

Opinion of Polish Judges Association Iustitia on the presidential draft Law on Supreme Court

The draft Law on Supreme Court introduced by the President of Poland provides four groups of solutions different from the current legal situation:

- the extension of disciplinary proceedings,
- the introduction of extraordinary complaint,
- the change of Supreme Court structure and
- the introduction of lay judges into Supreme Court.

Referring to these areas, Iustitia indicates the following:

I. Disciplinary proceedings.

The proposed solutions expand the apparatus for the prosecution of disciplinary offenses and subordinate the conduct of disciplinary proceedings against judges to the Minister of Justice, as well as provide this executive representative with a significant influence on disciplinary courts.

Generally the standards of defense judges' rights in the draft are lower than those applied in criminal proceedings against common citizens.

II. Extraordinary complaint to Supreme Court.

The introduction of this institution, which extends the existing possibilities of undermining the stability of final judgments, will pose a direct threat to the certainty and predictability of legal protection provided by courts in Poland.

It should be emphasized that this amendment will not directly improve the situation of citizens since lodging a complaint shall be left to the discretion of public establishments, including those of a political nature.

III. New Supreme Court structure.

The change in the structure of the Supreme Court is based on the introduction of two new chambers: the Disciplinary Chamber and the Chamber of Extraordinary Control and Public Affairs. These chambers are meant for operating on the special terms and conditions and only by name they will be parts of Supreme Court. The designer's intention is to create two "super-courts" that will control common courts and Supreme Court.

Iustitia generally approves the introduction of a Disciplinary Chamber, however, provided that it shall not be a special chamber of an autonomous nature and additionally opposed to the structure of the other chambers of Supreme Court. Besides, the composition of the new chambers will be decided by the new National Council of the Judiciary which members will be probably elected with the dominant role of politicians.

The drafted shapes of aforementioned chambers are blatantly incompatible with Polish Constitution (article 175.1).

IV. Lay judges in Supreme Court.

Firstly, it should be emphasized that lay judges are primarily "fact judges". While in the common courts the life wisdom and non-legal knowledge of lay judges is a valuable contribution, the character of Supreme Court, which is first of all the "court of law", no longer provides such opportunities to lay judges.

A lay judge at Supreme Court, as a full member of the adjudication panel, will often face the need to interpret regulations and read the content of legal norms requiring extensive legal knowledge, which is difficult to expect from e. g. high school graduate. The same applies, in essence, to adjudicating in disciplinary matters in which the subject of the assessment is often a disciplinary offense consisting of a blatant and obvious violation of the law while rendering judgments.