



AEQUITAS NEWSLETTER (Nr 11)

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ORDER OF THE SUPREME COURT OF 9 JULY 2025 III CB 72/23 AND ORDER OF THE CJEU OF 30 APRIL 2025 C-719/24

On July 17, 2025, the justification for the Supreme Court's ruling of October 17, 2024, was published on the Supreme Court's website (reference number III CB 72/23). The ruling concerned a request to review **whether a Supreme Court judge meets the requirements of independence and impartiality**. The ruling examined whether a judge appointed with the participation of the National Council of the Judiciary, formed after the 2017 reform, whose composition was questioned, could be considered independent and impartial.

In its justification, the Supreme Court emphasized that **the appointment procedure alone is not sufficient to undermine a judge's independence – specific circumstances are necessary. It specifically referred to the European Commission's position presented to the CJEU in case C-586/24, which indicated that EU law does not prohibit the election of judges – members of national nominating bodies – by national parliaments, and that the appointment procedure itself cannot be a basis for presuming a lack of independence of a judge unless accompanied by other circumstances that undermine independence.**

Ultimately, the Supreme Court found that **there was no basis for conducting an independence test solely based on the participation of the new National Council of the Judiciary in the judicial appointment procedure, and that the mere participation of the "new" National Council of the Judiciary in the judicial appointment procedure was not sufficient to undermine the judge's independence. Each case must be assessed individually, taking into account the specific circumstances.**

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=300701&pageIndex=0&doclang=pl&mode=lst&dir=&occ=first&part=1&cid=4181150>

NOTIFICATION OF A SUSPECTED CRIME COMMITTED UPON PUBLICATION OF THE RESOLUTION OF THE SUPREME COURT OF JULY 1, 2025, DECLARING THE VALIDITY OF THE ELECTION OF THE PRESIDENT OF THE REPUBLIC OF POLAND

In a letter dated July 10, 2025, the First President of the Supreme Court, Professor Malgorzata Manowska, filed a notice of suspicion of committing a crime in connection with the publication of the Supreme Court's resolution of July 1, 2025, confirming the validity of Karol Nawrocki's election to the office of President of the Republic of Poland (reference number I NSW 9779/25).

The resolution in question was published in the Journal of Laws of July 4, 2025, under item 893. Content taken from the 2024 resolution of the Council of Ministers was added, which – in the opinion of the notifier – constitutes unlawful interference with that content. Resolutions of the Council of Ministers, in light of Article 93, Section 1 of the Constitution of the Republic of Poland, are not a source of law.

The legal basis for the publication of the Supreme Court's resolution in the Journal of Laws is Article 9, Section 1. 2 point 9 of the Act of 20 July 2000 on the Promulgation of Normative Acts and Certain Other Legal Acts, in conjunction with Article 324 § 3 of the Electoral Code. The above regulations do not provide for the possibility of adding any additional content to the Journal of Laws publications, other than the content of Supreme Court resolutions.

According to the announcement posted on the Supreme Court's website, an obvious violation of the provisions requiring the publication of Supreme Court resolutions justifies the suspicion of committing an offense under Article 231 § 1 of the Penal Code. **There is no doubt that the unlawful attack by the executive branch on the independence of the Supreme Court constitutes an act detrimental to the public interest. The case law of the Court of Justice of the European Union and the European Court of Human Rights cited in the unlawful addition to the Supreme Court resolution bears no substantive connection to the Supreme Court resolution.** The determination of the validity of the election of the President of the Republic of Poland is neither a matter falling within the jurisdiction of European law nor the content of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular it is not a matter referred to in Article 6 of that Convention, the violation of which was indicated by the judgments cited in the unlawful addition.

<https://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=1113-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia>

APPLICATION FOR THE WAIVERY OF THE IMMUNITY OF THE FIRST PRESIDENT OF THE SUPREME COURT, PROF. MAŁGORZATA MANOWSKA

Five judges of the State Tribunal have requested that a full bench of the State Tribunal be convened to consider a motion to hold First President of the Supreme Court, Professor Małgorzata Manowska, criminally liable.

Simultaneously, the prosecutor's office submitted such a motion to the Professional Liability Chamber of the Supreme Court, where the motion has been registered and a reporting judge will be appointed to handle the case within a few days.

The charges include exceeding the powers of the Supreme Court Board in voting, failure to fulfill duties related to the failure to convene a session of the State Tribunal, and failure to fulfill obligations arising from a final court judgment.

<https://www.gov.pl/web/prokuratura-krajowa/wnioski-o-wyrazenie-zgody-na-pociagniecie-malgorzaty-manowskiej-do-odpowiedzialnosci-karnej>