



# SUPREME COURT

Republic of Poland

President of the Supreme Court  
Labour and Social Insurance Chamber

Warsaw, 10 January 2023

**1) Ms Małgorzata Manowska**

**First President of the Supreme Court**

**2) Prof. Dr. Joanna Misztal-Konecka**

**President of the Supreme Court directing the work of the Civil Chamber**

**3) Ms Joanna Lemańska, PhD  
President of the Supreme Court directing the work of the Extraordinary Control Chamber and Public Affairs**

**4) Supreme Court judges:**

- Jerzy Grubba
- Dr Elżbieta Karska,
- Dr Paweł Kołodziejcki,
- Prof. Dr Robert Stefanicki,
- Andrzej Siuchniński
- Dr Igor Zgolinski.

**In connection with my selection to the composition to adjudicate in the cases III CB 19/22 and III CB 21/22 (registered in the Civil Chamber), I declare that I do not intend to participate and perform any procedural actions within the framework of the aforementioned cases with the participation of the judges appointed to the Supreme Court on the basis of the motion of the National Council of the Judiciary formed in the composition and procedure provided for by the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3) .**

## Justification

As a preliminary remark, I would like to point out that my refusal to rule on the aforementioned cases is not due to personal animosity or - as the presumably independent Supreme Court judges appearing in the "independent" right-wing media rudely state - "grimacing". The motives for my conduct are purely normative and legalistic in origin.

In a resolution of the full panel of the Supreme Court - Civil, Criminal, Labour and Social Insurance Chamber of 23 January 2020, BSA I-4110-1/20 (OSNKW 2000 no. 2, item 1 and OSNC 2020 no. 4, item 34), it was determined that the participation in the composition of the Supreme Court of persons appointed to the Supreme Court on the basis of a motion of the National Council of the Judiciary formed in the composition and procedure provided for by the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws 2018, item 3) leads, in each case, to the undue composition of the court within the meaning of Article 439 § 1 item 2 of the Code of Criminal Procedure or the contradiction of the composition of this Court with the provisions of law within the meaning of Article 379 item 4 of the Code of Civil Procedure. The resolution was given the force of legal principle. The position taken by the Supreme Court - which is binding on every judge of the Supreme Court, including the "new" judges - makes joint adjudication impossible. I am not persuaded, or even strengthened, by the content of the Constitutional Court's judgment of 20 April 2020, U 2/20, OTK-A 2020 pos. 61. Leaving aside the obvious absurdity of the theses propounded therein - which, unfortunately, is more and more often the standard today - I draw attention to the Supreme Court's resolution of 5 April 2022, III PZP 1/22, OSNP 2022 no. 10, item 95, in which the relationship between the aforementioned resolution of the three Chambers and the said judgment of the Constitutional Tribunal is systematically explained. For anyone who bases their logic on the assumption that "two plus two is four", after this reading, it will become clear that the judgment of the Constitutional Tribunal of 20 April 2020 did not nullify the effects of the resolution of the Supreme Court of 23 January 2020.

Bearing in mind the rationale presented, the question arises as to how a

judge appointed to a panel with persons appointed to the Supreme Court in a flawed, unconstitutional, instrumentally created procedure by Law and Justice politicians is to behave. Pretend that nothing happened? Relativise the momentousness of the violations of the law? Or hide behind a variety of legal tricks? Unfortunately, pardon me, I am not judging anyone, but I do not know how to do that. I have been woven out of simple-mindedness. Sure I am not reasonable, but I am certainly not alone. In recent times, I have gloated over what the 'good change' in the justice system looks like. To say that what has gone on in the Disciplinary Chamber and is going on in the National Judicial Council is a denial of fundamental justice - is to say nothing. I remind you of this for two reasons. Firstly, the judges of the Disciplinary Chamber were selected by the National Council of the Judiciary on the same basis as the other "new" judges of the Supreme Court. Moreover, I can cite dozens of examples of blatant violations of the law and disregard for fundamental values by some, unfortunately numerous "new" judges. I think it is wise to say "the apple does not fall far from the apple tree". In my opinion, it is precisely this thought that the legislator had in mind when "reforming" the judiciary and the National Council of the Judiciary. Under these circumstances, sitting in "mixed" formations, with a "nothing happened" smile on my lips, surpasses my "pro-state" view of the profession. "State man" is not like grass in the wind. Secondly, and who knows if not most importantly, my attitude is shaped by other experiences with the Disciplinary Chamber and the National Judicial Council. Opposites like to be 'photographed' together. Apart from people I would never prefer to meet on my path, whose actions only confirm that they should never become judges, I have had the privilege of meeting many great lawyers. It turns out that the presidents of the Supreme Court can learn a lot from district and circuit court judges. Fidelity to the law, lack of opportunism, tenacity in defending fundamental causes, risking one's career to defend the rights of the sub judice, dignity, incorruptibility with promotions, modesty - these are the lessons I have taken away from representing judges in disciplinary proceedings. Not empty words, but actions, not meaningless declarations, but real dedication. In the Supreme Court, these qualities are becoming harder to come by every day - a veritable inflation of the deficit. Let me put it this way - I have understood the science. Since the resolution of the three combined Chambers is in force, and I

have no doubt about that, any proceedings involving the "new" judge are affected by nullity. I asked myself, therefore, whether a judge should proceed in the knowledge that his or her verdict and the preceding proceedings are null and void in advance? Forgive me, I cannot answer this question in the affirmative - I do not have such a flexible legal conscience. Conformism is not my strongest point.

So I sometimes think to myself that maybe I and the overwhelming majority of Polish lawyers are wrong, and that the narrow group of judges who are distinguished by the fact that they have generously and fully benefited from the politicised changes (if politicians of one option elect the members of the NCJ, how else to call it?). After all - if you think about it calmly - the fact that politicians protect and facilitate them at every turn (as can be seen by reviewing the dozen or so changes made to the Supreme Court Act in the last few years, as well as by observing the cowardly, inferior dance with the KPO money) is not tantamount to a lack of impartiality and independence on their part. Maybe it came out that way by the way, and we here in our "Polish countryside" are not familiar with standards and talk all sorts of silly things? Maybe? I am thinking about this question and trying to follow the pattern that "two plus two is still four". Something, however, is "not sticking". Thoughts are piling up. However, my blissful calm is disturbed by a message coming from the universally respected European Courts. I read it and open my eyes and ears wide. I find an explanation. I cite, for example, the judgments of the ECtHR: of 22 July 2021, *Reczkowicz v. Poland* (no. 43447/19); of 8 November 2021, *Dolińska-Ficek and Ozimek v. Poland* (no. 49868/19 and 57511/19);

of 3 February 2022, *Advance Pharma sp. z o.o. v. Poland* (application no. 1469/20). They determined that adjudication by persons appointed to the Supreme Court on the basis of a motion of the National Council of the Judiciary formed in the composition and procedure provided for by the Act of 8 December 2017 constitutes a violation of the right to a court and Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284). It also notes the numerous pronouncements of the Court of Justice of the European

Union (how many cases Poland has already lost before the CJEU - what a shame), and the fact that Poland pays fines of one million euros every day (today it is more than two billion zlotys). Well, I think, and I think, and nowhere in the formula "two plus two equals four" does it occur to me that everyone in Europe is wrong, and only a handful of "new" judges, "beneficiaries" are right about everything. If I were being malicious, which I am not, I would say that they are all envious of our pinnacle development of the rule of law and the stability of the judicial system - which is why they issue these vilifying rulings against our ideal legal system every now and then.

Enough jokes, it is time for a conclusion. The argument presented leads me to conclude that the submission of a request for the appointment of a judge of the Supreme Court by the National Council of the Judiciary formed in the composition and procedure provided for by the Act of 8 December 2017 means that judicial decisions issued with the participation of such a defectively appointed judge constitute a violation of the right to a court guaranteed by Article 45(1) of the Constitution of the Republic of Poland, the second paragraph of Article 19(1) of the TEU, Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the Convention on Human Rights (so: judgment of the Grand Chamber of the ECHR 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 this 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).

With this conclusion in mind, I declare that I see no possibility of joint adjudication with the said judges. A judge cannot knowingly violate the citizens' right to a court and expose the Polish State to the obligation to pay high damages. Conduct to the contrary is in opposition to the duty to "serve faithfully the Republic

of Poland" and "uphold the law and the rule of law" referred to in the oath of office of a judge. I may be foolish, but I am not in the habit of breaking my word.

I would like to emphasise once again - so that there is no doubt - I am not driven by any personal feelings, some of the judges with whom I would have to rule on the cases mentioned I do not even know, while there are some "new" judges with whom I have great respect and with whom I am "colleagues". There are no personal negative feelings in me. That is not the point. I refuse to adjudicate selected cases, because this leads to the invalidity of the proceedings, failure to guarantee the sub-judge the standard of a proper right to a trial, as a result it does a disservice to the Polish justice system and Poland's image outside, and in fiscal terms it leads to far-reaching consequences (awarding damages from the *Rzeczpospolita*, paying high fines on a daily basis, withholding RRF funds due to our country). If there are personal feelings in me, they only boil down to a plea - come to your senses, stop breaking the law, desist from issuing invalid rulings, most of you have a track record worthy of the Supreme Court, don't go in the same direction as the politicians who want to give us a dictatorship in Poland, don't make it easier for them in the name of preserving your position - see what the Supreme Court and the Constitutional Court look like today - these were institutions that enjoyed respect, today it is embarrassing to admit that you are a Supreme Court judge. I still have faith in you, just as I have faith in the judges of the district, circuit and appellate courts whom I represent in so many disciplinary proceedings. I know, it's a bit naïve, but I don't believe that you want the kind of judiciary where the scales held by Themida are swayed by the fear of disciplinary proceedings. It is no longer a court - it is a grotesque. Today you can become judges, tomorrow - if you do nothing - no one will forgive you for keeping silent. I cannot judge you today, which does not mean that I am your enemy, but I hope and believe deeply that tomorrow we will sit down together behind the judge's table. I hope to earn my "chain" in these difficult times. I sincerely wish this for you too.

Speaking of disciplinary proceedings, I think Madam President Małgorzata Manowska will send a request for me to be punished. This is the fourth time this has happened. Apparently, the saying "three times lucky" does not always apply. Before doing so, however, it might be worth taking a moment to reflect. Anger at

someone who thinks differently is a bad adviser. I look around and see what the justice system looks like today. Politicians have brought their favourite toys to it - the "stick and carrot". How funny and grotesque at the same time - the First President of the Supreme Court, because she is a "neo-judge", is going to discipline another president of the Supreme Court for what? Well, because he has different views. What is the difference between us? It seems to me that the only difference is that I have no interest in expressing such views (I do not and did not count on a "carrot"), and I see Poland and the Supreme Court pluralistically, as a home for people with diverse views. I do not "report" anyone to the disciplinary officer, nor do I demand disciplinary proceedings against anyone. Maybe I am old-fashioned, but in "my Poland" the Supreme Court enjoyed the highest respect, how is it in this "new Poland"? - Even a child turns its head away, it is a pity to talk. Mrs President, what are you going to do? What kind of Poland do you want? After all, no matter what arguments you give, anyone who recognises that "two plus two is four" will still know why Prusinowski should be punished. Even if you demanded that a thousand disciplinary proceedings be initiated, you would not silence the thousands of judges who faithfully and devotedly uphold the laws of the Republic. Free people cannot be intimidated. Free people sing beautifully, especially in chorus. The methods of politicians, the "stick and carrot" in the judiciary do not work. They are too clumsy. I am writing about this, not because I am afraid of disciplinary proceeding, I have already thrown my heart over the hurdle, I am writing because I care about everyone who is a judge, including you.

You have a choice. The politicians have already provided a "lifeline". With the latest amendment (by the Act of 9 June 2022 amending the Act on the Supreme Court and certain other acts), they introduced a new "product" into the catalogue of disciplinary offences. Pursuant to Article 72(1)(1a) of the Supreme Court Act, it is an official (disciplinary) offence to "refuse to exercise the administration of justice". As a result, you can either have the President reach for the new "politician's toy" and try to punish me for a legal assessment that differs from yours (stretching that I am refusing to exercise justice) or consider it a path to "judicial hell". After all, it is paradoxical that under this provision, me, who has

always handled more cases than others, can be punished for "refusing to serve justice". The lifeline thrown by politicians is intentional in nature. After all, you know perfectly well that the misconduct in question is not real - do you know any judge who does not want to adjudicate cases and refuses to do justice? No? Nor do I. So what, another "stick" for Prusinowski and his ilk? How about throwing them all out of the profession - so about 9,500 judges? After all, Madam President, this is madness, it's a pity for Poland.

I return to the formula that "two plus two is four". Using it, it is clear that the refusal to adjudicate selected and few cases cannot be equated with a "refusal to serve justice". This becomes understandable if one considers the function inscribed in Article 72 § 1 point 1a of the Supreme Court Act . The misdemeanour outlined in this provision stigmatises an attitude of an unfounded or frivolous refusal *in gremio* to perform the judicial duties entrusted to him/her, but does not cover the situation when a judge, in the name of cardinal reasons and values, refuses to carry out incidental judicial acts.

Finally, a few more words I want to cross out at the Supreme Court judges who have difficulty understanding what is being said to them. Is this some kind of epidemic - an infection brought in from outside? Well, let me explain, clearly and slowly - if I declare that I refuse to proceed and adjudicate in cases III CB 19/22 and III CB 21/22, it does not mean that, in accordance with Article 36 § 1 point 2 of the Supreme Court Act, I resign as a judge of the Supreme Court. Still not getting it? Perhaps I can explain it in a less convoluted way. When I say that I "like pears", it does not mean that I "eat apples every Tuesday". I would like to remind you - even though you may think otherwise - that the rule that 'two plus two equals six' in the Supreme Court has, for the time being, still not taken hold. Despite our differences, we believe that the laws of mathematics are not open to interpretation. If the argument so far is too difficult, I will try the legal side. We have event A (refusal to serve justice - section 72 § 1, subsection 1a of the Act) and event B (resignation from office - section 36 § 1, subsection 2 of the Act). Now for the conundrum. If every refusal to adjudicate (and more broadly, refusal to serve justice) would be equivalent to a relinquishment of office, then the question arises in what case can one commit an offence under section 72 § 1 item 1a of the Act and be punished? The answer is obvious - in none. I am thinking, dear judges of



the Supreme Court, so eager to go to the "independent" right-wing media, that you probably do not want to convince me that the President of Poland, by putting his name to the amendment introducing Article 72 § 1 point 1a of the Supreme Court Act into the legal order, has given us a provision whose scope of designations is empty? As a result, I regret to say that your claim that by signing the "declaration of 30 Supreme Court judges" and this letter I resigned from my office as a judge of the Supreme Court is very rude to the Head of State - but perhaps this does not fit into your logic either. I will therefore refer to a biblical thought - "Let your speech be: yes, yes; no, no. And whatever is above is of the Evil One". Well, at last, everything has become clear - I have not relinquished my office as a judge of the Supreme Court. Please hear what is being said to you. Don't muddle what is clear - it demeans the Supreme Court.

Summing up the argument, perhaps too long and emotional (forgive me - I cannot talk about important matters dispassionately), I state, firstly, that I do not resign from my office as a judge of the Supreme Court, and secondly, that I do not intend to proceed and adjudicate the cases III CB 19/22 and III CB 21/22 until the legal situation of the persons appointed to the Supreme Court on the basis of the motion of the National Council of the Judiciary formed in the composition and procedure provided for by the Act of 8 December 2017. on amendments to the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3). The current adjudication by these persons results in the invalidity of the proceedings and violates the right to a court, and I will not put my hand to the creation of such significant legal defects.

President of the Supreme Court  
directing the work of  
Chamber of Labour and Social Security

SSN Dr. Piotr Prusinowski