

Declaration of the retired judges of the Constitutional Tribunal of 20 July 2021

For over a dozen years, the Constitutional Tribunal, both before and after Poland's accession to the European Union, has unequivocally and consistently stated that the Polish Constitution has the overriding place in the system of sources of law that are applicable in our country. This position was related to the formulation of the principle of Poland's support of European integration. The constitutional norm, according to which the Republic of Poland respects the international law that is binding on it, has been confirmed and settled.

The fact that the Constitutional Tribunal held in the judgment of 15 July this year (P 7/20) that the provisions of the EU Treaties proclaiming the principle of loyal cooperation of Member States and granting the Court of Justice of the European Union the powers to order interim measures in cases under consideration are inconsistent with the Constitution of the Republic of Poland constitutes an unjustified derogation from the line of judgments to date.

A hearing in case K 3/21 is to be held before the full Constitutional Tribunal shortly, on 3 August 2021. The Constitutional Tribunal will examine from scratch the Prime Minister's motion to declare the provisions of the European Treaties that create treaty bases for EU institutions to examine whether the laws of the Member States, including Polish laws, provide effective protection for the subjects in the areas encompassed by EU law unconstitutional. In particular, this is about guaranteeing the independence of the judiciary and the impartiality of judges.

The retired judges of the Constitutional Tribunal are especially concerned that a judgment upholding the motion in case K 3/21 will be equivalent to questioning the applicability of the fundamental provisions of EU law in Poland. The judgment is to be issued on the motion of the Prime Minister, a member of the European Council, the constitutional body in charge of the government, who is authorised by the Constitution to manage the domestic and foreign policy of the Republic of Poland.

The retired judges of the Constitutional Tribunal state that the overriding role of the Polish Constitution is in no way breached when EU institutions demand that the independence of the courts and the impartiality of judges are respected. These demands do not extend beyond what has been awarded to them in the EU Treaties that have been ratified by the Republic of Poland, the constitutionality of which has been confirmed by the Constitutional Tribunal. This is because the competence of the EU institutions does not apply to the judicial system, but to the qualities that national judges must have in order to be able to adjudicate in European cases. The

Polish Constitution also requires that judicial independence and the impartiality of judges are respected (Article 4, Article 45, Article 78, Article 173, Article 178).

Therefore, the retired judges of the Constitutional Tribunal appeal to the Prime Minister to withdraw his motion, which he may do before the hearing begins.

Concerns are being increasingly raised that our country has reached a critical point in its recent history, and that it is up to the Constitutional Tribunal, among others, to ensure that the development path chosen in 1989, which is based on the principle of a democratic state governed by the rule of law and integration with Western Europe, is not interrupted.

The fact that we are speaking up on this subject arises from our fidelity to the constitutional oath we took upon appointment to the judiciary and our conviction that the Polish *raison d'état* requires that we do not now remain silent.

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