



RESOLUTION ON POLAND

1. At its meeting in Copenhagen on 10 May 2019 the - European Association of Judges ("EAJ") considered the provisions of the Act passed by the legislature of the Republic of Poland on 26 April 2019 amending the Act on the National Council of the Judiciary and the Act on the System of Administrative Courts.

2. The EAJ notes with much concern that, the Act of 26 April 2019 removes the right to bring proceedings challenging the appointment of a person to judicial office in the case of appointments to the Supreme Court. This removal from scrutiny of the appointment of persons as members of the Supreme Court constitutes an exception to the legal provisions governing the appointment of judges in Poland. It facilitates the appointment to the Supreme Court on political or other irrelevant grounds of persons lacking the qualifications and attributes which would be required for appointment on merit alone. It thereby threatens the independence of the Supreme Court and in turn the independence of the lower courts. It thus undermines the rule of law.

3. EAJ followed the many recent steps to change the legislation regarding the judiciary in Poland carefully and with great concern, including:

- The reduction of the retirement age for sitting judges
- The change in the way in which judicial members of the National Council of the Judiciary are elected
- The creation of two new chambers of the Supreme Court, with a decisive influence of the executive power on the appointment of its member.
- The regulation of disciplinary powers and their misuse.
- The newly created power to reopen decided cases.

4. The EAJ observes further that the Act of 26 April 2019 was adopted when the conformity with European Union law of earlier alterations to the legal provisions governing the Supreme Court, the National Council of the Judiciary, and the judiciary in the lower courts is being considered by the Court of Justice of the European Union in proceedings pending before it. The EAJ considers that, far from bringing the provisions on the organisation of the judiciary in Poland into line with the requirements of European Union law, the Act of 26 April 2019 constitutes a further departure from those standards.

5. Moreover, in addition to abolishing any right to seek judicial review of appointments to the Supreme Court, the Act of 26 April 2019 also terminates with immediate effect all cases in which that right of challenge by judicial review is currently being exercised. Such interference by the legislature in ongoing judicial proceedings constitutes a serious interference with the independence of the judiciary and is inconsistent with any proper regard for the rule of law.

6. Accordingly, the EAJ

- Deplores the foregoing provisions of the Act of 26 April 2019; and
- Calls upon the executive and legislative authorities of the Republic of Poland to recognise the incompatibility of those provisions with international and European Union standards and take all appropriate measures to remove that incompatibility.