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Constitutional Tribunal Act from 22 July partially unconstitutional

The Constitutional Tribunal has ruled that the latest law on the Constitutional Tribunal (the Act of 22 July 2016) is in part unconstitutional.

The following provisions were declared contrary to the Constitution:

- the provisions obligating the President of the Constitutional Tribunal to enable the assumption of judicial duties by the three judges appointed to already occupied posts on the Tribunal's bench,
- the provisions that allow for a selective publication of the Tribunal's decisions, which sanction, among other things, the non-publication of the judgment of 9 March 2016,
- the provisions introducing the procedural rule that requires the Tribunal's President to apply to the Prime Minister to have a judgment published,
- the provisions pursuant to which deliberations may be adjourned for three months if four judges object proposed adjudication of a case pending before the Constitutional Tribunal,
- the provisions that introduce the rule that cases should be heard according to the first-come, first-serve principle (this rule was named unconstitutional already during the review of the previous law on the Constitutional Tribunal),
- the provisions that necessitate an adjournment of a hearing if the Prosecutor General fails to appear despite having been properly summoned,
- the provisions obligating the Tribunal to hear a case in a full panel at the request of at least three of its judges.

Moreover, the Tribunal ruled that the transitional provisions of the contested law were also unconstitutional. For example, Poland's constitutional court challenged the rule that all its cases should be heard within a year, and also opposed the regulations that forced it to adjust the composition of an adjudicating panel to the provisions of the new law in all commenced cases, even those in which judgments have already been drafted. Another provision named unconstitutional was that obligating the Constitutional Tribunal to suspend, for six months, all cases that fail to satisfy formal requirements.

At the same time, the Tribunal discontinued the review proceedings in respect of the procedure of the presidential appointment of the Tribunal top judge from among three candidates named by the General Assembly of the Constitutional Tribunal. The Tribunal held that applications

requesting the review of the appointment procedure had been formulated too narrowly and had not covered all the material provisions, which prevented their constitutional scrutiny.

The Helsinki Foundation for Human Rights has opposed the adoption of the new law by the Sejm in a joint position statement with the Helsinki Committee in Poland. “We said in the statement that the new law betrayed the trias politica principle and paved the way towards a constitutionally unrestricted dictatorship of the parliamentary majority”, reminds Piotr Kłodoczny, Secretary of the HFHR Board.

The currently applicable Constitutional Tribunal Act from June 2015 will lose its binding force on 16 August. On that day, the new Act of 22 July 2016 will become effective. However, it will not include the provisions that the Tribunal invalidated as unconstitutional in the judgment. With virtually all transitional provisions declared unconstitutional, the application of the new law may prove difficult.