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THE CONSTITUTION AND THE MEMBERSHIP OF THE REPUBLIC OF POLAND IN THE EUROPEAN UNION

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I. Introductory Remarks

To begin with it should be noted that the norms of the new Constitution of the Republic of Poland of 2 April 1997 provide very favourable legal conditions for the implementation of the process of integration. It is a constitution which was drafted at a time when the Republic of Poland was bound by the association treaty with the European Union, when serious preparations for the negotiations concerning integration were under way and what, which is worth stressing, all the significant parliamentary groups expressed their support for the very idea of integration (which, of course, did not necessarily imply unanimity with regard to the negotiating positions and the very conditions of integration).

Over the past 10 years, beginning with the fall of the communist system and the regaining of sovereignty, the Polish society has experienced a significant evolution. During the initial years, the integration of Poland with the European Union was perceived more in the categories of a symbolic return of the country to the European family, of the recovery of its own identity in opposition to the reality which had dominated it for 45 years, forcing alien political models upon the nation, a different system of values and very little room for decisions concerning its own fate. The European Union embodied the society's yearning for not only a better life, but above all for the return to its own roots, historically embedded in the values of western culture. In that sense the European option coincided with a particular choice of civilisation.

That early or "childhood" Euro-enthusiasm of the Polish society is now over. Although the pro-European option continues to be strongly present among the political and juristic elites, and still enjoys strong support of the population, the spontaneous enthusiasm for the prospects of European integration has been replaced by a more balanced and more serious reflection on the consequences of the processes of integration, including their considerable costs, which need to be measured by the enormous effort undertaken by the society in order to make up, in a short period of time, for the economic and civilisational collapse in which the Republic of Poland had found itself in

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the aftermath of the communist rule. The reasons diminishing the Euro-enthusiasm are probably more complex. They include, I believe, the entrenchment of normal democratic mechanisms, which by their very nature allow to gain a more multifaceted, diversified and thereby more objective and independent insight into the essence of the integration processes and the evaluation of Poland's position in the uniting Europe. Undeniably, one of the factors weakening the pro-European attitudes is also the steady flow of information about the reluctance towards such integration manifested by the statistical majority of inhabitants (citizens) of the European Union, especially in such countries as France, Austria or Germany. Today, the prospects for integration still do not seem to be threatened, and it is expected that in our society the pro-European option would receive a substantial majority of about 60% in favour. But the prolongation of the period of negotiations, the postponement of integration to an unspecified future date will not have a positive influence on the continuation of pro-European attitudes in our society.

We should keep in mind the social and political context of the on-going debate on the future of Poland's integration with the European Union. Indeed, in the end - that social and political reality will tip the balance for the outcome of that debate, and not the purely formal and legal disputes concerning the otherwise important issues related to the adaptation of the legal system of the Republic of Poland to that of the European Union.

II. Constitutional Juridical Instruments of Integration

The law of the European Community has been recognized in the constitutional regulations as being separate from the norms of the international public law (norms contained in treaties, conventions, etc.) system of regulations which, given the objectively present differences, will have a favourable influence on the processes of implementing the entire *acquis communautaire* in the framework of legal order of the Republic of Poland.[1] One should not overlook, however, the fact that the legal system of the European Community is composed of norms of diverse legal character, classified as belonging to the so called primary law on one hand, and to the secondary law on the other hand. We shall attempt to describe the legal position of the Community law with regard to the above indicated categories, emphasizing issues related to the evaluation of the Community law from the point of view of the hierarchical review of norms under the Polish law.[2]

[1] Concerning the notion of the *acquis communautaire*, see i.a.: Z. B r o d e c k i: "Acquis communautaire. Pojęcie nieznane Konstytucji RP" [Acquis communautaire. A Notion Unknown to the Constitution of the Republic of Poland] [in:] C. M i k (ed.): *Konstytucja Rzeczypospolitej Polskiej z 1997 roku a członkostwo Polski* w U*nii Europejskiej* [The Constitution of the Republic of Poland of 1997 and Poland's Membership of the European Union], Toruń 1999, from p. 75 and following.

[2] Polish literature on that subject is presently rather voluminous; See, i.a. the recently published cycle of papers: M. K r u k (ed.): *Prawo międzynarodowe i wspólnotowe* w *wewnętrznym porządku prawnym* [International and Community Law in the Internal Legal Order], Warszawa 1997; C. M i k (ed.): *Konstytucja..., op. cit.;*

The Act of Accession and its Consequences

The founding treaties, the accession treaties, and, above all, the regulations concerning the structure and internal functioning of the European Union, which form the unique constitution of the Communities,[3] have to be classified as belonging to the body of the so called primary law. Initially, it can be assumed here that their evaluation will be subject to the criteria proper to the norms of international public law. Two significant constitutional principles concerning treaty norms, specified in Article 91, should be noted here: first, that a ratified international agreement, having been published in the Official Journal of Laws, becomes a part of the domestic legal order and is directly applicable, unless its application requires the enactment of a respective statute (section 1); second, that an international agreement which has been ratified upon the consent granted by statute has precedence over the statute, should such statute be irreconcilable with the respective international agreement (section 2). *Prima facie* this construction seems very clear and sufficiently precise, as it expresses the concept of incorporation of the treaty norms into the internal legal order (the monistic theory) and, additionally, *expressis verbis*, the principle of the validity of such norms *ex proprio vigore* as prevailing over the internal law.

As a side-note, we can only observe that in the context of the current constitutional regulations there are no serious doubts as to the status and the binding force of the Association Treaty of the Republic of Poland with the European Communities (the European Agreement).[4] As an act subject to the regulation of Article 91 section 1 and 2 of the Constitution, it constitutes a part of the internal legal order, is assured direct application (unless the application of its provisions requires the enactment of respective statutes), as well as precedence in the event of a conflict with statutory norms. Therefore, from the point of view of the hierarchy of the sources of universally binding laws, the European Agreement occupies a higher position than statutory regulations. Owing to the clear formulation of Article 91 section 2 of the Constitution, a court may refuse to apply a provision of internal law which contravenes a norm of the Agreement, and in the event when - due to the nature of such norm (lack of direct application) - its direct application is not imminent, a contravention of that kind may lead to repealing of a provision of internal law by the Constitutional Tribunal (see: Article 188 sub-section 2 of the Constitution).[5]

C. B a n a s i ń s k i, J. O n i s z c z u k (cds.): *Konstytucja. Trybunat Konstytucyjny. Zbiór studiów* [The Constitution. The Constitutional Tribunal. Collected papers.], Warszawa 1998; A. J e n e r a l c z y k - S o b i e r a j - s k a (cd.): *Wzajemne relacje prawa międzynarodowego, wspólnotowego oraz prawa krajowego* [Mutual Relationships Between International Law, European Union Law and Internal Law], Łódź 1998.

[3] The notion of the "European Constitution" is used, above all, with regards to the acts on the Establishment of the European Community (TWE) and the Treaty on the European Union, the Amsterdam Treaty in the Jurisprudence of the Court of Justice in Luxembourg; see also: R. A r n o 1 d: "Perspektywy prawne powstania konstytucji europejskiej" [The Legal Prospects for the Establishment of a European Constitution], *Państwo i Prawo (PiP)* 2000, no. 7, p. 35 and following.

[4] *Dziennik Ustaw* (Dz.U.) [Official Journal] 1994, no. 11, item 38 with subsequent amendments.

[5] Concerning the association agreements concluded by the European Community, see: E. L a t o s z e k: *Podmiotowość prawna Wspólnoty Europejskiej i jej kompetencje w zakresie zewnętrznych stosunków umownych* [The Juridical Personality of the European Community and Its Competencies Concerning External Contractual

With regard to the primary law of the Community, however, we are dealing with distinct specificity as compared to the classical regulations of international public law.

First, in the Polish constitution, the ratification procedure for the accession treaty is subject to special regulation, which differs from a typical ratification of an international agreement.

Second, the consequences of the accession treaty are of particular nature from the point of view of the implications of accession for the domestic legal order, and namely: that they automatically embrace all of the acts of the Community law (the constitutive acts of the Community and the acts of law derived from them) which, from that moment on constitute the *acquis communautaire*, and thereby become a part of the legal order in force in the Republic of Poland, what does not indicate, at least in terms of secondary law, that it is at the same time a part of internal law, as it is a particular, autonomous legal order.[6] They imply the relinquishment of certain legislative competencies by the respective state organs in the areas reserved for the agencies of the Communities; they introduce the exclusivity of the Communities' organ of jurisdiction with regard to the norms of the Community law, especially with regard to their interpretation, and the disputes over their validity and scope.[7]

The new Polish constitution provides the ratification of the accession treaty with a special status:

First, the constitutional regulation stipulates *expressis verbis* that in certain areas the competencies of the state organs be delegated to an international organisation (Article 90 section 1).

Second, the procedure for granting consent to the ratification of such an international agreement is extraordinary, namely it is required of both the lower chamber (Sejm) and the upper chamber (Senate) of Parliament to pass the respective statute by a qualified 2/3 majority of votes in the presence of at least half of the statutory number of deputies and the corresponding statutory number of senators (Article 90 section 2). As a side-note it can be pointed out that the requirement of majority in this case is more rigorous than in the case of a bill to amend the constitution, since in that latter case it is sufficient to have an absolute majority in the Senate in the presence of at least half of the statutory number of senators (Article 235 section *4 of* the Constitution).

Third, the granting of consent for the ratification of the accession treaty may be passed by a nationwide referendum (Article 90 section 3). According to the Constitution, a referendum may be held on matters of particular significance to the state (Article

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Relations], Warszawa 1999, p. 28 and following. With regard to general issues related to the position of an international agreement in the internal legal order, see also: M. M a s t e r n a k - K u b i a k: *Umowa międzynarodowa wprawie konstytucyjnym* [International Agreement in Constitutional Law], Warszawa 1997.

[6] See i.a. the famous ruling of the ECJ defining univocally the independent and autonomous nature of the Community law in the case *Costa Falmino* v. *Enel.* ECR 1964, p. 585 (in that judgment also the principle of unconditional precedence over the internal national law was pointed out),

[7] In particular sec: Article 230 TWE concerning the competencies of the European Court of Justice, and also the well known ruling on the case Handelsgesellschaft 11/70, ECR 1972, p. 1125. Sec also: E. P o d g ó r s k a: "Podstawowe koncepcje prawa Wspólnot Europejskich a perspektywa członkostwa Polski w Unii Europejskiej" [Fundamental Concepts of the Law of the European Communities and the Prospects of Poland's Membership in the European Union], *KPP* 1995, vol. 1, p. 73 and following.

125). In this case, of course, there is no vote in the Sejm or the Senate on the bill of consent for the respective ratification.

The constitutional norms provide thus two alternative legal procedures for the granting of consent for ratification: an act of parliament or a referendum, whereby the enactment of a statute should be regarded as an ordinary or basic procedure, while the decision to hold a referendum requires a separate resolution by the parliament passed by an absolute majority of the vote in the presence of at least half of the statutory number of deputies.

On this occasion it should be noted that the competence of the Sejm concerning the choice of procedure for granting consent to ratification is of exclusive nature and, as a result, the general principles of ordering a referendum stipulated in Article 125 of the Constitution do not apply in such a case (in my opinion, Article 90 section 4 constitutes a *lex specialis* in relation to the more general norm of Article 125 section 2).[8] The question of substantive justification for the selection of one of the two procedures provided for by the constitution is, of course, an entirely separate issue. The accession to the European Union, considering its importance and far-reaching consequences for the entire nation, should by its very nature be based on the broadest possible consensus, which might be expressed by a for-ratification outcome of the referendum. And so, will the political elites of the country be faced with the dilemma resulting from the gradually but systematically declining approval of the society for membership in the Union? Will there be a threat that the referendum may bring an outcome contrary to the expectations of the elites, and that the Norwegian scenario will be repeated?[9] On the other hand, should such forcast of the attitudes of the society, mostly negative towards the accession appear, then the parliamentary vote in favour of the consent for the ratification of the agreement, against the will of the society's majority, would be dramatically tensed.

This gives rise to the question (which is explicitly voiced in constitutional literature),[10] whether a statute passed pursuant to the procedure of Article 90 section 2 of the Constitution, granting consent to the agreement on the accession of Poland to the Communities, and especially the accession treaty itself, may be the subject of review by the

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[8] A different position on this issue is presented by K. D z i a ł o c h a [in:] L. G a r 1 i c k i (ed.): *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [The Constitution of the Republic of Poland. A Commentary], Warszawa 1999, p. 7, in whose opinion, in such case Article 125 section 2 will also apply.

[9] One should agree with the thesis that the dark scenario, i.e. the negative outcome of the referendum, a return of parliamentary consent to ratification would be impossible. It might take place only under the assumption that the result of such a referendum would not be binding, due to nonfulfillment of provisions of Article 125 section 3 of the Constitution, see: K. D z i a ł o c h a, *op. cit.*, p. 9.

[10] See, i.a.: J. B a r c z: "Akt integracyjny Polski z Unią Europejską w świetle Konstytucji RP" [The Act of Integration of Poland with the European Union in Light of the Constitution of the Republic of Poland], *PiP* 1998, vol. 4, p. 121; also: W. S o k o l e w i c z: "Ustawa ratyfikacyjna" [Ratification Law] [in:] M. K r u k (ed.): *Prawo międzynarodowe i wspólnotowe w wewnętrznym porządku prawnym* [International and Community Law in Domestic Legal Order], Warszawa 1997, p. 93 and following; also: R. M o j a k; "Konstytucyjne podstawy integracji Polski z Unią Europejską (zarys problematyki)" [The Constitutional Foundation of Poland's Integration with the European Union (An Outline of Issues)] [in:] *Konstytucyjny ustrój państwa. Księga ku czci Prof. Wiesława Skrzydło* [The Constitutional System of the State. A Book of Tribute to Prof. Wiesław Skrzydło], Lublin 2000.

Constitutional Tribunal. What is the status of that agreement and, subsequently, of other acts of the Community's primary law in the constitutional legal order?

Apparently the matter should not generate any doubts. The competencies of the Constitutional Tribunal include adjudication of conformity to the constitution of any statute, and therefore - one may justifiably claim - also of an act adopted under the special procedure specified in Article 90 of the Constitution. According to that point of view, the accession agreement would be subject to review by the Constitutional Tribunal even when the decision would have been made through a referendum, since according to Article 188 section 1 of the Constitution, any international agreement may undergo direct review of its conformity to the Constitution.[11] Moreover, it would be possible to apply the preventive review procedure (the President refers the act of consent for ratification to the Constitutional Tribunal pursuant to the procedure of Article 133 section 2 of the Constitution), as well as the subsequent review procedure. It should be noted that this approach, if adopted consistently, would also imply subjecting all treaty-like Community regulations of primary law to constitutional review (as they are introduced via the act of accession into the binding legal order).

In theory, however, one could also consider a different position. The accession agreement, being subject to the special ratification procedure (comparable with the amendment of the Constitution) should not be the subject of control by the constitutional court.

First, it can be claimed that the special course of action established under the Constitution exhausts all other premises and requirements concerning the legality of such an act.

Second, although the accession agreement is an international treaty from the point of view of public law, its status and its consequences are different in comparison with a typical or classical international agreement. It becomes, as already mentioned above, an element of the legal order in force in the Republic of Poland, but at the same time it belongs to the Community order (*acquis communautaire)* forming autonomous legal regulations, characterized also by the separateness of regulations concerning the institutional mechanisms of creating the legal rules belonging to the system (derived law), as well as its interpretation and application.

Third, the interference of the constitutional court could lead to consequences difficult to reconcile with the general principles in force in the European law (the interpretation of the constitutive treaties of the Communities and of the accession treaty performed by the Constitutional Tribunal could infringe on the exclusive competencies of the European Court of Justice in Luxembourg). The recognition of one of the elements (rules) of those treaties as non-conformant with the Constitution of the Republic of Poland would also contravene the principle of full acceptance of the entire legal order of the Communities upon accession.

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[11] In such case, of course, the Constitutional Tribunal would not rule on conformity to the Constitution of the approval of accession to the Union, which is rightly pointed out in the respective literature; Sec e.g.: K. W ó j t o w i c z: "Skutki przystąpienia Polski do Unii Europejskiej dla sądów i Trybunału Konstytycyjnego" [The Consequences of Poland's Accession to the European Union for the Courts and the Constitutional Tribunal] [in:] Z. W i t k o w s k i (ed.): *Wejście* w *życie nowej Konstytucji Rzeczypospolitej Polskiej* [Entry into Force of the New Constitution of the Republic of Poland], Toruń 1998, p. 89. That is irrelevant, however, from the point of view of the competencies of the Constitutional Tribunal to rule on the constitutional compliance of the very agreement.

And thus, fourth, the subsequent review of the accession agreement (or any other acts of primary law) performed by the Tribunal (which theoretically could not be ruled out, given the assumption adopted here), could lead to insurmountable complications with regard to the existing relations between the Republic of Poland and the Community, as well as the other member states (e.g., what would have given grounds to the ruling about non-conformance with the Constitution of some of the clauses of the founding treaty? How could this be reconciled with the principle of uniform application and interpretation of the entire legal heritage of the Community?).

Fifth, it could imply that the rank of the norms of primary law is to some extent lower than that of derived law - as only those former ones would be subject to the review of their constitutionality according to general principles, the latter ones, however, would be either exempt from such review altogether, or would be subject to review only to a limited extent (see the comments below).

The above presented argumentation is certainly of considerable substantive significance, and refers to the essential reasons of purpose related to the key principles of the integration process, but finding sufficient support for it in a formal semantic interpretation of the constitutional regulations currently in force might prove difficult. The scope of review of conformity to the Constitution of international agreements has been unequivocally defined (Article 188 section 1 of the Constitution). There is no doubt, however, that a possible evaluation of the constitutionality of the agreement of accession to the European Union should include all of the consequences resulting from the acceptance of the principles on which the Community order is resting. *De lege lata fundamentali* the principles of direct application of the Community law, of precedence over statutory regulations, of uniformity of interpretation and application of the derived Community norms (see below), may find, given the appropriate interpretation, their constitutional justification. And this is exactly what causes the thesis of the "constitutional environment" favouring the integration process to be more than a mere cliché.[12]

Against the background of the currently binding constitutional regulations, however, there can be no doubt as to the competence of the Constitutional Tribunal to review the accession agreement (and other norms of primary law belonging to international public law), from the point of view of its conformity to the provisions of the Constitution of the Republic of Poland. *De lege ferenda* the intervention of the constitutional legislator in order to contain the scope of such review seems, however, very desirable, to say the least. Approving the very admissibility of the Tribunal's review of the accession treaty, it would seem necessary to consider limiting it only to the procedure of preventive review, thus conducted prior to the final ratification of the agreement.[13] Although at present such

[12] Sec the polemic with that view in: J. G a 1 s t e r: "Tzw. opcja integracyjna konstytucji państw członkowskich a przychylność polskiego ustawodawstwa konstytucyjnego wobec przystąpienia do Unii Europejskiej" [The So-Called Integration Option for the Constitutions of Member Countries and the Favoring by Polish Constitutional Jurisprudence of the Accession to the European Union] [in:] C. M i k (ed.): *Konstytucja..., op. cit.,* p. 135 and following.

[13] A similar stipulation is proposed by S. B i e r n a t: "Miejsce prawa pochodnego Wspólnoty Europejskiej w systemie konstytucyjnym RP" [The Place of Derived Law of the European Union in the Constitutional System of the Republic of Poland] [in:] C. M i k (cd.): *Konstytucja..., op. cit.,* p. 182.

a possibility exists, as has been mentioned above, within Article 133 section 2 of the Constitution, it is neither mandatory nor exclusive. Il should be added here that in such a case the application of the so called interpretative jurisprudence of the Constitutional Tribunal should be ruled out (a regulation is considered constitutional on condition of being interpreted as defined in the respective decision of the Tribunal), in order to prevent a collision in this matter with the exclusive competencies of the ECJ in Luxembourg.

The Community Law and the Constitution

Based on the currently binding Constitution there is no ground for the thesis on the precedence of the Community law (both primary and derived) over the entire body of the domestic legal order, including constitutional norms. Therefore one cannot accept, as some representatives of the doctrine do, that the specificity of the act of integration expressed, among others, in the special procedure of accession,[14] secures the precedence of Community law not only over the statutes, but also over the constitution itself.

It is possible to indicate a number of formal arguments supporting the claim, that the Community law must yield in the event of collision with a constitutional norm. According to the reading of the Constitution, it itself is the highest law of the Republic of Poland (Article 8 section 1). The above discussed regulation included in section 2 of Article 91 stipulates *expressis verbis* the precedence of a Community provision in the event of collision with a statutory regulation, but not with a constitutional norm. Finally, one should not overlook the fact that the binding force of the Community regulations in the Republic of Poland does find its direct legitimacy in the constitutional norms (as discussed above), which determine the scope and the procedure for the delegation of certain competencies of the organs of state authority (especially in the legislative field) to an international organisation. As for the primary law, the conclusion is unequivocal: international agreements are in every case inferior to the constitutional norms, and the principle of precedence with respect to the statutes is applicable only to the norms of treaties ratified upon consent granted by statute (see Article 188 section 2, Article 91 section 2; the not precise enough regulation of Article 87 of the Constitution, which determines the sources of the universally binding law, in which all international agreements, regardless of their rank, are mentioned only after statutes - does not contradict this conclusion).

It can be noted further that an inherent characteristic of the Community law, that is its autonomy and independence from the system of internal law, would become involved in a certain contradiction. The Community law derives its position, its status of the legal order in force on a given territory of a member state from a sovereign act of a state authority, adopted on the basis of and within the framework of the Constitution,

[14] Sec e.g.: J. B a r c z: „Akt integracyjny ...," *op. cil.,* p. 12. That author writes, i.a.: "From the theoretical point of view, however, the primary law of the European Union should have the assured precedence of its application over the entire national law, including also constitutional law .... The primary (constitutional) law of the organization should not have guaranteed precedence of application in the national legal order to a lesser extent than its derived law." A similar conclusion is derived also by K. W ó j t o w i c z, *op. cit.,* p. 87, when he concludes that Community law has precedence over all other norms of domestic law, including the Constitution.

and therefore of the internal law. The autonomy and independence of the Community law cannot be therefore interpreted in absolute terms, and this is exactly why it is not possible to determine the supremacy of the Community law over the Constitution.

How can this approach be reconciled with the fundamental idea of the Community law, derived after all from the fundamental premises of European integration, and therefore from the universality of the rules adopted by the organs of the Communities, from their binding force in all the member states, the uniformity of their application with the respect for the principle of priority, the recognition — in certain areas - of the exclusive jurisdictional competencies of the European Court of Justice, excluding thereby the corresponding competence of the internal organs of jurisdiction?

It has to be recognised, above all, that the supremacy of the Constitution over the Community law should not be expressed in the admissibility of the review of the constitutionality of individual acts of the Community law on the same principles that govern the exercise of such review with regard to all the provisions of internal law. It should be realized in the sovereign act of accession to the Communities, and in the future - the acts of consent granted by the sovereign authorities to any modifications and amendments of the founding acts of the Communities. Those acts, as has already been mentioned above, are subject to review by the constitutional court as acts of international public law. By virtue of a sovereign act of accession to the European Union, the derived law, constituting an autonomous binding legal order, is as of that moment subject to the exclusion from internal review (see the remarks below). This appears to be the proper interpretation of the effects of the transfer of competencies of the state authorities to the organs of the Community. The supremacy of the Constitution with respect to the Community law is realized at the level of decisions concerning the primary law, but not the derived law. Indirectly, however, the control over the derived law is maintained. Adopting, theoretically, incompatibility between the Community regulations and the Constitution, it should also be assumed that they can be neither waived nor amended, nor even subjected to a certain interpretative intervention within the internal law. Such a state of affairs, however, might give grounds for renunciation of the act of accession.[15] Thus, this approach comes close to the position expressed in the jurisprudence of the German Constitutional Court.[16]

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[15] The possibility of renunciation of the accession act is being aptly pointed out, sec: J. B a r c z: "Konstytucyjnoprawne problemy stosowania prawa Unii Europejskiej w Polsce w świetle dotychczasowych doświadczeń państw członkowskich" [The Constitutional and Legal Problems Regarding the Application of the European Union Law in Poland in Light of Experience Obtained so farby Member States] [in:] *Prawo międzynarodowe i wspólnotowe* [International and Community Law], p. 207; also: K. D z i a ł o c h a, *op. cii.,* p. 6.

[16] See i.a.: M. A. D a u s e s: "Prawo Wspólnot Europejskich a prawo niemieckie w świetle niemieckiego porządku konstytucyjnego" [2the European Communities and German Law in Light of the German Constitutional Order], *Przegląd Prawa Europejskiego* 1998, no. 1, p. 23 and following. See especially the famous sentence "Solange II" of 22 October 1986, BverfGE vol. 52, p. 187. It is also interesting that the Hungarian constitutional doctrine is heading in the same direction, putting a strong emphasis on the constitutional legitimization of the Community legal norms. The jurisprudence of the Hungarian Constitutional Court 30/1998 holds, among others, that the parliament is not authorized to alter the Constitution through the procedure of granting consent to the ratification of an international agreement. On this issue, see also: M. B a r n a B e r k e: *European Integration and Constitutional Law: The Situation in Hungary*, publication of the Venice Committee 2000, p. 5.

Our conclusions with regard to the control over the constitutionality of the derived law are confirmed by the regulations concerning the scope of competencies of the Constitutional Tribunal. Article 188 of the Constitution does not provide for such control, as the derived Community law is neither a treaty norm (international agreement) subject to cognition pursuant to sub-section 1 of Article 188, nor can it be in any respect qualified as a set of regulations issued by the central organs of the State (section 3 of Article 188). Some doubt arises only with regard to the possibility of appeal against a Community regulation in accordance with the procedure for constitutional complaints. Article 79 of the Constitution provides for an appeal against a statute or any other normative act violating the constitutionally guaranteed rights and freedoms. Theoretically, therefore, a collision between a constitutional norm and a derived provision of the Community law is conceivable. It seems, however, that such a possibility should be ruled out. The concept of a normative act, defined in Article 79 of the Constitution, does not embrace the Community's derived law, which forms, as has already been mentioned, an autonomous legal order alongside the internal law.[17] The Community law is not included in the sources of universally binding law in Article 87 of the Constitution. A similar position should be adopted with regard to the possibility of control over a regulation of the derived Community law through a legal inquiry, directed to the Constitutional Tribunal by a court adjudicating a specific case. For, as a matter of consistency, neither in such a case can a provision of the Community law be regarded as a normative act in the sense of Article 193 of the Constitution. One cannot exclude, however, the possibility of a legal inquiry for the purpose of adjudication of conformity of a provision of the internal law with the Community law. But this matter requires further analysis and discussion.

The Legal System of the Republic of Poland and the Derived Law

The evaluation of provisions constituting the so called secondary law of the Community, with regard to the relationship of those provisions with the internal statutory regulations, presents the next substantial problem. As previously indicated, the Constitution grants a distinct character to the secondary law - recognising its specificity in comparison to the classical treaty norms. The provision of section 3 Article 91 of the

[17] The issue, however, gives rise to doubts. Theoretically, the possibility to base a constitutional compaint on the contradiction of a provision of primary Community law with the Constitution is found admissible by, e.g., K. W ó j t o w i c z, *op. cit.*, p. 89; also by J. B a r c z: "Akt integracyjny z Unią Europejską...," *op. cit.*, p. 16. Similarly, S. B i e r n a t: "Miejsce prawa pochodnego ...," *op. cit.*, p. 186. A different view of that issue seems to be held by: C. M i k: "Zasady ustrojowe europejskiego prawa wspólnotowego a polski system konstytucyjny" [The Principles of Political System in the European Community Law and Polish Constitutional System], *PiP* 1998, no. 1, p. 38. S. B i e r n a t ' s comment *(op. cit.*, p. 186) is to the point that, at least indirectly, the notion of a normative act subject to control by the Constitutional Tribunal stems, i.a., from Article 191 section 1, Article 190 sections 2,3,4 of the Constitution. A similar argumentation is put forward by K. D z i a ł o c h a *(op. cit.*, p. 9), in whose opinion the Constitution applies the notion of a normative act (Article 88 section 2, Art. 79, Art. 190 sec. 3, Art. 191 sec. 2, Art. 193) to the law established by the organs of the Republic of Poland. Yet, as an aside, it should also be noted that inapt seems the view of S. B i e r n a t *(op. cit., supra)* on the limiting of the substantive scope of acts subject to control via the complaint to the regulations named in Article 188 of the Constitution. Such an interpretation would eliminate other normative acts being part of the internal domestic order, e.g. acts of local law.

Constitution reads: "If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws."

Although this formula constitutes a clear opening of the Polish law towards the Community order, it is not the most fortunate one and - as noted in the literature (see: Mik, Biemat, Glaser) - leaves a number of doubts. They concern, among others, the position of the norms of the Community law within the system of the sources of the law in force in the Republic of Poland (as already indicated, Article 87 of the Constitution concerning the sources of universally binding law does not mention the Community law at all), the concept and the scope of direct application, the concept and the effects of precedence of the Community law, and finally, they concern the possible conflict between the provisions of the Community law and the statutes, and the possible competencies of the Constitutional Tribunal with regard to these issues.

On the basis of the general formula of Article 91 section 3, however, certain conclusions have been derived and a consensus with regard to at least some of the issues is gradually emerging.

It is assumed that the Community law, which constitutes an autonomous legal order, does not thereby belong to the system of sources of internal law.[18] The Community regulations are based on the constitutive acts of the European Communities, and their legality, their binding force and direct effectiveness are defined according to these acts.[19] They function in the area where the state authority has divested itself of its legislative competencies on behalf of the organs of the Community. There is also a view being expressed that the notion of direct effectiveness should be interpreted in the way that has been determined by the jurisprudence of the European Court of Justice in Luxembourg, and therefore more broadly than what the provisions of the founding treaty directly imply.[20] As

[18] For example: K. W ó j t o w i c z, *op. cit.*, p. 86. But also the view is being expressed that the institutional (derived) law belongs by the force of a ratified international agreement to the national legal order. It would thereby become a source of Polish law, despite lack of a clear mention of that in Article 87 of the Constitution. (See also: C. M i k: *Przekazanie kompetencji przez Rzeczypospolitą Polską na rzecz Unii Europejskiej i jego następstwa prawne (uwagi na tle Art. 90 ust. 1 Konstytucji)* [Transfer of Competencies by the Republic of Poland in favour of the Europen Union (reference made to Art. 90 passage 1 of the Constitution], in: C. M i k (cd.): *Konstytucja Rzeczypospolitej Polskiej z 1997 r. a członkostwo Polski* w *Unii Europejskiej* [Constitution of the Republic of Poland of 1997 and Membership of Poland in the European Union], Toruń, p. 159). That thesis is doubtful for at least two reasons. First, it is contradictory to the concept of autonomy and relative independence of the Community order; second, it must lead to the eradication of the principle of the exclusive jurisdiction of the ECJ. Similarly, it seems, K. D z i a ł o c h a *(op. cit.,* pp. 7-8), in whose opinion the Community law constitutes an clement of the domestic legal order, but docs not belong to the internal law. On the other hand, it is advisable to avoid confusion over the concepts in this matter: the Community law is an clement of the legal order applied on the territory of a given state, however, it docs not acquire the characteristics of internal law. Therefore, including the Community law into the internal legal order docs not seem justified.

[19] The notions of direct application and direct effectiveness have been giving rise to essential discrepancies in the European doctrine for a long time. Sec the pertinent comments on that issue by E. P o d g ó r s k a *(op. cit.,* p. 89 and following) and the jurisprudence and literature sources quoted there.

[20] See: C. M i k: *Przekazanie kompetencji...* [Transfer of Competencies...], p. 161; by the same author: "Zasady ustrojowe...," *op. cit.,* p. 27; see also: W. C z a p l i ń s k i: "Akty prawne Wspólnot Europejskich w orzecznictwie Trybunału Sprawiedliwości" [Legal Acts of the European Communities in the Jurisprudence of the Court of Justice] [in:] M. K r u k (ed.), *Prawo międzynarodowe... ,op. cit.,* p. 188.

a consequence, the notion of direct effectiveness can be applied not only to regulations (which the founding act refers to directly, see Article 249 EC Treaty), but to other community regulatory acts, and in particular to the directives, which at least in a vertical order, and therefore in conflicts between the state and the citizen, may have specific legal implications and constitute a direct source of the citizen's rights and the correlated duties of the state.[21] The possibility of indemnification liability of the state for the failure to implement Community norms confirms that belief. Finally, it is recognized that the precedence of Community norms over the statute, established by the constitutional norm, implies, in particular, the demand addressed to the courts to apply the Community provision in the event of such a collision (this is not treated as tantamount to the effect of derogation with respect to the provision of internal law which cannot be reconciled with the Community norm). Also, the postulate of such interpretation of the norms of internal law, as to allow for its reconciliation with the Community regulation to a maximum extent is deemed to be universally accepted. It is therefore a requirement to interpret and apply the law in the manner which is as favourable to the Community law as possible, and which expresses a particular presumption in favour of the adoption of such a meaning of the norm of internal law, from among many conceivable meanings of that norm according to the rules of inference, which corresponds with the Community norm.[22]

However, there exists a number of doubts, which still require resolution, and which are the subject of serious discrepancies in the available literature.

The general formula of precedence of application of the provisions of the Community law as expressed in section 3 Article 91 does not remove all of the doubts. A fairly clear situation will exist if a conflict (inconsistency) arises between a norm of the Community law and a provision of a statutory regulation in a situation, while the direct nature of the effects of the Community regulation will present itself unequivocally. The imperative of precedence expressed in the quoted constitutional norm must be interpreted as a demand to apply the Community provision, and therefore, at the same time, a refusal to apply a provision of internal law contradicting it. This position is not obstructed by any other basic constitutional formula (Article 178 section 1), expressing the principle of subjection of the judges to the Constitution and the statutes, from which

[21] See also: A W y r o z u m s k a: "Formy zapewnienia skuteczności prawu międzynarodowemu w porządku krajowym" [Forms of Assurance of Effectiveness of International Law in the National Order] [in:] M. K r u k (ed.): *Prawo międzynarodowe . . ., op. cit.*, p. 193 and following.

[22] See i.a.: S. B i e r n a t: "Wykładnia prawa krajowego zgodnie z prawem Wspólnot Europejskich" [Interpretation of National Law in Compliance with the Law of the European Communities] [in:] C. M i k (cd.): *Implementacja prawa integracji europejskiej w krajowych porządkach prawnych* [Implementation of the Law of European Integration Law in Domestic Legal Orders], Toruń 1998, p. 123. This position is also expressed, c.g., in the jurisprudence of the Constitutional Tribunal dated 28th March, 2000, K 27/99, which states that in consequence of the obligation to ensure the conformability of legislation, a directive of interpretation has been adopted, by which the regulations currently in effect should be given understanding that they will be used to ensure the broadest possible conformability. Similar theories arc emerging in other candidate states, e.g. the Czech Republic is considering the introduction of a distinct constitutional norm which would require the application of internal legal regulations (along with the constitutional ones) to be interpreted and applied in a way that allows their reconciliation with the Community law, see: V. B a 1 a s: "Legal and Quasi Legal Threshold of the Czech Republic to the E.C.," a report presented at an international conference in the Hague, August 2000.

one could draw the conclusion that it is unacceptable to refuse to apply a statute which is formally in force and has not been waived, even if it remains in conflict with a Community norm. The existence of a clear constitutional regulation regarding the precedence of application of the Community norm allows to accept that Article 178 of the Constitution must be interpreted in conjunction with the entire body of constitutional regulations concerning the application of the law, therefore including in particular Article 91 section 3 of the Constitution. Of course, it would probably have been better if that issue were resolved *expressis verbis* by an appropriately edited formula of Article 178 of the Constitution (although here I could not agree with the view that Article 178 of the Constitution should limit the subjection of the ordinary judges only to the Constitution; such formula would become a source of anarchic phenomena in law, and, in essence, it would question the purpose of existence of the constitutional court).[23] In any case, with the above indicated reservations, *de lege lata fundamentals* the problem of precedence of application of a Community norm, having a univocally direct effect, over a statute, can be resolved correctly.[24] By that univocal character I understand both the direct binding force in the legal system (and therefore without the need for implementation), and the possibility to define the rights of the addressee of the norm, resulting from the sufficiently precise contents of the regulation.

A much more serious problem arises in the situation when the collision concerns a Community regulation (eg. a directive), which requires its implementation in the internal order. With respect to the precise enough content of the Community regulation (subject to easy and univocal reconstruction by way of interpretation), which allows to assign it a direct effect (in the broader sense of that term - see above) in the sphere of the rights of the subject as a legal or physical person, can the court refuse to apply a statue or another type of provision of internal law, referring to the principle of precedence expressed in Article 91 section 3? The problem is controversial, the more so, as even applying the broad interpretation of the direct effect, in the case of a directive, it does not apply in the area of horizontal relations (in the relationships between private individuals; in the relationships between the citizen and the state, the directive can neither be a source of obligations arising in violation of the *lex retro non agit* principle).[25] We should neither lose out of sight the fact that the implementation of the Community rule may occur by way of various legislative methods - the determination of the procedure for the implementation of a directive belongs to the internal competencies of each state. It is also probably easier when the scope of regulation covered by the directive comprises an area previously not included in the legal reglamentation of the internal order; the case of an obvious collision between a binding statutory norm of a country and that of a Community is more complicated.

The direct application of a directive (or another type of Community regulation yet requiring to be implemented) by the organ applying the law, and the simultaneous refusal

[25] See: C. M i k: "Zasady ustrojowe ...," *op. cil.,* p. 36.

[24] Formally speaking, that requirement of the precedence of the application by national courts of the Community regulations is referred by the ETS only to the regulations which exert a direct outcome; see c.g. the case Simmenthal, ECJ 1979, p. 629.

[25] See: C. M i k: "Zasady ustrojowe ...," *op. cil.,* p. 29.

to apply the conflicting norm of the internal law, seems to generate many doubts and difficulties, at least on the grounds of *legis latae*. The approach purporting the direct effect of the Community regulations (interpreted at the same time as the possibility of their direct application), presented by the ECJ jurisprudence also with respect to that category of provisions, which require implementation, is *prima facie* encumbered by inconsistency, even if the direct effects do not emerge on every facet, but only in the vertical relationship (the state — vs. - the individual citizen). Thus the direct effect (applicability) of the legal regulation, approached in the above manner, is in consequence at least deficient. Undeniably, by its very nature, the directive is addressed to the member stale, and creates on its part the obligation to abstain from introducing regulations inconsistent with the Community rule, to remove any regulations in conflict with such rule, or to establish laws which implement the norms of the Community law.[26]

If one pursues the already developed jurisprudence of the ECJ on that matter,[27] it should be assumed that at least within such deficient scope of direct applicability (the controversy the state - the individual), there would appear a possibility for the direct application of the directive with precedence over the internal law, according to the solution adopted in Article 91 section 3 of the Constitution. As a result, it would also imply that those acts which require implementation generate a direct effect (in the sense of direct applicability), within the scope resulting from the jurisprudence of the ECJ. Given such an assumption, the differentiation between the direct effect and direct application loses its practical significance.[28]

But there is yet another possibility of looking at the problem of collision between a regulation of the Community law and a statutory regulation.

In the Polish legal system there is an institution of legal inquiries (questions of law), which makes that kind of collision possible to resolve. In accordance with Article 193 of the Constitution, "any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements

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[26] In accordance with the contents of Article 249 of the Treaty on the European Community, the directive "with regards to the intended effect, in relation to each member country to which it is addressed" is binding. The national authorities arc provided with the choice of the forms and methods of its implementation. It should be added that no internal legislative objections resulting from the constitutionally defined procedures shall provide justification of a state's reluctance to apply the Community regulations. Sec also the comments on that issue by E. P o d g ó r s k a, *op. cit.*, pp. 84-85.

[27] At least since the time of the well-known ruling on the case *Van Duyn v. Home Office*, ECJ 1974, p. 1337; sec also the case *Becker* v. *Finanzamt Miinster Innenstadt*, ECJ 1982, p. 53. See also with regards to the significance of the position of the ECJ on that issue for the interpretation of Article 91 section 3: J. S k r z y d ł o: "Konieczne zmiany w prawic polskim w perspektywie współpracy sądów polskich z Trybunałem Wspólnot (na podstawie Art. 177 Traktatu WE)" [The Necessary Changes in the Polish Law in the Perspective of Cooperation of Polish Courts with the Court of Justice of the Communities (on the basis of Article 177 of the Treaty on the European Community)], *PiP* 1998, no. 8, p. 91.

[28] It should be stressed, of course, that the principle of precedence of a Community norm of direct effect is not tantamount with the automatic elimination of a contradictory norm from the internal legal order. Such approach has been adopted also in the constitutional doctrine and jurisprudence of member states, see e.g. the characteristic decision of the Italian Constitutional Tribunal of 5th June, 1984, No. 170 in the *Gramini* case, which holds that beyond the meritorious scope and the time frame in which the Community law prevails, an internal norm sustains its validity and applicability.

or statute, if the answer to such a question of law will determine an issue currently examined before such court." I express the view that the model of review of a regulation of internal law can also be - albeit only indirectly - the rule of the Community law. Although Article 193 of the Constitution does not *expressis verbis* mention the Community rules, it is entirely legitimate to adopt the position that in a situation of collision between a norm of internal law and a Community norm, *eo ipso* a treaty norm of the primary law (of the founding treaty or the accession agreement) is being infringed upon, what fully justifies the application of the instrument of legal inquiry. The finding by the Constitutional Tribunal of the collision between a statute (or another provision of internal law) and a Community rule will be tantamount with the loss of binding force by such a normative act.[29] It is worth noting here, that the Constitutional Tribunal does not enter in that manner into the field reserved exclusively to the competence of the ECJ, as the object of the judgement is a provision of internal law, and the model is a treaty norm (indirectly — a derived rule of the Community). The establishment of the actual content of the model, of course, will at times also present a complicated exercise of interpretation.

In the future the need to establish a procedure for submitting a case to the ECJ must be considered, should there be any doubts concerning the interpretation of a Community provision itself, also by the Constitutional Tribunal.[30]

The Issue of Indemnity for Damage Resulting from Infringement of the Community Law — a Comment

An interesting question arises, whether it is possible for the state to be held liable for damages on the grounds of *legis latae* for infringement of the rights of an individual which result directly from a Community regulation. This issue has been reflected in the jurisprudence of the ECJ, which has defined relatively precise criteria, according to which the liability of the state in this respect should be determined.[31] It is after all significant, that the determination of the grounds and the procedure for claiming damages belong to the domain of internal law. Domestic regulations, as indicated in the

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[29] See also: S. B i e r n a t ' s opinion *(op. cit.,* p. 186) on the possibility of review by the Constitutional Tribunal, following Article 188 section 1 of the Constitution, of acts of internal law issued in order to implement the Community law. However, the issue is not limited to the implementation acts alone.

[30] On the grounds of the existing state of the law it would be doubtful whether Article 234 of the Treaty on the European Community could be applied to proceedings before the Constitutional Tribunal (that any court institution of a member state may ask for a ruling on a preliminary issue connected with the interpretation of a Community provision). See also: M. K o r n i ł o w i c z: "Wyroki prejudycjalne Trybunału Sprawiedliwości Wspólnot Europejskich" [Prejudicial Decisions of the European Communities Justice Tribunal], *Radca Prawny* 1999, no. 4, p. 50 and following.

[31] See more on this topic: N. P ó ł t o r a k: "Konstytucyjne prawo do wynagrodzenia szkody wyrządzonej przez organ władzy publicznej a odpowiedzialność odszkodowawcza państwa w prawie Wspólnot Europejskich" [The Constitutional Right to the Reparation of Damage Inflicted by an Organ of Public Authority and the Liability of the State for Damages in the Law of the European Communities] [in:] *Konstytucja Rzeczypospolitej Polskiej..., op. cit.,* p. 201 and following; M. G ó r k a: "Zasada odpowiedzialności odszkodowawczej państwa za naruszenie prawa wspólnotowego" [The Principle of Liability of the State for Damages on Account of Infringement of Community Law], *Przegląd Prawa Europejskiego* 1997, no. 1, p. 32 and following. Sec also particularly characteristic judgement by the ECJ on the case Francovich, ECJ 1991, p. 5114, paragraph 35.

jurisprudence of the ECJ, must not make the indemnification of damage impossible or especially difficult. The problem cannot be reviewed further. I believe, however, that the Constitution of the Republic of Poland (considering above all Article 77 section 1) provides a basis for the triggering of liability for damages in case of damage suffered by a private individual resulting from his/her being subject to the application of the internal law regulations which contradicted a Community rule.[32] The premise for the liability of the state would need to involve not so much the lack of implementation of a Community provision or the rule of a statutory norm contradicting such a provision, but the shape of the legal status of the subject concerned - through an individual judgement (and therefore an individual act of application of the law) - on the basis of a norm not conformant with a provision of the Community law. The premise of the causal link between the damage and the specific, sufficiently individualised, causative action (a specific act of application of the law) will be met only then. The binding of a regulation contradictory with a provision of the Community law or a hierarchically higher act alone, would not, in my belief, fulfil such a requirement, which in some situations may be regarded as the infringement of the requirements imposed upon a member country in accordance with Article 10 of the Treaty on the European Community.[33]

Prospects for the Establishment of the European Constitution

There is no doubt that the fundamental issues related to the relationship of the internal law with the Community law, including those deciding on the position of the constitutional norms of each member state, may by consistently and comprehensively resolved only at the level of an act, which is more frequently referred to as the European Constitution. Preparations for the adoption of such a document by the European Union have began, although not all significant issues related to the structure of such an act and the procedure for its implementation have been resolved so far. The preliminary assumptions include the positioning of the future European Constitution in the hierarchy of the binding laws of the member states above their national constitutions. It becomes particularly important for the future to grant univocal guarantees to the basic rights of the individual, and thus a specific incorporation of the provisions of the European Convention on Human Rights within the framework of that future constitutional regulation.[34] There is no doubt

[32] See i.a. my own article: "Odpowiedzialność państwa na podstawie art. 77 Konstytucji RP" [Liability of the State on the Grounds of Article 77 of the Constitution of the Republic of Poland], *PiP* 1999, vol. 4 pp. 3-18. 1 agree with the general conclusion of N. Półtorak on the possibility of constructing the liability of the state in the discussed situation, although the relation between Article 77 of the Constitution and Article 417 and what follows of the Civil Code, require much more careful evaluation.

[33] In accordance with that provision, the member states shall undertake every possible measure of a general or special nature in order to assure the fulfillment of the obligations resulting from that Treaty.

[34] It should be noted, however, that the particular incorporation of the provision of the European Human Rights Convention into the Community law has already taken place, first, through the jurisprudence of the ECJ indicating the obligation to observe in the Community law the basic rights guaranteed by the constitutions of the member states, and subsequently, in Article 6 of the Treaty on the European Union. A step in this direction was the adoption of the European Charter of Fundamental Rights at the Conference in Nice in December 2000; the Charter is not, however, a legal act formally binding the member states.

that both the procedure for the adoption of the European constitution, and the consequences which it will generate in the constitutional sphere of each member state, will require the introduction of appropriate significant changes to the national constitutions. The prospects related to the creation of the Constitution of the European Union are so essential for the future of European integration that the candidate countries aspiring to the Union, and bound by the association agreements, should be ensured the real opportunity to present their points of view. The work on the formulation of such positions should begin as early as possible, given that its subject consists of an array of problems of particular complexity, both in legal and in political terms. The opening towards the expansion of the European Union must be expressed not only in the efforts of the preparatory stage and on the candidate states' determination, but it should he reciprocated by the commensurate determination of the European Union itself. The participation of the candidate countries in the debate on the future of the European Union, strongly dominated by the prospects of the European Constitution, not only provide a great opportunity for dialogue, but also reinforce the belief in the real will of the Union to open itself towards a new formula of integration resulting from its expansion in the not very distant future.

Conclusions

The above presented considerations seem to confirm the thesis formulated already in the introduction, that the Polish constitutional regulations provide legal solutions which are in principle favourable for the process of European integration. The constitutional European clause contained in Article 90, which opens the system to the accession of Poland to the European Union and anticipates the transfer of part of the competencies of the sovereign organs of state authority to the organs of the Community determines, at the same time, the legal framework within which the process of Poland's accession to the Community will be implemented.

With of the prospect of Poland's membership in the European Union, the special constitutional status of the Community law (differing from international law interpreted as the law of treaties), assuming an explicit clause of precedence of its application over the internal legislation, is of enormous importance.

At the same time, Poland does not renounce its own constitutional identity, conceived in this case as maintaining the hierarchical superiority of the constitutional regulations over any other legal norms in force in the Republic of Poland. Poland, therefore, has not followed the example of some of the states in the Community, which have guaranteed the precedence of the Community law also over their constitutional regulations. But it should be firmly stressed at this point that such a position is not tantamount to the introduction of the Constitutional Tribunal's control of the derived Community law with regard to its conformance with the Constitution. Therefore, it is possible, within the scope related to the interpretation and evaluation of the validity of the Community regulations, to respect the principle of the exclusive competence of the Community's organ of jurisdiction. The Polish constitutional court, however, maintains its compe-

tence to adjudicate on the constitutionality of the accession agreement and, in consequence, of the other norms of the primary law of the European Union. The proposals on how to resolve the dilemmas arising in this context have been presented above.

And finally, it must be emphasized, that the favourable to the Community law and, above all, to the principle of direct consequence, interpretation of the solution contained in Article 91 section 3 of the Constitution, will enable the adoption of that direction in the jurisprudence of the ECJ, which extends the principles of direct effectiveness and precedence to include also those legal acts which require implementation (above all the directives).

With regard to the question as to the stage of the future of integration processes of the Republic of Poland with the European Union, the progress in establishing the legal construction constituting the foundations of Poland's accession to the Community can be assessed as satisfactory. The Polish legal community appears to be well prepared, what is manifested by the on-going extensive and profound discussions on the consequences of our contry's integration with the Union. However, a balance is needed in every area. Is the Community also so determined and politically willing to expand in such a hurry?