

In view of the large number of false information that appears in the debate on the amendments of the act – the Law on the Common Courts system and the Supreme Court Act that have been adopted by the Sejm of the Republic of Poland on 20 December 2019, the Ministry of Justice stresses one more time that the abovementioned legal act in any case does not limit the independence of judges and courts, which construct an important part of a democratic state of law.

We should be concerned by the statements of politicians and lawyers, who, without precisely indicating relevant provisions and case law, provide distinct opinions or statements. Therefore, the power of the Ministry of Justice is to clearly present facts to the public opinion, which confirm that the abovementioned legal act is compatible with both the European regulations and, above all, with the Polish Constitution.

Firstly, as pointed out by the deputies being authors of the draft act, the new regulations result from concerns about the legal order, the rule of law in the country and acting in accordance with the Constitution of the Republic of Poland. As explained, the draft is a response to an increase in the number of situations where the apoliticism of Polish judges is called into question. It also refers to a concerning behaviour of these judges, who challenge the status of other judges through their public statements and actions.

The Act amending the act – the Law on the Common Courts system, the Supreme Court Act and certain other acts of 20 December 2019, which is currently being processed in the Senate of the Republic of Poland, implements the judgement of the Court of Justice of the European Union of 19 November 2019 in cases C-585/18, C-624/18 and C-625/18. It was explicitly confirmed that the appointment of judges by the President of the Republic of Poland and their status shall not be the subject to judicial control. It should be noted that this issue is settled in the same way in the case law of the Constitutional Court and the Supreme Administrative Court. It is particularly impossible to undermine the appointment to the position of a judge by the President of the Republic of Poland and the status of a judge. The Polish legal system does not have an institution enabling this type of action, as it would constitute a violation of not only standards relating to the appointment of a judge, i.e. Article 144 paragraph 3 point 17 and Article 179 of the Constitution of the Republic of Poland, but also of the constitutional norm of irremovability of judges, referred to in Article 180 paragraph 1 of the Constitution of the Republic of Poland. The process of appointment of judges, in accordance with Article 179 of the Constitution of the Republic of Poland, consists of two stages: the first stage takes place before the National Council of Judicary (KRS) and is finalized with a submission of an application to the President of the Republic of Poland and the second stage involves the appointment and the oath. The appointment is an act alone of a systemic and constitutional nature. Its incorruptibility, similarly to a motion of the National Council of Judicary (KRS), results from an obligation to maintain stability of an office of a judge, which is an essential element of the principle of independence. Any attempts aiming at challenging the status of judges and legitimacy of their judgements penalise the constitutional foundations of the state of law. A refusal to apply an act without prior judgement of the Constitutional Court, which has an exclusive competence to control the constitutionality of provisions, is found unacceptable both in the case law of the Constitutional Court and the Supreme Court.

In order to strengthen the independence of judges, a definition of a judge has been introduced to the act of 20 December 2019, which makes reference to the content of Article 179 of the Constitution of the Republic of Poland, specifying necessary and sufficient elements for obtaining the status of a judge, i.e. a motion of the National Council of Judicary (KRS) and an appointment by the President of the Republic of Poland. This definition serves to determine elements necessary and sufficient for the recognition of the power of judgement (the so-called investiture) of a judge.

Additional instruments have been introduced to the act in order to strengthen apoliticality, impartiality and independence of judges. Therefore, judges are undertaken to publicly disclose certain data, such as their membership in associations, including past membership in political parties. These are the circumstances which, in the light of the standard of the Court of Justice of the European Union, may be found relevant for the assessment of a composition of the judiciary and a judge. A transparency of the judiciary and judges constitutes a fundamental guarantee of a democratic state of law. The indicated obligation does not affect any European standards, nor those resulting from the Constitution of the Republic of Poland. It is compatible with the constitutional principle of proportionality. This amendment to regulations has been long-awaited, also among legal community.

The act also introduces changes concerning disciplinary liability of judges. Standards set out therein do not deviate from the ones existing in other European countries, including France and Germany. Most importantly, in some countries of the European Union disciplinary provisions concerning judges are much more strict, as they provide for judges to be held criminally liable for their actions and omissions. It is therefore difficult not to agree with numerous opinions about the severity of the abovementioned act. The role of the legislature is to create laws that prevent actions destabilising rules of a democratic state of law. One of these actions is undoubtedly challenging the status of another judge.

The act also regulates certain issues concerning stability of public service relationship of judges appointed so far, including by the Polish Council of State (the status of which was not in any way legally regulated). It is not true that it has a retroactive effect in this regard, because it only shapes the status of these persons from the moment it came into force. This is the so-called retrospectivity, which in the case law of the Constitutional Court is recognized as a potential instrument of a legislator.

The solutions contained in the act of 20 December 2019 aim to improve the work of courts, increase the apoliticality of judges and the transparency of the justice system and prevent from challenging the status of judges, being an institution unknown to the Polish law.

[In the attachment we publish opinions of prominent lawyers on the Act of 20 December 2019.](#)