



There will be new chambers in the Supreme Court. Judges will be vetted by the NCJ.

Whoever wants to adjudicate in the new chambers of the Supreme Court will need to appear before the National Council of the Judiciary. This will lend credibility to the NCJ – experts warn.

Update: 02/11/2021, 19:24 Published on: 02/11/2021, 18:49 | Marek Domagalski, Wojciech Tumidalski

It arises from the solutions contained in the government's draft of a new Act on the Supreme Court that it can expect a revolution. The Supreme Court in the form in which it has functioned in the Polish legal system for 30 years will disappear. A new one would be created, consisting of two chambers: the Public Law Chamber and the Private Law Chamber. The first of these is to handle the same issues as the current Chamber of Extraordinary Control and Public Affairs. In other words, the assessment of the validity of elections and the review of extraordinary appeals against final court judgments. The second will be responsible for answering legal questions from the ordinary courts and ensuring consistency in their rulings.

But what about the classic chambers of the Supreme Court: the Criminal, Civil, Labour and Disciplinary Chambers? They will no longer exist. The second-instance courts, with judges 'sent down' from the Supreme Court, are to take over the consideration of these cases.

Some of the Supreme Court judges will almost certainly choose to retire on 100% pay until they reach the age of 65. This is a similar solution to that applied in 2009–2010, when the National Prosecutor's Office was liquidated and replaced by the General Prosecutor's Office which is independent of the government. The only difference was that it was possible to return from retirement in the prosecution service to active duty – which at least several prosecutors close to Zbigniew Ziobro did.

Flattening the structure

It arises from a document to which 'Rzeczpospolita' gained access that the first tier of the new structure would be a court referred to as a regional court. Today's regional court judges could be transferred by a decision of the minister of justice to a provincial court as a court of the second instance.

The minister would make the decision on this after reviewing the judge's service record and professional opinion. The transferred judge would not be able to appeal against his decision.

In turn, current Supreme Court judges would be required to submit a declaration as to whether or not they want to adjudicate. If they do, they would have to appear before the NCJ. Only a positive opinion from the Council would open the way for them to be nominated by the President to one of the two new Supreme Court chambers.

But this has already happened

The draft is reminiscent of the first 'revolutionary' Act on the Supreme Court of 20 July 2017, which President Andrzej Duda vetoed and which provided for a radical reduction in the number of Supreme Court judges and a reduction in the number of chambers in the Supreme Court to three – at that time, there was still talk of the Disciplinary Chamber, which is to be liquidated.

When we ask people familiar with the draft about its details, they refer to Chairman Jarosław Kaczyński's well-known statement from mid-October that the Supreme Court is to be a small court whose task will be to 'organise judgments'.

But experts point out that, if the new Supreme Court is to pass resolutions in civil, labour and social insurance and criminal cases, there must be at least ten Supreme Court judges in the new chambers. In order for them to pass, for example, seven-person resolutions, they would need 30 judges in case of illness or exclusion from the bench, and there are also really public matters, such as election cases, which have almost always been in the Supreme Court in at least the second instance. And even if cassation appeals were to be moved from the Supreme Court to a lower instance court, there are still extraordinary appeals – the current president's flagship election idea.

'The changes should start with specifying the tasks for the transformed Supreme Court and then, on that basis, the establishment of the number of Supreme Court judges, which, except for the post-War periods, has amounted to roughly 80-90 judges in the last 100 years,' comments Supreme Court Judge Wiesław Kozieliwicz from the Criminal Chamber.

How many posts

President Duda recently increased the statutory number of Supreme Court judges from 120 to 125. Only 94 posts are filled, including 42 by newly appointed judges – the whole of the Chamber of Extraordinary Control and Public Affairs and the Disciplinary Chamber, while there are ten judges in the Civil Chamber, mainly transferred from the Chamber of Extraordinary Control and Public Affairs.

Article 180, para. 5 of the Constitution allows a judge to be transferred to another court or retired on a full salary, in the event of a change in the structure of the courts or changes of the boundaries of judicial regions. But many lawyers believe that Article 180 does not apply to the Supreme Court, only to the ordinary courts.

According to Judge Kozieliwicz, this provision is intended for organisational changes in the courts, while those proposed by the government can be qualified as systemic. *'This would be the start of a new storm. A major role would be played in the verification of current Supreme Court judges by the NCJ, unless the drafters are considering a newly reformed Council. And there is an opportunity, as its term of office is ending next March,'* he adds.

'This shepherd cried 'wolf! wolf!' so many times that no one now, least of all me, believes in the honesty of what is being proposed. The only hope is that neither the European Commission nor anyone else will fall for it,' comments Prof. Ewa Łętowska, former Ombudsman and judge of the Constitutional Tribunal.

<https://www.rp.pl/sady-i-trybunaly/art19070101-beda-nowe-izby-w-sadzie-najwyzszym-sedziow-czeka-weryfikacja-przed-kr>

