

First President of the Supreme Court

We declare that there are fundamental legal obstacles preventing our participation in the examination of cases with the involvement of people appointed to the Supreme Court on the basis of a motion of the National Council of the Judiciary established with the membership and in the procedure provided for by the Act amending the Act on the National Council of the Judiciary and certain other acts of 8 December 2017 (Journal of Laws 2018, item 3).

In the resolution of the full panel of the Supreme Court – the Civil, Criminal, Labour and Social Insurance Chambers – of 23 January 2020, BSA I-4110-1/20 (OSNKW 2000 no. 2, item 1 and OSNC 2020 no. 4, item 34), it was established that, in each case, the involvement of such a person in a Supreme Court panel leads to the incorrect staffing of the court in the meaning of Article 439 § 1 item 2 of the Criminal Procedures Code or the conflict of the membership of that court with the provisions of the law in the meaning of Article 379 item 4 of the Civil Procedures Code. This resolution has the force of a legal principle, which is binding on every judge of the Supreme Court. A judge cannot participate in proceedings and rulings if it is known in advance that this will constitute unconditional grounds for filing an appeal or lead to the invalidity of the proceedings. In such a situation, it is inadmissible to start to handle proceedings and issue rulings. It cannot be acknowledged that proceedings are subject to a qualified procedural defect while simultaneously announcing that the judge is obliged to knowingly take part in this defective procedure. Conformism is not inherent in the ethos of the judicial service.

Furthermore, in the established and uniform case law of the European Court of Human Rights (for example, judgments of the ECtHR: of 22 July 2021, *Reczkowicz v. Poland*, no. 43447/19; of 8 November 2021, *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19; of 3 February 2022, *Advance Pharma sp. z o.o. v. Poland*, application no. 1469/20), it was prejudged that adjudication by people appointed to the Supreme Court on the basis of a motion of the National Council of the Judiciary established with the membership and in the procedure provided for by the Act of 8 December 2017 constitutes a breach of the right to a trial expressed in Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, as amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284). The consequence of this breach is compensation awarded against the Republic of Poland.

Judicial decisions issued with the participation of a defectively appointed judge breach the right to a trial guaranteed by Article 45(1) of the Constitution of the Republic of Poland, the second paragraph of Article 19(1) of the Treaty on European Union, Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the Convention on Human Rights (judgment of the Grand Chamber of the ECtHR of 1 December 2020, application no. 26374/18, *Gudmundur Andri Astradsson v. Iceland*; judgment of the Grand Chamber of the Court of Justice of the EU of 19 November 2019 in *Joined Cases C-585/18, C-624/18 and C-625/18, A.K. v. National Council of the Judiciary and C.P. and D.O. v. Supreme Court*, EU:C:2019:982; judgment of the Grand Chamber of the Court of Justice of the EU of 2 March 2021 in case C-824/18, *A.B., C.D., E.F., G.H. and I.J. v. National Council of the Judiciary*, EU:C:2021:153, and, in its implementation, the judgment of the Supreme Administrative Court of 6 May 2021, II GOK 2/18, LEX no. 2687377 and the judgments of that Court: II GOK 3/18 to II GOK 20/18 and the judgment of the Supreme Court of 15 April 2021, III PSKP 13/21, OSNP 2022 no. 2, item 11).

These defects were not fixed by the Act amending the Act on the Supreme Court of 9 June 2022 (Journal of Laws 2022, item 1259).

Given the rationale presented, we declare that we do not see any possibility of adjudicating together with people appointed in a defective procedure. A judge cannot knowingly breach the right of the citizens to a trial and expose the State of Poland to the obligation to pay high levels of compensation. Conduct to the contrary is in conflict with the duty to “faithfully serve the Republic of Poland” and “uphold the law and the rule of law”, as referred to in the judicial oath.’

We declare that, having exhausted the systemic and procedural means guaranteeing the parties the ability to obtain a correct panel of the court, we will not participate in activities undertaken by formations adjudicating with the involvement of people appointed to the Supreme Court on the basis of a motion of the National Council of the Judiciary which was established with the membership and in the procedure provided for by the Act of 8 December 2017.

This declaration does not constitute a refusal to administer justice.

Warsaw, dated October 2022

Signatures under the Declaration

1. Supreme Court Judge Tomasz Artymiuk
2. Supreme Court Judge Bohdan Bieniek
3. Supreme Court Judge Jacek Błaszczyk
4. Supreme Court Judge Dariusz Dończyk
5. Supreme Court Judge Jolanta Frańczak
6. Supreme Court Judge Jerzy Grubba
7. Supreme Court Judge Paweł Grzegorzczak
8. Supreme Court Judge Józef Iwulski
9. Supreme Court Judge Monika Koba
10. President of the Supreme Court Michał Laskowski
11. Supreme Court Judge Jarosław Matras
12. Supreme Court Judge Dawid Miąsik
13. Supreme Court Judge Grzegorz Misiurek
14. Supreme Court Judge Maciej Pacuda
15. Supreme Court Judge Władysław Pawlak
16. Supreme Court Judge Agnieszka Piotrowska
17. President of the Supreme Court Piotr Prusinowski
18. Supreme Court Judge Krzysztof Rączka
19. Supreme Court Judge Marta Romańska
20. Supreme Court Judge Barbara Skoczkowska
21. Supreme Court Judge Romualda Spyt
22. Supreme Court Judge Andrzej Stępka
23. Supreme Court Judge Dariusz Świecki
24. Supreme Court Judge Roman Trzaskowski
25. Supreme Court Judge Karol Waitz
26. Supreme Court Judge Małgorzata Wąsek-Wiaderek
27. Supreme Court Judge Eugeniusz Wildowicz
28. Supreme Court Judge Paweł Wiliński
29. Supreme Court Judge Włodzimierz Wróbel
30. Supreme Court Judge Dariusz Zawistowski