

## **Lawyers on PiS's revolution in the Supreme Court: an immoral proposition for judges**

**The government's draft changes to the Supreme Court disclosed by 'Rzeczpospolita' are assessed by Michał Laskowski, President of the Criminal Chamber of the Supreme Court, Aleksander Stępkowski, press officer of the Supreme Court, Dr Paweł Filipek from the Ombudsman's office, and constitutionalist Anna Rakowska-Trela from the University of Łódź.**

Published on: 02/11/2021, 19:03 | Wojciech Tumidalski

### **Dilemma for the old Supreme Court judges**

***'The proposal for old judges of the Supreme Court has been prepared in such a way that they would prefer to choose a comfortable retirement rather than surrender to an appraisal by the NCJ,' says Michał Laskowski, president of the Criminal Chamber of the Supreme Court.***

If the bill on the cut down Supreme Court were to come into effect, the question is whether the objective is to streamline proceedings and make the judiciary more citizen-friendly, or to pacify the Supreme Court and send the government's critics into retirement. To what extent will this changed Supreme Court ensure uniformity of judgments? To some extent it will almost certainly be through legal questions, but what about cassation appeals? Will something of the extraordinary review type return? Someone could perversely say that, without a cassation appeal, the time required for proceedings will be shortened, but unfortunately at the expense of guarantees for the parties. The older judges of the Supreme Court will face a dilemma of whether to choose a comfortable retirement or stand for appraisal before the NCJ and rely on the will of the president or the minister when filling a new post. This will almost certainly be thought through that the dilemma will be resolved in favour of the first option. We know nothing about the reform of the disciplinary courts, and this is not just a matter of liquidating the Disciplinary Chamber in the Supreme Court, but of the whole model of these courts and the involvement of the Minister of Justice in them.

### **We have too few Supreme Court judges, not too many.**

***'The proposals are in conflict with guarantees of judicial independence, which is why far-reaching caution is needed here,' said Aleksander Stępkowski, the Supreme Court's press officer.***

The proposals that were disclosed suggest that there is a tendency to reduce the number of judges in the Supreme Court, either by allowing them to retire early on preferential terms or by transferring them to ordinary courts of a higher instance.

In principle, such a solution is clearly in conflict with the guarantees of judicial independence protected by the principle of their irremovability. Although Article 180, para. 5 of the Constitution provides for the possibility of exceptions in this respect in the event of changes in the structure of the judiciary, such solutions require far-reaching caution.

It is also impossible to fully assess such proposals without having more information about the functions of the numerically cut down Supreme Court.

With the way its jurisdiction and remedies are currently structured, the Supreme Court certainly has an insufficient number of judges rather than too many.

A reduction in the number of judges would involve some kind of appraisal and verification mechanism, which the first president of the Supreme Court would certainly consider unacceptable, as she has repeatedly emphasised.

### **There could be more problems than to date**

*‘The proposed mechanism serves to authenticate the previous appointments made with the involvement of the NCJ. Now, the judges of the Supreme Court who previously had nothing to do with the NCJ would have to appear before it,’* says Dr Pawel Filipek of the Ombudsman’s office.

There are numerous problems here. The first is the National Council of the Judiciary. If it is the same NCJ, with the same membership or the same staffing, then we all – except perhaps the Constitutional Tribunal and the NCJ itself – already know that its formula is incorrect, and this gives rise to doubts about all the judges who come out from under its hands. The proposed mechanism can serve to validate previous nominations. Therefore, it appears that the NCJ’s opinion on the Supreme Court judges who are to rule in the ordinary courts may, on the one hand, act as a sieve to ‘weed out’ judges who critically assess the changes in the judiciary in recent years and, on the other, once again authenticate the nominations made after 2018. Another problem is the formulation of objective criteria for appointing Supreme Court judges to new official positions and the discretionary nature of the decisions of the Minister of Justice, as well as the inability to appeal against them – this gives rise to absolutely fundamental questions. We do not know whether the bill will specify the criteria according to which the President is to make appointments to the new chambers of the Supreme Court. The prevalence of cronyism means these could be the people he himself has been appointing to the Supreme Court since 2018. And this mechanism of appointment should be designed in such a way as to exclude the risk of any arbitrariness. The question is how the European Union institutions, which are waiting for the liquidation of the Disciplinary Chamber and the healing of the disciplinary regime, will react to this. Merely liquidating the Disciplinary Chamber is not enough. The announcements do not sound optimistic. I am highly concerned that there may be no fewer problems than to date.

### **Immoral proposition: if you want to remain a judge, stand before the NCJ**

*‘Without restoring the constitutional shape of the National Council of the Judiciary, any change in the Supreme Court will be defective,’* emphasises Anna Rakowska-Trela, a constitutional specialist, professor at the University of Łódź, attorney-at-law.

One cannot help getting the feeling that the proposed ‘reform’ of the Supreme Court involving the replacement of the current chambers with two new ones, is not about strengthening the judicial protection of the citizens or the constitutional right to a court. The proposed regulations focus on the establishment of free and arbitrary assessment of judges, which does not reflect constitutional and European standards, and which involves the appraisal of the Supreme Court judges by the neo-NCJ and the President. It cannot be heard that, before conducting this ‘reform’, the political authority intended to restore the NCJ to its constitutional shape, and that the President will be free to specify who will be appointed to the neo-chambers of the Supreme Court. The icing on the cake is the immoral proposal of: if you don’t want to be a neo-judge in the neo-Supreme Court, retire. If you don’t leave and you don’t pass the assessment – you can count on us demoting you.

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