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of.....2017

amending the Act on the National Council of the Judiciary and certain other acts¹

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

1) After Article 9, the following Article 9a shall be inserted:

“Article 9a. 1. The Sejm selects fifteen members of the Council from among the judges of the Supreme Court, common courts, administrative courts and military courts by the majority of 3/5 of votes in the presence of at least half of the statutory number of members of the Sejm for a common four-year term of office.

2. When making the selection referred to in paragraph 1, the Sejm, as far as possible, shall take into consideration the need to have in the Council the representation of judges of specific types and levels of courts.

3. The common term of office of new members of the Council selected from among the judges shall commence on the day following the day on which the last of the new members is selected. The members of the Council of the previous term of office shall perform their functions until the common term of office of new members of the Council begins.”;

2) Article 11 shall be repealed;

3) After Article 11, the following Articles 11a–11e shall be inserted:

“Article 11a. 1. No earlier than 120 days and no later than 90 days prior to the expiry of the term of office of the Council’s members selected from among judges, the Marshal of the Sejm shall announce in the Official Gazette of the Republic of Poland “Monitor Polski” that the procedure of submitting candidates for the members of the Council is commenced.

2. Entities entitled to submit a candidate for a member of the Council are:

- 1) a group of at least 2,000 citizens of the Republic of Poland who are at least 18 years old, enjoy full capacity to perform acts in law and have all public rights;
- 2) a group of at least 25 judges, excluding retired judges.

A submission includes only one candidate for a member of the Council.

3. A candidate for a member of the Council is submitted to the Marshal of the Sejm within 30 days after the announcement referred to in paragraph 1 is published.

4. The candidate submission includes information about the candidate, functions previously held by the candidate and social activity undertaken, as well as other significant events

¹ This Act amends the following acts: the Act of 21 August 1997 – Law on the system of military courts, the Act of 27 July 2001 – Law on the system of common courts, the Act of 25 July 2002 – Law on the system of administrative courts and the Act of 23 November 2002 on the Supreme Court.

that took place in the period in which the candidate has been holding a judge's office. The judge's consent for being a candidate shall be attached to the submission.

5. The president of the relevant court shall draft, upon the request of the Marshal of the Sejm and within 7 days of service of the request, information about adjudicating experience of the candidate, including socially important or precedent rulings, as well as significant information on the culture of executing the office, in particular disclosed during visits or lustration proceedings.

If a submission refers to:

- 1) a president of a district or regional court – the information shall be drafted by the president of the higher instance court;
- 2) a president of a court of appeal – the information shall be drafted by the vice-president of the court of appeal.

6. If the president of the relevant court or the vice-president of the court of appeal fails to draft the information about adjudicating experience of the candidate within the time-limit referred to in paragraph 5, the information shall be drafted by the candidate. The candidate shall submit a copy of the information about their adjudicating experience drafted by the candidate to the president of the relevant court or the vice-president of the court of appeal, respectively.

Article 11b. 1. The submission referred to in Article 11a(2) shall be made in writing by an attorney-in-fact. The attorney-in-fact is a person specified in the written declaration of first 15 persons from the list.

2. A list of citizens supporting the submission, including their names, surnames, residence addresses, personal identification numbers (PESEL) and hand-written signatures, shall be attached to the submission referred to in Article 11a(2)(1).

3. In the event of any doubts regarding the validity of the required number of signatures, the Marshal of the Sejm shall address the State Election Commission within 3 days of receipt of the submission and the State Election Commission shall decide whether the required number of signatures was provided.

4. Within 14 days of receipt of the request from the Marshal of the Sejm, the State Election Commission shall decide whether the required number of signatures was provided.

5. If, as a result of the procedure referred to in paragraph 4 above, it is disclosed that the number of valid signatures provided by the supporters of the submission is lower than the number required under statutes, the Marshal of the Sejm shall refuse to accept the submission. A decision in this regard together with the statement of grounds shall be immediately delivered to the attorney-in-fact.

6. The decision may be appealed against by the attorney-in-fact before the Supreme Court within 3 days of service of the decision. The Supreme Court shall consider the appeal within 3 days in non-contentious proceedings in a bench of 3 judges. The decision of the Supreme Court shall not be subject to any legal remedy.

7. A list of judges supporting the submission, including their names, surnames, residence addresses, personal identification numbers (PESEL) and hand-written signatures, shall be attached to the submission referred to in Article 11a(2)(2).

8. Within 3 days of receipt of the submission referred to in Article 11a(2)(2), the Marshal of the Sejm shall request that the Minister of Justice confirm that the persons filing the submission have a judge's status. Within 3 days of receipt of the request from the Marshal of the Sejm, the Minister of Justice shall confirm a judge's status of the persons filing the submission. The provisions of paragraph 5 and 6 shall apply accordingly.

9. The sample submission, the sample list of citizens and the sample list of judges submitting a candidate for a member of the Council shall be established by the Marshal of the Sejm by means of an order. An order of the Marshal of the Sejm shall be published in the Official Gazette of the Republic of Poland "Monitor Polski".

Article 11c. Any submissions filed in accordance with Article 11a and Article 11b shall be immediately forwarded by the Marshal of the Sejm to the members of the Sejm and made public.

Article 11d. 1. If within 90 days of publication of the announcement referred to in Article 11a(1), the Sejm fails to select fifteen members of the Council selected from among judges for a common four-year term of office pursuant to Article 9a(1) or if less than fifteen members of the Council are selected, members for vacant positions in the Council shall be selected by the Sejm in a roll call vote from among the candidates proposed.

2. Each member of the Sejm participating in the procedure aimed at selecting the members of the Council from among judges has one vote only and may vote only for one candidate.

3. A member of the Sejm shall cast a vote "for" a candidate, "against" a candidate or abstain from voting. The candidates who obtain the highest number of votes shall be considered selected to become members of the Council. If an equal number of votes is cast "for" more than one candidate, the candidate who obtains less votes "against" is considered selected to become a member of the Council.

4. If as a result of applying the procedure specified in paragraphs 1–3, fifteen members of the Council selected from among judges are not chosen, the selection procedure shall be repeated for vacant positions.

5. In the case referred to in paragraph 4, the Marshal of the Sejm shall immediately announce in the Official Gazette of the Republic of Poland "Monitor Polski" that the procedure of submitting candidates for the members of the Council is commenced. Article 11a(2)–(6), Article 11b and Article 11c shall apply. Any submissions of candidates for the members of the Council filed prior to the date of the Marshal's announcement shall not be considered.

Article 11e. 1. If it is necessary to select another person to take a mandate of a member of the Council prior to the expiry of the term of office of a member of the Council selected from among judges, the Marshal of the Sejm shall announce the vacancy immediately. The provisions of Article 11a–11c shall apply accordingly.

2. In the case referred to in paragraph 1, the selection of a member of the Council selected from among judges shall be governed by the provisions of Article 9a(1) and (2) and Article 11d accordingly.

3. A term of office of the member of the Council selected for the vacant position shall expire upon the expiry of the term of office of the members of the Council selected from among judges.”;

4) Articles 12 and 13 shall be repealed;

5) Article 14(3) shall be repealed;

6) In Article 20(1), the second sentence shall be inserted:

“The meetings shall be transmitted via Internet.”;

7) In Article 21, paragraphs 2a–2c shall be inserted after paragraph 2:

“2a. In justified cases, the Chairperson of the Council may order that the voting by circulation via e-mail be conducted. The Chairperson of the Council shall provide any materials containing personal data in a manner that ensures protection thereof and notify the members of the Council of the mode of voting and the strict time-limit by which the declaration of voting “for”, “against” or the declaration of abstention should be sent to an e-mail address specified by the Chairperson of the Council.

2b. In the case of adopting a resolution by circulation, there is no possibility of ordering a secret voting.

2c. Voting by circulation shall be effective if at least half of the members of the Council cast their votes by the time-limit specified for voting.”;

8) In Article 22, the following paragraph 1a shall be inserted:

“1a. When determining a detailed mode of work, the Council shall base its decision on the need to ensure access to information about the procedure before the Council, as well as exhaustive information about candidates and reasons for which a request for an appointment to the office of a judge or an assistant judge is filed.”;

9) Article 24(4) shall be replaced by the following:

“4. The provisions of the Act of 18 December 1998 on the employees of courts and public prosecutor’s offices (Journal of Laws of 2017, items 246 and 1139) shall apply to the employees of the Office, except for the requirement of completing public-official internship in a court or a public prosecutor’s office as referred to in Article 2(7) of the Act.”;

10) In Article 31,

a) the second sentence of paragraph 1 shall be replaced by the following:

“The team shall be composed of three members of the Council.”;

b) after paragraph 1, the following paragraph 1a shall be inserted:

“1a. The team shall not be composed of judges exclusively.”;

c) after paragraph 2, the following paragraphs 2a–2d shall be inserted:

“2a. When appointing the team referred to in paragraph 1, the Chairperson of the Council shall notify the Minister of Justice of the appointment of the team and inform about specific cases forwarded to the team to be prepared for consideration at the Council's meeting.

2b. Within 21 days of receipt of the information referred to in paragraph 2a, the Minister of Justice may present the Council with their opinion on a specific case. Prior to the expiry of the time-limit for the presentation of the opinion by the Minister of Justice, the team shall not adopt a stance referred to in Article 34(1).

2c. If the Minister of Justice fails to present an opinion on a specific case within the time-limit referred to in paragraph 2b, the work of the team shall not be withheld.

2d. The opinion referred to in paragraph 2b or information about failure to present the opinion shall be attached to the documentation of proceedings in this regard.”;

11) In Article 33, paragraph 1a shall be inserted after paragraph 1:

“1a. If the Council gives recommendations for a position of a judge or an assistant judge to a person other than the person specified in the stance of the team as referred to in Article 34(1), it shall adopt a resolution by the majority of 2/3 of votes in the presence of at least half of the members of the Council.”;

12) Article 35(2)(1) shall be replaced by the following:

“1) professional experience, including experience in the application of legal regulations, academic achievements, opinions of supervisors, recommendations, publications and other documents attached to the submission card;”

13) After Article 44, the following Article 44a shall be inserted:

“Article 44a. The Council shall submit to the President of the Republic of Poland a resolution containing a request to appoint a judge or an assistant judge together with the statement of grounds, information about other candidates for a position of a judge or an assistant judge and the assessments of all candidates. The documentation of proceedings in this regard shall be attached to the resolution.”.

Article 2. Article 10(3)(2) of the Act of 21 August 1997 – Law on the system of military courts (Journal of Laws of 2016, items 358, 2103 and 2261, and Journal of Laws of 2017, item 1452) shall be repealed.

Article 3. Article 106i(8) of the Act of 27 July 2001 – Law on the system of common courts (Journal of Laws of 2016, item 2062 as amended²) shall be replaced by the following:

“§ 8. If the National Council of the Judiciary fails to object within two months of the presentation of the list and the request referred to in § 7, the assistant judge shall perform duties of a judge for a period of 4 years from the day on which the two-month period ends, and if the objection is raised – from the day on which a resolution expressing such objection is repealed.”.

² Changes of the consolidated text of the Act were published in the Journal of Laws of 2016, items 1948, 2103 and 2261, and the Journal of Laws of 2017, items 38, 60, 803, 1139 and 1452.

Article 4. Articles 24(4)(5) and 24(4)(6) of the Act of 25 July 2002 – Law on the system of administrative courts (Journal of Laws of 2016, items 1066 and 2261) shall be repealed.

Article 5. Article 16(1)(4) of the Act of 23 November 2002 on the Supreme Court (Journal of Laws of 2016, item 1254 as amended³) shall be repealed.

Article 6. A member of the National Council of the Judiciary referred to in Article 187(1)(2) of the Constitution of the Republic of Poland selected under current provisions shall perform their function to the day of the commencement of the common term of office of new members of the Council selected by the Sejm from among judges pursuant to the Act changed in Article 1 according to the wording provided for in this Act.

Article 7. The selection of members of the National Council of the Judiciary for a new term of office due to the fact that the members of the National Council of the Judiciary referred to in Article 6 cease to perform their functions shall be made pursuant to the provisions of the Act changed in Article 1 according to the wording provided for in this Act, subject to the following:

- 1) the Marshal of the Sejm shall announce the commencement of the procedure of submitting candidates for members of the Council within no more than 7 days after this Act enters into force;
- 2) a candidate for a member of the Council shall be submitted to the Marshal of the Sejm within 21 days after the announcement referred to in point 1;
- 3) the Sejm shall select member of the Council from among judges pursuant to Article 9a(1) no later than 60 days of the announcement.

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

³ Changes of the consolidated text of the Act were published in the Journal of Laws of 2016, items 2103 and 2261, and the Journal of Laws of 2017, items 38 and 1452.