

Opinion of Polish Judges Association Iustitia on the presidential draft Law on the National Council of the Judiciary of Poland (NCJP)

Polish Judges Association 'Iustitia' gave an adverse opinion on the draft that is to change regulations considering the National Council of the Judiciary of Poland (NCJP) introduced by the President of Poland Andrzej Duda. This draft should be reviewed regardless of previous governmental draft.

According to the draft, member judges of the NCJP are to be elected by Polish Parliament (Sejm). 'Iustitia' holds these provisions are unacceptable in the light of the constitutional rule of judicial independence. Pursuant to the Constitution NCJP's task is to protect this rule, therefore its composition cannot be exclusively dependent on legislative or executive powers. Moreover, the number of representatives of legislative and executive powers has been already established in the Constitution (article 187). Considering innate unlawfulness of this solution, it does not matter whether Polish Parliament would elect judge members with ordinary, absolute or even qualified majority.

In spite of President's assurances his draft does not meet expectations of Polish judiciary respecting the increase of lower courts representatives in the NCJP. It should be emphasized that only the draft elaborated by Iustitia fulfils that requirement.

It should be mentioned that Iustitia introduced the draft which established transparent procedures concerning the NCJP members' election, as well as provided citizens with means to watch this election. President's proposals follow this requirement, however they are insufficient.

President's proposals weaken judicial self-government. The abolition of judges' gatherings of regional and appellate courts deprives the judiciary even of this substitution of the self-government body.

Iustitia negatively evaluated proposals aimed at sanctioning the possibility of refusing by the President to appoint a candidate nominated by the NCJP. It is a proposed obligation of the NCJP to provide the information about the other candidates and the documentation of the proceedings to the President. According to the article 179 of the Polish Constitution judges are appointed by the President on the request of the NCJP. This provision does not provide the President with power to pick candidates or verify the procedure of selection of candidates.

Iustitia negatively evaluated regulations that would allow termination of office of the members of the NCJP and criticized introduction of common four year term for all of the judge members of the NCJP.

Generally presidential draft does not include participation of the society in the activities of the NCJP. These demands were met in the draft proposed by Iustitia which provided the establishment of the Social Committee at the NCJP as an advisory body in which representatives of non-governmental organizations involved in the activities of the judiciary and legal practitioners would sit.