

# HR HELSINKI FOUNDATION for HUMAN RIGHTS

December 11<sup>th</sup>, 2017

---

## *New threats to the rule of law. The reform of the judiciary in Poland*

---

### Background

In July 2017, after massive social protest the President of Poland decided to veto two out of three controversial Acts reforming the justice system in Poland. Once vetoing the Act on the Supreme Court and Act on the National Council of Judiciary, the President also announced that he would prepare his own draft laws regarding these two institutions and direct them to the Parliament.

In August 2017, Helsinki Foundation for Human Rights (HFHR) [submitted a letter to the President pointing at the crucial problems of the Polish justice system](#). HFHR underlined that the plans to reform the Supreme Court and the National Council of Judiciary would not address the key problems of the Polish judiciary such as among others excessive length of the proceedings or access to legal aid.

On 25 September 2017, the President of Poland presented his two draft Acts on the Supreme Court and the National Council of Judiciary. Almost immediately, the Acts were directed to the Parliament without any social consultations with experts or stakeholders. The Parliament started works on these draft Acts in mid-November.

### Act on the Supreme Court

On 8<sup>th</sup> December 2017, Sejm (the lower chamber of the Polish Parliament) adopted the Act on the Supreme Court. Similarly, to the Act vetoed in July 2017, also this one includes numerous provisions that widen the political supervision over this institution. Furthermore, the Act introduces legal mechanisms which are new to the Polish legal system and lead to further violations of rule of law.

The key elements of this Act are summarised below:

#### **Retirement age of judges**

The Act lowers the retirement age of judges. In the light of the Act the judge who turns 65 years old should submit a motion to the President of Poland upon allowing them to stay in the office for next 3 years. Such a permission can be granted only twice. It is estimated that this provision may affect 40% of the sitting judges of the Supreme Court – including the First

President of the Supreme Court whose 6-year tenure is guaranteed by the Constitution. This provision slightly differs from what was originally postulated in the Act on the Supreme Court of July 2017 – that version of the law stated that term of office of all judges of the Supreme Court would have been terminated after Act's coming into force.

### **New chambers of the Supreme Court**

The Act creates two new Chambers of the Supreme Court - the Disciplinary Chamber and the Chamber of the Extraordinary Control and Public Affairs. All the judges sitting in these two chambers will be appointed by the new National Council of the Judiciary (please see the point National Council of the Judiciary).

The Disciplinary Chamber will be responsible for hearing the disciplinary proceedings in the case of judges of the Supreme Court and appeals against the decisions issued in the disciplinary proceedings of attorneys at law, solicitors and prosecutors. The Chamber of the Extraordinary Control and Public Affairs will be responsible for among other hearings in the cases concerning extraordinary appeal and declaring the validity of the elections.

### **Lay judges**

The Act introduces to the Supreme Court the function of a lay judge. Lay judges will be appointed by Senat for 4-year tenure in a simple majority voting. A lay judge should be a person who has higher education (not necessarily graduated in law), who is not a member of political party and is not a prosecutor, attorney at law or solicitor. Lay judges will hear cases in the newly established Chambers – the Disciplinary Chamber and the Chamber of the Extraordinary Control and Public Affairs.

### **Extraordinary appeal**

The Act on the Supreme Court introduces a mechanism which was not known in the Polish legal system before. The extraordinary appeal is an appeal which a party can submit to the Supreme Court via among others the Prosecutor General, the Ombudsman or Child's Rights Commissioner. The appeal can be submitted in cases which have already been closed and the judgements become final. In general, the extraordinary appeal can be submitted within 5 years in criminal cases and 1 year in civil cases since the judgement became final. However, the Act also stipulates that within 3 years of Act's coming into force such an appeal could be submitted in reference to all judgements issued in last 20 years.

This provision, in addition to fact that in the Constitutional Tribunal are three persons who were appointed to the position of a judge without a valid legal basis, will lead to deepening the legal certainty.

## **Act on the National Council of Judiciary**

Simultaneously to the works on the draft Act on the Supreme Court, the Parliament worked also on the President's draft Act on the National Council of Judiciary in Poland.

The [National Council of the Judiciary in Poland](#) is an administrative body composed of judges and representatives of the Parliament and the President. Its pivotal responsibilities are to protect the independency of the justice system, nominate the candidates for judges and

present opinions on the draft legislation concerning the justice system. The Council is composed of 15 judges (so far appointed by the courts of different ranks), 6 representatives of the Parliament, one representative of the President, Minister of Justice and Presidents of the Supreme Court and the National Administrative Court.

The draft Act was adopted on 8<sup>th</sup> December 2017 by Sejm. The draft Act states, among others, that the terms of office of all judges sitting in the Council will be terminated after the law comes into force. Furthermore, the Act changes the process of appointing the judges-members of the Council. In the light of this regulation the Parliament will appoint the judges-members in 3/5 majority among the candidates presented by 25 judges (including these judges who were delegated by the Minister of Justice to work in the Ministry) or a group of 2.000 citizens. Such a regulation widens the political supervision over the process of appointing the judges-members of the Council.

In the light of the Act, the candidates to the Council could be presented within 30-day deadline. It is highly unlikely that the citizens will be able to collect required number of signatures at such a short notice, so most probably this process will be dominated by judges of common courts who currently work in the Ministry of Justice.

#### Further works

On 8<sup>th</sup> December 2017, both draft Acts were directed to Senat. Most probably, Senat will adopt these two laws by the end of its session on 15<sup>th</sup> December 2017. Once the laws are adopted by both chambers of the Parliament, the President will have 21 days to sign the Acts.

#### About Helsinki Foundation for Human Rights

The Helsinki Foundation for Human Rights is one of the biggest and oldest non-governmental organisations dealing with the human rights protection in Poland. HFHR's mission is to promote human rights protection in democratic state ruled by law. HFHR undertakes educational, legal and monitoring activities both in Poland and the countries of the former Soviet block. HFHR has a consultative status at ECOSOC and is a member of numerous research networks and platform.

This brief has been prepared by HFHR's lawyers: Barbara Grabowska-Moroz and Małgorzata Szuleka. Should you need any further information, please contact authors directly at:

[b.grabowska@hfhr.org.pl](mailto:b.grabowska@hfhr.org.pl)

[m.szuleka@hfhr.org.pl](mailto:m.szuleka@hfhr.org.pl)

#### Follow us:

[www.hfhr.pl/en](http://www.hfhr.pl/en)

[Twitter/hfhrpl](https://twitter.com/hfhrpl)

[Facebook/hfhrpl](https://facebook.com/hfhrpl)

Helsinki Foundation for Human Rights

Zgoda 11

00-018 Warsaw, Poland

