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THE FUTURE POLISH CONSTITUTION IN THE PERSPECTIVE OF POLAND'S MEMBERSHIP OF THE EUROPEAN UNION

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1. The Accession in not too distant future to the European Union is treated as a priority by most political forces and public opinion in Poland. The same is also true for parallel actions towards intensification of cooperation with NATO within the program of Partnership for Peace which should eventually result, at least in the opinion of Poland, in the country's membership of the Alliance. The latter problem will not be discussed here but has to be mentioned as it provides a specific context for the trend to become involved in the process of European integration. On the whole, concerned here are the main determinants of the Polish reason of state in its modem interpretation within an extremely broad political consensus. [1] This is evidenced for example by the backing given by all the forces represented in the Parliament to Poland's application for the admission to the European Union, submitted by the centrist-leftist Cabinet. This aim of Poland has previously been expressed in the preamble of the European Agreement (on Poland's association with European Communities and their member states). The preamble states that the ultimate aim of Poland is to become member of the Communities and that, in the opinion of parties, association may help Poland towards this aim.

It is, however, beyond the scope of this paper to consider a variety of scenarios leading to or preventing Poland's accession to the European Union. The present point, instead, is to discuss the conditions which Poland (as well as the other candidates) has to meet to qualify for full membership of the integration structures, created for many decades now in Western Europe with both a great impetus and patient care. Only a fragment of this broad problem will be discussed, that is the constitutional conditions and prerequisites of membership of the European Union. This, however, seems to be a most important and timely fragment. In progress are the works of the Constitutional Committee of the National Assembly (a joint body appointed by the Diet and Senate) on preparation of a new fundamental law. The works base on constitutional drafts

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[1] For a broader discussion, see article by the Minister of Foreign Affairs in the years 1989 - 1993. K. Skubiszewski: „Racje stanu z perspektywy polskiej" [The Reason of State from the Polish Perspective], *Rocznik Polskiej Polityki Zagranicznej*, 1992, Warszawa 1994, p. 35 ff.

submitted by different political parties and by the President of the Republic of Poland. It is not unlikely that the Committee will also work on a civic constitutional draft, provided its initiators (the trade union ''Solidarity" and certain rightist parties) manage to collect five hundred thousand signatures required by the law.

2. The question thus arises: what traits should the new constitution have to make the Polish state able to participate in European structures of integration?

To make this general question more specific, two different aspects of the matter can be mentioned — to begin with two groups of problems that require constitutional regulation in the perspective of membership of the European Union.

First, it is the values that provide the foundations of constitutional regulation and find expression in its specific provisions. They have to be consistent with the values that were shaped in the course of historical development of Western European states and acquired the leading position in the process of their integration. Depending on their inclusion in the constitution is the very possibility of participation in that process.

Second, it is the regulation of the fundamental questions resulting from membership in institutions with special competence (previously often called supranational) which take over certain competence of states and constitute a law that prevails over the domestic legal order. What depends on inclusion of such problems in the constitution, in turn, is the practical ability of becoming involved in European structures.

3. Speaking of values in the context of the present discussion, we mean first and foremost a democratic political system based on free elections, promotion of and respect for human rights (minority rights included), and respect for the basic rules of market economy. Of course, the catalogue of European values can be made to include many more details. It seems, however, that any values defined in greater detail would be but a specific deduction from the above three basic ones, and are therefore contained in them from the start.

As far as the constitution is concerned, the fact has to be borne in mind that however important, it may often prove insufficient just to proclaim values. What should therefore also be included in the sphere of values are not only certain general formulas but also systemic solutions aimed at securing observance of the values proclaimed. After all, it is the principles of electoral regulations that provide the test of attitude towards democracy.

In the period of formation of European Communities, their member states aimed first of all at a precise definition of their tasks and functioning. It was a novel approach which gave rise to many controversies. What is called values in the present paper was the responsibility chiefly of the Council of Europe composed of all the states involved in formation of the Communities. The treaties establishing Communities focus on the problems of operation.

After a time, it appeared that a specific gap emerged this way which decisions of the Court of Justice sought to fill. Extension of the competence of the Communities and their agencies, consolidation of their position, development of Community law etc.

necessarily brought to the fore the problem of values, and particularly of the democratic legitimization of the Communities and the guarantees of fundamental rights of the individual. In its decision of 12 October 1969, faced with moderation of the founding treaties, the Court sought a resolution of the dilemma in a reference to the constitutions of member states. Its argument was formulated as follows:

"In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community"[2].

In its subsequent decisions, the Court made references to this reasoning, with certain modifications in some cases.[3] What is of special importance from the present point of view is the reference to common constitutional traditions which become part of the law of the Communities as the general principles of law. This way, the moderation of treaties with respect to the discussed issue of values resulted in those values being sought in the constitutions of member states. A clear indication follows: the constitution of a state applying for admission to the Union must necessarily make a reference to the values that are common to the constitutions of member states.

Later on, the problem of values began to occupy more and more space in the documents of the Communities and their agencies. In 1989, the European Parliament issued a special declaration relating to the fundamental rights binding for the Communities, suggesting a rather extensive catalogue of such rights.

Common values are also referred to by the European Agreements concluded by the Communities and their member states with the states of Central Europe. The Agreement with Poland devotes much attention to this question. The preamble contains a general mention of common values shared by parties. Stressed next is the involvement of Poland, the Communities and their member states in the consolidation of political and economic freedoms (which provides the grounds for association).

The preamble also points to achievements of the Polish nation in the process of prompt transition to the new political and economic order based on the rule of law and human rights, including the legal and economic framework for market economy and the many-party system with free democratic elections.

Finally, the parties state that the full realization of the association process should depend on Poland's genuine implementation of political, economic and legal reforms. There is no need to add that this connection should be stronger still if the association is with time to be transformed into membership of the Union.

As regards the frontal introduction of a specific system of values to the legal order of the European Union in the making, this was done by the Maastricht Treaty. Its preamble specifies the elements that were missing from the constitutional acts that once formed the Communities. What I mean here first of all are the formulations rela-

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[2] Fragment of decision of 12 November, 1969, case Nº 29/69 *ECR* 1969, p. 425.

[3] See e.g.£CÆ 1974, p. 491.

ting to the adherence to the principles of freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law.

Therefore, we no longer deal here with instructions deduced by judicial decisions and professional literature but with direct guidelines as to the main assumptions of the constitutional order in states applying for the admission to the European Union.

4. A variety of solutions concerning the admission of new members can be found in the practice of international organizations. Not going into details of this problem, one of its aspects should be stressed which is strictly relevant to the matters of interest for the present author: the conditions of membership. From this viewpoint, the provisions on the admission of new members can be roughly divided into two categories. The first one includes provisions that specify such conditions expressly (and, as can be assumed, no additional conditions should be set). The other category are provisions limited to the laying down of the admission procedure, and leaving the question of any conditions of membership open for negotiation.

The relevant provision of the Maastricht Treaty (Article 0) belongs to the second of the above categories. It states that any European state may apply for membership of the Union. Applications are to be filed with the Council which acts unanimously upon consultation with the Commission and consent of the European Parliament which should be granted by the absolute majority of votes. Therefore, the provision only regulates the formal and procedural elements. As regards the merits of conditions of membership which are the focus of the present paper, the Treaty provides that they should be defined in an agreement (and thus also negotiated) between member states and the state applying for membership.

This type of regulation is not too favorable for candidates. The conditions of the admission remain unclear, and the procedure of making decisions is multistage and rigorous (let me stress that the agreement with the admitted state has subsequently to be ratified by each of the member states of the Union).

Since the provision on the admission of new members fails to set down the conditions of membership, such conditions have to be sought in the whole of the legal order of the Communities and the European Union. Here, we seek guidelines relating to the candidate's constitutional order. Yet this is but a fragment of the discussed problem of conditions of membership. Hence the candidates, states of the Visegrad group in particular, keep insisting that the Communities and the Union make the conditions of their future membership more specific which might provide the departing point not only for negotiations but also for giving the proper direction to the adjustment actions in those countries. After all, deducing such conditions from the legal and economic system and so on is quite another thing that learning about the standpoint of one's prospective partner in the future negotiations.

Guided by these among other reasons, states of the Visegrad group availed themselves of an encouragement on part of their Western partners and sent to Brussels, on September 11,1992, a memorandum on the consolidation of the integration with European Communities and on the prospects of accession.

The extensive memorandum aimed not only at presenting the merits of the appraisal of approximation between the Visegrad group and the Communities and an analysis of the problems encountered; it was also to bring about a standpoint on this matter to be taken by the Commission or even the then oncoming summit of the Twelve in Edinburgh.

The aim could be achieved to an extent. The memorandum, or an attempted answer to it to be exact, provided the departing point for a report by F. Andriessen (at that time, responsible within the Commission for external relations). The report was accepted by the European Council at the Edinburgh meeting, thus acquiring the nature of at least a semi-official document of the Communities.[4]

Beside many other most interesting theses and opinions, the report contained the conditions, this time specific, that have to be met for states of the Visegrad group to become members of the Communities (Union). In particular, the following has been specified in the report:

— the candidate's ability to undertake all duties of a member, that is to meet the requirements of *acquis communautaire',*
— stability of the institutions that guarantee democracy and the rule of law, and respect for human and minority rights;
— the functioning of market economy;
— support to the aims of political, economic and monetary union;
— ability to meet the principles of competition and forces of the market;
— readiness of the Union to admit new members with no detriment to the dynamics of integration processes.

The last of the above-mentioned conditions is irrelevant to the present discussion. Let me add, though, that it gives a relativistic quality to the remaining conditions: what it resolves itself into is that, even if the countries of the Visegrad group manage to meet the specified conditions, the Union anyway reserves the right to refuse the motion for admission. None the less, Andriessen's report was the first to provide definite grounds for the issue of those countries' future membership of the Union and paved the way for subsequent favourable signs.[5]

The conditions set down in the report fully confirm the present assumption that the candidacy for membership of the European Union has serious and far-reaching consequences for the constitutional order. From this viewpoint, the considerable delay in the process of creating a new Polish constitution (as compared to the expectations and to the other postcommunist states) may well prove advantageous. Namely, it offers the

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[4] See *BEEC* 1992, № 12, pp. 7 - 42.

[5] For a broader discussion of this problem, see A. H a r a s i m o w i c z: „Po podpisaniu Układu Europejskiego. Perspektywy współpracy ze Wspólnotą Europejską. Aspekty polityczne" [After the Signing of the European Agreement. Prospects of Cooperation with the European Community. Political Aspects], and J.K. Bielecki: „Po podpisaniu Układu Europejskiego. Perspektywy współpracy ze Wspólnotą Europejską Aspekty gospodarcze [After the Signing of the European Agreement. Prospects of Cooperation with the European Community. Economic Aspects], *Rocznik Polskiej Polityki Zagranicznej,* 1992, Warszawa 1994, p. 57 ff and 69 ff.

chance for passing a constitution which would fully suit the Polish aspirations to participate in the processes of integrating and uniting Europe.

5. Will, however, this chance for passing precisely this constitution actually be used? At the present stage, elements of the answer to this question can be sought in the many constitutional drafts on which the Constitutional Committee of the National Assembly is now working. The author is fortunate here, being able to adduce a study of those drafts, carried out earlier this year by the Institute of Law Studies of the Polish Academy of Sciences. The study led to a comparative expertise based on many detailed reports.[6]

Basing on the analysis of the drafts, the authors were able to state that most drafts ''suggest, in matters of key importance for the future social order of Poland, regulations consistent with the modern principles of democracy".[7] This statement matters a lot for the nature of the future constitution, the fact considered that the drafts were prepared by various political forces, some of them sharply conflicting with one another.

What is of special importance from the viewpoint of the present discussion is the fact that the drafts refer to the conception of the rule of law. It has been functioning in the hitherto valid constitutional order since 1989 in the formula of ''democratic state ruled by law". It expresses the autonomous function of law and its superior role in the state. It also limits the omnipotence of the state (state agencies only allowed to do what the law permits them to do) and creates systemic conditions for promotion of human rights (people are allowed to do all that is not prohibited by law).[8]

The reference to this conception in the drafts of a new constitution permits the assumption that the idea of the rule of law will be consolidated in Poland which no doubt brings us closer to the system of values shaped in the constitutional tradition of Western Europe, and thus also to the European Union. It is a process of great importance, considering the fact that the former system which persisted for many decades was based, among other things, precisely on the omnipotence of the party-state and on the instrumental treatment of law.

Also as opposed to the former system, the constitutional drafts are highly cautious towards the scope of the regulation of social relations, and open extensive possibilities for the development of self-government.

This caution — or perhaps rather moderation (as far as the scope of regulation is concerned) — prevents most drafts from attempting a closer characterization and regulation of the economic system. The drafts, however, do provide the general grounds

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[6] See "Jaka konstytucja? Analiza projektów konstytucji RP zgłoszonych Komisji Konstytucyjnej Zgromadzenia Narodowego w 1993 r." [Which Constitution? Analysis of Drafts of the Constitution of the Republic of Poland Submitted to the Constitutional Committee of the National Assembly in 1993], Warszawa 1993. Scientific editor: M. Kruk (Comparative analysis has been applied to seven drafts.

[7] See ibidem, p. 10.

[8] For a broader discussion, see J. Zakrzewska: „Spór o konstytucję" [The Constitutional Dispute], Warszawa 1993, Chapter II: „Konstytucja państwa prawa" [The Constitution of a State Ruled by Law].

for market economy — chiefly through the setting down of guarantees of the right to property and the right of inheritance, and through proclaiming freedom of economic activity. The differences concern the extent of state intervention and the treatment of market economy in rather liberal vs. rather social categories. All of the options, however, seem contained in the framework of the European system of values discussed here.

Instead, the drafts contain most extensive catalogues of human and civil rights. At any rate, this is true for political rights. The drafts differ much more from one another as regards economic and social rights.[9] These particular rights tend to be better developed in the drafts submitted by the left wing, while the rest only regulate a definite minimum of that area — one that the authors consider feasible at the present stage of systemic transformation. Therefore, the Constitutional Committee is likely to face the need to compare the drafts with the European Social Charter so as to adopt at least appropriate solutions as to directions. Concerned here would be probably the development of a program which would take into consideration both the difficult economic conditions of today and the European perspective. This might result in the laying down in the constitution of the normative framework for the development of the discussed category of rights with the economic growth.

Finally, as regards the structure and principles of the functioning of a state, all drafts but one base on the conception of separation of powers which is given a flexible rather than rigorous treatment. Considerable differences are found in the shaping of relations between the legislative and the executive authority (between Parliament and President in particular), and of relations within the executive authority (Government — President).[10] These different options, however, meet the European constitutional standards.

Therefore, if one were to imagine the future constitution basing on the submitted drafts (which is perhaps risky to some extent), the prospects would be rather optimistic. The chances are that the future constitution will base on the same values on which the legal order of member states of the European Union is based. The passing of this kind of constitution should thus bring Poland closer to the Union, at least in terms of the values shared.

6. What remains to be discussed is the other group of problems which would have to be regulated in the constitution in the perspective of the future membership of the European Union. As has already been mentioned, concerned here are not values but creation in the constitution of the functional possibilities of active membership of the Union. What I mean is first of all the constitutional framework for participation in the

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[9] See B. Zawadzka: „Problematyka ekonomiczna i społeczna w projektach konstytucji" [The Treatment of Economic and Social Problems in Constitutional Drafts], (in:) *Jaka konstytucja...*, op. cit., p. 94 ff.

[10] See W. Sokolewicz: „Instytucja Prezydenta Rzeczypospolitej w świetle przepisów nowej konstytucji" [The Institution of President of the Republic in the Light of Provisions of the New Constitution], (in:) *Jaka konstytucja...*, op. cit., p. 148 ff.

organization (or perhaps already a union of states?) with most extensive material and formal competence.[11]

Here, two problems seem particularly important. What I mean are the constitutional grounds, first, for handing over of a part of state's competence (or supreme powers, as some call them) to international agencies, and second, for recognition of the principle of the direct application of the law created by the Union (Communities) and its priority over domestic law. The latter entails also the need to abide by decisions of the Court of Justice in Luxembourg.

It has to be stated in the first place that both the currently valid constitutional order and the submitted drafts of a new constitution fail to offer sufficient conditions for the resolution of the above-mentioned functional problems. None the less, certain suggestions *de lege ferenda* have already been submitted; they will be discussed further on.

What can be added here is that the present constitutional order fails not only to include the discussed specific problems but even to define the position of international legal norms in domestic law. The issue has been subject of discussion in the doctrine for many decades. A variety of hypotheses were made which — in the situation where the constitution kept silent on that point — were to justify the validity in domestic law of international legal norms (international agreement in particular). What met with a relatively broad acceptance was a conception that international law is valid in domestic legal order by its own force (*ex proprio vigore).*[12] According to its advocates, it based on constitutional practice even if the constitution made no mention of this issue. A broader justification and criticism of this conception go beyond the scope of this paper. The following has to be stated, though: the conception was in fact rather arbitrary and, more importantly still, it was never actually taken up by the courts.

Thus in the practice, international agreements functioned in the domestic legal relations chiefly in the shape of reception or reference. Therefore, they functioned not *ex proprio vigore* but through domestic legislation which repeated provisions of an agreement (reception) or indicated its application (reference). What is more, in its decision of 25 July 1987, the Supreme Court frontally declared against the possibility of a direct application of international law (without transformation), at the same time recognizing the priority of statutes over international agreements.[13] The decision met with a broad response due to its explicit political implications: the case concerned the application of an ILO convention on trade union freedoms (ratified by Poland) against a domestic statute inconsistent with that convention.

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[11] See C. Banasiński: „Prawnokonstytucyjne problemy uczestnictwa państwa we Wspólnotach Europejskich" [Participation of State in European Communities: Problems resulting from Constitutional Law], *Państwo i Prawo,* 1993, Nº 11 - 12, p. 75 ff.

[12] This conception was put forward for the first time as early as 1962, and developed further somewhat later. See S. Rozmaryn: „Ustawa w Polskiej Rzeczypospolitej Ludowej" [The Statute in Polish People's Republic], Warszawa 1964, Chapter VI: „Ustawa a umowy międzynarodowe" [The Statute and International Agreements].

[13] For thesis of the decision together with a gloss by K. Skubiszewski, see *Państwo i Prawo,* 1989, №6, p. 135 ff.

7. The systemic transformations in Poland, initiated in 1989, involved among other things the country's opening to the world, and thus also a greater openness to international law. This was expressed in the new trends of decisions of the Supreme Court, aiming at allowing the validity of international agreements, and in a growing interest of the Constitutional Tribunal in such agreements (although the Tribunal still lacks the competence in this respect). The changes consist mainly in interpretation and reinterpretation as no desired constitutional transformations have so far taken place in this sphere.

What is of some importance from the present viewpoint, though, is the inclusion of Parliament in the process of ratification of international agreements (in 1989). At present, this issue is regulated by the Constitutional Act of 17 October, 1992 on mutual relations between the legislative and executive authority and on local government, the so-called ''Small Constitution". Mentioned in its explicitly are the categories of international agreements which may only be ratified by the President upon authorization expressed by the Diet by statute. Thus international agreements ratified according to this procedure become related to domestic legislation.[14] It has to be stressed here that ratification of international agreements of consequence for the domestic legal order is likely to follow precisely this procedure as a rule, and to require a statutorily expressed authorization of the Diet. It is therefore a factor that actually promotes the evolution of judicature in the above-mentioned direction.

The submitted drafts of a new constitution aim at filling the acute gap consisting in the absence of an explicit definition of the position of international legal norms in the domestic legal order[15] and, as a consequence, also the lack of constitutional guidelines concerning a possible clash between an agreement and a statute. Prevailing decidedly is the conception of the direct application of international law; differences can be found as to the proposed extend of priority of international law over statutes. Undoubtedly, such priority has to be secured for the international agreements which have acquired validity as a result of a statutorily expressed authorization by the Diet. Other agreements would prevail (in situations of conflict) over substatutory normative acts.

Most drafts provide for the possibility of agreements being reviewed (prior to ratification) by the Constitutional Tribunal. Yet the nature and procedure of such review of constitutionality of international agreements are defined differently by different drafts.

As can be seen, therefore, already at the present stage of constitutional works chances can be noticed for a much greater openness to international law and a more modem definition, consistent with European standards, of the position of international

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[14] See W. Czapliński: „Miejsce prawa międzynarodowego w porządku prawnym RP pod rządami Małej Konstytucji" [The Position of International Law in the Legal Order of the Republic of Poland under the ''Small Constitution"], (in:) *„Mała Konstytucja"* w *procesie przemian ustrojowych w Polsce* [The ''Small Constitution" in the Process of Systemic Transformations in Poland], (ed.:) M. Kr uk, Warszawa 1993, p. 238 ff.

[15] See A. Wasilkowski: ''The Position of International Legal Norms within the Domestic Legal Order and the Issue of Constitutionality", (in:) *The Draft Polish Constitution 1991 in the Light of Comparative Law,* (ed.:) M. Piechowiak, R. H1iwa, Poznań-Warszawa 1993, p. 108 ff.

legal norms in the domestic legal order. This is too little, though, to resolve the specific problems that result from membership of the European Union, although the situation may prove conducive to such resolution.

8. Direct references to the problems discussed in the present paper are made by some of the constitutional drafts only, but they differ from one another.

The first variant is a general constitutional authorization to participate in international cooperation and integration within broader communities.

The constitutional draft submitted by the Democratic Left Alliance states in Art. 17 point 2: ''The Republic of Poland takes part in activities towards international cooperation and integration".

The draft submitted by the Confederation for an Independent Poland contains two provisions to this respect. Art. 3 point 2: the Republic may participate in a broader regional community of political, economic, or other nature. Art. 3 point 3: Becoming integrated within such community, the Republic preserves its separate identity, independence, and sovereign rights.

Thus what we deal with here is no doubt openness of the constitution to participation in integration groups (communities). The draft of the Confederation for an Independent Poland lays a special stress on participation in regional communities, making specific reservations which seem clearly to give preference to conceptions of the ''Europe of Fatherlands" type.

A lot can be deduced from such authorizations, the fact considered that the constitution is a synthetic act, and a whole volume of interpretations and commentaries may well be added to a single one of its sentences. What is missing here, though, is the functional element discussed in the present paper. Unmentioned is an element of basic importance for the constitutional order: the consequences of participation in integration — European integration, as can be supposed, since no other one comes into consideration in the case of Poland after all. Also missing is an authorization to hand over certain competence of the state to the international level, to apply common legal provisions etc.

The other alternative, based precisely on a trend towards regulating these latter problems, is represented by a single constitutional draft, the one submitted by the President.

In its Art. 16 point 3, the draft contains the following formula: a statute may agree to the signing of an international agreement which authorizes an international (supranational) organization to exercise definite powers reserved by the Constitution for the agencies of legislative and executive authority. A statute ratifying such agreement requires the majority of three-fifths of votes.

The fact can hardly be overlooked that the above draft provision contains explicit technical defects. The qualification of an organization as supranational is the responsibility of the doctrine and not the constitution. A statute does not ratify an agreement but authorizes the Head of State to ratify it. Yet leaving aside this detailed reservation, it has to be stated that we deal here with the only constitutional draft which provides

concrete grounds for Poland's future membership of European Union. This way, the discussed issue has been formally introduced to the forum of the Constitutional Committee of the National Assembly.

Chances are that the Constitutional Committee will use the discussed proposition, formulating a provision which would anticipate Poland's future membership of the European Union.[16] This way, the European option of a new constitution would find expression not only in the sphere of values and systemic arrangements but also in the practical political and the functional ones.[17]

9. To conclude, it can be stated that in the sphere of values and systemic arrangements the drafts of a new constitution provide solid grounds for Poland's future membership of the European Union.

But the functional problems resulting from such membership have not been given due consideration so far in the submitted constitutional drafts. The ''latest" news can be added here, though: the Constitutional Committee of the National Assembly has recently decided to take up this particular problem, and approached specialists for appropriate expertises.

[16]The Constitutional Committee may also take into account other propositions. One of them was prepared as early as 1990 by a specially appointed team within the Legislative Council attached to the Prime Minister. The team (headed by the present author) dealt with preparation of draft constitutional provisions concerning the position of international legal norms within the domestic legal order and related issues.

Among other things, the team prepared a draft provision relating to the discussed issue which read as follows:

1. By force of an international agreement, some legislative, administrative and judicial powers may be handed over to an international organization provided such handing over is the condition of membership of that organization.
2. The passing of a statute by force of which the Diet agrees to such international agreement requires a qualified majority of votes.
3. Provided this follows from an agreement constituting an international organization, the law made by that organization shall be applied directly within the domestic legal order of State.

[17]For a broader discussion of this subject, see J. B a r c z: „Członkostwo Polski we Wspólnocie Europejskiej a nowa konstytucja" [Poland's Membership of the European Community and the New Constitution], *Państwo i Prawo*, 1993, №3,p. 78 ff.