

*/courtesy translation/*

Warsaw, 2021

Dear Mr Speaker,

I would like to present this letter to you in a spirit of mutual respect, guided by concern for the good of our common project, the European Union. As the Speaker of the Polish Sejm I have the duty to guard the Polish legal system, which comprises both the Constitution and EU legislation that is in conformity with the Constitution. Settlement of disputes, not by arbitrary means, but by building compromises achieved through debate conducted with respect for the arguments of all states, is one of the foundations of the European Union. Such a debate is only possible when it is underpinned by reliable information, and therefore I feel empowered and obliged to present to you a set of documents concerning the judgment of the Polish Constitutional Court of 7 October 2021. I considered it imperative to provide you with this information because of the disturbing signals I received in Greece that the judgment of the Constitutional Court would result in the denunciation by Poland of all the Treaties of the European Union.

Firstly, it is necessary to emphasise that the Polish Constitutional Court has not declared any provision of the Treaties establishing the European Union to be inconsistent with the Polish Constitution. The ruling of the Court does not undermine a single provision to which Poland and other states adhered when accessing the European Union. It was not the content of the Treaties that the Constitutional Tribunal declared unconstitutional, but content that is not found in the Treaties but has been generated by the Court of Justice of the European Union, which has thus gone beyond the scope of the competences granted by the Treaties.

In particular, the Polish Constitutional Court did not declare Article 1 or Article 4(3) of the Treaty on European Union inconsistent with the Constitution, but these provisions were inconsistent with the Constitution to the extent that they authorised Union bodies to act outside the scope of competence granted to these bodies in the Treaties. Furthermore, the Court did not declare unconstitutional Article 19(1) of the Treaty on European Union, but Article 19(1) insofar as the Court of Justice of the European Union held that this provision implied the right of national courts to disregard the provisions of the Constitution and to rule on the basis of non-binding provisions. Finally, the Polish Constitutional Tribunal did not challenge either Article 19(1) or Article 2 of the Treaty on European Union, but those provisions interpreted as empowering Polish courts to review the legality of the procedure for the appointment of judges by the President of Poland.

A careful reading of the ruling of the Polish Constitutional Court demonstrates unequivocally and beyond any doubt that the Court did not even in the slightest degree question the content of the Treaties, but declared statements that are not contained in the Treaties to be unconstitutional. In practice, it was the Polish Constitutional Court by handing down its verdict of 7 October 2021 that upheld the actual provisions of the Treaties and the will of the citizens who had approved them in a referendum, defending the Treaties from being modified in a way

that was incompatible with democratic principles. By acceding to the European Union, the Polish people gave their consent to the actual wording of the Treaties. Unfortunately, in recent years we have witnessed attempts to change these principles and to give EU bodies, in particular the Court of Justice, new powers, including in the area of the judicial system, to which EU citizens and Member States did not agree.

The best evidence that the ruling of the Polish Constitutional Tribunal does not pose a threat to the functioning of the European Union, the common market and the implementation of other EU objectives and policies is the very fact that the content deemed unconstitutional by the Court was never present in the text of the Treaties, but was "discovered" in the jurisprudence of the Court of Justice of the European Union only in recent years. This means that the European Communities, and later the European Union, have successfully developed and functioned for over half a century without these contents. To date, the European Union and its institutions have not interfered in the way in which the judiciary system is organised in the Member States, as this competence has never been conferred on the Union by the Member States.

The competence of the Constitutional Court to rule on the compatibility of the Treaties with the Constitution is not questionable, as the Polish Court has already done so in the past in judgments of 11 May 2005 and 24 November 2010. Those judgments did not evoke any negative reaction from the European Union. The jurisprudence of the Polish Constitutional Court is not precedential in this respect, it is consistent with the jurisprudence of constitutional courts of other Member States. The possibility to control the compliance of EU law with the Constitution was recognised by the German Federal Constitutional Court as early as in 1974 (the Solange I judgment). The existence of this competence was reaffirmed in the judgment of 22 October 1986. (Solange II). The most recent example of this long-established line of case law is the judgment of the German Federal Constitutional Court of 5 May 2020, in which the Court explicitly stated the possibility of disregarding a judgment of the Court of Justice of the European Union that goes beyond the scope of the competence conferred on the EU.

The issue of the lawmaking activity of the Court of Justice of the European Union is not a new problem, it has been pointed out in legal studies for a long time, but recently it has become even more evident. I would like to draw your attention to the fact that acceptance of this practice will mean that in the future every country, not just Poland, may be treated in an object-like manner. If the practice of unlimited modification of the content of the Treaties by the Court of Justice of the European Union is allowed to continue, the fundamental principle on which the Union is based, that is the resolution of disputes by seeking compromise and consensus through debate, will be lost.

Please find enclosed an English translation of the judgment of 7 October 2021 prepared by the Constitutional Court's services as well as a comprehensive explanatory statement on the judgment issued by the Constitutional Court.

Please accept the assurance of my highest consideration.

/-/ Elżbieta Witek