

**Position of the Board of 'Themis' of 19 July 2021 -
appeal regarding actions openly heading towards PolExit**

Citizens of the Republic of Poland !!!

After lengthy accession negotiations and a nationwide referendum, Poland's accession to the European Union in 2004 is widely regarded as the greatest achievement in the history of Polish international politics.

As judges, we do not feel entitled to make a full assessment of the political, social and economic consequences of Poland's possible withdrawal from the European Union. However, we simultaneously feel obliged to draw the attention of the public to the fact that the effect of such an action would be that Poland would leave the circle of Western legal culture, which would mean a significant reduction in the level of protection of civil rights and freedoms in Poland, which are currently guaranteed by the Charter of Fundamental Rights and other primary and secondary law of the European Union.

From the point of view of Polish citizens, membership of the European Union does not only mean access to European funds, but also, and primarily, a guarantee that high European standards of legal protection will be maintained. The rights and freedoms guaranteed by the Charter of Fundamental Rights of the EU include the right to freedom and personal security, respect for private and family life, protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, the right to freedom of assembly and association, freedom of the arts and sciences, freedom to conduct business, prohibition of discrimination and protection of minority rights, equality before the law, fair and just working conditions, freedom of movement and residence, and the right to a fair trial before an independent and impartial tribunal. We have come to regard these values as being forever given to us, like water and air, but this is only an illusion, as their preservation requires a joint effort and commitment.

As Polish judges, we are simultaneously EU judges who are obliged to observe the above standards, just as Polish citizens are also EU citizens, which gives them the opportunity, among other things, to travel freely, take up employment or study throughout Europe. A common legal system has also enabled the abolition of internal borders between the countries of the European Union, which would not be possible without international cooperation in criminal matters, allowing effective prosecution of international crime. Such a system works on the principle of communicating vessels. An area without internal borders can only be created and maintained if a similar high level of protection of civic rights and freedoms guaranteed by an independent and apolitical judiciary is ensured in all the states within that area. The Court of Justice of the European Union, which is the highest judicial authority of the EU Member States, oversees compliance with common legal standards. The effectiveness of its judgments guaranteed by the principle of loyal cooperation between Member States, is a *sine qua non* requirement for the existence of a European area of security, freedom and justice.

Therefore, as judges of the Republic of Poland, we are extremely alarmed by the legally flawed (due to the participation of a false judge, as well as former active politicians of the ruling camp

appointed to the Constitutional Tribunal after reaching retirement age) decision of the Constitutional Tribunal of 14 July 2021, in which this body, under the guise of an alleged contradiction with the Constitution, questioned the right of the Court of Justice of the European Union to apply interim measures in the area of the judiciary. It should be emphasized that, by applying an interim measure that rules out the possibility of action on the part of the Disciplinary Chamber, the CJEU acted not only in defence of the European legal order, but also in defence of the principles arising from the Polish Constitution (the principle of the tripartite separation of power and the right to a fair trial before an independent and impartial tribunal).

It is with great disappointment and embarrassment that we read the position of Professor Małgorzata Manowska, who nominally holds the position of First President of the Supreme Court and who was illegally appointed to that position, which was published on 16 July 2021, in which, referring to the said Constitutional Tribunal ruling, she announced that the operation of the Disciplinary Chamber would be unfrozen. Such action constitutes a direct violation of the CJEU rulings of 14 and 15 July 2021 and, as such, not only deserves to be absolutely condemned, but should also become the basis for disciplinary and possibly criminal liability. This pseudo-ruling of the Constitutional Tribunal and the position of Professor Małgorzata Manowska are part of a series of actions by politicians and politicized state bodies that undermine the essence of Poland's membership of the European Union. Examples of such action include explanatory and disciplinary proceedings conducted by disciplinary commissioners against judges of ordinary courts who submitted questions for a preliminary ruling to the CJEU. Questioning the effectiveness of the jurisprudence of the CJEU undermines the essence of Poland's membership of the European Union. Such action is a clear step towards PolExit, as it is impossible to remain in the European Community in the long run in a situation where its legal system and the effectiveness of rulings by its highest judicial body are called into question.

Since the actions described above are a further and already very advanced step towards a *de facto* PolExit, we feel obliged to inform Poles that their status as citizens of the European Union is under threat. As judges, we are convinced that Poland's possible withdrawal from the European Union, regardless of the negative political, social and economic consequences, will entail a significant reduction in the level of protection of individual rights and freedoms in Poland. Soon, we may all find ourselves in a situation where an authority of the state, which is not subject to any control, will be built solely on the fear and defencelessness of citizens who are deprived of real legal protection.

The historic experience and geographical position of Poland show that, by rejecting the standards of Western civilization, Poland will inevitably be forced to adopt pseudo-standards written in Cyrillic script.