**RESOLUTION OF THE**

**NATIONAL COUNCIL OF THE JUDICIARY**

of 28 June 2019

**regarding the Opinion of the Advocate General of the CJEU**

The National Council of the Judiciary, with regard to the Opinion of the Advocate General of the CJEU, Evgeni Tanchev, presented on 27 June 2019 in joined Cases C-585/18, C-624/18 and C-625/18, presents the following arguments to demonstrate its unsuitability for judgment by the Court.

1. In paragraph 91 of the Opinion, we read that the condition for applying the preliminary ruling procedure is the actual *lis pendens* before the court referring the dispute, in which the court is obliged to issue a judgment dependent on the Court's ruling and that the Court cannot be deprived of its right to investigate whether the question meets the requirements of Article 267 TFEU, and in particular whether the question is relevant to the main dispute. Meanwhile, the Advocate in other points of his opinion (97-100) deprives the Court of its right to examine this issue. At this point, the Advocate General limits himself to stating that the national court indicates that the Act of 21 November 2018 did not override *ex tunc* of the disputable provisions of national law and their legal effects, which is clearly in contradiction with the facts. It should be remembered that the Case C-585/18 concerns repealing the non-binding opinion of the National Council of the Judiciary, and in the other two cases the plaintiffs demand to remain in active judicial service whilst no one questions the status of plaintiffs and the effects of their retirement have been removed with a retroactive effect, which directly results from the aforementioned Act of 21 November 2018.
2. In point 111, the Advocate formulates the thesis that the body making a referral and considered a court in accordance with the criteria developed by the case law of the Court does not have to enjoy the attribute of independence and even claims that the attribute of "independence" has various meanings depending on the case in which the interpretation is made. This part of the opinion must raise concerns of a democratic, law-abiding society.
3. The National Council of the Judiciary also notes that the Advocate General did not analyse Polish national provisions, because in Case C-585/18, the Disciplinary Chamber is, in fact, not competent to resolve the main dispute, as had been pointed out by the representative of the National Council of the Judiciary.
4. In essence, the conclusions of the Advocate’s opinion are based on a thesis which he does not attempt to prove, that the manner of appointing a judge is an important guarantee of judicial independence. It is widely recognised that the basic guarantee of judicial independence is the irremovability. The Advocate’s thesis that the independence of the judge's appointing body is necessary for the judge's independence, finds no support in the legal doctrine, other than journalistic catchphrases.
5. The Advocate General confirms that there is no single model for the appointment of judges in European law. This statement should lead to the conclusion that the method of appointing judges was left to the autonomous regulation of the Member States. Meanwhile, it's different. In relation to the Republic of Poland and only the Republic of Poland, the Advocate formulates an order to apply the principle of co-option as the only proper one and puts forward the thesis that only the judges (in Poland) guarantee the right selection of members of the body responsible for the selection of judges, in no way proving it.
6. The Advocate General distances himself *expressis verbis* fromthe application of double standards, but at the same time formulates principles that he himself relativizes by stating that they shall not be applied in every case. This creates the danger of selective, discriminatory application of law, and thus hits the fundamental principles of the European Union – equality of the States.
7. The National Council of the Judiciary obliges its representatives to submit an application pursuant to art. 113 § 2 of the Rules of Procedure of the Court of Justice of 4 March 2015(Dz.U.2015, L105, s.1 ze zm.) to reopen the oral phase of the procedure, and the Chairman of the National Council of the Judiciary to disseminate both the position of the National Council of the Judiciary, which was returned by the Court (not admitted in the written phase), and the request to reopen the oral phase of the procedure, together with its reasoning.
8. The Council asks the Chairman to provide the documents mentioned in the thesis 5, to the heads of departments of law faculties of all European universities, so as to initiate a discussion on the method of selection of judges, and above all on the relation of the body appointing the judge with judicial independence. The Council appeals to all lawyers to carefully review the opinion of the Advocate General of the Court, Evgeni Tanchev, presented on 27 June 2019.
9. To sum up, the National Council of the Judiciary recognises that the opinion of the Advocate General of the CJEU does not meet the standards of the legal opinion. It contains internal contradictions, is one-sided, and also formulates legal principles without indicating the sources of law, or invokes hitherto unfamiliar principles, which have only been constructed for the purpose of pending proceedings.