



Strasbourg, 13 October 2026

CDL-AD(2026)031

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

POLAND

OPINION

ON

**THE POWERS OF THE PRESIDENT
IN THE CONTEXT OF THE OATH-TAKING
OF THE JUDGES OF THE CONSTITUTIONAL TRIBUNAL
AND OF OTHER JUDICIAL APPOINTMENTS**

**Adopted by the Venice Commission
at its 148th Plenary Session
(Venice, 9-10 October 2026)**

On the basis of comments by

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I. Introduction

1. By letter of 29 June 2026, Ms Elvira Kovács, Chairperson of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) requested an opinion of the Venice Commission of the Council of Europe concerning the powers of the President of Poland in the oath-taking of judges of the Constitutional Tribunal and other appointments under the principle of the separation of powers in light of comparative examples.

2. Mr Richard Barrett, Mr Christoph Grabenwarter, Mr Martin Kuijer, Ms Angelika Nussberger and Mr Kaarlo Tuori acted as rapporteurs for this opinion.

3. On 15 and 17 September 2026, the rapporteurs held online meetings with representatives of the Ministry of Justice, the National Council of the Judiciary, the Chancellery of the President, the parliamentary majority and the opposition, the Constitutional Tribunal and the Ombudsperson, as well as with representatives of associations of judges and civil society organisations. The Commission is grateful to the Polish authorities for the excellent organisation of the online meetings.

4. This opinion was prepared in reliance on the English translation of the Acts of 30 November 2016 “On the Status of the Judges of the Constitutional Tribunal”, and “On the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal”, the Act of 13 December 2016 “The Introductory Provisions to the Act on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal and to the Act on the Status of the Judges of the Tribunal” and other relevant legislation ([CDL-REF\(2026\)022rev-e](#)). The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 15 and 17 September 2026. The draft opinion was examined at the joint meeting of the Sub-Commissions on Democratic Institutions, on Constitutional Justice and on the Rule of Law on 8 October 2026. Following an exchange of views with Mr Dariusz Dudek, advisor to the President of the Republic of Poland, it was adopted by the Venice Commission at its 148th Plenary Session (Venice, 9-10 October 2026).

II. Background

A. Constitutional and Legislative Provisions Governing the Oath-Taking of Judges of the Constitutional Tribunal

6. The Constitution of the Republic of Poland provides that “*the Constitutional Tribunal shall be composed of 15 judges chosen individually by the Sejm for a term of office of 9 years from amongst persons distinguished by their knowledge of the law. No person may be chosen for more than one term of office*” (Article 194(1)).¹ The Constitution does not provide for the need of an oath by the judges of the Constitutional Tribunal.

7. The requirement that a person elected to the office of judge of the Constitutional Tribunal take an oath before the President of the Republic is laid down in Article 4 of the Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal. Pursuant to that provision, “*A person elected to assume the office of a judge of the Tribunal shall take the following oath in the presence of the President of the Republic of Poland*”. Article 4(2) further

¹ [The Constitution of the Republic of Poland](#)

provides that *“refusal to take the oath is tantamount to resignation from the office of judge of the Constitutional Tribunal”*.^{2 3}

8. Article 5 of the same Act provides that *“A judge of the Tribunal shall commence his/her employment relationship after taking the oath of office. After taking the oath of office, a judge of the Tribunal shall immediately arrive at the Tribunal to assume judicial duties; the President of the Tribunal shall assign cases to the judge and create conditions that make it possible to perform the judicial duties”*.

9. The legislation makes the taking of the oath before the President of the Republic also a condition for the exercise of certain functions within the Constitutional Tribunal:

- Under Article 6 (1) the Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal *“the General Assembly of the Constitutional Tribunal is composed of the incumbent judges who have taken the oath before the President of the Republic”*. Article 11(5) likewise provides that *“the sitting of the General Assembly on the presentation of candidates for the position of the President of the Tribunal shall be attended by all the judges of the Tribunal who, prior to that sitting of the General Assembly, took the oath of office before the President of the Republic of Poland”*.⁴

Article 18 of the Act of 13 December 2016 – the Introductory Provisions to the Act on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal and to the Act on the Status of the Judges of the Tribunal provides that *“A judge of the Tribunal who has been assigned the duties of the President of the Tribunal by the President of the Republic of Poland, hereinafter referred to as ‘the judge performing the duties of the President of the Tribunal’, shall: 2) assign cases to the judges of the Tribunal who have taken the oath of office before the President of the Republic of Poland and create conditions that make it possible for the judges of the Tribunal to perform their judicial duties”*.⁵

10. As regards other courts, pursuant to Article 179 of the Constitution of the Republic of Poland, *“judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary”*. This provision applies to judges of the common, administrative, military and Supreme Courts. Article 179 of the Constitution does not provide for the taking of an oath by these judges appointed by the President.

11. The requirement to take an oath before the President of the Republic is laid down in ordinary legislation governing the organisation of the courts. The relevant provisions are contained in Article 55(1) of the Law on Common Courts Organisation, Article 29(1) of the Act on the Supreme Court, Article 23(1) of the Law on the Organisation of Military Courts, and Article 5 of the Law on the Organisation of Administrative Courts. Under these provisions, a person appointed by the President of the Republic assumes the office of judge after taking the statutory oath before the President.

² [CDL-REF\(2026\)022rev-e](#)

³ As regards terminology, the Ministry of Justice of Poland stated in its written comments: *“The meaning of the word ‘wobec’, which we understand as ‘towards’, but which is translated in the draft opinion as ‘before’ or ‘in the presence of’. In our view, such translations do not convey the proper meaning of the term ‘wobec’, which under Polish law does not require physical presence at all. We suggest consistently translating the word ‘wobec’ as ‘towards’.”* The Venice Commission notes, however, that in the English translations of the relevant legislation published on the official website of the Constitutional Tribunal, the term *“towards”* is not used in provisions concerning the oath-taking of judges of the Constitutional Tribunal. The expression *“in the presence of the President”* is used in Article 4(1) of the Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal, whereas *“before the President”* is used in Articles 18(2) and 21(2) of the Act of 13 December 2016 and in Articles 6(1) and 11(5) of the Act of 30 November 2016. The present Opinion therefore follows the terminology used in those English translations, using principally the expression *“before the President”*.

⁴ [CDL-REF\(2026\)022rev-e](#)

⁵ [CDL-REF\(2026\)022rev-e](#)

B. Developments Concerning the Oath-Taking of Judges of the Constitutional Tribunal

12. The administration of the oath of office to judges of the Constitutional Tribunal by the President of the Republic has been one of the central legal and institutional issues arising from the constitutional crisis that began in Poland in 2015. The dispute concerns the relationship between the constitutional act by which the Sejm elects the judges of the Constitutional Tribunal, the statutory requirement that they take an oath before the President of the Republic, and the scope of the President's powers in relation to the administration of that oath.

13. The issue first arose following the parliamentary elections held in 2015. On 8 October 2015, the outgoing Sejm elected five judges of the Constitutional Tribunal. Following the parliamentary elections, the newly elected Sejm adopted resolutions declaring those elections ineffective and subsequently elected five different persons to the same judicial positions.⁶ On 2 December 2015, notwithstanding interim measures adopted by the Constitutional Tribunal, the Sejm proceeded with those elections by adopting five resolutions.

14. The President of the Republic refused to administer the oath from the five persons elected by the outgoing Sejm. Instead, he administered the oath from the five persons elected by the newly elected Sejm, four of whom took the oath on 2 and 3 December 2015, while the fifth took the oath on 9 December 2015. The President of the Constitutional Tribunal subsequently recognised those persons as employees of the Tribunal without assigning them judicial duties.⁷

15. In its judgment of 3 December 2015 (Case K 34/15), the Constitutional Tribunal examined the constitutionality of the statutory provisions governing the election of judges of the Constitutional Tribunal. It held that the legal basis for the election of the three judges replacing those whose terms of office expired during the term of the outgoing Sejm was constitutional, whereas the legal basis for the election of the two judges replacing those whose terms expired during the term of the newly elected Sejm was unconstitutional. The Tribunal further held that the President of the Republic was under an obligation to receive the oath from the three judges whose election had been validly made by the outgoing Sejm.⁸

16. The judgment also addressed the legal consequences of the election of a judge by the Sejm and the role of the President in the oath-taking procedure.⁹ The Tribunal held that the election by the Sejm constitutes the constitutional act through which a person acquires the status of judge of the Constitutional Tribunal. It further found that the statutory requirement to take the oath before the President could not be interpreted as conferring upon the President discretion to determine whether a lawfully elected judge should assume office. The Tribunal found that *“Article 21(1) of the Act referred to in point 1 – interpreted other than that the President of the Republic of Poland is obliged to give the oath of office forthwith to a judge of the Constitutional Tribunal who has been elected by the Sejm – is inconsistent with Article 194(1) of the Constitution”*.¹⁰

⁶ Venice Commission, [CDL-AD\(2016\)001](#), Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, paras 14 and 20.

⁷ Ibid, para 25.

⁸ Ibid, para 26.

⁹ Article 4 of the Act of 30 November 2016 on the Status of Judges of the Constitutional Tribunal corresponds to Article 21(1) of the former Act of 25 June 2015 on the Constitutional Tribunal, which was in force when the Constitutional Tribunal delivered its judgment of 3 December 2015 (Case K 34/15). Accordingly, references in the 2015 case-law to Article 21(1) concern the provision that is now contained in Article 4 of the Act on the Status of Judges of the Constitutional Tribunal.

¹⁰ [Constitutional Tribunal judgment K 34/15](#), operative part, point 5.

17. The President did not take the oath of the three judges whose election had been recognised as constitutional by the Tribunal and, consequently, they never exercised judicial functions within the Constitutional Tribunal. By contrast, the President took the oath of the five persons subsequently elected by the newly elected Sejm to the same judicial positions and they thereafter participated in the work and adjudication of the Tribunal.

18. In its judgment of 9 December 2015 (Case K 35/15), the Constitutional Tribunal held that the term of office of a judge of the Constitutional Tribunal commenced upon election by the Sejm and not upon taking the oath before the President of the Republic. It also found that *“Article 21(1) of the Act referred to in point 2, as amended by Article 1(4)(a) of the Act referred to in point 1, in the part which includes the wording “within 30 days from the date of election”, is inconsistent with Article 194(1) of the Constitution”*.¹¹

19. The controversy concerning the oath-taking procedure did not end with the events of 2015. Following the parliamentary elections of October 2023, the newly elected parliamentary majority adopted a number of political resolutions concerning the Constitutional Tribunal. Among them was the Sejm Resolution of 6 March 2024 on removing the effects of the constitutional crisis of 2015–2023 in the activities of the Constitutional Tribunal. The resolution stated that the appointment of certain persons to the Constitutional Tribunal had been unconstitutional and referred to the appointment of the incumbent President of the Tribunal as unlawful. These persons were elected to judicial seats which had already been filled by judges previously elected by the Sejm, as had been found by both the ECtHR and the ECJ.¹² The Resolution further called upon the judges of the Constitutional Tribunal to resign from office and invited public authorities to refrain from cooperating with the Tribunal in order to safeguard the principle of legality under the Constitution.¹³

20. Subsequently, the Government announced that it would neither publish nor recognise as judgments of the Constitutional Tribunal decisions adopted with the participation of persons whose status as judges was disputed. In parallel, on 13 September 2024, the Sejm adopted two bills intended to reform the Constitutional Tribunal and regulate its composition. The President referred both bills to the Constitutional Tribunal for preventive constitutional review. The two cases were joined and, by its judgment of 29 July 2025 (Kp 3/24), the Constitutional Tribunal found certain provisions challenged by the President to be inconsistent with the Constitution and considered those provisions to be inextricably linked with the legislation as a whole.¹⁴ Consequently, the legislation did not enter into force.

21. On 13 March 2026, the Sejm elected six new judges of the Constitutional Tribunal. Of those persons, two took the oath before the President of the Republic on 1 April 2026, while the President did not receive the oath from the remaining four. These developments gave rise to a further institutional dispute concerning the completion of the oath-taking procedure. On 9 April 2026, the four judges who had not been sworn in by the President took an oath addressed to the President in the presence of the Marshal of the Sejm, former Presidents of the Constitutional Tribunal and a notary, as well as other officials and subsequently transmitted notarised copies of their oaths to the Chancellery of the President.^{15 16}

¹¹ Constitutional Tribunal judgment [No. K 35/15](#), operative part, point 3 and sections 5 and 6.

¹² ECtHR, [Xero Flor w Polsce sp. z o.o. v. Poland](#), no. 4907/18, 7 May 2021, paras 289-291; [M.L. v. Poland](#), no. 40119/21, 14 December 2023, paras 160-176; [CJEU, Grand Chamber, judgment of 18 December 2025, Commission v Poland \(Ultra vires review of the Court's case-law – Primacy of EU law\)](#), C-448/23.

¹³ [Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 6 marca 2024 r. w sprawie usunięcia skutków kryzysu konstytucyjnego lat 2015-2023 w kontekście działalności Trybunału Konstytucyjnego](#) see also European Commission, 2024 Rule of Law Report, Country Chapter on the rule of law situation in Poland, SWD(2024) 821 final, 24 July 2024, p. 10.

¹⁴ [Two Bills adopted by the Parliament with regard to the Constitutional Tribunal](#).

¹⁵ [European Commission, 2026 Rule of Law Report, Poland country chapter, page 8](#).

¹⁶ [Senat Rzeczypospolitej Polskiej / Dziennik / Wydarzenia / Marszałek Senatu na ślubowaniu sędziów Trybunału Konstytucyjnego](#)

22. During the online meetings, the delegation of the Venice Commission received information from the Chancellery of the President and other interlocutors concerning several reasons for not administering the oath for the four judges concerned: these included doubts concerning the procedure by which the Sejm had elected them, as well as questions relating to the identification of the individual vacancies to which the judges had been elected and, consequently, the dates from which their respective terms of office were to run. The delegation was also informed that the professional backgrounds of the judges were being examined by the Chancellery of the President. As regards the decision to receive the oath from two of the judges concerned, the delegation was informed that their participation was considered necessary to ensure that the Constitutional Tribunal retained a sufficient number of judges to adjudicate, while allowing further time for the outstanding issues concerning the other judges to be resolved.

23. To-date, the four judges who took the oath in the presence of the Marshal of the Sejm have not been admitted to the exercise of judicial functions by the President of the Constitutional Tribunal and are not receiving judicial remuneration. They are consequently unable to participate in the General Assembly of the Constitutional Tribunal. According to the information received by the delegation of the Venice Commission during the online meetings, those judges had expressed their readiness to take the oath also in the presence of the President of the Republic but had received neither a response nor an invitation to do so. Although the Presidential Chancellery had not indicated that the President would definitively refuse to receive their oaths, no concrete steps had reportedly been taken to enable the oath-taking procedure to be completed.

24. On 27 April 2026, the President of the Republic submitted an application to the Constitutional Tribunal concerning a competence dispute between the President and the Sejm as to whether the competence to receive the oath from a person elected by the Sejm as a judge of the Constitutional Tribunal belongs exclusively to the President of the Republic.¹⁷ This application is pending. Pursuant to Article 86(1) of the Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal, "the institution of proceedings before the Tribunal shall result in a stay of proceedings before the authorities that are involved in the dispute over the powers".¹⁸ The Constitutional Tribunal has previously interpreted this provision as producing a suspensive effect *ex lege*.¹⁹ As it has done in several previous cases, the Chancellery of the President has relied on this provision in the present context to provoke the suspension of the operation of the law concerning the oath-taking of the four judges concerned and delay the administration of the oath.²⁰

25. On 30 April 2026, the four judges from whom the President had refused to receive the oath applied to the European Court of Human Rights. On 5 May 2026, the Court issued an interim measure indicating "to the Government of Poland, under Rule 39 of the Rules of Court, that the Respondent State should ensure that its competent authorities refrain from hindering the taking up and exercise of judicial duties by the applicants as judges of the Constitutional Court until any further decision on the applicants' request for interim measures is taken."

¹⁷ Case no. Kpt 1/26 of 27 April 2026. [Trybunał Konstytucyjny: Spór kompetencyjny pomiędzy Prezydentem a Sejmem o to, czy kompetencja do przyjęcia ślubowania od osoby wybranej przez Sejm na stanowisko sędziego TK należy wyłącznie do Prezydenta Rzeczypospolitej Polskiej](#)

¹⁸ [Act of 30 November 2016](#)

¹⁹ Judgment of the Constitutional Tribunal of 19 June 2024, No K 7/24: Reasoning Part, Section 2.5. <https://trybunal.gov.pl/postepowanie-i-orzeczenia/komunikaty-prasowe/komunikaty-po/art/12819-tryb-uchwalenia-ustawy?utm>

²⁰ [Minister Bogucki w programie „Gość Wydarzeń” w Polsat News \ Kancelaria \ Aktywność Ministrów \ Oficjalna strona Prezydenta Rzeczypospolitej Polskiej](#)

26. On 12 May 2026, the Constitutional Tribunal, sitting in a five-judge formation which included two judges whose election had previously been found by the European Court of Human Rights to be irregular²¹, adopted Decision No. K 3/26, in which it held that Article 4(1) of the Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal, interpreted as imposing an obligation on the President of the Republic of Poland to receive the oath of office from a person elected by the Sejm to the office of judge of the Constitutional Tribunal, is inconsistent with Article 126²² in conjunction with Article 2²³ of the Constitution.²⁴

27. On 11 June 2026, the Sejm elected a new judge of the Constitutional Tribunal, whose oath of office was subsequently received by the President of the Republic on 28 July 2026.²⁵ On 4 September 2026, the Sejm elected another judge of the Constitutional Tribunal. The delegation was informed that the Chancellery of the President had raised doubts as to whether the judge fulfilled the statutory professional requirements for election to the Constitutional Tribunal. At the time of adoption of the present Opinion, the President had not received the oath from that judge.

C. Relevant Venice Commission Opinions on the Constitutional Tribunal of Poland (2016 and 2024) and in respect of other countries

28. In its 2016 Opinion, the Venice Commission considered that *“taking the oath cannot be seen as required for validating the election of constitutional judges. The acceptance of the oath by the President is certainly important – also as a visible sign of loyalty to the Constitution – but it has a primarily ceremonial function”*.²⁶

29. In its 2024 Opinion on the draft constitutional amendments concerning the Constitutional Tribunal and two draft laws on the Constitutional Tribunal, the Venice Commission underlined *“Pursuant to Article 20 of the Act, the President of the Republic of Poland will have the obligation to accept the oath of a newly elected judge of the Constitutional Tribunal no later than 14 days after her or his election by the Sejm (and if this is not possible, the oath shall be made in writing, with the judge’s signature notarised and submitted to the Speaker of the Sejm). As highlighted by the Venice Commission in respect of Poland before, unlike the oath of deputies and members of the government, the taking of the oath of constitutional judges is not mentioned in the Constitution and it can thus not “be seen as required for validating the election of constitutional judges”. The Commission has furthermore stated that “The acceptance of the oath by the President is certainly important – also as a visible sign of loyalty to the Constitution – but it has a primarily ceremonial function”. Against the background of the situation in 2015, when lawfully elected judges of the Constitutional Tribunal were prevented from taking up their duties by the refusal of the President to take their oath in defiance of the judgments of the Constitutional Tribunal of 3 and 9 December 2015, the Commission welcomes that the Act clarifies that accepting the oath on the side of the President is*

²¹ ECtHR, [M.L. v. Poland](#), no. [40119/21](#), 14 December 2023, paras 173 and 174.

²² Article 126 of the Constitution:

1. The President of the Republic of Poland shall be the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority.
2. The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory.
3. The President shall exercise his duties within the scope of and in accordance with the principles specified in the Constitution and statutes.

²³ Article 2 of the Constitution: The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.

²⁴ See Decision [K 3/26](#).

²⁵ [The official website of the President of the Republic of Poland](#).

²⁶ Venice Commission, [CDL-AD\(2016\)001](#), Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, para 108.

obligatory, not optional, and that in cases where it is not made possible for judges to have their oath accepted, this can be done in writing".^{27 28}

30. The Venice Commission has addressed the role of other State authorities in the oath-taking of constitutional court judges in a number of opinions concerning other States. In its 2015 Opinion on the Draft Institutional Law on the Constitutional Court of Tunisia, the Commission considered that *"Article 12 provides that members of the Constitutional Court are appointed by decision of the President. Even if this is a mandatory power, this rule entails the risk that the President could prevent the candidates elected by the two other organs from fulfilling their term of office (for example by challenging their merit). Consequently, the election of candidates by the two other organs should be followed directly by the taking of the oath, without the need for a decision of the President"*.²⁹ The Commission further found that *"Article 14 provides that the members of the Constitutional Court take an oath before the President of the Republic. This also provides the President with the opportunity to prevent or delay the members of the Court taking up their office. Alternatively, candidates could take an oath before the organ which elected them"*.³⁰

31. In its 2016 Opinion on the Draft Law on the Constitutional Court of Ukraine, the Venice Commission underlined that *"in its opinion following this crisis, the Commission recommended that there should be a default mechanism for taking the oath. The Commission warmly welcomes that this problem is now settled by the acceptance of the oath before the Court itself."*³¹

32. More recently, in its 2025 Opinion on the draft law on the Constitutional Court of the Republic of Moldova, the Venice Commission stated that *"although a judge's oath to the Constitutional Court is a ceremonial formality, it nonetheless carries important legal significance. In particular, it marks the official commencement of the judge's mandate, during which he or she is bound by the undertakings contained in the oath"*. Moreover, the Commission emphasised that *"even if the oath is taken before the mentioned state institutions, their participation shall have only a ceremonial nature so that their absence would not impede the commencement of the judge's mandate"*.³² The question of the legal consequences of the oath requirement has also been addressed in other assessments of the Polish judicial system.³³

D. Relevant Judgments of the European Court of Human Rights

33. The composition of the Constitutional Tribunal of Poland and the circumstances surrounding the appointment of its judges has also been addressed in the case-law of the

²⁷ Venice Commission, [CDL-AD\(2024\)035](#), Poland Opinion on the draft constitutional amendments concerning the Constitutional Tribunal and two draft laws on the Constitutional Tribunal, para 58.

²⁸ Following their adoption by the Sejm on 13 September 2024, the President referred the two Acts (Act on the Constitutional Tribunal and the Act introducing the Act on the Constitutional Tribunal) to the Constitutional Tribunal for preventive constitutional review. By its judgment of 29 July 2025 (Kp 3/24), the Constitutional Tribunal found certain provisions unconstitutional and inseparably linked with the legislation as a whole and consequently found both Acts unconstitutional. The President therefore did not sign the Acts, which did not enter into force.

²⁹ Venice Commission, [CDL-AD\(2015\)024](#), Opinion on the Draft Institutional Law on the Constitutional Court of Tunisia, paras. 25.

³⁰ *Ibid* para 27.

³¹ Venice Commission, [CDL-AD\(2016\)034](#), Opinion on the Draft Law on the Constitutional Court of Ukraine, para. 21.

³² Venice Commission, [CDL-AD\(2025\)005-e](#), Opinion on the draft law on the Constitutional Court of the Republic of Moldova, paras. 44-48.

³³ OSCE/ODIHR in its Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (Sejm Prints no. 253 and 254, as of 24 July 2024) ([JUD-POL/502/2024](#)), recommended to clarify that the requirement for a newly elected judge of the Constitutional Tribunal to take an oath before the President of the Republic is not necessary for validating his or her election and that preventing a judge from taking the oath within the legally defined timeline should not become an obstacle for starting the term of office (para 61).

European Court of Human Rights. In *Xero Flor w Polsce sp. z o.o. v. Poland*, the Court found that one of the persons participating in the adjudication of the applicant's case had been elected to a judicial position that had already been validly filled by one of the judges elected in October 2015. The Court concluded that the participation of that person resulted in a violation of the applicant's right to a tribunal established by law under Article 6 § 1 of the European Convention on Human Rights. The Court treated the President's refusal to receive the oath from the judges lawfully elected by the outgoing Sejm as part of the sequence of events that led to the irregular composition of the Constitutional Tribunal.³⁴ In the case *M.L. v Poland* the Court found that the eighth-term Sejm had elected three Constitutional Court judges on 2 December 2015, even though the respective seats had already been filled by three judges elected by the previous Sejm. The President of the Republic had refused to swear in the three judges elected by the previous Sejm, and had received the oath of office from the three judges elected on 2 December 2015. The Court further found that the irregularities in the election procedure of the above-mentioned judges compromised the legitimacy of the Constitutional Court's bench which introduced the impugned restriction as a "tribunal established by law", its ruling fell short of what the rule of law required.³⁵

34. The execution of the *Xero Flor* judgment has been under the supervision of the Committee of Ministers since 2021. Most recently, the Committee examined the case at its 1563rd Human Rights meeting, in June 2026. In the context of the general measures required for the execution of the judgment, the Committee has addressed, inter alia, the lawful composition of the Constitutional Tribunal, the status of decisions adopted with the participation of irregularly appointed judges and the procedure for appointing judges to the Tribunal. The Committee of Ministers also encouraged the authorities to reconsider whether a legislative solution that would not be rejected by the Constitutional Court is possible, taking into account the recommendations of the Venice Commission on the 2024 drafts.³⁶

35. On 18 December 2025, the Court of Justice of the European Union adopted a Grand Chamber Judgment in which it held that "*since the Constitutional Court does not satisfy the requirements of an independent and impartial tribunal previously established by law on account of irregularities in the procedure for the appointment of three of its members in December 2015 and of its President in December 2016, Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU*".³⁷

E. Scope of the Opinion

36. The Opinion will focus primarily on the scope of the powers of the President of the Republic in relation to the oath-taking of the judges of the Constitutional Tribunal. The Commission will further address the appointment and oath-taking of the judges of other courts. An examination of the full range of appointments involving the President would extend the scope of the Opinion to matters unrelated to its principal subject and risk detracting from its central focus on the oath-taking of judges of the Constitutional Tribunal.

37. In the present Opinion the Venice Commission assesses the issues submitted to it from the perspective of applicable international standards, its previous Opinions concerning Poland and comparative constitutional practice, in the particular circumstances prevailing in Poland at this time.

III. Analysis

³⁴ ECtHR, *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021, paras 289-291.

³⁵ ECtHR, *M.L. v. Poland*, no. 40119/21, 14 December 2023, paras 171 and 174.

³⁶ <https://hudoc.exec.coe.int/eng?i=004-58569>

³⁷ CJEU, Grand Chamber, judgment of 18 December 2025, *Commission v Poland (Ultra vires review of the Court's case-law – Primacy of EU law)*, C-448/23.

A. Comparative Overview

38. As set out above, the requirement that judges of the Constitutional Tribunal take an oath before the President of the Republic is not provided for by the Polish Constitution, but by ordinary legislation. In this respect, the Polish model is not exceptional. Comparative practice in European States shows considerable diversity as regards both the level of regulation of the oath-taking procedure and the authority before which the oath is taken.

39. The taking of an oath by judges and other holders of public office has a long tradition in European constitutional systems. The oath generally constitutes a solemn public undertaking to respect the Constitution and the law and to exercise the functions of office faithfully, independently and impartially. The relevant distinction, for the purposes of the present Opinion, is between the legal act by which a person is elected or appointed as a constitutional judge and the subsequent act of taking the oath, as well as between the authority competent to make the appointment and the authority before which the oath is taken.

a. Countries where neither the oath nor the authority administering it are provided in the Constitution

40. **Austria** provides an example which is close to Poland as regards the level of regulation. Article 147 of the Federal Constitution regulates in detail the composition and appointment of the Constitutional Court but does not provide for the oath of its members. The oath is governed instead by Section 8 of the Constitutional Court Act.³⁸ Before assuming office, all members undertake to observe the Constitution and the laws and conscientiously discharge their duties. The President and Vice-President of the Constitutional Court take the oath before the Federal President, whereas the other members and substitute members take it before the President of the Constitutional Court. The Austrian system thus separates the constitutional rules governing the appointment from the statutory regulation of the oath and, moreover, does not require all members of the Constitutional Court to take the oath before the same authority.

41. In **Germany**, Article 93(2) of the Basic Law provides that the judges of the Federal Constitutional Court are elected by the Bundestag and the Bundesrat; ordinary legislation provides both that the Federal President formally appoints the elected judges and that, on assuming office, they take their oath before the Federal President.³⁹

42. In **Spain**, the Constitution determines the system of nomination and formal appointment of Constitutional Court judges. According to Article 159 of the Constitution, the Constitutional Court shall consist of twelve members appointed by the King. Of these, four shall be nominated by Congress by a majority of three-fifths of its members, four shall be nominated by the Senate with the same majority, two shall be nominated by the Government, and two by the General Council of the Judiciary. The requirement that the judges take an oath or pledge before the King on taking office is contained in the Organic Law on the Constitutional Court.⁴⁰

43. In **Portugal**, the Constitution provides that ten judges are elected by the Assembly of the Republic and the remaining three are co-opted by those judges; the Constitution does not assign the President of the Republic a role in their selection. The Law on the Constitutional Court provides that the judges take office and take their oath before the President of the Republic.⁴¹

³⁸ [Constitutional Court Act \(Verfassungsgerichtshofgesetz 1953\)](#), official Austrian RIS database.

³⁹ [Act on the Federal Constitutional Court](#) (Bundesverfassungsgerichtsgesetz – BVerfGG), sections 5-11.

⁴⁰ [Organic Law 2/1979](#), Article 21.

⁴¹ [Law of the Constitutional Court Law no. 28/82, of 15 November](#), Article 20.

44. In **Latvia**, Constitutional Court judges are approved by the Saeima, while Section 5 of the Constitutional Court Law provides that, following approval, they take the judicial oath, which is administered by the President of the Republic; the judge begins to perform his or her duties after taking the oath.⁴²

45. In the **Republic of Moldova**, the Constitution distributes the power to appoint Constitutional Court judges among Parliament, the Government and the Superior Council of Magistracy. Under the 2025 Law on the Constitutional Court, the oath is taken before Parliament, the President of the Republic and the Superior Council of Magistracy. The same law provides a default mechanism: if the oath cannot be taken before those authorities within the prescribed period, it is taken before the Plenum of the Constitutional Court.⁴³

46. In **Croatia**, the Constitution provides for the election of the judges of the Constitutional Court by Parliament, whereas the Constitutional Act on the Constitutional Court requires them, before entering office, to take an oath before the President of the Republic.⁴⁴

b. Countries where both the oath and the authority administering it are provided by the Constitution

47. According to Article 84 (2) of the Constitution of **Czechia**, the justices of the Constitutional Court shall be appointed by the President of the Republic with the consent of the Senate. Article 85 of the Constitution provides that a judge of the Constitutional Court assumes his or her duties upon taking the oath administered by the President and further provides that refusal to take the oath, or taking it with reservations, results in the person being deemed not to have been appointed.⁴⁵

48. In **Slovakia**, the judges of the Constitutional Court are appointed by the President on the proposal of the National Council. Article 134 of the Constitution itself provides for the oath before the President and provides that the judge assumes office upon taking it.⁴⁶

49. In **Ukraine**, the President, the Verkhovna Rada, and the Congress of Judges each appoint six judges to the Constitutional Court. Article 148 of the Constitution provides that a judge of the Constitutional Court assumes his or her powers from the day on which the oath is taken at a special plenary meeting of the Constitutional Court.⁴⁷

50. In **Lithuania**, the Seimas appoints three candidates for justices of the Constitutional Court from the candidates submitted by the President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court. Article 104 of the Constitution requires judges of the Constitutional Court, before entering office, to take an oath in the Seimas.⁴⁸

51. In **Albania**, the Constitutional Court is composed of nine members, which are appointed for nine years. Three members are appointed by the President of the Republic, three members are elected by the Assembly, and three members are elected by the Supreme Court. Article 129 of the Constitution provides that a judge of the Constitutional Court assumes office after taking the oath in front of the President of the Republic.⁴⁹

⁴² [Constitutional Court Law, Section 5.](#)

⁴³ [Law on the Constitutional Court of Moldova](#), Article 14.

⁴⁴ [The Constitutional Act on the Constitutional Court of the Republic of Croatia](#), Article 8.

⁴⁵ [Constitution of the Czech Republic](#), Articles 84 and 85.

⁴⁶ [Constitution of the Slovak Republic](#), Article 134 (2) and (5).

⁴⁷ [Constitution of Ukraine](#), Article 148.

⁴⁸ [Constitution of the Republic of Lithuania](#), Articles 103 and 104.

⁴⁹ [Constitution of Albania](#), Articles 125 and 129.

c. Countries where the oath is provided by the Constitution, but the authority administering it is provided by legislation

52. In **Italy**, the Constitutional Court is composed of fifteen judges, a third nominated by the President of the Republic, a third by Parliament in joint sitting and a third by the ordinary and administrative supreme Courts. Article 135 of the Constitution links the nine-year term of office of Constitutional Court judges to the date on which the oath is taken.⁵⁰ Article 5 of the Law No 87/1953, envisages that before taking office, the judges of the Court take an oath before the President of the Republic, in the presence of the Presidents of the two Houses of Parliament.

53. The comparative material above shows that there is no uniform European model as regards the legal source governing the oath and the authority before which it is taken, nor as concerns which authority administers the oath. In some cases, the oath is not mentioned in the Constitution (Austria, Germany, Poland, Spain, Portugal, Latvia and the Republic of Moldova). In these cases, the oath is not a constitutive part of the assumption of office at the constitutional level. The requirement to take an oath, as well as the manner in which and the authority before which it is administered, are provided for and regulated by legislation.

54. In other cases, such as Italy, the oath is provided for by the Constitution and marks the commencement of a constitutional judge's term of office. However, the modalities of taking the oath, including the authority before which it is taken, are regulated at the statutory level. Finally, in some cases, the oath is provided for and regulated by the Constitution itself (Czechia, Slovakia, Ukraine, Lithuania, Albania), which also specifically indicates the authority before which it is taken.

55. As this overview shows, even where the Constitution provides that the President of the Republic administers the oath, this does not imply that the President has the power to examine the merits of the appointment or the procedure leading to the oath. Where a constitution intends to confer such a power on the President, it must do so explicitly, for example among the constitutionally enumerated powers of the President. It should be underlined in this respect that the oath is taken *before* the President and is not subject to the President's discretion. Consequently, the President cannot, on this basis, claim a power to review the procedure of nomination either. A fortiori, where it is legislation that provides that constitutional judges take the oath before the President, such legislation cannot confer on the President a power that has no basis in the Constitution.

56. It follows that in the absence in the Constitution of an explicit power of the President to participate in the procedure of nomination of the constitutional justices, the President does not have any discretionary power in respect of the oath taking: he or she is legally required to administer it. This is true *a fortiori* when the role of the President in the oath taking is only allocated by legislation. It is an obligation of the President to receive the oath without undue delay.

57. The comparative analysis also shows that the participation of the Head of State in the oath-taking procedure does not necessarily correspond to a power to select or appoint the constitutional judge. Portugal, Croatia, Latvia and Moldova provide clear examples: notwithstanding the absence of a presidential power to select the judges concerned, the President administers their oath. Conversely, in Ukraine and Lithuania the President participates in the appointment of judges but the oath is taken before the Constitutional Court or Parliament respectively, rather than before the head of State. The authority before which the oath is taken is therefore a matter of constitutional or legislative design and does not, in itself, determine the distribution of powers in the appointment process.

⁵⁰ [Constitution of the Italian Republic](#), Article 135.

B. The Role of the President of Poland in receiving the Oath of the Judges Elected by the Sejm

58. Article 194(1) of the Constitution entrusts the election of judges of the Constitutional Tribunal to the Sejm and does not provide anything about an oath or the procedure to administer it. It is Article 4 of the Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal that provides that *“a person elected to assume the office of a judge of the Tribunal shall take the following oath in the presence of the President of the Republic of Poland”*. Pursuant to Article 4(2), *“refusal by the person elected to take the oath is tantamount to resignation from office”*.

59. According to Article 5 of the same law *“A judge of the Tribunal shall commence his/her employment relationship after taking the oath of office. After taking the oath of office, a judge of the Tribunal shall immediately arrive at the Tribunal to assume judicial duties; the President of the Tribunal shall assign cases to the judge and create conditions that make it possible to perform the judicial duties.”*⁵¹ While the requirement to take the oath before the President and the consequence attached to a refusal to do so were already provided for in the Acts of 1997 and 2015, the provisions linking the taking of the oath to the commencement of the judge's service relationship and the subsequent assignment of cases by the President of the Constitutional Tribunal were introduced in legislation adopted in 2016.

60. The distinction between the constitutional act of election and the subsequent requirement to take an oath is important for determining the nature of the oath as well as the nature of the President's powers in this respect. The Venice Commission has already addressed this question in its 2016 Opinion on Poland. It emphasised that, unlike certain oaths expressly provided for by the Constitution, the oath of judges of the Constitutional Tribunal was regulated only by ordinary legislation. The Commission stated that: *“Government experts argue that this oath is decisive for the final validity of the appointment. However, in contrast to the oath by Members of Parliament (in the presence of the Sejm, Article 104(2) of the Constitution) and members of the Government (in the presence of the President of the Republic, Article 151 Constitution), the oath of judges of the Constitutional Tribunal is regulated only in the law on the Tribunal, but not in the Constitution itself. Against this legal background, taking the oath cannot be seen as required for validating the election of constitutional judges. The administration of the oath by the President is certainly important – also as a visible sign of loyalty to the Constitution – but it has a primarily ceremonial function.”*⁵² Thus, in the light of these previous findings of the Venice Commission and the comparative analysis presented in this Opinion, the oath cannot be regarded as having a constitutive effect on the election of the constitutional judges.

61. The Venice Commission stresses once again that Article 194(1) of the Constitution does not contain any reference to a role of the President in the election of judges of the Constitutional Tribunal, in contrast, for example, with Article 179 of the Constitution which assigns to the President the power *to appoint* the ordinary judges. The statutory requirement that the oath be taken *“in the presence of the President”* or *“before the President”* cannot therefore be interpreted as conferring upon the President a competence which the Constitution does not provide. In particular, it cannot authorise the President to review the legality of the election, to assess the substantive suitability of a judge elected by the Sejm, or otherwise to approve, refuse or reconsider the Sejm's choice or to determine the beginning of the judge's mandate. The Constitution has not assigned to the President a general veto on the assumption of office of the constitutional judges elected by the Sejm. Nor can Articles 7 and 126 of the Constitution, setting out the President's role as guarantor of the continuity of State authority

⁵¹ [The Constitutional Tribunal Act](#)

⁵² Venice Commission, [CDL-AD\(2016\)001](#), Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, para 108.

and guardian of the Constitution, in themselves constitute a legal basis for withholding the reception of the oath for an indeterminate period.

62. The constitutional interpretation of the President's role is that of a primarily ceremonial duty, intended to mark the assumption of judicial office. The oath bears nonetheless an important legal significance. Under Article 4 of the Act of 30 November 2016, the statutory duty to take the oath rests, in the first place, on the "person elected to assume the office of a judge"⁵³ of the Constitutional Tribunal. The President's presence lends institutional solemnity to this undertaking. Moreover, as long as the person elected has not taken the oath, the legislation attaches consequences to the exercise of certain functions within the Tribunal.⁵⁴

63. The Venice Commission has previously recalled, with reference to the relevant case law of the Constitutional Tribunal, that the President is under an obligation to receive the oath from judges elected by the Sejm.⁵⁵ For the reasons set out above, the Venice Commission considers that this obligation follows from the constitutional allocation of powers itself: where the Sejm has exercised its power of election under Article 194(1), the President is obliged to receive the oath and has no discretion to approve or refuse the Sejm's choice.

64. This understanding is also consistent with comparative considerations. In several European systems, the head of State presides over the oath-taking ceremony despite having no role in the election or appointment of the constitutional judges concerned. In other systems the oath is taken before Parliament or the constitutional court itself. What is decisive is therefore not the identity of the authority before whom the oath is taken, but the powers conferred upon that authority by the relevant constitutional framework. In Italy, Article 135 of the Constitution itself links the commencement of the term of office of judges of the Constitutional Court to the taking of the oath, which thus constitutes a necessary condition for assuming judicial functions. Article 5 of Law No. 87 of 11 March 1953 provides that the oath is taken before the President of the Republic. The statutory provision of the President's role in the oath-taking procedure does not, however, confer upon the President a power to refuse to receive the oath or to delay the swearing-in.

65. The Venice Commission acknowledges that questions may arise concerning the legality of an election by the Sejm, the identification of the vacancy to which a judge has been elected, or the fulfilment by an elected judge of statutory eligibility requirements. The relevant constitutional question, however, is which authority is competent to determine such matters, in accordance with which procedure and with what legal consequences. The Constitution has not assigned this role to the President.

66. The prolonged non-completion of the oath-taking procedure may have direct consequences for the Constitutional Tribunal's capacity to exercise its adjudicatory functions. Article 37(2) of the Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal⁵⁶ provides that "*the consideration of a case by a full bench of the Tribunal shall require the participation of at least 11 judges of the Tribunal*". During the online meetings the delegation of the Venice Commission was informed that the inability of the elected judges concerned to assume judicial duties, together with the expiry of the term of office of another judge on 18 September 2026 and the temporary absence of a further judge, may result in the Tribunal being unable to reach the number of judges required to adjudicate in full bench. In the present circumstances, the

⁵³ [The Constitutional Tribunal Act](#), Article 5 of the Act on the Status of the Judges of the Constitutional Tribunal, Article 6 of the Act of on the Organisation of the Constitutional Tribunal and Articles 18 and 21 of the Act of 13 December 2016.

⁵⁴ Ibid.

⁵⁵ Venice Commission, [CDL-AD\(2024\)035](#), Poland Opinion on the draft constitutional amendments concerning the Constitutional Tribunal and two draft laws on the Constitutional Tribunal, para 6.

⁵⁶ [The Constitutional Tribunal Act](#)

unresolved oath-taking procedure may thus affect the Tribunal's capacity to determine matters which, under the applicable legislation, require consideration by the full bench.

67. A distinct, and no less important, consequence concerns the functioning of the General Assembly of the Constitutional Tribunal. Pursuant to Article 6(1) of the same Act, *"the General Assembly shall comprise the incumbent judges of the Tribunal who have taken the oath of office before the President of the Republic of Poland"*. The General Assembly exercises functions which are essential to the institutional operation of the Tribunal Under Article 6(2)(9) of that Act, it is competent to *"adopt a draft estimate of revenue and expenditure of the Tribunal"*. The inability of elected judges to complete the oath-taking procedure may therefore affect not only the adjudicatory capacity of the Tribunal, but also its ability to take decisions necessary for its financial and administrative functioning.

68. During the online meetings the delegation of the Venice Commission was informed that, as a result of the limited number of judges currently able to participate in the General Assembly, it risks being unable to take decisions required for the normal financial operation of the Tribunal. Such a situation would be particularly serious: a prolonged failure to complete the oath-taking procedure would then cease to affect only the status and ability to exercise judicial functions of the judges concerned and would have consequences for the effective functioning of the Constitutional Tribunal as an institution, including its capacity to secure the financial resources necessary for the performance of its constitutional functions.

69. Moreover, the Venice Commission was informed that the prolonged failure to complete the oath-taking procedure also affects the proper formation of adjudicating panels. Judges duly elected by the Sejm whose oath has not been received are not only prevented from adjudicating, but are also excluded from the assignment of cases, notwithstanding the requirement under Article 38(1) of the Act on the Constitutional Tribunal that cases be assigned to judges in alphabetical order and according to the order in which they are received. Their continued exclusion may therefore raise serious concerns as to the proper composition of adjudicating panels.

70. In this connection, during the online meetings the Venice Commission heard repeated references to the judgment of the Constitutional Tribunal of 3 December 2015 (K 34/15), which some interlocutors invoked as recognising a possibility for the President to postpone the taking of the oath. The Venice Commission recalls that the starting point of that judgment is that receiving the oath from a newly elected judge constitutes an obligation of the President which, in the absence of a statutory time-limit, must be fulfilled *"forthwith"*. K 34/15 recognised only a narrowly circumscribed possibility of postponement in an *"extraordinary, objective and unambiguous"* situation that *"must be linked to an obvious and unambiguous circumstance"*. The postponement is only admissible for the time rationally necessary to dispel doubts and under the condition that the result of extending the period of not giving the oath will not bring about consequences that are even less acceptable constitutionally, such as a paralysis of the activity of the Constitutional Tribunal, whose capacity to act constitutes a constitutional value in itself.⁵⁷ On the basis of the information available to the Venice Commission, the

⁵⁷ [Constitutional Tribunal judgment K 34/15](#), section 8.5.2. "The occurrence of an extraordinary, objective and unambiguous situation which may not rationally be predicted and prevented may require that the principle of the protection of the supremacy of the Constitution will bind the President to take certain action and will justify extending a period for the giving of the oath of office, but only as much as it is rationally necessary to dispel the doubts. However, a situation justifying the extension of a period for giving the oath of office must be linked to an obvious and unambiguous circumstance indicating that: the Sejm did not adopt a resolution within the meaning of Article 120, second sentence, of the Constitution; a given person has no legal capacity to assume the mandate of a judge of the Tribunal; or, already after the election of the judge, a permanent and insurmountable impediment to the exercise of the judicial office has emerged, due to previously-unknown personal circumstances of the judge. Only after determining that, in a given case, one of those situations occurs could the President of Poland consider extending a waiting period for taking the oath of office. However, this is only admissible under the condition that the result of extending the period of not giving the oath of office will not bring about consequences that are not

circumstances identified by the Tribunal as potentially justifying such a postponement do not appear to be present in the cases under consideration. In any event, the Tribunal expressly ruled out interpreting this exceptional possibility as conferring on the President a power to refuse to receive the oath.

71. K 34/15 further stressed that the duty of a public authority to assess the lawfulness of its own actions does not confer a power to review the acts of another constitutional authority; such a power requires an explicit legal basis under Article 7 of the Constitution. Constitutional supremacy therefore also requires respect for the constitutional allocation of competences, including the Sejm's power under Article 194(1) to elect judges of the Constitutional Tribunal. The President's role in administering the oath cannot consequently become a means of reviewing that election. Moreover, even an exceptionally justified postponement cannot produce constitutionally less acceptable consequences, including the paralysis of the Tribunal. This is particularly relevant where continued delay may itself impair the Tribunal's adjudicatory, institutional or financial functioning.

72. This conclusion finds further support in the Venice Commission's opinions concerning other constitutional systems. In its Opinion on Slovakia, the Commission considered that *"the Constitution does not expressly empower the President to refuse a judge - appointed in accordance with the Constitution - to take the oath. And there is nothing in the Constitution which would suggest by implication that he would have such a power."*⁵⁸ More recently, in its Opinion on Moldova, the Commission emphasised that the participation of a State authority in the administration of the oath must not become an obstacle preventing a validly appointed judge from taking office.⁵⁹ The Commission has accordingly stressed the importance of clear rules and time-limits governing the administration of the oath,⁶⁰ and, in other contexts, has supported mechanisms designed to prevent the oath-taking procedure from being used to impede the assumption of judicial office.⁶¹

73. The case-law of the European Court of Human Rights provides further support for maintaining the distinction between the Sejm's constitutional power of election and the President's role in the oath-taking procedure. In *Xero Flor w Polsce sp. z o.o. v. Poland*, the Court examined the sequence of events surrounding the election of judges to the Constitutional Tribunal in 2015, including the President's refusal to receive the oath from three judges whose election had subsequently been recognised as valid by the Constitutional Tribunal, and the subsequent election and swearing-in of other persons to the same positions. The Court found that *"those acts and omissions of the President of the Republic should be regarded as a contravention of the domestic law in respect of the election process for Constitutional Court judges"*.⁶²

74. Against this background, the Venice Commission is of the view that the relevant provisions governing the oath-taking of judges of the Constitutional Tribunal should be applied in accordance with their statutory purpose, so that judges elected by the Sejm are able to complete the oath-taking procedure without delay and that any doubts concerning the legality of their election or their eligibility be resolved by the competent authorities through the procedures provided for by the Constitution and the law.

even less acceptable constitutionally, such as a paralysis of the activity of the Constitutional Tribunal, whose capacity to act constitutes a constitutional value in itself. When making such a decision, the President takes full responsibility – provided for in the Constitution – for the consequences of the decision."

⁵⁸ Venice Commission, [CDL-AD\(2014\)015](#) Opinion on the procedure for appointing judges to the Constitutional Court in times of the Presidential transition in the Slovak Republic, paras. 28-30.

⁵⁹ Venice Commission, [CDL-AD\(2025\)005](#), Opinion on the draft law on the Constitutional Court of the Republic of Moldova, para. 44.

⁶⁰ *Ibid.*, para. 45.

⁶¹ Venice Commission, [CDL-AD\(2016\)034](#), Opinion on the Draft Law on the Constitutional Court of Ukraine, para. 21.

⁶² ECtHR, 7 May 2021, *Xero Flor w Polsce sp. z o.o. v. Poland* (appl. no. 4907/18), paras. 269-270.

C. Safeguards against Failure to Complete the Oath-Taking Procedure

75. The conclusion that receiving the oath of a judge elected by the Sejm constitutes an obligation of the President, rather than a discretionary power to approve or reject the Sejm's choice, raises the further question as to how the oath-taking requirement is to operate where the President does not receive the oath and whether the resulting non-completion of the procedure may prevent a judge elected by the Sejm from assuming judicial functions.

76. In December 2024, the Venice Commission adopted an opinion concerning among others a mechanism set out in the amendments to the Act on the Constitutional Tribunal (which have never entered into force) to prevent undue delays by the President in the administration of the oath of the judges of the Constitutional Tribunal:

"Pursuant to Article 20 of the Act, the President of the Republic of Poland will have the obligation to accept the oath of a newly elected judge of the Constitutional Tribunal no later than 14 days after her or his election by the Sejm (and if this is not possible, the oath shall be made in writing, with the judge's signature notarised and submitted to the Speaker of the Sejm). [...]. Against the background of the situation in 2015, when lawfully elected judges of the Constitutional Tribunal were prevented from taking up their duties by the refusal of the President to take their oath in defiance of the judgments of the Constitutional Tribunal of 3 and 9 December 2015, the Commission welcomes that the Act clarifies that accepting the oath on the side of the President is obligatory, not optional, and that in cases where it is not made possible for judges to have their oath accepted, this can be done in writing".⁶³

77. Consistently with its analysis of the ceremonial nature of the oath in Poland and referring to the constitutional crisis which took place in Poland at that time, the Commission therefore welcomed that, where the oath cannot be received by the President in person, its completion in writing may constitute an alternative means of fulfilling the oath-taking requirement.

78. In its 2025 Opinion on the Republic of Moldova, the Commission stressed that the oath of a constitutional judge, although a ceremonial formality carrying important legal significance, *"must not be employed to block a validly appointed judge from taking office"*.⁶⁴ It recommended greater clarity as to the time within which the oath should be administered, while the legislation subsequently adopted provides, in defined circumstances, for the oath to be taken before the Plenary of the Constitutional Court where the ordinary procedure cannot be followed.⁶⁵

79. Clear legislative provisions to remedy the failure of the President to participate in the oath-taking procedure are undoubtedly desirable from the perspective of legal certainty. As the Updated Rule of Law Checklist states, where there is a risk of one constitutional body blocking the work of another, *"the legislation should provide for appropriate anti-blockage mechanisms"*.⁶⁶ In principle, difficulties of this kind pending legislative reforms should be prevented or addressed through loyal cooperation between constitutional authorities.⁶⁷ The

⁶³ Venice Commission, [CDL-AD\(2024\)035](#), Poland Opinion on the draft constitutional amendments concerning the Constitutional Tribunal and two draft laws on the Constitutional Tribunal, para 58.

⁶⁴ Venice Commission, [CDL-AD\(2025\)005](#), Opinion on the draft law on the Constitutional Court of the Republic of Moldova, paras. 44-48.

⁶⁵ [Law on the Constitutional Court of the Republic of Moldova 10.04.2025](#).

⁶⁶ Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist para 79.

⁶⁷ The principle of cooperation between constitutional organs is well explained in *The Collaborative Constitution* (Aileen Kavanagh; Cambridge Studies in Constitutional Law 2024 at p11) as follows,

'In order to avoid a downward spiral of escalating animosity and entrenched antagonism, the key constitutional actors need to carry out their constitutional roles with a modicum of constitutional restraint. Therefore, mutual respect begets mutual restraint, which bespeaks a concern to channel, constrain and manage inter branch conflict and rivalry in constitutionally constructive ways. Collaboration does not naively suggest an absence of tension or

Preamble to the Constitution itself refers to “cooperation between the public powers”, and the Updated Rule of Law Checklist recognises that the principle of loyal cooperation may serve as a means of resolving conflicts between constitutional bodies. At the same time, the Checklist expressly acknowledges the possibility that this principle may not be respected and that one constitutional body may block the work of another.⁶⁸

80. The present impossibility for several constitutional court judges to take up their functions cannot be viewed as an isolated procedural disagreement concerning the manner in which an oath is to be taken. It forms part of a longer-standing institutional difficulty concerning the composition and effective functioning of the Constitutional Tribunal. In this respect, the Venice Commission refers to the Benchmark on “Restoration of the Rule of Law” in its Updated Rule of Law checklist, where it stressed in particular that restorative measures may be required to implement binding judgments of an international court but should be compatible with the basic principles of the constitution, and justified by a pressing need and proportionate. The Updated Rule of Law Checklist further emphasises that *“measures adopted [to restore the rule of law] [...] should have regard, inter alia, to the severity and duration of the flaws in the system and the extent to which public confidence has been undermined”*.⁶⁹

81. In the present case, the Commission is of the view that, in the prevailing circumstances of non-effectiveness of the constitutional remedy, strict adherence to the statutory requirement that the oath be administered before the President would enable the President, by refusing to act, or by applying to the Constitutional Tribunal to prevent the assumption of office by judges validly elected by the Sejm and thereby frustrate the constitutional distribution of powers. In such exceptional circumstances, it is arguable that the statutory requirement concerning the administration of the oath cannot be interpreted so as to permit the obstruction of the Constitution itself. Accordingly, the Commission considers that it is constitutionally justified to permit the assumption of office and the start of the judicial service relationship without the President’s participation where the President unlawfully refuses to administer the oath. Although such a solution would depart from the literal wording of the relevant statutes, it would better preserve the constitutional allocation of powers and prevent the abuse of a merely ceremonial function to obstruct the functioning of the Constitutional Tribunal. The Commission moreover considers somewhat artificial the distinction between obtaining the status of a judge and the commencement of the judge’s employment relationship, which depends, inter alia, on the assignment of cases by the President of the Constitutional Tribunal.

82. The Venice Commission recalls that the European Court of Human Rights has issued an interim measure to the Government of Poland, under Rule 39 of the Rules of Court, that the Respondent State should *“ensure that its competent authorities refrain from hindering the taking up and exercise of judicial duties by the applicants as judges of the Constitutional Court until any further decision on the applicants’ request for interim measures is taken.”*

83. The Venice Commission takes note of the procedure followed on 9 April 2026 in respect of the four judges elected by the Sejm whose oath had not been received by the President. The judges read and signed the oath in the Sejm in the presence of a notary; the oath was addressed to the President of the Republic and notarised copies were lodged with the Chancellery of the President on the same day.⁷⁰ This procedure, which was similar to the procedure set out in the amendments to the Act on the Constitutional Court adopted by the Sejm, but which did not enter into force following their referral by the President to the

conflict between the branches. Indeed, it discerns a duty of mutual respect and restraint between interdependent actors who have a responsibility to make the constitutional partnership work. If constitutions are shaped by the working relationships between the key constitutional actors, then there is a duty on all branches of government to work on their relationships and to treat each other with constitutional civility and mutual respect’.

⁶⁸ Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist, para. 79.

⁶⁹ Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist, paras. 157-158.

⁷⁰ [European Commission, 2026 Rule of Law Report, Poland](#), page 8.

Constitutional Tribunal and the subsequent finding of unconstitutionality, enabled the judges elected by the Sejm to perform the act required of them while preserving the prescribed wording and solemn character of the oath and maintaining the President as its addressee. The Commission, in view of the primarily ceremonial nature of the President's role, which is exercised in his capacity as Head of state, rather than as an exercise of executive power, is convinced that the absence of his physical participation does not, in itself, alter the constitutional allocation of powers, given that the Constitution does not provide for a role of the President of Poland in respect of the oath-taking of the constitutional judges. This case is therefore different from that of Albania, where the Commission raised issues of constitutionality of a similar situation "as the Constitution clearly states that the oath should be given "in front of" the President".⁷¹

84. The Venice Commission therefore recommends that, when the President does not receive the oath of a judge elected by the Sejm for an unjustified period of time, the oath-taking requirement may, in the circumstances described above, be fulfilled without the President's physical participation, provided that its essential elements are preserved. In particular, the oath should be made in the prescribed form, addressed to the President through a duly verified official written document and formally submitted to the President. This gives effect to the statutory oath-taking requirement while ensuring that the non-performance of a primarily ceremonial function does not prevent the Sejm's exercise of its constitutional power of election from taking effect or impair the effective functioning of the Constitutional Tribunal. Once the oath has been validly completed in this manner, the judge should be able to assume judicial duties and be assigned cases in accordance with the applicable legislation. When the situation permits, legislative amendments providing for an appropriate anti-deadlock mechanism should be prepared and adopted.

D. Presidential Powers in the Appointment of Judges of Other Courts

85. The position of judges of courts other than the Constitutional Tribunal requires separate consideration. The constitutional framework governing their appointment differs significantly from that applicable to judges of the Constitutional Tribunal. Pursuant to Article 179 of the Constitution, "*judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary*". The Constitution therefore allocates to the President the power to appoint the judges.

86. As in the case of judges of the Constitutional Tribunal, the Constitution however, does not provide for the oath to be taken by judges after they have been appointed by the President. The requirement to take the oath is laid down in ordinary legislation. Article 55(1) of the Law on Common Courts Organisation, Article 29(1) of the Act on the Supreme Court, Article 23(1) of the Law on Organisation of Military Courts and Article 5 of the Law on the Organisation of Administrative Courts provide, respectively, that a judge of the court concerned is a person appointed by the President "who has taken an oath before the President".

87. The President has two distinct roles: a constitutional role in the appointment of the judges and the statutory role to administer the oath after the appointment. The precise scope of the President's powers under Article 179, and in particular the question whether and under what circumstances the President may refuse to appoint a candidate proposed by the National Council of the Judiciary, falls outside the principal subject matter of the present Opinion.

88. Nevertheless, the Commission wishes to recall its considerations in its Report on Judicial Appointments that, where the Head of State is entrusted with the appointment of judges, what matters in particular is the extent to which the Head of State is free in deciding on the

⁷¹ Venice Commission, [CDL-AD\(2020\)010](#), Albania, Opinion on the appointment of judges to the Constitutional Court, paras. 99 and 100.

appointment. The Commission considered that the main role in the process should be given to an independent body, such as a judicial council, and that proposals made by such a body should be rejected only exceptionally.⁷² These considerations reflect the need to safeguard judicial independence and to limit undue influence over judicial appointments. They are also consistent with the broader requirements of legality, legal certainty and prevention of abuse of power reflected in the Venice Commission's Updated Rule of Law Checklist. Accordingly, while Article 179 of the Constitution confers upon the President a genuine constitutional role in the appointment of judges, the existence of that competence does not, in itself, place the manner in which it is exercised outside the requirements of the rule of law or dispense with the need for safeguards against arbitrariness.

89. In its recent Opinion on Finland, the Venice Commission examined a system in which the President has the power to appoint the judges of the apex jurisdictions and may accordingly refuse to appoint a candidate proposed for judicial office. The Commission noted that such refusals had been extremely rare in practice. While not questioning this power, the Commission considered that requiring an explicit and sufficiently reasoned written decision in the event of a refusal would enhance the transparency and accountability of the appointment process. It also took note of the absence of judicial review in Finland, in the light of the particular constitutional culture and the existence of other forms of institutional oversight.⁷³

90. In this respect, the recent judgment of the European Court of Human Rights in *Sobczyńska and Others v. Poland* is of particular importance. The case concerned the President's refusal to appoint candidates to judicial office who had fulfilled the applicable eligibility requirements, successfully participated in the relevant selection procedures and had been proposed for appointment by the National Council of the Judiciary. The candidates were not informed of the reasons for those decisions and had no possibility of obtaining judicial review of them. The European Court found Article 6 § 1 of the Convention applicable and concluded that the applicants had been denied the necessary protection against what could legitimately be suspected to be arbitrariness in the President's decisions. In particular, it was not persuaded *"that the considerations invoked disclose objective grounds in the State's interest" capable of justifying the complete exclusion of the applicants' right of access to a court. While preserving the proper balance between the executive and the judiciary and taking account of the democratic legitimacy of the President are undoubtedly legitimate aims, they cannot, in and of themselves, warrant placing decisions on judicial appointments entirely beyond judicial scrutiny. In the Court's view, a review of the lawfulness and non-arbitrary character of such decisions does not upset the institutional balance or negate presidential powers; on the contrary, it reinforces the principle of the rule of law and the appearance of independence of the judiciary. Accordingly, the Government have not shown that denying the applicants any avenue of judicial review was strictly necessary for the preservation of institutional balance or in order to safeguard interests with a higher priority"*.^{74 75}

91. During the online meetings the delegation of the Venice Commission was informed that the question of the availability of judicial review of presidential refusals of judicial appointment remains relevant under the current legal framework. Challenges have recently been brought before the administrative courts against decisions of the President of 12 November 2025 refusing to appoint a number of candidates to judicial office. In July 2026, the Warsaw Regional Administrative Court rejected one such challenge, and an appeal brought by the

⁷² Venice Commission, [CDL-AD\(2007\)028](#), Report on Judicial Appointments, para 14.

⁷³ Venice Commission, [CDL-AD\(2026\)003](#), Opinion on the proposed amendments to the Constitution of Finland regarding the independence of the judiciary, paras 53 and 54.

⁷⁴ ECtHR, *Sobczyńska and Others v. Poland*, applications nos. 62765/14, judgment of 21 May 2026, para 159.

⁷⁵ Insofar as the matter falls within the scope of European Union law, Article 47 of the Charter of Fundamental Rights of the European Union, which guarantees the right to an effective remedy and to a fair hearing, may also be relevant. Pursuant to Article 51(1) of the Charter, however, its application to Member States presupposes that they are acting within the scope of Union law.

Commissioner for Human Rights is currently pending before the Supreme Administrative Court.⁷⁶

92. Against this background, the Venice Commission considers that the constitutional character of the President's appointment power under Article 179 of the Constitution must be reconciled with the requirements of the rule of law and judicial independence. Where the exercise of presidential discretion prevents a candidate who has successfully completed the preceding stages of the judicial selection procedure from obtaining judicial office, safeguards are required to ensure that this power is exercised within its constitutional and legal limits and is not exercised arbitrarily. The nature and intensity of such safeguards must respect the constitutional allocation of powers and the President's constitutionally assigned role in the appointment procedure, while remaining effective in practice.

93. The Venice Commission does not make any specific recommendation concerning the oath-taking of judges of other courts. As regards their appointment, however, it recommends that the Polish legal framework provide appropriate safeguards against arbitrary refusals of judicial appointments, including access to judicial review capable of verifying the non-arbitrary character of such decisions.

IV. Conclusion

94. By letter of 29 June 2026, Ms Elvira Kovács, Chairperson of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) requested an opinion of the Venice Commission of the Council of Europe concerning the powers of the President of Poland in the oath-taking of judges of the Constitutional Tribunal and other appointments under the principle of the separation of powers in light of comparative examples.

95. As the Venice Commission underlined in its Updated Rule of Law Checklist, constitutional justice is a central feature of constitutional democracy and a determining criterion of the Rule of Law.⁷⁷ A constitutional court performs an essential role as guardian of the Constitution, upholding constitutional principles, preserving the separation of powers and protecting the rights guaranteed by the Constitution. The effective performance of these functions requires that the Constitutional Tribunal be able to operate with a lawfully constituted and functional composition. Procedures governing the assumption of office by elected judges, including the taking of the oath, must therefore be designed and applied in a manner which safeguards, rather than impedes, the continuity and effective functioning of constitutional justice.

96. The comparative analysis undertaken in this Opinion confirms that there is no uniform European model as regards either the legal source governing the oath or the authority before which it is taken. In some systems, the oath is not provided for by the Constitution and is therefore not a constitutive part of the assumption of office at the constitutional level, its requirement and modalities being regulated by legislation. In others, the Constitution provides for the oath as a constitutive part of the assumption of office, while leaving its modalities, including the authority before which it is taken, to legislation; in others, the Constitution itself regulates both the oath and the authority before which it is taken. Irrespective of these differences, the fact that the oath is taken before the President does not in itself confer on the President a power to examine the merits of the appointment or the procedure leading to it.

97. In Poland, the primarily ceremonial function of the oath taking before the President does not diminish the institutional significance of the oath itself. At the same time, the oath-taking

⁷⁶ [Sprawa postępowań WSA ws. niepowołania na asesorów i urząd sędziego. Skarga RPO do NSA na odrzucenie skargi sędzi | Rzecznik Praw Obywatelskich](#)

⁷⁷ Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para 132.

procedure cannot be understood or applied in a manner that affects the constitutional power of the Sejm to elect judges of the Constitutional Tribunal or gives the President a role in that election which the Constitution does not confer upon him. Safeguarding the effective exercise of this power is essential to ensure the proper composition and unimpeded functioning of the Constitutional Tribunal, which are fundamental to the Rule of Law. These considerations assume particular significance in Poland, where the issues examined in the present Opinion arise against the background of the constitutional crisis concerning the Constitutional Tribunal which began in 2015.

98. The Venice Commission therefore makes the following recommendations:

- ensuring that the relevant provisions governing the oath-taking of the judges of the Constitutional Tribunal are applied in accordance with their statutory purpose, so that the President should administer without delay the oath of the judges elected by the Sejm, without claiming any power to review the election procedure;
- when the President refuses or delays to administer the oath of a judge elected by the Sejm, thereby preventing the completion of the ordinary oath-taking procedure, allowing the oath to be fulfilled without the President's physical participation, provided that its essential elements are preserved, including that the oath is made in the prescribed form, its performance is duly verified, and it is addressed and transmitted to the President;
- as regards other judicial appointments, ensuring that candidates affected by a refusal of judicial appointment benefit from effective safeguards against arbitrariness, including access to judicial review capable of verifying the non-arbitrary character of such decisions.

99. The Venice Commission remains at the disposal of the Polish authorities and the Parliamentary Assembly for further assistance in this matter.