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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

POLAND

DRAFT LAW
OF 12 APRIL 2024
AMENDING THE LAW ON THE
NATIONAL COUNCIL OF THE JUDICIARY

**Text of the draft law provided to the Senate under
Article 52 of the Standing Orders of the Sejm**

ACT

of 12 April 2024

amending the Act on the National Council of the Judiciary

Article 1. The Act of 12 May 2011 on the National Council of the Judiciary (Journal of Laws of 2021, item 269; and of 2023, item 1615) shall be amended as follows:

- (1) Article 9a shall be repealed.
- (2) Articles 11a to 11e shall be repealed.
- (3) The following Articles 11f to 11u shall be added after Article 11e:

“Article 11f. (1) The following members of the Council shall be elected by judges, in direct elections and by secret ballot:

- (1) one judge of the Supreme Court;
- (2) two appeal court judges;
- (3) three regional court judges;
- (4) six district court judges;
- (5) one military court judge;
- (6) one judge of the Supreme Administrative Court;
- (7) one voivodeship administrative court judge.

(2) The right to elect members of the Council referred to in paragraph 1 shall be vested in judges of the Supreme Court, judges of common courts, judges of military courts, and judges of administrative courts who are in active duty on the day of the election. A judge may cast a vote for one candidate.

(3) In the election of members of the Council referred to in paragraph 1(1) and (5)-(7), the candidate who receives the highest number of votes among the candidates being judges of the Supreme Court, military court judges, judges of the Supreme Administrative Court, or voivodeship administrative court judges, respectively, shall become a member of the Council. In the election of the members of the Council referred to in paragraph 1(2)-(4), the relevant number of candidates who receive the highest numbers of votes among the candidates being appeal court judges, regional court judges, or district court judges, respectively, shall become members of the Council. In the event of a tie, the judge with the longer service shall become a member of the Council, and in the event of equal service – the older judge.

(4) The joint term of the members of the Council referred to in paragraph (1) shall commence on the day following the day on which the election results are promulgated. Members of the Council of the preceding term shall remain in office until the start of the joint term of the new members of the Council.

Article 11g. (1) The election of the members of the Council referred to in Article 11f(1) shall be ordered by the National Electoral Commission by way of a resolution promulgated in the Official Journal of the Republic of Poland ‘Monitor Polski’ no later than four months before the day on which the joint term of the members of the Council referred to in Article 11f(1) ends, except in cases under Article 11s(3) and Article 11t.

- (2) The resolution referred to in paragraph 1 shall specify:
 - (1) the date of the election, falling not later than one month before the expiry of the joint term of the members of the Council referred to in Article 11f(1), or designated in accordance with Article 11s(3) or Article 11t;
 - (2) the number of members of the Council elected, as referred to in Article 11f(1);
 - (3) the deadline for the nomination of candidates for members of the Council, falling no earlier than 21 days after the day the resolution is adopted and no later than two months before the election day;
 - (4) deadlines for conducting electoral procedures;
 - (5) the model application to nominate a candidate for a member of the Council and the model list of judges supporting the nomination by the group referred to in Article 11i(1);
 - (6) the model ballot paper and the model voting report.

Article 11h. (1) The election of the members of the Council referred to in Article 11f(1) shall be conducted by the National Electoral Commission.

(2) If a member of the National Electoral Commission is a candidate for a member of the Council, they shall be excluded from the electoral procedures.

Article 11i. (1) The following groups may nominate a candidate for a member of the Council referred to in Article 11f(1):

- (1) a group of 10 judges – for a candidate who is a judge referred to in Article 11f(1)(1), (2) or (5)-(7);
- (2) a group of 25 judges – for a candidate who is a regional court judge;
- (3) a group of 40 judges – for a candidate who is a district court judge.

(2) The following entities may also nominate a candidate for a member of the Council referred to in Article 11f(1):

- (1) the Polish Bar Council;
- (2) the National Bar Council of Attorneys-at-Law;
- (3) the Polish National Council of Notaries

(3) The groups referred to in paragraph 1 and entities referred to in paragraph 2 may put forward only one candidate for a member of the Council.

(4) Retired judges may not support the nomination of, or stand as, a candidate for a member of the Council.

Article 11j. (1) Candidates for members of the Council shall be proposed in writing to the National Electoral Commission within the time limit specified in the resolution referred to in Article 11g(1).

(2) The application to nominate a candidate for a member of the Council shall include: the candidate's forename and surname, date of birth, PESEL number, official position and place of service, periods of service in respective judicial positions, functions held in the judiciary and periods of their discharge.

(3) The application to nominate a candidate for a member of the Council shall have appended to it the consent of the judge to stand as a candidate for a member of the Council.

(4) The application to nominate a candidate for a member of the Council by the group referred to in Article 11i(1) shall have appended to it a list of judges supporting the nomination, including their forenames and surnames, PESEL numbers, official positions and places of service, and their handwritten signatures with the date of signature. A judge

may support only one candidate and may not support their own nomination. Withdrawal of support given shall have no legal effect.

(5) The list of judges supporting the nomination of a candidate for a member of the Council by the group referred to in Article 11i(1) must bear the following annotation on each page:

'I give my support for the nomination of the Judge of (designation of the court at which the judge serves), (full name of the judge), as a candidate for a member of the National Council of the Judiciary.'

(6) The nomination of a candidate for a member of the Council by the group referred to in Article 11i(1) shall be made in writing by an attorney-in-fact who shall be a person specified by the candidate for a member of the Council from among the persons included in the list of judges supporting the nomination. The power of attorney granted by the candidate for a member of the Council shall be appended to the application.

(7) If more than one candidate for a member of the Council is nominated by the group referred to in Article 11i(1) or by the entity referred to in Article 11i(2), the proposal received earlier by the National Electoral Commission shall be accepted, unless the candidate whose nomination is received earlier has withdrawn their consent to stand as a candidate for a member of the Council, has lost the right to be elected, or has died.

(8) Where a judge supports the nomination of more than one candidate, the support of the nomination received by the National Electoral Commission earlier shall be accepted, unless the candidate whose nomination is received earlier has withdrawn their consent to stand as a candidate for a member of the Council, has lost the right to be elected, or has died.

Article 11k. (1) The National Electoral Commission shall verify the correctness of applications of candidates for members of the Council.

(2) Within three days of the day on which the application is received, the National Electoral Commission shall refer to the Minister of Justice, the First President of the Supreme Court, and the President of the Supreme Administrative Court – in respect of common court judges and military court judges, Supreme Court judges, and administrative court judges, respectively – with a letter requesting them to provide information:

- (1) whether the candidate has the status of a judge eligible to stand as a candidate for a member of the Council;
- (2) whether the persons supporting the nomination of a candidate for a member of the Council by the group referred to in Article 11i(1) have the status of judges entitled to support the nomination of a candidate for a member of the Council.

(3) The Minister of Justice, the First President of the Supreme Court, and the President of the Supreme Administrative Court shall provide the National Electoral Commission with information to the extent indicated in paragraph 2 within seven days of receiving the letter from the National Electoral Commission.

(4) If the National Electoral Commission finds that a candidate for a member of the Council does not have the status of a judge eligible to stand as a candidate for a member of the Council, it shall refuse to accept their nomination.

(5) If the National Electoral Commission finds that the application to nominate a candidate for a member of the Council cannot be properly acted on as a result of non-compliance with requirements other than those specified in paragraph 4, in particular if this application does not have appended to it the consent of the judge to stand as a

candidate for a member of the Council, the power of attorney, or the list of judges supporting the nomination of a candidate for a member of the Council by the group referred to in Article 11i(1), or if the number of properly affixed signatures by the judges supporting the nomination of a candidate for a member of the Council by the group referred to in Article 11i(1) is less than required, the National Electoral Commission shall call upon the attorney or the entity referred to in Article 11i(2) to supplement or correct the said application, provided that the deadline for nominating candidates has not expired. The application to nominate a candidate for a member of the Council may be supplemented or corrected until the deadline for nominating candidates expires.

(6) The National Electoral Commission shall reject the nomination of a candidate for a member of the Council if the application to nominate a candidate for a member of the Council is not supplemented or corrected by the deadline for nominating candidates.

(7) The summons referred to in paragraph 5 and the resolution of the National Electoral Commission rejecting the nomination of a candidate for a member of the Council, together with the justification, shall be published forthwith in the Public Information Bulletin, on the page of the National Electoral Commission and served on the attorney or the entity referred to in Article 11i(2).

(8) A resolution of the National Electoral Commission rejecting the nomination of a candidate for a member of the Council may be challenged by the attorney or the entity referred to in Article 11i(2) to the Supreme Administrative Court within three days of the date on which it is published in the Public Information Bulletin, on the page of the National Electoral Commission. The challenge shall be lodged through the National Electoral Commission.

(9) The Supreme Administrative Court shall examine the challenge at a closed session, sitting in a panel of three judges, no later than within three days of its receipt. As a result of the examination of the challenge, the Supreme Administrative Court shall either amend or uphold the resolution challenged. The decision of the Supreme Administrative Court shall be served forthwith on the attorney or the entity referred to in Article 11i(2), and the National Electoral Commission which shall publish it in the Public Information Bulletin, on its page. There shall be no legal remedy against the decision of the Supreme Administrative Court.

(10) To the extent not governed, the proceedings before the Supreme Administrative Court shall be governed by the provisions of the Act of 30 August 2002 – Law on Proceedings before Administrative Courts (Journal of Laws of 2023, items 1634, 1705, and 1860) that concern cases of complaints referred to in Article 3 § 2(1) of that Act, excluding Articles 52-55, Article 61 § 2-6, Article 90, Article 91 § 2, Article 93, Articles 96-122, Article 145 § 1(1)(b), (2) and (3), as well as Articles 243-262, with the proviso that the time limit referred to in Article 193 of that Act shall be three days.

Article 11l. Immediately after the expiry of the deadline referred to in Article 11k(8), in the event that no such challenges are filed within this deadline, or after the decision referred to in Article 11k(9) is issued, the National Electoral Commission shall promulgate in the Public Information Bulletin, on its page, the list of candidates for members of the Council referred to in Article 11f(1), as well as the applications to nominate the candidates for members of the Council and the lists of judges supporting the nominations of candidates for members of the Council by the groups referred to in Article 11i(1), in the scope of their full names, official positions and places of service.

Article 11m. (1) The presidents of the courts referred to in Article 11f(1)(2)-(7) and the First President of the Supreme Court shall:

- (1) inform the National Electoral Commission of the number of judges of the given court as at the date such information is provided, no later than 30 days before the election day;
- (2) after the list of candidates for members of the Council is promulgated, appoint a ballot committee consisting of at least three judges of the given court, including the chair, who are not candidates for members of the Council;
- (3) provide the organisational and technical means necessary to properly hold the ballot at court.

(2) At the unanimous request of the competent court presidents, the National Electoral Commission may establish one ballot committee for more than one of the courts referred to in Article 11f(1)(2)-(5) and (7).

Article 11n. (1) The National Electoral Commission shall order:

- (1) ballot papers to be printed in a number that takes into account the number of judges at each court, ensuring that the ballot is held correctly;
- (2) ballot papers to be delivered to the relevant courts, in such number and in such time as allows the ballot to be held properly.

(2) Next to the name of each candidate for a member of the Council on the ballot paper, their official position and place of service shall be stated.

Article 11o. (1) No later than seven days before the election day, the National Electoral Commission shall organise a public hearing of the candidates for members of the Council, during which the candidates shall make a speech, and participants will be able to ask questions.

(2) Immediately after the list of candidates for members of the Council is promulgated, the National Electoral Commission shall communicate in the Public Information Bulletin, on its page, that one may participate in the public hearing of candidates for members of the Council, and specify the deadline for applications to participate, falling no later than 21 days before the election day.

(3) Natural persons may apply to participate in the public hearing of candidates for members of the Council. The application shall be submitted to the National Electoral Commission within the time limit specified under paragraph 2.

(4) The application to participate in the public hearing of candidates for members of the Council shall specify the full name and address of the participant, as well as the candidates to whom the participant wishes to pose questions and the number of such questions.

(5) An application to participate in the public hearing of candidates for members of the Council which does not comply with the conditions set out in paragraph 3 or 4 shall not be considered.

(6) The form and agenda of the public hearing shall be determined by resolution of the National Electoral Commission.

(7) For reasons related to the place where the hearing is held or for technical reasons, the National Electoral Commission may limit the number of participants at the public hearing, or the number of questions posed by a participant to the respective candidates for members of the Council. This limitation shall be imposed based on objective criteria applied to all persons who have applied to participate in the hearing. People may be admitted to the public hearing in particular based on the order of application or the setting of the maximum number of questions posed to a candidate for a member of the Council.

The criteria applied may not render it completely impossible to pose questions to a given candidate for a member of the Council.

(8) In the case referred to in paragraph 7, the list of persons admitted to participate in the public hearing, including their full names and places of residence, shall be made available in the Public Information Bulletin, on the page of the National Electoral Commission, no later than two days before the day of the public hearing. Along with the list, information shall be provided in respect of the criteria applied to limit the number of participants in the public hearing.

(9) The public hearing shall be chaired by the Chair of the National Electoral Commission or a person authorised by them. The chair shall determine the order and duration of the speeches by the candidates for members of the Council and by the participants in the hearing.

(10) The public hearing shall be broadcast and recorded using audio and video recording equipment, and the recording shall be made available in the Public Information Bulletin, on the page of the National Electoral Commission.

Article 11p. (1) The election of the members of the Council referred to in Article 11f(1) shall be held in such a way as to ensure the secrecy and security of the vote.

(2) The ballot shall be held by a ballot committee.

(3) Voting shall take place on the election day, in the building of the court, during the court's working hours.

(4) The chair of the ballot committee shall ensure that the voting is secret and that order and peace are maintained during the ballot.

(5) On the day preceding the election day at the latest, the president of the court and, in the case referred to in Article 11m(2), the relevant presidents of the courts, shall provide the ballot committee with a list of the judges of the given court, valid on the election day.

(6) Judges shall vote in person.

(7) The voting shall take place using ballot papers.

(8) The ballot committee shall ascertain a judge's right to vote on the basis of the list referred to in paragraph 5 or the judge's service card. The judge shall confirm the receipt of the ballot paper by affixing their handwritten signature on the list referred to in paragraph 5.

(9) The vote shall be cast by placing an "x" in the box to the left of the name of one of the candidates for members of the Council on the ballot paper.

(10) A vote shall be declared invalid if, on the ballot paper, an "x" is placed in the box to the left of the names of two or more candidates for members of the Council or no such mark is placed in the box to the left of the name of any candidate for a member of the Council.

(11) The ballot papers with the votes cast shall be put in the ballot box.

(12) The ballot box shall be made in such a way, as to ensure that:

(1) at the time of the voting, it is not possible to put ballot papers in the ballot box other than through the designated opening;

- (2) it is not possible to remove the ballot papers from the ballot box before the ballot box is unsealed, as referred to in paragraph 15, nor is it possible for the ballot papers to fall out of the ballot box.
- (13) Before the voting begins, the ballot committee shall check whether the ballot box is empty, and afterwards seal the ballot box.
- (14) From the start of the ballot until its end, at least half of all members of the ballot committee must be present in the voting room at the same time.
- (15) After the end of the ballot, the ballot committee shall unseal the ballot box, count the ballot papers taken out of it, and determine the number of valid votes cast for each candidate for a member of the Council and the number of invalid votes.
- (16) The ballot committee shall draw up a voting report, including information on the time at which the ballot started and ended, relevant circumstances related to the ballot, as well as the figures referred to in paragraph 15.
- (17) The ballot papers with the votes cast in the election, together with the unused ballot papers, the voting report and the lists referred to in paragraph 5, shall be forwarded forthwith by the ballot committee to the National Electoral Commission.

Article 11q. (1) Based on the voting reports from all the ballot committees, the National Electoral Commission shall count the votes and draw up the electoral report, stating in particular the number of votes cast, the number of valid votes cast for individual candidates for members of the Council, and the number of invalid votes, as well as specify the judges who are elected as the members of the Council, referred to in Article 11f(1).

(2) Within three days of the date the electoral report is drawn up, the National Electoral Commission shall promulgate the election results by way of an announcement in the Official Journal of the Republic of Poland 'Monitor Polski.'

Article 11r. At the request of a judge standing as a candidate for a member of the Council, the National Electoral Commission shall provide them with documents related to the election forthwith. The documents shall be made available at the seat of the National Electoral Commission.

Article 11s. (1) Within 14 days of the date the election results are promulgated, the judge standing as a candidate for a member of the Council may file a protest against the validity of the election of a member of the Council with the Supreme Administrative Court. Article 82 § 1 of the Act of 5 January 2011 – Electoral Code (Journal of Laws 2023, item 2408) shall apply accordingly.

(2) The Supreme Administrative Court shall examine election protests within 30 days after the expiry of the deadline for filing protests, sitting in a panel of three judges, with the participation of the protesting party and the Chair of the National Electoral Commission, or a member of the National Electoral Commission authorised by them. Article 11k(10) shall apply.

(3) When ruling that the election of a member of the Council is invalid, the Supreme Administrative Court shall declare the expiry of the mandate and order a rerun of the election or a rerun of certain electoral procedures. If the order is to rerun the election, the election shall be ordered to be held on a date falling no later than three months from the day on which the ruling is announced.

Article 11t. If the mandate of a member of the Council referred to in Article 11f(1) expires before the end of the term, an election shall be ordered to be held on a date falling no later than three months from the day on which the mandate expires.

Article 11u. (1) The elections referred to in Article 11s(3) and Article 11t shall not be held if the election day may be set within the period of three months before the day on which the joint term of the members of the Council referred to in Article 11f(1) ends.

(2) The term of the member of the Council elected in the elections ordered in the cases referred to in Article 11s(3) or Article 11t shall expire on the day on which the joint term of the members of the Council referred to in Article 11f(1) ends.”.

(4) In Article 14:

(a) the following paragraph 1a shall be added after paragraph 1:

“(1a) The appointment of a member of the Council referred to in Article 11f(1) to another judicial post shall not result in the expiry of their mandate.”;

(b) in paragraph 2, the second sentence shall be worded as follows:

“The Chair of the Council shall immediately notify the body which elected the member of the Council of the resignation, and, in the case of a member of the Council referred to in Article 11f(1), the National Electoral Commission.”.

(5) The following Article 21a shall be added after Article 21:

“Article 21a. (1) Minutes of meetings shall be taken.

(2) Regardless of the minutes, stenographic records of the meetings of the Council shall be drafted based on recordings of broadcasts of the meetings.

(3) The Council shall make the following available forthwith in the Public Information Bulletin:

- (1) draft agendas for meetings of the Council;
- (2) resolutions of the Council;
- (3) recordings of broadcasts of the meetings of the Council;
- (4) minutes and stenographic records of the meetings of the Council;
- (5) resolutions and positions of groups established to prepare individual matters for consideration during the meetings of the Council;
- (6) opinions of the Minister of Justice presented in individual matters;
- (7) minutes of the meetings of the groups referred to in item 5, if taken.”;

(6) The following Article 27a shall be added after Article 27:

“Article 27a. (1) The Council shall have a Social Council attached to it, which presents opinions on the matters referred to in Article 3(1)(1) and also, at the request of the Council Presidium, on other matters belonging to the Council’s tasks.

(2) The Social Council shall consist of:

- (1) a person designated by the Polish Bar Council;
- (2) a person designated by the National Bar Council of Attorneys-at-Law;
- (3) a person designated by the Polish National Council of Notaries;
- (4) a person designated by the Polish National Council of Bailiffs;
- (5) a person designated by the General Council for Science and Higher Education;
- (6) a person designated by the Commissioner for Human Rights;
- (7) a person designated by the National Council of Public Prosecutors to the Public Prosecutor General;

- (8) three representatives of non-governmental organisations designated by the Public Benefit Activity Council.
- (3) No person who has been sentenced under a final and non-appealable court judgement for an intentional offence prosecuted under public indictment or for an intentional fiscal offence may be a member of the Social Council.
- (4) The term of the Social Council shall be four years, and shall begin on the day the Social Council of the new term meets for the first time.
- (5) Membership of the Social Council shall expire before the end of the term referred to in paragraph 4 as a result of:
 - (1) death;
 - (2) resignation;
 - (3) sentencing under a final and non-appealable court judgement for an intentional offence prosecuted under public indictment or for an intentional fiscal offence.
- (6) If the membership of the Social Council expires before the end of the term referred to in paragraph 4, the competent authority shall immediately present a new member to the Chair of the Council for the period until the end of the term of the Social Council.
- (7) The Social Council shall elect a chair and their deputy from among its members.
- (8) The Chair of the Council shall refer matters referred to in paragraph 1 to the Social Council, setting a deadline of no less than 21 days for the Social Council to present its opinion. The failure on the part of the Social Council to present its opinion within the deadline referred to in the first sentence shall not preclude the consideration of the matter by the Council.
- (9) The Chair or, in their absence, the Deputy Chair, or a member of the Social Council designated by them, may speak at the plenary meetings of the Council to present the opinions referred to in paragraph 1.
- (10) In the performance of the task referred to in paragraph 1, the members of the Social Council shall be given access to the documents and data processed by the Council.
- (11) Article 28 shall apply *mutatis mutandis* to the members of the Social Council.
- (12) Members of the Social Council may participate in the works of the panels established pursuant to Article 31(1), without the right to vote.
- (13) The Social Council shall be provided support by the Council Office.
- (14) The operating costs of the Social Council shall be covered from the part of the State budget referred to in Article 27(2).
- (15) Members of the Social Council participating in the meeting of the Social Council who reside outside the place where the meeting is held shall be entitled to a reimbursement of travel and accommodation costs and a daily allowance, as governed by Article 775 § 2 of the Act of 26 June 1974 – Labour Code, per the rules applicable to domestic business trips.
- (16) The first meeting of the Social Council of the new term shall be convened by the Chair of the Council.

(17) The Social Council shall lay down the detailed procedure for its operations in its rules of procedure.”.

Article 2. (1) The National Electoral Commission shall order the first election of the members of the National Council of the Judiciary referred to in Article 11f(1) of the Act amended under Article 1 to be conducted on the basis of the Act amended under Article 1, as amended by this Act, within 21 days of the date this Act enters into force, setting the election for a date falling no later than within three months of this Act entering into force.

(2) In the elections referred to in paragraph 1, the judges who took up a position as a result of an appointment application presented to the President of the Republic of Poland by the National Council of the Judiciary established under Article 9a of the Act amended under Article 1, may not stand as candidates for members of the National Council of the Judiciary, except for judges who returned to the office of a judge and to their previously occupied post, if they had taken up the previously occupied post in a manner other than as a result of an appointment application presented to the President of the Republic of Poland by the National Council of the Judiciary established under Article 9a of the Act amended under Article 1.

(3) The first meeting of the National Council of the Judiciary after the elections referred to in paragraph 1 are held shall be convened by the Minister of Justice for a date falling no later than within 14 days of the date on which the results of these elections are promulgated. The session of the National Council of the Judiciary shall be presided over by the oldest member of the National Council of the Judiciary being a judge referred to in Article 11f(1) of the Act amended under Article 1. This judge shall preside over the session until a new Chair of the National Council of the Judiciary is elected.

Article 3. As of the date of promulgation of the results of the elections referred to in Article 2(1) of this Act, the operations in the National Council of the Judiciary of persons elected by the Sejm to the National Council of the Judiciary on the basis of Article 9a(1) of the Act amended under Article 1 shall cease.

Article 4. Proceedings in individual cases initiated before and not concluded by the National Council of the Judiciary established under Article 9a of the Act amended under Article 1, shall be conducted by the National Council of the Judiciary established as a result of the elections referred to in Article 2(1).

Article 5. (1) The entities referred to in Article 27a(2) of the Act amended under Article 1 shall present the members of the Social Council to the Chair of the National Council of the Judiciary within one month of the results of the elections referred to in Article 2(1) being promulgated.

(2) The Chair of the National Council of the Judiciary shall convene the first meeting of the Social Council within 14 days of the expiry of the deadline referred to in paragraph 1.

Article 6. The Act shall enter into force 14 days after its promulgation.