

**Poland, Supreme court, I NO 192/19, 2 June 2020**

Member State

 Poland

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Topic

Independence of judges – promotion of judges

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Deciding Court Original Language

National Court

**Sąd Najwyższy**

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Deciding Court English translation

**Supreme Court**

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Registration N

**I NO 192/19**

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Date Decision

June 2nd, 2020;

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ECLI (if available)

Not available

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EU legal sources and CJEU jurisprudence

Article 47 of EU Charter;

C – 585/18; C – 624/18, C – 625/18;

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ECtHR Jurisprudence

Not applicable

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## Subject Matter

Composition of Supreme Court – promotion of judges – NCJ recommendation

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## Legal issue(s)

Independence of judges – promotion of judges – role of NCJ in promoting judges – recommendation given by NCJ – comparison of judges experience and legal proficiency

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## Request for expedited/PPU procedures

NO

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## National Law Sources

Constitution;

Act on Supreme Court

Act on National Council of Judiciary

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## Facts of the case

By resolution of 21 November 2019, The National Council of the Judiciary presented to the President of the Republic of Poland an application for appointing one of the candidates of the competition procedure to hold office for one of the four positions of the Supreme Court judge in the Civil Chamber (point 1 of the resolution) and did not present to the President of the Republic of Poland an application for appointing other participants in the nomination procedure (point 2 of the resolution).

By judgment of 2 June 2020 The Supreme Court in the Chamber of Extraordinary Control and Public Affairs repealed the above-mentioned resolution in point 1 in its entirety and in point 2 in part and referred the case to the National Council of the Judiciary for reconsideration.

The Supreme Court held that the control of the resolutions of the National Council of the Judiciary by the Supreme Court must be shaped in such a way as to ensure full effectiveness of the Union's law, therefore the incompatibility of Article 44 Section 1 sentence 2 of the Act on the National Council of the Judiciary (stating that no appeal is possible in individual cases concerning the appointment of a judge of the Supreme Court) with Article 47 of the Charter of Fundamental Rights should be eliminated, acting on the basis of Article 91 Section 2 of the Constitution of the Republic of Poland.

Supreme Court considered it admissible to lodge an appeal with the Supreme Court against the resolution of the National Council of the Judiciary on the submission of a motion for appointment to the post of a judge of the Supreme Court.

The Supreme Court, when examining the case within the limits of the appeal, came to the conclusion that the position expressed in the contested resolution of the National Judicial Council violates the law, because the Council drew logically incorrect conclusions from the facts known to it, as well as omitted important circumstances which it should have considered.

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#### Reasoning (role of the Charter or other EU, ECHR related legal basis)

"It is the duty of the court to apply EU law in a hierarchical order of sources of law (...). It follows from the CJEU judgment of 19 November 2019 that the Supreme Court is the direct addressee of the duties specified therein. The Supreme Court, when recognizing appeals against NCJ resolutions, should supervise the effective implementation of constitutional requirements and EU law. Moreover (...) the judicial review of NCJ resolutions by the Supreme Court must be shaped in such a way as to ensure full effectiveness of EU law. The Supreme Court, composed of seven judges and in this case, takes the position that the regulations of Article 47 of the Charter, Article 19 TEU and the principle of effective judicial protection influence the determination of the limits of appeal against a NCJ resolution."

"The judicial review of NCJ resolutions by the Supreme Court must be designed to ensure that Union law is fully effective. Such an objective can be achieved by eliminating NCJ resolutions from the legal circulation in situations defined in points 147-151 in connection with point 145 of the CJEU judgment. The obligation to repeal the Council's resolution in these conditions determines its appeal against Article 44(1), second sentence of the Act on NCJ. It follows from Article 47 of the Charter that effective judicial review of the Council's resolutions should apply to resolutions containing motions for the appointment of Supreme Court judges. The inconsistency of Article 44, paragraph 1, sentence 2 of the Act on NCJ. with Article 47 of the Charter should be eliminated by acting on the basis of Article 91, paragraph 2 of the Polish Constitution. It cannot be assumed that appealing a resolution of the NCJ is not admissible at all.

Charter was mentioned and used, without broader analysis. The SC decision was mainly the formal (procedural) decision, but it is worth mentioning that the SC in the new chamber (Extraordinary Control and Public Affairs) quoted the Charter and also applied the guidelines from CJEU judgment.

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#### Relation of the case to the EU Charter

EU Charter was used as a legally binding parameter, without broader analysis, without quoting any jurisprudence.

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#### Relation between the EU Charter and ECHR

Not applicable

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#### Use of Judicial Interaction technique(s)

“In certain situations, the principle of the primacy of European Union law must be interpreted as obliging the referring court to disapply a provision of national law reserving to such a body the jurisdiction to hear disputes in the main proceedings so that those disputes may be heard by a court which satisfies the abovementioned requirements of independence and impartiality and which would have jurisdiction in the area in question if that provision had not precluded it”.

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#### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

Only national jurisprudence

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#### Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

National jurisprudence only

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#### Strategic use of judicial interaction technique (purpose aimed by the national court)

Filling a legislative gap in accordance to fundamental rights enshrined in the EU Charter.

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#### Impact on Legislation / Policy

NO

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#### Notes on the national implementation of the preliminary ruling by the referring court

Insofar as possible, when analysing the follow up of a preliminary ruling to the CJEU, address the

following questions (making a separate point for each of them):

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Connected national caselaw / templates

Templates #1,2,3, 14

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(Link to) full text

<http://www.sn.pl/sites/orzecznictwo/orzeczenia3/i%20no%20192-19-2.pdf>

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Resolution of NCJ;
  2. SC judgment.
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