

Brief summary of a parliamentary draft law on the Supreme Court

(the draft submitted to the parliament by a group of members of the Law and Justice party)

1. The Supreme Court, celebrating the centenary of its existence this year, exercises the supervision over the adjudicating activities of common courts and military courts. Its jurisprudence is essential for protection of the human and the citizen's rights and freedoms. The Supreme Court recognizes not only the remedies against the judgments of the abovementioned courts, but above all resolves doubts and divergences in the interpretation of the law, appearing in the case law of Polish courts. Due to the fact that the Minister of Justice has administrative supervision over the activities of the common and military courts, the Supreme Court has always remained outside the sphere of influence of the Minister. This demonstrates the strong independence of the Supreme Court from political power, so that judges of the Supreme Court can exercise judicial functions in the public interest, guided by their advanced legal knowledge. Thanks to the professionalism and apolitical nature of the Supreme Court, citizens can count on their cases to be heard in lower instances by an independent and independent court. The presented project significantly strengthens the position of the Minister of Justice, making the Supreme Court, acting on the basis of the amended legislation, unable to fulfill its basic functions, due to the strong dependence of each judge on the unconstrained will of the Minister of Justice. After the entry of this law into force in Poland, even Deputy Ministers of Justice will enjoy greater independence from the Minister of Justice than the judges of the Supreme Court.
2. All judges of Supreme Court in active service will be transferred into retirement on the day following the entry of this Act into force, with the exception of a group of judges indicated arbitrarily by the Minister of Justice. The project does not provide for any criteria of the selection of judges, who will remain in active service - the Minister would, for instance, be able to transfer to retirement those judges who participated in the issuance of decisions contrary to the views of the Minister of Justice. The Minister of Justice will decide about the possibility of the further exercise of the Office of judge Supreme Court by the person reaching retirement age, about the possibility of taking additional classes (e.g. lecturing 1,5 h per week) and the exercise of other powers by Supreme Court judges they are entitled to, within the framework of their employment relationship.

3. The Supreme Court will be, as far as organisation and human resources are concerned, subordinated to the Minister of Justice, who will now issue the Rules of the Supreme Court, specifying the number of judicial positions in the Supreme Court as well as the competence and the organisation of the chambers of Supreme Court. So far, the Rules of the Supreme Court were issued by the General Assembly of the judges of the Supreme Court as proof of independence and distinctiveness of the Court from political power; the number of judicial positions in the Supreme Court has been so far specified by the President of Poland, whose role was marginalised by the authors of the draft.
4. The Minister of Justice will be personally picking the candidates for judges of the Supreme Court in the first recruitment of judges to the Court after the entry into force of this law. The draft provides that the Minister shall submit to the National Council of the Judiciary (hereinafter: KRS) one candidate for each vacant judicial position, and the KRS will have 14 days for the consideration of this candidature. Unsuccessful expiry of this period shall be equivalent with the presentation of the candidacy to the President of Poland with a motion for the appointment of judge. In practice, it will therefore be the Minister of Justice who will decide about the nomination of judge Supreme Court. Appointment of the judges of the Supreme Court will not be preceded by the assessment of the qualifications of candidates for these positions, and the judicial self-government in the Supreme Court will not have the powers to do their assessment, and the candidates for judges of the Supreme Court will be deprived of the right to appeal to the Court.
5. The Minister of Justice shall indicate the transitory First President of the Supreme Court, taking away that competence of the President of the Republic and of the General Assembly of the Judges of the Court, which are the only bodies, in accordance with the Constitution, participating in the procedure of the appointment of the first President of the Supreme Court. The project does not specify for how long the transitory First President of the Supreme Court can fulfil these duties (even a few months). In addition, the Minister of Justice will himself indicate the candidates for Presidents of the Supreme Court in the first nominating procedure following the entry into force of the Act.
6. The project provides for abolition of Civil, Criminal, and Military Chambers as well as the Chamber of Commerce, Work, social security and public affairs - the judicial structure corresponding to the subject of the case-law of the Supreme Court and the creation in their place: the Public Law Chamber, the Private Law Chamber and the Disciplinary

Chamber. The Disciplinary Chamber will enjoy separate organisational and financial status compared to other chambers of the Supreme Court. President of Supreme Court managing the work of this chamber will be the superior at work to the first President of the Supreme Court, and judges of that Chamber will have a separate status from the other judges Supreme Court (e.g. salary will be higher by 40%) and adjudicate in matters relating to judges of the Court.

7. In accordance with the Polish systemic legal tradition, the Supreme Court as the first out of all the courts in the State is out of the range of administrative supervision of the Ministry of Justice, whose tasks carried out with respect to common courts, were distributed in relation to the Supreme Court between the President of the Republic of Poland and the First President of the Supreme Court. The granting of the Supreme representative of Poland the competence related to the operation of the Supreme Court was supposed to protect this Court from the effects of current political battles (in which the President of the Republic of Poland should not participate). New draft law on Supreme Court marginalises the role of the President of the Republic with regard to the Supreme Court and grants the Minister of Justice the essential competencies related to the functioning of the Supreme Court.
8. The Minister of Justice will exercise the actual supervision over the disciplinary proceeding with respect to the judges of the Supreme Court, common courts and military courts, which will include granting him the right to issue binding instructions concerning the course of this proceeding. The Minister of Justice will also pick the judges of disciplinary courts and appealing disciplinary attorneys for the common and the military judiciary, and will even be able to set up *ad hoc* disciplinary attorney of his own (form among the prosecutors) to carry out a specific disciplinary proceedings.
9. The draft provides for the verification of the employees of the Supreme Court and the Research and Analyses Office of the Supreme Court. If new management of the Supreme Court does not provide them with job offers, their employment will be subject to termination by operation of law. This means that long-time employees of the Supreme Court and the eminent scientists supporting the Research and Analyses Office of the Supreme Court with their knowledge can be deprived of employment without giving a reason.