

HR HELSINKI FOUNDATION for HUMAN RIGHTS

July, 14th, 2017

The draft amendment to the Act on the Supreme Court

On 12 July 2017, the group of MPs submitted to the Parliament the draft law amending the Act on the Supreme Court. One of the most controversial provisions of the draft law states that all tenures of judges sitting currently in the Supreme Court will be terminated on a day of the Act's coming into force. In the light of this provision, the Minister of Justice will decide which judges will remain in the office and whose term of office will be terminated.

„The draft law amending the Act on the Supreme Court, directed to the Parliament by the governing majority, is an attempt to introduce an unconstitutional change to the system of government of the Republic of Poland and contravene the principle of the separation of powers” – says the statement signed by the members of the Managing Board and the Board of Directors of the Helsinki Foundation for Human Rights as well as the Helsinki Committee in Poland on 13th July.

„The termination of tenures of all the Court's judges and granting the Minister of Justice a competence to single-handedly decide which judges will remain in the office in this most important Polish court is tantamount to the revocation of the Supreme Court's independence. Such a solution is applied only by the governments of authoritarian states” – reads the statement.

In the light of the draft, the new judges of the Supreme Court will be selected by the National Council of the Judiciary in Poland. Also last week, the Parliament adopted changes in the Act on the Council which enable the parliament to appoint the members of the Council. Furthermore, in the light of these changes the appointment of a new judge will not be possible without the consent of the representatives of government, Parliament and President sitting in the Council.

Furthermore, in the light of the draft Law on the Supreme Court, the Minister of Justice will prepare the Statute of the Supreme Court which will regulate its works.

In the opinion of the Board of the Helsinki Foundation for Human Rights „the draft law on the Supreme Court deepens the Polish constitutional crisis, ongoing since November 2015. A day after the Act on the National Council of the Judiciary was amended, the governing majority strengthens the political influence on the administration of justice in Poland. This in consequence will lead to a situation when the basic human right to a fair trial by an impartial court becomes illusory”.

About the Supreme Court

The Polish Supreme Court's competences are very wide and it plays a crucial role in sustaining the independence of the justice system in Poland.

First of all, the Supreme Court supervises the works of the courts of lower ranks in terms of „judiciary control”. For example, the Court can adopt decisions in which it presents the legal interpretation of a provision. Such a decision is binding for courts of lower ranks. At the beginning of this year, when the Constitutional Tribunal was taken over by the governing majority, the President of the Supreme Court underlined that not it is the role of the common courts to protect, implement and interpret the Constitution.

Secondly, the Supreme Court confirms the validity of the elections to the Parliament and Presidential elections.

Thirdly, the Supreme Court has a right to issue opinions about draft legislation. For example, in 2016 the Supreme Court presented a very strong opinion regarding the draft Law on Assemblies in which it called the draft legislation „an attempt to violate the constitutional order of the Republic of Poland”.

The draft Law on the Supreme Court has been directed to the first reading in the Parliament’s plenary session which will, most probably, take place this week (17-21 July).