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Statement of the Group of Legal Expert at the Stefan Batory Foundation on the constitutionality of the provisions in the new law of the Supreme Court

The Group of Legal Expert at the Stefan Batory Foundation in the legal opinion on the constitutionality of the provisions in the draft law of the Supreme Court submitted to the lower chamber of Parliament on 18 July 2017 states the following:

1. The Bill contravenes the constitutional imperative to act for the common good and undermines the stability of the state and the security of its citizens.

2. There are major concerns regarding the separation of powers and the extent of authority vested in the Minister of Justice. An extra-constitutional authority, the Minister is given a range of powers that considerably exceed any mandate in the executive branch.

3. The Bill contravenes the fundamental principles of the rule of law enshrined in the Polish Constitution, as well as modern democratic standards. Any legislation that forces all Supreme Court justices to retire, except for justices specified by the Minister of Justice (Article 87 of the Bill), gives a mandate to the Minister of Justice to appoint new Supreme Court justices (Article 92 Paragraph 2 of the Bill), and introduces a new system of disciplinary liability for justices and other legal professions is contrary to the following constitutional principles:

- The democratic rule of law (Article 2 of the Polish Constitution);
- The separation and balance of powers (Article 10 of the Polish Constitution);
- The independence of courts and that of oae justices (Article 173 and Article 178 Paragraph 1 of the Polish Constitution);
- The irremovability of justices (Article 180 Paragraph 1 of the Polish Constitution).

4. Not only does the Bill violate the fundamental constitutional standards but it actually seeks to compromise and remove them altogether. This is apparent in the amendments adopted on 12 July 2017 of the Law on the National Judiciary Council and the Law on the Common Courts System. The intention is also clear in the applicable legislation previously amended by the current Parliament such as the Law on Prosecution Service and the law on Law Enforcement. As a result, the judiciary and the National Judiciary Council will be subordinated to the executive branch (Article 186 Paragraph 1 of the Polish Constitution) in form of the current political majority and the Minister of Justice appointed by that majority. This clearly contravenes basic democratic standards.

5. The Bill leads to the infringement of the constitutional right to justice (Article 45 Paragraph 1 of the Polish Constitution). According to the Polish Constitution, every person has the right to a fair and open trial before a competent, independent, and impartial court of law. Following the entry into force of the Bill, the Supreme Court will not have enough tools to guarantee that the justice system meets all the said conditions.

6. The Bill forces all the Supreme Court justices to retire and provides for the appointment of new justices exclusively upon the request of the Minister of Justice (Article 87 – 89 of the Bill). Furthermore, it terminates all staff of the Office of the Supreme Court President and the Supreme Court Research Unit (Article 90 of the Bill). This creates a major risk to the process of validating parliamentary elections and the observance of democratic standards in the election process. According to Article 101 Paragraph 1 of the Polish Constitution, the Supreme Court shall validate the outcome of elections to the lower (Sejm) and higher (Senate) chamber of the Polish parliament. When the Bill becomes law, the following elections may be subject to validation by Supreme Court justices appointed by the Minister of Justice. These justices will not have the institutional/institutional capacity to help them maintain the continuity of the collective memory of the Supreme Court.

Full text of the legal opinion in Polish:

http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Sad_Najwyzszy_opinia_prawna.pdf

Group of Legal Experts:

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The mission of the Stefan Batory Foundation's Legal Experts Team is to formulate statements, opinions and reviews with regard to government and parliamentary proposals that essentially change the political system in Poland and the position of the public and civic institutions in the legal system. Team Members track and review bills for their constitutionality and compliance with generally accepted international democratic standards. They assess their impact on human and civil rights and the political system in Poland.