**Motion**

**for the General Assembly of the Supreme Court Judges to pass the following resolutions**

**on 12 June 2020:**

**(1) Resolution**

**ON THE ASSESSMENT OF THE CONDUCT OF THE GENERAL ASSEMBLY OF THE JUDGES OF THE SUPREME COURT ON 8–9, 12–13 AND 22–23 MAY 2020**

1. The General Assembly of the Judges of the Supreme Court declares that serious breaches of the law took place at the General Assembly of the Judges of the Supreme Court meeting on 8–9, 12–13 and 22–23 May 2020 involving:

a) the failure to accept an agenda and rules governing the detailed course of action of the General Assembly of the Supreme Court Judges regarding the selection of candidates for the position of the First President of the Supreme Court;

b) the acceptance by the Chairman of the General Assembly of Judges of the Supreme Court of the provisions of Chapter 3 of the Regulation of the President of the Republic of Poland of 29 March 2018 – Regulations of the Supreme Court (Journal of Laws item 660 as amended) – as the basis for the operation of the General Assembly of Judges of the Supreme Court, as it which had been issued in this part by overstepping the statutory authorization contained in Article 4 of the Act on the Supreme Court of 8 December 2017 (consolidated text, Journal of Laws of 2019, item 825, as amended) and, as such, could not constitute legal grounds for the General Assembly of the Supreme Court Judges, acting as an independent constitutional body, selecting candidates for the position of the First President of the Supreme Court;

c) the breach of § 29 of the Supreme Court’s regulations by the Chairman of the General Assembly of the Judges of the Supreme Court declaring the results of the secret ballot held in the election of members of the returning committee referred to in the General Assembly of Judges of the Supreme Court adopted in accordance with § 10 of the Supreme Court’s regulations, on 12 May 2020 on his own, and in conflict with the rules on voting on this matter approved by the General Assembly of Judges of the Supreme Court and implemented on 8 and 9 May 2020, in conflict with the result of the voting established on 9 May 2020 by the returning committee consisting of five judges, one from each chamber of the Supreme Court;

d) the participation of people appointed as judges of the Disciplinary Chamber of the Supreme Court in the General Assembly of Judges of the Supreme Court, in conflict with the decision of the Court of Justice of the European Union of 8 April 2020 (C 791/19) on the application of interim measures, including on the suspension of the application of Article 3, item 5, Article 27 and Article 73 § 1 of the Act on the Supreme Court of 8 December 2017 (consolidated text, Journal of Laws of 2019, item 825, as amended) and leading to the temporary suspension of the activity of this chamber (cf. point 1, indent 1 of the decision in connection with points 44 and 110 of its justification), the implementation of which required the exclusion of these people from participation in the Assembly;

e) the failure to vote on the following motions of the majority of the members of the General Assembly of the Supreme Court Judges:

* on the adoption of the agenda and the rules governing the detailed procedure of the General Assembly of the Supreme Court Judges regarding the selection of candidates for the office of First President of the Supreme Court;
* on the exclusion from the participation in the General Assembly of the Supreme Court Judges of people appointed as judges in the Disciplinary Chamber of the Supreme Court;
* on the exclusion from participation in the work of the returning committee of Judges Jacek Grela, Tomasz Przesławski, Mirosław Sadowski, Zbigniew Korzeniowski, Marek Motuk and Adam Roch;
* on the appointment by the General Assembly of a Supreme Court Judge, pursuant to Article 13 § 7 of the Act on the Supreme Court, as the person providing the list of candidates for the office of the First President of the Supreme Court elected by the General Assembly of the Supreme Court Judges, together with the minutes of the voting to the President of the Republic of Poland;

f) the failure to vote on the motion of the majority of the members of the General Assembly of the Judges of the Supreme Court on the passage of a resolution to present candidates for the office of First President of the Supreme Court to the President of the Republic of Poland;

g) on the breach of Article 183, para. 3 of the Polish Constitution in connection with Article 17 § 1 item 1 *in fine* and the second sentence of § 3 of the Act on the Supreme Court by the failure of the General Assembly of the Supreme Court Judges to pass a resolution on the presentation of candidates for the office of the First President of the Supreme Court to the President of the Republic of Poland.

2. The General Assembly of Judges of the Supreme Court concludes that, in connection with the breaches referred to in point 1, the General Assembly of Judges of the Supreme Court has not exercised its powers to present candidates for the office of First President of the Supreme Court to the President of the Republic of Poland, in accordance with Article 183, para. 3 of the Polish Constitution and Article 17 § 1 item 1 *in fine* of the Act on the Supreme Court. This means that the constitutional conditions for the appointment of the First President of the Supreme Court by the President of the Republic of Poland have not been satisfied, which constitutes grounds for contesting the validity of the act of appointing Supreme Court Judge Małgorzata Manowska to the office of First President of the Supreme Court.

**(2) Resolution**

**ON THE FUNCTIONING OF THE DISCIPLINARY CHAMBER**

**OF THE SUPREME COURT**

**I**

pursuant to the decision of the Court of Justice of the European Union of 8 April 2020 (C 791/19) on the application of interim measures, including on the suspension of the application of Article 3, item 5, Article 27 and Article 73 § 1 of the Act on the Supreme Court of 8 December 2017 (consolidated text Journal of Laws of 2019, item 825 as amended), in order to implement this decision, the General Assembly of the Supreme Court Judges decides to exclude the people appointed as judges to the Disciplinary Chamber of the Supreme Court from participation in its meeting.

**II**

1. Pursuant to the order of the Court of Justice of the European Union of 8 April 2020 (C 791/19) to apply interim measures, including the suspension of the application of the provisions of Article 3, item 5, Article 27 and Article 73 § 1 of the Act on the Supreme Court of 8 December 2017 (Journal of Laws of 2018, item 5), constituting the basis of the jurisdiction of the Disciplinary Chamber of the Supreme Court, in disciplinary matters of judges, the General Assembly of Supreme Court Judges states that on 8 April 2020, pursuant to the order issued on the application of interim measures, and pending the judgment of the Court of Justice of the European Union in case C 791/19, the following took place:

a) the suspension of the rights of the Disciplinary Chamber of the Supreme Court regarding admitting and examining matters falling within the jurisdiction of this Chamber, as referred to in Article 27 § 1, item 1, points a and b of the Act on the Supreme Court (“disciplinary matters”), Article 27 § 1, item 2 of the Act on the Supreme Court (“labour and social security matters regarding Supreme Court judges”), Article 27 § 1, item 3 of the Act on the Supreme Court (“matters regarding the retirement of a Supreme Court judge”), Article 27 § 1, item 1a and Article 55 § 1 of the Act on the Supreme Court (“matters involving the deprivation of liberty or prosecution of judges, assessors, prosecutors and assessors of the prosecutor’s office”), Article 27 § 3 and 4 of the Act on the Supreme Court, top the extent to which these provisions apply to matters other than those specified in Article 27 § 1, items 1–2 and Article 55 § 1 of the Act on the Supreme Court (“other cases”) and Article 110 § 3, Article 114 § 7 of the Act on the System of Ordinary Courts of 27 July 2001 (consolidated text Journal of Laws of 2020, item 365, as amended) (“powers to appoint the appropriate disciplinary court”);

b) the suspension of the President of the Supreme Court of the Disciplinary Chamber in exercising his rights to nominate an appropriate disciplinary court (Article 110 § 3 and Article 114 § 7 of the Act on the System of Ordinary Courts);

c) the establishment of a prohibition to transfer the matters referred to in point a), which are pending in the Disciplinary Chamber of the Supreme Court no later than 8 April 2020, for substantive or formal consideration by a court (bench of the court) which does not satisfy the requirements of independence specified in particular in the judgment of the Court of Justice of the European Union of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18;

d) the establishment of a prohibition to transfer the matters referred to in point a), which are pending before the President of the Supreme Court overseeing the work of the Disciplinary Chamber no later than 8 April 2020, regarding the nomination of a competent disciplinary court for further substantive or formal examination, to a court or court body that does not satisfy the requirements of independence specified in particular in the Judgment of the Court of Justice of the European Union of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18.

2. In view of the above, the General Assembly of Judges of the Supreme Court states that, until the Court of Justice of the European Union issues a judgment in case C-791/19, the matters referred to in item 1, point a should be subject to examination or further examination in the Criminal Chamber of the Supreme Court or the Chamber of Labour and Social Insurance of the Supreme Court, while the powers of the President of the Chamber of the Supreme Court presiding over the work of the Disciplinary Chamber in the nomination of the appropriate disciplinary court should be exercised by the President of the Supreme Court presiding over the work of the Criminal Chamber – in accordance with the rules provided for in Regulation No. 48/2020 of the First President of the Supreme Court of 20 April 2020 on the transitional organizational solutions for implementing the decision of the Court of Justice of the European Union of 8 April 2020 on the application of interim measures in Case C-791/19.

**(3) Resolution**

**ON THE EXAMINATION OF THE CASE OF JUDGE IGOR TULEYA ON 9 JUNE 2020 IN THE DISCIPLINARY CHAMBER OF THE SUPREME COURT**

The General Assembly of Judges of the Supreme Court concludes that the examination by the adjudicating panel of the Supreme Court on 9 June 2020 of the case of Igor Tuleya, Regional Court Judge in Warsaw, for permission to prosecute, was conducted in breach of the decision of the Court of Justice of the European Union of 8 April 2020 (C 791/19) on the application of interim measures pending the judgment of the Court of Justice of the European Union in Case C 791/19, including on the suspension of the application of Article 3, item 5, Article 27 and Article 73 § 1 of the Act of 8 December 2017 on the Supreme Court (consolidated text: Journal of Laws of 2019, item 825, as amended).

Supreme Court Judges: *(46 signatures of SC Judges)*