

We, the undersigned members of the Board of the Supreme Court, declare the following:

1. the judgment of the Court of Justice of the European Union of 15 July 2021 (C-719/19) and the earlier order of 14 July 2021 (C-204/21) should result in the immediate suspension of all activities of the Disciplinary Chamber,
2. in the first instance, the First President of the Supreme Court is responsible for implementing the judgment,
3. the order issued on 16 July 2021 by the First President of the Supreme Court, Dr hab. Małgorzata Manowska, which allows the Disciplinary Chamber to operate to its full extent is in conflict with the said judgment and constitutes a breach of the law,
4. the refusal to urgently call a meeting of the Board of the Supreme Court on the above matter, thereby preventing a discussion on this particularly important and pressing issue, constitutes a failure to properly exercise the powers of the First President.

Judges of the Supreme Court constituting members of the Board of the Supreme Court:

- Tomasz Artymiuk
- Bohdan Bieniek
- Józef Iwulski
- Michał Laskowski
- Jarosław Matras
- Grzegorz Misiurek
- Agnieszka Piotrowska
- Krzysztof Rączka,
- Barbara Skoczowska
- Marta Romańska

Justification

In the order of 8 April 2020 in case C-791/19 R, European Commission v the Republic of Poland, the Grand Chamber of the Court of Justice of the European Union (CJEU) ruled on the application of interim measures and prohibited the Disciplinary Chamber of the Supreme Court from hearing cases. In order to implement this order, the First President of the Supreme Court, Małgorzata Gersdorf, issued order no. 48/2020 on 20 April 2020 suspending the rights of the Supreme Court – Disciplinary Chamber to receive and to hear all cases falling within the jurisdiction of that Chamber. On 5 May 2020, the Acting First President of the Supreme Court issued order no. 55/2020, by which he revoked order no. 48/2020. Although the Disciplinary Chamber of the Supreme Court did not rule on disciplinary cases of judges for many months, while referring to order no. 55/2020, it ruled on cases of lifting the immunity of judges. Despite attention being drawn to the irregularity of this practice, the First President of the Supreme Court and the President of the Disciplinary Chamber declared that it lay within the limits of the CJEU's order of 8 April 2020 and was an expression of compliance with it, as well as its implementation.

In the order of 14 July 2021 in case C-204/21 R, the Vice President of the CJEU obliged the Republic of Poland (*inter alia*) to immediately and pending a final judgment suspend the application of the provisions on the basis of which the Disciplinary Chamber of the Supreme Court has jurisdiction to rule on cases regarding lifting the immunity of judges and court assessors and to suspend the effects of resolutions already issued on the basis of these regulations.

In the judgment of 15 July 2021 in case C-791/19, European Commission v Republic of Poland (EU:C:2021:596), the CJEU (Grand Chamber) ruled that the Polish regulations on disciplinary judiciary, including Article 3, item 5, Article 27 and Article 73 § 1 of the Act on the Supreme Court of 8 December 2017, namely the provisions on the Disciplinary Chamber of the Supreme Court, are incompatible with EU law.

In response to the said rulings of the CJEU, the First President of the Supreme Court publicly announced that she is deeply convinced that the Disciplinary Chamber of the

Supreme Court is fully independent in exercising the jurisdiction assigned to it by law, while the judges of that Chamber are fully independent in their adjudication. Simultaneously, the First President of the Supreme Court cancelled the order of 8 April 2020. This means that, from the point of view of the organisational orders of the First President of the Supreme Court (who manages the work of the Supreme Court), the obstacle to the Disciplinary Chamber adjudicating to the full extent of this Chamber's jurisdiction, as specified in Article 27 of the Act on the Supreme Court Act, has been removed.

The above announcement and orders of the First President of the Supreme Court do not constitute a manifestation of the correct application of the law. This is because, in the event of a conflict of laws, the obligation to directly apply primary (treaty) law of the European Union in the wording specified in the case law of the CJEU with precedence arises from the Constitution of the Republic of Poland (Article 91, para. 2). This is also how the judgment of the CJEU of 15 July 2021 in case C-791/19 is to be enforced and this means that it is inadmissible to apply (should be omitted) Article 3, item 5, Article 27 and Article 73 § 1 of the Act on the Supreme Court, as these provisions are in conflict (fail to comply) with the second paragraph of Article 19(1) TEU. In turn, this means that the Disciplinary Chamber is not an independent and impartial court established by law and, therefore, it is inadmissible for the Disciplinary Chamber to adjudicate to the full extent of its jurisdiction, as specified in Article 27 of the Act on the Supreme Court (this provision should be omitted from application).

Therefore, we call on the First President of the Supreme Court, Małgorzata Manowska, to issue organisational orders intended to implement the judgment of the CJEU of 15 July 2021, C-719/19, as it is also addressed to her as the manager of a constitutional body of the Republic of Poland.