

To Mr Gianni BUQUICCHIO  
President of the Venice Commission  
Council of Europe  
67075 Strasbourg FRANCE  
e-mail: [venice@coe.int](mailto:venice@coe.int)

29 September 2021

**Re: Irregular membership of Mr Mariusz MUSZYŃSKI,  
Poland's Substitute Member of the Venice Commission**

Dear President of the Venice Commission,

I am writing to you on behalf of *The Good Lobby Profs*, a group of professors and rule of law experts who have been following the situation in Poland closely with increasing alarm.

As you may remember, a number of us already wrote to you in July 2018 to alert you to the behaviour of Mr Marcin WARCHOŁ and Mr Mariusz MUSZYŃSKI. We then inquired about the possibility to initiate a review of their continuing membership of the Venice Commission in light of their manifestly unbecoming behaviour ever since Article 7(1) TEU was activated by the European Commission in December 2017 in respect of Poland. Sadly, but unsurprisingly, the unbecoming behaviour we denounced in July 2018 as incompatible with the objectives laid down in the Statute of the Venice Commission has continued unabated.

We are now writing to inquire about the consequences the Venice Commission has drawn (or will draw) from the formal finding of the European Court of Human Rights in the case of *Xero Flor w Polsce sp. z o.o. v. Poland*. In this judgment of 7 May 2021, which has now become final, the Court held inter alia that the breaches in the procedure for electing the three concerned individuals, including Mr Mariusz MUSZYŃSKI, to the Constitutional Court of Poland had been **of such gravity as to impair the legitimacy of the election process and undermine the very essence of the right to a “tribunal established by law”**.

We would also like to draw your attention to the European Court of Human Rights' judgment of 22 July 2021 in the case of *Reczkowicz v. Poland* in which the Court referred to a series of decisions of the 'Constitutional Tribunal' of Poland. Having repeatedly noted the irregular participation of the irregularly appointed Mr MUSZYŃSKI, the Court emphasised at paragraph 263 of its judgment

the general context in which the Constitutional Court has operated since the end of 2015 and its actions aimed at undermining the Supreme Court resolution's finding as to the manifest breach of domestic and international law due to the deficient judicial appointment procedure involving the NCJ. These actions started from an unprecedented interim decision of 28 January 2020, suspending the Supreme Court's jurisdiction [...]. The Court considers that this kind of interference with a judicial body, aimed at incapacitating it in the exercise of its adjudicatory function in the application and interpretation of the Convention and other international treaties, must be characterised as an affront to the rule of law and the independence of the judiciary. (our emphasis)

To the extent that Mr Mariusz MUSZYŃSKI **was irregularly appointed to the Constitutional Court of Poland** following multiple irregularities amounting to manifest breaches of domestic law, not to forget his active participation to what the European Court of

Human Rights described as “an affront to the rule of law”, **we would like to inquire about the consequences of his irregular appointment as far as his position on the Venice Commission is concerned.** It is indeed our understanding he was nominated and appointed by Polish authorities in his professional capacity of judge of the (now unlawfully composed) Constitutional Court of Poland. This judgement proves his manifest lack of fitness for a position on the Venice Commission.

We are therefore asking you whether any steps have been taken (or will be taken) in relation to Mr MUSZYŃSKI’s designation since his title as Vice-President of the irregularly composed body formally known as the “Constitutional Court” of Poland derives from what the European Court of Human Rights has formally established to be a procedure that impairs the legality and legitimacy of his election.

At the very least, we would hope to see the website of the Venice Commission promptly amended to explicitly mention the Court’s *Xero Flor* judgment of 7 May 2021 and remove the reference to “Vice President” as well as the reference to “Constitutional Court”.

Yours sincerely,



Professor Laurent Pech on behalf of *The Good Lobby Profs*