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Marta WOŹNIAK*

The relationship between law, ratified agreements and the EU law, in the light of the Polish Constitution and application of the EU law by public administration in Poland

Introduction

Polish legal system is characterized by openness to foreign orders. The openness is connected, on the one hand, with respect for the international law and – on the other one – with Poland's accession to the European Union, which results in the need for the Polish legal system to adjust to a wealth of new types of sources of law.

The problem posed in the title of this paper can be considered one of the key research areas in studies of administrative law, which deals with sources of law. Both ratified international agreements and acts of the EU law are sources of administrative law and require applying by the Polish administrative and judicial authorities, where necessary. Axiological arrangements are reflected in the constitutional order and the basis of the findings concerning the relationship between law, ratified agreement and the EU is a constitutional system of sources of law. The current view, expressed by H. Maurer, is that administration and administrative law are to a large extent defined by the constitution in force at the given time.[1] The constitutional dependence of the

* Wydział Prawa i Administracji Uniwersytetu Opolskiego, e-mail: martawozniak1@o2.pl.

[1] H. Maurer, *Ogólne prawo administracyjne*, tłum. i red. K. Nowacki, Wrocław 2003, p. 28.

administration states that "administrative law is a concretized constitutional law", the constitutional provisions concerning the state, its tasks and powers, as well as the sources of law, must be clarified in the administration.[2] Thus, one may formulate a point that the standard of application of international law and the EU law by public administrations depends on how the constitution regulates the issue of international law and internal law.

The article deals with two issues: the relationship between the international law and national law in the light of the Polish Constitution and application of the EU law by the public administration in Poland. In Polish jurisdiction (the Constitutional Court and the Polish Supreme Administrative Court) the practice of respecting the principle of primacy of the EU law, as well as the principle of interpretation of this law has been established. These issues can be dealt with separately but have a number of tangent points.

The relationship between the national law and ratified international agreements, and between the national law and the European law is covered by the Polish Constitution of 2 April 1997,[3] which, in the chapter devoted to sources of the national law, determines their type, establishes their hierarchy and defines the status of the international agreement in the Polish legal system and its relationship to the law in force.[4] The interests of the Constitution are also regulated by the relationship between law and the acts constituted by the European Union, but these relationships are not as clearly defined as it is in the case with respect to a set of ratified international agreements.

The membership of Poland in the European Union entails a number of consequences in relation to activities of public authorities, which bear the bulk of work related to the application of the EU law. It should be clearly separated from the sphere of organizational implementing of the Union's law. As regards the first aspect, the Court of Justice of the European Union has held it that Member States retain organizational and procedural autonomy, and therefore have the right to freely decide

[2] H. Maurer, *op. cit.*, p. 28.

[3] Dz.U. 1997, nr 78, poz. 483., z 2001 r. Nr 28, poz. 319, z 2006 r. Nr 200, poz. 1471, z 2009 r., Nr 114, poz. 946.

[4] More on the relationship between law and international agreements and the status of international agreements in the Polish legal system can be found in Polish literature of the ubject, e.g., R. Szafarz, *Skuteczność traktatów na obszarze Rzeczpospolitej Polskiej w świetle prawa konstytucyjnego*, [in:] *Międzynarodowe Pakty Praw Człowieka w polskim ustawodawstwie i w praktyce organów ochrony prawa*, L. Wiśniewski (ed.), Warszawa-Poznań 1996, p. 12; M. Masternak-Kubiak, *Przestrzeganie prawa międzynarodowego w świetle Konstytucji Rzeczypospolitej Polskiej*, Kraków 2003, p. 217-224.

on the structure, powers and the mode of operation of state-run bodies, including their establishment and liquidation. On the one hand, the European Union respects the fact that the autonomy of a structural state means that the state itself decides on the organization, the position and the role of the state in the administration, but – on the other one – they should be shaped so as to be able to exercise the Union's competence. The EU law does not interfere in the sphere of organization of public administration.[5] The construction of administrative structures, as well as the issues of supervision over the activities and forms of bodies performing public duties belong to the competence of Member States. The EU does not interfere in issues relating to basic territorial division of any country so that the structure of public administration in the Member States of the European Union is very diverse.[6] It may, though, suggest to the Member States that they should organize relevant field structures in order to perform tasks of special nature.[7]

As regards the second issue, i.e., application of the EU law, the obligations associated with it are divided between the central, regional and local authorities[8], and in many cases it is the authorities that remain at the lowest levels of the government (local government bodies) which experience the hardships associated with exercising the EU rights[9]. It can be argued that the EU law is applied in a decentralized

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[5] M. Jaśkowska, *Europeizacja prawa administracyjnego*, "Państwo i Prawo" 1999/11, p. 11-20.

[6] This issue is part of the broader context of the principle of procedural autonomy of the EU Member States. About the principle of procedural autonomy, see case C-213/89, *The Queen przeciwko Secretary of State for Transport, ex parte: Factortame Ltd i in* [1990] ECR I-2433. The concept of procedural autonomy, including procedural and systemic issues, also covers substantive issues, see: M. Hoskins, *Tilting the Balance: Supremacy and National Procedural Rules,* EL Rev. 1996, No. 21, p. 365.

7 See, for example, the Directive of the European Parliament and of the Council of 23 October 2000, establishing a framework for Community action in the field of water policy No. 2000/60/EC (the Water Framework Directive). According to this Directive, water management is to be implemented on the river basin scale, which should be assigned to areas of river basins - the administrative units created to carry out tasks of water management. For more on this subject see: G. Kallis, D. Butler, *The EU water framework directive: measures and implications,* "Water Policy", Volume 3, Issue 2, June 2001, p. 125-142; M. Kaika, The Water Framework Directive: A New Directive for a Changing Social, Political and Economic European Framework, "European Planning Studies" 2003, Volume 11, Issue 3, p. 299-316.

[8] A. Nowak-Far, *Stosowanie acquis communautaire przez administracje publiczne państw członkowskich Unii Europejskiej – zagadnienia prawne i organizacyjne*, "Służba Cywilna" 2002/4, p. 31; A. Gajda, *Organy regionalne i lokalne a prawo wspólnotowe* [in:] J. Barcz*, Efektywność prawa wspólnotowego w Polsce. Wybrane problemy*, "Studia z dziedziny prawa Unii Europejskiej" 2005/3, p. 109.

[9] M. Zieliński, *Wpływ członkostwa Polski w Unii Europejskiej na samorząd terytorialny*, [in:] *Przystąpienie Polski do Unii Europejskiej. Traktat Akcesyjny i jego skutki*, S. Biernat, S. Dudzik, M. Niedźwiedź (eds), Kraków 2003, p. 263.

manner.[10] For this reason it is important to determine the relationship between the normative acts of the EU law and international treaties in the domestic legal order.

One of the principles formulated a long time in the Polish legal system is the principle of the primacy of law. State authorities, including public authorities, can legally work, only if it is justified by the applicable laws. This principle calls, however, for revaluation after the entry of the Constitution into force. To extend the catalogue of universally binding law in Poland on the principle of primacy of international agreements, the Act has changed its face. The act, as a dominant one in the internal relations, has, in some cases and under the conditions specified in the Constitution, to give way to an international agreement or to the European Union's Law.

The place of international agreements in the Polish legal order

Placing international agreements within the system of sources of national law requires answering the question whether the Constitution is of the closed or open system of legal sources. The closed system is one in which the sources of law may be those which the Constitution refers to as legislative acts. The Constitution of 2 April 1997, by adopting a democratic political system of law, stood on the basis of the concept of the closed system of legal sources. In the light of the provisions of Article 87, the legal standards are established by legislative (law-making), clearly indicated in the Constitution. Among the legislative acts there are those that should be taken to extract the narrow-band acts constituting generally the binding law. They include those that establish binding norms of both public authorities and citizens, and other entities that are not authorities.[11]

Establishing the relationship between individual legal acts is part of a broader context, namely the question of the relation of international law to domestic law, which was discussed at the end of the 19th century. The doctrine formulated two extreme theories: dualistic and monistic. Dualists emphasized a complete separation of international law and

[10] When the term "decentralized" in this context differs from the meaning ascribed to it in the study of administrative law, see: S. Biernat*, Europejskie prawo administracyjne i europeizacja krajowego prawa administracyjnego (zarys problematyki)*, [in:] "Studia Prawno-Europejskie" 2002, Volume VI, p. 73.

[11] M. Masternak-Kubiak, *Umowy międzynarodowe w prawie konstytucyjnym*, Warszawa 1997, p. 110.

national law, which are treated as two distinct and independent legal systems, with no tangible points. According to the dualists, international law governs only international relations, while internal law – those between individuals and the state. The proponents of duality argue that the two branches of law differ from each other in both the subject matter of regulation and the source of norms, and because of the distinctness of international law and internal law, there can be no conflict between them. According to the monistic theory, international law and national law create a homogenous legal system, in which these norms are hierarchical. Depending on how the hierarchy of standards is established, monism is distinguished from the primacy of domestic law and monism with the primacy of international law. The above theories are not suitable for use in their original form and the decriminalization of the reciprocal relationship between international law and domestic law calls for constitutional provisions, backed up by judicial decisions.[12]

The issue of primacy of international treaties over laws can be seen on the internal or international level. In the first case, the primacy of international agreements should have clear support in the Constitution. According to some authors, primacy may be derived from the democratic rule of law. "State law" cannot – according to proponents of this view – deny the importance of international agreements that are bound by a voluntary basis, and with justification that their content is contrary to national law. At the international level the primacy is obvious;[13] in accordance with Article 27 of the Vienna Convention, a state may not rely, as against other countries, on their legal system (including the provisions of the Constitution) in order to evade obligations imposed by international law or treaties adopted as binding.

The duty of every state therefore is agreed in actions between domestic disputes with international obligations. On the basis of international law, states' own standards are always better than national ones. If they issue a law contrary to the international agreement concluded by them, it may be an infringement of international law. The

[12] Read more about the monism and dualism: J. Laws, *Monism and dualism*, "La Revue administrative" 2000, N. special 2, p. 18-22; L. Wildhaber, *The European Convention on Human Rights and International Law*, Volume 56, Issue 2 April 2007, p. 217-231; T. Ginsburg, *Locking in Democracy: Constitutions, Commitment, and International Law*, New York 2005-2006, p. 713-721.

[13] Read more about the relationship between international law and national law in Vladlen S. Vereshchetin, *New Constitution and the old Problem of the relationship between international law and national law*, 7 Eur. J. Int'l L. 29 (1996), p. 29-41; A. Chayes; A. Handler Chayes, *Why Do Nations Obey International Law?,* "The Yale Law Journal", Volume 106, No. 8, Symposium: Group Conflict and the Constitution: Race, Sexuality, and Religion (Jun., 1997), p. 2599-2659.

state is obliged to fulfil its obligations under international law in good faith (*pacta sunt servanda rule*[14]). In the case of a conflict occurring between a national law and norms of the international law, the state remains bound by the latter.

Regarding the sphere of national law, the principles which determine the relation between norms of international agreements and those of internal law, including the principles of settling conflicts between these norms, should be covered by the Constitution.

The postulate to determine the rank of international agreements ratified in the Constitution, and their relation to the laws has been reported in Poland for a long time. The Constitution of 2 April 1997 is the first Polish constitutional law which makes reference to the issue of international agreements in detail. Defining terms of the relationship towards laws concerns, however, only one category, namely international agreements of ratified contracts.

The starting point for the discussion here is Article 2 of the Constitution, under which "Poland is a democratic state ruled by law (...)." This provision requires keeping international commitments and executing them in the internal relations and provides a reference for all other provisions of the Constitution, determines the effectiveness of international law in the Polish law. The formula contained in Article 9 of the Constitution situated among the guiding principles of the system, is crucial for the presented problem. This provision states that the Republic of Poland shall respect international law as binding. This standard is not isolated in any particular way of international agreements, it refers to the whole of the international law as binding in Poland. The most important message, stemming from that article, is that courts, administrative bodies and other authorities may apply the rules of international law that were not included in the directory of sources of the Polish law. This applies, in the broadest measure, to international agreements which are not ratified and therefore remain subject to governmental and ministerial agreements.

Determining the status of international agreements is essential to Article 87 of the Constitution, which places the ratified international treaties in the catalogue of the universally binding law of the Republic of Poland. The question of the place of international agreements in the hierarchy of legal sources is settled by Article 91, Paragraph 2 of the Constitution. This article does not concern all international agreements, but only those needed for ratification by the consent of the *Seym*. The

[14] See: H. Wehberg, *Pacta Sunt Servanda*, "The American Journal of International Law", Volume 53, No. 4 (Oct., 1959), p. 775-786.

article mentioned above gives priority to international agreements ratified with the prior consent granted by the statue before the statue, if the latter cannot be reconciled with the contract.

Against the background of the Constitution there are three types of international agreements: the agreement ratified under qualified (with the prior consent of the *Seym*), ratified an agreement on a regular basis (sometimes called simplified without regulatory approval) and the agreement ratified.

In the light of Article 87, Paragraph 1 of the Constitution, ratified international agreements placed in the system of the universally binding law of the Republic were established in compliance with Polish laws. The provision does not distinguish whether the agreement was ratified with the consent of the *Seym*, or independently by the President. It is obvious only from Article 91, Paragraph 2 that the agreement ratified upon a prior consent of Parliament has precedence over the Act. The primacy of this can only be provided by the ratification of the agreement concluded on the basis of the law authorizing (ratification).

Determination of the status of international agreements ratified without the approval of the act requires an analysis of Art. 89 of the Constitution. It calculates the agreement, whose ratification is subject to the consent of the *Seym*.[15] We can conclude from Article 89 that the intention of the legislature was constitutional broad participation of Parliament in the process of concluding the most important international agreements for the state. Regarding this, Paragraph 5 seems to be especially capacious as it admits the participation of the *Seym* in ratification of agreements which relate to matters governed by the Act. The constitution sets a special place to international agreements ratified without the participation of the *Seym* in Art. 91, stating that these contracts and following the publication in *The Official Journal* are part of the national legal order and are directly applicable in so far as suitable for such a use. However, this does not specify clearly the position of an agreement ratified in a regular mode in the hierarchy of legal acts. An analysis of Article 91, Paragraph 2 of the Constitution leads to the conclusion that agreements are ratified without the participation of Parliament, which does not take precedence over the

[15] Their catalogue is extensive and includes: 1) contract (agreement) to peace, alliances, political or military agreements, 2) contracts concerning freedom of rights or obligations of citizens, under the Constitution, 3) contracts for Polish membership in international organizations, 4) agreements significantly aggravating the financial condition, 5) an agreement on the matters regulated by statue or law which Constitution requires.

laws, the legislature expressly reserves the constitutional privilege to the contracts ratified with the consent of the legislative authority.

The first and the second group have much in common. Although their importance to the national law is different, both the first and the second part of the national legal order are directly applicable. Article 91, Paragraph 1 of the Constitution uses solely the expression "ratified international agreement" and if execution of such agreements depends on enactment of a law, they can be applied only after releasing one. The additional condition to be satisfied, irrespective of the mode of ratifying an international agreement, is that it must be published in *The Official Journal*. Until this is effected, the international agreement cannot be applied in the national law.

A third category of contracts are ones which are not subject to ratification, the Constitution does not give them a place in the chapter on the sources of law only in Article 146, Paragraph 4, Point 10 (Chapter VI – the Council of Ministers and Government Administration). The Constitution does not refer to the relationship of these contracts to the law or other normative acts. A general adjustment of their status in the Constitution may hamper the development of practice. These agreements belong in the category of governmental contracts and are characterized by a great deal of diversity, both as far as their content and the significance are concerned.

It should be emphasized that all international agreements concluded by the Polish Republic and ratified contracts (by the President alone or with the consent of the *Seym*), agreements approved or accepted, contracts concluded by an exchange of documents or being effective as a result of their signing, bind our country as such and all should be respected and enforced – on both the international level as well as the internal one. Only the value of their acts in relation to particular types of acts of Polish law is or may be different.

The relationship between the Polish legal system and the European law

Another issue raised in the title of the article is the relationship between law and the European law, which is a direct consequence of the Polish accession to the European Union. The basics of the Polish accession to the European Union and its effects are provided by the Constitution. Article 90, Paragraph 1 are essential here, according to which "the Republic of Poland may, on the basis of international agreements, delegate to an international organization or international

institution the competence of state authorities in certain matters." On the basis of this article, part of the state power was transferred to an international organization – the European Union. The consequence of the Act of Accession respect for and implementation of the European law in the Polish legal system. The Constitution provides a special place for these acts, securing, in Article 91, Paragraph 3 that "if this is due to the agreement ratified by the Republic of Poland, establishing an international organization law, it shall be applied directly and have precedence in the event of a conflict with the law." Regarding secondary legislation of the European Union there are three types of them: regulations, directives and decisions.[16] It should be noted that they belong to the category of primary law of the European Union of derivative (secondary) of the European Union.

It should be noted that a directive – as opposed to the regulations which give rise to direct legal consequences for individuals – is not directly effective, and therefore they cannot be directly based on the rights and obligations of natural and legal persons. There are, however, exceptions to this rule, confirmed by the principle of "a limited direct effect of directives", which was formed in the jurisdiction of the Court of Justice of the European Union. The direct effect of directives means that only on this basis one can effectively reconstruct the sphere of rights and obligations of private entities, and players can prove their rights directly before a court of administrative authority. Thus, the direct effect is possible only in a relation arising between the state and a private entity,[17] and this only in situations in which a directive is not transposed into the national law or is transposed incorrectly, or if the provision of the directive is sufficiently clear and specific to an authorized entity to determine the directive given to it by the law.[18]

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[16] W.M. Góralski, *Legal order of the EU and European Communities*, [in:] *The European Union. Origins-Structure-Acquis*, W.M. Góralski, Sz. Kardaś (eds), Warszawa 2008, p. 172-176; J. Fairhurst, *Law of the European Union*, United Kingdom 2014, p. 64-66; M. Horspool and M. Humphreys, *European Union Law*, Oxford 2014, p. 95-97.

[17] The Court of Justice of the European Union developing the doctrine of direct effect, concluded that the directive may have a direct effect only on the vertical plane (unit-the state), while on the horizontal plane (unit-the unit) there may not be such an effect. See more on this subject in: D. Kornobis-Romanowska, (ed.) *Stosowanie prawa wspólnotowego w prawie wewnętrznym z uwzględnieniem prawa* polskiego, Toruń 2004, p. 86; S. Weatherill, *Cases and materials on EU Law*, Oxford 2012, p. 112-138.

[18] W. Chalmers, G. Davies and G. Monti, *European Union Law*, Cambridge 2010, p. 285-290 (direct effect), 294-300 (indirect effect); P. Craig, G.de Burca, EU Law. *Text, cases and Materials*, Oxford 2015, p. 279-282; M. Horspool and M. Humphreys, *European Union Law*..., p. 147-155.

With regard to the relationships characterized above, secondary legislation to the Act shall apply to Article 91, Paragraph 3 of the Constitution, which situates these acts on a higher position in the act (but not in the Constitution). In light of this article, the EU law seems to be a law of particular character, which is confirmed in the above--mentioned Article 91, Paragraph 3 of the Constitution. It states that law is directly applicable in the internal domain of a Member State and in the event of a collision has priority over laws. The specificity of the EU law is also expressed in the fact that this right will not be subject to a constitutional review by the Constitutional Court, because the law is not an international agreement within the meaning of Article 188, Paragraph 1 of the Constitution. Nevertheless, Poland retains control over the shape of law arising from participating in the legislative process and the Constitutional Court shall retain jurisdiction to naturally control the constitutionality of national legislation transposing EU rules into the national law.

The question of the relationship between the national law and the EU law applies mainly to secondary law of the European Union, but the attitude assumed in the Act towards the primary EU law, namely the founding treaties and the accession treaties, is also important. From the formal point of view they are ratified international agreements[19] and therefore are subject to the regime set out in Art. 91 of the Polish Constitution. Moreover, the law approving the ratification of such an agreement shall be qualified ratification procedure referred to in Article 90, Paragraph 2 of the Polish Constitution. The primary law of the European Union, as a ratified international agreement, benefits thus from the status of precedence over the national law.[20]

The supremacy of the EU law over the national law is a consequence of adoption of the rules in force in the European Union. One of the key principles of the EU law, specifically developed for the Court of Justice of the European Union and to ensure the effective application of the principle of primacy of law is also called the principle of primacy, supremacy, or primacy.[21] The order of priority relates to the priority of

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[19] W.M. Góralski, *International agreements of the European Communities*, [in:] *The European Union...*, p. 180-182.

[20] Read more about the place of the Constitutive Treaties in the Union's legal system in M. Horspool and M. Humphreys, *European Union Law...*, p. 86-95.

[21] The subject of this principle was the rich case law of the Court of Justice of the European Union, whose presentation would go beyond the scope of this study. It is worth referring the reader to representative literature, which is a collection of judgments of this court, including the principle of priority: S. Weatherill, *Cases and materials on EU Law*, Oxford 2012 and P.Craig, G.de Burca, EU Law. *Text, cases and Materials*, Oxford 2015. See, e.g., the case: Costa

application rather than the priority of being in force, the effect of which is that in the case of a conflict arising between national norms and one of the European law the competent national organ shall base its decision on the Community Law.[22] The essence of a direct application (direct applicability) of the EU legislation is that the legal basis for settlement, in a case heard before an organ (court, public organ) of a Member State, is the provision of the European Union Law, and not the national law of a Member State.[23]

The relation between the EU law and the national law was examined in its judgements by the Constitutional Court of Poland, in which it justified that since the basic premise of the functioning of the EU legal system is to give primacy to the EU law over the internal order of the Member States, the principle of priority should be adopted, otherwise the cooperation would become pointless. It further argued that possible conflicts between "ingredients" within the legal system of a Member State should be resolved by the principle of "mutually agreeable interpretation" and the principle of "cooperative coexistence" of Polish law and the EU law.[24] The Constitutional Court also referred to its jurisprudence in relation to accession treaties, which are in fact international treaties with the Constitution of the Republic of Poland. It stressed that the guarantees provided for in Art. 91, Sec. 2 of the Constitution, concerning the priority of the application of international agreements, including agreements on the transfer of competence of an international organization, do not lead directly to the recognition of the analogous precedence of these agreements before the provisions of the Constitution. The Constitution therefore remains the supreme law by virtue of its special power in relation to all Poland's international agreements. Due to Art. 8, Sec. 1 of the Constitution of the supremacy of

V Enel (Case 6/64) [1964] ECR 585, Court of Justice of the European Communities; Amministrazione delle Finanze V Simmenthal (Case 106/77)[1978] ECR 629, Court of Justice of the European Communities; Ministero delle Finanze v IN.CO.GE 90 Srl and others (Joined Cases C-10/97 to C- 22/97) [1998] ECR I – 6307, Court of Justice of the European Communities.

[22] The principle of supremacy of the EU law is closely connected with the principle of direct applicability and direct effect. Referred to as "twin doctrines". Linking the primacy of the principle of direct effect is that if the doctrine of direct effect is to ensure that Community rules which are given to derive individual rights, the doctrine of priority is to ensure that the direct effect of law shall prevail over any provision of national law or practice, cf. Edward D. and Robert C. Lane*, European Community law, An Introduction*, Butterworths 1996, p. 135. About direct applicability see case Variola v Amministrazione delle Finanze (Case 34.73) [1973] ECR 981, Court of Justice of the European Communities.

[23] A. Wróbel (ed.) *Stosowanie prawa Unii Europejskiej przez sądy*, Kraków 2005, p. 85.

[24] Wyrok TK z dnia 27 kwietnia 2005 r., sygn. akt P 1/05, 42/4/A/2005; wyrok TK z dnia 11 maja 2005 r., sygn. akt K 18/04, 49/5/A/2005.

legal power, it benefits from the priority of application on the territory of the Republic of Poland.[25]

Application of the EU law by the public administration – some comments

These principles are used in the public administration. Application of the EU law by public authorities may take the form of direct application when this law sets the content of the administrative bodies. Standards of the EU law are, in these situations, the legal basis for administrative acts issued by the national authorities.[26] It is much more often that we have to deal with the use of an intermediate, when the legal basis of administrative acts issued standards are laws and other normative acts implementing the EU law. Empowerment for the public authority to act is found most often in national substantive administrative law, which has been Europeanized to a large extent (e.g., environmental law, public procurement law, etc.). A particular case of direct application of the EU law is passing an administrative decision on its basis. This may apply to EU regulations which, by their nature, can be applied directly. But this is not a common situation, although – from the formal point of view – possible when such an act of the EU law refers to the sphere of rights and duties of individuals. They can then, only on the basis of successfully reconstructed sphere of their rights and authority, grant rights or impose obligations of an administrative nature. It is imperative that the Member State's administration held suitable knowledge in the scope of application of the EU law.

The application of the European law by the Polish authorities may take the form of usage, in a narrow sense, or issuance of an administrative act directly on the basis of EU regulations or untimely or improperly implemented directives, indirectly, on the basis of the EU law tailored to the national one, or used in a broad sense, that is executed by public administrative authority, as resulting from obligations contained in the European Union law. The issue of application of the EU law by public administration bodies was noted in the case of the Polish Supreme Administrative Court (NSA) which focused on areas such as tax law, customs law, industrial property law and environmental law. The ruling

[25] Wyrok TK z dnia 11 maja 2005 r. [Ruling of the Constitutional Tribunal of 11 May 2005], sygn. akt K 18/04.

[26] These solutions are used when the intention of Member States is that throughout the Community the same standards were applied, substantive and procedural, see: S. Biernat, *Europejskie prawo administracyjne...*, p. 84.

on data protection, diploma recognition or road transport was slightly less common. Regardless of the scope of the case, when deciding on cases with an EU element, the NSA referred to the obligation of a proactive interpretation of the provisions of the national law and of giving priority to the European law. It also used the possibility of direct application of the regulations and – under certain conditions – directives. According to the view expressed by the NSA: "In order to fully assess the compatibility of the national law with the EU law, it is, of course, necessary to refer not only to the letter of the regulation, but also to its context, place in the system, functions and aims it serves. Where a national judge cannot forget that the interpretation of a national provision should be made from the point of view of its purpose and the general regulatory system of which it is a part."[27] An important role in the interpretation of the EU law by the NSA was played by the system of preliminary rulings,[28] which aims at granting national courts the possibility of ensuring its uniform interpretation and application in all Member States. When questioning the interpretation of the European law, the NSA has to ask the Court of Justice of the European Union for a preliminary ruling.

Summary

The structure of the sources of Polish law and its hierarchical structure leaves no doubt as to the primacy of the individual pieces of legislation. The essence of this construction shows the status of specific acts of general nature and their mutual relations. Ratified international agreement shall take precedence over the law, but only if it was ratified after the agreement in the form of an Act of Parliament. Ratification of the agreement without the participation of the *Seym* deprives this act of over statutory authority. In the light of the Polish Constitution of 2 April 2007, European laws hold higher power over an act. This applies both to

[27] The NSA ruling of 12 September 2012, I FSK 1781/2011, CBOSA. See also the NSA ruling of 27 June 2013, I FSK 720/13, CBOSA, the NSA ruling of 29 May 2013, I FSK 147/13, CBOSA. The NSA, in the last of the cited rulings, deemed it appropriate to refer to the principles of effectiveness and priority, taking primarily account of the relationship between the directives and the national legislation implementing the objectives of those directives, on the one hand, and, on the other hand – the assistance provided by the preliminary judgments of the Court of Justice of the European Union in the interpretation of the EU law and its impact on the assessment of the way of implementing the directive or the understanding of a national provision.

[28] Read more in: A. Norberg *Preliminary rulings and the co-operation between national and European Courts*, Master thesis, 20 points, Supervisor Joakim Nergelius European Community Law, https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1560676&fileOId=1565389, (access 2 July 2017) p. 9-21.

primary law, whose sources are – from the formal point of view – ratified international agreements and secondary legislation.

It should be noted that the problem of the relation between these in the title of legislative acts occurs when we deal with incompatibility (conflict) standards. This raises the question of which of the standards should be applied. But if there is compatibility between the standards the body applying the rights will not be exposed to the charge of misapplication of the law. The application of the EU law by the administrative authority may take the form of direct application, but in practice it is more often done through the use of Europeanized administrative law. Despite a decade of Polish membership in the European Union, unabated interest in the science of administrative law issues of the EU law and the issue of its use by the Polish authorities remains the subject of scientific reflection in education of Polish administrative law. The issues of the European law applied by the administrative courts are sufficiently large to cover all questions pertaining to it, such as the primacy of the European law, the direct effect and the pro-Union interpretation of domestic law. Member States and their organs, including the judiciary, must respect not only the letters but also the spirit of the EU law.

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THE RELATIONSHIP BETWEEN LAW, RATIFIED AGREEMENTs AND THE EU LAW IN THE LIGHT OF THE POLISH CONSTITUTION AND APPLICATION OF THE EU LAW BY PUBLIC ADMINISTRATION IN POLAND

Abstract: The article makes a presentation of the relation between legal acts belonging to the so-called foreign orders and the national law at the level of regulation contained in the Constitution of the Republic of Poland and the problem of application of the EU law by the Polish administrative authorities. The ratified international agreements and acts of the EU law are sources of administrative law and must be applied by the public authority of Member States. The article deals with two issues: the relationship between the international law and national law in the light of the Polish Constitution and application of the EU law by public administration in Poland. These issues can be dealt with separately but have a number of tangent points. The author does not aspire to present a comprehensive discussion of these issues, but intends to point out some aspects.

It has been argued that the standard of application of international law by public administrations (which is also the accession treaties) and the EU law depends on how the constitution regulates the issue of international law relation to the domestic law. In Polish jurisdiction (the Constitutional Court and the Polish Supreme Administrative Court) the practice of respecting the principle of primacy of the EU law as well as the principle of a community of interpretation of this law has been established.

Keywords: LAW, RATIFIED AGREEMENT, EU LAW, POLISH CONSTITUTION, PUBLIC ADMINISTRATION