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EUROPEAN INTEGRATION IN LIGHT OF THE POLISH CONSTITUTIONAL COURT'S JUDGMENTS

1. Introductory remarks

It has been ten years since Poland became a member of the European Union (EU). Poland joined the EU following successful negotiations, signing the Treaties and their subsequent ratification. However, there remain issues that have not yet been agreed upon, either because they are not negotiable or are too controversial and too political.

Looking at the process of European integration from the perspective of more than half a century since it began, we can clearly see that this process has not been free from tensions. Supreme and constitutional courts (hereinafter: constitutional courts) are the national forums which deal with clashes between the EU and the Member States, *i.e.* between the fundamental principles of the EU and the constitutional principles of the Member States. And today, constitutional courts find themselves in a very awkward situation since, on the one hand, they are guardians of the constitutions (*i.e.* the principles and values contained therein) and jealously safeguard their position in their respective legal systems, while on the other they must negotiate, between multiple jurisdictions (national, European, international). Such a role is also played by the Polish Constitutional Tribunal (CT), which sets the limits to European integration, *i.e.* limits to the interference of EU law into the constitutional order of the Republic of Poland.

The EU is a special international organization, based on Treaties that define its scope and its limits. EU law, both primary (Treaties) and secondary (enacted by the EU institutions), more and more encroaches on grounds previously reserved for the Member States.¹ The limits of such interference are determined

¹ At the beginning of 1990s, Koen Lenaerts stated that there was no domain that could not be regulated by the Community law. See: K. Lenaerts, *Constitutionalism and the Many Faces of Federalism*, "American Journal of Constitutional Law" 1990, Vol. 38, No. 2, p. 220.

by: 1) the principle of conferral; 2) the case law of constitutional courts safeguarding the fundamental principles of the Member States' constitutional orders; as well as 3) the EU's commitment to respect national identities.²

Like other constitutional courts, in particular the German Constitutional Court (GCC), the CT sets limits on EU interference into the constitutional order of the Republic of Poland. This, in turn, may (but not necessarily has to) lead to a conflict between the Polish and EU legal orders. However, such conflicts can also create an incentive for dialogue and cooperation. The case law of the CT on key issues relating to the European integration illustrates not only the Polish viewpoint on the EU, and hence the entire process of integration, but also shapes relations between Poland and the EU.

2. Opening of the Polish legal system for integration with the European Union

The Constitution of the Republic of Poland of 2 April 1997 (hereinafter: Constitution) is open to both international and European law (the 'new legal order of international law', to cite the words of the Court of Justice of the EU (ECJ)). Pursuant to Art. 90 par. 1 of the Constitution, the Republic of Poland may, by virtue of an international agreement, delegate to an international organization or an international institution the competences of organs of state authority in certain matters. And although Art. 90 of the Constitution does not contain an explicit reference to the EU, the view prevails that it was drafted and incorporated to enable Poland's accession to the EU, thus becoming a peculiarly European clause. What also deserves attention is that, although Art. 90 includes an authorization for the delegation of competencies, it does not define the limits of such a transfer.

As regards the place of EU law in the Polish national legal order, Art. 91 par. 1 of the Constitution states that a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. In turn, Art. 91 par. 2 provides that an international agreement ratified upon prior consent granted by a statute shall have precedence over a statute if such an agreement cannot be reconciled with the provisions of such a statute. This also applies to derivative law. Art. 91 par. 3 states that the laws established by the international organization shall be applied directly and have precedence in case of a conflict of laws. Thus, the provisions of Art. 91 of the Constitution define the relationship between the Polish and the EU legal orders.

² Cf. Art. 4 par. 2 TUE.

What deserves our special attention is the problem of competences to review the constitutionality of EU law, both primary and secondary. It is this issue which causes difficulties (not to say crises) between the national legal systems and the European one. As to the conformity of EU primary law with the Polish Constitution, the CT in its judgment of May 2005 recognized its competence to examine the constitutionality of the Accession Treaty. In its statement of reasons, the CT said that it was not authorized to examine the constitutionality of EU primary law; however, it enjoyed such a competence in relation to the Accession Treaty as a ratified international agreement.³ The CT took a similar position on the Treaty of Lisbon, confirming its jurisdiction to review the constitutionality of the Treaty to the extent it was ratified by the President of the Republic of Poland.⁴ As to the examination of EU secondary law, such a competence belongs to the ECJ, wherein the ECJ examines the compatibility of the EU secondary law with EU primary law and general principles of law, as well as international law.⁵ However, it is not so clear cut in cases where EU law is directly applicable, *i.e.* when it becomes part of the Member States' legal orders. In the first instance, also here it is the ECJ which has the sole jurisdiction to rule on the validity of such an act (or part of it). In turn, national courts, in case of a conflict between EU and national legal regulations, should apply the EU law. In addition, they can refer a preliminary question to the ECJ for a preliminary ruling. Thus, in principle, the EU secondary law cannot be subject to a constitutionality review by the constitutional courts of the Member States. However, it is argued that since acts enacted by the EU institutions can be a direct source of rights and obligations for individuals (natural and legal persons), binding on courts and state administrative bodies, they may infringe upon rights that are guaranteed by the Member States' constitutions.⁶ Hence, some constitutional courts have reserved the right to have the final word in such situations, due to the violation of constitutional values such as fundamental rights and freedoms, basic principles of the political system, or national identity.⁷

The CT ruled for the first time on the admissibility of its constitutional review of EU secondary law in 2011,⁸ wherein it began by quoting its previous position, namely, on inadmissibility of constitutional review of the norms of the EU secondary legislation.⁹ However, the case of 2011 was somewhat different since it was

³ Cf. point 1.2 and 1.3 part III of the CT judgment of 11 May 2005 Ref. No. K 18/04. See also: K. Wójtowicz, *Sądy konstytucyjne wobec prawa Unii Europejskiej*, Trybunał Konstytucyjny, Warszawa 2012, p. 67.

⁴ Cf. point 1.1.1 and 1.1.2 part III of the CT judgment of 24 November 2010 Ref. No. K 32/09. See also: K. Wójtowicz, *Sądy konstytucyjne...*, p. 67.

⁵ K. Wójtowicz, *Sądy konstytucyjne...*, p. 70.

⁶ *Ibidem*, p. 73.

⁷ *Ibidem*, p. 75.

⁸ CT judgment of 16 November 2011 Ref. No. SK 45/09.

⁹ CT judgment of 17 December 2009 Ref. No. U 6/08.

initiated by filing a constitutional complaint under concrete control of Polish constitutional norms. In such a case, the material scope of acts that may be subject to constitutional review is defined in Art. 79 of the Constitution (unlike Art. 188, which relates to the abstract control of norms). Pursuant to Art. 79 par. 1, a statute or another normative act may constitute the basis for examining compliance with the Constitution. In the opinion of the CT, a normative act, in the meaning of Art. 79 par. 1 of the Constitution, is not only a normative act issued by an organ of the Polish state, but also a legal act issued by an organ of an international organization, provided that the Republic of Poland is a member thereof. This statement applies primarily to the EU legal acts, *i.e.* acts enacted by the EU institutions. They constitute part of the Polish legal order and shape the legal situations of individuals.¹⁰ Thus, according to the CT, the EU regulations as normative acts may be subject to constitutional review in the course of review proceedings initiated by the filing of a constitutional complaint.¹¹ The CT further held that its review of the conformity of an EU regulation to the Constitution should be regarded as independent, and at the same time subsidiary in relation to the jurisdiction of the ECJ.¹²

3. Main issues of disagreement

The CT takes an EU-friendly stance by, *inter alia*, interpreting EU law in a pro-integrative way,¹³ and in the event changes are necessary and in line with the fundamental principles of the Polish law, it suggests that provisions of the Constitution be changed. However, the CT does not remain uncritical and sets limits on the integration process, *i.e.* on the encroachment of EU law into the Polish legal order.

An issue against which leads to confrontations between the EU and the Member States, *i.e.* between the ECJ and the constitutional courts, is the principle of primacy of EU law. This principle was not provided for in the founding Treaties, but was spelled out in the case law of the ECJ. The principle of primacy came up for the first time in the *Costa v. ENEL* judgment.¹⁴ According to the principle,

¹⁰ Cf. point 1.3 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09.

¹¹ Cf. point 1.5 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09.

¹² Cf. point 2.6 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09.

¹³ Cf. point 16 part III of CT judgment of 27 May 2003 Ref. No. K 11/03. It should be noted that the Constitutional Court of the Czech Republic is also characterized by a pro-integration stance. See J. Zemánek, *The constitutional courts in the new Member States and the uniform application of European law*, [in:] *The future of the European judicial system in a comparative perspective*, 6th International ECLN Colloquium/IACL Round Table, Berlin, 2–4 November 2005 (2006), p. 258.

¹⁴ In the *Costa v. ENEL* judgment, the ECJ said: “[...] the transfer by the states from their domestic legal systems to the Community legal system of the rights and obligations arising under

as delineated by the ECJ, EU law takes precedence over Member States' laws, even if the national norm was adopted subsequently and even if it enjoys the status of a constitutional norm.¹⁵ It must be noted here that the principle of primacy concerns the primacy of application however, not the primacy of binding force (*i.e.* validity).¹⁶ This issue forms the basis of many disputes, inasmuch as constitutional courts take the position that the constitutional norm enjoys primacy over EU law as the supreme law of the land. The CT shares this view.¹⁷ In contrast, this position – for obvious reasons – is not shared by the ECJ.

As was already mentioned, the constitutional courts of the Member States define the limits on the interference of EU law into national legal orders. Initially the courts (tribunals) referred to the principle of sovereignty, then to the need to guarantee the fundamental rights enshrined in national constitutions (*cf.* case law of the GCC), and now they refer to the need for the EU to respect national identities (in the meaning of constitutional identities). This brings us to another EU principle, namely, the principle of conferral, which is not only anchored in the Treaties but also enshrined in the constitutions of the Member States. The principle of conferral defines the limits on the transfer of competencies to the EU and thus determines the boundaries of EU activities. In turn, the constitutional courts of the Member States ensure that the EU does not exceed the set limits, or put differently, that it does not act *ultra vires*.

4. Principle of primacy in the case law of the Polish Constitutional Court

By referring to the provisions of the Constitution (principles and values), the CT defines the relationship between the Polish and the EU legal orders. Among the most important judgments should be included: 1) judgment of May

the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail". Judgment *Costa v. ENEL*, case 6/64 (1964) ECR 585.

¹⁵ Cf. judgment *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, case 11/70 (1970) ECR 1125, par. 3. See also judgment *Amministrazione Finanze dello Stato v. Simmenthal S.p.A.*, case 106/77 (1978) ECR 629.

¹⁶ Cf. judgment *Amministrazione delle Finanze dello Stato v. Simmenthal S.p.A.*, case 106/77 (1978) ECR 629, and also judgment *Fratelli Costanzo v. Comune di Milano*, case 103/88 (1989) ECR 1839.

¹⁷ Cf. point 7 part III of CT judgment of 11 May 2005 Ref. No. K 18/04. According to Anneli Albi, while constitutional courts of the Member States advocate the supremacy of the Constitution, they however do not openly question the primacy of Community law. Cf. A. Albi, *Supremacy of EC Law in the New Member States. Bringing parliaments into the Equation of 'Co-operative Constitutionalism'*, "European Constitutional Law Review" 2007, Vol. 3, Issue 1, p. 27.

2005 concerning the constitutionality of the law on elections to the European Parliament;¹⁸ 2) judgment of April 2005 on the European Arrest Warrant (EAW);¹⁹ 3) judgment of May 2005 on the constitutionality of the Accession Treaty;²⁰ 4) judgment of November 2010 on the constitutionality of the Treaty of Lisbon;²¹ 5) judgment of November 2011 on the constitutionality of a Council Regulation (EC);²² and 6) judgment of June 2013 on the constitutionality of the law on the ratification of the European Council Decision amending Art. 136 TFEU.²³

The CT accepts, in principle, the primacy of EU law over national law, provided that the principle of primacy of EU law does not apply to constitutional provisions. In support of its position, the CT refers to Art. 8 of the Constitution.²⁴ Thus, EU law does not enjoy absolute primacy; the Constitution remains the supreme law of the Republic of Poland. In addition, in case of an irreconcilable inconsistency between the provisions of the Constitution and the provisions of EU law, *i.e.* between the constitutional principles and the secondary Community (now EU) law, the autonomous decision regarding the appropriate manner of resolving such inconsistency, including the expediency of a revision of the Constitution, belongs to the Polish constitutional legislator.²⁵ So in the opinion of the CT in the event of an irreconcilable inconsistency between a constitutional norm and a Community (now EU) norm, *i.e.* one that could not be eliminated by an interpretation which respects the autonomy of both European and national law, the Nation as the sovereign, or an organ of state authority authorized by the Constitution to represent the Nation, would decide on whether to amend the Constitution, seek modifications to the Community (now EU) provisions or, ultimately, on Poland's withdrawal from the EU.²⁶ Such a conflict arose when Poland implemented the Council Framework Decision of 13th June 2002 on the European Arrest Warrant and the surrender procedure between Member States. In the operative part of its judgment concerning the issue, the CT stated that Art. 607t § 1 of the Code of Penal Procedure,²⁷ within the scope of which a surrender of a Polish citizen to an EU Member State on the basis of the EAW was permissible, was incompatible with Art. 55 par. 1 of the Constitution, which then provided that the extradition of a Polish citizen was prohibited. At the same time the CT deferred by eighteen months the moment when the provision would lose its binding

¹⁸ Cf. CT judgment of 31 May 2004 Ref. No. K 15/04.

¹⁹ Cf. CT judgment of 27 April 2005 Ref. No. P 1/05.

²⁰ Cf. CT judgment of 11 May 2005 Ref. No. K 18/04.

²¹ Cf. CT judgment of 24 November 2010 Ref. No. K 32/09.

²² Cf. CT judgment of 16 November 2011 Ref. No. SK 45/09.

²³ Cf. CT judgment of 26 June 2013 Ref. No. K 33/12.

²⁴ Art. 8 par. 1 of the Constitution provides: "The Constitution shall be the supreme law of the Republic of Poland."

²⁵ Cf. point 7 part III of CT judgment of 11 May 2005 Ref. No. K 18/04.

²⁶ Cf. point 6.4 part III of CT judgment of 11 May 2005 Ref. No. K 18/04.

²⁷ OJ 1997 no. 89 item 555, as amended.

force.²⁸ The CT also referred to the commitment of the Republic of Poland to ensure the full effectiveness of the EAW in the Polish legal order, thus becoming *de facto* the initiator of changes to the Constitution.

In the aforementioned judgment on the constitutionality of the Accession Treaty,²⁹ the CT expressed its view on the primacy of the Constitution over EU law, claiming two reservations of sovereignty. Firstly, in the opinion of the CT the Constitution authorized the delegation of competences of state organs only in relation to certain matters, which, in turn, implies a prohibition to delegate to the EU all competences of a state authority organ, competences determining its substantive scope of activity, or competences concerning the entirety of matters within a certain field (quantitative reservation). Secondly, according to the CT, the EU (then the Communities) functions in accordance with the Treaties on the basis of, and within the limits of, the powers conferred upon them by the Member States, so the Member States maintain the right to judge whether or not the Community (now EU) legislative organs, in issuing particular legal provisions, acted within their delegated competences.³⁰

Somewhat later, in the judgment on the constitutionality of the Lisbon Treaty,³¹ the CT not only upheld its jurisdiction but went even further in specifying the limits of integration. The CT defined the hard core set of competencies that are essential for the Polish constitutional identity, *i.e.* the competencies that cannot be transferred to the EU. According to the CT, the Constitution prohibits conferral of the following matters: decisions specifying the fundamental principles of the Constitution and decisions concerning the rights of the individual which determine the identity of the state, including, in particular, the requirement of protection of human dignity and constitutional rights; the principle of statehood; the principle of democracy; the principle of a state ruled by law; the principle of social justice; the principle of subsidiarity; the requirement to ensure better implementation of constitutional values; the power to amend the Constitution; and the competence to determine competences.³²

Overall however, the case law of the CT takes an EU-friendly approach, despite the fact that the CT, like most constitutional courts, expresses reservations and sets limits to integration, trying to strike a balance between the Polish

²⁸ Cf. point 4.4 and 5.2 part III of CT judgment of 27 April 2005 Ref. No. P 1/05.

²⁹ Cf. CT judgment of 11 May 2005 Ref. No. K 18/04.

³⁰ J. Schwarze, *Das Verhältnis...*, p. 100. See also: point 4.1 and 10.2 part III of CT judgment of 11 May 2005 Ref. No. K 18/04. Interesting considerations on reservations of sovereignty in the countries of Central and Eastern Europe can be found in: U. Hufeld, *Der Staatliche Souveränitätsvorbehalt in der EU: Polenals Paradigma*, [w:] *Die Genese einer Union der 27. Die Europäische Union nach der Osterweiterung*, Hrsg. E. Bos, J. Dieringer, VS Verlag für Sozialwissenschaften, Wiesbaden 2008, p. 55–82. As regards reservations of control of legislation, see the judgment of the Constitutional Court of the Czech Republic of 2012/01/31 – Pl. ÚS 5/12: *Slovak Pensions*.

³¹ Cf. CT judgment of 24 November 2010 Ref. No. K 32/09.

³² Cf. point 2.1 part III of CT judgment of 24 November 2010 Ref. No. K 32/09.

and the EU law.³³ This positive image cannot even be blurred by the judgment of November 2011, in which the CT ruled on the constitutionality of the EU secondary law.³⁴ This judgment is worth paying attention to since, in its earlier rulings, the CT had ruled on the compatibility of the EU primary law, *i.e.* Treaties (international agreements). In the case of the EU secondary law we are dealing with a particular situation. Given that the EU is the source of the law, the jurisdiction to interpret it should belong to the ECJ. However, in cases where the EU law is directly applicable in the Member States and becomes part of national legal orders, it should as well be in line with national fundamental constitutional principles.³⁵ In deciding the case, the CT also considered what would happen if it delivered a ruling on the non-conformity of EU law with the Polish law. It stated that such a ruling, which would have an *ultima ratio* character, should be issued only when all other ways of resolving a conflict between the Polish and the EU norms have failed (*i.e.* amending the Constitution, taking up measures aimed at amending the EU provisions, or taking a decision to withdraw from the EU). Hence, according to the CT, before issuing a ruling declaring the non-conformity of particular norms of the EU secondary legislation with the Polish Constitution, measures should be taken in order to avoid such a conflict. Moreover, the constitutional principle of favorable predisposition of the Republic of Poland towards the process of European integration and the Treaty principle of loyalty of the Member States towards the Union would require that the effects of the Tribunal's ruling be deferred in time, pursuant to Art. 190 par. 3 of the Constitution.³⁶

5. Key issues raised in the case law of the Polish Constitutional Court

The principle of primacy of EU law and the corresponding principle of supremacy of the Constitution are among the most important principles, not only from the point of view of the European integration process, but also because they form the basis for many disputes concerning, on the one hand, Member States' constitutional principles, and on the other, fundamental principles of EU law. According to the CT, the Constitution remains, by virtue of its supreme legal force, the supreme law of the Republic of Poland in relation to all international agreements binding Poland, including ratified international agreements that del-

³³ J. Schwarze, *Das Verhältnis...*, p. 102.

³⁴ Cf. CT judgment of 16 November 2011 Ref. No. SK 45/09.

³⁵ See also: A. Chmielarz, *Kontrola konstytucyjności prawa pochodnego Unii Europejskiej*, "Przegląd Sejmowy" 2012, t. XX, nr 4, p. 9–32.

³⁶ Cf. point 2.7 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09.

egate competences in certain matters to the EU.³⁷ Poland's accession to the EU only *changes* the viewpoint regarding the principle of the supreme legal force of the Constitution; it does not *challenge* it.³⁸

Constitutional norms regarding individual rights and freedoms set the minimum and unsurpassable threshold, which cannot be lowered nor questioned, neither by a national nor an EU legal regulation. In this respect the Constitution plays the role of guarantor, protecting rights and freedoms clearly defined therein in relation to all entities in the scope of its application.³⁹ A conflict between a constitutional and an EU (earlier Community) norm cannot be resolved by assuming the supremacy of the latter over the former. It also cannot lead to the situation whereby a constitutional norm not only loses its binding force but is substituted by an EU (Community) norm, nor limit the application of the constitutional norm to areas which are beyond the scope of the EU (Community) legal regulation. Should such a situation occur, the Polish constitutional legislator would need to decide to either amend the Constitution, bring about modifications in the Community (now EU) provision(s), or ultimately effect Poland's withdrawal from the EU.⁴⁰

Equally important is the principle of conferral, frequently referred to by the CT. This principle defines the limits of delegation of competencies to the EU. According to the CT, the principle of conferral confirms the sovereignty of the Member States in relation to the EU, which cannot act outside the competences conferred upon it.⁴¹ Also, according to the CT accession to the EU and the corresponding conferral of competences do not imply the surrender of sovereignty to the EU. The limits of a conferral of competences are defined in the Preamble of the Constitution, which recognizes the state's sovereignty as a national value.⁴² On the other hand, the CT shares the view, also present in the constitutional law doctrine, that accession to the EU can be perceived as a sort of limitation – but not loss – of state sovereignty. However, this limitation is combined with a compensatory effect, namely, the possibility of partaking in the EU decision-making process.⁴³ In the opinion of the CT, Member States maintain the right to assess whether or not, in issuing particular legal provisions, the Community (now EU) legislative organs (*i.e.* institutions) acted within the scope of delegated competences and in accordance with the principles of subsidiarity and proportionality. Should

³⁷ Cf. point 4.2 part III of CT judgment of 11 May 2005 Ref. No. K 18/04, then repeated in other rulings. Cf. point 2.2 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09, as well as point 2.5 part III of CT judgment of 24 November 2010 Ref. No. K 32/09.

³⁸ Cf. point 1.3 part III of CT judgment of 24 November 2010 Ref. No. K 32/09.

³⁹ Cf. point 6.4 part III of CT judgment of 11 May 2005 Ref. No. K 18/04.

⁴⁰ Cf. point 6.4 part III of CT judgment of 11 May 2005 Ref. No. K 18/04, and also point 2.7 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09.

⁴¹ Cf. point 2.2 part III of CT judgment of 24 November 2010 Ref. No. K 32/09.

⁴² Cf. point 2.2 part III of CT judgment of 24 November 2010 Ref. No. K 32/09.

⁴³ Cf. point 2.1 part III of CT judgment of 24 November 2010 Ref. No. K 32/09.

the adoption of Community (EU) provisions exceed the competencies granted, and infringe upon the residual competencies remaining with the Member States, the principle of the primacy of Community (EU) law does not apply.⁴⁴

In the discussion on the issue of sovereignty, one should pay attention to the modern understanding of the term by the CT. According to the CT, sovereignty should not be understood as a supreme and unlimited power as regards both the internal relations within the state and its foreign relations, nor as an unlimited possibility of exerting influence on other states, nor as a manifestation of power that is free from external influences. Quite the contrary, sovereignty should be understood as the freedom of activity of a state, subject to the restrictions of international law, *i.e.* a sovereignty which takes into account the process of institutionalization of the international community, globalization, and European integration. According to the CT, international liabilities and their management does not lead to the loss or limitation of the state's sovereignty, but on the contrary is its affirmation. Hence, Poland's membership in the EU does not entail a limitation of its sovereignty, but it is its manifestation.⁴⁵ In the opinion of the CT, Poland's voluntary membership in the EU, in which sovereignty is exercised collectively, is the primary confirmation of sovereignty. This positive attitude towards European integration is noteworthy, bearing in mind that in countries that (re)gained independence after 1989, sovereignty is seen as a particularly treasured good which should be protected.

Another key issue is EU identity. According to the CT, complicated processes of mutual interdependences take place among the EU Member States, which are related to conferring part of the competences of state organs on the EU. However, it is the Member States that remain the subjects of the integration process and maintain the competence to determine competences, and the model of European integration retains the form of an international organization.⁴⁶

The CT equally often refers to the international obligations Poland is bound by. In the opinion of the CT, the constitutional duty to respect international law binding upon Poland is not only a great declaration addressed to the international community, but also an obligation of the state bodies, including the government, parliament and the courts, to observe the international law which is binding for Poland. And alongside adequate changes in the national legal order, the implementation of the obligations may require the bodies of public administration to undertake some actions within the scope of their competences.⁴⁷ As to EU law, according to the CT the interpretation of binding statutes should take into account the constitutional principle of sympathetic predisposition towards the process

⁴⁴ Cf. point 10.2 part III of CT judgment of 11 May 2005 Ref. No. K 18/04.

⁴⁵ Cf. point 2.1 part III of CT judgment of 24 November 2010 Ref. No. K 32/09.

⁴⁶ Cf. point 2.1 part III of CT judgment of 24 November 2010 Ref. No. K 32/09, repeated in another ruling. Cf. point 6.3.3 part III of CT judgment of 26 June 2013 Ref. No. K 33/12.

⁴⁷ Cf. point 5.5 part III of CT judgment of 27 April 2005 Ref. No. P 1/05.

of European integration and the cooperation between states.⁴⁸ The CT underlines the fact that within the Polish territory, in addition to norms adopted by the Polish legislator, legal regulations enacted outside the framework of Polish legislative organs (*i.e.* subsystems of legal regulations that come from different law-making centers) also operate, and all of them should co-exist on the basis of mutually acceptable interpretation and cooperative application.⁴⁹

The CT also draws attention to the role it should play itself. According to the CT, it is obliged to perceive its position in such a way that, as to fundamental matters that concern systemic issues, it is “the court which will have the last word” with regard to the Polish Constitution.⁵⁰ On the other hand, the CT underlines the fact that Poland accepted the division of powers regarding the review of legal acts,⁵¹ which results in granting jurisdiction to the ECJ to provide the final interpretation of EU law and to ensure that the interpretation is observed consistently in all Member States, as well as granting an exclusive power to the ECJ to determine the conformity of the acts of EU secondary legislation to the Treaties and the general principles of law. So it follows that the jurisdiction of the CT to examine the conformity of EU law to the Polish Constitution should be of a subsidiary character.⁵²

Another issue often raised today by the Member States and their constitutional courts is that of constitutional identity. The CT shares the view, also present in the prevailing doctrine, that the competences that fall within the prohibition of conferral are an expression of constitutional identity and thus reflect the values the Constitution is based on.⁵³ The CT also draws our attention to the universal values of the Constitution and the basic principles organizing the life of the national community, such as: democracy, respect for the rights of the individual, cooperation between the public powers, social dialogue as well as the principle of subsidiarity. It should be noted that these are values and principles that are at the same time among the fundamental assumptions of the EU.⁵⁴

The recent financial crisis in the EU led to the perceived necessity to undertake emergency measures, either by the introduction of changes to the primary law, the adoption of derivative legislation, or even by taking measures outside

⁴⁸ Cf. point 16 part III of CT judgment of 27 May 2003 Ref. No. K 11/03, repeated in a later ruling. Cf. point 4 part III of CT judgment of 31 May 2004 Ref. No. K 15/04.

⁴⁹ Cf. point 2.2 part III of CT judgment of 11 May 2005 Ref. No. K 18/04, and see also point 2.6 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09.

⁵⁰ Cf. point 2.4 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09. See also: S. Dudzik, N. Półtorak, ‘*The Court of the Last Word. Competences of the Polish Constitutional Tribunal in the Review of European Union Law*,’ *Yearbook of Polish European Studies* 2012, Vol. 15, p. 225–258.

⁵¹ Cf. point 2.1 part III of CT judgment of 18 February 2009 Ref. No. Kp 3/08, and also point 10.3 part III of the justification of CT judgment of 11 May 2005 Ref. No. K 18/04.

⁵² Cf. point 2.6 part III of CT judgment of 16 November 2011 Ref. No. SK 45/09.

⁵³ Cf. point 2.1 part III of CT judgment of 24 November 2010 Ref. No. K 32/09.

⁵⁴ Cf. point 2.2 part III of CT judgment of 24 November 2010 Ref. No. K 32/09, and see also point 6.1 part III of the justification of CT judgment of 11 May 2005 Ref. No. K 18/04.

the Treaty framework. As a result, some of these activities are subject to proceedings before the constitutional courts of the Member States due to their legally questionable character. A good example of this is the CT judgment of June 2013 on the constitutionality of the law on ratification of the European Council decision of 25th March 2011 on the amendment of Art. 136 TFEU with regard to a stability mechanism for Member States whose currency is the euro.⁵⁵ In this case the CT draws our attention to Poland's opening up to the international law order.

6. Concluding remarks

Undoubtedly, constitutional courts rank among the most important state institutions due to the role they play by navigating and negotiating between different legal systems (national, European, international), and as guardians of the rules each state system (political, legal, social, economic) is based on. The constitutional courts, in particular, the courts of the Central and Eastern European states, have played a significant role in shaping and then in solidifying the principles that all democratic states are based on, as well as in protecting the rights and freedoms of individuals.

As regards the EU, the CT has always been favorably inclined towards the entire process of European integration. Its euro-friendly attitude is characterized by dialogue and cooperation. Having said that, the CT does not remain uncritical of the integration processes, especially when the EU enters into the legal ground reserved for the Republic of Poland. The principle of the primacy of EU law over national law, together with the principle of conferral, are the most common grounds for disputes. Such a confrontational stance is somewhat understandable given that the CT naturally defends its position and the role it plays, in order to avoid marginalization. Equally important is the CT's stance towards international law (including EU law). According to the CT, subsystems of legal regulations coming from the different law-making centers that operate in the Polish territory should co-exist on the basis of mutually acceptable interpretation and cooperative application.

As Krzysztof Wójtowicz rightly pointed out, constitutional courts play an ever-increasing role in shaping the constitutional framework allowing for participation of each member in a great integration project, balancing to some extent activities of the EU Court of Justice.⁵⁶ This statement also holds true for the Polish Constitutional Tribunal.

⁵⁵ Cf. CT judgment of 26 June 2013 Ref. No. K 33/12.

⁵⁶ *Zmiany w Konstytucji RP dotyczące członkostwa Polski w Unii Europejskiej*. Dokumenty z prac zespołu Naukowego powołanego przez Marszałka Sejmu, Biuro Analiz Sejmowych, Wyd. Sejmowe, Warszawa 2010, p. 7.