SĄD NAJWYŻSZY
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First President
Supreme Court of the Republic of Poland

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Statement

of the First President of the Supreme Court

in connection with statements of the President of the Republic of Poland

In view of the quality of the debate concerning the Act of 20 December 2019 amending the Act – Law on the Common Court System, the Act on the Supreme Court and certain other Acts, and statements promulgated in the mass media concerning the need for the adoption of the Act, including statements of the President of the Republic of Poland (interview in the TVP Info programme "Woronicza 17" on 22 December 2019), one must recall the key facts regarding the reform of the judiciary over the past four years, in particular in the context of the presumption that *"a stream of lies about the situation is flowing from Poland"* and that he [the President of Poland] is ashamed that *"someone who calls herself the First President of the Supreme Court would say such things about the Polish State."*

Evidently, the current circumstances would not have occurred had it not been for the unconstitutional termination of the mandate of members of the National Council of the Judiciary and the Sejm's appointment of new members replacing them. There would have been no issue with the interpretation of Article 179 of the Constitution and the validity of resolutions passed by the National Council of the Judiciary. Neither any court in Poland nor the First President of the Supreme Court denies the rights of the President of the Republic of Poland to exercise his prerogative of appointing judges. Neither any court in Poland nor the First President of the Supreme Court challenges the role and the importance of the President of the Republic of Poland in the nomination of judges. The only issue is that Article 179 of the Constitution of the Republic of Poland provides that judges are appointed by the President of the Republic of Poland "at the request of the National Council of the Judiciary." All Polish citizens know that the request may not be just any request: it needs to be a request tabled by

the competent body whose composition and operation are consistent with the Constitution. This is the only matter and the whole matter.

The current circumstances would not have occurred if the judgment of the Supreme Administrative Court of 29 June 2019 (I OSK 4282/18) which requires the disclosure of the lists of endorsement of candidates for members of the National Council of the Judiciary had been enforced; if the Chancellery of the Sejm had not hidden behind the excuse of personal data protection. Everyone in Poland knows that court judgments must be enforced; especially judgments concerning the constitutional right of access to public information. The Polish government does not permit citizens to exercise that right.

Had those gross violations not been committed, in all probability no court in Poland would have referred questions for a preliminary ruling to the Court of Justice of the European Union in 2018. One must recall that the CJEU judgment of 19 November 2019 was passed in the case of three judges of the Republic of Poland who were to be removed from office by an act of law lowering the retirement age in breach of the Constitution and European law. Those cases would not have been filed had the Parliamentary majority not pushed for solutions inconsistent with acts of a higher rank and had the President of the Republic of Poland not signed them into law.

The current circumstances would not have occurred if the President of the Republic of Poland had not appointed judges for office in the Supreme Court in breach of injunctive orders issued by the Supreme Administrative Court. After all, the idea was not to deprive the President of the Republic of Poland of his prerogatives but simply to remove legal doubts concerning the operation of the National Council of the Judiciary at a sufficiently early stage. It should be stressed that the President of the Republic of Poland like any other public authority must act "on the basis and within the limits of the law" (Article 7 of the Constitution of the Republic of Poland). The President of the Republic of Poland is not above the law and the exercise of his prerogatives must be rooted in and consistent with the legal order.

The current circumstances would not have occurred if the President of the Republic of Poland had not, under the cover of night, eight hours before the Constitutional Tribunal issued its judgment of 3 December 2015, sworn in the persons appointed for positions already taken by judges whose term of office had begun on 7 November 2015. Evidently, the sole intention of swearing them in, under the circumstances, was to pre-empt that judgment (by a matter of hours) as it had been clear from the beginning that the Sejm of the 7th term was fully empowered to appoint three members of the Constitutional Court. This was clear to the MPs of the [now] ruling

party who lodged an application with the Constitutional Court before the end of the 7th term of the Sejm, in which they only referred to two judges appointed in October 2015.

The current circumstances would not have occurred if the authority of the Constitutional Tribunal had not been wrecked; if courts and citizens could trust the Constitutional Tribunal. The question arises, why no-one hesitated to file queries and applications with the Constitutional Tribunal for years while now the number of cases pending before the Constitutional Tribunal has dropped sharply. Whom should the courts be addressing with their doubts concerning the constitutionality of new laws? All this would not have happened if the Constitutional Tribunal could [still] be trusted and if its members had been lawfully appointed. I have no doubt that in domestic cases the courts would first address their doubts to the Constitutional Tribunal even if a question of Union law loomed in the background.

The current circumstances would not have occurred if a genuine debate had been opened concerning the reform of the judiciary.

One should recall that at the time when the first changes were made to the system of the judiciary, including the Supreme Court, in anticipation of the intentions of the Parliamentary majority and their long-term consequences (which are now coming to a head), the First President of the Supreme Court tabled on 15 November 2017 a draft law meeting all the objectives apparently pursued by the Parliamentary majority, from modifications to the system of disciplinary liability to extended personal liability of judges for their judgments to citizens' participation in the administration of justice to special legal instruments for annulment of past judgments. Fully in line with the Constitution, the draft provided for more far-reaching instruments than the then proposed modifications. This is still the case.

It is unfitting to accuse the First President of the Supreme Court of doing nothing while in fact the First President of the Supreme Court has for years and on many occasions offered, among others in direct relations with the President of the Republic of Poland, and stood ready to support, at any time and place, the reform of the judiciary that is indispensable and essential for citizens. It is clear beyond any doubt to all judges in Poland that changes are necessary. However, those changes must respect the Constitution and Union law.

This begs the question: what changes have been made to cut the duration of judicial procedures, to reinforce a sense of trust in the judiciary and judges? What changes have been made to inspire more trust of citizens in courts and to enable citizens to exercise their right to justice? That right is enshrined in Article 45 of the Constitution,

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 47 of the Charter of Fundamental Rights. The safeguards ensured by CJEU judgments are safeguards for individuals, not courts or individual judges. Individuals who turn to courts to seek justice and protection of rights and freedoms may, for various reasons (especially the reasons discussed above), doubt whether their cases will be adjudicated by an independent and impartial court or tribunal.

It is high time to put an end to the narrative that the dispute amounts to judges being keen to preserve their status, resisting change and acting against the government. That is completely untrue. If judges were only keen to preserve their status, they would accept all proposed changes and continue to pass judgments in the quiet of their offices in favour of the Republic of Poland and in her interest, especially in cases concerning social security charges, taxes or levies, criminal cases or other cases between citizens and the State. Is that not what the legislature and the executive are expecting? By doing so, judges wouldn't need to fear being removed from office, deprived of remuneration, or retired. They would be comfortably passing judgments without a shred of care or fear about their fate.

This is why I must insist that the position taken by judges follows from a sense of responsibility for the fate and the good of individuals, ensuring that every case is adjudicated not by a specific judge but by an independent and impartial court or tribunal. This is also the objective of the CJEU judgment of 19 November 2019 which expressly purports to safeguard the protection of individuals (and not of judges) under Article 47 of the Charter of Fundamental Rights. It is time to initiate changes in the judiciary in the spirit of mutual respect, for the sake of legitimate interest of citizens of the Republic of Poland and according to their expectations.