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European Dimension of the Constitution of the Republic of Poland of 2 April 1997

I.

The last years of political practice have brought significant changes in the understanding and application of numerous provisions of the Constitution of the Republic of Poland of 2 April 1997 (hereinafter referred to as the Constitution or the Constitution of the Republic of Poland). Constitutional principles are acquiring new meanings in terms of application and interpretation, norms of a rule-like nature are changing their application, certain areas of regulation, regarded as falling within the scope of the Constitution, are actually being eliminated from the Constitution, programmatic norms are being implemented in a diverse and not always coherent manner, and certain institutions are undergoing significant evolution or are disappearing. These issues are the subject of heated discussion in connection with the activity of the constitutional courts of some member states of the European Union (hereinafter referred to as the EU), including the Polish Constitutional Tribunal (hereinafter referred to as the CT), and also due to the judgments of the CJEU applying Article 4(2) of the Treaty on European Union (hereinafter referred to as the TEU), as modified by the Treaty of Lisbon¹.

We would like to present the relations between the Polish and European legal orders and find content among the provisions of the Constitution of the Republic of Poland that helps to deepen the process of European integration initiated many

¹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, drawn up at Lisbon on 13 December 2007, OJ 2009, No. 203, item 1569.

years ago. This integration covers various levels, including the constitutional one. It assumes respect for and preservation of the diversity of constitutional legal orders of the Member States, and in particular promotion of community in the axiological dimension. The development of this concept, as well as its formal incorporation into constitutional regulations, will be presented. The analysis of the provisions of the Constitution of the Republic of Poland will make it possible to show the European dimension of this legal act and to formulate some remarks concerning the common constitutional traditions that are reflected in the Polish Constitution. This will be followed by a presentation of the position of the Polish Constitutional Tribunal with regard to this concept, including the development of this position in the most recent judicial decisions of this body.

The basic research method is the legal-dogmatic method, which will involve the analysis of the provisions of the Polish Constitution, supported by some elements of the judicial practice of the Constitutional Tribunal and the available literature of the subject. The auxiliary method used is the historical method.

II.

Unlike basic laws in some other states, the Constitution of the Republic of Poland of 1997 does not contain a separate chapter determining the legal framework for participation in European integration. There is no doubt, however, that when drafting the text of the Constitution, the authors of the Constitution were aware of the imminent prospect of Poland's accession to the European Union, and this prospect was fully recognised as desirable.² This context allowed the Constitutional Tribunal in 2003 to discern a pro-integration approach taken in the Constitution, albeit expressed in very general terms; in other words, to decide that the Constitution can and should be interpreted in a way that is "friendly" to the idea of integration.

Taking effective action to define the framework of Poland's membership in the European Union is necessary, as the Polish Constitution, due to the time when it was drafted, could not comprehensively regulate this issue. At the same time, we should appreciate the foresight of the authors of the Constitution. As early as in 1997, by introducing Article 90 to the Constitution of the Republic of Poland, they included a norm enabling Poland's integration with the European Union.

The provisions of the Preamble to the Constitution concerning the position of Poland in the contemporary world are of significant importance for the es-

² L. Garlicki, *Wprowadzenie*, [in:] A. Flisek (ed.), *Konstytucja RP. Kodeks wyborczy. Ustawa o Trybunale Konstytucyjnym. Ustawa o Rzeczniku Praw Obywatelskich i inne akty prawne*, 11th edition, Warszawa 2012, p. 32.

establishment of principles and limits of the processes of Poland's integration with the European organisms. It was on the basis of these provisions and Article 9 of the Constitution that the Constitutional Tribunal, in the explanatory memorandum of judgment ref no. K 11/03 recognised the existence of "the constitutional principle of friendliness towards the process of European integration and cooperation between states" and stated that "it is constitutionally correct and preferable to interpret the law in way that serves the implementation of the indicated constitutional principle"³. In the justification of judgment ref. no. K 18/04, the Constitutional Tribunal stressed that the fundamental constitutional principles indicated in the preamble (democracy, respect for the rights of the individual, cooperation between authorities, social dialogue and the principle of subsidiarity) "are at the same time fundamental to the functioning of the Communities and of the European Union".

The Preamble to the Constitution of 1997 contains the characteristics of Poland's development of its system, with emphasis on the experience of independence and democracy, and indicates universal constitutional values and the basic principles organising the life of the state community, such as democracy, respect for the rights of the individual, cooperation between authorities, social dialogue, and the principle of subsidiarity. It should be emphasised that these values, as well as the subsidiarity principle referred to above, are also among the founding principles of the functioning of the European Union (Article 2 of the TEU). The Preamble reveals the European aspect of the Constitution of the Republic of Poland, which refers to common European traditions, expressing explicit awareness of "the need to cooperate with all countries for the good of the Human Family"⁴.

III.

The Constitution of the Republic of Poland was enacted in 1997 and has since been amended twice (Article 55 and Article 99), but these amendments were not fundamental⁵. Undoubtedly, however, the entry into force of the Lisbon Treaty re-initiated a discussion in Poland on the need to amend the Constitution of the Republic of Poland. The provision opening the Polish legal order to international law and integration processes is Article 90 of the Polish Constitution. Pursuant to this provision, "the Republic of Poland may, under an international agreement,

³ See: Judgment of the CT of 24 November 2010, K 32/09, OTK ZU 2010, No. 9A, item 108.

⁴ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483.

⁵ Cf. L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2014, p. 39.

delegate the powers of state authorities in certain matters to an international organisation or international body”⁶. Article 90 of the Constitution is referred to as the “integration clause”, which formed the basis for Poland’s accession to the European Union and defined the legal consequences of membership from the perspective of the national legal order⁷. This provision suggests that the constitutional legislator allows the possibility of renouncing the exclusivity of national authorities in the field of lawmaking and application of law for the benefit of an international organisation of which Poland is a member. This does not at all imply a “loss” or “transfer” of sovereignty, as the decision to join the EU is not final and there is always the possibility to leave the EU in accordance with the procedure provided for in the Treaties. At this point, it is worth quoting the Constitutional Tribunal, which in its judgment of 24 November 2010, ref. no. K 32/09, shares the view expressed in the doctrine of constitutional law that accession to the European Union is perceived as a certain restriction of state sovereignty, but one which does not mean its annulment, as it is connected with a compensatory effect in the form of the possibility of taking part in decision making processes in the European Union. In the view of the Constitutional Tribunal:

The sovereignty of the Republic and its independence, understood as the distinctiveness of Poland as a state within its present boundaries, in the conditions of membership in the European Union on the terms laid down in the Constitution, signify confirmation of the primacy of the Polish Nation to determine its own fate. The normative expression of this principle is the Constitution, in particular the provisions of the Preamble, Article 2, Article 4, Article 5, Article 8, Article 90, Article 104(2), and Article 126(1), in the light of which the sovereignty of the Republic is expressed in the non-transferable powers of the state authorities, which determine the constitutional identity of the State⁸.

The laconic nature of Article 90 of the Constitution has been subject to criticism, mainly due to the failure to define the substantive limits of non-transferable competences⁹. As Maria Kruk rightly observes, the objective scope of this provision may be considered too sparse and insufficient. This situation results from the circumstances in which the provision was adopted, as the Constitution of the Republic of Poland in 1997 was supposed to lay ground for the political transformation of the state, and the prospect of accession to the European Union seemed a rather

⁶ Article 90(1) of the Constitution of Poland.

⁷ See: M. Haczowska, *Komentarz do art. 90 Konstytucji*, [in:] M. Haczowska (ed.), *Komentarz. Konstytucja Rzeczypospolitej Polskiej*, Warszawa 2014, p. 233.

⁸ Judgment of the CT of 24 November 2010, K 32/09, OTK ZU 2010, No. 9A, item 108.

⁹ Cf. B. Banaszak, G. Kulka, *Prawo europejskie w polskim systemie prawnym*, [in:] Z. Pulka (ed.), *Wybrane zagadnienia teorii i praktyki prawa europejskiego*, Legnica 2009, p. 14.

distant future¹⁰. Despite this criticism, it must be emphasised that the “integration clause” contained in Article 90 of the Constitution was a sufficient basis for Poland’s accession to the European Union.

It made it possible to give, in a referendum procedure, consent to the ratification of the international agreement on the basis of which Poland, together with other 9 states, joined the European Union¹¹.

The area in which the European dimension of the Polish Constitution is revealed is its axiological layer. It is anchored mainly in the provisions of the Preamble to the Constitution of the Republic of Poland. The purposes that the Constitution serves according to the Preamble are “guaranteeing civic rights forever” and “ensuring reliability and efficiency in the operation of public institutions”, as well as concern for “preserving the inherent dignity of the human being, their right to freedom and duty of solidarity with others.” These purposes and fundamental constitutional values fully correspond to the objectives of the Union as set out in the Preamble to the Treaty on European Union¹². The provisions of the Preamble to the Constitution are at the same time the premise for the formulation of the principle of friendliness towards the process of European integration and international cooperation. The constitutional provisions on membership in the European Union should also be interpreted from this perspective¹³.

IV.

The Constitution of the Republic of Poland of 2 April 1997 contains hardly any direct references to Poland’s membership in the European Union. The Constitution in force does not use the term “European Union” at all. However, if the essence of this organisation is understood as the existence of institutions and solutions that ensure the building of a common axiological identity, then friendliness towards the process of European integration may be derived from a number of provisions of the Constitution of the Republic of Poland.

In theory, two forms of introducing changes into the national constitutional system can be imagined: either by enacting an entirely new constitution or by

¹⁰ M. Kruk, *Tryb przystąpienia Polski do Unii Europejskiej i konsekwencje członkostwa dla funkcjonowania organów władzy państwowej*, [in:] K. Wójtowicz (ed.), *Otwarcie Konstytucji RP na prawo międzynarodowe i procesy integracyjne*, Warszawa 2006, p. 138 et seq.

¹¹ Cf. M. Jabłoński, *Polskie referendum akcesyjne*, Wrocław 2007, p. 178 et seq.

¹² Cf. the provisions of the Preamble and Articles 2, 3 and 6 of the TUE.

¹³ Judgment of the Constitutional Tribunal of 24 November 2010, ref. No. K 32/09, OTK ZU 2010, No. 9A, item 108.

amending the already existing text of the constitution¹⁴. If one wishes to introduce certain amendments into the constitutional text conditioned by the state's membership in the European Union, this can also be done in two ways: 1) by introducing scattered amendments, included in various places in the constitution; 2) by introducing a new, separate "European chapter" into the text of the constitution.

The first amendment that should be included in the draft of the new Constitution of the Republic of Poland is the clear indication of Poland's place in the European Union by introducing the name of this organisation into the Constitution. This could be possibly done through a direct reference to this organisation both in the preamble to the Constitution, emphasising the importance of the long-standing process aimed at Poland's admission to the European Union, and in its articles. It would be also possible to draft a separate chapter showing Poland's place in the structures of the European Union. Regardless of the form, such an anchoring of the state (the Republic of Poland) in the structures of the European Union would have a crucial political significance.

In view of Poland's possible accession to the Eurozone, an amendment to the Constitution of the Republic of Poland should be considered with regard to the functioning of the National Bank of Poland, which now has the exclusive right to issue money and to determine and implement the state's monetary policy. Accession to the Eurozone requires the transfer of certain constitutional powers of the National Bank of Poland to EU institutions.

It is worth recalling that an attempt to amend the Constitution with regard to the functioning of the Republic of Poland in the structures of the European Union was made in the Sejm of the Republic of Poland of the 6th term of office¹⁵. Five drafts were then submitted, two of them comprehensively regulating issues related to Poland's membership in the EU¹⁶. It needs to be emphasised that, despite some regulatory shortcomings in individual matters, the draft of the amendment developed by the Constitutional Committee was a desirable solution, introducing regulations which could significantly strengthen the position of Poland in Europe. Unfortunately, due to the lack of agreement among the major political forces, the

¹⁴ Cf. R. Balicki, *Zagadnienie „rozdziału europejskiego” w Konstytucji RP – uwagi de lege ferenda*, [in:] M. Jabłoński, S. Jarosz-Żukowska (eds.), *Zasada pierwszeństwa prawa Unii Europejskiej w praktyce działania organów władzy publicznej RP*, Wrocław 2015, p. 100.

¹⁵ Cf. R. Balicki, *Rozdział europejski w polskiej Konstytucji – rzecz o niezrealizowanym kompromisie konstytucyjnym*, [in:] S. Dudziuk, N. Półtorak (eds.), *Prawo Unii Europejskiej a prawo konstytucyjne państw członkowskich*, Warszawa 2013, p. 185 et seq.

¹⁶ See more: A. Szmyt, *Członkostwo i perspektywy jego rozwoju w UE a projekty zmian Konstytucji RP*, [in:] Z. Witkowski et al. (eds.), *Aktualne problemy współczesnego konstytucjonalizmu. Europeizacja konstytucji Republiki Czeskiej i Rzeczypospolitej Polskiej*, Toruń 2014, p. 27 et seq.

draft was not implemented. Perhaps, we will live to see a “constitutional moment,” which will change the constitutional regulation.

V.

The Constitution of the Republic of Poland does not explicitly express the principle of friendliness towards European integration. This makes one look for it in the judicial practice of the Constitutional Tribunal. The judicial decisions of this body are particularly relevant and, given the dynamic nature of the ever-increasing integration processes, should be subject to constant interpretation taking into account these developments¹⁷. The analysis concerns not all rulings related to Poland’s membership in the EU, but selected rulings relevant to the issues at hand, in which the conditions of Poland’s membership in the EU were included or specified.

Literature divides judicial decisions into pre-accession and post-accession. The pre-accession judicial decisions did not formulate the conditions for Poland’s membership in the EU for obvious reasons. The only principle developed in this period that could be qualified as the aforementioned condition was the principle of friendliness towards European integration, in particular the principle of pro-EU interpretation of national law¹⁸.

The judicial practice of the Constitutional Tribunal contains many examples of pro-European interpretation of constitutional norms, even in the period before the accession of the Republic of Poland to the European Union. The postulate of pro-European interpretation of constitutional norms finds its source not only in the norms of European treaties as acts of international law, imposing on member states the obligation to respect EU law, but also directly in the Constitution of the Republic of Poland itself.

Pursuant to Article 188(1) of the Constitution of the Republic of Poland, the Constitutional Tribunal is competent, *inter alia*, to adjudicate on the compliance of international agreements with the Constitution. The Tribunal examines their content, the competence of the authority to conclude them and the observance of the procedure for their conclusion provided by law. In its judgment of 11 May 2005, ref. no. 18/04, the Constitutional Tribunal examined the constitutionality of the Accession Treaty enabling the accession of the Republic of Poland to the European Union. This judgment is of key importance from the point of view of the analysed

¹⁷ Cf. D. Wojtczak, *Zasada przychylności wobec integracji europejskiej w orzecznictwie Trybunału Konstytucyjnego*, [in:] R. M. Black, Ł. Baratyński, P. Ramiączek, K. Spryszak (eds.), *Państwo i prawo wobec wyzwań u progu trzeciej dekady XXI wieku. Księga jubileuszowa z okazji 70. urodzin Profesora Jerzego Jaskierni*, Toruń 2020, p. 266.

¹⁸ M. Balczyk, *Polski i niemiecki Trybunał Konstytucyjny wobec członkostwa państwa w Unii Europejskiej*, Wrocław 2017, pp. 123–124.

issues, as the CT attempted to answer the question whether the legal system of the European Union is anchored in the Constitution of the Republic of Poland¹⁹.

The Constitutional Tribunal unequivocally indicated that, in accordance with Article 8(1), “the Constitution is the supreme law of the Republic of Poland.” This regulation is accompanied by an order to respect and promote properly shaped norms of international law in force in the territory of the Republic of Poland. The constitutional legislator made a conscious decision to introduce into the guiding principles of the Constitution of the Republic of Poland, in the immediate vicinity of Article 8(1), the principle expressed in Article 9. In accordance with this norm, “the Republic of Poland shall observe international law binding upon it”.

The legal consequence of Article 9 of the Constitution is the constitutional assumption that the system of law that is in force in the territory of the Republic will have a number of components: apart from the norms (regulations) enacted by the Polish legislator, Poland respects and applies international law²⁰. Thus, in the territory of Poland, subsystems of legal regulations originating from various legislative centres are in force at the same time. They should coexist on the principle of mutually friendly interpretation and cooperative co-application. Otherwise, it would imply a potential conflict of norms and the primacy of one of the distinguished subsystems.

In its judicial practice, the Court emphasises that the Constitution remains, by virtue of its special power, the “supreme law of the Republic of Poland” in relation to all international agreements binding on the Republic of Poland. This also applies to ratified international agreements on the transfer of powers “in certain matters”. The Constitution enjoys the primacy of validity and application in the territory of the Republic of Poland. This position was also confirmed in the judgment concerning the Treaty of Lisbon²¹.

Most importantly, pursuant to Article 4 of the Constitution, “The supreme power in the Republic of Poland belongs to the Nation”. It was the Nation itself, in accepting the Constitution in force as a result of a referendum, that accepted the possibility of the Republic being bound by the law enacted by an international organisation or body. This is done within the limits provided for by ratified international agreements. Moreover, in that referendum, the Nation further agreed that the law would apply directly in the territory of the Republic of Poland, with precedence over laws in the event of a conflict. It should be recalled that in the

¹⁹ Judgment of the Constitutional Tribunal of 11 May 2005, K 18/04, OTK ZU 2005, No. 5A, item 49.

²⁰ C. A. Wasilkowski, *Prawo krajowe – prawo wspólnotowe – prawo międzynarodowe. Zagadnienia wstępne*, [in:] M. Kruk (ed.), *Prawo międzynarodowe i wspólnotowe w wewnętrznym porządku prawnym*, Warszawa 1997, p. 15.

²¹ Judgment of the CT of 24 November 2010, K 32/09, OTK ZU 2010, No. 9A, item 108.

nationwide referendum on Poland's accession to the European Union and ratification of the Accession Treaty, held on 7 and 8 June 2003, 77.45% of citizens were in favour of accession to the EU.

VI.

The Constitutional Tribunal issued a judgment on 7 October 2021 in case K 3/21²² concerning the place of EU law in the Polish legal order. This judgment caused great public concern due to its foreseeable devastating consequences for the position of the Republic of Poland as a member state of the European Union. The proceedings were initiated by the Prime Minister.

In the judgement, the Constitutional Tribunal decides that the first and second paragraph of Article 1, in conjunction with Article 4(3) of the Treaty on European Union (TEU), is incompatible with the Polish Constitution to the extent that the integration of the equal and sovereign states constituting the European Union reaches a "new stage" in which, in the opinion of the members of the Constitutional Tribunal: a) the bodies of the European Union act beyond the limits of the competences delegated by Poland in the Treaties, b) the Constitution is not the supreme law of the Republic of Poland with precedence of validity and application, c) Poland cannot function as a sovereign and democratic state.

It also rules the unconstitutionality of the second subparagraph of Article 19(1) of the TEU insofar as, in order to ensure effective legal protection in areas covered by Union law, it confers powers on national courts to disregard provisions of the Constitution in the process of adjudication and to adjudicate on the basis of provisions which are not in force, have been repealed by the Sejm or have been declared unconstitutional by the Constitutional Tribunal.

It is worth noting the part of the justification, in particular its last sentence, in which the Constitutional Tribunal indicates that "since all EU law as hierarchically subordinate to the Constitution is covered by the cognition of the Constitutional Tribunal", not only normative acts as defined in the judicial practice of the CJEU, but this judicial practice itself, as part of the EU normative order, will be subject, from the point of view of compliance with the Constitution, to assessment by the Constitutional Tribunal. The Tribunal stipulates that:

If the practice of progressive activism of the CJEU, consisting in particular in encroaching on the exclusive powers of the Polish authorities, in undermining the position of the Constitution as the highest-ranking legal act in the Polish legal system, in questioning the universal validity and finality of the judgments of the Tribunal, and finally in casting

²² Judgment of the Constitutional Tribunal of 7 October 2021, K 3/21

doubt on the status of the judges of the Tribunal, is not abandoned, the Court does not rule out that [...] it will directly assess the compatibility with the Constitution of the judgments of the CJEU, including their removal from the Polish legal order.

The rulings of the CJEU cannot be subject to direct assessment of constitutionality by the Constitutional Tribunal. This applies both to specific rulings, as well as the jurisprudence of the CJEU as derived from specific rulings. Irrespective of the subjective elements in the interpretation and establishment of that jurisprudence, the assessment of the jurisprudence of any jurisdictional body of the European Union remains unequivocally beyond the cognition of the Constitutional Tribunal, strictly defined in Article 188 of the Constitution. The ruling of the Constitutional Tribunal directly undermines the principles that Poland undertook to observe when joining the European Union in 2004. The ruling on the unconstitutionality of the provisions of the TEU constitutes not only a gross violation of European Union law, but also a violation of the Constitution itself, according to which Poland observes international law binding upon it (Article 9 of the Constitution). Although the provisions of the Constitution remain the fundamental standard of control in cases decided by the Constitutional Tribunal, they should be set in the European context in matters relating to Poland's membership in the EU. It should be clearly emphasised that neither the law of the European Union nor the jurisprudence of the CJEU and the ECtHR in any respect contradicts the Constitution of the Republic of Poland, nor do they question the supremacy of the Constitution over other legal norms. This judgment has been subject to justified criticism from respected legal bodies²³. It can be concluded that the judgment of

²³ Unequivocally negative opinions on the judgment were expressed by, among others: Retired judges of the Constitutional Tribunal, *26 retired judges and retired judges of the Constitutional Tribunal on the 10 untruths in the CT judgment of 7 October and the explanatory memorandum*, "Monitor Konstytucyjny" 10.10.2021 r., <https://monitorkonstytucyjny.eu/archiwa/19852>, [Accessed on: 19.08.2022]; Committee of Legal Sciences of the Polish Academy of Sciences, *Resolution No. 04/2021 of the Committee of Legal Sciences of the Polish Academy of Sciences of 12 October 2021 in connection with the decision of the Constitutional Tribunal of 7 October 2021*, <https://knp.pan.pl/index.php/wykaz-dokumentow-knp-pan-podjetych-w-2021-r/246-m>, [Accessed on: 19.08.2022]; Supreme Council of Advocates, *Adwokatura zajęła oficjalne stanowisko ws. wyroku TK*, "Rzeczpospolita" 25.10.2021 r., <https://www.rp.pl/zawody-prawnicze/art19045801-adwokatura-zajela-oficjalne-stanowisko-ws-wyroku-tk>, [Accessed on: 19.08.2022]; Deans of law faculties of public and non-public universities, *Dziekani wydziałów prawa popierają stanowisko PAN dotyczące wyroku TK*, "Gazeta Prawna" 20.10.2021 r., <https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8275855,dziekani-wydzialow-prawa-popiera-ja-stanowisko-pan-dotyczace-wyroku-tk.html>, [Accessed on: 19.08.2022]; experts of the Stefan Batory Foundation, *Position of the Team of Legal Experts of the Stefan Batory Foundation on the decision of the Constitutional Tribunal concerning the compatibility of the provisions of the Treaty on European Union with the Constitution of the Republic of Poland*, <https://www.batory.org.pl/oswiadczenie/stanowisko-zespolu-ekspertow-prawnych-fundacji-im-stefana-batorego-w-sprawie-rozstrzygnięcia-trybunalu-konstytucyjnego-dotyczacego-zgodności-przepisów-traktatu-o-unii-europejskiej-z-konstytucja-rzecz/>, [Accessed on: 19.08.2022].

the Constitutional Tribunal of 2021, ref. no. K 3/21 is, in a way, selective, as it does not take into account the full aspect of the relations between national and European law. This kind of practice undermines the body of judicial decisions developed over the years by this institution in the area of European integration. This undermining of European integration may be regarded as a threat, particularly since the Constitutional Tribunal has expressly reserved the right to recognise as legal only those judgements of the CJEU that are consistent with the binding Constitution of the Republic of Poland, and thus with its judicial practice.

VII.

In conclusion, the Constitution of the Republic of Poland of 2 April 1997 is a constitution which, thanks to the positive and effective use of its provisions in the process of Poland's accession to the European Union, has demonstrated its European dimension. The European law-friendly interpretation of the Constitution followed by the Constitutional Tribunal has played an enormous role. The catalogue of political and personal freedoms and rights contained in the Polish Constitution is modelled on the catalogue of freedoms and rights of the European Convention on Human Rights. Hence, it is of particular importance that the jurisprudence of the European Court of Human Rights should be widely taken into account in the jurisprudence of the Polish Constitutional Court. Over the years, an axiological unity has been developed in the Polish doctrine of constitutional law and in the jurisprudence of the Polish Constitutional Tribunal in determining the legal status of the individual in the vertical relation to the state bodies. Thanks to the institutions of the constitutional complaint and the complaint to the European Court of Human Rights, the awareness of the importance of constitutional freedoms and rights in Poland has grown significantly over the last three decades. This is a crucial achievement in terms of building constitutional awareness among society. However, this integrative trend, so far clearly outlined in the judicial practice of the Polish Constitutional Tribunal, has been weakened by the aforementioned ruling of the Constitutional Tribunal in 2021. Its effects may have a negative impact on the relations between Poland and the European Union. This ruling is part of a broader picture of the problems that have been weakening the Constitutional Tribunal.

In conclusion, we would like to make one more point – to make a certain constitutional postulate. Until 2015, European integration and Poland's membership in the European Union and the Council of Europe used to be an element of a political consensus among all the parties. At the time, the Polish doctrine of constitutional law made a case for the so-called European chapter to be included in the Polish Constitution, so as to make our country more firmly anchored within the European

Union. At that time, Polish constitutionalists held an in-depth debate on the legal content and scope of the chapter. There were plans to introduce the concept of the European Union into our constitution. That time of political prosperity was not put to good use. But these projects still exist and can be used in the future.

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European Dimension of the Constitution of the Republic of Poland of 2 April 1997

Summary: This paper discusses the Constitution of the Republic of Poland of 2 April 1997 and its European dimension, including the analysis of its significance, implications and evolution in the context of Poland's integration with the European Union. The authors note significant changes in the constitutional practice in recent years with regard to the interpretation and application of the provisions of the Constitution of the Republic of Poland. Constitutional laws are acquiring new interpretations, while certain aspects of the Constitution are hardly applied at all. The study also shows the role of the Polish Constitutional Tribunal and the judgments of the Court of Justice of the European Union in the context of European integration. The authors discuss the conceptual

development of the clause concerning “favouring the process of European integration” and its formal incorporation into the constitutional regulations, as well as present an analysis of the selected provisions of the Constitution of the Republic of Poland, focusing on the “integration clause” in Article 90 thereof, which was the basis for Poland’s accession to the EU, and underlining common constitutional traditions. At the same time, the authors recognise the need for amendments of the Constitution in the context of Poland’s possible accession to the eurozone and the role of the National Bank of Poland. With regard to the jurisprudence of the Constitutional Tribunal, the paper stresses the importance of the Lisbon Treaty judgment and the 2021 judgment, which caused public concern due to its potential negative consequences for Poland’s position in the EU. It emphasises that the Polish Constitution and its provisions have precedence over international law, including EU law, and that Poland can function as a sovereign, democratic state within the European Union. The paper is concluded with recommendations for further discussion and possible amendments to the Constitution of the Republic of Poland in the context of European integration.

Keywords: Constitutional principles, the Constitution of the Republic of Poland, the European Union

Europejski wymiar Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.

Streszczenie: W artykule omówiono Konstytucję RP z dnia 2 kwietnia 1997 r. i jej wymiar europejski, w tym analizę jej znaczenia, implikacji i ewolucji w kontekście integracji Polski z Unią Europejską. Autorzy zauważają istotne zmiany, jakie zaszły w praktyce konstytucyjnej w ostatnich latach w zakresie wykładni i stosowania przepisów Konstytucji RP. Przepisy konstytucyjne zyskują nowe interpretacje, a niektóre elementy Konstytucji są prawie w ogóle niestosowane. W opracowaniu ukazano także rolę polskiego Trybunału Konstytucyjnego oraz orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej w kontekście integracji europejskiej. Autorzy omawiają rozwój koncepcyjny klauzuli dotyczącej „sprzyjania procesowi integracji europejskiej” i jej formalnego włączenia do regulacji konstytucyjnych, a także przedstawiają analizę wybranych przepisów Konstytucji RP, skupiając się na „klauzuli integracyjnej” zawartej w jej art. 90, która była podstawą przystąpienia Polski do UE i podkreślając wspólne tradycje konstytucyjne. Jednocześnie autorzy dostrzegają potrzebę zmian w Konstytucji w kontekście ewentualnego przystąpienia Polski do strefy euro i roli Narodowego Banku Polskiego. Odnosząc się do orzecznictwa Trybunału Konstytucyjnego, w artykule podkreślono również wagę wyroku dotyczącego Traktatu Lizbońskiego oraz wyroku z 2021 r., który wzbudził zaniepokojenie społeczne ze względu na jego potencjalne negatywne konsekwencje dla pozycji Polski w UE. Opracowanie podkreśla, że Konstytucja RP i jej postanowienia mają pierwszeństwo przed prawem międzynarodowym, w tym prawem unijnym, oraz że Polska może funkcjonować jako suwerenne, demokratyczne państwo w ramach Unii Europejskiej. Artykuł zawiera także rekomendacje do dalszej dyskusji i ewentualnych zmian w Konstytucji RP w kontekście integracji europejskiej.

Słowa kluczowe: zasady konstytucyjne, Konstytucja Rzeczypospolitej Polskiej, Unia Europejska