

RADA FUNDACJI

Halina Bortnowska-Dąbrowska Marek Antoni Nowicki
Jerzy Ciemniewski Teresa Romer
Janusz Grzelak Mirosław Wyrzykowski
Michał Nawrocki

ZARZĄD FUNDACJI

Prezes: Danuta Przywara
Wiceprezes: Maciej Nowicki
Sekretarz: Piotr Kładoczny
Skarbnik: Lenur Kerymov
Członek Zarządu: Dominika Bychawska-Siniarska

April, 16th, 2018

Statement on the draft Acts on the Supreme Court, the Constitutional Tribunal and the System of Ordinary Courts adopted by the Parliament

The adoption of three laws amending the Acts on the Supreme Court, the Constitutional Tribunal and the System of Ordinary Courts is yet another element of the two-year long trend with the aim of limiting the institutional independence of the judiciary.

The amendments to the Act on the Supreme Court include provisions opening a possibility to block the appointment of the First President of the Supreme Court. In the light of the amendment, the appointment of the new First President of the Supreme Court will be carried out under complete control of the executive power. According to the new rules the process will involve among others the National Council of Judiciary in Poland whose members have been recently elected by the Parliament. The President of Poland will appoint a „judge acting as the President of the Court” who will manage and represent the Supreme Court till the moment when the vacancies are filled. The position of a „judge acting as the President of the Court” is unknown to the Polish Constitution. In the opinion of the Helsinki Foundation for Human Rights, such a regulation, after appointing the President of the Constitutional Tribunal in 2016, is yet another attempt of appointing the Chief Justice in one of the most important courts in Poland in a way which is completely depended on the political will.

The amendments to the Act on the Constitutional Tribunal concern the publication of the three Constitutional Tribunal’s decisions which remain unpublished since 2016. The judgments will be published with a disclaimer that the decisions were made in violation of the law. In Helsinki Foundation for Human Rights’ opinion, the on-going constitutional crisis consists in the governing majority’s usurping the right to verify the decisions made by the independent Constitutional Court. The adoption of the regulation concerning the promulgation is just a continuation of this trend.

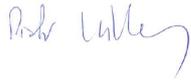
The newly adopted amendments to the Act on the System of Ordinary Courts introduce changes in the procedure of dismissing the presidents of the courts. The new proposed procedure includes some consultations with the judges of each court. This amendment will not, however, be a remedy to the massive dismissal of the presidents and deputy presidents of the courts which took place from August 2017 to February 2018.

In Helsinki Foundation for Human Rights’ opinion, contrary to the government’s declarations, none of the proposed changes meet the Rule of Law Recommendations presented by the European Commission. The adopted amendments are just cosmetic changes which will not repair the damages done to the judiciary in last two years.

Poland may return to the path of safeguarding the rule of law only after full implementation of the European Commission’s recommendations - which include among other publishing the

judgements of the Constitutional Tribunal, amending the provisions of appointing the presidents of the courts restoring the judges' right to appoint their representative for the position of the president of a court, and restoring the old procedure of appointing judges-members of the National Council of the Judiciary in Poland. Without these fundamental changes, any other reforms will be just a continuation of the two-year long legislative trend of widening the executive and legislative powers' control over judiciary.

On the behalf of the Helsinki Foundation for Human Rights,

A handwritten signature in blue ink, appearing to read 'Piotr Kłodoczny', written in a cursive style.

Piotr Kłodoczny
Secretary of HFHR's Board