

Constitutional aspects of relations between Poland and the European Union

Summary

The subject of the dissertation is comprehensive analysis of the impact of constitutional regulation on relations between Poland and the European Union. This issue has not been discussed thoroughly in the source literature - most of the available sources are limited to a certain stage of the integration process.

The area of concern defined in the title presents a fundamental meaning not only for constitutional law but also for public international law.

The thesis points to the actual importance of the Polish Constitution in the process of European integration and proposes *de lege ferenda* conclusions - i.e. what the law ought to be as opposed to what the law is.

The thesis studies Polish legal solutions, as well as a certain set of legal acts from other member states of the European Union.

The most crucial issue discussed is the status of the constitution within the Polish legal system. In particular, the aim is to determine if the European integration process remains in line with the principle of constitutional precedence defined by art. 8 of the Polish Constitution from 1997. Another question is whether the Polish regulations constitute adequate "framework" for or if they impose "limits" on the future European integration. In the case where constitutional provisions do not regulate matters specified by the European law, their actual role becomes significantly wider than specified in the art. 91 ust. 3 of the Constitution of Poland, which provides that the law of an international organisation shall be applied directly, preceding the binding local statute if a collision occurs. What it does not consider are cases of indirect collision with the Constitution, with the requirements of the EU notification procedure prior to any regulation adoption by a member state being a cardinal example of such a case, which has a direct impact on the process of lawmaking in Poland.

Another research problem pertaining to the principle of constitutional precedence is the period needed for making amendments to the constitutional regulations. As proven by practice, such changes were implemented after full integration between Poland and the European Union. I aim to establish whether this procedure is consistent with the substance of the Constitution of Poland.

Since one of the fundamental values of the European Union (next to: respect for human dignity and human rights, including minorities, freedom, democracy, equality and the rule of law) is respect for member states national identity, I attempt at defining national identity from the legal perspective. Thus, it can be defined as the duty of the European Union to respect the continuity of the member states' existence as sovereign agents. Strengthening the principle of respecting the constitutional identity and clarifying its content may be an important step reinforcing the sense of legal certainty in the complex legal order in force in the EU.

The dissertation consists of five chapters. Each chapter ends with conclusions which summarize main findings of the study.

Chapter I plays an introductory role. Its purpose is to introduce fundamental findings of the thesis. In order to carry out a deep dive analysis of relations between Poland and the European Union, it was necessary to investigate the legal character of the European Union.

The Treaty of Lisbon has fundamentally changed the structure of the EU. It liquidated the pillar structure which was replaced with a unified EU equipped with legal entity. Presently, the EU can be qualified as a special, complex international organization, as its foundations are governed by two treaties (TEU and TEC) For this reason, the changes resulting from the nature of the European Union as a supranational organization, stemming from the principles of the European Union's activity, were also discussed. The debate on the treaty and the debate surrounding its ratification have revived considerations regarding the problem of the sovereignty of the member states. However, they have not been completed by changes to the constitution.

The problem of the so-called deficit of democracy in the EU was also considered in the context of the Treaty of Lisbon, which strengthened the position of national parliaments, as well as expanded the European Parliament's competences, meaning a step towards reducing the "democratic deficit" in the European Union.

The second chapter discusses the problem of the essence and place of fundamental acts within the laws of the Member States. The process of shaping the principle of the precedence of the EU law over the national law of the Member States is widely known in the literature.

One of the aspects related to this principle is its relationship with the principle of supremacy of constitutional provisions in the system of national law. This issue was presented both from the point of view of constitutional law of the Member States and the jurisprudence of their constitutional courts, as well as from the point of view of the European treaties and the jurisprudence of the Court of Justice.

Until the entry into force of the Treaty of Lisbon, the principle of precedence was interpreted in the context of the case-law of the Court of Justice. The jurisprudence of this body was the basis of analyses carried out by the representatives of the doctrine.

Several of the constitutions of the member states determine the status of the EU in the same way as the status of international organizations. While analyzing the constitutional regulations of individual member states, it is worth pointing out how they define the EU institutions. Thus, it is possible to distinguish constitutions which concern the state's membership in the EU and those that contain regulations on the transfer of EU competences.

The third chapter of the work was devoted to the analysis of issues related to the constitutional aspects of the accession process of the Republic of Poland into the European Union. It presents the constitutional aspects of negotiations and ratification of the Europe Agreement, which established an association between the Republic of Poland and the European Communities and their Member States. Legal changes related to the negotiation process of the Athens Accession Treaty between Member States and the Republic of Poland were also presented. The aim of the analysis was, in particular, to determine why the processes of negotiating Poland's membership in the EU were not followed by constitutional changes, in particular regarding the competence of the Council of Ministers with respect to foreign policy, as well as the control function of the Sejm.

All activities and processes related to Poland's preparation for membership in the Union were of external character, i.e. they were subject to exchange of information, promotion, consultation, negotiations and arrangements with EU institutions and its member states and ultimately required their approval. At that point there was a need for a thorough analysis of the legal status and actual functioning of state institutions in this field and the search for new, effective solutions.

The subsequent, fourth chapter of the thesis concerns the presentation of the constitutional basis for the membership of the Republic of Poland in the European Union. In this part, the subject of analysis are the binding regulations of the Constitution of the Republic of Poland of 1997 with respect to European affairs. The chapter also presents the solutions in this area proposed in the constitution projects submitted in the Constitutional Committee of

the National Assembly. The main thesis put forward in this part of the study is that the scope of the regulations of the Basic Law in this respect and the place of the said provisions in the constitutional systematic structure had been impacted by the need to support the draft of the fundamental act in a referendum. This is best illustrated by the provision allowing for transferring the competence of state authorities in certain matters to the international organization or the international body, which initially was in chapter I devoted to the principles of the system. It was ultimately included in the regulation of chapter III of the constitution, since the lawmaker decided to regulate the material aspect and the procedural aspect within one article, creating the so-called the "European clause" that combines features of both direct and indirect integration provision.

Procedure referred to in art. 90 of the Constitution was envisaged for the most serious cases of Poland's binding of international law norms. Thus, the majority thresholds are in this case higher than for the adoption of changes to the constitution. As this article describes, the entities that the Republic of Poland may delegate the powers of its state organs to are international organizations or international bodies.

In the doctrine, views on art. 90 are divided. Despite the fact that the doctrine and jurisprudence of the Constitutional Tribunal have made significant progress in explaining the rules of the term "transfer of competence of organs of state authority", in the conditions of dynamic institutional changes in the EU it will continue to cause numerous interpretational disputes.

In addition, this chapter presents the content of draft amendments to the Constitution regarding European affairs and analyzes their potential impact on the functioning of the Polish state in the EU structures.

The fifth chapter presents the legal requirements for changes in the Polish legal system resulting from the current provisions of the Treaties on the European Union and the European Community. I carried out a detailed analysis of the ratification process of the Treaty of Lisbon from the point of view of the requirements of the Polish constitution. The last chapter of the thesis was also devoted to the influence of Poland's membership in the European Union on the the supreme state organs. In this part of the study, the subject of the findings is the impact of EU membership on the system of government and the characteristics of relations between state bodies. The accession of Poland to the European Union is connected with the transfer of legislative powers of the Sejm and the Senate, including primarily legislative ones, to the EU. The tasks and competences of the Sejm and the Senate in matters related to membership in the EU are currently regulated in detail by the Act on the Cooperation of the Council of Ministers

with the Sejm and the Senate in matters related to the membership of the Republic of Poland in the European Union and the rules of the Sejm and Senate. The adoption of these documents was necessary due to the ratification by Poland of the Treaty of Lisbon in order to coordinate the work of the parliament and the government on EU matters.

The participation of national parliaments in the process of establishing EU law is aimed at strengthening the democratic mandate of the European Union bodies. The inclusion of national parliaments in the procedure of establishing and monitoring European Union law should be assessed positively, due to the fact that European Union law acts often directly affect the rights of individuals, and must be implemented by means of national laws in individual countries.

However, these regulations do not reflect all changes resulting from the Lisbon Treaty. In particular, the Senate, which has lower competences in the exercise of legislative functions than the Sejm, and which has no control functions over the Council of Ministers in the Basic Law, received new important tasks regarding the European sphere under the said treaty, strengthening its current political position. The adoption of the cooperative act in 2010 and the proposed amendments to the Constitution of the Republic of Poland contribute to the trend of strengthening the parliament while maintaining the existing constitutional provisions.

An important element of the analysis was also the issue of cooperation between the Council of Ministers and the Sejm and the Senate in the process of implementing EU law, as a manifestation of a new type of relationship between the executive and the legislative authority, a consequence of the membership of the Republic of Poland in the European Union.

The model of cooperation between the Sejm and Senate and the Council of Ministers introduced in the European law set forth detailed rules for the influence of legislative bodies on Polish policy on EU matters. Therefore, it is difficult to regard the procedure for the implementation of EU law into the national legal order as the manifestation of the implementation of the classic legislative function of the parliament.

Another constitutional problem not reflected in the legal system is the obligation to notify. The law of the European Union imposes an obligation on member states to inform about prepared changes of national law. A part of the regulations concerning notification to the competent bodies of the European Union of draft legal acts requires the suspension of legislative work at the national level, including parliamentary work, until the positive decision of the competent European Union bodies has been issued.

There is no comprehensive regulation in Polish law regarding the execution of notification procedures specified in EU law. In particular, there is no comprehensive regulation regarding the procedure for notification of parliamentary bills.

The thesis analyzed the impact of membership in the European Union on the functioning of the executive.

Accession to the European Union has had a profound impact on the entirety of the law in force in Poland, which is why another research problem touched upon in my work is the impact of membership in the European Union on the functioning of the judiciary in Poland. First of all, I am trying to define the role of constitutional judiciary.

In the practice of applying EU law courts, not CTs, are competent to resolve conflicts between EU law and national law. In general, in such a case, the court is obliged to settle the matter on the basis of a provision of EU law. This is a consequence of the principle of direct effectiveness of EU law and the principle of its priority over national law.

The impact of the Treaty of Lisbon on the judiciary manifests itself in the fact that the Court of Justice stands for the absolute principle of the primacy of EU law, which determines the achievement of the Treaty's objectives. On the other hand, the Constitutional Tribunal emphasizes that the highest source of law is the constitution, which is an expression of the will of the sovereign and is also a source of competence, including the competence of the EU.

The basic research method used in the work is the legal-dogmatic analysis of legal acts enriched in selected elements with analysis of the jurisprudence of the Constitutional Tribunal and available literature on the subject. The auxiliary methods that I use are historical and legal-comparative methods.

The source database of this work is: Polish legislation, treaties, regulations and EU directives.

As the source texts used for the analysis were also the decisions of the Constitutional Tribunal regarding European affairs and the case law of the Supreme Administrative Court.

The final part of the thesis indicates the necessity and scope of future changes in the Constitution of the Republic of Poland related to European integration. In this part of the study, I also take up the issue of the need to include a separate chapter in the Basic Law devoted to these matters.

The creation of a completely new chapter devoted to European affairs brings a risk of passing laws that are completely useless from the point of view of our membership in the EU, or of creating constitutional provisions "in reserve".

The adoption of the concept of a "constitutional law" would allow for more frequent changes to its regulation without fear of coherence in the regulation of the other provisions of the Constitution. It would also ensure proper implementation of the principle of supremacy of the Constitution defined in art. 8 of the Basic Law.

