

## **Summary of the National Council of the Judiciary of Poland position on the draft Act on the Supreme Court**

The Supreme Court exercises the supervision over the activities of the common and military courts in the field of judgments, clarifies doubts about the content of the law, and the discrepancies appearing in the case law. The Supreme Court recognizes electoral protests and controls the validity of national elections and referenda. The Supreme Court recognizes the legal measures related to the functioning of political parties and supervises disciplinary cases concerning judges and lawyers. The strong position of the Supreme Court requires that the rules governing its operation guarantee the distinctness and independence of the Supreme Court from other authorities and enables the judges to remain independent in office.

The draft law on the Supreme Court imposes a mandatory retirement to those of current judges of the Court whom the Minister of Justice shall not designate for further judicial service. The Minister will also put designate the temporary First President of the Supreme Court and - at Minister's request - the President will appoint Presidents of the Supreme Court directing the work of particular chambers of the Court, despite the fact that the Constitution of the Republic of Poland excludes the participation of members of the Government in these appointments. The project vests the Minister of Justice with strong supervisory powers over the judges of the reformed Supreme Court – he shall determine the rules of procedure, the jurisdiction of individual chambers and the number of judges in the Supreme Court. Only the Minister of Justice will be entitled to nominate a candidate for the judicial position in the first selection procedure – the role of the National Council of the Judiciary will be reduced to an advisory role and the candidature will not be subject to assessment of qualifications. The project minimises the requirements for candidates for Supreme Court judges, and their content indicates that they were designed for specific individuals in the political environment of the Minister of Justice. In the Supreme Court, the changes will undermine the position of the First President of the Supreme Court who in practice will be subordinate to the President of the Supreme Court directing the work of the Disciplinary Chamber. Most of the competences previously performed by the First President or the President of the Republic of Poland shall be obtained by the Minister of Justice.

The project introduces new solutions for disciplinary proceedings against judges. It strengthens the role of the Minister of Justice (executive authority organ), who will be empowered to: appoint disciplinary officers (prosecutors in disciplinary proceedings) for a term of office from among judges and *ad hoc* from among prosecutors; issue binding

instructions to disciplinary officers and disciplinary courts; appoint members (judges) of disciplinary courts in common and military courts; request disciplinary proceedings against judges; oblige the disciplinary officer to conduct disciplinary proceedings even against his will; have access to the court files of disciplinary proceedings and ask the court to clarify the deficiencies found, before the judgment in the case. Further changes include: the possibility for the President of the Disciplinary Chamber of the Supreme Court to request disciplinary proceedings against a Supreme Court judge and to appeal the decisions of a disciplinary officer, which appeals will be heard by the Disciplinary Chamber he directs; Reducing the number of judges in the disciplinary cases of judges of the Supreme Court (from 3 to 1 in the first instance and from 7 to 3 in the second instance, whilst in the analogous cases of judges of common and military courts - a disciplinary court panel composed of 3 judges shall adjudicate); Publication of disciplinary judgments on the Internet in every case, which constitutes an additional sanction for the judge next to the disciplinary penalty (only exceptionally the sentences will be anonymised); To certain extent, the right of the defendant judge to defend shall be limited; The right to a two-step disciplinary proceedings will be abolished in case of acquittal of the judge in first instance and second-instance conviction (the judge will not be able to appeal and challenge the conviction in such a situation); It will be allowed to use disciplinary evidence from the operational activities of the special services including those who have been found to be obtained in violation of law. The Minister of Justice will also be entitled to apply for a resumption of any disciplinary action against the judge, validly completed by the disciplinary officer before the proposed amendments enter into force if he considers that it is required by the interests of justice. These changes undermine the essence of the democratic rule of law, the separation of judicial power, the independence of judiciary and judges, and the right to an impartial court.

The amendments proposed lead therefore to the introduction of supervision of the Ministry of Justice over the Supreme Court and undermine the basic guarantees related to the independence of courts as well as the independence of judges. The entry into force of this project will be equivalent to the suspension of the tripartite power in Poland and will undermine the constitutional and conventional standards related to the right of recourse to the court.