



Strasbourg, 17s September 2024

**CDL-REF(2024)038**

Engl. only

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

**POLAND**

**DRAFT PROVISIONS INTRODUCING THE ACT ON THE  
CONSTITUTIONAL TRIBUNAL**

**Print No. 254**

Warsaw, 6 March 2024

SEJM  
OF THE REPUBLIC OF POLAND  
10th term of office

Mr  
Szymon Hołownia  
Speaker of the Sejm  
of the Republic of Poland

Pursuant to Article 118(1) of the Constitution of the Republic of Poland and pursuant to Article 32(2) of the Standing Orders of the Sejm, the undersigned deputies propose a bill:

## **- Provisions introducing the Act on the Constitutional Tribunal**

We authorise Mr Grzegorz Rusiecki (MP), Mr Bartosz Romowicz (MP), Mr Mirosław Adam Orliński (MP) and Ms Katarzyna Ueberhan (MP) to represent the applicants in the work on the bill.

(-) Piotr Adamowicz; (-) Urszula Augustyn; (-) Władysław Bartoszewski; (-) Sylwia Bielawska; (-) Paweł Bliźniuk; (-) Izabela Bodnar; (-) Krzysztof Bojarski; (-) Piotr Borys; (-) Agnieszka Buczyńska; (-) Elżbieta Burkiewicz; (-) Marek Jan Chmielewski; (-) Żaneta Cwalina-Śliwowska; (-) Włodzimierz Czarzasty; (-) Jacek Czerniak; (-) Zofia Czernow; (-) Sławomir Ćwik; (-) Barbara Dolniak; (-) Robert Dowhan; (-) Agnieszka Dziemianowicz-Bąk; (-) Joanna Frydrych; (-) Konrad Frysztak; (-) Patryk Gabriel; (-) Krzysztof Gadowski; (-) Elżbieta Gapińska; (-) Kamila Gasiuk-Pihowicz; (-) Krzysztof Gawkowski; (-) Piotr Głowski; (-) Marta Golbik; (-) Adam Gomoła; (-) Stanisław Gorczyca; (-) Daria Gosek-Popiołek; (-) Piotr Górnikiewicz; (-) Michał Gramatyka; (-) Andrzej Grzyb; (-) Krzysztof Habura; (-) Iwona Hartwich; (-) Paulina Hennig-Kloska; (-) Marek Tomasz Hok; (-) Łukasz Horbatowski; (-) Klaudia Jachira; (-) Marcin Józefaciuk; (-) Iwona Karolewska; (-) Rafał Kasprzyk; (-) Henryk Kiepus; (-) Katarzyna Kierzek-Koperska; (-) Agnieszka Maria Kłopotek; (-) Michał Kobosko; (-) Rafał Komarewicz; (-) Zbigniew Konwiński; (-) Katarzyna Kotula; (-) Iwona Małgorzata Krawczyk; (-) Adam Krzemiński; (-) Anita Kucharska-Dziedzic; (-) Marcin Kulasek; (-) Maciej Lasek; (-) Gabriela Lenartowicz; (-) Aleksandra Leo; (-) Łukasz Litewka; (-) Radosław Lubczyk; (-) Katarzyna Anna Lubnauer; (-) Adam Luboński; (-) Artur Jarosław Łącki; (-) Alicja Łepkowska-Gołaś; (-) Dorota Łoboda; (-) Magdalena Łośko; (-) Krystian Łuczak; (-) Mirosław Maliszewski; (-) Jagna Marczułajtis-Walczak; (-) Dorota Marek; (-) Izabela Katarzyna Mrzygłocka; (-) Joanna Mucha; (-) Arkadiusz Myrcha; (-) Jacek Niedźwiedzki; (-) Jolanta Niezgodzka; (-) Maja Ewa Nowak; (-) Wanda Nowicka; (-) Mirosława Nykiel; (-) Barbara Okuła; (-) Barbara Oliwiecka; (-) Mirosław Adam Orliński; (-) Łukasz Osmalak; (-) Paweł Papke; (-) Urszula Paślawska; (-) Krzysztof Paszyk; (-) Karolina Pawliczak; (-) Ryszard Petru; (-) Norbert Pietrykowski; (-) Lucjan Marek Pietrzczyk; (-) Jacek Protas; (-) Michał Pyrzyk; (-) Renata Rak; (-) Bartosz Romowicz; (-) Monika Rosa; (-) Wiesław Różyński; (-) Grzegorz Rusiecki; (-) Marek Rząsa; (-) Jarosław Rzepa; (-) Tadeusz Samborski; (-) Marek Sawicki; (-) Ewa Schadler; (-) Joanna Scheuring-Wielgus; (-) Krystyna Sibińska; (-) Rafał Siemaszko; (-) Tomasz Siemoniak; (-) Arkadiusz Sikora; (-) Marcin Skonieczka; (-) Anna Sobolak; (-) Marek Sowa; (-) Magdalena Sroka; (-) Piotr Paweł Strach; (-) Mirosław Suchoń; (-) Wiesław Szczepański; (-) Michał Szczerba; (-) Andrzej Szejna; (-) Adam Szłapka; (-) Henryk Szopiński; (-) Krystyna Szumilas; (-) Ewa Szymanowska; (-) Paweł Śliz; (-) Krzysztof Śmiszek; (-) Apoloniusz Tajner; (-) Tadeusz Tomaszewski; (-) Wioleta Tomczak; (-) Tomasz Trela; (-) Katarzyna Ueberhan; (-) Jarosław Urbaniak; (-) Dariusz Wieczorek; (-) Jarosław Wiesław Wieczorek; (-) Kamil Wnuk; (-) Anna Wojciechowska; (-) Paweł Zalewski; (-) Bogdan Andrzej Zdrojewski; (-) Witold Zembaczyński; (-) Piotr Zgorzelski; (-) Jolanta Zięba-Gzik; (-) Tomasz Zimoch; (-) Anna Maria Żukowska.

Pressed by order of the Speaker of the Sejm of the Republic of Poland

**BILL AND EXPLANATORY STATEMENT****dated 4 March 2024****ACT**

of ... 2024

**Provisions introducing the Act on the Constitutional Tribunal****Chapter 1****General provision****Article 1**

The Act of ... on the Constitutional Tribunal (Journal of Laws, item ...) shall enter into force 30 days following the promulgation of this Act.

**Chapter 2****Amendments to the provisions****Article 2**

In the Act of 9 May 1996 on the exercise of the mandate of a deputy and senator (consolidated text: Journal of Laws of 2022, item 1339, as amended), Article 30(1) shall be replaced by the following:

“1. During the period of exercising their mandate, deputies and senators may not perform work under an employment relationship: in the Chancellery of the Sejm, in the Chancellery of the Senate, in the Chancellery of the President of the Republic of Poland, in the Chancellery of the Constitutional Tribunal, in the Supreme Audit Office, in the Office of the Commissioner for Human Rights, in the Office of the Ombudsman for Children, in the Office of the National Broadcasting Council, in the National Election Office, in the State Labour Inspectorate, in government and local government administration – except in an elected employment relationship – and may not perform work as a judge, assistant judge and public prosecutor, administrative employee of the court and prosecution service, and may not perform professional military service.”.

**Article 3**

In the Act of 27 June 1997 on political parties (consolidated text: Journal of Laws of 2023, item 1215), Article 43 shall be replaced by the following:

“Article 43 The procedure in the cases referred to in Article 42 shall be determined by the Act of ... on the Constitutional Tribunal (Journal of Laws, item ...).”.

#### Article 4

In the Act of 21 August 1997 on the limitation of conducting economic activity by persons performing public functions (consolidated text: Journal of Laws of 2023, item 1090), the following amendments shall be introduced:

- 1) Article 8(3) and (4) shall be amended to read as follows:

“3. President of the Republic of Poland, Speaker of the Sejm, Speaker of the Senate, Prime Minister, Head of the Chancellery of the President, Head of the Chancellery of the Sejm, Head of the Chancellery of the Senate, President of the Constitutional Tribunal, President of the Supreme Audit Office, Prosecutor General, Commissioner for Human Rights, President of the Supreme Administrative Court, Governor of the National Bank of Poland, Chairperson of the National Broadcasting Council, Chief Labour Inspector, President of the Polish Academy of Sciences, Head of the National Election Office and Financial Ombudsman shall submit the statement referred to in paragraph 1 to the First President of the Supreme Court. The First President of the Supreme Court shall submit the statement to the President of the Republic of Poland.

4. The provision in paragraph 2 shall not apply to the President of the Republic of Poland, Speaker of the Sejm, Speaker of the Senate, Prime Minister, Deputy Speaker of the Sejm, Deputy Speaker of the Senate, Vice President of the Council of Ministers, President of the Constitutional Tribunal, Vice President of the Constitutional Tribunal, President of the Supreme Audit Office, Vice President of the Supreme Audit Office, Prosecutor General, Commissioner for Human Rights, President of the Supreme Administrative Court, Vice President of the Supreme Administrative Court, First President of the Supreme Court, President of the Supreme Court, Governor of the National Bank of Poland, First Deputy Governor of the National Bank of Poland, and Deputy Governor of the National Bank of Poland.”;

- 2) Article 10(5) shall be replaced by the following:

“5. President of the Republic of Poland, Speaker of the Sejm, Speaker of the Senate, Prime Minister, Head of the Chancellery of the President, Head of the Chancellery of the Sejm, Head of the Chancellery of the Senate, President of the Constitutional Tribunal, President of the Supreme Audit Office, Commissioner for Human Rights, President of the Supreme Administrative Court, Governor of the National Bank of Poland, Chairperson of the National Broadcasting Council, Chief Labour Inspector, President of the Polish Academy of Sciences, Head of the National Election Office and Financial Ombudsman shall submit the statement referred to in paragraph 1 to the First President of the Supreme Court who shall analyse the data contained therein. The First President of the Supreme Court shall submit the statement to the President of the Republic of Poland who shall analyse the data contained therein.”.

#### Article 5

In the Act of 18 December 1998 on employees of courts and prosecution service (consolidated text: Journal of Laws of 2018, item 577), the following amendments shall be introduced:

- 1) in Article 1, point 3 shall be deleted;

2) Articles 14a to 18 shall be replaced by the following:

“Article 14a The remuneration of officials and other employees of courts and prosecution service shall be increased within the time limits and in accordance with the rules set for employees of the state budget sector not covered by multiplicative remuneration systems.

Article 15 An official and other employee of a court or prosecution service shall be entitled to a long-service bonus equal to 5% of the monthly basic remuneration after 5 years of service. This bonus shall increase by 1% for each additional year of service until it reaches 20% of the monthly basic remuneration.

Article 16 In return for many years of service, an official and other employee of the court or prosecution service shall receive a jubilee award amounting to:

- 1) after 20 years of service – 75% of the monthly remuneration;
- 2) after 25 years of service – 100% of the monthly remuneration;
- 3) after 30 years of service – 150% of the monthly remuneration;
- 4) after 35 years of service – 200% of the monthly remuneration;
- 5) after 40 years of service – 300% of the monthly remuneration;
- 6) after 45 years of service – 400% of the monthly remuneration.

Article 17 An official or other employee of a court or prosecution service whose employment relationship has been terminated due to disability retirement or old-age retirement shall be entitled to a one-time severance payment amounting to:

- 1) two months' remuneration – after 10 years of service in a court or prosecution service;
- 2) three months' remuneration – after 15 years of service in a court or prosecution service;
- 3) six months' remuneration – after 20 years of service in a court or prosecution service.

Article 18 In matters not regulated by this Act, the provisions of the Act of 16 September 1982 on employees of state offices (consolidated text: Journal of Laws of 2023, item 1917) shall apply accordingly to officials and other employees of courts and prosecution service, and in matters also not regulated by the latter act – the provisions of the Act of 26 June 1974 – Labour Code (consolidated text: Journal of Laws of 2023, item 1465) shall apply.”.

### **Chapter 3**

#### **Repealing, transitional, adjusting and final provisions**

##### **Article 6**

1. The following pieces of legislation shall expire:

- 1) Act of 30 November 2016 on the status of the judges of the Constitutional Tribunal

(consolidated text: Journal of Laws of 2018, item 1422);

- 2) Act of 30 November 2016 on the organisation of the Constitutional Tribunal and the mode of proceedings before the Constitutional Tribunal (consolidated text: Journal of Laws of 2019, item 2393), except for the provisions referred to in paragraph 2;
  - 3) Act of 13 December 2016 – the introductory provisions to the Act on the organisation of the Constitutional Tribunal and the mode of proceedings before the Constitutional Tribunal and to the Act on the status of the judges of the Constitutional Tribunal (Journal of Laws of 2016, item 2074, as amended).
2. The provisions of Articles 16 to 32 of the Act of 30 November 2016 on the organisation of the Constitutional Tribunal and the mode of proceedings before the Constitutional Tribunal (consolidated text: Journal of Laws of 2019, item 2393) shall expire on the day following the lapse of 18 months from the date of entry into force of the Act referred to in Article 1.

### **Article 7**

1. Judgments of the Constitutional Tribunal, hereinafter referred to as the “Tribunal”, rendered by a panel of judges that included a person appointed to the position of a judge of the Tribunal in violation of the Act of 25 June 2015 on the Constitutional Tribunal (Journal of Laws of 2015, item 1064, as amended) and the judgments of the Constitutional Tribunal of 3 December 2015, ref. no. K 34/15 (Journal of Laws of 2015, item 2129), and of 9 December 2015, ref. no. K 35/15 (Journal of Laws of 2015, item 2147), as well as the person appointed in his/her place, hereinafter collectively referred to as a “person not authorised to adjudicate”, are invalid and do not have the effects specified in Article 190(1) and (3) of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483; of 2001, No. 28, item 319; of 2006, No. 200, item 1471; of 2009, No. 114, item 946), subject to paragraph 4.
2. The decisions referred to in Article 103(2)(1) of the Act of 30 November 2016 on the organisation of the Constitutional Tribunal and the mode of proceedings before the Constitutional Tribunal (Journal of Laws of 2019, item 2393), issued by a panel of judges which included a person not competent to adjudicate, shall be invalid and devoid of legal effect.
3. All procedural actions performed in proceedings before the Tribunal that concluded with the decisions referred to in paragraphs 1 and 2 must be repeated.
4. Judicial decisions and final administrative decisions, no longer appealable at the time of entry into force of this Act, rendered in individual cases on the basis of the legal status formed by the judgment referred to in paragraph 1 shall remain in effect.
5. Within 1 month from the date of entry into force of the Act, the Tribunal shall compile and make public a list of judgments and orders that are invalid under paragraphs 1 and 2. The list shall be published in the Official Gazette “Monitor Polski”.

### **Article 8**

1. The decisions of the Tribunal issued under Articles 59 and 61 of the Act of 30 November 2016 on the organisation of the Constitutional Tribunal and the mode of proceedings before the

Constitutional Tribunal in a panel which included a person not authorised to adjudicate shall remain in effect.

2. If the decision referred to in paragraph (1) concerned a case initiated by a constitutional appeal, the complainant may again file a constitutional appeal within 3 months from the date of entry into force of the Act.

#### **Article 9**

1. Subject to paragraph 2, the existing provisions shall apply to proceedings before the Tribunal initiated and not concluded before the date of entry into force of the Act referred to in Article 1.
2. The provisions of this Act shall apply to proceedings before the Tribunal initiated and not concluded before the date of entry into force of the Act referred to in Article 1, in which the panel of judges included a person not authorised to adjudicate.
3. Procedural actions performed in the proceedings referred to in paragraph 2 must be repeated.

#### **Article 10**

The existing provisions shall apply to the types of disciplinary acts of judges of the Tribunal and retired judges of the Tribunal committed prior to the entry into force of the Act referred to in Article 1, as well as the disciplinary penalties adjudicated for such acts.

#### **Article 11**

1. As of the date of entry into force of the Act referred to in Article 1, the duties of the President of the Constitutional Tribunal shall be performed by the judge with the most judicial seniority in the Constitutional Tribunal.
2. Within 6 months from the date of entry into force of the Act referred to in Article 1, the General Assembly of Judges of the Constitutional Tribunal shall present to the President of the Republic of Poland candidates for the position of President of the Constitutional Tribunal and Vice President of the Constitutional Tribunal. The provisions of the Act referred to in paragraph 1 regarding the selection of candidates for the position of President of the Constitutional Tribunal and Vice President of the Constitutional Tribunal shall apply accordingly.

#### **Article 12**

1. A judge of the Tribunal whose term of office began before the date of entry into force of the Act referred to in Article 1 may, within one month from the date of its entry into force, make a declaration to the President of the Tribunal that due to the introduction of new rules for the performance of the duties of a judge of the Tribunal during his/her term of office, he/she is retiring, subject to paragraph 2.
2. The possibility of retiring for the reasons specified in paragraph 1 shall not apply to a person not authorised to adjudicate.

3. The retirement of a judge of the Tribunal, as referred to in paragraph 1, shall take place on the first day of the month following the month in which the declaration of retirement was made.

### **Article 13**

1. As of the day following the lapse of 18 months from the date of entry into force of the Act referred to in Article 1, the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal, established under the Act referred to in Article 6(1)(3), shall be abolished.
2. Until the date referred to in paragraph 1, the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal shall perform tasks on the basis of the existing provisions.
3. As of the day following the day referred to in paragraph 1, the Chancellery of the Constitutional Tribunal shall be established within the meaning of the Act referred to in Article 1.
4. The General Assembly of Judges of the Tribunal shall, within 1 month from the date of entry into force of the Act referred to in Article 1, appoint the Head of the Chancellery of the Tribunal and entrust him/her with responsibilities related to the abolishment of the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal established under the provisions of the Act referred to in Article 6(1)(3), and with responsibilities related to the organisation of the Chancellery of the Tribunal established under the provisions of the Act referred to in Article 1, and shall determine his/her responsibilities and remuneration.
5. As of the date of appointment of the Head of the Chancellery of the Tribunal referred to in paragraph 4, the positions of the Director of the Chancellery of the Tribunal and the Director of the Office of the Legal Service of the Tribunal, within the meaning of the Act referred to in Article 6(1)(2), shall be abolished.

### **Article 14**

1. Employees of the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal shall retain their rights and perform their employment duties in accordance with the scope ensuing from the existing acts under which their employment relationship was established until:
  - 1) the day following the lapse of 18 months from the date of entry into force of the Act referred to in Article 1, if they accepted the proposed terms and conditions of work and pay for a further period in connection with the abolishment of the Tribunal Office;
  - 2) the date of expiration of the employment relationship referred to in paragraph 2;
  - 3) the date of termination of the employment relationship referred to in paragraph 4.
2. The employment relationships with employees referred to in paragraph 1(2) shall expire on the day following the lapse of 18 months from the date of entry into force of the Act referred to in Article 1 if:
  - 1) until the day following the lapse of 15 months from the date of entry into force of the act referred to in Article 1, no terms and conditions of work and pay are offered to them for a further period in connection with the abolishment of the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal;

- 2) they refuse to accept the new terms and conditions of work and pay offered to them in connection with the abolishment of the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal.
3. The employer shall notify the employee referred to in paragraph 2 in writing of the date of expiration of the employment relationship or of the consequences of not accepting new terms and conditions of work and pay in connection with the abolishment of the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal.
4. Early termination of employment by the employer may be effected by notice.
5. Employees of the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal, whose employment relationship expires or is terminated, shall be entitled to a severance payment determined in accordance with the rules set forth in Article 8 of the Act of 13 March 2003 on special rules for termination of employment relationships with employees for reasons not related to employees (consolidated text: Journal of Laws of 2018, item 1969, as amended).

#### **Article 15**

The General Assembly of Judges of the Tribunal shall, by the day following the lapse of 18 months from the date of entry into force of the Act referred to in Article 1, adopt the Rules of Procedure of the Tribunal and the Statute of the Chancellery of the Tribunal.

#### **Article 16**

The Act shall enter into force after 30 days following its promulgation, except for Article 2, which shall enter into force on the day following the lapse of 18 months from the date of entry into force of the Act referred to in Article 1.