



PPI-0131-1841/2020

Aleksander Stępkowski JSC, Acting First President of the Supreme Court

Statement of 25 May 2020

In response to unfounded claims alleging that on 23 May 2020 the Judges of the General Assembly of the Supreme Court of the Republic of Poland failed to complete the procedure for the election of candidates for the office of First President of the Supreme Court of the Republic of Poland, I hereby make the following statement:

1. Since the General Assembly of the Judges of the Supreme Court (GA), which was required by law to select five candidates for the office of First President of the Supreme Court, was not convened in due time (i.e. during the term of office of its former First President, Professor Małgorzata Gersdorf), the electoral assembly of the Judges of the Supreme Court had to be convened under the extraordinary procedure provided for in Article 13a of the Supreme Court Act (2017). P The only reason why the Assembly was not convened in due time was Professor Gersdorf's decision not to summon a General Assembly.
2. The sole purpose of the General Assembly convened under the extraordinary procedure as provided by Art. 13a of the SC Act (2017) is to select candidates for the office of First President of the Supreme Court following the regular statutory procedure as specified in Article 13 of the Supreme Court Act and the Rules of Procedure of the Supreme Court.
3. Pursuant to Article 13a § 2 of the Supreme Court Act, the judge who is the Acting First President of the Supreme Court presides over the electing General Assembly of the Judges of the Supreme Court in order to select candidates for the office of First President of the Supreme Court under the aforementioned statutory provisions.
4. From the very beginning of the GA, the Chairperson performing his statutory duties to convene and chair the General Assembly was confronted with a number of obstacles posed by judges trying to impose alternative regulations for the electoral procedure, different from those defined by the SC Act (2017). One example of such conduct was some judges' contempt of the Chairperson's orders specifying the mode of voting for the members of the ballot committee.
5. Despite these difficulties, the GA continued proceedings and on 23 May 2020 finally selected a list of five (out of ten) candidates for the office of the First President of the

Supreme Court. Since only the five candidates eventually shortlisted out of the initial ten received votes in the final ballot, it is clear that the list of candidates presented to the President of the Republic of Poland has represented the preferences of all of the GA members and not only of their majority.

6. It should be emphasised that the General Assembly of the Judges of the Supreme Court held between 8 and 23 May 2020 was unprecedentedly transparent in its deliberations. The media provided coverage not only of the deliberations, but also of the actual voting and the work of the ballot committee. Hence the fairness of the selection process is indisputable.
7. A request was made during the GA that the official presentation of the list of candidates for the office of First President of the SC be done by means of a GA special resolution. However, there were no normative grounds for such a request. The ruling of the Constitutional Tribunal (ref. K 3/17) stipulates that the form of the presentation of the list of candidates for the post of the SC First President is to be determined by statutory means. The form has been determined in Article 13 § 7 of the Supreme Court Act, which does not provide for a GA resolution in this respect. No such resolution has ever been adopted under the provisions of the Constitution of the Republic of Poland (1997), as can easily be verified by reviewing the minutes of the General Assemblies held since 1997 for the selection of candidates for the office of First President of the Supreme Court. More detailed legal grounds for this position were provided during the General Assembly and have been published on the website of the Supreme Court.
8. Pursuant to Article 13 § 7 of the Supreme Court Act, "immediately after the selection of candidates for the office of First President of the Supreme Court, the Chairperson of the General Assembly of the Judges of the Supreme Court or another person appointed by the General Assembly of the Judges of the Supreme Court shall present a list of candidates for the office of First President of the Supreme Court to the President of the Republic of Poland." Contrary to what some Supreme Court Judges are publicly claiming, this provision does not establish an obligation to take a vote on who is to submit the list of candidates to the President of the Republic of Poland, although it provides for the possibility of a person other than the Chairperson of the Assembly submitting the list. Since the Chairperson of the Assembly was able to personally present the list of candidates to the President of the Republic of Poland, and to take immediate action in this respect, as specified by the statutory requirement, there were no grounds for a vote on the issue.

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of the Supreme Court of the Republic of Poland