



SĄD NAJWYŻSZY

First President
Supreme Court of the Republic of Poland
Zbigniew Kapiński

Warsaw, 9 June 2026

KPP V.074.8.2026

Mr Donal O'Donnell
President of the Board
Network of the Presidents of the Supreme Judicial
Courts of the European Union

For the attention of Members of the Board:

Mr Eric de Formanoir de la Cazerie

Ms Katerina Stamatiou

Mr Petr Angyalossy

Mr Tatu Leppänen

Mr Christophe Soulard

Ms Bettina Limperg

Mr Pasquale D'Ascola

Ms Danguolė Bublienė

Mr Thierry Hoscheit

Ms Dineke de Groot

Mr Anders Eka

Dear Mr. O'Donnell,

Dear Members of the Board,

I am writing in response to your letter regarding the alleged deferral of the consideration of my participation, as the First President of the Supreme Court of the Republic of Poland, in the work of the Network of the Presidents of the Supreme Judicial Courts of the European Union. I am also writing in response to the refusal to confirm my registration for the upcoming conference in Limassol.

I must state at the outset that I received your letter with profound surprise and serious concern.

The position set out in your letter is difficult to reconcile with the Articles of Association currently in force, with the institutional character of the Network, and with the principles that should govern cooperation between the supreme judicial courts of the Member States of the European Union. Under the Articles of Association as they presently stand, the Members of the Network are the Presidents of the Supreme Judicial Courts within the Member States of the European Union. In this matter, I do not appear as a private applicant seeking discretionary admission to an association. I am acting in my capacity as the First President of the Supreme Court of the Republic of Poland,

i.e., as the holder of an office already associated with membership of the Network. This point is particularly important in the present case, as the First President of the Supreme Court of the Republic of Poland has already been accepted as a participant in the Network. This is confirmed not only by the prior relationship between the Supreme Court of the Republic of Poland and the Network, but also by the payment of the membership fee in the amount of EUR 2,000 to the Network on 7 May 2026. Therefore, the present matter should not be framed as an ordinary application for admission by a person standing outside the Network. Rather, what is at stake is the continued participation in the work of the Network by the holder of an office to which, under the Articles of Association currently in force, membership of the Network is attached.

The current Articles of Association state that membership is institutional by nature. It is attached to the office of the President of the Supreme Judicial Court of a Member State, and not to an ad hoc assessment of a particular office-holder by the Network's governing bodies. The current Articles of Association contain no additional condition for membership of the kind referred to in your letter. Nor do they empower the Board to suspend, postpone, refuse to recognize, or otherwise effectively deprive the President of a Supreme Judicial Court of a Member State of the ability to participate in the work of the Network on the basis of criteria that are not yet part of the Articles of Association. Consequently, any measure aimed at withholding, suspending, or preventing my continued participation in the Network would require a clear basis in the Articles of Association. No such basis exists. The Articles of Association do not allow for the informal suspension of membership, the non-recognition of a Member, or the provisional exclusion of a Member from the Network's activities by a Board decision or by the Secretary-General's correspondence. On the contrary, the Articles of Association specifically regulate the loss of membership or observer status. In particular, exclusion may only take place by a decision of the General Assembly, adopted by the required majority and on the grounds and in accordance with the procedure laid down in the Articles of Association, including the right of the affected Member to be heard. No such procedure has been initiated or completed in respect of the office which I have held since 27 May 2026.

It is therefore particularly troubling that your letter seeks to justify the postponement of any decision and the refusal to confirm my registration for the Limassol conference by reference to a proposed amendment to the Articles of Association. This amendment has not yet been adopted. It has not entered into force, and its final wording remains uncertain. It may still be modified or rejected by the General Assembly. A merely prospective legal framework cannot be applied to the present situation. Relying on rules that are not yet in force in order to withhold my participation in the work of the Network would amount, in substance, to an anticipatory application of future criteria and to the creation of an extra-statutory obstacle to the exercise of rights arising under the current Articles of Association.

Such an approach cannot be accepted. It goes against legal certainty, institutional fairness, and the standards of the rule of law shared by Member States of the European Union. It is also inconsistent with the legal tradition shared by those States, according to which institutional decisions must be based on rules in force at the time when they are taken, not on rules which may possibly be adopted in the future.

The Network is, of course, entitled to discuss and, where appropriate, amend its Articles of Association in accordance with the procedure set out therein. However, a proposed amendment

may produce legal consequences only if and when it is duly adopted and enters into force. Until that point, the existing Articles of Association remain the sole applicable legal basis for decisions concerning the exercise of rights arising from membership, participation in the work of the Network, and attendance at Network events. For this reason, the refusal to confirm my registration for the Limassol conference has no discernible basis in the currently binding Articles of Association. In the absence of a specific provision presently in force that precludes such participation, this refusal inevitably appears to be an arbitrary and discriminatory restriction imposed on the representative of the Supreme Judicial Court of a Member State of the European Union.

Apart from this fundamental procedural objection, I must also firmly reject any suggestion that the Network's bodies may, outside the framework of the Articles of Association, assess whether my participation in a judicial formation prevents it from meeting the requirements of an independent and impartial tribunal or of effective judicial protection. No competent body, whether a European court or a national court, has ever issued a binding ruling finding that a judicial formation of the Supreme Court composed with my participation does not constitute an independent and impartial tribunal within the meaning of the case law of the European Court of Human Rights, or fails to meet the requirements of effective judicial protection within the meaning of the case law of the Court of Justice of the European Union. Nor has any competent court held that my participation in a judicial panel would, in itself, render that panel incapable of being considered independent, impartial, established by law, or providing effective judicial protection. There is therefore no binding legal basis for treating me as a person whose ability to sit in a court satisfying those requirements has been called into question.

Furthermore, even the proposed wording of Article 4 of the Statute, as cited in your letter, refers to an assessment of courts in general, rather than to an assessment of an individual judge's or specific judicial panel's. The draft provision assumes that the Members of the Network are the Presidents of the Supreme Courts of the Member States of the European Union whose courts meet the conditions required to be regarded as independent and impartial tribunals within the meaning of the case law of the European Court of Human Rights, as well as the requirements of effective judicial protection within the meaning of the case law of the Court of Justice of the European Union. However, no European court has found that the Supreme Court of the Republic of Poland, as such or all of its panels hearing cases, fails to meet those requirements. Only such a finding could be relevant in light of the criterion formulated in the proposed amendment.

The case law of national courts and European courts may allow, in certain circumstances, for an individual assessment, in a specific case, of whether the requirements relating to an independent and impartial tribunal previously established by law have been met. It does not, however, provide any basis for an abstract, general and extra-procedural conclusion that a person appointed to judicial office under a given constitutional and statutory framework is incapable of forming part of a judicial formation satisfying those requirements, or that the holder of a constitutional office in a Member State may be treated by the Network as requiring additional verification before being allowed to participate in its work.

I am a judge of the Criminal Chamber of the Supreme Court and have served in the judiciary for over thirty years. Throughout my career, I have served at every level of the judicial hierarchy. My appointment to the office of judge of the Supreme Court took place within the same constitutional

and statutory framework as that which applied to a number of other judges of the Supreme Court, including the former First President of the Supreme Court, Professor Małgorzata Manowska, who had previously been involved in the work of the Network without reservation. In fact, neither the Court of Justice of the European Union nor the European Court of Human Rights called into question the fact that my predecessor held the office of First President of the Supreme Court; both courts expressly confirmed this fact. By way of example, reference may be made to the judgment of the Court of Justice of the European Union of 1 August 2025 in joined cases C-422/23, C-455/23, C-459/23, C-486/23 and C-493/23.

The position set out in your letter would effectively mean that the Network's organs claim the competence to assess the effect of the appointment of a judge of a Member State's supreme court on that judge's ability to participate in a judicial formation that satisfies the requirements of independence, impartiality, and effective judicial protection. Such a competence cannot be derived from the current Articles of Association, from the purposes of the Network, or from the principles of loyal and respectful cooperation between institutions of Member States and organizations that bring together the representatives of the supreme judicial courts of the European Union.

In these circumstances, the practical effect of your position is equivalent to the *de facto* suspension of the membership of the First President of the Supreme Court of the Republic of Poland in the Network, without initiating or completing any procedure provided for in the Articles of Association. This outcome inevitably appears arbitrary, and arbitrariness stands as the very antithesis of the rule of law. I therefore request that my continued participation in the work of the Network be recognized on the basis of the Articles of Association currently in force. I also request confirmation of my registration for the Limassol conference without delay. If the Board maintains a different position, I request that it identify the specific provision of the currently binding Articles of Association that, in its view, authorizes the suspension or withholding of my participation in the Network's activities.

Finally, I must note that the Supreme Court of the Republic of Poland received your letter only a few days before the planned event, at a time when significant organizational and financial arrangements had already been made in connection with my planned travel and participation in the conference, together with two members of my staff. This timing only serves to reinforce the serious concerns raised by the substance of your position.

The Supreme Court of the Republic of Poland and I personally remain committed to constructive cooperation within the Network as well as to the values that underpin its establishment: dialogue between supreme courts, mutual respect, institutional continuity, legal certainty, and fidelity to the rule of law. For this reason, decisions within the Network must be taken strictly in accordance with the current legal framework, and not on the basis of prospective amendments whose content and adoption remain uncertain.

Yours sincerely,

