

**Warsaw, 19 March 2021**

**Věra Jourová**

Vice-President of the European Commission

**Didier Reynders**

Member of the European Commission

Dear Honourable Members of the European Commission,

We have welcomed recent statements of Madam President indicating that the European Commission is monitoring the election of the new Commissioner for Human Rights in Poland. Here we would like to kindly turn your attention to the fact that in the process of this election, yet another time the Constitutional Tribunal may be involved in potential breaches of the rule of law in Poland.

As you know in the following week the Constitutional Tribunal is supposed to hear the case concerning the provisions regulating the term of office of the Commissioner for Human Rights. Therefore, we would like to bring your attention to the issue of the functioning of the Constitutional Tribunal in Poland. In recent years, the Constitutional Tribunal has become one of the most crucial elements in the ruling majority's strategy for limiting the rule of law in Poland.

The so-called "reform" of the Constitutional Tribunal, which boiled down first to an attempt to paralyze this organ, and then to the establishment of de facto political control over it, has triggered the ongoing constitutional crisis in Poland. Furthermore, it has enabled the ruling majority to modify the substance of the Polish Constitution without formally amending it.

In the last five years, the Constitutional Court has acted as a rubber stamp of the political power, justifying the most controversial acts adopted by the Sejm. Some of them strongly interfered in human rights of individuals, e.g. the freedom of assembly or the right to a fair trial.

The Constitutional Tribunal has also been active in the area of European Union law, especially in the context of the CJEU judgment of 19 November 2019. In its ruling of 20 April 2020, the Constitutional Tribunal found the resolution of the three combined Chambers of the Supreme Court, implementing the CJEU's judgment, not only to be contradictory to the Constitution of Poland, but also to Articles 2 and 4(3) TEU. Moreover, in its judgment of 20 March 2020, the Tribunal assessed certain provisions of criminal procedure insofar as they allow to submit a motion to exclude a judge due to his or her defective appointment.

Both of these rulings were aimed at preventing common courts' attempts to assess the status of judges appointed by the new National Council of the Judiciary. By delivering the aforementioned judgments, the Constitutional Tribunal has deprived courts and parties to the proceedings of the possibility to implement the CJEU's judgment of 19 November 2019. As a result, despite the CJEU's ruling, it is

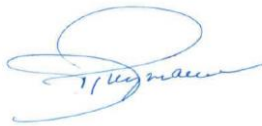
currently impossible to question particular judge's judicial independence due to his or her defective appointment.

In the first of the aforementioned judgments' statement of reasons, the Constitutional Tribunal widely referred to EU treaties and relations between EU law and constitutions of Member States, indicating that the Constitutional Tribunal is the "court that has the final say". As a result, instead of cooperating in dialogue and mutual respect with the CJEU, the Constitutional Tribunal emphasised its competence to authoritatively resolve any conflict situation.

Furthermore, in recent days, the Constitutional Tribunal has been used to influence the election of the new Commissioner for Human Rights. Members of the ruling majority, by filing a motion for constitutional review, are clearly willing to delegitimise the current Commissioner for Human Rights and lead to a situation in which this office will be held by a politician dependent on the ruling majority. In our opinion, such a situation jeopardises the independence of the Commissioner for Human Rights' office and decreases the level of the protection of human rights in Poland.

As the largest human rights civic society organization in Poland, we appeal to the European Commission to take strong and firm actions to protect the rule of law in our country, new infringement procedures concerning the functioning of the Constitutional Tribunal in the framework of the EU law included. Since most of Poland's rule of law problems start with and focus on the Constitutional Tribunal, there is a burning need for clarifying the status of this body, as well as guaranteeing that it will assess the constitutionality of laws both impartially and independently.

Yours sincerely,



Danuta Przywara

President of the Board of Helsinki Foundation for Human Rights