

**Resolution No. 04/2021 Committee of Legal Sciences of the Polish Academy of Sciences  
of October 12, 2021  
in regard to the ruling of the Constitutional Tribunal  
of October 7, 2021**

The Committee on Legal Sciences of the Polish Academy of Sciences, being a democratic representative of scientists conducting research in the field of legal science, declares that the ruling of the Constitutional Tribunal in case K 3/21 of October 7, 2021:

- is defective due to the faulty appointment of judges;
- accepts as the basis for its reasoning a number of statements that are not provided for in the normative regulations (both Polish and European) or the jurisprudence concerning them;
- aims to legalize unconstitutional changes introduced in the administration of justice after 2015 which are inconsistent with EU law and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); to put pressure on Polish judges to ignore the binding judgments of the Court of Justice of the European Union (CJEU); and to refrain – under the threat of disciplinary liability – from examining the status of judges appointed by the politicized National Council of the Judiciary.

The ruling of the Constitutional Tribunal in case K 3/21 was issued by the adjudication panel with the participation of persons who had been elected to seats already lawfully filled. Therefore, for both formal and legal reasons it cannot be perceived as the judgment of the Constitutional Tribunal. The Committee on Legal Sciences of the Polish Academy of Sciences reminds that in the judgment of 7 May 2021 in the case of *Xero Flor v. Poland* (application no. 4907/18), the European Court of Human Rights found that the decision of the Constitutional Tribunal, issued with the participation of a person elected for a place already filled, violates Art. 6 (1) of the ECHR. Such a Tribunal does not fulfill the requirement of a "court established by law".

There are no legal grounds for the view of the Constitutional Tribunal that EU law and the case law of the CJEU has called into question the supremacy of the Constitution in the Polish legal order, thus entitling national courts to ignore the provisions of the Constitution of the Republic of Poland or to review the legality of the appointment of a judge by the President of the Republic of Poland. The practice so far does not confirm the reasoning adopted by the Constitutional Tribunal that EU bodies operated beyond the competence conferred on them by Poland in the EU treaties.

The Constitutional Tribunal went beyond its powers, declaring the provisions of the Treaty on European Union (TEU) unconstitutional. It did not exclude that in the future it would assess the conformity of the CJEU judgments with the Constitution of the Republic of Poland, "including their removal from the Polish legal system". This is beyond the legal scope of the Constitutional Tribunal's competence. According to the principle of the division of competences between the EU and the Member States, the interpretation of the TEU falls within the exclusive competence of the CJEU.

The claims made in order to justify the ruling of the Constitutional Tribunal are misplaced and manifestly ignore the real legal problem – the changes in the Polish judiciary carried out in violation of the Constitution of the Republic of Poland, EU treaties, and the ECHR. The Tribunal's claims intended to legitimize these changes, primarily by undermining the legal effects of CJEU judgments. The ruling of the Constitutional Tribunal threatens the foundations

of the entire EU, interferes with the authority of the CJEU, and limits the competences of Polish courts to apply EU law directly. As a result, this places Poland outside the European legal space. It also dangerously restricts the right of individuals to an effective remedy and to have their cases heard by a court established by law, independent of any other authority, and impartial – which is the foundation of the rule of law.

The Committee on Legal Sciences emphasizes that care for the common good is the responsibility of all citizens, especially those entrusted with the exercise of power. No generation, let alone any political group in power at any given time, has the right to treat the State as its sole property. The Committee emphasizes that the Introduction to the Constitution of the Republic of Poland clearly underscores the need for “cooperation with all countries for the good of the Human Family.” Poland's effective participation in the EU contributes to peaceful cooperation between nations, the reliability and efficiency of public institutions in our country, and above all it serves to ensure respect for the freedoms and rights of the citizens of the Republic of Poland.