

URGENT ACTION

GOVERNMENT ATTEMPTS FURTHER CONTROL OF JUDICIARY

On 22 November, proposals to increase the government's control of the judiciary were put before the Polish Parliament. Lawmakers are expected to vote on the legislative amendments in the next few days. If the amendments are passed, the right to an effective remedy and the right to a fair trial will be severely undermined in Poland.

The Polish Parliament is debating amendments to the Law on the National Council of the Judiciary (NCJ) and the Law on the Supreme Court. The proposed changes would allow parliament to elect judges to the NCJ, until now a self-regulating body of judges, and would decrease the retirement age of Supreme Court judges from 70 to 65 years, thereby requiring 40% of current Supreme Court judges to retire. Any Supreme Court judge seeking to continue their work would have to be vetted by the President.

Both amendments are currently being discussed in the parliament. If approved in the lower chamber of the parliament, the *Sejm*, the amendments will be submitted to and voted on in the Senate. The President has the power to veto any proposals adopted by the parliament.

On 24 July, the President vetoed two out of three legislative amendments which threatened the independence of the judiciary, following large nationwide demonstrations opposing the proposed changes. The two vetoed amendments were redrafted by the President and submitted to the parliament on 26 September.

The President's redrafted amendments undermine the right to an effective remedy and to a fair trial, enshrined in Article 45 of the Polish Constitution, 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, to which Poland is a state party. These amendments are incompatible with Article 47 of the Charter of the Fundamental Rights of the European Union.

1) TAKE ACTION

Write a letter, send an email, call, fax or tweet:

- Calling on parliamentarians to vote against the proposed changes to the Law on the National Council of Judiciary and the Law on the Supreme Court;
- Calling on the President to refuse to sign into law any amendments to the Law on the National Council of Judiciary and the Law on the Supreme Court which threaten independence of the judiciary and which would undermine the right to an effective remedy and to a fair trial

Contact these two officials by 5 January, 2018:

Chancellery of the Sejm
Kancelaria Sejmu
ul. Wiejska 4/6/8
00-902 Warsaw, Poland
Fax: +48 22 694 22 52
Email: listy@sejm.gov.pl
Twitter: @KancelariaSejmu
Salutation: Dear Chancellery

[Ambassador Piotr Wilczek, Embassy of the Republic of Poland](#)
2640 16th St. NW, Washington DC 20009
Phone: (202) 234-3800
Fax: (202) 328-6270
Email: washington.amb@msz.gov.pl
Twitter: @AmbWilczek
Salutation: Dear Ambassador

2) LET US KNOW YOU TOOK ACTION

[Click here](#) to let us know if you took action on this case! *This is Urgent Action 173.17*

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**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

Between May and July, the Polish parliament adopted four laws on the “reform” of the judiciary. The reforms provoked a strong response from the public, intergovernmental organizations, and NGOs who expressed concern over the waning independence of the judiciary and rule of law in Poland. Some of the proposed changes would have given the Minister of Justice control over the Supreme Court, as well as over the procedure for the appointment and dismissal of judges, and threatened to undermine the independence of the National Council of Judiciary. On 24 July, the President vetoed the amendment of the Law on the National Council of Judiciary and of the Law on the Supreme Court.

The veto was, at least in part, prompted by large protests against the proposals when thousands of people took to the streets in over 50 cities around Poland. The heavy-handed state response to these protests, especially in the area around Parliament and at the Presidential Palace, inhibited the demonstrators’ ability to protest effectively. Dozens of protesters are now facing criminal prosecution for their involvement in the protests. The prospect of a fair trial for these activists is at serious risk if the judiciary is put under political control.

On 25 July, despite his two vetoes, the President signed one amendment, which concerns the Law on Common Courts. The amendment entered into force in August. The amended Law extends the powers of the Ministers of Justice to replace the presidents and vice-presidents of the common courts, and introduces different retirement ages for male and female judges. Since August, the Minister has replaced over 40 presidents of the courts which raises concerns over the political motives behind the changes in the judiciary. In response, the European Commission opened infringement proceedings against Poland for breaching EU Law.

The redrafted amendment of the Law on the National Council of the Judiciary (NCJ), submitted to parliament by the President, gives the parliament the power to choose the majority of the judges sitting on the NCJ which is the constitutional body safeguarding the independence of courts and judges. This proposal breaches the Constitution of Poland, which requires the separation of powers responsible for choosing the members of the NCJ. The members should be elected by representatives of the judicial rather than legislative power. Under the current regulation, 15 judges are elected by the self-governing bodies of the judiciary; four judges are members of the lower chamber of the parliament (Sejm), and two are members of the Senate. The President’s proposal further envisages a termination of the tenure of the current members of the NCJ after the new members are elected by the parliament. This termination could be executed approximately 30 days after the amendment enters into force.

The second draft amendment on the Law on the Supreme Court decreases the retirement age of Supreme Court judges from the current age of 70 to 65. Those who would want to stay in the position after reaching the retirement age, would have to be vetted by the President. Furthermore, the draft effectively terminates the tenure of the current President of the Supreme Court. Should she want to stay in the office, she would need to seek an approval of the President. This increase in powers of the President over the Supreme Court amounts to a direct political interference with the judiciary. Another source of concern is the introduction of the concept of “extraordinary complaint” which permits the Supreme Court to open and potentially quash decisions of all common courts that became final in the past five years.

Gender m/f: all

Further information on UA: 173/17 Index: EUR 37/7504/2017 Issue Date: 24 November 2017