



THE SUPREME COURT

First President of the Supreme Court

Warsaw, 4 March 2026

KPP V.0720.18.2026

Dear Sir or Madam

Members of the Venice Commission

The First President of the Supreme Court hereby requests that the Members of the Venice Commission consider the following:

- I. pursuant to Article 4(3) of the *Protocol on the Preparation of Urgent Opinions* endorsed by the Venice Commission; CDL-AD(2018)019; hereinafter: the "Protocol")

to postpone consideration of the opinion adopted under the urgent procedure on 27 February 2026, namely the *Urgent Joint Opinion on the draft law concerning the status of judges appointed or promoted between 2018 and 2025 and other related matters*, adopted by the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe;

- II. pursuant to Article 12 (*third indent*) of the Protocol

to consider the opinion as having been issued under the ordinary procedure rather than adopted under the urgent procedure, i.e. with a simultaneous plenary debate on the merits of the proposed legislative solutions.

1. The First President of the Supreme Court has taken careful note of the *Urgent Joint Opinion on the draft law concerning the status of judges appointed or promoted between 2018 and 2025 and other related matters*, issued on 27 February 2026 by the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe; hereinafter referred to as the "Opinion of 27 February 2026" or as the "Opinion").

2. Pursuant to Article 14a of the Rules of Procedure of the Venice Commission (hereinafter: "the Rules"), recourse to the procedure for issuing urgent opinions is envisaged solely "in exceptional cases", where it has been demonstrated that awaiting consideration of the matter under the ordinary procedure would not be appropriate, and the application of this procedure requires the prior consent of the Commission or Bureau, acting in consultation with the rapporteurs. The content of the Opinion of 27 February 2026 leaves no doubt that neither the general conditions (paragraph 2) nor the specific conditions (paragraph 3) justifying its adoption under the urgent procedure have been fulfilled. The draft did not concern a sudden or unforeseeable situation, and its subject-matter, i.e. determination of the status of judges and the consequences of resolutions

of the National Council of the Judiciary adopted between 2018 and 2025, has long been the subject of public debate and legal analysis. Moreover, previous draft laws on the same subject have already been the subject of opinions issued by the Commission under the ordinary procedure. Accordingly, there were no grounds for assuming that it would have been inappropriate to await consideration of the matter under the ordinary procedural framework.

3. Furthermore, the very nature of the draft, its scope and constitutional implications are all arguments against its consideration under an extraordinary procedure. The draft interferes with fundamental constitutional principles, in particular the principle of the independence of the courts, the irremovability of judges, and the right to a court.

4. In its key elements, the content of the Opinion of 27 February 2026 is inconsistent with the earlier guidelines formulated in the Opinion of 14 October 2024, which likewise requires an in-depth analysis involving all Members of the Venice Commission. Application of the urgent procedure in such a case should neither replace nor limit the need for a full debate on a draft law with such far-reaching consequences.

6. The following circumstances in particular deserve attention and require more thorough discussion:

- In its opinion concerning the draft law prepared by the previous leadership of the Ministry of Justice, the Commission did not allow for the possibility of removing judges via an act of law. In the present Opinion, such a possibility has been accepted. At the same time, the Opinion identifies three grounds for the immediate removal of a judge via an act of law: flaws in the appointment procedure, doubts concerning the jurisdiction of a particular unit of the judicial structure, and the statutory liquidation of that unit. It should be noted that two of these three grounds depend entirely on the will of legislators, thereby providing any state with a ready-made formula for removing a particular group of judges. It should also be noted that, in the case of Polish judges, practically every appointment has involved some serious flaw (for example, appointment through a procedure without any possibility of appeal, confirmed as unconstitutional by the Polish Constitutional Court, which concerned judges appointed between 1989 and 2011), and therefore the first condition is fulfilled with respect to all judges, while future political majorities may freely implement the remaining two conditions and, relying on said Opinion, remove undesirable judges from the system. In this way, the Venice Commission has provided a ready-made formula for how judges may be "disposed of": by creating an incomprehensible, even absurd, jurisdiction of the Supreme Court and subsequently abolishing the relevant Chamber, thereby removing its judges.

- The questionable jurisdiction of the unit where these judges sit was cited as a premise for allowing the statutory removal of a group of judges. Meanwhile, the mere abolition of a particular Chamber does not mean that the Supreme Court loses jurisdiction in this respect: only a group of judges is removed under this pretext, while cases must continue to be heard. If, on the other hand, a change in jurisdiction were to remedy the situation, this in no way necessitates the statutory removal of a group of judges.

- The Opinion fails to take into account that the repetition of competitions for positions in the Supreme Court would take several years (proceedings before the National Council of the Judiciary last on average two years, followed by the time required for appointment by the President). The immediate removal of a group of judges via an act of law, combined with granting them the

“right” to participate in competitions, means that their legal status would remain unresolved for many years. A similar situation arises with regard to the so-called “yellow group”: if losing a repeated competition before the National Council of the Judiciary were to result in the automatic removal of such a judge from the profession (which would also be a statutory consequence, albeit with deferred effect), then the Opinion fails to take into account the second stage, i.e. awaiting the President’s appointment. During this period, the vast majority of judicial positions would remain vacant (for example, the Supreme Court alone would only retain about one-fifth of its statutory composition), and the judicial system would be completely paralysed.

- The Opinion ignores the fact that judges in the group to be removed via an act of law, in the vast majority of cases, have already worked as judges for eight years, and during that time no substantive objections have been raised regarding their judicial activity, which includes thousands of rulings. Moreover, in the case of *Wałęsa v Poland*, the Court explicitly stated that the decisions issued by the relevant Chambers were substantively correct. At the same time, the Opinion explicitly states that the longer the judges have been adjudicating and the less controversial their judgments are, the less need there is to remove them from the system. The Opinion does not address this evidently correct assumption at all.

These are only a few of the many significant concerns arising from the Opinion. They are, however, highly important not only for the Polish judiciary but also for the entire judicial system and, consequently, the adoption of the urgent opinion format raises serious concerns and objections as it precludes an in-depth discussion and a broader analysis of its far-reaching consequences. Finally, attention should be drawn to the social aspect, which also justifies a debate on the Opinion by all Members of the Venice Commission. The draft submitted for review concerns approximately 3,000 judges who participated in competitions conducted in accordance with the statutory procedure enacted by the Polish Parliament. Their actions were not motivated by political or financial considerations, and the statutory procedure was not violated in any way. These individuals were entitled to act in reliance on the State, and in the future those individuals and their families may face negative consequences. In the future, they are to be subjected to a humiliating procedure which was not even applied to judges adjudicating during the period of communist dictatorship.

In view of the above, I respectfully request that the Commission grant the request set out in the *petitum*.

Kind regards

Prof. Małgorzata Manowska

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