

POSITION
OF THE NATIONAL COUNCIL OF THE JUDICIARY OF POLAND
of 21 November 2019
on the judgment of the Court of Justice of the EU of 19 November 2019

The National Council of the Judiciary of Poland is pleased to note that the judgment of the Court of Justice of the European Union of 19 November 2019 fully shares the Council's position in Case C-585/18, and in Cases C-624/18 and C-625/18 it did not share the opinion of Advocate General E. Tanchev. The Court's position is in line with most of the arguments submitted by the Council's representatives at the oral hearing.

The Tribunal did not question the authorisation of the National Council of the Judiciary and the Disciplinary Chamber of the Supreme Court, but only indicated that the national court may assess in a single case whether the national authority – competent in accordance with national law – is an independent and impartial court within the meaning of Article 47 of Charter of Fundamental Rights. It thus confirmed that it respects the areas reserved for the Member States.

Although the Court states in its judgment that any political factor involved in the appointment of judges may raise doubts and trigger an assessment of whether the court is an independent court, but at the same time notes that it is only a set of factors – enumerated as examples – that can lead to the final conclusion excluding the existence of attributes of independence and impartiality. Among these factors, it mentions the practice of bodies involved in the process of judges' appointment. Council notes that the practice belongs to the realm of facts. The practice's feature is that it can change over time. The systemic legal provisions are, however, of universal nature.

The previous judgment of the Court of 24 June 2019 in case C-619/18 regarding the independence of the Supreme Court emphasized the irremovability of judges. Therefore, the interpretation of the judgment of 19 November 2019 leading to the conclusion that it is permissible to deprive judges and the competent court of the right to adjudicate is unacceptable. Such an interpretation contradicts the fundamental value of the European Union – the principle of the irremovability of judges.

The National Council of the Judiciary notes and emphasizes that there are no institutional regulations, and there are no factual circumstances that would in any way make the Council dependent on the influence of legislative, executive or judicial authorities. The Council is a fully independent body. In order to completely remove the doubts of individuals as to the independence of the Council, consideration should be given to strengthening the systemic position of Council members along the lines of other constitutional bodies.

The Supreme Court is not authorised to question the legality of other constitutional organs of the Republic of Poland and has no competence to speak abstractly about applicable laws. The National Council of the Judiciary notes with concern the statements, including those of some of the judges, encouraging verification of judges and their judgments. The National Council of the Judiciary indicates that these actions are aimed at creating a false impression in society, harming the legal certainty and a sense of legal security of citizens.

The National Council of the Judiciary deems it appropriate to indicate that making statements, and thus anticipating the content of any decision that may be issued by the Supreme Court in the case in which the question referred in C-624/18 and C-625/18 was referred, is at least unethical. In particular, this is how public calls directed to judges to abandon activities should be perceived, which in fact boils down to enforcing a non-existent Supreme Court ruling.