

## **Statement on The Civic Shutdown of the ex-Constitutional Tribunal**

*„Supreme power in the Republic of Poland shall be vested in the Nation”*

– this is one of the sentences that lay the foundation of the political system of the Republic, our country, a member state of the European commonwealth of countries – the European Union (EU). The Nation, understood herein as an autonomous cultural and political entity, that is the political nation, appoints and dissolves, under the common social contract – both directly and indirectly, *i.e.*, through its representatives –, public institutions to which it assigns the rôle of guardians of the common good and of the axio-normative order adopted for the sake of its realisation. A critical assessment of the actions carried out by these institutions is expressed by the political nation in the elective mode *and* through credible survey procedures. In the latter case, a natural and commonly accepted measure of approval of a public institution is the level of social trust in that institution. The results of a professional survey of the level of trust, on the part of the citizens of the Republic, in public institutions as of the end of 2020, conducted by the Polish Institute for Social Research and Market, a participant of the European Research Project during the 2019 EP elections, leave no room for doubt: the Constitutional Tribunal of the Republic of Poland, bringing up the rear among public institutions with the *critically* low result of 26% („trust”) : 53% („distrust”), is actually perceived as an institution of public *distrust* by those in whom „*supreme power in the Republic of Poland shall be vested*”. A comparison of the last result with that obtained five years ago: 37% : 36% demonstrates a frightening dynamics of a steep decline of trust in the institution and an escalation of dissatisfaction with its actions. In this context, the stability of trust that the political nation of the Republic of Poland puts in the EU: 55% : 26% by the end of 2020 *versus* 56% : 27% by the end of 2016 is well worth noting. This juxtaposition acquires an exceptional significance under the circumstances of a sharp disagreement between politicians of the Republic's ruling party and EU institutions with regard to the status and rulings of the Tribunal...

The increasingly and already radically critical assessment, presented above, of the actions carried out by an institution of such fundamental relevance to the community's life, as a body appointed to directly protect the constitutional order in the country and to ensure compliance of its relations with international entities with the values inscribed in that order, is a direct and incontrovertible consequence of a methodical erosion of the institution and a barbaric negation of the idea of the rule of law in the Republic effected on an unprecedented scale and with an unprecedented intensity, and, at the same time, with a hitherto unseen arrogance and brutality over the last six years, in which time the helm of the state has been held (single-handedly) by a political group with a funny self-given name Law and Justice, its right-wing, fundamentalist and nationalist coalition task partners as well as political nominees for public posts. It was none other than the Constitutional Tribunal that became the first target and the first „booty” of the creeping coup d'état, or, indeed, a civilisational counter-reformation that was and still is being committed with impunity by the ruling authorities after 2015. We read off the tragic finale of these actions in the European Parliament Resolution of 17 September 2020, which states that “*independent constitutional review of laws can no longer be effectively guaranteed*” in the Republic since December 2015. This is equivalent to the assertion:

*The Constitutional Tribunal of the Republic of Poland in its current form, given to it with a gross violation of the Constitution of the Republic of Poland, is not a court. Therefore, we are dealing with an ex-Constitutional Tribunal of the Republic of Poland.*

The ultimate fall of this institution and of its authority marks a sad turning point in the history of the Republic.

A reliable quantitative measure of the situation that the country is now facing as a result of the aforementioned coup – a coup of which the *ex*-Constitutional Tribunal was first a victim, and subsequently also a docile tool – is provided by the commonly used “democracy indices” that allow to put local phenomena in a global perspective, and in particular: the Liberal Democracy Index, established by the Göteborg-based international V-Dem Institute since 2014 and the democracy index of the Washington-based research institute and think-tank Freedom House (once supporting the First Polish „Solidarity”). The latter documents the decay of a “consolidated democracy” in the Republic (still present in agony as late as 2019) to

a “semi-consolidated democracy” (the status as of 2020), indicating the direction of the devolution towards an “authoritarian régime”. The former quantifies a transition of the Republic from the phase of “liberal democracy” to the phase of „electoral democracy”, with the 30% decrease in the value of the index since 2015 implying that

*The Republic is currently the country most rapidly tending towards the authoritarian system worldwide.*

Phenomena of a politically driven disintegration of democracy in the Republic have evoked a strong institutional-procedural response in the structures of the cultural-political community of which our country has been a member – by the will of its citizens expressed in a referendum – since 2004, that is, of the European Union. It is with respect to the Republic, and in relation to the brutal onslaught against the Constitutional Tribunal perpetrated by politicians from the ruling party, that the Rule of Law Framework was activated for the very first time in history – already in January 2016. It is the Republic that became the first ever member state of the EU to be subjected to the exceptional procedure in defense of EU values provided by Article 7(1) of the Treaty on EU (TEU) and a special monitoring procedure of the Council of Europe. It is with respect to the so-called „judicial reforms” in our country – the first ever member state of the EU to undergo such a treatment – that the Court of Justice of the EU (CJEU) employed the mechanism of provisional suspension twice in 2018. It is the creation of those „reforms” – the Disciplinary Chamber of the Supreme Court (DCSC) – that was suspended by the CJEU twice (in 2019, and then again in 2020) in its unlawful and manifestly politicised actions posing a threat to the EU legal order – this creation was finally stripped of its usurped status of a European court by the ruling of the CJEU of 15 July 2021. It is the Republic, as the first country in history, that was charged, in 2019, with a violation of its Treaty obligations under Article 19(1) of the TEU.

*The ruthless and flagrant realisation, with absolute impunity, of narrow party interests by the populists and anti-democrats currently ruling the country, which is being cynically presented as a fight for the communal interests, has reduced the Republic, over the last six years, to the rank of a geopolitical pariah and an ordinary institutional ruffian.*

The Constitution of the Republic of Poland as well as international commitments assumed by our country impose upon its public institutions the obligation to rectify dangerous pathologies, such as the ones signalled above, promptly and efficiently. That fact notwithstanding, it is an established practice among politicians of the ruling party to persistently temporise, employ low legal cunning (this is, e.g., the status of a circumvention of a CJEU decision with regard to the DCSC using the so-called “muzzle law”, blatantly unconstitutional and contrary to the European law), and finally – once the arsenal of cheap trickery has been used up –

*a phantasmagorical „invalidation”, in the Poland “made great again”, of various incommensurable principles, decisions and procedures embedded unassailably in the European legal order, adopted by the Republic through the vote of Its citizens in 2004, and that by means of subordinating those principles, decisions and procedures to an interpretation of the Constitution of the Republic of Poland ordered at the conquered ex-Constitutional Tribunal, because, in truth, THIS is the sole purpose of the answer to the request from the Prime Minister of the Republic of Poland Mateusz Morawiecki for an „Assessment of conformity with the Constitution of the Republic of Poland of selected provisions of the Treaty on European Union” that is to be announced by the ex-Constitutional Tribunal in full court at the next session on 31 August 2021.*

This pathetic phantasmagoria – whose first act was the ruling of the ex-Tribunal of 14 July 2021 with regard to the „Obligation on the part of a member state of the EU to execute interim measures pertaining to the form of its political system and the performance of constitutional bodies of the judiciary of that state”, announced, as if to amplify the effect of the grotesque and surrealism, by the presiding judge of the bench who happens to have been... a prosecutor of the martial-law period and an active representative of the apparatus of repression of the People's Republic of Poland – shows a disquieting and, à la fois, embarrassing analogy with the solutions pushed for, since 2015, in the authoritarian Russian Federation (RF) whose Constitutional Court has „freed” Russian public institutions from the obligation to comply with rulings of international institutions such as CJEU and the European Court of Human Rights in case of a „detection”, by the Constitutional Court, of an inconsistency of the rulings with the constitution of RF. That spectacle of a „creative legislation” ended in an expected manner: a package of laws establishing superiority of the Russian

constitution over international agreements and rulings of international bodies, was signed by the Russian autocrat Vladimir V. Putin in December 2020. In this analogy, only too manifest, there germinates a tragifarce: While the Russian phantasmagoria is supported by the potential of an aggressive and dangerous regional hegemon,

*The Republic is laid open to ridicule under the heavy weight of absurdity of the delusions of grandeur entertained by Its rulers.*

It is a ridicule mixed with terror that looms out of the frenzied vision of breaking off the cultural and institutional anchor which the Republic dropped in the safe haven of the EU in 2004, after several decades of an authoritarian rule of The Party, then loyally served by today's judge of the ex-Constitutional Tribunal nowadays captured by another Party, and of subsequently steering the ship of state out into the depths of authoritarianism, controlled undividedly by countries with a tradition of an authoritarian rule which is longer and gloomier than ours, and – above all else – with an incomparably greater geopolitical potential, engaged, in all possible disguises of the hybrid warfare, in the destabilisation of the global democratic order. Thus,

*the political self-interest of the ruling party, realised in the camouflage of populist slogans of a geopolitical self-empowerment and endorsed by the ex-Tribunal manifestly bereft of independence, poses not only a cultural and economical, but also a direct existential threat to the Republic.*

The circumstances, outlined above, of utter exhaustion of the institutional-procedural mechanisms of control and repair of the ex-Constitutional Tribunal available to citizens of the Republic (within the time scale in which the demolition of the democratic order is taking place) prompt us to invoke Point 2. of the previously quoted Art. 4 of the Constitution of the Republic of Poland:

*„The Nation shall exercise such power **directly** or through their representatives.”*

From it, we derive an axio-normative sanction for a direct action, which the cultural, historical and (geo)political awareness of the citizens turns into a moral duty in the present situation. In the light of the ideological positions and actions – fundamentally at odds with a broadly understood modern European cultural paradigm – that have been consistently declared, propagated and actively supported by the ruling party, we are inclined to view the present situation as a source of a direct and indirect threat to the core values, rights and freedoms protected by law, such as, *i.a.*, human dignity, with its constitutionally affirmed status of a “*source of freedoms and rights of persons and citizens*”, the freedom to make, each, our autonomous decisions with regard to our health, body, sexual life and procreation, but also the right to a fair trial. Such understanding legitimises, in turn, placing the postulated direct action within the scheme of necessity, with all cultural and legal consequences of this fact.

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Taking into account the unequivocally and radically critical civic assessment of the status and actions of the ex-Constitutional Tribunal and the statement of its dysfunctionality published by Polish organisations representing the legal profession, such as, *e.g.*, the Polish Judges Association “Iustitia”, as well as EU institutions endowed with the requisite competence and enjoying a high and stable social trust, and, simultaneously, bearing in mind the systemic, cultural and existential threats engendered by the politically steered activity of this puppet extra-legal entity,

*those who are the Republic, that is Its culturally and politically aware citizens, who are also citizens of the European Union, effect, on 30 August 2021, on the basis of Art. 2 and 30 of the Constitution of the Republic of Poland and of Art. 2, 3 and 10 of the Treaty on European Union,*

***The Civic Shutdown of the ex-Constitutional Tribunal.***

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Making our action and its logical and axiological basis publicly known herewith, **we call upon our fellow citizens in the Republic to participate, actively and in large numbers**, in the second act of our direct action, that is in the **civic blockade of the seat of the ex-Constitutional Tribunal** before and during the next phantasmagorical session dedicated to the assessment of conformity with the Constitution of the Republic of Poland of selected provisions of the Treaty on the European Union

*on 31 August 2021.*

At the same time, we appeal to representatives of political structures of the EU, with all the power that the Constitution of the Republic of Poland, the Treaty on the European Union and the European Convention on Human Rights endow us with, to see and acknowledge the actual nature of our action, to wit, that a civic mechanism of execution of an unequivocal statement of will of an autonomous participant and animator of the political life in our country – its self-organising society, and through that also to recognise in us a partner in the discourse on the repair of the Republic on the basis of universal democratic values, and in a necessary fight against the retrogressive and pro-authoritarian powers and ideologies.

Warszawa, August 30<sup>th</sup>, 2021

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