

Resolution No. 1/2015
of the Committee for Legal Sciences of the Polish Academy of Sciences
adopted on 26 November 2015

Pursuant to Article 1.2(5) in conjunction with Article 5 of the Rules of the Committee for Legal Sciences of the Polish Academy of Sciences, as annexed to the Resolution No. 1/2012 of the Committee for Legal Sciences of the Polish Academy of Sciences adopted on 22 March 2012, the Committee for Legal Sciences of the Polish Academy of Sciences (hereinafter referred to as “**The Committee for Legal Sciences**”) resolves as follows:

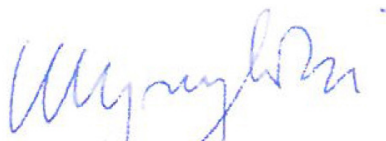
1. The Committee for Legal Sciences notes that the recently escalating developments which directly concern the Constitution of the Republic of Poland and its legal system are instances violating the principle of separation of powers, the principle of the independence of the judiciary, and the principle of judicial autonomy. Any state authority which assumes the competence to refuse to comply with statutory law—especially when that authority is entrusted with safeguarding constitutional compliance—violates both the principle of the legality of actions of public authorities and the principle of separation and independence of the judiciary.
2. The Committee for Legal Sciences indicates the imminent danger of overturning the principle of the separation of powers, which may lead to a change of the political regime of the Republic of Poland. Next to judicial review, constitutional separation of powers, both in principle and as a regime practice, is the crucial bulwark guarding against authoritarian rule. Encroachments upon the powers of the judicial branch by the legislative branch and the executive branch are especially impermissible.
3. The Committee for Legal Sciences is opposed to any display of constitutional and legal nihilism, of contempt shown for the principles of a democratic state ruled by law, of circumventing or abusing the law, and of exploiting and abusing democratic mechanisms to curtail democracy and the rule of law.
4. The Committee for Legal Sciences notes that the neglecting by the President of the Republic to swear in Judges of the Constitutional Tribunal elected to that office by the Sejm of VII Term based on the binding Act of 25 June 2015 on the Constitutional Tribunal (Journal of Laws, item 1064, hereinafter referred to as “the CT Act”) has prevented these persons from discharging their duties as Judges and has impaired the composition of this constitutional judiciary body, thereby curtailing its ability to perform its constitutional functions.
5. The Committee for Legal Sciences asserts that the Act of 19 November 2015 Amending the Act on Constitutional Tribunal (Journal of Laws, item 1928, hereinafter referred to as “the 2015 Amendment”) shows significant constitutional and legislative flaws, which are both procedural and material. The legislative procedure, as provided for by the Rules of the Sejm,

has been violated insofar as the bill was introduced for a first reading in a committee instead of at a plenary session; with respect to the time of its introduction; with respect to the time when the print version of the bill was delivered to the deputies; and with respect to the constitutional requirement to seek the opinion of the National Council of the Judiciary. Furthermore, the adopted act terminated, in an unconstitutional way, the mandate of sitting judges to serve as President and as Vice-President of the Constitutional Tribunal before their terms are up. Resolutions of the Sejm of VIII Term adopted on 25 November 2015 have voided (“deprived of legal force”) Resolutions of the Sejm of VII Term appointing Judges of the Constitutional Tribunal, thereby introducing extra-statutory cause to terminate the mandate of judges of the Constitutional Tribunal before their term-in-office has expired.

6. The Committee for Legal Sciences holds that the granting of pardon by the President of the Republic to persons who have not been duly pronounced guilty by the courts violates the clemency procedure and constitutes unacceptable encroachment by the executive into the competence of the judiciary. This is to protest both against the presumption that clemency may be applied to a person presumed innocent (as an innocent person cannot be pardoned) and against the President’s presumption at terminating court proceedings which have been in progress. Article 10, Article 126.3 and Article 173 of the Constitution have thereby been violated, as have also the rights of parties to criminal proceedings.

7. This Resolution was adopted with 17 members of the Committee for Legal Sciences in attendance. 13 votes were cast in favour of the Resolution, one vote abstained, and three votes were opposed (Prof. Tomasz Giaro, Prof. Franciszek Longchamps de Bériér and Prof. Mirosław Sitarz, who have expressed the intention of adjoining this Resolution with an appropriate dissenting opinion).

8. The Resolution was adopted in the absence of such members of the Committee who are active Judges of the Constitutional Tribunal.



The President of the Committee for Legal Sciences,
Polish Academy of Sciences
Prof. Mirosław Wyrzykowski