



Strasbourg, 20 November 2017

**CDL-REF(2017)053**

**Opinion n° 904 / 2017**

Or. ang.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**POLAND**

**PRESIDENTIAL DRAFT ACT (\*)**

**ON AMENDING THE ACT  
ON THE NATIONAL COUNCIL OF THE JUDICIARY**

---

(\*) *Translation provided by the Polish authorities*

ACT  
of ..... 2017  
**amending the National Council of the Judiciary Act  
and certain other acts<sup>1</sup>**

**Article 1.** The National Council of the Judiciary Act of 12 May 2011 (Journal of Laws 2016, items 976 and 2261; 2017, items 1139, 1183 and 1452) is amended as follows:

1) the following Article 9a is inserted after Article 9:

‘Article 9a. 1. The Sejm shall elect, by a 3/5 majority in the presence of at least half the statutory number of deputies, 15 judges to the National Council of the Judiciary, for a four-year joint term, from among judges of the Supreme Court, the common courts, the administrative courts and the military courts.

2. When conducting the election referred to in paragraph 1, the Sejm shall take all possible account of the need for the Council to represent judges of courts of different types and levels.

3. The joint term of office of the new members elected to the Council from among judges shall begin the day after that on which the last of them is elected. The members of the previous Council shall perform their functions until the joint term of office of the new members of Council begins.’;

2) Article 11 is repealed;

3) the following Articles 11a to 11e are inserted after Article 11:

‘Article 11a. 1. No earlier than 120 days and no later than 90 days before the end of the term of office of the members of the Council elected from among judges, the Marshal of the Sejm shall announce the start of the procedure for nominating candidates for membership of the Council in the Official Gazette of the Republic of Poland *Monitor Polski*.

2. The entities authorised to nominate candidates for membership of the Council shall be:

1) a group of at least 2000 nationals of the Republic of Poland who are over 18 years of age, have full legal capacity and enjoy full public rights;

2) a group of at least 25 judges, excluding retired judges.

---

<sup>1</sup> This Act amends the following acts: the Military Courts Organisation Act of 21 August 1997, the Common Courts Organisation Act of 27 July 2001, the Administrative Courts Organisation Act of 25 July 2002, and the Supreme Court Act of 23 November 2002.

A nomination shall concern only one candidate for membership of the Council.

3. A candidate for membership of the Council shall be nominated to the Marshal of the Sejm no more than 30 days after the publication of the notice referred to in paragraph 1.
4. A candidate's nomination shall include the candidate's personal details, the functions and social action performed to date and other key events in the course of the candidate's occupation of a post as judge. The judge's consent to being a candidate shall be annexed to the nomination.
5. At the request of the Marshal of the Sejm, the president of the relevant court shall draw up, no more than seven days after service of the request, information on the candidate's rulings, covering rulings of social significance or setting a precedent, and key information concerning their workplace culture, as manifested above all during inspections and lustration. Where a nomination concerns:
  - 1) the president of a district or regional court, the information shall be drawn up by the president of the higher instance;
  - 2) the president of an appeal court, the information shall be drawn up by the deputy president of the appeal court.
6. Where the president of the relevant court or the deputy president of the appeal court fails to draw up information on the candidate's rulings within the time-limit referred to in paragraph 5, this information shall be drawn up by the candidate. A copy of the information drawn up by a candidate concerning their rulings shall be sent, as appropriate, to the president of the relevant court or to the deputy president of the appeal court.

Article 11b. 1. The nomination referred to in Article 11a(2) shall be made out in writing by an agent. The agent shall be a person indicated in a written statement by the first 15 persons on the list.

2. A list of citizens supporting a nomination, containing their names, surnames, addresses and Social Security identification numbers (PESEL) and personally deposited signatures, shall be annexed to the nomination referred to in Article 11a(2)(1).

3. In the event of doubts as to whether the requisite number of signatures have been duly deposited, the Marshal of the Sejm shall, no more than three days after receiving the nomination, ask the State Election Commission to confirm whether the requisite number of signatures have been deposited.

4. The State Election Commission shall confirm whether the requisite number of signatures have been deposited no more than 14 days after receiving the Marshal of the Sejm's letter.

5. If the enquiry referred to in paragraph 4 shows that the number of signatures duly deposited by persons supporting a candidature is lower than that required by statute, the Marshal of the Sejm shall refuse to accept the nomination.

The decision in this matter and the grounds shall be served on the agent without delay.

6. The agent may challenge this decision before the Supreme Court no more than three days after service. A three-member bench of the Supreme Court shall examine the appeal within three days in non-contentious proceedings. The Supreme Court's decision shall not be subject to appeal.

7. A list of judges supporting a nomination, containing their names, surnames, addresses and Social Security identification numbers (PESEL) and personally deposited signatures, shall be annexed to the nomination referred to in Article 11a(2)(2).

8. No more than three days after receiving a nomination referred to in Article 11a(2)(2), the Marshal of the Sejm shall ask the Minister for Justice to confirm that the persons submitting the nomination have judge's status. The Minister for Justice shall confirm that the persons submitting the nomination have judge's status no more than three days after receiving the Marshal of the Sejm's letter. Paragraphs 5 and 6 shall apply *mutatis mutandis*.

9. The Marshal of the Sejm shall lay down the models for the nomination and for the lists of citizens and judges nominating candidates for membership of the Council in an order. The order of the Marshal of the Sejm shall be published in the Official Gazette of the Republic of Poland *Monitor Polski*.

Article 11c. The Marshal of the Sejm shall immediately forward nominations made in accordance with Articles 11a and 11b to the deputies of the Sejm and publish them.

Article 11d. 1. If the Sejm fails, within 90 days of the publication of the notice referred to in Article 11a(1), to elect, for a four-year joint term of office, in accordance with Article 9a(1), 15 Council members from among judges or elects fewer than 15 members to the Council, the Sejm shall vote to elect nominated candidates to the vacant seats on the Council by roll call.

2. Each deputy taking part in the procedure of electing to the Council members from among judges shall have only one vote and may vote for only candidate.

3. A deputy may vote 'for' or 'against' a candidate or abstain from voting. The candidates who have received the highest number of votes shall be deemed to have been elected members of the Council. In the event of a tie in the number of votes cast 'for' a candidate, the candidate with the fewest votes 'against' shall be deemed to have been elected to the Council.

4. If the procedure laid down in paragraphs 1 to 3 fails to result in the election of 15 Council members from among judges, new elections to the vacant seats on the Council shall be held.

5. In the case referred to in paragraph 4, the Marshal of the Sejm shall immediately announce the start of the procedure for nominating candidates for membership of the Council in the Official Gazette of the Republic of Poland *Monitor Polski*. Articles 11a(2) to (6), 11b and 11c shall apply. Nominations for candidates for membership of the Council made prior to the date of the Marshal of the Sejm's notice shall not be considered.

Article 11e. 1. If a member of the Council elected from among judges has to be replaced before the end of their term, the Marshal of the Sejm shall immediately advertise the vacancy. Articles 11a to 11c shall apply *mutatis mutandis*.

2. In the case referred to in paragraph 1, Articles 9a(1) and (2) and 11d shall apply to the election of the member of the Council elected from among judges.

3. The term of office of a member of the Council elected to a vacant post shall expire on the date of expiry of the term of office of the members of the Council elected from among judges.';

4) Articles 12 and 13 are deleted;

5) in Article 14, paragraph 3 is deleted;

6) in Article 20(1) the following second sentence is added:

'Deliberations shall be broadcast over the internet.';

7) the following paragraphs 2a to 2c are added after Article 21(2):

'2a. In justified cases the President of the Council may give instructions for a circular vote to be held by electronic mail. The President of the Council shall send documents containing personal data in a form assuring their protection and shall notify the members of the Council of the voting method and of the absolute time-limit by which a declaration casting votes 'for' or against or abstaining from voting are to be sent to the electronic mail address indicated by the President of the Council.

2b. If a resolution is to be adopted by a circular vote, a secret vote shall not be

ordered.

2c. The circular vote shall be valid if at least half the Council's members vote within the time-limit set for reaching a position.';

8) the following paragraph 1a is inserted in Article 22:

'1a. When laying down detailed rules of procedure, the Council shall be guided by the need to ensure access to information on proceedings before the Council and comprehensive information on candidates and the reasons for requesting a person's appointment to the post of judge or assistant judge.'

9) in Article 24, paragraph 4 is replaced by the following:

'4. The provisions of the Act of 18 December 1998 on public prosecution and court staff (Journal of Laws 2017, items 246 and 1139) shall apply *mutatis mutandis* to staff of the Bureau, except for the requirement to have completed a probationary period, as referred to in Article 2(7) of that Act, in a court or public prosecutor's office.';

10) in Article 31:

a) in paragraph 1, the second sentence is replaced by the following:

'The team shall be made up of three members of the Council.'

b) the following paragraph 1a is inserted after paragraph 1:

'1a. Teams may not be composed exclusively of judges.'

c) the following paragraphs 2a to 2d are inserted after paragraph 2:

'2a. When designating a team of the kind referred to in paragraph 1, the President of the Council shall notify the Minister for Justice of the team's appointment and inform them of the individual cases assigned to the team for preparation for examination at a meeting of the Council.

2b. Within 21 days of receiving the information referred to in paragraph 2a the Minister for Justice may present the Council with an opinion on an individual case. The team may not take adopt positions of the kind referred to in Article 34(1) before the time-limit for the presentation of opinions by the Minister for Justice has expired.

2c. The failure of the Minister for Justice to present an opinion in an individual case within the time-limit referred to in paragraph 2b shall not suspend the team's work.

2d. The opinion referred to in paragraph 2b, or information on the failure to present such an opinion, shall be annexed to the case documents.';

11) in Article 33, the following paragraph 1a is added after paragraph 1:

'1a. Where the Council recommends for a judge's or assistant judge's post a

person other than that indicated in the position of the team referred to in Article 34(1), it shall adopt a resolution by a majority of 2/3 of the votes in the presence of at least half the Council's members.';

12) in Article 35(2), subparagraph 1 is replaced by the following:

'1) professional experience, including experience of applying the law, academic achievements, opinions presented, recommendations, publications and other documents annexed to the nomination papers;'

13) the following Article 44a is inserted after Article 44:

'Article 44a. The Council shall present to the President of the Republic of Poland a resolution containing a request for the appointment of the judge or assistant judge together with the grounds, information on other candidates for the post of judge or assistant judge and an assessment of all the candidates. The documents recording proceedings in the matter shall be annexed to the resolution.';

**Article 2.** Article 10(3)(2) of the Military Courts Organisation Act of 21 August 1997 (Journal of Laws 2016, items 358, 2103 and 2261; 2017, item 1452) is repealed.

**Article 3.** Article 106i(8) of the Common Courts Organisation Act of 27 July 2001 (Journal of Laws 2016, item 2062, as amended<sup>2</sup>) is repealed.

'8. If the National Council of the Judiciary does not object within two months of the date of submission of the list and the request referred to in paragraph 7, the assistant judge shall perform judicial duties for a period of four years after the expiry of the two-month deadline or, in the event of objections, from the date on which the resolution containing the objections is rescinded.'

**Article 4.** Subparagraphs 5 and 6 of Article 24(4) of the Administrative Courts Organisation Act of 25 July 2002 (Journal of Laws 2016, items 1066 and 2261) are repealed.

**Article 5.** Article 16(1)(4) of the Supreme Court Act of 23 November 2002 (Journal of Laws of 2016, item 1254, as amended<sup>3</sup>) is repealed.

**Article 6.** A member of the National Council of the Judiciary referred to in Article 187(1)(2) of the Constitution, elected under the previous provisions shall perform their function until the starting date of the joint term of office of the new members of Council elected by the Sejm from among judges under the Act referred to in Article 1, as amended by this Act.

---

<sup>2</sup> Amendments to the consolidated text of this Act were published in Journal of Laws 2016, items 1948, 2103 and 2261; 2017, items 38, 60, 803, 1139 and 1452.

<sup>3</sup> Amendments to the consolidated text of this Act were published in Journal of Laws 2016, items 2103 and 2261; 2017, items 38 and 1452.

**Article 7.** The election of members of the National Council of the Judiciary for a new term of office, in connection with the termination of the performance of the function by the members of the National Council of the Judiciary referred to in Article 6, shall be conducted under the Act referred to in Article 1, as amended by this Act, save that:

- 1) the Marshal of the Sejm shall announce the start of the procedure for nominating candidates for membership of the Council no later than seven days after the date of entry into force of this Act;
- 2) a candidate for membership of the Council shall be nominated to the Marshal of the Sejm no more than 21 days after the publication of the notice referred to in paragraph 1;
- 3) the Sejm shall elect members of the Council from among judges in accordance with Article 9a(1) no more than 60 days after publication of the notice.

**Article 8.** This Act shall enter into force 30 days after its publication.