



SUPREME COURT

of the Republic of Poland

First President of the Supreme Court
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**Letter by the First President of the Supreme Court
to the Organisers of the Conference
„Protecting European Union Values:
Breaches of Article 2 TEU and Their Consequences”
Warsaw, 14-15 September 2017**

*Dear Mr. Dean of the Faculty of Law! Dear Organisers of this Conference,
Doctors, PhD Candidates, and Students of the Polish and foreign
higher education institutions! Ladies and Gentlemen!*

I would like to thank you for the invitation to the Conference and, at the same time, I apologize that because of my duties, I could not appear here in person. Nonetheless, let me address a few words in the form of a short letter. Please do not regard it as an official statement by the institution still headed by me but rather as an expression of the very personal concern and emotions by a citizen of both the Republic of Poland and, least but not last, the European Union. I cannot and will not pretend to be indifferent to the facts affecting all of us and our common future.

In a famous Declaration by Robert Schuman, there is an often cited passage serving as a true *credo* of the European integration: “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity.” The last sentence should be felt as something very close particularly to us Poles. At least for the last 37 years our society has understood quite well that the solidarity, as a foundation of each and every human relationship, consists in an antithesis of indifference and isolation. Let me remind the words spoken by John Paul II in Gdańsk on the 12th of June, 1987: „Solidarity – it means: one for the other, and if there is a burden, it is a burden borne together, in community.” Therefore, if we agree that certain values must

underlie every legal system – including the European Union one – then it is obvious that the EU has been founded first and foremost on this basic principle of sharing both the benefits and the burdens among the Member States and their respective Nations.

This quite obvious conclusion sets the correct context for the whole discussion over the question of the EU's competence as to overseeing of, and possible intervention against, the laws enacted by its Member States within the field of the judiciary. Of course, I fully understand the Polish government's position which, generally speaking, consists in characterizing the administration of justice as a purely internal question or, to put it otherwise, as a problem of the national sovereignty. As the government has put it as a cause of the dispute with the European Commission, it comes as no surprise that the former does its utmost to convince the public opinion that the sovereignty forbids any kind of an intervention from the outside. Thus the judiciary should be left for its final and exclusive decision.

Even though I can understand the stance, I think that the assumptions of the European Union's position have entirely been misunderstood by the Polish government. Sovereignty – particularly within its internal dimension – is an unquestioned attribute of a nation-state and its authorities. The Commission, however, has never cast in doubt that our Parliament was able to pass both the Laws reforming the Constitutional Tribunal and the Act on the re-organization of the common courts. It has merely been argued that in this way Poland violates the basic treaty principles, mostly these ones enshrined in Article 2 of the Treaty on European Union; one of them is the rule of law. It is the Commission's prerogative to express its opinion, as does it belong to a Member State to decide how to deal with its judiciary.

The Union is neither a foreign object nor a kind of an occupying force. It is an organization that we joined voluntarily. It would be hard to deny that the Polish reforms diminish the ambit of autonomy of the courts and tribunals of this country. Let me sum up briefly the current state of affairs. One person holds the position of the Minister of Justice and the Public Prosecutor General; he has a full and unlimited power over the whole body of public prosecutors who now are not held liable for their "acts undertaken in the general interest"; he also has an unlimited competence of appointment and dismissal of both the directors and the presidents of all the common courts, the latter still being responsible for the

distribution of the incoming lawsuits between the court's staff. Quite recently, the appointment of the deputy judges, who actually are not judges but they seat in the trial courts just as the full judges do, has been added to this catalogue. It is the Minister of Justice – Public Prosecutor General who actually drafts all the Bills submitted to the Polish Parliament, even though in order to avoid any public debates, the latter are officially labelled as the motions of the Deputies of the *Sejm*. How can we believe that anyone in Europe will truly respect the Polish judgments after such legislative amendments? How can other Member States' nationals – and, at the same time, the EU citizens like us – fearlessly trust in the legal guarantees of their freedoms on the Polish territory? I want to stress, by the way, that no such change would have been introduced, had the Constitutional Tribunal not been *de facto* deprived of its whole authority after more than a year of the battle, in which no means were judged to be inadmissible.

Ladies and Gentlemen! The Republic of Poland is sovereign. No one questions it. The the state sovereignty, however, means not only the governmental control over the territory and the country's population. First and foremost, it is the sense of responsibility for the freely incurred international commitments. By signing the Act of our EU accession, we have bound ourselves to abide by the values expressed in Article 2 TEU. This was a valid decision of the whole Polish Nation, consciously made in the way of the nationwide referendum. Thus it is now the politicians' duty, no matter their affiliation, to remember it.

To be sure, the current dealings of our government are not exceptional; to some extent, there are analogies, for instance, with the arguments submitted by the Russian Federation in the dispute over the control of their Constitutional Court of the ECHR judgments. But these are not good patterns for my country, Poland – after all, a true European state. Within the community voluntarily composed of the Member States, within the Union founded upon the principles of solidarity and freedom, no law pertaining to its foundation should constitute the internal matter any more.

Please accept my wishes of a fruitful debate and thank you for your attention!