

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

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### **Poland: Three amendments that seriously undermine the independence of judiciary – July Update**

Amnesty International is alarmed by the amendments to the Law on the National Council of Judiciary and the Law on Common Courts adopted by the parliament: the lower chamber, *Sejm* on 12 July and the Senate on 15 July. The amendments are now awaiting the signature of the President of Poland. Another amendment, of the Law on the Supreme Court, put on the agenda of *Sejm* at night of 12 July raises further concerns over the government's attempt to put the judiciary under political control. This amendment is going for the first hearing on 18 July. The changes and why they are problematic are listed below.

These changes follow earlier, already problematic amendments to the composition of the Constitutional Tribunal that severely affected its independence to the extent that the European Commission issued a recommendation under the Rule of Law Framework in which it found that there was a “systemic threat to the rule of law in Poland”.<sup>1</sup> Another source of concern in relation to the independence of the justice system is the large-scale personnel changes in the prosecution service carried out in 2016. Upon the merger of the position of the Prosecutor General and the Minister of Justice, which took effect in March 2016, as many as 500 out of the total 6,000 prosecutors in Poland were either degraded to a lower position, transferred to another location or forced to retire. The increased powers of the Prosecutor General (PG) and the Minister of Justice, including the power to intervene at each stage of legal proceedings led by any prosecutor by issuing instructions, as a result of the amendments of the Prosecution Act raised serious concerns.<sup>2</sup>

Amnesty International considers that all these amendments undermine the right to an effective remedy and to a fair trial, enshrined in Article 45 of the Constitution of the Republic of Poland as well as in Articles 6 and 13 of the European Convention on Human Rights and Articles 2(3) and 14 of the International Covenant on Civil and Political Rights

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<sup>1</sup> European Commission, Opinion on the Rule of Law in Poland, 1 June 2016; Rule of Law Recommendation on the situation in Poland, 27 July 2016.

<sup>2</sup> See: Report by Nils Muižnieks following his visit to Poland from 9 to 12 February 2016, p. 21.  
<https://rm.coe.int/16806db712>

(ICCPR), all of which bind Poland legally as a state party. These amendments are also incompatible with Article 47 of the Charter of the Fundamental Rights of the European Union. As such, they amount to a 'clear risk of a serious breach' of the values referred to in Article 2 of the Treaty of European Union, foremost among them respect for human rights. Amnesty International therefore reiterates its call on the European Commission to resort to the procedure laid down in Article 7 of the Treaty on European Union (TEU).

#### **NATIONAL COUNCIL OF THE JUDICIARY OF POLAND**

On 12 July, the lower chamber of the Polish parliament (*Sejm*) adopted an amendment of the Law on the National Council of the Judiciary (NCJ), the constitutional body safeguarding the independence of courts and judges. The amendment increases the number of members appointed by parliament. Out of the total 25 members of the NCJ, 15 members would be judges appointed by the lower chamber of the parliament. This breaches the Polish Constitution which limits the number of members of the NCJ appointed by the parliament to six (four by the lower chamber and two by the Senate).<sup>3</sup> Until now, according to the Polish Constitution, 15 members of the NCJ were elected by and from amongst the judiciary (Supreme Court, common courts, administrative courts and military courts). Under the new provision, it will be the legislative not the judiciary power that will have the decisive role in the appointments of judges on the NCJ. Under the European Court of Human Rights case law, this represents a risk of increasing the political influence over the judicial council and undermines the principle of independence.<sup>4</sup>

The remaining 10 members of the NCJ would be the Minister of Justice (who now also holds the office of the Prosecutor General), the First President of the Supreme Court, the President of the Supreme Administrative Court, a person appointed by the President of the Republic of Poland, four members appointed by the lower chamber of the parliament and two members appointed by the Senate.

Besides an increased number of political appointees, the reform also reduces its powers, while increasing the powers of the Minister of Justice. Under the previous legislation, the nominations of new judges were made on the recommendation of the NCJ. The reform leaves the NCJ with its role reduced to a possibility to object a particular candidate. It no longer has the competence to promote trainee judges; this competence is given to the Minister of Justice.<sup>5</sup>

Besides Amnesty International, several international bodies have expressed concern over the amendment. A report commissioned by the Office for Democratic Institutions and Human Rights (ODIHR) concluded that if adopted, the law would jeopardize the independence of a body whose main purpose is to guarantee judicial independence in Poland. In his letter to the Speaker of the Polish parliament on 31 March, the

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<sup>3</sup> Article 187 of the Constitution of the Republic of Poland.

<sup>4</sup> *Oleksandr Volkov v Ukraine*, ECHR judgement of 9 January 2013. Paras. 112 and 117.

<sup>5</sup> Position of the National Council of Judiciary (in Polish), 10 February 2017 (WO-020-6/17): <http://www.krs.pl/pl/dzialalnosc/posiedzenia-rady/f,189,posiedzenia-w-2017-r/630,7-10-lutego/4617,opinia-krajowej-rady-sadownictwa-z-dnia-10-lutego-2017-r-wo-020-617>

Commissioner of the Council of Europe for Human Rights, “strongly encourage[d]” the parliament to reject the proposal to amend the Law on the NCJ due to serious concerns that it would undermine the independence of the judiciary. In April, the Consultative Council of European Judges (CCEJ), an advisory body of the Council of Europe, stated that the “implications of Draft [Law]... effectively mean transferring the power to appoint members of the Council from the judiciary to the legislature. This proposed new method for selecting judicial members of the Council is not in accordance with European standards for judicial independence.”<sup>6</sup>

### **LAW ON COMMON COURTS**

On the night of 15 July the parliament also adopted<sup>7</sup> an amendment to the Law on Common Courts which puts the power to appoint presidents and vice-presidents of courts into the hands of the Minister of Justice, who is also the Prosecutor General, and thus already has vast powers to directly take part in proceedings as a party. The amendment also changes the procedures for the promotion of judges which fails to specify criteria for promotions and therefore introduce an element of arbitrariness. The role of the Minister of Justice would grow even further: they would appoint presidents and vice-presidents of courts while at the same time as the Prosecutor General being directly involved in proceedings. This clearly violates the independence of judiciary, contrary to Poland’s obligations under Article 6 of the European Convention on Human Rights, Article 14(1) of the ICCPR, Article 45 of the Constitution of the Republic of Poland and Article 47 of the Charter of the Fundamental Rights of the European Union.

### **LAW ON SUPREME COURT**

Under the amendment of the Law on the Supreme Court (at the time of writing in the first hearing in *Sejm*), the day after it enters into force, all current Supreme Court judges will have to retire.<sup>8</sup> The Minister of Justice, who also acts as the Prosecutor General and party to proceedings, will have the power to decide to grant exceptions to this rule and extend the tenure of some of the judges.

The amendment introduces the following main changes in the powers of the Minister of Justice which raise particular concerns:

1. It would grant the Minister the power to terminate the term of judges on the Supreme Court;
2. The Minister would also have the power to form the “new” Supreme Court after the termination of terms of the current Supreme Court members

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<sup>6</sup> Consultative Council of European Judges, 7 April 2017:

[http://www.coe.int/t/dghl/cooperation/ccje/cooperation/Opinion%20EN%201\\_Poland%20April%202017\\_en.asp](http://www.coe.int/t/dghl/cooperation/ccje/cooperation/Opinion%20EN%201_Poland%20April%202017_en.asp)

<sup>7</sup> The Senate adopted the amendments in the early hours of 15 July. The lower chamber of the parliament (*Sejm*) adopted the amendments on 12 July.

<sup>8</sup> Art 87, par. 1 of the draft of the amendment of the Law on Supreme Court.

3. The Minister will gain new competence within the disciplinary proceedings of the Supreme Court judges, including the possibility to question the decisions of the Supreme Court taken in previous disciplinary proceedings;<sup>9</sup>

The proposal has been criticised by NGOs,<sup>10</sup> as well as legal experts<sup>11</sup> as unconstitutional and apparently politically motivated.<sup>12</sup>

#### **APPENDIX**

(In Polish) Opinion of Amnesty International on the threats to the independence of judiciary and judges in Poland. 5 July 2017. Available at: <https://amnesty.org.pl/wp-content/uploads/2017/07/Zmiany-w-s%C4%85downictwie-opinia-Amnesty-International-05072017.pdf>

Amnesty International. 'Poland: New law undermines the independence of the judiciary'. 12 July 2017. Available at: <https://www.amnesty.org/en/latest/news/2017/07/poland-new-law-undermines-the-independence-of-the-judiciary/>

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<sup>9</sup> Art 104, par. 1 of the draft of the amendment of the Law on Supreme Court

<sup>10</sup> <http://www.hfhr.pl/en/the-draft-amendment-to-the-act-on-the-supreme-court/>

<sup>11</sup> <http://prawo.gazetaprawna.pl/artykuly/1057595,nowelizacja-ustawy-o-sn-pis-komentarz-letowska.html>

<sup>12</sup> <http://wyborcza.pl/7,75398,22087563,nocny-zamach-pis-na-sad-najwyzszy-co-chce-zrobic-partia-jaroslawa.html>