

HFHR comments upcoming amendments to Supreme Court Act

The Helsinki Foundation has sent an opinion on the amendment to the laws on the Supreme Court and on the National Council of the Judiciary, which were hastily adopted by the *Sejm* on 20 July.

New Supreme Court judges appointed without external review of resolutions of National Council

Under the new law, resolutions on the appointment of Supreme Court judges adopted by the National Council of the Judiciary will automatically become final and unappealable. This means that any appeals against NCJ resolutions that may be submitted by persons who have not received judicial appointments will have no legal consequences because such appeals are incapable of setting aside or changing such a resolution.

Even if the Supreme Administrative Court rules on appeal that a resolution of the NCJ is unlawful, this does not change the fact that the relevant judicial post at the SC will already be occupied by that time. Consequently, it seems that the legislator accepts the situation where top judicial positions in Poland are taken by candidates whose appointments will be considered unlawful in the future.

These solutions will deprive candidates for judges of Poland's top court of a measure of effective judicial review that must be afforded to a person seeking a public post. The absence of an effective judicial review (or turning that review into an empty shell) may also violate the European Convention on Human Rights. Furthermore, the HFHR assesses that the 14-day deadline for the Supreme Administrative Court's examination of an appeal against the NCJ resolution is disproportionately short and may pose a threat to the fairness of court proceedings.

No documents? No problem!

Equally disturbingly, pursuant to the new law the absence of required documents (such as a court assembly's opinion on a judicial candidate will not prevent the NCJ from preparing a list of recommended candidates. On the top of the above, the current procedure for the selection of judge-members of the National Council of the Judiciary is unconstitutional. This excludes the possibility of the NCJ discharging its constitutional role of a guarantor of the independence of courts and judges.

Accelerated appointment of Supreme Court's President

The new law results in another amendment of the transitional provision of the Supreme Court Act adopted in December 2017, including the provisions hastily added in April 2018. These provisions are designed to secure the faster appointment of the new President of the Supreme Court, which is to precede the anticipated ruling of the Court of Justice of the EU in the matter of Poland's violation of obligations arising out of EU Treaties, which was [initiated by the European Commission](#) in July 2018. The lawmakers want to appoint the new President despite the fact that the term of office of the incumbent President ends already in 2020.