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Jacek Przybojewski
Kolegium Jagiellońskie Toruńska Szkoła Wyższa

Relations of the European Union law with Polish legal order

Key words: EU law, Polish law, Republic of Poland, sources of law, legal system

1. Introduction

Although the primacy of the European Union law in relation to the legal orders of the member states both when it comes to judicial judgments and doctrines isn`t a controversial issue, there is a point in analyzing premises constructing this thesis, also basing on the Constitution of the Polish Republic. The essential legal regulations included in the Polish fundamental act referring to the sources of law and the hierarchical relations between them make the starting point for the considerationp.

2. Constitution

In art. 87 of the Constitution there is a specific catalogue of the sources of law, with the Constitution, acts, ratified international agreements, regulations and the acts of local law applicable on the area of organs, which have produced them. Additionally, in art. 234 regulations with the force of acts have been mentioned as the legal regulations that can be introduced during marshal law, when Sejm (the parliament) cannot assemble. The above mentioned categories concern all the subjects within the jurisdiction of the Polish state, although due to their character or specificity of regulations they don`t have to encompass the whole territory or all of people and organizational units functioning there.

Amongst the sources of generally applicable law it is the Constitution that has the leading role as the act of a special legal meaning regulating the fundamental issues referring to the system. This place of the fundamental act in the hierarchy of the sources of law is determined in its art. 8 par. 1, where it is pointed out that the Constitution is the supreme law of the Republic of Poland. Moreover, in par. 2 the direct application of constitutional norms has been introduced. The leading character of the Constitution in the system means that the norms included in it influence upon the whole legal order of the Polish Republic, also by delimiting constitutional standards to be applied in inferior acts. Constitutional Tribunal is the organ appointed to control the constitutionality of legal regulations (art. 122 par. 3, 133 par. 2, 188 points 1, 3, 5, 193 of the Constitution), whose judgments of generally applicable and final character in the situation when a legal regulation is inconsistent with the fundamental act, result in making the regulation invalid (art. 190 par. 1, 3 of the Constitution). The verification can also be made even before a statues has been signed or an international agreement

ratified by the President, or it can precede the potential introduction of solutions that are inconsistent with the Constitution into the legal order (already mentioned art. 122 par. 3 and 133 par. 2).

On the other hand, the above mentioned direct application of the Constitution (art. 8 par. 20 ought to have place in all situations when it is possible, i.e. mainly when in the fundamental act itself there aren`t any regulations excluding such solutions, and the specifics of a constitutional regulation due to its precision and explicitness allows using it in case when there is a need of individual solution in a process of applying law. Such an application of the Constitution should in no way lead to ignoring simultaneously applicable acts. Hence it would mean the approval of impoverishing the foundations of individual solutions, and at the same time braking formal duties of the ones who apply the law, which is reflected by ,e.g. in art. 178 par. 1 of the Constitution, the submission of judges to the Constitution as well as statues. It seems that the simultaneous use of the constitutional norms and regulations included in statues is the only rational solution.

3. Statutes

The next position in the system of the sources of law belongs to statues. As legal acts including general and abstract norms, passed by Sejm (art. 120 of the Constitution) they are undoubtedly an essential element of the Polish legal system, on the basis of which the specification of constitutional regulations frequently takes place. the legislative function of Sejm, and exceptionally of Senat (art. 90 par. 2 and 235 par. 4 of the Constitution) should be perceived as a significant element of the indirect realization by representatives of the Nation, MPs and senators (art. 104 par. 1 in relation to art. 108 of the Constitution) the rule of its sovereignty. Placing in art. 87 par. 1 acts directly after the Constitution and before ratified international agreements does not determine the position of the latter ones in the system of the sources of law. Before an international agreement becomes a part of the legal order of a state and is applied directly[1] it has to be ratified by the President and published in Dziennik Ustaw (art. 91 par. 1 of the Constitution). It is only then that the considerations over hierarchical relations between acts and international agreements are justified. In art. 91 par. 2 of the Constitution there is a solution that can be treated as a norm of competence in this respect. It states that if an international agreement cannot be consistent with an act, then the agreement has the primacy over it, yet only when it has been ratified according to the form expressed in an act[2]. The kinds of international agreements requiring such a procedure are determined in art. 89 par. of the fundamental act. This category includes the agreements concerning:

- peace treaties, alliances, political or military arrangements
- constitutional, citizens` freedoms, rights or duties
- the membership of the Republic of Poland in an international organization
- a significant financial burden imposed on the state
- matters determined in an act, or the ones that require act regulations according to the Constitution.

When it comes to other international agreements the Prime Minister is only obliged to inform Sejm on the intention of submitting it to the President to be ratified (art. 89 par. 2 of the Constitution). They do not break acts, even in case of conflict between norms, since there is no clear empowerment in the Constitution.

4. Other sources of law

The other categories of generally applicable sources of law, i.e. regulations as executive acts of statues (art. 92 par. 1 of the Constitution), acts of local law issued on the basis and within the authorization included in statues (art. 94 of the Constitution) and regulations with the force of an act confirmed at the assembly of Sejm that is held closest in time after their passing, which are of incidental meaning (art. 234 par. 1 of the Constitution) don`t have significance from the perspective of the main topic of this article, since the most important categories of international agreement are the above acts, which on the other hand, are in the superior position towards regulations and local legal acts. The identical

[1] More on the implications of such a statement art. 91 par. 1 of the Constitution Garlicki L., *Polskie prawo konstytucyjne,* Warszawa 2011, p. 143.

[2] In this context it is worth citing the opinion on introducing by the Constitution „the derogation force" concerning this category of international agreements – Mikołajewicz J., *Zasady orzecznicze Trybunału Konstytucyjnego. Zagadnienia teoretycznoprawne.,* Poznań 2008, p. 101–102.

status is held by law passed by an international organization when the agreement establishing such an organization has been ratified, as long as the result in form of its direct application[3] and the primacy in case of collision with acts has been stated in the same agreement (art. 91 par. 3 of the Constitution).

The shape of the regulations mentioned so far implies the agreement of the legislator on the validity and application in the Polish legal system of both law passed by the state legislator as well as the one established beyond the Polish legislator, yet accepted by the public authorities of the Republic of Poland, obeying the superiority of the Constitution. Such a dual, when it comes to the origins, construction of the sources of law inscribes in the rule of obeying international law that binds Poland (sometimes referred to as the rule of favour of the Republic Of Poland towards the international law), which is directly expressed in art. 9 of the Constitution. Duality in this case shouldn`t mean the disagreement within the interpretation and application of law but on contrary, according to coexistence since the international law regulations cannot be included in the legal area of the Republic of Poland otherwise than as a result of the approval of the organs of the Polish state. The opposite comprehension of the rule expressed in art. 9 of the Constitution would be in disagreement with the rule of sovereignty of the Republic of Poland, the value of which the content of numerous articles of the Constitution has been referred to (art. 5, 26 par. 1, 104 par. 2, 126 par. 2, 130) alternatively with the term of independence. The sovereignty of the Republic of Poland is not disturbed, the way it is expressed in the Constitution, by the possibility of limited cession of competences to an organ or international organization, which is explicitly expressed in art. 90 par. 1. The above mentioned article states the possibility to transfer to these subject the competences of the organs of the state authorities in particular cases on the grounds of an international agreement. Emphasizing in art. 90 par. 1 that the cession of competences is of limited character should be perceived both as the prohibition of transferring the whole of the competences of a particular organ concerning all of the cases in this field as well as the competences concerning the essence of cases determining the competence of a particular organ of the state authority. Thus, it is justified to notice the need of abstentions when it comes to transferring competencies to the subjects of international law, since any unjustified eagerness in this respect might result in depriving the state organs of, e.g. constitutional prerogatives, this way undermining their existence, and in consequence the sovereignty of the Republic of Poland. The potential haste associated with this category of international agreements seems to be excluded by particularly demanding procedures leading to the agreement for their ratification. It can be expressed in the form of an act passed by Sejm with the qualified majority of at least 2/3 votes with the participation of minimum half of the statutory number of MPs, and further on in unaltered version by Senat with the majority of 2/3 of votes with the participation of at least a half of the statutory number of senators (art. 90 par. 2 of the Constitution). Another option is the agreement for the ratification in form of the general referendum expressed in art. 90 par. 3 of the fundamental act. The choice of either form is determined by Sejm which passes an appropriate regulation with the absolute majority of votes with the participation of at least a half of the statutory number of MPs (art. 90 par. 4).

5. Polish law and UE law

There is no doubt that advantage of this regulation is the fact that it has been used in accepting the accession treaty (the ratification was approved in the form of general referendum), which, however, as an international agreement could be controlled as far as its constitutionality is concerned (art. 133 par. 2, 188 p. 1). Accepting the accession treaty by the Republic of Poland made the relation of the European Union and Polish law regulations an up-to-date issue, although it ought to be pointed out that this issue was of significance before in the context of the would-be need of adjusting Polish law to the legal order of the European Union; also the Constitutional Tribunal had many times before referred to the interpretation presented in verdicts of the Court of Justice of the European Union[4]. The above remarks limit the issue to the relation of the European Union law to the Constitution, since the primacy of the EU law in relation to acts inferior to the Constitution is undisputable, due to the foundation it has not only on the grounds of jurisprudence of the Court of Justice of the European Union, but also it has been sanctioned in the above mentioned articles of the Constitution of the

[3] More on this issue: Banaszak B., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, p. 460–461.

[4] Mikołajewicz J., op. cit., p. 103–104.

Republic of Poland. However, determining the superiority or inferiority of constitutional norms in relation to the norms of the European Union law might cause some difficulties.

On a side note, referring to art. 8 par. 1 of the Constitution it should be pointed out that the literary interpretation of this regulation makes one think that the Constitution is the supreme law that comes from the Republic, however it isn`t the most supreme law that is in force in the state. The above mentioned article should be, as it seems, interpreted in the context of art. 9, establishing the requirement of obeying by the Republic of Poland international law which binds it[5], which is the source of e.g. the directive of a friendly interpretation of Polish regulations, including the ones on the constitutional level, towards the European Union law.

In order to make a thorough analysis of the above matters it is necessary to refer to the rudimentary system rules of the European Union which characterize the effect of the European Union law on the legal orders of the member states. The following principles deserve to be distinguished here:

- autonomy
- direct application
- direct effect
- loyal cooperation (loyalty)

They are strictly associated with the rule of primacy of the European Union law over the internal legal orders of the member states for the, which is fundamental for the discussed issue and present in the consolidated line of jurisprudence of the Court of Justice of the European Union. It is not, however, about the primacy when it comes to importance (the inconsistence of state law norms with the norms of the European Union law doesn`t itself result in the invalidity of the state regulations), but about the primacy of application[6] (such a collision requires a subject applying the law to refuse the application of the state law and apply a norm of the European Union law instead). Nevertheless, this distinction is only partly useful, since according to the jurisprudence of the Court of Justice of the European Union member states are obliged to remove any inconsistent regulations from their legal order so that the certainty of the law is preserved (*Commission v. France*)[7].

After the problems concerning the ratification of the constitutional treaty some states encountered, as well as a heated debate over the justification of creating "the Constitution for Europe"[8], during the work over the Treaty of Lisbon all the references that could possibly be suggesting the perception of the Union as a *sui generis* super-state were avoided. Also the rule of the primacy of the European Union law, expressed in art. I-6 of the project of the Treaty establishing the Constitution for Europe[9] was abandoned (Constitution and the law applied by the Union institutions in performing its competences hold the primacy before the law of the Member States). Currently there is no reference to the rule of the primacy of the European Union law in the treaties, it is , however, in the Declaration no 17 enclosed to the Treaty of Lisbon. The Declaration *recalls that, in accordance with well settled case law of the EU Court of Justice,the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law*. On the other hand, the opinion of the Legal Service from 22nd June 2007 quoted in it emphasises the fact that not including the rule of the primacy of the European law in the Treaty of Lisbon in *no way violates the rule itself or the jurisprudence of the European Union Court of Justice*. In so far as art. 51 of the Treaty on European Union states directly that the protocols enclosed to the Treaties are their integral part (hence they are of normative character and legal force analogical to the one of the treaties), in case there is no resolution referring to the declaration *a contrario* interpretation makes one think that declarations as the acts of political character are not legally binding[10], although

[5] On the constitutionalization of the rule *pacta sunt servanda* made in this provision see Szymański J., *Constitutional and Legal Regulation of the Republic of Poland's Capacity to Conclude Treaties* (in:) Matwiejuk J., Prokop K. (ed.)., *Evolution o Constitutionalism in the Selected States of Central and Eastern Europe*, Białystok 2010, p. 158–160.

[6] Ahlt M., Szpunar M., *Prawo europejskie*, Warszawa 2011, p. 52–53.

[7] The judgment of the Tribunal from 4th April 1974, case 167–73, The Commission of the European Communities v. France, p. 00359.

[8] More on this see Eleftheriadis P., *The Idea of a European Constitution,* Oxford Journal of Legal Studies, 1/2007.

[9] The Project of the Treaty establishing the Constitution for Europe http://www.europarl.europa.eu/parliament/archive/staticDisplay.do?id=77&pageRank=3&language=PL, [28.10.2011]

[10] Like the majority of doctrine including sf.: Kuś A., *Konstytucyjność Traktatu z Lizbony* (in:) Daniluk P., Radziewicz P., *Aktualne problemy konstytucyjne w świetle wniosków, pytań prawnych i skarg konstytucyjnych do Trybunału Konstytucyjnego*, Warszawa 2010, p. 661–662; compare: Beck G., *The Lisbon Judgement of the German Constitutional Court, the Primacy of EU Law and The Problem of Kompetenz-Kompe-*

they surely serve as interpretational guideline for the regulations of the treaties.

Thus the discussed norm was expressed *expressis verbis* not in primary law but in jurisprudence of the Court of Justice of the European Union. It wasn`t directly acknowledged by the Union legislator as a source of law nor was it granted the force of precedent , however, taking into consideration the standpoint of the Tribunal claiming that it does not create but merely abstract immanent rules of law rooted in the treaties, it should be stated that its role is indeed crucial.

Art. 4 par. 3 of the consolidated version of the Treaty on European Union[11] contains the reference to the rule of sincere cooperation (*Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.*

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.), whose content creates the basis for the Court of Justice of the European Union to conclude the rule of primacy[12].

Absolutely crucial role of the Luxemburg tribunal in shaping the rule of primacy resulted in a series of court judgments, in which this rule was referred to. The first and most fundamental one was the judgment in case of *Costa*[13], in which the Tribunal referred also to the idea of the autonomy of the European Union law. It was stated, e.g. that the Community establishes a separate legal order, incorporated into the legal system of member states, as well as individuals originating from them. This state, according to the Tribunal, is justified by the preceding voluntary limitation of the member states sovereignty by the treaty transfer of particular competencies to the Community.

In the later one the Tribunal specified the rule of primacy especially by stating the requirement of refusing the application of state legal norms colliding with a norm of the Union law by courts of member states (judgment *Simmenthal II*[14]), which then it also applied to the administration organs (judgment *Fratelli Constanzo*[15]). In *Simmenthal II* case the Tribunal concluded from the rule of primacy the prohibition of establishing state law that would be inconsistent with the legal order of the EU. The rule of primacy combined with the rule of efficiency obliging to assure the efficiency of the EU law also served in establishing new procedural means (judgment *Factortame*[16]). When it comes to the collision between constitutional rank norms and norms of the European Union law there is the judgment in *Kreil*[17] case, in which the Tribunal stated the inconsistency of the regulations of German law forbidding females to serve armed in military service with the Union legislation referring to the rule of equal treatment of females and males. The norms that limited the military service of females were also included in the German fundamental act. The rule of primacy of the EU law is thus of the absolute character from the perspective of the European Union Court of Justice, since it refers even to the situation when there is contradiction between a constitutional regulation of a particular member state on the one hand, and on the other the derivate law established by the EU institutions.

This rule is additionally strengthened by the above mentioned principles concerning the issue of mutual relations between the European Union law and the internal legal orders of member states. Referring to the already mentioned rule of the autonomy of the EU law (regulated for the first time in judgment *van Gend & Loos*[18]) one of its aspects should be emphasised, i.e. the judicial autonomy, according to which in order to assure uniformity of the interpretation of the EU law in all the member states the European Union Court of Justice is exclusively entitled to resolve the dispute concerning the application and interpretation of this law.

Therefore, the judgments of the tribunal are granted such significance, even though as pointed out above, have not got formally the force of precedent.

tenz: A Conflict between Right and Right in which there is no Praetor, European Law Journal, 4/2011, p. 471–472.

[11] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, *OJ C306 of 13.12.2006, p. 1–271.*

[12] Łazowski A., *Zasada lojalności* (in:) Barcz J. (ed.), *Zasady ustrojowe Unii Europejskiej*, Warszawa 2010, *passim*.

[13] The judgment of the Tribunal from 15th July 1964.

[14] The judgment of the Tribunl from 9th March 1978, Case 106/77.

[15] The judgment of the Tribunal from 22nd June 1989, Case 103/88.

[16] The judgment of the Tribunal from 19th June 1990, Case C–213/89.

[17] The judgment of the Tribunal from 11th Jan. 2000, Case C–285/98.

[18] The judgment of the Tribunal from 5th Feb. 1963, Case 26–62.

The rules of direct application are also of significance here (the norms of EU law are the legal basis of actions of both general and individual character taken by organs of the member states) as well as the direct effect (these norms might be independent source of rights and duties of individuals)[19]. Moreover, the organs of member states are obliged to interpret state legal rules in pro-Union way (judgment *von Colson and Kamann*[20]).

While the European Union Court of Justice in well settled case law declared the broad interpretation and strict application of the rule of primacy of the EU law, when it comes to constitutional courts of some of member states they were far from being so categorical[21]. In principle they expressed the readiness to accept the primacy of the EU legal order, however, made certain stipulations, two basic of them being the requirement of respecting fundamental values by the European Union law and obeying the division of competences between the Union and the member states (the prohibition of acting *ultra vires*).

The relation of Polish Constitutional Tribunal to the European integration and the necessity of adopting Polish law to the European Union legal order associated with it is best illustrated by the fact that already in 1997 it regulated the rule of goodwill towards the process of European integration and cooperation between states[22]. The court judgments referring to the issue of relation between the EU law to the Polish legal order that are of the greatest significance are: the judgment from 11th May 2005 on the consistence of the accession Treaty with the Constitution[23] and the judgment from 24th November 2010 on K 32/09[24] case, concerning the consistence of the Lisbon Treaty with the Constitution. The first one states, among the others, that due to the status of the Constitution in the Polish legal system (the primacy of force and application) the inconsistency of its norms with the EU legal order cannot be solved by recognizing the supremacy of the EU law norms – in this situation it would be necessary to make a judgment concerning the change of the Constitution, causing the change in the EU law, or even leave the European Union. Therefore, the rule of the primacy of the EU law, guaranteeing the uniformity of the application of the European law, is not an independent basis for resolving collisions of this kind – the necessary judgments should take into consideration art. 8 par. 1 of the constitution determining the supremacy of the Constitution. The second court judgment, on the other hand, refers to the question of transferring competences by the Republic of Poland on the basis of art. 90 of the Constitution. According to the Constitutional Tribunal the normative limit of transferring competences is set by the *factors determining the constitutional identity of the Republic of Poland*: *respecting the rules of Polish statehood, democracy, the rules of the state of law, the rule of social justice, the rules determining the foundations of economic system, granting the security of human dignity and rights as well as constitutional freedoms*[25]. Transferring competences can in no way threaten the constitutional foundations of the state`s system. This way the Constitutional Tribunal referred both to the division of competences between the Union and member states, and to respecting primary rights as well as fundamental constitutional rules.

Renowned judgments of German Federal Constitutional Tribunal were a kind of inspiration for the standpoint of European constitutional courts. One that ought to be mentioned here is *Solange I*[26] from 1974, stipulated the control of the consistency between the common law with the constitution, until there was no system of security of primary rights, and judgment *Solange II*[27] from 1986, in which the German tribunal stated the existence of such and announced drawing back from the control of constitutionality of the common law until such system would be in force.

In this context it is worth mentioning about a breakthrough judgment of the Polish Constitutional

[19] However, the direct effect of the EU law norms depends on fulfilling various conditions, variable depending on a type of a legal act; sf. Ahlt M., Szpunar M., *Prawo europejskie*, Warszawa 2011, p. 41–50.

[20] The judgment of the Tribunal from 10th April 1984, Case 14/83.

[21] Sf.: Rossi L.P., *How Fundamental are Fundamental Principles? Primacy and Fundamental Rights after Lisbon*, Yearbook of European Law, 2008.

[22] The judgment of the Constitutional Tribunal from 29th Sept. 1997., K 15/97, OTK ZU 1997 r., nr 3–4, poz. 37; quote from: Szafraniuk A., *Prawo wspólnotowe a polska Konstytucja – prezentacja najważniejszych zagadnień na podstawie orzecznictwa Trybunału Konstytucyjnego* (in:) *Konstytucja Rzeczypospolitej Polskiej. Próba oceny i podsumowania z perspektywy dziesięciolecia stosowania*, Górka K., Litwin T. (edp.), Kraków 2008.

[23] The judgment of the Constitutional Tribunal from 11th May 2005, K 18/04, OTK-A 2005, nr 5, poz. 49.

[24] The judgment of the Constitutional Tribunal from 24th Nov. 2010, K 32/09, OTK-A 2010, nr 9, poz. 108.

[25] The press information after announcing the judgment on the Treaty of Lisbon http://www.trybunal.gov.pl/Rozprawy/2010/k_32_09.htm, [28.10.2011].

[26] BverfGE 37, p. 271.

[27] BverfGE 37, p. 339.

Tribunal from 16th November 2011[28], issued after hearing a constitutional complaint concerning the exclusion of the participation of a debtor in the court of the first instance during the case on the court enforcement clause concerning the judgment of a EU member state court in light of a regulations of the Council concerning the jurisdiction and recognition of court judgments as well as their application in civil and commercial cases (Brussels I)[29]. The content of a constitutional complaint, claiming the inconsistence of this judgment (directly applicable not only for member states but also citizens) with a number of articles of the Constitution, implied the necessity of resolving by the Constitutional Tribunal the question of admissibility of the control of consistency of the derivative EU law with the fundamental act. The Tribunal stated that the object range of normative act which can be controlled when it comes to their constitutionality as a result of a constitutional complaint was determined in an autonomous and independent way from art. 188 p. 1–3 of the Constitution, which do not list the acts of derivative law of the EU amongst the normative acts within the cognition of the Tribunal. A regulation as the act of the secondary law of the European Union can meet the requirements of art. 79 par. 1 of the Constitution, and thus be a normative act, on basis of which a court or organ of public administration states ultimately on freedoms, rights or duties of a plaintiff determined at the level of constitutional norms. In this respect the Tribunal referred to the legal character of a regulation, which in the light of art. 2 par. 2 of the Treaty on the functioning of the European Union have a general range, are in force as a whole and are directly applicable in member states. They are then undoubtedly the acts of general and abstract character, directed at individuals as well. At the same time, however, the Tribunal in special way emphasized the necessity to preserve the diligent abstinence and cautiousness in using the possibility of controlling the secondary law of the EU while recognizing constitutional complaints, referring most of all to the above mentioned system rules of the European Union, characterizing the impact of the Union law on the internal legal orders of member states.

It is worth mentioning that the provisions made by constitutional courts are justified in as far as that except from the Irish constitution all fundamental acts of member states stipulate either in the whole of their regulations, or at least in fundamental ones the superior position.[30] It is not surprising that constitutional courts of member states attribute to themselves the right for the final judgment in objective question, since at least *prima facie* there is a significant discrepancy between the jurisprudence thesis of the European Union Court of Justice and the particular regulations of state constitutions. Nevertheless, it is highly doubtful whether the stipulations made by constitutional courts which generally recognize the consistency of the Union primary law with national constitutions, could really threaten the rule of primacy. The condition of preserving the sufficient level of protection of fundamental rights, especially after the Treaty of Lisbon had come into force, granting the Charter of Fundamental Rights the importance equal to the treaties, and additionally obliging the European Union to join the European Convention of Human Rights is just a precaution. On the other hand, the condition of respecting the division of competences between the Union and member states is a kind of a safety anchor making it impossible for the Union institutions to take advantage of so called *Kompetenz-Kompetenz* (i.e. granting themselves particular prerogatives) and in this way protect the sovereignty of member states. As the German constitutional court decided in a famous Maastricht case[31], member states remain "the masters of the Treaty" (in German Herren der Verträge). The role of the competence rule entrusted as the security mechanism was confirmed in the judgment of this court from 30th June 2009, concerning the Treaty of Lisbon.

Conclusions

Despite various stipulations made by constitutional courts of member states[32] and judgments on the superiority of constitution in the fundamental acts of member states, it needs to be stated that the primacy of the union law towards the legal orders of member states, as permanently rooted and frequently referred to especial-

[28] The judgment of the Constitutional Tribunal from 16th Nov. 2011, SK 45/09, published 25.11.2011 r. in Dz. U. Nr 254, poz. 1530.

[29] The regulation of the Council no44/2001 from 22nd Dec. 2000 on the jurisdiction and recognition of court judgments and their application in civil and commercial cases, OJ L 12, 16.1.2001, p. 1–23.

[30] Kuś A., op. cit. , p. 685.

[31] BverfGE 89, p. 155.

[32] Ritleng D., *De l'utilité du principe de primauté du droit de l'Union*, Revue trimestrelle de droit européen, 2009, *passim.*

ly by the European Union Court of Justice is not to be questioned. However, as it was shown by the example of the Constitutional Treaty, especially after crossing out the rule which was stating *expressis verbis* the primacy of the Union law, political consensus does not necessarily means the will to settle this issue either on the level of introducing appropriate regulations to the treaties establishing the European Union or to constitutions of almost all member states. It seems, however, that such changes would be desirable on account of the rule of certainty of law, concluded both at the level of the Polish law (from the rule of a democratic state of law stated in art. 2 of the Constitution) as well as from the primary law of the Union (the rule of the state of law stated in art. 2 of the Treaty on European Union).

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