

Statement on the resolution of the Supreme Court

The resolution of the Supreme Court of 23 January 2020 is ineffective. It was passed in gross violation of law. It violates Article 179, Article 180(1) and Article 10 of the Polish Constitution. Contrary to the applicable statutory provisions, the Supreme Court adopted a resolution in proceedings regarding the challenge of the status of judges appointed with the participation of the current National Council of the Judiciary (KRS).

These proceedings were suspended by law on 22 January 2020 upon initiating a dispute of competence between the Supreme Court and the Sejm and the President of the Republic of Poland before the Constitutional Tribunal. Before the Constitutional Tribunal's ruling, no action is allowed to be taken in the matter concerned. The resolution of the Supreme Court is therefore invalid by law.

Pursuant to the Act on the Organisation of the Constitutional Tribunal and the Mode of Proceedings before the Constitutional Tribunal, if a dispute of competence is initiated, the proceedings before the Supreme Court are suspended by law. All actions of the Court during the suspension are invalid. Before the Constitutional Tribunal's ruling, no action is allowed to be taken in the matter concerned. A party to a dispute is not allowed to judge for itself whether a dispute has actually occurred. Pursuant to the Constitution, this right is vested only in the Constitutional Tribunal.

The essence of such as dispute is that no Court can examine, let alone question judicial appointments or act that govern the status of judges and the manner in which candidates are selected. Therefore, the Supreme Court cannot encroach upon the competences of the National Council of the Judiciary, the President of the Republic of Poland or the Sejm, and, pursuing this line, even the competencies of the Constitutional Tribunal itself, which has already dealt with the case of the National Council of the Judiciary and declared the current wording of the Act to be in accordance with the Constitution.

The suspension of the proceedings before the Supreme Court was also necessary because a case regarding the provision of the Code

of Civil Procedure to which the resolution refers (i.e. Article 379(4) of the Code of Civil Procedure) is being heard before the Constitutional Tribunal.

A resolution adopted by three chambers of the Supreme Court is unlawful and, as such, produces no legal effects. The Supreme Court is not authorised to examine and assess whether the fact that a judge appointed by the President of the Republic of Poland at the request of the National Council of the Judiciary after 2018 sits on common court, military court or Supreme Court invalidates the proceedings. Consequently, no authority, including a judicial one, can question the appointment and investiture of a judge.

In addition, following the effective date the Act of 20 December 2019 on Guaranteeing Constitutional Order in the Administration of Justice and Improving the Work of Courts, the resolution of the Supreme Court will become even more irrelevant. Indeed, the new Act eliminates recent doubts about the possibility of questioning the status of judges appointed by the President of the Republic of Poland. It declares inadmissibility of such actions, in accordance with the jurisprudence of the Supreme Administrative Court and the Constitutional Tribunal.

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