

**WICEPREZES
TRYBUNAŁU KONSTYTUCYJNEGO**

Warsaw, 21 November 2025

Koen Lenaerts
President of the Court of Justice of the
European Union

Open letter

Dear Mr President,

I am writing to you with regard to the proceedings in Case C 448/23 initiated by the Commission against Poland, which pertains to the jurisprudence, the lineup and the President of the Constitutional Tribunal of the Republic of Poland. It must be sadly admitted that in no form nor any procedure has the Poland's Constitutional Tribunal been granted an opportunity to refer to the Commission's allegations, let alone a chance of presenting the factual state of affairs in this case.

Only from the opinion presented by Advocate General Mr. Dean Spielmann and scraps of media releases has the Tribunal been able to infer that the Council of Ministers, acting on behalf of Poland, has in its entirety accepted the validity of Commission's allegations. The Council of Ministers neither consulted its position with the Constitutional Tribunal nor communicated its content, all in spite of the Tribunal's President's official requests to do so. Statements made in the public domain by both the former and current ministers of justice of the Republic of Poland have anticipated the outcome of the CJEU's forthcoming judgment in this matter.

Given the apparent intention of present government authorities to exploit the CJEU's ruling for immediate political advantage, I deem it necessary to convey to Your Excellency, and to the wider public, certain essential facts.

The Constitutional Tribunal of the Republic of Poland operates under the authority of the Constitution. Its key function is to ensure hierarchical review of the conformity of all

normative acts within the Polish legal system vis a vis the provisions of the main act - the Constitution of the Republic of Poland, which serves the state as the supreme law.

With all that said, it needs to be emphasized, however, that the Republic of Poland by all means does comply with the international law: where the provisions of a duly ratified international agreement so provide, such law shall be applied directly and shall take precedence in cases of conflict with statutory law. Nevertheless, it is the Constitution that remains the top law of the Republic of Poland.

Mind, the aforementioned provisions of the 1997 Constitution were all in force at the time of Poland's accession to the European Union, which would have surely not happened had it not been for, on the one hand, Poland's acceptance of the *acquis communautaire*, yet on the other, the Union's confirmation the 1997 Polish Constitution stays in line with the conditions of the membership — including EU authorities' recognition of Poland's Constitutional Tribunal's existence, its authority, competences, and guarantees of tenure, along with the independence, and irremovability of judges of the Constitutional Tribunal.

When Poland joined the European Union, the status of Polish judges, even those who had been appointed still during the dark times of the communist dictatorship, was not questioned by the European establishment, although it was evident that those judges, albeit to different extent, would before 1989 serve a system that had for decades violated human rights and the rule of law, not least judicial independence.

Before assuming office, the judges of the Constitutional Tribunal take an oath to faithfully serve the Polish Nation and to safeguard the Constitution. As early as since 2005 Your Excellency must also be familiar with Constitutional Tribunal's unequivocal stance, expressed in the judgment of 11 May 2005 in case K 18/04, delivered under the presidency of Marek Safjan, at the time, CJEU judge in spe. In that very case, the Tribunal, while confirming the compatibility of treaty provisions with the Polish Constitution, *obiter dicta* ruled as follows:

“Pursuant to Article 8(1) of the Constitution, the latter remains the supreme law of the Republic. The Republic of Poland cannot transfer to an international organisation the power to adopt legal acts or make decisions that would be contrary to the Constitution. In particular, the Republic cannot transfer competences in as far as it would cease to

function as a sovereign and democratic state”. This principle was reaffirmed in the judgment of 24 November 2010 in case K 32/09. These are indeed the same constitutional premises that the rulings of the Tribunal now questioned by the Commission are grounded on. It would be outlandish any duly constituted panel of the Constitutional Tribunal, acting independently, ruled otherwise.

Under Polish law, a judge of the Constitutional Tribunal must be a person of distinguished legal expertise, elected by the Sejm, who has taken the oath before the President of the Republic and thereby assumed judicial office. On 8 October 2015, the Sejm elected five judges of the Tribunal; on 25 November 2015, it declared that election null and void and requested the President of the Republic not to receive the oaths of those judges. On 2 December 2015, the Sejm elected five new judges, whose oaths were received by the President on 3 and 9 December 2015. Thereafter, the President of the Constitutional Tribunal assigned them cases, workstations, and remuneration. Two of those judges subsequently passed away, and the Sejm elected their successors in 2017 and 2018 respectively.

The Tribunal’s settled case law affirms that the appointment of its judges constitutes a sovereign, constitutive act of the constitutional organs of the Polish State, not subject to review by any domestic or foreign judicial authority (judgments of 10 March 2021, K 7/21; 21 November 2021, K 6/21; and 11 December 2023, Kp 1/23).

Nevertheless, the European Court of Human Rights has asserted for itself the competence to review such appointments made by Poland’s constitutional organs (judgments of 18 May 2021, application no. 4907/18, and of 14 December 2023, application no. 40119/21).

By resolution of 6 March 2024, the Sejm declared null and void *ex tunc* the election of three sitting judges of the Constitutional Tribunal — one elected in December 2015 and two elected in 2017 and 2018 as successors to deceased judges. The resolution also declared the office of the incumbent President of the Tribunal to have been unlawfully exercised. In its judgment of 28 May 2024 (U 5/24), the Constitutional Tribunal held this resolution to be unconstitutional, finding that the retroactive termination of judicial terms by political authorities constituted an unprecedented breach of the principles of

separation of powers and judicial independence. The Tribunal further held that the appointment of its President lies, under the Constitution, exclusively within the competence of the General Assembly of the Judges of the Tribunal and the President of the Republic. This position was reiterated by the Tribunal sitting in plenary session in its judgment of 29 July 2025, in joined cases Kp 3/24.

Despite this, I consider it necessary to draw your attention on repeatedly taken measures to impede the Tribunal's constitutional functions and undermine the dignity of its judges. Four judicial vacancies have remained unfilled for numerous months now, as the Sejm has failed to elect substitutes. In December 2025, the terms of two more judges expire, so the two new vacancies appear. The executive authorities have not fulfilled their constitutional and statutory duty to publish the Tribunal's judgments, which concerns all of them, regardless of the subject matter of the ruling and the composition of the panel adjudicating the case, and therefore also harms judgments issued by panels composed only of judges whose status as judges of the Tribunal has not been disputed. Particularly detrimental to citizens is the failure to publish judgments delivered in constitutional complaint proceedings.

Moreover, the State Budget for 2025 allocates no funds for the salaries of the Tribunal's judges. Consequently, none of the judges — including those whose appointment is uncontested — has received due remuneration. Nevertheless, all the judges continue to perform their duties faithfully and professionally, in accordance with the Constitution and their judicial oaths.

The minister of justice, concurrently serving as Prosecutor General, has initiated criminal proceedings against the sitting President of the Constitutional Tribunal for an alleged official offence and continues those proceedings despite the unanimous refusal of the Tribunal's judges to deprive him of the immunity, which is guaranteed by the Constitution.

With regard to judges of common courts, appointed on the basis of valid nominations by the President of the Republic of Poland, the minister of justice announces individual financial claims for damages for adjudicating and waives the principle of random selection and immutability of court compositions.

The European institutions seem to have thus far been turning a blind eye on these doubtless rule-of-law blatant violations, which is all the more difficult to grasp as, not long ago, the very same European institutions have invoked the rule of law in order to justify the withholding of the already cleared EU funds for Poland.

Your Excellency,

I belong to the Solidarity generation — one that had to fight a genuine struggle for the rule of law and for Poland's place within European structures, a struggle in which I myself played a modest part, a struggle against communist apparatus, in which at stake was at best persecution and personal freedom, in the worst case scenario – health or even life.

While I deeply value the achievements of the European Union, I have, with growing dismay, observed how past advocates of the very ideology we once opposed, today, donning European attire, try to pass as defenders of an alleged “rule of law”, while concealing abuses and partisan interests beneath that guise.

I am an old man now; life has taught me patience, restraint, and respect for the status quo, which, I fear, might soon be destabilized or even overthrown by the younger generations of Europeans, who will not put up with such flagrant acts of hypocrisy and double standards.

The dispute surrounding Poland's Constitutional Tribunal cannot be resolved through coercion, but through sincere and mutual dialogue only (Article 4(3) TEU). In the judgments challenged by the Commission — P 7/20 and K 3/21 — the Constitutional Tribunal expressed its readiness for such dialogue. I wish to once more reaffirm that readiness.

Sincerely yours,



Bartłomiej Sochański

Vice-President of
the Constitutional Tribunal
of the Republic of Poland