



Strasbourg, 17 September 2024

CDL-REF(2024)036

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

POLAND

DRAFT AMENDMENTS TO THE CONSTITUTION OF POLAND

Bill

from...

on amendment of the Constitution of the Republic of Poland

Article 1. The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws item 483, of 2001 item 319, of 2006 item 1471 and of 2009 item 946) is amended as follows:

1) Article 193 shall read as follows:

"Article 193. Any court may refer a question of law to the Constitutional Tribunal regarding the conformity of a normative act with the Constitution, ratified international agreements, or statutes, provided that the ruling of the pending case before the court hinges upon the answer to that legal question and that the direct application of the Constitution, as outlined in Article 8, Section 2, is insufficient to achieve such a ruling.";

2) Article 194 shall be read as follows:

"Article 194.

1. The Constitutional Tribunal shall be composed of 15 judges, each elected individually by the Sejm for a non-renewable term of 9 years, from among individuals distinguished by their legal expertise.

2. A person who has previously held the mandate of a Deputy, Senator, Member of the European Parliament, or who has served as a member of the Council of Ministers, may be elected as a judge of the Constitutional Tribunal only if at least 4 years have elapsed since the expiration of the mandate or the conclusion of their service in the Council of Ministers.

3. The President and Vice-President of the Constitutional Tribunal shall be appointed by the President of the Republic for a term of 3 years, from among two candidates for each position, nominated by the General Assembly of Judges of the Constitutional Tribunal. Reappointment to the position of President or Vice-President of the Tribunal shall be permissible only once."

Article 2

1. On the date of entry into force of this Act, the term of office of the current judges of the Constitutional Tribunal shall expire. The judges shall hold their positions until their successors are elected.

2. The judges of the Constitutional Tribunal whose term of office has expired pursuant to par. 1 shall have the right to retire after completing their term of office.

3. The judges of the Constitutional Tribunal who were elected by the Sejm on 8 October 2015 (Journal of Laws item 1038, 1039 and 1040) and who have not taken an oath before the President of the Republic of Poland shall have the right to retire on the date of entry into force of this Act.

Article 3

1. Within 14 days of the date of entry into force of the Act, the Sejm shall elect 15 judges of the Constitutional Tribunal by a 3/5 majority vote. If this election cannot be made, within 2 months of the date of entry into force of the Act, the Sejm shall elect 15 judges of the Constitutional Tribunal by an absolute majority vote.

2. The Constitutional Tribunal, elected pursuant to par. 1, shall consist of:

- 1) 5 judges elected individually for 3 years;
- 2) 5 judges elected individually for 6 years;
- 3) 5 judges elected individually for 9 years.

3. The President of the Republic of Poland shall accept the oath of office from the judges of the Constitutional Tribunal, elected pursuant to par. 1, no later than within 7 days of their election by the Sejm.

4. The judges of the Constitutional Tribunal referred to in par. 1 shall hold their positions until their successors are elected. After completing their term of office, they shall have the right to retire.

5. After the expiry of the term of office of the judges referred to in paragraph 1, the judges of the Constitutional Tribunal shall be elected individually on the basis of Article 194 paragraph 1 of the Constitution in the wording given by this Act.

Article 4.

1. The General Assembly of Judges of the Constitutional Tribunal, in a composition formed pursuant to this Act, shall present to the President of the Republic of Poland immediately, no later than within 14 days from the date of taking the oath by all judges referred to in Art. 3 sec. 1, two candidates for the position of President and two candidates for the position of Vice-President of the Constitutional Tribunal.

2. The President of the Republic of Poland shall appoint the President and Vice-President of the Tribunal for a term of 3 years.

Article 5.

The Act shall enter into force after 14 days from the date of announcement.