

Thesis of the Resolution by the Supreme Court sitting in the bench of seven judges, January the 8th 2020, Ref. No. I NOZP 3/19, legal principle

1. The Supreme Court while performing judicial review of the resolutions adopted by the National Council of the Judiciary on presenting to the President of the Republic of Poland, candidates for the office of judge, is applying the interpretation of EU law as established in the judgment of the CJEU of November 19, 2019 in joined cases C-585/18, C-624/18 and C-625/18 in order to check – on the grounds of the appeal and within its scope - whether the National Council of the Judiciary (KRS) is an independent body.

2. If it is demonstrated by the appellant, that an unlawful influence affected the content of the resolution of the National Council of the Judiciary presenting a candidate for the office of judge, or if the appellant demonstrate that the court, in which a person so presented will sit, will not be independent or impartial, such a contested resolution is subject to repealed.

3. According to Polish Constitution, a judge is appointed – upon the request of the National Council of the Judiciary – by the President of the Republic of Poland having direct democratic mandate, thus ensuring democratic legitimacy and continuity of judicial power. The appointment of a judge by the President is therefore constitutional law act.

4. The inalienable connection between constitutional provisions determining appointment of judges by the President and the basic principles of the Polish political system – enshrined in the Chapter I of the Constitution – makes them one of the basic constitutional structures which are not eligible for transfer to international organizations by virtue of Article 90 of the Polish Constitution and must be respected on the ground of Polish international obligations.

5. Constitutional principle of the separation of powers (Article 10 of the Polish Constitution) and the principle of irremovability of judges (Article 180(1) of the Polish Constitution) require that neither Presidential act of appointment to the office of judge, nor the constitutional relationship between the judge and the State is subject to review. In particular, it is not allowed to determine the existence or non-existence of this constitutional relationship in any court of law. This protects proper operation of the statutory provisions providing for judicial review of the National Council of the Judiciary resolutions as well as the final character of the judgments pronounced by the Supreme Court.

6. Judicial review of the legality of the nomination process can take place only before the act of appointment by means of challenging the National Council of the Judiciary resolution before the Supreme Court. This review procedure gives full effect also to EU law allowing elimination of the National Council of the Judiciary resolutions in cases specified in paragraphs 125, 139-144, 147-151 in connection with paragraph 145 of the mentioned CJEU judgment.

7. EU law in general as well as art. 19 TEU in particular, determines appointment by the governments of the Member States, only the CJEU judges and does not contain any provision applicable to the appointment of national judges. The power to judge on behalf of the Republic of Poland results from the constitutional relationship as established between judge and the State by means of presidential appointment and mustn't be abstract nor functionally vain. The court, in which such a judge is sitting cannot be generally considered upon any abstract reason as being incorrectly composed. This provides also effective judicial protection in areas covered by EU law.

8. The CJEU judgment of November 19, 2019, does not state any violation of the right to fair trial. It merely indicates a catalogue of circumstances that may be helpful in the assessment of the proper operation of Art. 47 of the EU Charter of Fundamental Rights corresponding with Article 6(1) and Article 13 of the ECHR. Furthermore, according to the well settled case law of the Polish Supreme Court as well as the Polish Constitutional Tribunal, violation of the right to fair trial determined by the European Court of Human Rights does not justify the resumption of civil proceeding. Thus, the above mentioned judgment of the CJEU cannot be the basis for the resumption of civil proceedings neither.