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Statement of the Legal Experts Group of the Stefan Batory Foundation on the Constitutional Tribunal ruling on interim measures imposed by the Court of Justice of the European Union

On 14 July 2021, Poland's Constitutional Tribunal (CT) ruled that Article 4(3), second sentence, of the Treaty on European Union (TEU) in connection with Article 279 of the Treaty on the Functioning of the European Union, insofar as the Court of Justice of the European Union (CJEU) imposes obligations on Poland *ultra vires* by prescribing interim measures pertaining to the system and characteristics of Polish courts and the mode of procedure in Polish courts, is inconsistent with the country's Constitution.

We would like to point out that the CT ruling has a significant legal flaw: Justyn Piskorski, who was elected by the Sejm (8th term) to a judge's post that had been filled properly earlier, was involved in issuing it. This person cannot adjudicate at the CT, which means that the proceedings involving him are invalid and the decision is non-binding because the ruling does not exist in the legal sense (it is a non-existent ruling). This subject was discussed by the Legal Experts Group in a report on the judiciary published in March 2018. The group fully upholds the views expressed there.

The legal question that the CT was asked came from the Disciplinary Chamber of the Supreme Court (SC), a body which, in the light of the CJEU's established jurisprudence, is not a court within the meaning of European Union law and which, also in connection with the CJEU ruling of 8 April 2020 suspending the application of certain provisions of the law on the Supreme Court, should not function at all and should not adjudicate at all. This was confirmed by the CJEU on 15 July when it ruled that, in view of the overall context of the recent judicial reforms in Poland and the circumstances in which the Disciplinary Chamber was established, it does not fully guarantee independence and impartiality.

Finally, we would like to repeat that, according to European Union law, the CT is not authorised to conduct an independent assessment of the constitutionality of the Treaties, as we wrote in our [statement on 7 May 2021](#). In this respect, the CT ruling constitutes a gross violation of European Union law, which may result in the European Commission launching proceedings at the CJEU, potentially leading to financial sanctions on Poland. The CT ruling undermines the fundamental principles of European Union law, which Poland committed to comply with when it joined the EU.

Contrary to the CT ruling, the CJEU's issuing of interim measures relating to the system and characteristics of Polish courts and the mode of procedure in Polish courts does not breach norms on competencies, as the CJEU may order the necessary interim measures in every case it considers. The CJEU's settled case law shows that, although the organisation of the judiciary in the member states is

within their jurisdiction, they are obliged to comply with the obligations arising from European Union law when acting in this regard.

The provisions concerning the system and characteristics of Polish courts and the mode of procedure in Polish courts may be subject to review in light of Article 19 (1), second paragraph, of the TEU; among other things, as part of a complaint concerning a member state's failure to fulfill its obligations. As a consequence, they may also be subject to interim measures ordered by the CJEU in the same context, in particular relating to the suspension of the application of the above-mentioned provisions (decision of 14 July 2021 in case C-204/21).

Regardless of the above, we believe that opposing European Union law and the Polish Constitution creates the appearance of a contradiction between these legal orders and, we state with great regret, constitutes a manifestation of the legitimization of the dismantling of the rule of law by the politicised CT. The so-called "reforms" of the Polish judiciary introduced over the past few years are actually destroying it. They violate both the Constitution and European Union law, because the Constitution and the founding Treaties are built on the same axiological basis – the values of the democratic state and the rule of law.

In the coming weeks, the CT is due to rule on the Prime Minister's request of 29 March 2021 asking it to examine whether other fundamental principles of the European Union, including the rule of law and the principle of effective judicial protection, are consistent with the Constitution. We warn that a CT ruling in line with the Prime Minister's request and Poland's refusal to comply with CJEU rulings will be incompatible with European Union membership.

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