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Honorable Marek Kuchciński, Member of Parliament, Speaker of the Sejm

Comments of the Helsinki Foundation for Human Rights to the Private Members' Bill Amending the Constitutional Tribunal Law
(Sejm Paper No. 122)

I. General Remarks

The Bill Amending the Constitutional Tribunal Law is yet another proposed modification of the law that governs one of Poland's most important judiciary bodies. Previous amendments, i.e. the Law of 25 June, 2015 and the Law of 19 November 2015, have been rendered partly unconstitutional. While the Law of 25 June, 2015 was in the parliamentary process for two years the Parliament needed only three days to pass the Law of 19 November, 2015. Consequently, the process of adopting the November amendment was appealed against before the Constitutional Tribunal by major bodies responsible for the protection of rights and liberties, i.e. the Civil Rights Ombudsman and the Senior President of the Supreme Court and the protection of the independence of the court system and judges. However, the parliamentary majority has unfortunately announced it will apply the same instant legislative procedure to the current Bill.

While the Bill proposes provisions affecting some of the critical components of the country's political system there have been no prior consultations whatsoever, in particular with the stakeholders that have a mandate to file complaints with the Constitutional Tribunal and whose powers and prerogatives are largely dependent on its effective functioning. Citizens are the largest stakeholder group whose rights and liberties have been violated by the legislature. The Helsinki Foundation for Human Rights believes that it is the citizens who should first and foremost be consulted on the proposed changes to the Constitutional Tribunal. This is essential because any disruption of the Tribunal's operations, as is indeed proposed in the Bill, will lead to

the violation of Article 79 of the Polish Constitution which grants the mandate to file a constitutional complaint to each and every citizen.

The fundamental character of this matter and its ramifications for the political system of the Republic of Poland necessitate a high degree of care and diligence to ensure that hasty proceedings do not affect the quality of the legislation. This is why the Bill should be subject to a public review, as announced by the President in his address on 3 December, 2015. As a matter of fact, the Bill does not address so urgent a matter to justify the omission of the public review phase and the adoption of a such a speedy legislative track. The haste and the lack of consultations appear to undermine the sincerity of the commitment to listen to the voice of the people in the process of reforming the political system.

II. Detailed Remarks

1. There are specific proposals to modify the mandate and powers of the Constitutional Tribunal. The current context in which the Tribunal operates must be considered in Constitutional Tribunal to make a meaningful assessment of these proposals, i.e.:

- Currently, there are 10 judges in the Tribunal and their tenures began before 2015 and will end at different times;

- Three of the judges were elected by the Sejm on 8 October, 2015, their tenures have commenced but they have not been sworn in by the President to date;

- An attempt was made to remove the three judges elected on 8 October, 2015 by means of Resolutions passed by the Sejm on 25 November; however, this measure has no legal effect;

- Five new ’judges’ were elected on 2 December, 2015 and subsequently sworn in by the President, which was done in violation of the law and the absence of vacancies that could be filled under this procedure.

As a result, only 10 judges can effectively exercises their duties in the Constitutional Tribunal.

2. The Bill introduces a qualified majority which will be required for resolutions of the General Assembly to pass (proposed Article 10 Paragraph 1 of the Bill). Moreover, the minimum number of General Assembly participants is increased from 10 to 13 judges. The explanatory memorandum offers no explanation why the number of judges is to increase or why a qualified majority is to be introduced for

General Assembly resolutions. Thus, the proposed requirements must be seen as arbitrary and aiming at preventing the current members of the Constitutional Tribunal General Assembly from effectively passing resolutions, thus limiting the margin of the Tribunal decision-making autonomy on matters such as disciplinary cases or cases related to mandates of the Tribunal's judges.

3. The Bill proposes identical requirements for the Tribunal's rulings. The Constitutional Tribunal is now expected to rule in sittings attended by a full panel of its judges (proposed 44 Paragraph 1 Item 1). This entails a minimum of 13 judges (proposed Article 44 Paragraph 3). Moreover, the Bill stipulates that „judgements passed by the Tribunal by its full membership shall require a two third majority" (proposed Article 99 Paragraph 1). Whenever the panel includes fewer than 13 judges (which will be exceptional under the proposed legislation) judgements will be passed by a simple majority of votes, as is currently the case for all judgments.

Again, the explanatory memorandum offers remarkably little in terms of justification. The proponents of the legislation state that a full panel of judges must be involved in rulings „because of the need to examine constitutional matters thoroughly and comprehensively as they are of particular significance to public good". The proponents hold an opinion that the current practice where most cases are adjudicated by a panel of five judges „cannot be accepted bearing in mind that the Tribunal consists of 15 judges". While following this logic one should also expect the Supreme Court to pass most of its judgements in full membership sittings as opposed to the current practice where this procedure is only used in exceptional cases.

First, no court procedure in Poland contains requirements for any specific, qualified majority of votes. In particular, this practice is absent from the civil procedure which underlies Constitutional Tribunal judgements. This arrangement is a carbon copy of practices used in other legal regimes, e.g. in parliamentary law, but it is inadequate for court procedures. The proposed legislation would allow Parliament to adopt legislation by a simple majority (Article 120 of the Constitution) whereas the Constitutional Tribunal would only be allowed to rule such legislation unconstitutional by a qualified majority. This requirement makes constitutionality tests disproportionately more challenging than the adoption of the primary legislation and thus providing inadequate protection for civil rights and liberties. Scrutiny over the executive branch that issues secondary legislation will be equally more challenging.

Notably, the Constitution itself provides that the Constitutional Tribunal rules based on a majority of votes (Article 190 Paragraph 5). This provision has not raised any interpretation doubts to date. An established, repeated and uncontested constitutional

practice has attributed the meaning of 'simple majority' to the language of Article 190 Paragraph 5 of the Constitution. It is for the reason of the established constitutional practice that the meaning of the constitutional standard must not be arbitrarily changed by means of parliamentary legislation.

Furthermore, the language of proposed Article 99 Paragraph 1 stipulates that all rulings of the Tribunal made by the full panel of judges will have to be backed by a two-thirds majority, both the rulings of unconstitutionality and constitutionality alike. The absence of a qualified majority means the Tribunal will not be able to rule at all. This is likely to create a large backlog of pending but not adjudicated (possibly dropped) cases.

Secondly, the proposed system is ineffective and deadlocks the Tribunal, especially in the current constitutional crisis. With its 10 mandated judges and 3 who have not been sworn in by the President, the Tribunal will not be capable of effectively ruling unconstitutionality because of the insufficient number of judges required for the full panel. According to the proponents, the new legislation „adds dignity and significance to the Constitutional Tribunal rulings". This goal will not be met if the Tribunal does not have the capacity to rule effectively at all.[1]

Thirdly, the proposed practice will cause an excessive length of proceedings in civc cases (e.g. cases referred to the Tribunal by common courts in the framework of the constitutionally guaranteed procedure of legal queries). Consequently, this will lead to the violation of the constitutional right to a fair trial.

Fourthly, the deadlock in the operation of the Constitutional Tribunal constitutes by its own merit an infringement of the citizens' right to file constitutional complaints (Article 79 of the Constitution) because the Tribunal will have no capability of examining such complaints.

Fifthly, the Tribunal's inability to pass effective judgements will directly affect Poland's position in the framework of international law. This will be of particular relevance for the European Human Rights Convention and its right to an efficient procedure. It must be clearly stressed that the paralysis of the Constitutional Tribunal will lead to an increased number of individual complaints submitted in the European Court of Human Rights against Poland. Further, this violates the subsidiarity principle that stipulates that effective safeguards against violations of individual

[1] In addition, such a high number of judges required for the full panel ruling offers an easy tool for manipulating and blocking the Tribunal by means of requesting the exemption of multiple judges from the proceedings when effectively no more than 2 judges can be exempted.

rights and liberties under the European Human Rights Convention must exist at the national level. The Constitutional Tribunal plays a pivotal role in the enforcement of this principle in the Polish legal system.

4. The proposed legislation provides that cases will be examined again if „the proceedings commenced prior to the entry into force of this Law are not conducted by a panel of judges prescribed by this Law" (Article 2 of the Bill). According to the proponents, this „is a revocation of the proceedings but one conducted for the benefit of the applicant" (proposed Article 2). The proposed provision imposes an obligation to restart most of the pending cases (currently about 100 cases). This will radically extend the time of the Constitutional Tribunal proceedings. Consequently, the revocation of proceedings can hardly be deemed as one which is „for the benefit of the applicant". This approach stands in contradiction to the principle of protection for pending cases and adds to the slow-down and indeed deadlock of the Tribunal.

The Helsinki Foundation for Human Rights believes that opened and pending cases should be examined according to the existing procedure. An example of such an approach is offered in the Constitutional Tribunal Law of 25 June, 2015 which contains detailed provisions regarding the rules applicable to opened and pending cases (Article 134), giving priority to existing rules defined in the Law of 1997[2].

5. Moreover, article 3 of the Bill, designed as an interim provision, permits the „revocation" of an unlimited number of closed cases that may now be re-opened by the Constitutional Tribunal (there is no time limit for backtracking) in closed proceedings. This applies particularly to a large number of verdicts regarding constitutional complaints that were refused. Again, this may lead to a management and judicial paralysis of the Tribunal.

6. Article 4 of the Bill repeals a wide range of provisions stipulated in the Law of 25 June, 2015. This current provision is described by its proponents as one whose „goal is to restore order". Several different types of justification are provided.

6.1. According to the proponents, the first category of provisions seek to eliminate the statutory repetition of provisions stipulated in the Constitution (Article 16, Article 17 Paragraph 1, Article 17 Paragraph 2 Clause 2, Article 23 Paragraph 1 of the

[2] „For opened and pending cases brought before the Tribunal prior to the entry into force of the law: 1) with respect to pre-examination, existing provisions shall apply; 2) when the Tribunal has postponed or interrupted a case or has appointed a date when a case is to be examined or adjudicated and such date follows the date of the entry into force of the law, existing provisions shall apply; 3) if there are grounds for terminating the proceeding, existing provisions shall apply; 4) with respect to complaints filed by a competent court, the provisions of Article 88 Paragraph 1 shall not apply."

Constitutional Tribunal Law). First and foremost, it must be stressed that the Legislative Techniques Guidelines[3] contain a number of provisions that ban repetition of existing legislation, e.g. secondary legislation (ordinances) must not contain the provisions of the primary legislation (laws) (Para. 118), laws should contain provisions copied from other laws or international agreements (Para. 4). The Legislative Technique Guidelines do not ban copying constitutional provisions. Moreover, the inclusion of such provisions in the law helps structure a number of questions and makes the law more comprehensible.

a) Repealed Article 16 of the Constitutional Tribunal Law

According to Article 16 the Constitutional Tribunal Law „any judge of the Tribunal shall be independent while exercising the function and shall only answer to the Constitution". In the explanatory memorandum, the proponents argue that there it is justifiable that this provision should be repealed because it constitutes a redundant repetition of a constitutional standard. Indeed, the provision of Article 16 of the Law is tantamount to the provision of Article 195 Paragraph 1 of the Constitution and, technically, no legal change is effected by repealing this provision — repealing a provision of primary legislation does not derogate a constitutional standard. However, in the light of the fact that both the current law and its predecessors have repeated this constitutional provision and that the proponents of the current Bill have not been consistent while removing redundancies (e.g. Article 24 Paragraph 3 and 4 of the Bill are retained even though they are a repetition of Article 196 of the Constitution), there may be concerns about the rationale for such a proposal. In the opinion of HFHR, the repetition in the Constitutional Tribunal Law of provisions that provide grounds for the protection of the independence of the Tribunal's judges is not only not unacceptable but rather desired because of the significance of the matter.

b) Repealed Article 16 of the Constitutional Tribunal Law

Remarks regarding the repealed Article 16 are fully applicable to the derogation of Article 17 Paragraph 1 and Paragraph 2 Clause 2 of the Constitutional Tribunal Law. Further, it must be emphasized that repealing just Clause 2 of Article 17 Paragraph 2 of the law does not seem logical: the first clause of the provision also partly repeats the constitutional provisions. Should the proponents of the Bill be consistent they would delete the part of 1 Article 17 Paragraph 2 which speaks about the selection of judges by the Sejm „individually for tenures of 9 years". The individual nature and the length of tenures are covered by Article 194 Paragraph 1 of the Constitution.

[3] Ordinance of the President of the Council of Ministers of 20 June, 2002 regarding the Legislative Technique Guidelines (Journal of Laws, Issue No. 100, Section 908, as later amended).

c) Repealed Article 23 Paragraph 1 and Paragraph 3-4 of the Constitutional Tribunal Law

Article 23 Paragraph 1 and Paragraph 3-4 of the Constitutional Tribunal Law allows judges to engage in other activities, paid or voluntary. The currently applicable Constitutional Tribunal Law contains limitations that prevent judges from engaging in activities that would offend the dignity of the position at the Constitutional Tribunal or undermine confidence in the judge's impartiality or independence. Any intention by a judge who assumes a position at the Constitutional Tribunal to take up employment or engage in any other activity or to continue any such employment or activity must be notified by the judge to the President of the Tribunal. The Tribunal President has an obligation to counter such an intention should the Tribunal President believe that such engagement or continued engagement in such other paid or voluntary activity may hinder the exercise of the duties, offend the dignity of a judicial position at the Tribunal or undermine confidence in the judge's impartiality or independence.

The explanatory memorandum to the Bill explains that this change will strengthen the independence of judges. Notably, a similar approach is found in the Supreme Court Law of 23 November, 2002 (Article 37 Paragraph 4). Therefore, one cannot reasonably argue that the proposed Bill introduces a higher standard of protection for the independence of Constitutional Tribunal judges. Furthermore, Article 195 Paragraph 3 of the Constitution (copied in Article 23 Paragraph 1 of the Constitutional Tribunal Law) suggests that a Constitutional Tribunal judge may *a contrario* engage in any activity that is compatible with the principle of court and judge independence. The right of the President of the Constitutional Tribunal or the Senior President of the Supreme Court to object appears to ensure that Article 195 Paragraph 3 of the Constitution is realistically enforced.

6.2. The second group of provisions repealed „to restore order" relate to „the competitive relationship between the Law and the Rules of Procedure of the Sejm". Article 19 and 20 of the current law are removed. They define the rules and deadlines of nominating Constitutional Tribunal candidates. The provisions also govern the application of the relevant Rules of Procedures of the Sejm (Article 19 Paragraph 4 and 5 of the Constitutional Tribunal Law). The mutual relation between Article 19 of the Constitutional Tribunal Law and Article 112 of the Polish Constitution RP was interpreted by the Constitutional Tribunal in its ruling of 3 December, 2015 (Ref. K 34/15). The ruling stipulates that:

„The selection procedure for judges in the Tribunal is not exclusively an internal matter of organising the work of the chamber and assigning responsibilities to its

internal bodies. (…) While adding new members of the constitutional court the Sejm affects the actual capacity of this body to exercise its mandate. (…). Therefore, provisions governing the election of judges in the Tribunal may affect the whole system of public governance and potentially imply negative consequences for the functions of the state in multiple areas. (…) apart from the obviously technical aspects that are solely internal to how the chamber organises its work, the issue of deadlines for the submission of applications regarding the nomination of candidates for the position of judges at the Tribunal also extends beyond the exclusive remit of the Rules of Procedure of the Sejm. (…) The legislature is (…) obliged to regulate the deadlines for Constitutional Tribunal nominations in the law in a manner that guarantees the constitutional protection of the tenure of the Tribunal judges, an uninterrupted exercise of the duties of the constitutional court as well as the effectiveness, transparency and adequacy of the entire election process".

In the light of the above, the Helsinki Foundation for Human Rights finds the proposed legislation that repeals the provisions regarding the Constitutional Tribunal election to be unacceptable. The content and goal of the legislation are to ensure a proper functioning of the Constitutional Tribunal. The absence of these provisions in the law will create a legal gap at the level of primary legislation and will leave the matter at hand for the sole coverage by the Rules of Procedure of the Sejm, i.e. an internal regulation. In contrast, the Law on the Civil Rights Ombudsperson, in its Article 3, contains the basic terms and conditions and stipulates that the Ombudsperson shall be appointed by the Sejm, subject to the consent of the Senate, upon the request of the Speaker of the Sejm or a group of 35 Members of Parliament and the detailed terms and conditions for nominating candidates for the position of the Civil Rights Ombudsperson shall be specified by the Sejm by means of a resolution. There have been no concerns raised as to the alleged competition between the said provision and the Rules of Procedure of the Sejm.

6.3. The third group includes „provisions that violate the principle of equality or are socially ungrounded". Here, the Bill repeals Article 125 Paragraph 2-4 of the Constitutional Tribunal Law that governs the availability of judicial qualification tests for the Constitutional Tribunal office staff whose duties are directly linked to passing judgements. The proponents of the amending legislation hold a view that this provision constitutes a privilege over and above the privileges granted to their counterparts in the Supreme Court and in the Supreme Administrative Court.

First and foremost, the proposed legislation modifies the legal situation of a specific group of individuals who may have expected to have the right to take a judicial qualification after serving on a position linked to passing judgements for five years,

subject to the Law of 25 June, 2015. By repealing this provision, the legislation deprives the group of their acquire rights and their expectation to acquire such rights and such rights are protected under Article 2 of the Constitution. The provision emanates a principle whereby the legislature and legislation must not take individuals by surprise. It must be noted that no interim provisions have been proposed.

In contrast, individuals in a similar situation under the Law on Common Court System, i.e., assistant judges in common courts have the right to seek the judicial qualification following a five-year service on the assistant judge position (Article 155 Paragraph 7). Thus, the rationale for the Bill fails to provide a sufficiently strong case for violating the rights protected under Article 2 of the Constitution, nor does it make a case for the alleged discriminatory nature of Article 125 Paragraph 2-4 of the Constitutional Tribunal Law.

6.4. The Bill repeals Article 2 of the law which specifies Warsaw as the location of the Constitutional Tribunal. The proponents of the Bill explain that this proposal is part of a broader concept of „bridging the gap between Warsaw and the rest of Poland" by „moving some government agencies from the capital city to other cities in the country". However, the Bill does not suggest any other provision to replace the repealed Article 2 of the Constitutional Tribunal Law that would specify the new location for the Constitutional Tribunal. Consequently, the proposed removal of Article 2 of the law has created an unclear legal standard for the operation of the Tribunal. The proposed relocation of the Constitutional Tribunal is out of sink with a rather terse financial impact assessment of the proposed legislation. No concerns have ever been raised by parties to the Constitutional Tribunal proceedings over its current location. There seems to be no reasonable ground for changing the Tribunal's legal and physical status.

6.5. Repealed Article 28 Paragraph 2 of the Constitutional Tribunal Law

According to Article 28. Paragraph 2 of the Constitutional Tribunal Law,perform „any judge of in the Tribunal shall be held liable under disciplinary procedure for his or her conduct prior to assuming the position, if he or she failed to perform the duties while in public service or has proven unworthy of the judicial position at the Tribunal". The Bill repeals the provision on the grounds that it is the Sejm that is authorised to assess the conduct of the judges before they assume the position in the Tribunal. Consequently, when the Sejm elects a judge the candidate must have been deemed worthy of office and no disciplinary proceeding before the Constitutional Court should seek to undermine such an assessment.

HFHR finds this explication unconvincing. It should be noted that the Sejm may not have the full knowledge of all the past activities of the candidate at the time it elects the individual judge in the Constitutional Tribunal. Some activities in which the candidate at hand may have been involved in the past may only come to light after the Sejm completes the election. The removal of Article 28 Paragraph 2 of the Constitutional Tribunal Law means that if any knowledge of a reprehensible act (not necessarily crime) allegedly committed by a judge to the detriment of his or her integrity of a particular comes to light several years after the election there will be no institution that will be authorised to hold the individual liable. Notably, common court judges may be held liable under disciplinary procedure for acts they committed before they became judges[4]. HFHR believes there is no reasonable case for repealing Article 28 Paragraph 2 of the Constitutional Tribunal Law and it may create circumstances that will detrimentally affect the public perception of the constitutional judges and the whole Tribunal.

6.6. Repealed Article 30 of the Constitutional Tribunal Law

Article 30 of the Constitutional Tribunal Law stipulates that „no cassation appeal shall be allowed against a second instance disciplinary ruling". The proponents of the Bill claim grounds for repealing this provision because it unreasonably limits the judges' civil right to trial and violates the principle of equality. According to HFHR, the rationale for the proposed change rests on false grounds.

First, the simple removal of a provision that rules out the cassation appeal against a disciplinary ruling does not entail that cassation becomes lawful. Cassation appeals are appeals of an extraordinary character and their admissibility and rules of procedure should be directly defined in the law. The Constitution provides for a two-stage procedure (Article 176 Paragraph 1 of the Constitution), and further appellate measures should derive directly from primary legislation. Meanwhile, the derogation of Article 30 of the Constitutional Tribunal Law with no further provisions will make the law mute with regard to cassation appeals. As a result, there will be no grounds still for filing a cassation appeal against a disciplinary ruling in the second instance.

[4] „The judge will also be held liable under disciplinary procedure for his or her conduct before the assumption of the position if through such conduct he or she failed to perform duties while in public service or is found unworthy of the judicial position" (Article 107 Paragraph 2 of the Law on Common Court System). A similar provision is found in Article 50 Paragraph 2 of the Supreme Court Law: „The judge will also be held liable under disciplinary procedure for his or her conduct before the assumption of the position if through such conduct he or she failed to perform duties while in public service or is found unworthy of the judicial position".

Secondly, it is not clear why the principle of equality should be violated by the inadmissibility of a cassation appeal against disciplinary rulings of the Constitutional Tribunal. Common court judges (Article 122 of the Law on Common Court System), administrative court judges (see Article 9, Article 48 in connection with Article 29 and Article 49 of the Law on Administrative Court System) and judges in the Supreme Court (Article 56 Paragraph 6 of the Supreme Court Law) have no such privilege.

Thirdly, the admissibility of cassation appeals against disciplinary rulings passed under the Constitutional Tribunal Law could lead to unnecessary tension between the Constitutional Tribunal and the Supreme Court, and possibly the Supreme Administrative Court. Clearly, such cassation appeal would have to be examined by either of the two courts (as is the case for other cassation appeal in the Polish legal system). The Supreme Court or the Supreme Administrative Court would then have a mandate to question judgements passed by another judiciary body that is not subordinated to but on par with them — all the three courts are highest court institutions in the country.

6.7. Repealing 82 Paragraph 5 of the Constitutional Tribunal Law

As a matter of principle, according to Article 82 Paragraph 2 of the Constitutional Tribunal Law, any participant to a proceeding shall submit a written statement pertaining to the matter at hand no later than 2 months after the service of the subpoena. Paragraph 5 of this article stipulates, however, that in justified cases, the Tribunal President may appoint a different deadline. The Bill seeks to revoke the exception from the rule but the proponents have unfortunately provided no explanation of the reasons in the memorandum. One can hardly find reasonable grounds for this change. The adoption of an absolute deadline of two months for the submission of a written statement on the matter at hand is deemed undesirable and the option to shorten the deadline should be maintained for justifiable circumstances. One should bear in mind a potential need to respond swiftly to certain cases before the Tribunal and the two-month deadline would considerably prevent the Tribunal from taking immediate action.

6.8. Repealed Article 112 Paragraph 2 of the Constitutional Tribunal Law

The Bill also repeals Article 112 Paragraph 2 of the Constitutional Tribunal Law. The provision grants a power to Tribunal President to deem an individual who actually lead a party as an authorised person whenever such an authorised person mandated to represent a party cannot be established or whenever no contact can be established with such a person. The explanatory memorandum states that this provision may lead

to abuse as it gives the Tribunal the authority to ascertain who is actually in charge of a political party with far reaching consequence for such a party in the proceedings before the Tribunal. The proposed amendment will limit the powers of the Tribunal and is deemed unjustified. The proponents of the Bill refer to potential abuse by the President of the Tribunal. However, the absence of this provision will cause even more undesirable consequences. The Tribunal will not have an option to rule on the constitutionality of the goals and operations of political parties, for example in cases of premeditated failure to disclose persons authorised to represent political parties. Moreover, the new provision shows political parties an easy way to avoid constitutional scrutiny.

6.9. Repealed Article 137a of the Constitutional Tribunal Law

The Bill repeals Article 137a of the Constitutional Tribunal Law because of its „obsolescence". This provision has been found by the Constitutional Tribunal to be unconstitutional to the extent it applies to nominating a candidate to the Constitutional Tribunal and his/her election by the Sejm to replace a judge whose tenure expires on 6 November, 2015[5]. This was a consequence of the ruling by the Tribunal of 3 December, 2015[6]. The Sejm could use this provision within 7 days of the entry into force of the Law of 19 November, 2015. Despite the expiry of this provision, the Sejm continues to have the power to elect two judges for two vacant positions in line with Constitutional Tribunal Law (Article 19). Hence, the provision of Article 137a can hardly be deemed obsolete and it is clearly not essential to remove it.

7. Impact of the Proposed Legislation

The draft legislation contains no information whatsoever about any completed consultations or impact assessments. If not for anything else, the proposal to relocate the premies of the Constitutional Tribunal has financial ramifications that have not been presented. There are doubts surrounding the statement that the law is not covered by EU legislation. The Constitutional Tribunal is one of the courts authorised to file question for a preliminary ruling by the European Court of Justice. Thus, preventing its effective operation will have a bearing on the enforcement of EU legislation.

III. Conclusions

[5] Ruling of 9 December, 2015 Ref. K 35/15.
[6] Ref. K 34/15.

The Helsinki Foundation for Human Rights objects to the hasty legislative process with respect to legislation affecting the country's political system. The comments presented above point to the unconstitutionality of the proposed legislation in a number of different dimensions. In particular, the Constitution (Article 188 and Article 79 in connection with Article 2) is violated with respect to the actual purpose of the legislation, i.e. preventing the Constitutional Tribunal from exercising its constitutional responsibilities. The nature of the proposed amendments are indications of the said aim: mandatory full panel ruling with a minimum of 13 judges, the qualified majority vote requirement, mandatory re-opening of pending cases currently examined by smaller panels of judges, re-opening closed cases to be examined in closed sessions, not to mention the actually „unknown" location of the Tribunal. The adoption of the proposed legislation will paralyse the Constitutional Tribunal. This development constitutes an infringement of the Constitution, which in Article 10 provides that the existence and actual operation of all three branches of government are essential to ensure a democratic state.

The rationale for the proposed amendment is lacking with respect to a number of modifications. Ultimately, the quality and clarity of the Constitutional Tribunal Law of 25 June 2015 are compromised. The gravity of the statutory provisions calls for a thorough analysis of the Bill, main in terms of its impact on the citizens.

The Helsinki Foundation for Human Rights wishes to stress firmly that an effectively functioning Constitutional Tribunal constitutes an essential safeguard against abuse of the legislative and executive branch in a constitutional democracy. The fundamental tool granted to individuals to ensure the protection of their rights and liberties, i.e. the constitutional complaint, may only be used in the procedure before the Constitutional Tribunal. Unfortunately, the Bill at hand that seeks to amend the Constitutional Tribunal Law stands in contradiction to the role of the Constitutional Tribunal in the Polish legal framework that has been developed over the past 18 years since the adoption of the Constitution of the Republic of Poland.

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