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**Synthèse / Summary / Kurzfassung / резюме**

RÉPUBLIQUE DE POLOGNE / REPUBLIC OF POLAND /  
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The Constitutional Tribunal of the Republic of Poland  
Trybunał Konstytucyjny Rzeczypospolitej Polskiej

Anglais / English / Englisch / английский

## Cooperation of Constitutional Courts in Europe - current situation and prospects for the future

### Abstract

[1, 2] The Polish Constitution mentions about „the international law” and does not use notion of the “European Union” or „the European law”. The constitutional issues connected with Poland’s membership in the European Union, are assessed by the Constitutional Tribunal in the context of those constitutional norms which regard international organizations and international law. [3, 4] The obligation to „take European laws into account” during the exercise of constitutional competences, may be validated by the Art. 9 of the Constitution of the Republic of Poland. Thus, the Constitutional Tribunal shall make allowances for the European law and has a duty to interpret the Constitution in accordance with the European law. [5, 6, 7] *De iure* and *de facto*, the European law is taken into consideration by the Constitutional Tribunal not only as a benchmark and subject to control but also as an interpretation directive or „source of inspiration” when the Constitution and the Polish law is construed. The Tribunal refers to international sources of law when those sources are a model of control and when the international sources of law are subject to control. In case of constitutional complaints, they may only refer to "constitutional rights or freedoms". Thus, international agreements cannot constitute the proper model of control. [8] All ratified international agreements including the EU treaties are within the jurisdiction of the Constitutional Tribunal. [9, 10] The Tribunal recognized the possibility to control the constitutionality of international agreements under a proceeding initiated by a constitutional complaint. Applicants and complainants frequently indicate the provisions of European Convention for the Protection of Human Rights and Fundamental Freedoms as a control model among the sources of international law. The Tribunal recognized as a matter of principle the possibility to control the constitutionality of international agreements under a proceeding initiated by a constitutional complaint (including the European Union’s derivative legislation). [11, 12, 13, 14, 15] When the charges expressed in a complaint or an application regarding nonconformity of legal acts with international agreements are tantamount to the charges regarding the lack of conformity to the Constitution, the Tribunal recognizes such model as inadequate and discontinues the proceedings. The Tribunal states that any breaches of the Convention’s provisions cannot be the grounds of a constitutional complaint. However the Tribunal does not avoid any substantive assessments. The assessment formulated in respect of the above indicated constitutional models is applied within full scope in respect of the invoked international standards and the Tribunal sometimes refers to the Convention on its own initiative. When a querying court or an applicant refers to the provisions of the Convention as a control model, the Tribunal takes a position more „favorable” to the Convention. [16] The provisions of the Charter of Fundamental Rights of the European Union set a high standard of the protection of fundamental rights (human rights) in the European Union and its converge with Polish law. Which does not mean that legal solutions adopted by both legal systems are identical. [17, 18, 19] The Constitutional Tribunal accepts provisions of the EU Treaties also as control benchmarks of the law’s constitutionality. In its judicial decisions, Tribunal took into consideration some Council of Europe’s Conventions. [20, 21] Quite frequent are also cases where the Constitutional Tribunal stated that an act of law is not conform to the provisions of the international law. There is no obligation on the Tribunal to consider decisions by European courts of justice. However, in its adjudication practice the Constitutional Tribunal takes into account the judiciary decisions of European courts of justice. According to art. 79 of the Constitution a constitutional complaint regards the infringement of constitutional rights and freedoms and does not apply to the norms of international conventions. [23, 24] The Tribunal does not notice the foregoing limitations in the proceedings generated by a court’s legal query. Therefore it is necessary to examine a problem of states’ commitment by the Court’s

judgments on so-called parallel cases. [25, 26] The Tribunal states that a judgment passed in a „Polish” case „influences the assessment of the provisions by the Constitutional Tribunal” which probably means that it takes into account the same verdict during the control of the Polish law’s constitutionality. [27, 28] The Constitutional Tribunal refers to the judgments of European courts of justice but more frequently to the adjudications of the European Court of Human Rights. [29, 30] A rare example of such discrepancies between the judgments of the Constitutional Tribunal and the adjudications of the European Court of Human Rights is a question of duty to authorize and of criminal liability for failure to perform that duty. Example of an obvious though rare discrepancy between the judgment of the Court of Justice of the European Union and the adjudications of the Constitutional Tribunal is the question of the competency to control the legality of the derivative law of the European Union. [31, 32] The Polish courts broadly take into account the judgments of European courts of justice, but there is no evidence that they do so due to the authority of the Constitutional Tribunal or in connection with the fact that those judgments are taken into account by the Tribunal. The European Court of Human Rights frequently referred to the judgments by the Constitutional Tribunal in statements of its judgments’ reasoning. [33, 34, 35] The Constitutional Tribunal refers to the judgments of the European constitutional courts and also non-European courts, such as the US Supreme Court and the Tribunal invoked the judgments of other constitutional courts in civil, criminal and public law. In many cases references have a broad „geographical” scope. [36, 37, 38, 40, 41] The judgment in the case SK 45/09 (competency to control the constitutionality of the EU derivative law) seems to be significant for foreign constitutional courts. The Tribunal cooperates with other constitutional courts in form of common conferences. References to European Union law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights do not influence judgments by the Constitutional Tribunal. There is no convincing evidence that judgments of the Constitutional Tribunal have had a significant impact on the shaping of formal relations between the ECHR and the Court of Justice of the EU. The Constitutional Tribunal did not examine differences between the jurisprudence of the ECHR or the Court of Justice of the European Union.