



**STATEMENT**  
**of the Supreme Court's Spokesman**

The amendments to the Act on the Supreme Court proposed on 11 April 2018 concerning prolongation of the mandate of the Supreme Court judges' after the age of 65 years do not apply to judges who attained that age before 3 April 2018 or will attain it by 3 July 2018 (including the current First President of the Court). The procedure of such prolongation with respect to these judges is stipulated by Article 111 § 1 of the Supreme Court Act of 8 December 2017 which is not subject to proposed amendments. In accordance with the latter provision, after 3 July 2018 the aforesaid judges will be allowed to exercise their active judicial mandate only upon the consent of the President of the Republic of Poland. Such a consent or refusal of such consent will be fully discretionary, as was underlined in the previous opinion of the Supreme Court on the draft Supreme Court Act (opinion of 6 October 2017). Furthermore, the validity of such consent will depend on the approval of the Prime Minister.

Given the above it is absolutely obvious that the proposed amendments do not fulfil the European Commission Recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland. The Polish authorities were recommended to "ensure that the law on the Supreme Court is amended so as to: - not apply a lowered retirement age to the current Supreme Court judges; - remove the discretionary power of the President of the Republic to prolong the active judicial mandate of the Supreme Court judges". As was mentioned above, the proposed amendments do not concern current Supreme Court judges at all. Hence, the discretionary power of the President of the Republic to prolong their active judicial mandate is not removed.

With reference to judges of the Supreme Court who attain the age of 65 after 3 July 2018 the proposed amendments seem to create the impression that these judges will be allowed to exercise their active judicial mandate only upon submitting an appropriate declaration accompanied by a health certificate. However, it should be emphasised that the President of the Republic of Poland will have discretionary power to object to exercising active mandate by a Supreme Court judge after the age of 65 years. Thus, the possibility of exercising active judicial mandate by such judges will continue to depend on the discretionary decision of the representatives of the executive power.

Michał Laskowski  
Supreme Court Justice