



Warsaw, January 11th, 2016

MINISTER OF JUSTICE
REPUBLIC OF POLAND

BM-I-0830-2/16

H.E. Mr Frans Timmermans
The First Vice-President of
The European Commission

Honorable President,

I was astonished to read your letter kindly addressed to me with respect to the Constitutional Court in Poland. The contents of the letter indicate a lack of knowledge about the factual developments related to the Constitutional Court. You had a possibility to receive from me competent information regarding this issue e.g. by using routine working contacts between the Ministry and the European Commission. I deplore the fact that you decided not to do so. Thus, I first found out about your unjustified accusations and unfair conclusions from the media and later from the official correspondence. Those are the reasons, why I regarded your letter as an attempt to exert pressure upon the democratically elected Parliament and Government of the sovereign Republic of Poland.

Therefore please be informed of the following facts:

1. The stability and proper functioning of the Constitutional Court, which just recently has become your concern, was disrupted in a drastic manner last summer as a result of amendments to the Law on the Constitutional Court, which had been adopted by the then governing coalition. The coalition of the Civic Platform (PO) and the Polish People's Party (PSL), as it was losing political ground, passed a resolution that replaced one-third of the composition of the Court and ensured that 14 out of 15 judges were nominated by parties then in government. The objective was to monopolize the Court. The intention to do so was made evident by Mr Robert Kropiwnicki, MP and member of the Civic Platform, in his address to the Lower House concerning the amendments to the Law on the Constitutional Court. He expressly declared that the goal was, inter alia, to elect 5 judges during "our" term of office (i.e. while the PO-PSL coalition enjoyed a majority in Parliament). The governing coalition thus contravened the principle of pluralism of constitutional courts, which is fundamental to democratic states (with the exception of those countries, including your native Netherlands, that do not provide for a constitutional court at all). The principle of pluralism was invoked in numerous opinions by the Venice Commission to which you refer in your letter. The Venice Commission clearly

stated that “A ruling party should not be in a position to have all judges appointed to its liking.”¹

2. In addition, the previous Parliament failed to observe an established practice when it hurriedly appointed five new judges to the Court in order to replace the outgoing judges whose term was to elapse only after the election of a new Parliament. In so doing just two weeks before parliamentary elections, the then parliamentary majority deprived the new and democratically elected Lower House of its rightful decision. These disgraceful activities, which regrettably failed to attract your attention at that time, were protested against by members of the opposition; President Andrzej Duda appealed, unsuccessfully, for democratic standards to be upheld. The activities of the governing coalition were unprecedented. When a similar situation occurred in 1997 and the end of parliamentary term of office coincided with that of the judges’ of the Court, the outgoing left-wing government left the nomination of the Constitutional Court replacements to the new parliamentary majority. The then Parliament established this as a constitutional practice which was later violated by the PO-PSL coalition.
3. Only 5 out of the 15 current members of the Constitutional Court have been nominated by the new parliamentary majority. The 5 judges were elected in place of those members of the Court who had been nominated by operation of the Law on the Constitutional Court which was, in part, unconstitutional. The unconstitutional character of the Law was confirmed by the Constitutional Court in its ruling.

Law and Justice (PiS), which is the first political party in Polish history to win a majority in the parliamentary elections and therefore enjoys an undisputed democratic mandate, took remedial actions to reinstate pluralism in the Constitutional Court. This was achieved in conformity with the position expressed in numerous documents by the Venice Commission which pays close attention to the principle of pluralism in the composition of constitutional courts. It should be underscored that the new parliamentary majority did not ensure for itself an advantage, or even a political balance in the composition of the Court as the majority of its judges were appointed by the previous coalitions.

4. The five judges appointed by the new parliamentary majority were unlawfully removed from the ruling practice as a result of an arbitrary decision taken by the Court’s President, Professor Andrzej Rzepliński. His political ambitions continue to pose the greatest threat to the independence of the Court, as well as to the balance of the judiciary, legislative and the executive powers in Poland. Being a judge, Mr Rzepliński is under an obligation to remain impartial. However, he declares himself to be a supporter of the Civic Platform, which is now in opposition, and himself acts as a politician. So much so, in fact, that he was elected “Politician of the Year” by one of the most popular weekly magazines in Poland. In the parliamentary chamber he openly confers with the members of the opposition. He

¹ CDL-STD(1997)020 The composition of constitutional courts - Science and Technique of Democracy. no. 20 (1997), p.21

criticizes the actions taken by the President of the Republic and by the parliamentary majority. In his capacity as President of the Constitutional Court he appeared in the mass media and made suggestions in public regarding the direction in which the ruling on the constitutionality of the Law on the Constitutional Court would go, before the ruling was actually adopted and even before the respective Court's session was held.

Honorable President,

Today, the Polish Government is engaged in efforts to reinstate legal order and to ensure proper functioning of the Constitutional Court and, in particular, the Court's pluralism. This approach reflects the Government's profound commitment to the principles of democratic rule of law. I trust that, owing to the information that I now pass on to you, we will stand together as allies in an effort to achieve these objectives.

Poland is a sovereign and democratic state. Therefore, may I ask you to exercise more restraint in instructing and cautioning the Parliament and the Government of a sovereign and democratic state in the future, despite ideological differences that may exist between us, with you being of a left-wing persuasion.

It would be my great pleasure to host you in Poland and answer any other questions that you may have.

Yours faithfully,

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Zbigniew Ziobro

