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**The Honorable
Ludwik Dorn
Marshal of the Sejm of the
Republic of Poland**
ul. Wiejska 4/6/8
00-902 Warsaw

Dear Mr. Marshal,

The Helsinki Foundation for Human Rights wishes to present its position on the issue of the recently announced proposals of amendments to the Act of 1 August 1997 on the Constitutional Tribunal (The Journal of Laws "Dziennik Ustaw" of 1997, No. 102, item 643 with further amendments; hereafter: the Act). Our interest in the proposed amendments to the act results from the fact that we view the Constitutional Tribunal as an institution of fundamental significance for the functioning of a democratic state of law that respects the rights and liberties of individuals. Therefore, we find it necessary to express our position whenever proposals appear in public debate that may have a negative impact on the CT fulfilling its constitutional mission.

Our remarks relate particularly to a draft, the assumptions of which were presented on 29 June 2007 by a group of parliamentary members from the Law and Justice party (*Prawa i Sprawiedliwości*). The proposals included in it arouse our concern for several reasons.

1. The Draft-makers demand for the Constitutional Tribunal to consider cases in the same sequence as they are lodged

In our opinion, this type of proposal can lead to seriously lowering the significance of verdicts issued by the Tribunal. The time, in which the CT considers cases, sometimes has great significance for the stability of the legal system. Some of the regulations questioned by the Tribunal cause irreversible consequences and on some occasions very seriously threaten the rights and liberties of the individual. Referring to the example of the Act of 18 October 2006 on revealing information about documents of State security organs from the period of 1944-1990 (the so called lustration law), the proposed regulation would require the case to be considered after a year or more has passed, when most of the consequences foreseen by the act would already be in effect. Moreover, when the extent of a given regulation covers many people and situations, then the prolonged period of awaiting the Tribunal's ruling leads to disturbing the security of legal relations and lack of confidence with regard to the law, which is particularly dangerous from the point of view of the citizen's rights and liberties.

2. The draft assumes that all cases will be considered by the Constitutional Tribunal in full composition. Additionally, while currently the full composition constitutes at least nine judges, according to the proposed regulation the threshold would be increased to at least eleven judges.

The implementation of this concept would be the next step, following numerous statements by high-ranking representatives of the authorities, towards weakening the Tribunal's position. The obligation to consider all cases in full composition means first and foremost a significant reduction in the number of rulings of particular significance for constitutional order, inter alia for fundamental rights. Ruling in smaller composition in the remaining cases, the Tribunal ensures the consideration of all cases, including those relating to fairly uncomplicated legal issues, within a reasonable timeframe.

There is a threat that the abovementioned Draft assumptions could paralyze the CT and result in the necessity to wait at least a dozen or so months longer for a ruling. At the same time, there is no evidence that the verdicts issued by three or five Judges are essentially inferior. The fact that a series of cases considered by the Tribunal concerns one or several fairly uncomplicated legal issues, the consideration of which does not require examination by all the Judges, is equally insignificant to the Draft-makers.

Moreover, increasing the number of judges who make up the CT magnifies the risk of a situation, in which the Tribunal could not rule on a given case at all due to the exclusion of so many judges that the achieving a full composition would be impossible. Such a concern is the more so justified since there are many individuals among the judges who took part in adopting the acts that are put before the Tribunal.

3. According to the draft, the President of the Republic of Poland will select the President and Vice-president of the Tribunal every three years from among three candidates presented by the General Assembly of CT Judges, and not two as is the case currently. At the same time, reelection will be possible for both positions. Until now, the Judge ceased to be the President once his/her mandate as Judge expired, without the possibility of reelection.

The significant strengthening of the influence of the Head of the State on the appointment of Tribunal members seems indicate the improper understanding of the President's role as the "guarantor of the observance of the Constitution" (Article 126 par. 1 of the Constitution of the Republic of Poland). In the context of this draft, this is a misreading of the presidential duty. This role should not include restricting the independence and self-reliance of the Constitutional Tribunal, as is the result in the mentioned proposal. The draft provides the President with an instrument to influence the behavior of Judges, as it allows him to interfere much more significantly than before in the appointment of two key positions within the CT. If that's not enough, by introducing the possibility of reelection, it opens the way for pressuring the Tribunal President and Vice-president in office under threat of refusal of reelection. The lack of opportunity for reelection is currently the mainstay for the CT Judges' independence. We believe that this principle should be carried over not only onto the election of CT members, but also onto the procedure of selecting the President and Vice-president.

If the Draft-makers intention was to strive to increase the Tribunal's political indifference, than the proposed solutions are inadequate to achieve this objective. *De facto*

they lead to incapacitating the CT and decreasing its opportunity to supervise the authorities' proceedings. If the intention of the Draft's Authors was really to protect the Tribunal from political influence, then they should rather consider a mechanism for electing CT judges (increasing the number of votes necessary for the election or changing the manner of putting up candidates), making the procedure more transparent and subjecting it to greater supervision by the public opinion. In the meantime, the proposed amendments not only go in a direction opposite to the one desired, but also result in weakening, and even marginalizing the institution that on many occasions has blocked the authorities' proceedings that violated the rights and liberties of the individual. From our perspective, this seems particularly dangerous and that is why we decided to present this position.

With kind regards,

On behalf of the Helsinki Foundation for Human Rights,

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Marek Antoni Nowicki
President of the Board