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The intersection of national and European law - Assessing the conflict of laws, rules and the primacy of EU law in Poland

ABSTRACT *The article explores the principle of the primacy of European Union law in the context of Polish law, analyzing its evolution, legal foundations, and its impact on the sovereignty of member states. It discusses the origins of the primacy principle, emphasizing the role of the case law of the Court of Justice of the European Union and the significance of the Treaty of Lisbon. The conflicts between EU law and the Polish Constitution are examined, with particular focus on rulings of the Polish Constitutional Tribunal, such as K 3/21 and P 7/20. The article highlights the challenges of implementing EU law within the Polish legal framework and the mechanisms for resolving disputes between the legal systems. In conclusion, it underscores that despite controversies over sovereignty limitations, the principle of EU law primacy is crucial for ensuring coherence, protecting citizens' rights, and maintaining the effective functioning of the EU.*

KEYWORDS: *EU law primacy, CJEU, Sovereignty of member states, Lisbon Treaty, Conflict of Polish and EU law.*

1.

Background of the Principle

The primacy of EU law, sometimes called the principle of supremacy¹, derives from the case law of the Court of Justice of the European Union (CJEU). The CJEU is of great importance in shaping and changing the dynamics of EU law – but the acceptance of such a high degree of authority of the court has often been problematic for member states, with many doubts raised about the impact on state sovereignty and

1 Biernat, 2011, p. 47.

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decision-making.² Indeed, when considering the primacy of EU over national law, we are talking about both primary sources of law – i.e. the treaties establishing the legal framework of the EU legal order – and secondary sources of law – comprising legal instruments adopted on the basis of these treaties (regulations, directives, decisions, agreements, as well as general principles of EU law, CJEU case law and international law). For the development of the principle, the key document is the Treaty of Lisbon, regulating and detailing the scope of EU competence. The Lisbon Treaty, unlike the Constitutional Treaty, does not contain a formal article granting the primacy of EU law over national legislation.

However, the Lisbon Treaty was accompanied by Declaration No. 17, which refers to the opinion of the Council's Legal Service – and again refers to the consistent case law of the CJEU on this issue.³ In that annex, “the Conference recalls that, in accordance with the consistent case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties take precedence over the law of the Member States under the conditions established by the said case law.” The adoption of the primacy of the European legal system entails several important consequences. Firstly, it ensures uniformity in the application of law throughout the EU – which is relevant to the functioning of the common market and ensuring its efficiency. Second, it ensures the protection of the rights of citizens and businesses throughout the EU, guaranteeing a unified level of legal protection. Third, it gives the CJEU the ability to interpret EU law and apply it throughout the union, which is crucial to maintaining a unified position on legal issues. In principle, therefore, EU law takes precedence over national law. This does not mean, however, that national law no longer has any relevance.

As we explore the implications of the primacy principle, it becomes evident that the CJEU's role extends beyond a mere legal arbiter. The court's ability to interpret and enforce EU law fosters a cohesive legal framework, reinforcing the integration of member states. This integration, however, is not without challenges, as the principle's influence on member states' sovereignty continues to be a subject of ongoing debate and negotiation within the EU framework. Moreover, the dynamic nature of EU law – shaped by ongoing developments and legal interpretations – underscores the need for a comprehensive understanding of the primacy principle. The continuous evolution of the EU legal landscape prompts scholars, policymakers and legal practitioners to stay abreast of CJEU decisions and legislative developments that impact the

2 For more on the process of forming the principle see in: Kozłowski, 2018, pp. 29-33; Cesarz, 2014, pp. 179-182.

3 Consolidated version of the Treaty on the Functioning of the European Union - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon signed on December 13, 2007 - A. Declarations relating to the provisions of the Treaties - 17. Declaration relating to primacy (Official Journal L 115, 09/05/2008 P. 0344 - 0344).

delicate balance between union and national law. The primacy of EU law represents a cornerstone in a unified European legal framework. Its origins in CJEU case law – reaffirmed by the Treaty of Lisbon and accompanying declarations – highlight its enduring importance. As the EU navigates the complexities of legal harmonisation, the primacy principle remains a linchpin – ensuring coherence, uniformity, and the effective functioning of the European Union.

2.

Allegations of unconstitutionality and judgments

In the case *Van Gend en Loos v. Nederlandse Administratie der Belastingen*,⁴ the CJEU ruled that community law adopted by the institutions of the European Union can be a source of powers enforced by natural and legal persons before the courts of individual member states. This means that EU law can be applied directly. In *Costa v. ENEL*⁵ the court relied on the principle of direct application, and held that recognising the subordination of community law to the laws of individual member states would jeopardise the objectives of the treaties. Because the member states had delegated certain powers to the EU, they had thereby limited their sovereignty. Consequently, in order for community law to operate effectively, the principle of its primacy over all national laws – including the constitutions of individual member states - must apply.⁶

In Poland this hierarchy of sources of law has been met with a number of allegations, amounting to a conflict between the founding treaties and the Polish

4 Court ruling of February 5, 1963. *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Nederlandse administratie der belastingen*. Reference for a preliminary ruling *Tariefcommissie* - Netherlands. Case 26/62.

5 Judgment of the Court of July 15, 1964. *Flaminio Costa v. E.N.E.L.* Reference for a preliminary ruling *Giudice conciliatore di Milano* - Italy. Case 6/64.

6 See also other examples of cases in which the Court has emphasised the principle of the primacy of European Union law include: *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (Judgment of the Court of December 17, 1970. *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*. Reference for a preliminary ruling *Verwaltungsgericht Frankfurt am Main* - Germany. Case 11/70); *Marleasing SA v. La Comercial Internacional de Alimentacion SA* (Judgment of the Court (Sixth Chamber) of November 13, 1990. *Marleasing SA v. La Comercial Internacional de Alimentacion SA*. Reference for a preliminary ruling: *Juzgado de Primera Instancia e Instruccion no 1 de Oviedo* - Spain. Directive 68/151/EEC - Article 11. Case C-106/89); *Amministrazione delle Finanze dello Stato v. Simmenthal SpA* (Judgment of the Court of March 9, 1978. *Amministrazione delle Finanze dello Stato v. Simmenthal SpA*. Reference for a preliminary ruling: *Pretura di Susa* - Italy. Case 106/77).

Constitution.⁷ On November 27 2009 a group of MPs submitted a motion to examine the compatibility of a number of provisions of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. The motion concerned the extent that these provisions allow the Council of the European Union to legislate by a qualified majority – either alone or jointly with the European Parliament – contrary to the sovereign interests of Poland. The application also sought to examine the compatibility of Declaration No. 17 with Article 8 in conjunction with Article 91(2) and (3) and Article 195(1) of the Constitution of the Republic of Poland. In addition, the applicant alternatively requested an examination of the compatibility with Articles 2, 4, 8, 10, and Article 95(1) of the Constitution of Article 1 of the Act of April 1 2008 on the ratification of the Treaty of Lisbon – to the extent that the legislature’s consent to the binding of the Republic of Poland to the indicated treaty provisions is not accompanied by a statutory norm providing for the participation of the Sejm and the Senate in the process of shaping the position of the Republic of Poland in any matter of possible adoption by the European Council or the Council of the European Union of a legal act on the basis of any of these provisions. The applicant’s fundamental constitutional doubts concerned the mechanism for creating EU law and making other relevant decisions. The case was resolved by the Constitutional Court in its decision of November 10 2010 (ref. K 32/09).⁸

The allegations concerned the incompatibility of Poland being bound by the provisions of the Founding Treaties and acts adopted by the institutions of the communities and the European Central Bank – and therefore by the rulings of the CJEU – leaving doubt as to the compatibility of this regulation with Article 8 of the Constitution, which guarantees the supremacy of the Constitution and its direct application. Recognition of the supremacy of the external legal system over the Constitution was met with the charge of limiting the sovereignty of the nation from Article 4 of the Constitution. In addition, the principle of permissibility to interpret the primacy of community law over the Constitution was accused of limiting the sovereignty of the republic itself, due to the fact that the scope of the state’s competencies

7 Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws 1997 No. 78, item 483). Text adopted on April 2, 1997 by the National Assembly.

8 In this particular case, the Court decided to discontinue the proceedings with regard to the examination of the application of a group of deputies due to the absence of the applicant at the hearing. The presence of the representative of the group of deputies was limited to participation in the first phase of the hearing, because at the beginning of the second phase, after responding to the Constitutional Court’s decision not to grant the request for adjournment of the hearing and to the positions of the participants in the proceedings on this issue, the deputy left the courtroom. The representative of the group of deputies asked the Court to allow him to resign from further participation in the hearing. The Court did not issue any decision in this regard. In this state of affairs, the Constitutional Court, in the absence of the representative of the group of deputies, did not have the opportunity to continue the proceedings on the motion of the group of deputies.

ceded to the European Union exceeded the permissible scope of the vague concept of 'certain matters'⁹ in which the republic may – on the basis of an international agreement – delegate to an international organisation or international body the powers of state authorities, in accordance with Article 90(1) of the Constitution. Beyond this, the allegations also included the risk of danger associated with "opening before the Community adjudicating institutions the issue of the legal status of real estate in the northern and western lands of the Republic" (which refers to the transfer to certain legal entities of the Catholic Church free of charge ownership of land located in the resources of the State Land Fund or in the Agricultural Property Stock of the State Treasury). It was also alleged that Article 55(1) of the Constitution (which prohibits, in principle, the extradition of a Polish citizen) was incompatible with the possibility of extraditing a citizen under EU law.

In light of the legal analysis of the Constitutional Court's ruling K 18/04,¹⁰ it can be concluded that the accession of the Republic of Poland to the European Union and the adoption of its laws as a result of the Accession Treaty does not violate the sovereignty of the Polish state. The Constitutional Court pointed out that the EU and the European Communities are not considered supranational organisations that stand above sovereign states. They are considered international organisations to which sovereign member states are parties. Joining the EU means joining an international organisation, which is in accordance with the Constitution. The legal acts adopted clearly define the scope of the competencies that have been transferred to the EU. The Republic of Poland retains its sovereignty and the ability to withdraw from international agreements, including the EU, remains preserved. Therefore, accession to the EU does not violate state sovereignty – and in accordance with international law and constitutional provisions, the Nation has authorised state organs to conclude international agreements and join international organisations, such as the European Union.

9 The article reads: "The Republic of Poland may, on the basis of an international agreement, delegate to an international organization or international body the competencies of the organs of state power in certain matters". Although the Constitution of the Republic of Poland lacks a direct reference to the EU, the general feeling, as well as in the doctrine, is that the quoted provision was included with Poland's membership in the EU in mind and can be considered the equivalent of the European clause. It should be emphasised that the Constitution of the Republic of Poland allows for the delegation of powers to an international organisation, but does not specify the limits of such delegation.

10 Judgment of the Constitutional Tribunal of May 11, 2005, ref. K 18/04, para. 11.2, OJ. 2005.86.744, 17.05.2005.

3. Crucial Judgments for Poland

The rulings K 3/21 and P 7/20 of the Constitutional Court in Poland are milestones in the debate on the primacy of EU law over national law. In its judgment K 3/21 of 7 October 2021, the Constitutional Court ruled that certain provisions of the Treaty on the European Union (TEU) are incompatible with the Polish Constitution.¹¹ In particular, the court held that Articles 1 and 19 of the TEU – which provide the basis for the primacy of EU law and the principle of effective legal protection – cannot be applied in the Polish legal order to the extent that they empower EU bodies to act beyond the scope of their powers and interfere with Polish sovereignty. Similarly, in its judgment P 7/20 of 14 July 2021, the Constitutional Court questioned the competence of the CJEU to issue interim measures that affect the organisation of the judiciary in Poland. The court found that the provisions of the TEU, to the extent that they allow for such measures, are contrary to the Polish Constitution.

Both judgments are an expression of the position of the Polish Constitutional Tribunal, according to which the Constitution of the Republic of Poland takes precedence over EU law in situations where this law violates fundamental principles of the Polish system – such as the sovereignty of the state or the rule of law.¹² They are also a reflection of the broader political context in Poland, where the ruling political majority seeks to limit the interference of EU institutions in domestic affairs.¹³

The rulings K 3/21 and P 7/20 have a significant impact on the primacy of EU law in Poland, challenging its absoluteness in the Polish legal order. These decisions undermine the fundamental principle of the community legal system that EU law takes precedence over national law, including the constitutions of the member states.¹⁴ The K 3/21 judgment is particularly problematic as it relates directly to the principle of effective judicial protection, which is a key element of the *acquis communautaire* and the EU rule of law system. In practice, this means that Polish courts may be obliged to ignore CJEU rulings that are not in line with Constitutional Court rulings,¹⁵ leading

11 See: Jaraczewski, J. (2021).

12 See more: Pastuszko, G. (2023).

13 After all, there remain different interpretations of the primacy of EU law by the Polish Constitutional Court. See: Zoll F., Południak-Gierz K., Bańczyk W. (2022).

14 Biernat S., Łętowska, E. (2021).

15 This in practice, by all means, raises a number of interpretative problems in in concreto situations. See Wojcik, 2023: The EC argues that the Polish Constitutional Court violates EU law by challenging its primacy over national law. This Court has issued rulings that question the supremacy of EU law, which, in the EC's view, threatens the fundamental principles of the European Union.

to a potential fragmentation of the application of EU law in Poland and undermining the principle of uniform application of law throughout the Union.¹⁶

4.

Competences Ceded to the EU

The basis for Poland's membership in the EU is Article 90 of the Constitution, which we call the pillar of European integration. It does not expressly mention the EU, but rather "an international organization or international body",¹⁷ reflecting concerns about the union infringing on the republic's independence. The article contains a basis for transferring to such entities the competencies of state authorities in certain matters, such as when the Sejm abandons the issuance of regulations in a matter already regulated by international law. However, the transfer of competencies does not mean that state sovereignty is divested. The transfer of competencies is carried out on the basis of a treaty, and the treaty must be ratified with the prior consent of either the people in a referendum or the Sejm in a law – and the choice of the path of consent to ratification is made by the Sejm with an absolute majority of votes.

The opening of the Polish domestic order to international law also has a basis in Article 9 of the Constitution, obliging Poland to comply with international law binding on it. The two legal orders are reconciled by conflict of laws rules. Primary law is part of a member state's domestic legal order and should be applied directly, unless application requires the issuance of a law. If this law is adopted through the so-called 'major ratification'¹⁸ procedure it takes precedence over the law in the event of a contradiction. Secondary law is applied directly, taking precedence in case of conflict with laws. Regulations are applied directly, while directives require implementation and are implemented through an implementing law. In general, EU law has the force of a law and takes precedence over a law in case of conflict. EU law enables

16 See more: Kwiecień, R. (2019).

17 Jerzy Ciapała distinguishes two potential interpretations of the term in this regard. The first implies referring the term exclusively to state bodies with authority, i.e., those with imperium, to the exclusion of local and professional self-government bodies. The second interpretation suggests treating the term in a functional sense, referring to anybody with public authority, regardless of its position in the public power structure. Given the unique nature of Article 90(1), the need for a restrictive interpretation of the term, and the relevance of Articles 15, 16 and 163 of the Constitution, the first interpretation is preferred, although this does not imply a concomitant approval of the form of expression of the term in Article 90(1). See: Ciapała, 2014, pp. 77-90.

18 Also referred to as "superratification", see: Jaskiernia, 2009, pp. 461-470. The legislative regime for enacting an ordinary law expressing approval for the ratification of an international agreement applies exclusively to agreements whose effects do not result in the transfer of competences as defined in Article 90 of the Constitution of the Republic of Poland.

the realisation of its common goals and values, such as freedom, security and justice. It constitutes the legal foundation of the union's operation. EU law and the national laws of the member states have common roots, as noted by Article 2 of the TEU, saying that these legal orders are based on common values.

As already mentioned in the introduction, the Lisbon Treaty distinguishes three main types of competence, which is important for the principle of primacy of EU law. Thus, we distinguish firstly between 'exclusive competences',¹⁹ which empower the EU to exclusively enact its laws (leaving member states with the duty to implement them); second, 'shared competencies',²⁰ which allow member states to adopt legal acts of a binding nature when the EU has not addressed a particular area; and third, complementary competencies,²¹ which allow the EU to adopt measures to support or complement the policies of member states. The transfer of powers from the union to the member states is only possible through the Treaty amendment procedure. The division of powers is linked to the issue of exceeding powers. Any action outside the granted scope of authority is referred to as *ultra vires*. The consequence of such an action is that it is null and void by operation of law, and thus lacks the attribute of validity. As an example of *ultra vires* action one can point to rulings of the CJEU, concerning areas reserved for member states such as the organisation of the judiciary. The exercise of EU competence is subject to two basic principles set forth in Article 5 of the TEU. The first of these is the principle of proportionality, which imposes limits on the content and scope of EU activities so that they do not go beyond what is necessary to achieve the objectives set forth in the Treaties. The second principle is that of subsidiarity, which specifies that in areas that do not fall under its exclusive competence, the EU shall take action only if the objectives of the intended action cannot be sufficiently achieved by the member states and can be better achieved at EU level.

There should also be a dive into the historical context of Poland's accession to the EU. The journey towards EU membership began in the early 1990s, following the collapse of the Soviet bloc and the establishment of a democratic government in Poland. The desire to integrate into Western political, economic and security structures became a central tenet of Poland's foreign policy. The Association Agreement signed in 1994 paved the way for closer ties, setting out the framework for cooperation and establishing the path towards EU accession. The actual accession process was marked by rigorous negotiations and a comprehensive alignment of Polish legislation with EU norms and standards. This process required significant domestic reforms to meet the accession criteria outlined in the Copenhagen criteria, which focused on democracy, rule of law and market economy principles. The completion of this

19 Article 3 of the Treaty on the Functioning of the European Union (TFEU).

20 Article 4 TFEU.

21 Article 6 TFEU.

process culminated in Poland officially becoming a member of the European Union on May 1 2004, along with nine other countries. Poland's membership in the EU brought about a multifaceted transformation. On the economic front, access to the EU's single market opened up new opportunities for Polish businesses. Structural funds and cohesion policy provided crucial financial support for the modernisation of infrastructure and the convergence of living standards.²² However this period also posed challenges, particularly in sectors where Polish industries had to adapt to increased competition within the common market.

From a political perspective, EU membership solidified Poland's commitment to democratic values and the rule of law. It became an active participant in EU decision-making processes, contributing to the shaping of policies that spanned various domains, from agriculture to foreign affairs. Additionally, the free movement of people facilitated cultural exchanges and increased societal interactions, fostering a sense of European identity among Poles. However, Poland's relationship with the EU has not been without its complexities. Tensions have arisen on several fronts, including issues related to the rule of law, judicial independence, and migration policies. These challenges underscore the delicate balance between national sovereignty and the obligations that come with EU membership.

The ongoing discourse surrounding the rule of law has been a prominent feature of Poland's relationship with the EU. The European Commission, invoking Article 7 of the TEU, initiated proceedings against Poland – expressing concerns about the independence of the judiciary and the rule of law. This development triggered debates about the limits of EU intervention in the internal affairs of member states, and raised questions about the effectiveness of the mechanisms in place to safeguard fundamental values. Another area of contention has been migration policies, with Poland taking a firm stance against mandatory quotas for the relocation of refugees. This stance reflects broader debates within the EU about solidarity, burden-sharing, and the preservation of national identity in the face of complex migration challenges. As the dynamics of the EU continue to evolve, Poland finds itself at a crossroads, navigating the tensions between national sovereignty and integration. The emergence of new geopolitical challenges, such as the conflict in Ukraine and the redefinition of the EU's relationship with Russia, adds additional layers of complexity to Poland's role within the union.

22 After Poland's accession to the European Union, aid programs became much more influential for the economy, mainly due to an increase in the amount of structural funds. With EU accession, there have been significant changes in the directions of support, with a particularly noticeable increase in the role of programs focused on improving human capital. See statistics from the collective work edited by Filip Tereszkievicz in: Glusman, 2013, pp. 154-191.

5. Resolving Conflicts of National and EU Law

The implementation of EU law in the Polish Sejm mainly consists of the creation of laws that incorporate EU provisions into the national legal order. This process is not regulated in detail by law, and is mainly carried out under the standard legislative procedure. However, there are some exceptions that regulate a number of procedural issues aimed at aligning the legislative process with implementation requirements. These include provisions contained in the Rules of Procedure of the Sejm²³ and the cooperative law.²⁴ Unlike the process of EU lawmaking, implementation activity in the Sejm is carried out by various parliamentary committees associated with specific areas of law. These committees undertake ordinary legislative activities as part of the legislative procedure, adapting Polish legislation to the norms and requirements of EU law. Their activities vary, as each committee has a specific subject area.

It is worth emphasising that the process of implementing EU law in the Polish legal order does not involve passing laws that are contrary to European norms. The Sejm strives to create regulations that are compatible with European law, which is one of the key principles of the Polish parliament in the context of European integration.²⁵ The implementation procedure requires cooperation between various state bodies, as well as dialogue with EU institutions. The parliamentary committees, acting in their specialised areas, strive to adapt Polish legislation to European standards effectively and in accordance with the law. In this context, consultations with the public and experts in the field also play an important role.

However, even within the framework of the implementation procedure there is a certain freedom of action for the Sejm. This allows national specifications and needs to be taken into account, while maintaining compliance with the principles of EU law. The implementation process is thus a balance between meeting European requirements and preserving the state's autonomy in shaping its laws. It is worth noting that Poland, like other EU member states, actively participates in shaping European policy through its participation in EU institutions. The European Parliament, the Council of

23 Resolution of the Sejm of the Republic of Poland dated July 30, 1992 Rules of Procedure of the Sejm of the Republic of Poland.

24 Law of October 8, 2010 on cooperation of the Council of Ministers with the President of the Republic of Poland and the Sejm and Senate in matters related to the membership of the Republic of Poland in the European Union.

25 That is why, among other things, one of the mandatory elements of the justification of a bill, as stipulated in Article 32(2) of the Rules of Procedure of the Sejm, is the prophylactic obligation to require a statement on the compatibility of the bill with EU law or a statement that the subject of the proposed regulation is not covered by EU law. See more on this topic: Kuczma, 2015, pp. 136-138.

the European Union and the European Commission are places where Polish representatives co-determine the direction and content of EU policy.

It should be emphasised that the European Union is not a state, but a special legal entity. It does not have the right to *kompetenz-kompetenz* (the right of an entity or state to assign itself the competencies of another entity or state),²⁶ which only EU member states have. In addition, the transfer of competencies to union bodies is subject to the jurisprudential control of the Constitutional Court and the constitutional courts of other states. The fact that EU law does not always have primacy over national law is evidenced by the Constitutional Court's interpretation in its judgment K 18/04, according to which Poland could withdraw from the EU if an irremovable contradiction between the Constitution and EU law were to arise.²⁷ The decision is made by Poland – not the European Union. On the basis of Article 90 of the Constitution, an entire legal construction has been created covering accession and the possibility of withdrawal from the EU. Three steps are taken in the following order: mandatory renegotiation of the European Treaty, amendment of the Polish Constitution, and, as a last resort, withdrawal from the EU. The position of the Constitutional Court is that neither Article 90(1) nor Article 91(3) can provide a basis for delegating to an international organisation the authority to enact legal acts or make decisions that would be contrary to the Constitution of the Republic of Poland. In particular, the norms indicated here cannot be used to delegate authority to the extent that would make the Republic of Poland unable to function as a sovereign and democratic state.²⁸

Moreover, the CJEU in its rulings K 18/05 and K 32/09 distinguished the primacy of application from the primacy of validity. He stated that the principle of supremacy of the nation in Article 4 allows for the primacy of application of EU law over national law, including the Constitution, but this does not imply the supremacy of EU law over the Constitution of the Republic of Poland, because the Constitution still retains primacy of validity. He further formulated the concept of constitutional identity as a set of inalienable values and principles of law that are fundamental to the country, and these provisions can never be transferred to international bodies.

26 An interesting approach defining the *Kompetenz-Kompetenz* doctrine as a "necessary evil that aids in the administration of justice" see: Bawah, 2019, pp. 168-179.

27 A similar approach to the primacy of EU law and national sovereignty can be seen in the jurisprudence of the Hungarian Constitutional Court, e.g. in the already mentioned decision 32/2021 (XII. 20.) AB, where it was emphasised that the protection of constitutional identity is a key element of Hungarian sovereignty. The Court stated that Hungary may refuse to apply EU law if it considers that it violates its constitutional order. See more about that: Varga Zs., András és Berkes, Lilla (2023).

28 I am encouraged to read a similar case in the Decision 32/2021. (XII. 20.) AB judgment. This judgment concerned the question of whether Hungarian state authorities are obliged to implement the provisions of European Union law in such a way as to lead to a violation of the Hungarian Constitution, in particular with regard to national sovereignty and the integrity of constitutional identity.

The principle of primacy, or priority, signifies the precedence of the applicability of EU law over the national legal systems of its member states. From the perspective of the EU, this principle holds sway over all national legal norms within the member states, irrespective of their position within the hierarchy of legal sources, including constitutional provisions. Nevertheless this perspective – which inherently entails the absolute supremacy of EU law over national law – has not found unanimous validation in the rulings of the majority of constitutional courts within the member states. Consequently the CJEU – while acknowledging the necessity for a ‘constructive dialogue’ with the national courts of the member states – has introduced certain techniques designed to facilitate the coexistence of EU and national legal frameworks.

Specifically, in its recent jurisprudence²⁹ the court has recognised the safeguarding of the national identities of the member states as a justification for limiting the scope of the primacy principle.³⁰ In this manner, the court has permitted the potential invocation of constitutional values by member states under certain circumstances, thereby enabling them to deviate from the absolute supremacy of EU law in the interest of protecting their national identities. In the legal context, it should be emphasised that the EU has neither a state nor a federal character. Nevertheless, the degree of cooperation and economic interdependence achieved – as well as the gradual implementation of elements typical of sovereign states, such as citizenship, the establishment of a common euro currency in some member states and the abolition of internal border controls within the Schengen area – contribute to a growing sense of European identity.³¹

6. Conclusions

In conclusion, the primacy of EU law – rooted in the case law of the CJEU and bolstered by the Treaty of Lisbon – plays a crucial role in the legal dynamics of the European Union. Despite concerns raised by member states about the potential impact on sovereignty, the principle serves to maintain uniformity in the application of law, protect the rights of citizens and businesses, and empower the European Court of Justice in

29 See for example: Judgment of the Court of Justice of October 14, 2004. C-36/02.

30 Całka, 2016, pp. 47-58.

31 The significance of positive self-images in shaping European identity goes beyond internal discussions, as the EU actively projects its vision of European identity beyond its own borders. This is particularly evident in the European neighborhood, encompassing both the Southern and Eastern dimensions. The focus lies on the external democratisation efforts of the EU, involving the promotion of democracy in third countries through support for human rights, the establishment of good governance standards, and participation in modernisation projects. See more: Kaina and Karolewski, 2013), pp. 35-40; Martinelli, 2017, pp. 7-12.

interpreting and applying EU law across the Union. Allegations of unconstitutionality and conflicts between EU law and national constitutions, exemplified by the case in Poland, underscore the ongoing tension between supranational legal systems and national sovereignty. The Constitutional Court's decision in the K 32/09 case emphasised that the accession to the EU does not violate state sovereignty, provided the transfer of powers is clearly defined, and the state retains the ability to withdraw from international agreements, including the EU.

Examining the competences ceded to the EU, Article 90 of the Polish Constitution serves as the foundation for European integration, allowing the transfer of specific competencies while preserving state sovereignty. The Lisbon Treaty's delineation of exclusive, shared, and complementary competencies further shapes the principle of primacy, emphasising the importance of proportionality and subsidiarity in EU actions. Resolving conflicts between national and EU law involves the implementation of EU law in the Polish Sejm, where laws are created to align with European norms. While there is a degree of freedom for the national legislature, efforts are made to ensure compatibility with EU law, reflecting the delicate balance between meeting European requirements and preserving state autonomy.

The classical concept of sovereignty, as defined in Article 4 of the Constitution of the Republic of Poland, is inadequate today to reflect with full clarity the essence of Poland's functioning in EU structures. The concept has evolved in such a way that the Constitution always retains the supreme power and priority of validity but allows, in certain cases, the priority of applying international law directly. Thus, the culmination of the argument will be the recognition that EU law does not have absolute precedence over national law, due to the strongest position of the fundamental legal act of the state. Thus, the purpose of the primacy of community law is to ensure that all residents enjoy equal protection under EU law throughout its territory. However, it should be borne in mind that the primacy of community law applies only in areas in which individual member states have transferred their sovereign powers to the EU – such as the single market, environmental protection, transportation, and others. However, it does not apply to areas such as education, culture, or tourism. This nuanced approach aims to facilitate the coexistence of EU and national legal frameworks, while respecting the diversity and values of member states.

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