

Strasbourg, 17 July 2017

## CONSULTATIVE COUNCIL OF EUROPEAN JUDGES

(CCJE)

### **Statement of the CCJE Bureau on the Polish Parliament's recent adoption of two Acts on the Polish judiciary and on the draft Act on the Polish Supreme Court**

The Bureau of the Council of Europe's Consultative Council of European Judges (CCJE), deeply regret the recent adoption by the Polish Parliament of the Act on the Polish National Council of the Judiciary. According to the Act, the power to appoint members of the Judicial Council will be transferred from the judiciary to the legislature, and the political powers will now have a decisive role in the procedure for appointing judges.<sup>1</sup> The Parliament also adopted an Act that will give the Minister of Justice the power to dismiss court presidents and substitute them within the next six months after the entering into force of this new law. This is a major setback for the rule of law and for judicial independence in Poland.

Furthermore, the Bureau of the CCJE is deeply concerned by the draft Act on the Polish Supreme Court, recently submitted to the Parliament by a group of members of the Law and Justice Party. According to the draft Act, all judges of the Supreme Court being in active service, except a group of judges indicated arbitrarily by the Minister of Justice, will be transferred into retirement on the day following the entry into force of the draft Act.

According to the draft Act, the Supreme Court will be subordinated to the Minister of Justice regarding the Court's organization and its human resources. The Minister of Justice will also be empowered with the exclusive competences of nominating candidates for judicial office holders in the Supreme Court.

If adopted, the Act will further undermine the separation of state powers, the rule of law and the independence of the judiciary in Poland. New judges will be appointed to the Supreme Court under decisive political influence.

Having in mind all above mentioned the CCJE Bureau is of the opinion that, again, on the basis of Council of Europe standards regarding the independence of judiciary, it has to be clearly stated that:

- It is a fundamental tenet of judicial independence that tenure is guaranteed until a mandatory retirement age or the expiry of a fixed term of office.<sup>2</sup> In

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<sup>1</sup> See the Opinion of 7 April 2017 of the CCJE Bureau following the request of the Polish National Council of the Judiciary to provide an opinion with respect to the Draft Act of 23 January 2017, latest amended on 3 March 2017, amending the Act of 12 May 2011 on the Polish National Council of the Judiciary and certain other acts.

<sup>2</sup> CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, paragraph 57

order to uphold the rule of law and for the protection of human rights, judges must be protected against arbitrary dismissal.

- The term of office of judges and their age of retirement must be respected and adequately secured by law, as the security of tenure of judges is an essential guarantee of the independence of the judiciary. The Bureau of the CCJE reiterates that a new parliamentary majority and government must not question the appointment or tenure of judges who have already been appointed in a proper manner.<sup>3</sup> Any change to the judicial obligatory retirement age must not have retroactive effect.<sup>4</sup>

Furthermore, this proposed provision may interfere with the guarantees of Article 6 of the European Convention on Human Rights in so far as the current judges of the Supreme Court would seemingly not be able to challenge the termination of their mandates before a judicial body. In this respect the Bureau of the CCJE refers to the ECtHR Grand Chamber judgment of 23 June 2016 in the case *Baka v. Hungary*.  
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The draft law on the Polish Supreme Court and the suggested pre-term removal of the Polish Supreme Court judges runs contrary to European standards on judicial independence, and the Bureau of the CCJE strongly recommends the Polish authorities not to adopt and not to introduce the proposed amendments to the law.

The Bureau of the CCJE



Nils Engstad  
President of the CCJE

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<sup>3</sup> CCJE Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, paragraph 44

<sup>4</sup> The Universal Charter of the Judge, Article 8, approved by the International Association of Judges on 17 November 1999