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Supremacy and Primacy: Hierarchical Relationships Between the Polish and EU Legal Systems and Their Guardians

ABSTRACT: *European Union (EU) law and Polish national law are two separate legal systems. However, they function together within the framework of the Law of the Republic of Poland, in line with the meaning of Article 8(1) of the Constitution and have legal effects within the territory of the Polish State. Also, their norms are directed at the same addresses and operate within the same Polish territory. This results in the possibility of collision, both at the levels of the binding force (dispute over the hierarchy of provisions) and the application of law (dispute over the primacy of application). Each system has instruments aimed at solving collisions. Each also has an organ (organs) guarding the system. The activity of the said organ is to guarantee internal coherence and the proper position in the event of a collision with the other system. This analysis presents relations between those systems at the normative level and among the guardians of those systems. The first case concerns the definition and explanation of the substance of legal instruments solving collisions at the level of the Constitution and EU Treaties, and the indication of existing similarities and disparities, and as a result, the indication of the spheres of potential collision. In the second context, the text discusses the legal position of the guardians of the systems, that is, in the case of national law – the position of the Constitutional Tribunal, the Supreme Court, and administrative courts, and in the case of EU law – the position of the Court of Justice of the EU (CJEU). It also indicates the field of mutual convergence and disparity, and defines the applied legal tools. The analysis embraces constitutional identity as a boundary for national concessions to the primacy of EU law.*

KEYWORDS: Constitution, legal system, guardians of system, Constitutional Tribunal, Supreme Court, administrative courts, CJEU, EU Law

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1. Introduction

European Union (EU) law and Poland's national law are two separate legal systems. However, they function together within the Law of the Republic of Poland in line with Article 8(1) of the Constitution of the Republic of Poland (Constitution) and have legal effects within Polish territory. Their norms are directed at the same addressees. This article presents the relations among these systems in the normative dimension and among the guardians of those systems, namely the Constitutional Tribunal (CT), the Supreme Court (SC), administrative courts and the Court of Justice of the EU (CJEU).

2. The relationship between national law and EU law

■ *2.1. The systemic position of the system of national law and the system of EU law*

The legal position of the Constitution is crucial for the relationship between Polish national law and EU law. It results from the Preamble to the Polish Constitution, which indicates that the Constitution is established as "the basic law for the State," and from Article 8(1), which calls it "the Supreme Law of the Republic of Poland." Legal scholars refer to the latter as the principle of the supremacy of the Constitution.[1] This principle means that all other legal acts that are binding and applied in the territory of Poland should conform to the Constitution.

The Constitution also determines the position of EU law in the Polish legal order. Treaties establishing the EU – as international agreements ratified with consent granted by statute or in a referendum – are directly included in the national system of the sources of law.[2] From a hierarchical perspective, their position in that system is specified by Article 188(1)–(2) of the Constitution, which places them below the Constitution and above statutes owing to their role in the review process. The rank of EU secondary legislation in the system of the sources of law – albeit indirectly restricted to application – is determined by Article 91(3) of the Constitution. Thus, from the perspective of the Constitution, EU law has been embraced in its entirety by the principle of supremacy.

The EU law system lacks provisions positioning its sources vis-à-vis the national law of EU Member States. Only in the functioning of the EU are its Treaties considered "acts constituting the EU," whereas the EU law system is transformed into a *quasi-federal* one by the CJEU's case law. Though it does not have the formal feature of hierarchical supremacy over national law, including the national

1 Banaszak, 2015, p. 49.
2 Art. 87(1) of the Constitution.

constitution, there is undoubtedly a growing tendency to perceive it this way. The premises that indicate such aspirations directly are as follows: 1) First, the principle of the primacy of EU law, which refers to the functional sphere, namely the primacy of application. However, the recognition that the hierarchy of the system whose norm should be applied in the event of a conflict is implicitly more important and needs to serve as a background for such primacy. 2) Second, the orientation of the formal dialogue between national courts and the CJEU. References for a preliminary ruling are addressed to the CJEU, and its response should be binding on the party making a reference. This construct unambiguously indicates the hierarchical importance of institutions and sources, thus also of the system. 3) Third, the alleged axiological domination of EU Treaties (European values), enforced by the CJEU in its case law, over the axiology of national systems.

■ *2.2. Collisions between the legal systems and methods of solving the collisions*

Norms of both legal systems are executed in the same State (Polish) territory. They regulate different contexts of the same factual situations, which often gives rise to serious functional problems manifesting in two dimensions: The binding force and application of the law. In the former, the problem pertains to the formally distinct systems of the sources of national and EU law. They are governed by their own principles. Though the integration process solidifies the coherence between EU and national law, that coherence is not perfect.[3] Thus, the question concerns the mutual relations of specific legal acts *in abstracto* (superiority–subordination). The second level of conflict concerns the application of law. It is related to the need to determine the source to be applied to and omitted in each case (primacy of the application of law). This makes it necessary to search for instruments that can eliminate possible collisions at both levels. Collisions at the level of the binding force are to be resolved *a priori* by the Treaty-based division of competences between the State and Union. The result is the independent existence of different legislators enacting separate legal acts in spheres assigned to them (the EU's exclusive competences and State's exclusive competences). In the case of shared competences, an organising rule was established, allowing for the State's activity solely under specified circumstances.[4]

In practice, it is impossible to eliminate collisions entirely. Even if they do not emerge at the level of the binding force of law, they may manifest in the process of the application of the law. Thus, each system has appropriate rules for solving mutual collisions at this level. In Polish law, in reference to EU primary law, it is Article 91(2) of the Constitution, and in reference to EU secondary legislation, it is Article 91(3) of the Constitution. The former states that 'An international agreement ratified upon prior consent granted by statute shall have precedence

3 The question concerns the role of the Treaties constituting the EU (primary law).
4 See Art. 2(2) of the TFEU.

over statutes if such an agreement cannot be reconciled with the provisions of such statutes.' *A contratio*, the primacy of such an act does not refer to collisions with the Constitution. Article 91(3) provides that the law established by an international organisation is directly applied and has primacy in case of a collision with statutes. However, this rule has limitations in that: (1) it operates if this follows from the agreement constituting such an organisation, which becomes binding on Poland by way of ratification; (2) primacy refers to statutes, so it literally concerns one of the acts contained in the catalogue of the national sources of law;[5] and (3) it may be applied solely in reference to EU provisions directly applicable in the national legal order.

In the EU system, the principle of the primacy of EU law governs the conflict of laws. It embraces the obligation of an organ to apply a norm of EU law in the event of a collision between EU law and national law. Its construction corresponds to the solution contained in Article 91(2) and (3) of the Constitution, but there is a considerable difference between the said solutions vis-à-vis their scope. Whereas constitutional norms have a restricted scope, it is commonly known today that the EU requires the attribution of primacy to EU law over national constitutions.[6] This is opposed by Article 8(2) of the Constitution. It contains the imperative to apply the Constitution directly unless it states otherwise. From the perspective of that provision read in conjunction with Article 8(1) of the Constitution, each constitutional provision that may be directly applicable should have primacy over EU law. This shows that the mere fact that conflict of law rules are different and incoherent gives rise to a problem.[7]

3. The guardians of the system of national law: Constitutional Tribunal, the Supreme Court and administrative courts

■ *3.1. The Constitutional Tribunal as the guardian of the hierarchy of law*

In accordance with Article 10(2) of the Constitution, the CT is an organ of judicial power. However, it does not administer justice, as under Article 175(1) of the Constitution, the administration of justice is implemented by '(...) the Supreme Court, common courts, administrative courts and military courts.' Thus, the CT is not a court within the constitutional meaning, and the *locus standi* to refer to it is not an element of the guarantee of the right to a court as discussed under Article 45(1) of the Constitution. The scope of the powers of the CT embraces

5 Literally. What follows from *a maiorem ad minus* reasoning is also primacy over regulations and enactments of local law.

6 More on that cf. Muszyński, 2020, pp. 118–121.

7 Muszyński, 2020, pp. 129–130.

issues concerning the hierarchical conformity of law and specified matters of a systemic nature.[8]

The first case concerns adjudication vis-à-vis the conformity of: (1) statutes and international agreements to the Constitution; (2) statutes to ratify international agreements where ratification requires prior consent granted in statute; and (3) provisions of law enacted by central State organs to the Constitution, ratified international agreements, and statutes. As for the hierarchical review of law, the CT examines questions of law referred to by courts and constitutional complaints, and at the request of the President of the Republic of Poland, it adjudicates on the conformity to the Constitution of a statute before it is signed as well as on the conformity to the Constitution of an international agreement before it is ratified.

The CT settles disputes over the authority between central constitutional organs of the State, determines the existence of an impediment to the exercise of the office by the President of the Republic of Poland, and reviews the purposes or activities of political parties for conformity to the Constitution. The tasks of the guardian of the national legal system are performed by the CT through instruments that form part of its full scope of powers. This refers to the powers related to the hierarchical review of law, which include a review of the conformity of statutes and international agreements to the Constitution, regardless of its formula (whether an *a priori* or *a posteriori* review); the review of the conformity of statutes to international agreements ratified with consent granted by statute; the review of the conformity of legal provisions enacted by central State organs to the Constitution, and ratified international agreements and statutes. This catalogue may include settling disputes over authority among central constitutional organs of the State.

The CT acts via its judgments. Their effects, the rules concerning their entry into force, and their substance are regulated by Article 190 of the Constitution. It follows from its content that the judgments of the CT have a universally binding character and *erga omnes* legal effects. Only the operative part of its decisions has a universally binding force.[9] *Erga omnes* effectiveness means that judgment concerns all addressees of a challenged norm, irrespective of whether they participated in the proceedings before the Tribunal, and organs enacting and applying the law.[10] Thus, judgments produce permanent effects in the system of the binding law. The CT's judgments are final, which means that they are not subject to review, and are thus irrebuttable and indisputable. There is no legal remedy against them. They may not be challenged, their correctness may not be examined, and procedures enabling such an action may not be established either. They may not be cancelled

8 See Art. 122(3), Art. 131(1), Art.133(2) and Arts. 189 and 193 of the Constitution (Journal of Laws No. 78, item 483, as amended).

9 See the judgment of the CT of 5 November 1986, U 5/86, OTK 1986, item 1 and the judgment of the CT of 18 April 2000, K 23/99, OTK ZU 2000, no. 3, item 89.

10 See Nita, 2000, p. 96.

or changed. This prohibition applies to the CT and other organs. The subject of a judgment acquires the authority of *res judicata*, and the judgment triggers the operation of the principle *ne bis in idem*.

The judgments of the CT, in accordance with Article 190(2) of the Constitution are subject to immediate promulgation in the proper journal of laws. Such an action is not a technical act (publishing), but it fulfils an important guaranteeing function. It makes it possible for one to familiarise oneself with an amendment of the law and to adjust to one's conduct or actions.[11] Moreover, if, under Article 190(3) of the Constitution, a judgment of the CT takes effect from the day of its promulgation, the act of promulgation is necessary for the production of legal effects, that is, for the confirmation or denial of constitutionality.[12] A derogatory effect in the case of judgements concerning unconstitutionality is the reason the CT – as the guardian of the system of the law in force – is called a negative legislator, that is, it creates by virtue of its judgments a specific situation in the system of the sources of law.

The settlement of a dispute over authority results in the determination of the jurisdiction or lack of proper power of an organ indicated by the Tribunal in its judgments. The judgments of the CT have a future-facing effect. However, they do not have an annulling effect, which means that they do not annul determinations delivered by other organs based on the provisions that were subsequently held unconstitutional, even in cases instituted through a constitutional complaint. As we read in the jurisprudence of the CT, 'the Constitutional Tribunal is not a court of facts or a court adjudicating in instance proceedings. Constitutional complaint is not an instrument of review directed against State organs applying law (...).'[13] The CT solely assesses legal norms (normative acts) based on which a final determination in the complainant's case was delivered. Thus, a judgment concerning unconstitutionality will not automatically lead to the rebuttal of a given determination. As long as, in accordance with Article 190(4) of the Constitution, an interested party does not undertake such an action based on procedures for rebutting final determinations delivered based on an unconstitutional norm, the final determination in his/her case is valid. The exercise of the rights arising from Article 190(4) of the Constitution takes place outside the CT. A mere revision of such a case does not have to lead to a satisfactory result for the complainant. Sometimes, to fully organise a legal situation, the intervention of the legislator may be necessary. The Constitution does not determine the form in which the CT delivers its rulings. In accordance with the rules adopted in the Polish legal system, the rulings of the CT may take the form of a judgement or decision, whereas the former are attributed

11 See the judgment of the CT of 9 December 2015, K 35/15, OTK ZU 2015, no. 11, series A, item 186.

12 The CT may indicate a different moment of the loss of the binding force of a normative act.

13 See, for example, the judgment of the CT of 12 November 2002, SK 40/01, OTK ZU no. 6/A/2002, item 81.

to situations in which a ruling involves an authoritative determination of the State. Thus, judgements are delivered in the name of the Republic of Poland.[14]

■ *3.2. The Supreme Court as the guardian of the application of law in the justice system*

In accordance with Article 10(2) of the Constitution, the SC is an element of the judicial power. However, as opposed to the CT, it is – within the framework of such power – one of the elements of the justice system.[15] It plays a crucial role that is confirmed by the fact that it occupies the first place in the catalogue contained in the proper provision and by the specificity of powers ascribed to it. The scope of the powers of the SC at the constitutional level is specified under Article 183 of the Constitution. In accordance with this, the SC exercises supervision over common and military courts as regards adjudication and performs other activities specified in the Constitution and statutes.

Supervision has a judicial character. It extends to the direct implementation of the administration of justice in specific cases and concerns indirect activities that involve guaranteeing the correctness and unification of jurisprudence within the State's jurisdiction.[16] The realisation of judicial supervision in the direct and indirect forms is implemented by: (1) examining judicial remedies of an extraordinary character against judicial decisions and other remedies in line with procedural law; (2) adopting resolutions containing determinations of points of law that give rise to serious doubts concerning the interpretation of provisions serving as the basis for the delivered determination; and (3) adopting resolutions aiming to settle points of law in the event of discrepancies in the jurisprudence of common and military courts and the SC vis-à-vis the interpretation of legal provisions. This supervision is initiated by extraordinary remedies to which the following actors are entitled: Common and military courts (questions of law), parties to proceedings or other subjects, such as the Commissioner for Human Rights, Minister of Justice (cassation appeal – *kasacja*, cassation complaint – *skarga kasacyjna*), or – in certain situations – by way of its own instruments enabling the clarification of legal provisions[17] whose application has led to discrepancies in the interpretation of law.

Jurisdiction has a real character, as in a situation where the substance of proceedings makes it possible, the SC may interfere with the content of final determinations. However, this activity must take into account other provisions of the Constitution referring to the organs of judicial power (autonomy of courts and

14 Art. 174 of the Constitution.
15 See Art. 175(1) of the Constitution.
16 Szmulik, 2008, p. 283.
17 Cf. the resolution of the Supreme Court of 28 January 2014, BSA-4110-4/13, unpublished.

independence of judges). The additional powers of the SC arise from the Constitution[18] and ordinary statutes.[19]

As is the case with the CT, the role of the guardian is fulfilled by parts of numerous instruments ascribed to the SC. They are the powers by which the SC guarantees legal safety and the certainty of law applied (as part of implementing the administration of justice) within the territory of the Republic of Poland. Those instruments embrace judicial supervision, and the adoption of resolutions resolving points of law and institution of extraordinary appeal (Pl. *skarga nadzwyczajna)*, introduced to the legal system through the new Supreme Court Act.[20] The purpose of that appeal is the protection of the conformity of jurisprudence to constitutional value, that is, the principle of a democratic State ruled by law implementing the principles of social justice. The direct requirements making it possible to apply extraordinary appeal embrace an infringement of the constitutional principles and the rights and freedoms of persons and citizens, a gross infringement of law, or a contradiction between the court's findings and evidence collected. This way, extraordinary appeal complements, within a certain scope, the mechanism for reviewing constitutionality (constitutional complaint) in the sphere of the application of law.[21]

Judicial supervision does not comprise the jurisprudence of administrative courts, which are subordinate to the Supreme Administrative Court. While serving as the guardian of the system, the SC adjudicates in the name of the Republic of Poland. This feature is ascribed to determinations including an authoritative imperative. This concerns the power related to implementing the administration of justice. Therefore, adjudicating in the name of the Republic of Poland concerns judgements delivered in appeal proceedings and in relation to extraordinary remedies. The judgements of the SC do not have a universally binding character, although they are final. They have an *inter partes* character. Where the SC does not end proceedings conclusively, it delivers an order in its own name.

The determination of the points of law is a unique instrument for the fulfilment of the function of the guardian of the system. Decisions delivered in the course of such proceedings take the form of resolutions of the SC. Their content does not embrace the attribute of a State act (in the name of the Republic of Poland) but constitutes an act of judicial power because of their role and character. The findings contained in them may have the rank of a legal rule. However, in the case of resolutions adopted by a full bench of the SC, by benches comprising the joined

18 Art. 101(1) and 2 of the Constitution and Art. 124(4) independently and in conjunction with Art. 235(6) of the Constitution.

19 See Art. 1 of the Supreme Court Act of 8 December 2017 (Journal of Laws 2018, item 5), Art. 244(1) in conjunction with Art. 336 of the Act of 5 January 2011 – Electoral Code, Art. 37(1) of the Code of Criminal Proceedings.

20 The Supreme Court Act of 8 December 2017.

21 More on that Syryt, 2021, pp. 36–58.

and full chambers, the decisions gain the force of a legal rule at the time of their adoption. In the case of a resolution adopted by a bench comprising seven judges, the bench may decide to attribute such a force thereto.[22]

A legal rule is binding on the different levels of the SC based on the level at which it was adopted. If any bench of the SC intends to depart from a legal rule, the legal issue is to be resolved by a bench comprising an entire chamber. A departure from a legal principle adopted by a chamber, joined chambers, or a full bench of the SC, requires a new determination in the form of a resolution adopted by the proper or joined chambers, or a full bench of the SC. If the bench of one chamber of the SC seeks to depart from a legal rule adopted by another, a determination takes the form of a resolution of both chambers. The chambers may refer a point of law to a full bench of the SC.[23]

Although a legal rule does not formally bind common and military courts, it directly affects their jurisprudence. If such a principle is ignored at that level, the judgement will be quashed in the course of appellate proceedings or at the level of the SC upon the application of extraordinary remedies. The guardian of the system will take action. Resolutions that have gained the force of legal rule are published with a statement of reasons in the Bulletin of Public Information on the SC website.[24]

■ *3.3. Administrative courts as guardians of the legality of the operation of public administration*

The next guardian of the system in Poland is the administrative judiciary.[25] It comprises the voivodship administrative courts and Supreme Administrative Court (SAC).[26] This arrangement is different from that of the common judiciary and SC. The power of the SAC is identical to that of the voivodeship administrative courts. However, there is a difference in that it is the "supreme" court within that judiciary. The administrative judiciary is separate from and independent of the common and military judiciary and SC. However, together with them, a unique part of the justice system is discussed under Article 175(1) of the Constitution.

The role of the guardian of the system in the case of the administrative judiciary was indicated through the proper formulation of tasks. At the Constitutional level, they are defined as "control over the performance of public administration."[27] This means that its function is to protect – within the context of the exercise of the right to a court – individuals' rights in the event of their

22 Art. 87(1) of the Supreme Court Act.
23 See Art. 88 of the Supreme Court Act.
24 Art. 87(2) of the Supreme Court Act.
25 The functions of the administrative judiciary are indicated by a statute (*a contrario* Art. 177 of the Constitution).
26 Art. 184 of the Constitution.
27 Art. 184 of the Constitution.

violation by public administration, and to guard the legal order. This may, but does not have to, be related to a direct infringement of individuals' rights by organs of public administration. All the more so as administrative courts are not courts of the first choice in the exercise of the constitutional right to a court. Under Article 177 of the Constitution, there is a presumption of the power of common courts vis-à-vis implementing the administration of justice. This systemic requirement results in the adequate model of the adjudication of administrative courts, that is, annulling adjudication. Administrative courts review acts of public administration organs – from the perspective of their powers, including the existence of a legal basis as well as the lack of infringement of the hierarchical order of norms in the selection of the said basis (apart from the assessment of the constitutionality of statutes) – as well as procedures for action and substantive-law issues to the proper binding legal standard. Acts constitute the subject of review and a legal standard derived from the higher-level norm. The result is the possible annulment of an act inconsistent with the law. The catalogue of acts and activities that may be the subject of an administrative appeal lodged with an administrative court is broad. Since 2002, it has embraced the classical acts of the application of law (administrative decisions).[28] In the literature, the power under discussion refers to all forms and almost all spheres of action of public administration.[29]

Additionally, administrative courts have two powers: (1) The partial possibility to adjudicate on the substance. This mainly concerns the power to indicate in the judgment how an issue is to be resolved by an organ of public administration, or the possibility to deliver a judgment stating the existence or non-existence of a right or obligation. Although an ambiguous approach is expressed in the legal scholarship in this regard, it is still considered to conform to Article 184 and, by way of exception,[30] to Article 10 of the Constitution.[31] Administrative courts rarely apply provisions allowing for reformative adjudication; and (2) "signalisation" rights.[32] When an administrative court determines a vital infringement of a right or circumstances giving rise to infringement, it may inform the proper or superior organs of those infringements through an order. An organ is obliged to examine that order and inform the court about its stance.

From the perspective of the function of the guardian of the system, the literal exposition in the Constitution – within the sentence "control over the performance of public administration" – of adjudication by administrative courts

28 The enactment of the Act of 30 August 2002 – the Law on Proceedings before Administrative Courts (Journal of Laws 2023 item 259) has broadened the scope of control exercised by administrative courts, which follows from Art. 3(2) of the said act.

29 Chlebny and Piątek, 2021, pp. 22–23.

30 Hauser and Masternak-Kubiak, 2012, p. 405.

31 Piątek, 2017, p. 31.

32 Art. 155(1) of the Act of 30 August 2002 – Law on Proceedings before Administrative Courts.

on the conformity to statutes of resolutions enacted by organs of local self-government and normative acts of territorial organs of government administration is noteworthy.[33] This is a power to conduct an abstract review of the acts of local law indicated. In the first case, this indication is specified vis-à-vis the kind of legal act concerned (resolution). It embraces all kinds of resolutions (normative ones and those that are acts of the application of law, and internal and non-legal acts).[34] Thus, it is broad in relation to the *ratione materiae* scope, because it goes beyond the review of normative acts (acts of local organs of public administration which are sources of local or internal law). The review of other kinds of authoritative acts of local organs of public administration is conducted, but derives from a general constitutional power of administrative courts to 'control the activities of public administration organs.'

The higher-level norm for review indicated in the Constitution is a statute. Legal scholarships extend to contain the Constitution, ratified international agreements, and acts enacted by an international organisation, as discussed under Article 91(3) of the Constitution.[35] The view that dominates in the jurisprudence notes that local law should conform to regulations.[36] The *ratione materiae* scope of review embraces the powers of an organ enacting a legal act, the conformity of the scope of an act to the content of authorisation, and the review of the enactment procedure. The function of the guardian of the system is fulfilled by administrative courts in an incidental manner. Based on Article 166(3) of the Constitution, they settle jurisdictional disputes between units of local self-government and government administration.

The role of administrative courts as a guardian of the system, as opposed to the CT and Supreme Court, is strengthened by the construct of the mode of proceedings. As the principle of the accusatorial procedure applies in the sphere of the administrative judiciary, those courts adjudicate within the limits of a case, but in a different way than both remaining guardians, as they are not bound by the challenges and requests contained in an appeal, or by the invoked legal basis.[37]

The SAC plays an exceptional role among administrative courts, which are the guardians of the national legal system. As the "supreme" court, it performs the task of jurisprudential supervision over voivodeship administrative courts not only as an organ settling cases in the second instance, but also in a general manner, as regards the interpretation of law (points of law).[38]

33 Art. 184 of the Constitution.
34 Dąbek, 2013, p. 76 et seq.
35 Garlicki, 2005, p. 9.
36 See, for example, the judgment of the Supreme Administrative Court of 28 May 2010, II OSK 531/10, Legalis.
37 Art. 134(1) of the Act – Law on Proceedings before Administrative Courts.
38 Art. 187 of the Act – Law on Proceedings before Administrative Courts.

Administrative courts deliver decisions in the form of judgments and decisions. Judgments refer to authoritative determinations and are delivered in the name of the Republic of Poland.[39] Decisions are delivered where the legislator did not envisage the delivery of a judgment in a given course of proceedings. Based on the character of the non-conformity to the law of an administrative act with an individual character, a judgment may quash it or declare its invalidity or infringement of law.[40] This results in the loss of the binding force of such an act. Judgments are announced by courts.

The determination of the illegality of acts of local law results in the determination of their invalidity, or their enactment in breach of law if provisions do not envisage the determination of invalidity. Such a judgment has an *ex nunc* effect. Acts of the application of law enacted based on such local law continue to be valid. They may be rebutted only in accordance with modes of procedure specified in the law. Judgments in that regard are announced in a voivodeship journal of laws.[41]A final decision is binding on the parties and the court that delivered it, and on other courts and State organs, and in cases envisaged in the statute also on other persons.[42]

As regards points of law, the SAC adjudicates through resolutions that are passed in a bench comprising seven judges, or a full bench of a chamber or of the SAC. There are two kinds of resolutions: (1) Those concerning the clarification of legal provisions whose application has led to discrepancies in jurisprudence (general, abstract resolutions); and (2) Those containing the determination of points of law giving rise to serious doubts in a specific case (specific resolutions). General resolutions are adopted at the request of organs entitled thereto by the law.[43] Specific resolutions are adopted at the request of the bench adjudicating in a specific case. All resolutions are binding on administrative courts.[44] No adjudicating bench of any administrative court may resolve an issue embraced by the scope of a resolution in breach of that resolution until the interpretation of a specific provision is changed by another resolution.[45] If a court does not share the stance adopted in a resolution, it may only refer an issue to the proper bench of the SAC.

39 Art. 174 of the Constitution.

40 See Art. 145 et seq. of the Act – Law on Proceedings before Administrative Courts.

41 Art. 13(5) of the Act of 20 July 2000 on the promulgation of normative acts and certain other legal acts (Journal of Laws 2019 item 1461).

42 Art. 170 of the Act – Law on Proceedings before Administrative Courts.

43 They include the President of the SAC, Public Prosecutor-General, General Counsel to the Republic of Poland, Commissioner for Human Rights, Commissioner for Small and Medium Enterprises, and Commissioner for Childrens' Rights. See Art. 264(2) of the Act – Law on Proceedings before Administrative Courts.

44 See Art. 269(1) of the Act – Law on Proceedings before Administrative Courts.

45 See the judgment of the Supreme Administrative Court of 11 January 2008, I OSK 1942/06.

4. The CJEU as the guardian of the EU legal system

The CJEU is an organ of the EU. Its jurisdiction is derived from the Treaties ratified by the Polish State. The competences of the CJEU are defined under Article 19(1) of the TEU (ensuring that the law is observed in the interpretation and application of the Treaties). The realisation of its competences is enabled by several procedural instruments contained in Articles 251–281 of the TFEU. The role of the guardian of the system of EU law, in the case of the CJEU, is fulfilled internally (vis-à-vis EU organs) and externally (vis-à-vis Member States). I focus on the latter, as it is relevant for the purposes of this article. The role of the guardian of the system is fulfilled from two perspectives: (1) the imperative to restore the condition of conformity to the Treaties, and (2) *ex-ante* protection against infringement.

The instruments related to the first perspective comprise the aforementioned proceedings commenced against Member States vis-à-vis an infringement of the Treaty-based obligations,[46] whereas the second perspective is concerned with proceedings instituted through a reference for a preliminary ruling.[47] The first is verbalised by referring to the CJEU as the guardian of the Treaties.

In both perspectives, the CJEU acts via judgments and decisions. These are collegial acts. They have an external character for the national legal system, and their effect vis-à-vis a Member State, that is, the scope and character of their binding force, possibly their impact on national law, procedures, and addressees, or the manner of their execution, are indicated by the EU Treaties. The judgments of the CJEU delivered in the course of proceedings envisaged in Articles 258 and 259 of the TFEU have a declaratory character. The CJEU declares that the Treaties were infringed by the State[48] regardless of whether a factual action or enacted law is concerned. This means that they are a declaratory act and do not independently have legal effects in the sphere of the State's jurisdiction. The latter is confirmed (*a contrario*) by Article 280 in conjunction with Article 299 of the TFEU, which indicate which judgments of the CJEU are directly effective in the system of the national law of the Member States.[49] Consequently, even if a national act, provision, or remedy was held to be in breach of the EU Treaties, from the point of view of national law, they are legal and binding until they are derogated from in keeping with relevant national procedures.

The judgments of the CJEU entail the obligation of their execution. It derives from the principles *pacta sunt servanda* and *bonae fidei* and from the

46 Arts. 258–259 of the TFEU.
47 Art. 267 of the TFEU.
48 Art. 260 of the TFEU.
49 Those are only judgments that impose financial obligations on subjects other than States.

content of the obligation arising from Article 260(1) of the TFEU. Failure to give effect to a judgment may result in sanctions (payment of a lumpsum amount as a penalty).

The State is obliged to give effect to a judgment through its organs. National law regulates the organs that are competent to give effect to a judgment. In Poland, it is the Constitution that divides competences within the framework of the division of powers. If the performance of Treaty-based obligations constitutes an element of foreign policy, in accordance therewith it is the competence of the executive power.[50] Thus, the government, which *nota bene* represents the State before the CJEU, initiates the execution of a judgment in the national sphere. If a judgment deals with an amendment to the law, then the government prepares a draft act and submits it with the Sejm. Until such an act is passed, the national law infringing on EU Treaties is still in force. The organs of the State, acting based on this, may only refrain from action. They may not infer any rights for themselves on their own directly from the content of a judgment of the CJEU even if it seems that the said court enforces rights on them. They may not refuse to apply a national norm held to be in breach of the Treaties and invoke the judgment of the CJEU in their action. It is not a source of law – either for EU or national law – so to treat it as the foundation for the action of a State organ would be in breach of the constitutional principle of legality.[51] Refraining from action by administrative organs and courts requires national authorisation in the binding law.[52] If there is no such basis, refraining from action is not possible and organs must proceed based on the national legal norms even if they know that these norms infringe on the Treaties and that their action deepens the infringement.

Preliminary judgments indicate the normative content of a specific provision of EU law. The CJEU, while responding to a reference for a preliminary ruling, acts as an interpreting body and delivers the interpretation of law. Courts or the proper national organs give effect to such a judgment by applying a norm of EU law, adopting its content as defined in that judgement. Such a judgement is binding *inter partes*. Yet, it refers to all courts and organs dealing with a given case. From the temporal perspective, preliminary judgments have an *ex tunc* effect in principle. Courts and other State organs are obliged to consider the interpretation provided by the CJEU vis-à-vis legal relations founded in the past, although only those that are determined in the present. In other words, a judgment does not change the existing and consolidated legal situations unless they are challenged afresh.

50 Art. 146 of the Constitution.

51 Art. 7 of the Constitution.

52 Polish practice has dealt with a situation where the First President of the SC blocked the actions of the Disciplinary Chamber of the SC vis-à-vis the judgment of the CJEU twice (order Nos. 48/2020 and 93/2021 as amended). Art. 14(1) of the Supreme Court Act of 8 December 2017 served as the basis for it.

5. Relations concerning the institutions and powers of the guardians of the systems

In accordance with the Constitution and EU Treaties, the CT, SC, and administrative courts do not remain in a hierarchical relationship vis-à-vis the CJEU. The CJEU does not remain in a hierarchical relationship vis-à-vis the CT, SC, or administrative courts. This follows from the fact that those bodies have separate legal authority to act and that different functional roles are attributed to them. Thus, in principle, those organs may not formally control their activity, and quash their decisions. Simple proceedings instituted by the CT, SC, and or administrative courts on the CJEU's decisions would constitute an infringement of their constitutional powers. If the CJEU simply (hierarchically) dealt with the jurisprudence of the CT, SC, or administrative courts, it would violate both the EU Treaties and the sovereignty of the Member States.

However, the unique nature of European integration and the scope of powers of those organs lead to the conclusion that at the level of the application of law (exercise of powers), there may arise indirect situations that depart from these premises. The most glaring example among them are the competences of the CJEU to examine an infringement of the EU Treaties by a Member State.[53] As "Member State" is understood to mean the State as a whole, that is, all organs and subjects performing State tasks, any activity or failure to act is attributed to the State. This way, the scope of the CJEU's competences theoretically embrace the activities of the CT, SC, and administrative court, as adjudication by the CJEU is based on an examination of facts. The CJEU may deliver a judgment assessing a judgment delivered by any of those organs. Nevertheless, this is an *in abstracto* assessment that does not have direct impact on the assessed judgments and does not change their content.[54] It will possibly be the State's task to take action to eliminate an infringement that emerged as a result of those judgments, which seems impossible given the constitutional guarantees related to the proceedings and decisions of the CT, SC, and administrative courts.

The CT is competent to examine the constitutionality of EU primary law. The provision concerns ratified international agreements, but a treaty is a treaty. The Constitution discusses all international agreements[55] and does not envisage procedural immunity for EU Treaties. The CT has also developed, in its jurisprudence, the conception of examining EU secondary legislation.[56] It derived this from the interpretation of the provisions regulating its powers. It also inferred the possibility to review the jurisprudential activity of the CJEU. It derived this

53 Art. 258 or Art. 259 of the TFEU.
54 Cf. case C–234/04 (Kapferer), the operative part.
55 Art. 188(1) of the Constitution.
56 For more on that, see Muszyński, 2020, pp. 117–158.

from the specificity of judgments delivered by international courts as acts that not only resolve a matter *in concreto*, but also – from the procedural perspective – attribute specific content to a provision of international law by inferring from it a specified legal norm.[57] This refers to the entire case law of the CJEU,[58] and not only to preliminary judgments, although they seem to be the most predestined for examination given their interpretative specificity.

In such a case, a decision of the CJEU is not examined directly. A provision (norm) whose content is created by such a decision is formally examined.[59] An examination may embrace two aspects: the conformity of the substantive content of a norm to the Constitution; and the examination of the CJEU's competence to shape the specific content of legal norms from the perspective of the boundaries of the conferral of competences[60] or principle of conferral.[61]

If the CT states that the content of a norm does not conform to the Constitution or was created by the CJEU's activity beyond the boundaries of conferral, it eliminates it from the legal order of the Republic of Poland by making it impossible for national organs to apply it. The principle of the primacy of EU law does not operate in this case. The Tribunal may do this because the Constitution is the Supreme Law of the Republic of Poland, and sovereign Member States are the masters of the Treaties as their creators.[62] A State organ or another subject would infringe on the Constitution if it applies an unconstitutional norm. There is less mutual convergence between the case law of the CJEU and the activity of the SC. The substantive sphere of the SC's activity (civil, criminal, and labour laws) embraces issues whose substance is regulated outside EU law, which limits the CJEU.

Administrative courts seem predestined to collaborate with the CJEU from the perspective of their competences vis-à-vis executive power. If a part of Poland's legal order is regulated by EU law and these are the spheres in which State organs act by applying EU law (environmental and competition law, common market, etc.), then, where a case related to the activity of administrative organs is examined by administrative courts, a reference for a preliminary ruling seems to be a natural part of the proceedings. This is more typical of

57 For more on that, see the judgment of the CT of 10 March 2022, K 7/21, OTK ZU A/2022, item 24.

58 See the judgment of the CT of 7 October 2021, K 3/21, OTK ZU A/2022 item 65. It relied on the norms derived by the CJEU in the judgments in accordance with the course of proceedings envisaged in Art. 258 of the TFEU (case C-619/18, *European Commission v. Republic of Poland* and case C-192/18, *European Commission v. Republic of Poland*), and in judgments delivered in accordance with the preliminary procedure (in joined cases C-585/18, C-624/18 and C-625/18, and C-558/18 and C-563/18, and in case C-824/18).

59 In the judgment in K 3/21, the CT announced the direct possibility of assessing the CJEU's judgments. However, it did not indicate the procedure this process would follow.

60 Art. 90 of the Constitution.

61 Art. 2 of the Constitution.

62 Art. 1 of the TEU.

administrative courts than of the SC. It conforms to the Treaty-based imperative directed at the State to establish effective legal protection in spheres embraced by EU law.[63]

As the dialogue with the SC and administrative courts takes place via references for a preliminary ruling, this formula excludes any possibility of a review of the case law of the CJEU. If a court makes a reference for a preliminary ruling, it is obliged by the Treaty to proceed in a case based on a norm interpreted in keeping with the content of the preliminary judgment. In the administrative judiciary, there has been no divergence in that regard; there have been disparities in the SCs concerning the assessment of the role and significance of preliminary judgments.[64]

6. Solving conflicts in jurisprudential practice

Given that the catalogue of conflict of law rules remains limited, conflicts related to the application of law are eliminated by legal instruments created to serve that purpose, allowing for a dialogue among competent organs. In keeping with the EU Treaties, the fundamental measure of dialogue with the CJEU is a reference for a preliminary ruling.[65] The court of a Member State is competent to make a reference.

The first question that may arise vis-à-vis the provision constructed this way is whether the CT of the Republic of Poland has such power. Foreign legal scholarship states that the power (obligation) to make a reference for a preliminary ruling is attributed to all constitutional courts of Member States, yet the CT is different from most constitutional courts of the EU Member States. It is not a court from national and European standpoints. Jurisprudential practice will not help find an unambiguous answer. In the history of its adjudication, the CT once made a reference for a preliminary ruling in Case K 61/13,[66] and the CJEU responded with a judgement dated 7 March 2017 (C-390/15). The CT did not have a chance to give effect to (or to refuse to give effect to) that judgement because the national applicant withdrew the application, and the case was discontinued.

63 See Art. 19(1), (2) of the TEU.

64 In a resolution by the three joined chambers, namely the Civil, Criminal, and Labour and Social Insurance Chambers, the role of the CJEU's case law was affirmed. See the resolution of the bench comprising the joined chambers: The Civil, Criminal, and Labour and Social Insurance Chambers of 23 January 2020, BSA-I-4110–1/20. The Disciplinary Chamber of the SC noticed that a judgment may not be recognised as 'being in force' if the reference was made by a court that is not entitled to do so. See Izba Dyscyplinarna SN: Wyroku TSUE z listopada 2019 nie można uznać za obowiązujący(2020), p. 4.

65 Art. 267 of the TFEU

66 See the order of the CT of 7 July 2015, K 61/13, OTK ZU no. 7/A/2015, item 103.

The CT has not made a reference for a preliminary ruling in any other case. It refrained from doing so in Case P 1/18,[67] in which it adjudicated on the non-conformity of Polish national law to EU law. It acted in line with Cases P 7/20[68] and K 3/21.[69] This restraint follows from the features of the CT's activity. The CT does not apply EU law in the common sense, that is, it does not deliver individual acts based on it. It may only adjudicate on its constitutionality or apply it as a higher-level norm for review (EU Treaties) to evaluate national law other than the Constitution. CT needs to understand a specific legal provision to recreate the content of a norm which will be subsequently examined from the perspective of the Constitution. CT uses also EU law as a higher-level norm to examine the conformity to it of the content of a provision contained in an act of a lower rank.

The situation of the SC is different. From the constructional and functional perspective, it is a court of national and EU law. It has applied the instrument of a reference for a preliminary ruling, although this practice was initially rare.[70] The number of references for a preliminary ruling has increased since 2015 as a result of the reform of the justice system. This was triggered by the fact that on 20 December 2017, the European Commission instituted proceedings against Poland under Article 7 of the TEU. The SC considered a reference for a preliminary ruling the perfect tool to shape the reforms with the help of the EU.[71] Based on the information on the Court's website, it made 60 references for preliminary rulings between 2008 and 2022.[72] However, in the case of the SC, the problem arises at a different point. In light of the Treaties, a court is entitled to make a reference for a preliminary ruling. Yet, only a court against whose decisions there is no judicial remedy under national law is obliged to do so. In Polish law, this concerns a court of last instance, and not courts that deal with extraordinary remedies.

The SC is a court of last instance within a limited scope. One may consider it a disciplinary court for judges of common courts. It provides extraordinary remedies and adjudicates upon systemic matters. This begs the question of whether it can make references for a preliminary ruling. If it were obliged to do so, it would mean that such an obligation does not apply to a court of second instance. There may not be two levels of courts obliged to make a reference as courts against whose decisions there is no judicial remedy. This leads to the conclusion that the SC is at liberty, but has no obligation, to make a reference.

67 See the judgment of the CT of 30 October 2018, OTK ZU A/2019, item 61.
68 See the judgment of the CT of 14 July 2021, OTK ZU A/2021, item 49.
69 See the judgment of the CT of 7 October 2021, OTK ZU A/2022, item 65.
70 Stępień-Załucka, 2016, p. 339.
71 Thus far, 104 references for a preliminary ruling have been made. In 2018 – only 7; in 2019 – 6; in 2020 – 12; in 2021 – 5; in 2022 – 11. The first was the order of the SC of 2 August 2018, III UZP 4/18. The case was registered in the CJEU as the case C-522/18.
72 *Biuletyny* [Online]. Available at: https://www.sn.pl/publikacje/SitePages/Biuletyny.aspx?ListName=BSiA_Pytania_prejudycjalne, Bulletins. (Accessed: 4 April 2023).

Another problem concerns the doubt around whether the SC may make a reference for a preliminary ruling in a sphere of its activity other than the application of EU law, that is, for example, while adopting resolutions on the interpretation of national law *in abstracto*. If this is not related to the application of (EU) law, the answer to this question should be negative. Otherwise, an unauthorised reference and – as a result of it – unlawful interference of the CJEU's case law with the Polish legal order ensues. The position of the SAC is different. This court is part of the two-instance administrative judiciary. As regards the realisation of administrative cassation appeal (Pl. *skarga kasacyjna*), it is a court against whose decisions there is no legal remedy within the meaning of Article 267 of the TFEU. Thus, if the subject of examination comprises the activity of organs of public administration based on EU law, then making a reference for a preliminary ruling is justified. From 2005 to January 2023, administrative courts made 103 references for a preliminary ruling to the CJEU.[73]

7. Constitutional identity as a boundary of dialogue

The Treaty-based obligation of the EU to respect the national identity of the Member States is an instrument indicating the boundaries of the federalising effects of the principle of the primacy of EU law. National identity is defined by means of "constitutional structures," that is, the substance of systemic statehood and sovereignty provided for in the highest legal act of the State. From the perspective of national law, constitutional identity is the functional counterpart of the Treaty-based construct of national identity. It has been shaped by the jurisprudence of tribunals and constitutional courts of EU Member States.[74] This way, the obligation, deriving from EU law, to respect national identity implies respect for the constitutional identity of the Member States.

The constitutional identity of each State has an individual character. To learn more, it is necessary to refer to the constitutional provisions of a given State, specified by the jurisprudence of the proper organ, which, in Poland, is the CT. It defined constitutional identity in Case K 32/09, where it reviewed the constitutionality of the Treaty of Lisbon.[75] According to the CT: a) the sovereignty of Poland implies the primacy of the Polish Nation to determine its fate. The Constitution is the normative expression of that principle, especially its Preamble and Articles 2, 4, 5, 8, 90, 104(2), and 126(1). The normative anchors[76] serve to protect the said act; b) Constitutional identity blocks the possibility of conferring on the

73 *Pytania prejudycjalne WSA i NSA*. [Online]. Available at: https://www.nsa.gov.pl/pytania-prejudycjalne-wsa-i-nsa.php (Accessed: 20 October 2023).
74 More on that Muszyński, 2023, pp. 540.
75 See the judgment of the CT of 24 November 2010, K 32/09, OTK ZU no. 9/A/2010, item 108.
76 Arts. 8, 90, and 91 of the Constitution.

EU authority over, based on Article 90 of the Constitution, matters fundamental to the political system of the State (the hard core), and protecting the collection of the fundamental principles of the Constitution (the principles of statehood, democracy, a State ruled by law, social justice, and subsidiarity) or provisions referring to the rights of the individual. It also embraces prohibitions against the conferral of power to amend the Constitution and determine competences; c) Article 90 of the Constitution guarantees the preservation of the constitutional identity of the Republic of Poland. It is applied in the event of each amendment to the Treaty provisions constituting the foundation of the EU; also, if amendments are implemented in a manner other than by virtue of an international agreement if they lead to the conferral of competences on the EU.

The rules inferred in Case K 32/09 were confirmed by the CT in Case P 7/20, which concerned Poland's obligation to give effect to the interim order of the CJEU by referring to the system and jurisdiction of and the procedure before Polish courts. The CT referred, in its statement of reasons, to the concept of constitutional identity, which, in its opinion, includes the "Polish judiciary."[77]

This way, the CT defined constitutional identity from the perspective of the preservation of sovereignty. The State was recognised as its possessor. The construction of constitutional identity, formulated this way, together with the parallel Treaty-based obligation imposed on the EU, that is, on its organs, to respect the said identity, constitutes a boundary for the dialogue between the CT, SC, and courts and the CJEU.

8. Conclusion

The Polish national and EU law systems are elements of the legal order of the Republic of Poland, where the Constitution plays a crucial role. The Constitution is at the top of the hierarchy of both sources of law, as exclusively by its power and within the scope indicated by it, the Treaties founding the EU are binding, and the EU institutions, including the CJEU, are competent to deliver acts that refer to the Polish State and nationals, as well as to other natural and legal persons staying within the territory of the Republic of Poland.

The principle of the supremacy of the Constitution formally functions at the level of the binding force. However, it also partially limits the attribution of the primacy of application to provisions stemming from the system of EU law. Only where the Constitution requires the enactment of a statute for its application, the primacy of EU law vis-à-vis such an act is unquestionable. Nonetheless, it reaches its boundaries here. Extraordinary safeguards of sovereignty operate in this dimension, such as constitutional identity or the boundary (scope) of conferred

77 See the judgment of the CT of 14 July 2021, P 7/20, OTK 2021, series A item 49, point 6.8.

competences. They indicate that EU law may not regulate certain matters. If the EU attempts to adopt such a regulation, which as a result compels a national organ to apply it in view of the principle of the primacy of EU law and conflict of law rules contained in Article 91 of the Constitution, then those extraordinary parameters make it possible to refrain from such an action. It is impossible to apply the principle of primacy of EU law in relation to constitutional provisions that are applied directly. At the level of the Constitution, this is confirmed by the systemic conflict of law rules.

The legal order of the Republic of Poland constructed this way is defended by the guardians of each system. The national legal system comprises the CT, SC, and administrative courts. Each has a relatively autonomous scope of activity. The role of the CT as a guardian of the system involves guaranteeing the hierarchical conformity of legal acts, creating the certainty of law and legal security at the legislative level and protecting constitutional values. The role of administrative courts as a guardian of the system involves guaranteeing the legality of activity of public administration. In turn, the role of the SC involves guaranteeing the uniformity of application of law vis-à-vis implementing the administration of justice, and securing the supreme role of the Constitution in this jurisprudence.

This way, the CT guards law at the level of the binding force, and the SC and administrative courts do so at the level of application. However, these organs do not act in isolation. Their roles converge at many points, depart from, overlap with, and/or complete each other. The CT shares its role of a guardian of the system of the sources of law with administrative courts vis-à-vis the review of the constitutionality of acts of local law. In turn, administrative courts not only adjudicate vis-à-vis acts of the application of law, and encroach on the field of the CT's activity with their jurisprudence by adjudicating on certain normative acts that reflect the activity of the public administration. By settling disputes over powers between central constitutional organs, the CT completes the competence of courts to settle such disputes between organs of local self-government and governmental administration. Some acts of public administration within a certain scope are subject to both the SC and common courts.[78] This way, within a highly limited scope, they act within the sphere of control of acts of public administration. The institution of extraordinary appeal complements the institution of constitutional complaint. In situations specified by the law, the SC and administrative courts and the Supreme Court take advantage of the decisions of the CT delivered in proceedings commenced by way of a question of law.[79]

78 Issues concerning the National Broadcasting Council, pertaining to the regulation of energy, electronic and, postal communications, railway transportation, and the regulation of water and sewerage market are addressed here. The Chamber of Extraordinary Control and Public Affairs of the Supreme Court deal with these issues though they are administrative in nature.

79 See Art. 193 of the Constitution. Cf. Art. 91(2) of the Supreme Court Act.

This leads to the conclusion that relations among the CT, SC, and administrative courts are not hierarchical. These organs act based on the systemic division and convergence of powers. The purpose of these overlapping functions is to guarantee the protection of all areas of State functioning, most often by two, and ultimately at least one of the guardians of the national system.

The CJEU is the guardian of the EU system. Thus, it is not entirely independent in that regard, as some powers of the CT allow a review of EU law, though from a narrow perspective of the constitutionality of that system. This follows from the fact that the constitutions of the Member States are a source of the system of EU law. This area of co-existence is particularly prone to conflict, which should be resolved with mutual respect for jurisprudence and through instruments of dialogue. Here, one may be able to defend the thesis that, in practice, it is possible to significantly eliminate some part of natural conflicts between both legal systems that arise from divergent conflict of law rules and the effects of the activity of the CJEU and the guardians of the national system.

Yet, tensions arise mainly at the level of the hierarchical relations of national and EU laws, that is, in the sphere of the activity of the CT and CJEU. The practice of the CJEU is problematic. It encroaches on national systemic dimensions through its case laws. This interference is so deep that it leads to clashes with the Constitution. This enforces the reaction of the CT, which is obliged to act in this situation. It may not simply cease to monitor constitutionality and allow a legal system that is not subject to the Constitution to operate within Polish territory.

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