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EUROPEANIZATION OF LAW IN POLAND FROM THE POINT OF VIEW OF CONSTITUTIONAL LAW

1. The European Union is today a form of transnational organization of 28 European countries which aim to carry out specific tasks together. These tasks include economic and social tasks, as well as tasks concerning security, justice and foreign policy. The present shape of the European Union is a result of a 60-year long period of integration transformations. The 1957 Treaty of Rome laid the foundations for the integration and the subsequent treaties were its milestones – the Single European Act of 1986, the Treaty on European Union (the Maastricht Treaty) of 1992, the Treaty of Amsterdam of 1997, the Treaty of Nice of 2001 and finally the Treaty of Lisbon of 2007 (adopted after the failed attempt to adopt the European Constitution in 2004) which determines the current shape of the European Union. It entered into force on 1 December 2009. In Poland, some provisions of Lisbon Treaty were challenged before the Constitutional Tribunal, however, the Tribunal did not agree with the objections raised in the appeal¹.

The Republic of Poland has acceded to the European Union by virtue of the Accession Treaty which was signed on 16 April 2003 in Athens and entered into force on 1 May 2004. The Polish Constitutional Tribunal confirmed the constitutionality of the Treaty in its judgment of 11 May 2005². The Accession Treaty was preceded by the preparatory steps formally initiated by the Association Agreement between the European Communities and Poland which entered into force on 1 February 1994.

From the point of view of constitutional law, there were several issues which concerned the preparation for EU accession at the national level. They were especially related to: 1) the establishment of legal basis allowing for the integration with the European Union in Polish constitutional law, 2) the harmonization of the Polish legal system with the legal order of the European Union, 3) the establishment of the ratification procedure of the Accession Treaty. All these issues required new legal regulations to be implemented to the Constitution. That was why the new Constitution of the Republic of Poland adopted on 2 April 1997³ included two provisions relevant for the issues concerning the integration with the European Union – art. 90 and art. 91 para.

2. Art. 90 of the Constitution provides that the Republic of Poland may, by virtue of international agreements, delegate to an international organization or an international institution the competence of organ of state authority in relation to certain matters. A statute granting consent for the ratification of such international agreement shall be passed by the Sejm by a 2/3 majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a 2/3 majority vote in the presence of at least half of the statutory number of senators (art. 90 para. 2). Granting consent for the ratification of such agreement may also be enacted in a national referendum pursuant to art. 125 of the Constitutions (art. 90 para. 3). The resolution in respect to the choice of procedure for granting consent (statutory mode or referendum) shall be adopted by the Sejm by an absolute majority of votes in the presence of at least half the statutory number of deputies (art. 90 para. 4). In that context, two important issues concerning the procedure of enacting the ratification act should be emphasized. First of all, the Sejm has no right to “reject” the Senate’s resolution in regard to the statute. Secondly, the majority of 2/3 votes required in the Senate is even higher than in case of the amendment of the Constitution (art 235 para. 4). However, a number of legal problems may also arise on the background of the choice of the ratification mode (legislative or referendum).

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Art. 91 para. 3 of the Constitution of the Republic of Poland stipulates that if an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws made by this organization shall be applied directly and have precedence in the event of a conflict of laws (ordinary legislation).

3. To sum up, it may be said that the provisions of art. 90 of the Polish Constitution serve as a legal basis for the limited transfer of the competences of organs of state authority (including procedural frameworks). Art. 91 para. 3 determines the place of law established by an international organization in the national legal system. As it may be noticed, the above provisions do not directly apply to one, determined by its name, international organization⁴. They have been formulated in a universal way, although they were created with the intention to allow Poland to join the European Union. The scope of the constitutional regulation is quite narrow because of the political circumstances surrounding the adoption of the Constitution. The Constitution makers decided to limit the constitutional regulation concerning Poland's accession to the European Union to certain minimum that would allow the accession. Therefore, many important issues concerning "EU matter" were not regulated in the Constitution. In particular it concerns issues, praxeologically significant, which relate to the functioning of state organs within European Union structures⁵. In political practice, this approach led to political and legal conflicts, especially within the executive branch⁶.

Art. 90 of the Constitution – especially its para. 1 – has defined the essence and scope of integration, which is the possibility – by virtue of international agreement – to “delegate the competence of organs of state authorities in relation to certain issues” to an international organization or international institution. However, the transfer of the competence of state organs cannot mean the transfer of state sovereignty. In the judgment of 24 November 2010 (K 32/09) the Polish Constitutional Tribunal stated that the essence of art. 90 of the Constitution was to impose certain limitations important from the point of view of the sovereignty of the Nation and the state. The transfer of competences is acceptable only to an international organization (international institution), only in regard to certain issues, only with the prior consent of the parliament (alternatively expressed by the Nation in a referendum). This triad of limitations is perceived as a guarantee of preserving a constitutional identity. Respect for constitutional boundaries is necessary because of the principle of sovereignty. The Constitutional Tribunal has underlined in its judgment the particular role of art. 90 of the Constitution stating that “The principle of preserving sovereignty in the process of European integration requires respect for the constitutional limitations of competence transfer in this process. This principle is specified by a rule that the transfer of competences cannot have “universal character” and it cannot refer to “the whole of the most important competences (...), and in addition by the dependence of the transfer of competences from a special procedure regulated in art. 90 of the Constitution”.

The provisions of the Constitution of the Republic of Poland do not regulate in which “areas” the competences may be transferred. Therefore, it may affect all areas of power – legislative, executive and judicial. The representatives of the doctrine of constitutional law strongly emphasizes that art. 90 of the Constitution does not limit the sovereignty but only limit the exercise of powers by state authorities. The “transfer” of competences results in the division of the exercise of sovereignty attributes between state organs and international organizations⁷.

4. The constitutional provisions as a whole allows to formulate a principle of favorability for the European integration process. It can be also deduced from the analysis of the legislative works on the current Constitution “during which the prospect of Poland's accession to the European Union was accepted”⁸. This principle of favorability determines the way of interpretation of constitutional provisions as well as other acts of Polish law. It has been emphasizes both by the doctrine of law and number of decisions of the Constitutional Tribunal⁹.

5. The problem of a “narrow” European dimension of the provisions of the Polish Constitution quickly became a subject of broad analysis of the doctrine of law. They have led to far-reaching consensus on the need, limits and merits of the desired additions and amendments to the Constitution. In principle, it was considered that this matter should be comprehensively regulated in a separate new chapter of the Constitution¹⁰, which was proposed in the draft of the Act on the amendment of the Constitution of the Republic of Poland of 30 June 2010. The draft was a result of the work of a scientific team established for this purpose by the Marshal of the Sejm¹¹. Previously, there was no visible commitment – in this matter – of the entities provided by the Constitution with the right to initiate constitutional amendments. Only 12 years after the adoption of the Constitution, three drafts of its amendment referring to “EU matter” were submitted to the Sejm. However, none of them was adopted. The legislative works on all these amendments were subject to the rule of discontinuation of parliamentary work following the termination of the 6th term of office of the Sejm. Nevertheless, they provide a significant picture of the vision and political aspirations concerning the constitutional regulations of EU matters. Probably, they will be still subject to scientific and legislative analyzes in future¹².

6. Both the process of Poland's accession to the European Union and the subsequent presence in its structures and works required to pass many statutes as well as amendments to the current Standing Orders of the Sejm and the Senate. In particular, the following should be mentioned: 1) the Act of 14 March 2003 on the national referendum¹³, 2) the Act of 8 October 2010 on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the Republic of Poland's membership in the European Union¹⁴ (previously an analogous statute of 11 March 2004¹⁵), 3) the Act of 27 August 2009 on the Committee for European Affairs¹⁶.

The process of harmonization of Polish law with EU law obtained its legal framework by the aforementioned Association Agreement. The interpretation of Polish law carried out by courts in accordance with the *acquis communautaire* was significant here, but the legislative process was also of particular importance. It was necessary, among others, to introduce certain distinctive features of the parliamentary legislative procedure in regard to the adoption of “adjustment laws”. In the end of 2001 a separate European Committee was established in the Sejm to

consider the drafts of adjustment laws in an accelerated mode, even without other (standing) committees of the Sejm. Moreover, the deadlines for individual stages of the Sejm's proceedings have been shortened and the requirements concerning the deputies' amendments to such draft laws have been raised.

7. The current constitutional system of the European Union with the limited role of the Parliament is the reason of accusations of a "democratic deficit" in the EU. This is accompanied by the reduced role of national parliaments in two dimensions. First of all, it is estimated that about two thirds of legislative matters has been transferred to the EU level. Secondly, also at the level of Member States, the main role in "EU matters" is played by governments. The role of parliamentary bodies is being strengthened in two ways – by strengthening the role of the European Parliament and by the introduction of new institutional forms to EU law that would allow national parliaments to participate in decision-making processed before European authorities. Such new instruments have been provided by the Treaty of Lisbon.

From the perspective of a Member State, it is particularly important to create specific procedures allowing the parliament to influence and control the activities of the national government in the organs of the European Union. In Poland, more profound changes in this area are not possible without amending the Constitution. However, minor changes could be introduced at the lower legislative levels – in statutes and Standing Orders of the parliamentary chambers. They concern changes in the structure of parliament's internal bodies, changes in the forms of cooperation between the parliament and the government on matters concerning the European Union and changes in the legislative procedure¹⁷.

8. According to the Standing Orders of the Sejm of the Republic of Poland¹⁸, the Committee on European Union Affairs (art. 18 para.1 p. 3a) is one of the standing committees of the Sejm¹⁹. The annex specifying the scope of action of individual committees provides that the Committee on European Union Affairs is responsible of matters related to the membership of the Republic of Poland in the European Union. Its competences are equivalent to the duties of the government, provided by the Act of 2010 on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the Republic of Poland's membership in the European Union. In particular, it may take a stance and express its opinions on: a) the drafts of European Union legislation; b) the drafts of international agreements to be concluded by the European Union; c) the work plans of the Council and annual legislative plans of the European Commission. The Committee on European Union Affairs is also responsible for: a) formulating recommendations to the Council of Ministers concerning the position of the Republic of Poland to be presented by the Polish government while considering the draft in the Council, b) examining information and other documents submitted by the Council of Ministers, c) issuing opinions about candidates to certain posts in the European Union. However, the Committee has no power to take actions that would ultimately bind the government or to act outside on behalf of the Sejm.

The Standing Orders of the Sejm devote the whole chapter 13a to the Committee on European Union Affairs (art. 148a-148e). The composition of Committee should proportionally reflect the representation of clubs and teams of at least 15 Deputies in the Sejm. Clubs and teams shall announce to the Presidium of the Sejm candidates to the Committee in a number and dates specified by the Presidium of the Sejm. The Sejm shall adopt a resolution on the election of the Committee members by a joint vote.

The Committee take its decisions by a formal vote. If there is an equal number of votes at the meeting of the Committee, the vote of the President of the Committee (unless he/she is abstaining from voting) shall decide on the adoption or rejection of the resolution. If proceedings conducted by the Committee are not completed before the end of the term of office of the Sejm, they may be continued by the Committee appointed by the Sejm of the next parliamentary term of office. So the principle of discontinuation of parliamentary works is not applied to that case.

It should be noted that the scope of action of the analogous Committee on European Union Affairs in the Senate of the Republic of Poland is somewhat narrower than that of the Sejm Committee. It includes, among others, adopting opinions on the drafts of EU legal acts and requesting the government to provide information on matters defined by the Committee which relate to the membership in the European Union²⁰. This role has been strengthened by the Constitutional Tribunal's judgement of 12 January 2005²¹. The Tribunal held that issuing opinions on the government's viewpoints on the drafts of EU legislation was an expression of a legislative function rather than a control function of the parliament. As a consequence, the Tribunal stated that the Senate should take part in the opinion procedure²².

9. As it has been already mentioned, the provisions of the Act of 2010 on cooperation between the Council of Ministers and the Sejm and the Senate in matters related to the Republic of Poland's membership of the European Union are also very important. The Act has established a general obligation of the government to cooperate with the Sejm and the Senate in matters relating to Poland's membership of the European Union (art. 2). In art. 3 it states that at least once every six months, the Council of Ministers shall provide the Sejm and the Senate with information on Poland's participation in activities of the European Union (para. 1). At the request of the Sejm, the Senate or the competent body under the rules of procedure of the Sejm or the competent body under the rules of procedure of the Senate, the government shall provide them with information on any matter relating to the Poland's membership of the European Union (art. 3 para. 2). The following chapters concern cooperation: a) in the making of European Union law (Chapter 2), b) in the lodging of complaints by the Sejm and the Senate with the Court of Justice of the European Union (Chapter 3), c) in the making of Polish law implementing European Union law (Chapter 4), d) in expressing opinions on candidates for certain posts in the European Union (Chapter 5), e) relating to the exercise of the presidency of the Council by representatives of the Council of Ministers (Chapter 6)²³.

10. The provisions of the Standing Orders of the Sejm expressly recognize two important issues concerning the legislative procedure related to the European Union. First of all, they provide solutions which ensure that Polish legislation complies with EU regulations. Secondly, there are provisions aimed at promoting the urgent (timely) implementation of EU solutions to Polish law.

In the first case, the Standing Orders of the Sejm requires (art. 34 para.2 p.7) that the explanatory statement submitted with each draft law should contain a statement of conformity of the bill to European Union law or a statement that the subject matter of the proposed legislation is not governed by the law of the European Union. The Marshal of the Sejm, before referring the bill for its first reading, shall order the preparation by experts of the Chancellery of the Sejm of an opinion on the conformity of the introduced bill to the law of the European Union, with the exception of bills introduced by the President of the Republic or the Council of Ministers (art. 34 para.9). The Marshal of the Sejm, after seeking the opinion of the Presidium of the Sejm, may refer any bill or draft resolutions which raise doubts as to their consistency with European Union law, to the Legislative Committee for its opinion. The Committee may, by a 3/5 majority vote in the presence of at least half of the members of the Committee, find the bill (draft resolution) inadmissible. The Marshal of the Sejm shall be free not to initiate the proceedings in relation to any bill (draft resolution) which has been found inadmissible (art. 34 para. 8). All legislative proceedings relating to the bills or draft resolutions shall be attended by a representative of the legal service of the Chancellery of the Sejm, who may make conclusions and remarks within the field of matters of the conformity of bills to the legislation of the European Union (art. 70). In the event that a bill raises doubts as to its consistency with European Union law, committees may submit a motion for an opinion in this regard to the minister competent for the Republic of Poland's membership in the European Union. The time limit for presenting an opinion shall be specified by committees (art. 42 para. 4).

The second issue concerns adopting statutes implementing EU law. In that respect the legislative procedure has some distinctive features in comparison to an average legislative process. However, it should be mentioned that the Sejm's Committee on European Union Affairs does not have exclusive right to consider such bills. The Standing Orders of the Sejm devote the whole chapter 5a (art. 95 – art. 95f) to the proceedings in relation to bills implementing European Union law. The Council of Ministers, when submitting a bill, declares whether it is a draft of this kind. In case of other drafts, the Marshal of the Sejm, before ordering the first reading, decides whether it is a bill implementing the law of the European Union or not. The Marshal of the Sejm, when deciding on the start of legislative proceedings, always determines the timetable of the Sejm's work on the draft, taking into account the deadline for the implementation of the EU law. Also, the relevant Sejm's standing committee, prior to a detailed examination of the draft, shall establish an appropriate timetable of its work. With regard to this type of drafts, the deputies' right to propose amendments is limited and the proceeding with a request to reject the draft is more difficult. The second reading of the draft as a rule must take place at the next sitting of the Sejm after the delivery of the committee's report to the Deputies. Also, the potential amendments introduced by the Senate to this type of laws are considered by the Sejm at the next sitting after the delivery of the committee's report.

11. Unfortunately, there is still no comprehensive regulation of issues concerning the “notification” of some draft laws to the European Commission. European Union law contains a rather extensive system of “notification” obligations concerning national law. These obligations stem from both primary and secondary EU law. They cover many areas of law and have different legal effects. The notion of the “notification” has not been uniformly defined. In general, however, it should mean the national obligation to inform the EU institutions about the draft legislation and provide them with the texts of the respective drafts. More qualified notification procedures – for example in the area of public aid or technical regulations – require the suspension of national legislative work until a positive decision made by competent EU authorities. This also applies to legislative works at the parliamentary stage. The failure to comply with notification obligations is punished by sanctions.

The main areas of notification obligations concern: a) public aid, b) technical regulations, c) harmonization of national law with EU law, d) environmental protection and consumer protection measures, e) areas within the competence of the European Central Bank, f) national implementation measures.

It should be noticed that the government much earlier signaled to the parliament that certain changes were required in the legislative procedure. The point is to adopt regulations that would allow to notify drafts at the last stage of legislative work, just before their adoption. However, there is no regulation in the Standing Orders of the Sejm concerning the notification procedure.

Currently, the comprehensive statutory regulation concerns only the “public aid”. It is included in the Act of 30 April 2004 on proceedings in matters concerning public aid²⁴. It includes a specific procedure, which includes proceedings concerning the preparing of “assistance” drafts for notification. However, it is limited to the proceedings before the bodies of public administration. The statutory reference to the Sejm's Standing Orders still remains unfulfilled. In the political practice there is a need for extremely broad and flexible interpretation of the provisions of the Standing Orders to the extent necessary to establish the framework for the notification procedure in the Sejm. The problem is particularly important when it comes to deputies' bills. In practice there is a problem whether applicants would be able to prepare the appropriate documentation for the purpose of notifying the bill. Without such documentation it is not possible to issue an opinion and make a notification in the mode implementing European Union legislation. The current shape of the procedure regulated in the Standing Orders of the Sejm is not adequate for the relevant notification requirements. Poland's membership in the European Union should therefore provoke to rethink the legislative procedures.

In Poland, the regulation of the Council of Ministers of 23 December 2002 on the functioning of the national notification system of norms and legal acts²⁵ is also important for matters concerning the notification obligations. It implements the relevant directive of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (Directive 98/34/EC). This directive has also established a notification requirement. However, above mentioned regulation does not determine the status of parliamentary acts and acts related to the notification. Only in the light of general principles, it can be assumed that, according to the mode provided by this regulation, the notification could be made in respect to governmental bills before their submission to the Sejm. However, these drafts may later, in the course of parliamentary work, be subject to substantial substantive changes. What is also important, the right of legislative initiative is not only granted to the Council of Ministers. The lack of appropriate provisions in the Standing Orders of the Sejm is even too much visible²⁶. In Poland, for example, a lot of attention was drawn by the public dispute over the notification of the Act on Gambling²⁷.

European law does not specify a national authority responsible for the notification in EU Member States. It is important that the failure to notify or failure to stop the legislative procedure is an infringement of EU law leading to legal sanctions. The drafts which have been substantially changed after the notification should be re-notified. In Poland, the lack of the comprehensive regulation of the fulfilment of notification obligations is important from the legal point of view. Especially, difficulties are caused by the lack of appropriate regulations in this respect with regard to the parliamentary proceedings regulated in the Standing Orders of the Sejm (or the Senate respectively).

12. The specificity of the European Union's influence – as a transnational entity – on the national law of a Member State should be perceived from the perspective of its broad and internally differentiated system of the sources of law. Its division into primary and secondary law is well established and widely accepted. The importance of the Community *acquis* (*acquis communautaire*) should be emphasized. The *acquis* refers to all EU legal institutions, their judicial and doctrinal interpretation as well as underlying values. It is assumed that the Member States of the European Union are obliged to respect and accept it.

Primary law consists of the founding treaties (Treaty on European Union, Treaty on the Functioning of the European Union, also the Charter of Fundamental Rights of the European Union) and subsequent accession treaties. These are international agreements with specific features. They should be perceived as quasi – EU Constitution. Common law plays a modest role. However, the category of general principles of law defined by the case law of the Court of Justice of the European Union is significant. General principles set standards for the functioning of the Union and its organs.

Secondary law is established by the European Union's authorities on the basis of the powers conferred by primary law. It is a specific separate European legal order placed next to the system of international law and the system of national law. The acts of secondary law do not require the approval of Member States. Importantly, they may contain directly applicable provisions. They can be a direct source of rights and obligations of legal entities. European Union legislation includes regulations, directives, recommendations and opinions (art. 288 TFEU). The last two categories have no binding force. It is also important that European law prevails over national law. In case of the collision of norms, EU law should be applied and the provisions of national law should be disregarded.

The position of EU law in the national legal order is therefore determined by the principle of direct effectiveness, the principle of primacy and the principle of uniform application of EU law in all Member States. In Poland, the conflict between EU law and national law is resolved in the aforementioned art. 92 of the Constitution – art. 92 para. 2 refers to primary law and art. 92 para. 3 refers to secondary law.

The jurisprudence of the Court of Justice of the European Union clearly states that European law takes priority even over national constitutions. The point is different from the perspective of the Polish Constitution as well as doctrine and constitutional jurisprudence in Poland. Primary EU law takes a form of international agreements. According to art. 188 para. 1 of the Constitution of the Republic of Poland, international agreements must comply with the basic law. When it comes to secondary European law, the Constitution guarantees its priority in the event of a conflict with statutes (art. 91 para. 3). However, it cannot be extended to the Constitution as an act of higher legal force. This intention can be confirmed by the historical analysis of legislative work on the preparation and adoption of the Constitution. The Constitutional Tribunal has also stated in its judgements that the conflict between EU law and the provisions of the Constitution “cannot be resolved in the Polish legal system by recognizing the superiority of a norm of Community law in relation to a constitutional norm”²⁸.

In the light of the Polish Constitution, the competences of the Constitutional Tribunal concerning primary EU law is unquestionable. Art. 188 para 1 of the Constitution *explicite* provides for the jurisdiction of the Constitutional Tribunal in respect to international agreements. Nevertheless, the Polish Constitution does not mention about national jurisdiction with regard to secondary EU law. The Constitutional Tribunal has recognized for several years that the constitutional determination of its jurisdiction leaves the EU secondary law beyond the jurisdiction of the Tribunal²⁹. The judgment of 16 November 2011 in case SK 45/09 was a certain breakthrough. The Constitutional Tribunal found out that the exclusion of its jurisdiction refers only to the procedure of abstract control of norms. Thus, the Tribunal recognized its jurisdiction to control EU secondary law in the procedure of constitutional complaint. This strengthens the national control over EU law.

13. As it has been already mentioned, three attempts have been made so far to change the provisions of the Constitution of the Republic of Poland related to EU issues. However, none of the them was adopted.

The most significant from the political and substantive point of view was the draft amendment submitted by the President of the Republic of Poland on 12 November 2010 which had a comprehensive nature. It provided for a separate chapter of the Constitution entitled “Membership of the Republic of Poland in the European Union” (art. 227a – art. 227k) which was not supposed to universally refer to all international organizations but strictly concerned the EU. In addition, the proposal separately contained regulations allowing for the introduction of the euro in the future. It indicated, among others, the affiliation of the National Bank of Poland to the European System of Central Banks and emphasized the independence of the National Bank of Poland from other state authorities.

The above mentioned separate chapter regulating Poland’s membership in the European Union contained a number of essential provisions. They were supposed to regulate such matters as: a) the conditions of EU membership (the so-called limit clause), b) the procedure of transferring powers of state authorities in certain cases, c) the status of an EU citizen residing in Poland; d) relations between the Council of Ministers, the Sejm, the Senate and the President of the Republic of Poland in the field of Polish policy in the EU, f) special requirements for draft laws implementing EU law, g) the procedure of Poland’s withdrawal from the European Union. The new provisions were intended to be incorporated into art. 90 of the Constitution.

The detailed solutions included in proposed regulations will not be presented here³⁰. However, it is important to point out an important “limitation clause” defining the axiology (art. 227a): “The Republic of Poland is a member of the European Union which respects the sovereignty and national identity of Member States, respects the principles of subsidiarity, democracy, rule of law, respect for the inherent and inalienable dignity of a man, liberty and equality and ensures the protection of these freedoms and rights in the Constitution”. This provision defined the axiological basis of Poland’s participation in the processes of European integration – legitimating it within the borders determined by law. This provision was intended to strengthen the protection of the most important values in the sphere of European integration. The values mentioned in the proposed art. 227a were identical to those listed in art. 2 of the Treaty on the European Union. Such regulation was aimed to prevent conflicts between EU norms and the norms of the Constitution of the Republic of Poland. It was addressed to Polish public authorities and determined the constitutional boundaries of Poland’s membership in the European Union. In other words, Poland does not have a constitutional obligation to participate in the Union which would not respect these values. Nor it have a constitutional obligation to enforce EU law which would violate these values. The provision was a clear normative novelty on the background of the current art. 90 of the Constitution of the Republic of Poland. It gave an explicit constitutional basis for Poland’s membership in the European Union.

The presidential draft amendment of the Constitution passed almost the whole legislative path in the Sejm, only without the final vote (adoption). The suspension of legislative work was caused, in principle, by non-substantive reasons concerning more current political calculations within the ruling majority. Since then (August 2011), the EU issues have not been subject to any constitutionally-relevant legislative work in Poland.

References:

¹ The judgement of the Constitutional Tribunal of 24 November 2010, case no K 32/09 (OTK – A 2010, No 9, item 108). See also – „Selected rulings of the Polish Constitutional Tribunal Concerning the law of the European Union (2003-2014)”, Wydawnictwo Trybunału Konstytucyjnego, Warszawa 2014.

² Case no. K 18/04.

³ Official Journal of Laws „Dziennik Ustaw”, No 78, item 483, with later amendments.

⁴ This has been emphasised by J. Galster: *Konstytucja Rzeczypospolitej wobec postępów integracji europejskiej. Diagnoza stanu europeizacji ustawy zasadniczej* /in:/ E. Gdulewicz, H. Zięba – Załucka (ed.): *Dziesięć lat Konstytucji Rzeczypospolitej Polskiej*, Rzeszów 2007, p. 56.

⁵ See: A. Szmyt: *O dwóch przykładach wątpliwości w sprawie zamierzeń legislacyjnych* /in:/ R.M. Czarny, K. Spryszak (ed.): *Państwo i prawo wobec współczesnych wyzwań*. Vol. 3 – *Zagadnienia prawa konstytucyjnego. Księga Jubileuszowa Profesora Jerzego Jaskierni*, Toruń 2012, p. 176; also: A. Szmyt, B. Banaszak: *International and European Law in the Polish Legal System*, „Gdańskie Studia Prawnicze” vol. XXXVI, Gdańsk 2016, wydawnictwo Uniwersytetu Gdańskiego, p. 451 passim, in particular: 457–461.

⁶ See: in particular the judgement of the Constitutional Tribunal of 29 May 2009 (case No Kpt 2/08) concerning the content and limitations of the Prime Minister’s and President’s competences relating to the representation of the Republic of Poland at the meetings of the European Council.

⁷ Sz. Pawłowski: *Prawo unijne a prawo krajowe* /in:/ A. Szmyt (ed.): *Leksykon prawa konstytucyjnego. 100 podstawowych pojęć*, C.H. Beck, 2nd edition, Warszawa 2016, pp. 279–281.

⁸ L. Garlicki: *Polskie prawo konstytucyjne. Zarys wykładu*, Wolters Kluwer, Warszawa 2016, p. 485.

⁹ The judgements of the constitutional Tribunal of 29 September 1997 (K 15/97), 28 January 2003 (K 2/02), 27 May 2003 (K 11/03), 21 April 2004 (K 33/03), 31 May 2004 (K 15/04), 2 July 2007 (K 41/05), 24 November 2010 (K. 32/09).

¹⁰ The review of the opinions – A. Kustra: „*Euronowelizacja*” w projektach ustaw o zmianie Konstytucji RP. *Próba oceny*, „Przebieg Sejmu” 2011, No 3, pp. 35-37.

¹¹ „*Zmiany w Konstytucji RP dotyczące członkostwa Polski w Unii Europejskiej. Dokumenty z prac zespołu naukowego powołanego przez Marszałka Sejmu*”, Wydawnictwo Sejmowe, Warszawa 2010.

¹² These were the draft amendments of the Constitution of the Republic of Poland included in the Sejm documents No 3399, No 3598 and No 3687. The two latter ones were comprehensive. The leading role was played then by the draft law registered as the Sejm document No 3598, introduced to the Sejm by the President of the Republic.

¹³ Official Journal of Laws „Dziennik Ustaw”, No 57, item 507, with later amendments.

¹⁴ Official Journal of Laws „Dziennik Ustaw”, No 213, item 1395, with later amendments.

¹⁵ Official Journal of Laws „Dziennik Ustaw”, No 52 item 515, with later amendments.

¹⁶ Official Journal of Laws „Dzienni Ustaw” 2009, No 161, item 12277, with later amendments.

¹⁷ See: B. Pawłowski (ed.): *Rola Sejmu w stanowieniu i wykonywaniu prawa Unii Europejskiej*, Wydawnictwo Sejmowe, Warszawa 2015.

¹⁸ The Standing Orders of the Sejm of the Republic of Poland of 30 July 1992 (unified text – the Official Journal of Laws „Monitor Polski” 2012, item 32, with later amendments).

¹⁹ In a comparative perspective, also in relations to Poland, see: M. Serowaniec: *Parlamentarne Komisje do Spraw Europejskich*, Wydawnictwo Sejmowe, Warszawa 2016.

²⁰ Art. 34 para. 2a and art. 75 b of the Standing Orders of the Senate of the Republic of Poland of 23 November 1990 (unified text – the Official Journal of Laws „Monitor Polski” 2010, No 39, item 542, with later amendments).

²¹ In case No K 24/04 (concerning the provisions of the law of 2004 on the cooperation of the government and the parliament in EU matters).

²² See: A. Szmyt: *O współpracy rządu z parlamentem w sprawach związanych z członkostwem Polski w Unii Europejskiej*, „Gdańskie Studia Prawnicze” 2011, vol. XXV, pp. 422–423.

²³ On some more detailed issues – ibidem, passim.

²⁴ The Official Journal of Laws „Dziennik Ustaw” 2007, No 59, item 404, with later amendments.

²⁵ The Official Journal of Laws „Dziennik Ustaw” No 239, item 2039; see more – A. Szmyt: *Elementy praktyki sejmowej pod rządami Konstytucji RP (1997–2007)*, Gdańsk 2008, pp. 392–397 and idem – *Węzłowe problemy procesu legislacyjnego w Sejmie i Senacie RP* /in:/ J. Jirasek, Z. Witkowski (eds.): *Promeny delby moci. Delba moci v ustavnim systemu Ceske republiky a Polske republiky*, Olomouc 2015, p. 63 and next, in particular p. 14.

²⁶ See also: Sz. Pawłowski: *Notyfikacja – obowiązek informowania UE o projektowanych krajowych aktach prawnych*, „infos” No 9/2016, Biuro Analiz Sejmowych Kancelarii Sejmu (ISSN 2082-0666).

²⁷ The judgement of the European Court of Justice of the European Union in joint cases Fortuna sp. z o.o. (C-213/11), Grand sp. z o.o. (C-214/11) and Forta sp. z o.o. (C-217/11) v. Director of the Customs Chamber in Gdynia.

²⁸ The judgements of the Constitutional Tribunal of 11 May 2005 in case No K 18/04 and of 24 November 2010 in case No K 32/09.

²⁹ In particular – the judgements of the Constitutional Tribunal of 17 December 2009 (U 6/08) and 13 October 2010 (Kp 1/09).

³⁰ More about the drafts see: A. Szmyt: *Członkostwo i perspektywy jego rozwoju w UE a projekty zmian Konstytucji* /in:/ Z. Witkowski, V. Jiraskova and others (ed.): *Aktualne problemy współczesnego konstytucjonalizmu. Europeizacja Konstytucji Republiki Czeskiej i Rzeczypospolitej Polskiej*, Wydawnictwo UMK, Toruń 2014, pp. 27–51.

Резюме

Анджей Шмит, Анна Рител-Варзоха. Європеїзація прав у більшій частині з точки зору конституційного права.

Стаття присвячена викликам і проблемам, пов'язаним зі вступом Республіки Польща до Європейського Союзу. Автори аналізують конституційні основи вступу в ЄС, а також основні правові акти, які регулюють взаємовідносини Польщі та ЄС. Республіка Польща вступила до Європейського Союзу на підставі Договору про вступ, який був підписаний 16 квітня 2003 року в Афінах і набув чинності 1 травня 2004 року.

З точки зору конституційного права було кілька питань, які стосувалися підготовки до вступу в ЄС на національному рівні.

Вони були особливо пов'язані з: 1) створенням правової основи, що дозволяє інтегрувати право Європейського Союзу в польське конституційне право, 2) гармонізацією правової системи Польщі з правопорядком Європейського Союзу, 3) встановленням процедури ратифікації договору про приєднання. Всі ці питання вимагали введення нових правових норм до Конституції. Тому нова Конституція Республіки Польща, прийнята 2 квітня 1997 року, включала два положення, що належать до питань інтеграції в Європейський Союз, – ст. 90 і ст. 91.

Основні проблеми, представлені в статті, стосуються відносин польського національного права (зокрема, Конституції) до джерел первинного і вторинного європейського права, гармонізації польського права з правом ЄС (конституційні поправки, які стосуються «питань ЄС», необхідні поправки законодавства і положень Регламентів Сейму і Сенату), а також інституційних змін у Польщі, що визначаються членством в ЄС.

Ключові слова: конституційне право, вступ до ЄС, Польща, договір про вступ, право ЄС.

Резюме

Анджей Шмит, Анна Рител-Варзоха. Европезация права в Польше с точки зрения конституционного права.

Статья посвящена вызовам и проблемам, связанным с вступлением Республики Польша в Европейский Союз. Авторы анализируют конституционные основы вступления в ЕС, а также основные правовые акты, регулирующие взаимоотношения Польши и ЕС.

Республика Польша вступила в Европейский Союз на основании Договора о вступлении, который был подписан 16 апреля 2003 года в Афинах и вступил в силу 1 мая 2004 года.

С точки зрения конституционного права было несколько вопросов, которые касались подготовки к вступлению в ЕС на национальном уровне. Они были особенно связаны с: 1) созданием правовой основы, позволяющей интегрировать право Европейского Союза в польское конституционное право, 2) гармонизацией правовой системы Польши с правопорядком Европейского Союза, 3) установлением процедуры ратификации договора о присоединении. Все эти вопросы требовали введения новых правовых норм в Конституцию. Поэтому новая Конституция Республики Польша, принятая 2 апреля 1997 года, включала два положения, относящихся к вопросам интеграции в Европейский Союз, – ст. 90 и ст. 91.

Основные проблемы, представленные в статье, касаются отношения польского национального права (в частности, Конституции) к источникам первичного и вторичного европейского права, гармонизации польского права с правом ЕС (конституционные поправки, относящиеся к «вопросам ЕС», необходимые поправки законодательства и положений Регламентов Сейма и Сената), а также институциональных изменений в Польше, определяемых членством в ЕС.

Ключевые слова: конституционное право, вступление в ЕС, Польша, договор о вступлении, право ЕС.

Summary

Andrzej Szmyt, Anna Rytel-Warzocha. Europeanization of Law in Poland from the point of view of Constitutional Law.

The article is devoted to the challenges and problems concerning the accession of the Republic of Poland in the European Union. The authors analyze the constitutional bases of the accession to the EU as well as basic legal acts which have regulated the mutual relations between Poland and the EU.

The Republic of Poland has acceded to the European Union by virtue of the Accession Treaty which was signed on 16 April 2003 in Athens and entered into force on 1 May 2004.

From the point of view of constitutional law, there were several issues which concerned the preparation for EU accession at the national level. They were especially related to: 1) the establishment of legal basis allowing for the integration the law of the European Union with Polish constitutional law, 2) the harmonization of the Polish legal system with the legal order of the European Union, 3) the establishment of the ratification procedure of the Accession Treaty. All these issues required new legal regulations to be implemented to the Constitution. That was why the new Constitution of the Republic of Poland adopted on 2 April 1997 included two provisions relevant for the issues concerning the integration with the European Union – art. 90 and art. 91 para

The main problems presented in the article concern the relation of Polish national law (in particular the Constitution) to the sources of primary and secondary European law, the harmonization of Polish law with EU law (constitutional amendments referring to “EU matters”, necessary amendments of statutory law and the provisions of the Standing Orders of the Sejm and the Senate), as well as institutional changes in Poland determined by the EU membership.

Key words: Constitutional law, EU accession, Poland, accession treaty, EU law.

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**THE MARITIME INDUSTRY AND THE ROLE OF WOMEN SEAFARERS:
A LEGAL REGULATORY FRAMEWORK**

Introduction

The Maritime industry is a global service industry, where the acceptance of women has taken much longer than in other industries. In some perspectives, the maritime industry is considered more conservative than other global industries, especially where the roles of women compared to that of men are very low. As a result, one of the biggest world service industry has become male-dominated. As history has shown, women were not accepted on board of ships and even more so, excluded from the shipping business. Additionally, existing traditional, religious, social and customary views of the industry whereby females are unemployable, has had a particularly strong influence on a woman’s status in the maritime industry. At present, there is a great need to establish comprehensive policy and strategy in order to promote women’s entrance into the shipping industry. As a result, there have been positive responses to international calls for more females to join the seafaring profession. However, in Georgia, very few women are employed aboard ships where technical and/or engineering work takes place. Furthermore, the growth rate is rather slow, even with advancements in ship technology, which have made seafaring less strenuous than it used to be.

Gender pay gaps are still omnipresent, but shrinking¹. The most common and enumerated arguments against the employment of women in the maritime industry are physical efficiencies of women, the lack of psychological ability to work onboard the vessel, vulnerability and emotional instability and improper social conditions on vessels, questions regarding professional qualifications and common opinions that ship is not an appropriate workplace for women and/or women shall not work at sea. Nevertheless, it is necessary to point out that all aforementioned arguments existed previously in society and provide stereotypical perceptions of women. In Georgia, females are seldom encouraged to pursue a career in the maritime industry, specifically due to the fact that such a job is risky and unsafe, moreover they are expected to play the natural role of maintaining a favorable emotional environment in society. Nowadays, this tendency has slowly begun to change in Georgia, and most importantly, in a positive way.

The first chapter makes a brief overview of the facts which relatively lows the role of women on board of the ship; The second chapter introduce the international legal regulatory instruments in line with the international fun-

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