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Conflict between EU law and national sovereignty: Analysis of decisions by the Constitutional Court of Poland in the light of the rule of law in the European Union

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Abstract

The relevance of the study is conditioned by the growing tension between the principle of the rule of law of the European Union and the trends of national legal sovereignty in the member states, which threatens the integrity of the common legal space of the European Union. The purpose of the study was to analyse the legal consequences of the decisions of the Constitutional Court of Poland on the interaction between national sovereignty and the rule of law in the European Union, and to assess their impact on legal integration within the European Union. The study used methods of legal analysis, comparative analysis, and methods of interpretation of court decisions, which allow assessing the legal consequences of decisions of the Constitutional Court of Poland and their impact on the interaction of national and European law. In the course of the study, it was revealed that the decision of the Constitutional Court of Poland regarding the superiority of the national constitution over the law of the European Union led to a legal conflict that makes it impossible for the rule of Law of the European Union to fully function. It was found that this position created legal difficulties for national courts in the application of decisions of the Court of Justice of the European Union and the implementation of the Union's law. It was found that the response of the institutions of the European Union, in particular, the Court of Justice and the European Commission, was

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based on mechanisms for monitoring compliance with the rule of law, but was limited in the context of national resistance. It was proved that the case of Poland showed the process of politicisation of constitutional control, which calls into question the independence of national judicial bodies in the member states. The lack of a unified mechanism for resolving the conflict between national sovereignty and legal integration creates systemic risks for the stability of the common legal space of the European Union. The analysis showed the need for normative rationing of the correlation of national constitutional control with the legal obligations of member states within a single legal space. Practical significance lies in the development of the basis for improving the mechanisms of legal responsibility of member states in the event of a deviation from the principle of the rule of law in the Union

Keywords:

institution; jurisdiction; pluralism; normative inconsistency; sovereignty

Introduction

The escalation of conflicts between national constitutional courts and the EU Court of Justice regarding the interpretation of the rule of law of the European Union calls into question the integrity of the European legal order. The decisions of the Constitutional Court of Poland, which explicitly deny the priority of EU law, indicate a deeper crisis of interaction between supranational institutions and state sovereignty. This actualises the need for a legal rethinking of the limits of competence of national courts and the EU Court of Justice, and the search for legal mechanisms that can preserve the unity and effectiveness of the EU legal system without undermining the constitutional identity of member states.

As emphasised by M. Serovanets (2022), the legal clash between national constitutionalism and EU law goes beyond purely technical issues of competence and concerns the fundamental principles of European integration. In their opinion, Poland's position indicates the emergence of an alternative paradigm of legal pluralism, within which the supremacy of the constitution is considered as an inviolable source of national sovereignty. P.V. Makushev & A.V. Khridochkin (2023) highlighted the threat of fragmentation of the EU legal space due to disregard for the principle of priority of European law. The researchers argued that such actions of national courts undermine the uniform application of EU law and pose risks to the stability of the institutional order within the Union. They noted that the further spread of such practices may lead to a blurring of the general standards of the rule of law, which form the core of European identity. In addition, such opposition contributes to the growth of distrust between member states, making it difficult for political and legal coordination.

M. Voronov & I. Voronova (2022) considered the conflict between the national constitutional courts and the EU Court of Justice as the result of the incomplete process of constitutionalisation of Europe. The researchers pointed out that the lack of a clearly defined hierarchy between national and European law leaves room for contradictions that only deepen in the context of political polarisation. L.M. Deshko & V.S. Boiko (2024) analysed the decisions of the Constitutional Court of Poland through the prism of the erosion of the principle of mutual trust between member

states. They emphasised that the gap between the legal systems of the member states and the legal order of the EU allowed for the full functioning of European integration mechanisms.

According to O.M. Yukhymyuk (2022), the decision of the Constitutional Court of Poland is a challenge not only for EU jurisprudence, but also for the very concept of a legal community. The researcher emphasised that the denial of the jurisdiction of the EU Court of Justice in the context of treaty interpretation casts doubt on the contractual nature of the EU as a legal entity. I.V. Yakoviuk *et al.* (2022) pointed to the depth of the crisis generated by the Polish judicial authorities' refusal to recognise the binding nature of EU Court decisions, stressing that such conduct is incompatible with the principles of membership in the European Union and destroys the foundations of integration solidarity. The researchers note that such precedents set a dangerous example for other member states that are prone to nationalist and populist approaches. From a legal standpoint, such actions undermine the doctrine of the primacy of EU law, which is the cornerstone of the Union's unified legal order.

L. Pech *et al.* (2021) focused on the link between the legal nationalism of the Constitutional Court of Poland and the general policy of the Polish government in the field of judicial reform, pointing out that the conflict with EU law serves to legitimise internal authoritarian tendencies. According to the researchers, the restriction of the independence of the judiciary is accompanied by discrediting European institutions. V.S. Mulyavka (2024) argues that the problem of legal conflict extends beyond Poland and requires a review of mechanisms for monitoring compliance with the rule of law in member states, since conventional sanctions tools are ineffective. Modern mechanisms do not consider the political consolidation of governments, which systematically undermine the independence of the courts. The researcher emphasised that the passivity of the European Council in resolving such conflicts only deepens the crisis of confidence in European norms.

Scientific discourse was dominated by publications that viewed events in Poland as part of the broader problem of the erosion of the rule of law in Central Europe, without paying sufficient attention to the

doctrinal reasoning of the Constitutional Court of Poland. This study filled in these gaps by providing a legal assessment of the Polish court's decisions through the lens of key precedents of the EU Court of Justice and demonstrating how the conflict between national constitutionalism and EU law affected the structural unity of the Union's legal order.

An analysis of the relationship between the national courts of the member states and the Court of Justice of the European Union revealed deep structural contradictions within the framework of EU legal integration. They are manifested primarily in conflicts between the principle of the rule of law of the EU and the concept of constitutional sovereignty. The purpose of the study was to clarify the legal nature of the conflict between EU law and national sovereignty using the example of decisions of the Constitutional Court of Poland, and to analyse its consequences for the European legal order. Within the framework of this goal, the following tasks were formulated: to investigate the jurisprudence of the EU Court of Justice on the rule of law in relation to the decisions of the Constitutional Court of Poland; to analyse the legal arguments of both institutions regarding the limits of EU competence; to assess the impact of these decisions on the stability of legal integration mechanisms within the European Union.

Materials and Methods

The study used an interdisciplinary approach aimed at investigating the legal consequences of decisions of the Constitutional Court of Poland for the rule of law of the EU. Methods of legal and dogmatic analysis, comparative legal analysis, and case-study were used. The method of legal and dogmatic analysis was used to systematise and interpret regulatory sources that are of key importance for assessing the relationship between national sovereignty and the rule of Law of the European Union. In particular, the international treaties on which the EU legal system is based, including the Treaty on the European Union (TEU)¹, were analysed and the Treaty on the Functioning of the European Union²,

and the practice of their application by the EU Court of Justice. The comparative legal method was used to analyse similar conflicts between national and European law to identify common features of legal approaches to interpreting the boundaries of the jurisdiction of the EU Court of Justice. Within the framework of this approach, the opinions of the Federal Constitutional Court of Germany³, decision of the Constitutional Court of France⁴, and the Constitutional Court of Italy⁵ were analysed. The use of the comparative legal method allowed comparing the arguments used to substantiate national sovereignty. It was a comparison of Polish practice that revealed a systemic problem: the lack of an effective mechanism for resolving conflicts between National Constitutional Courts and the EU Court of Justice within the EU legal space. The case-study method was used for an in-depth analysis of the Polish case. Cases Nos. K 18/04⁶ and K 3/21⁷, allowed us to trace the development of the legal positions of the Constitutional Court of Poland, the political context of their adoption and reactions from EU institutions. These cases were chosen because of their key role in shaping the doctrine of constitutional supremacy in the Polish legal order and in defining the limits of EU law at the national level. The first case concerned the constitutionality of Poland's EU accession treaty, and the second case analysed certain provisions of the European Union Treaty in terms of their constitutionality in the context of the growing conflict between the Polish and European legal systems.

The source base of the study also covered a wide range of regulations and court decisions selected according to the criterion of their key significance for the legal assessment of the conflict between the law of the European Union and the National Legal order of Poland. The analysed sources included fundamental decisions of the EU Court of Justice, which laid the foundation for the doctrine of priority and autonomy of EU law, in particular, in the cases of *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*⁸, *Costa v. E.N.E.L.*⁹, *Internationale Handelsgesellschaft mbH v. Einfuhr- und*

¹ Treaty on European Union. (1992, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT>.

² Treaty on the Functioning of the European Union. (2016, June). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>.

³ Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany. (2020, May). Retrieved from https://www.bverfg.de/e/rs20200505_2bvr085915en.

⁴ Decision of the Constitutional Court of France No. 2004-505. (2004, November). Retrieved from <https://www.conseil-constitutionnel.fr/en/decision/2004/2004505DC.htm>.

⁵ Judgment of the Constitutional Court of the Republic of Italy No. 115. (2018, May). Retrieved from https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_2018_115_EN.pdf.

⁶ Judgment of the Constitutional Court of Poland in Case No. K 18/047. (2005, May). Retrieved from <https://sip.lex.pl/akty-prawne/dzuziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-18-04-17187437>.

⁷ Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

⁸ Judgment of the Court of Justice in Case No. 26-62 "NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration". (1963, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0026&qid=1746626815221>.

⁹ Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L.". (1964, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006>.

Vorratsstelle für Getreide und Futtermittel¹ and Simmenthal². Contemporary precedents concerning the interaction between national legal systems and the European legal order have also been examined, in particular, the case Trade Union Association of Portuguese Judges v. Court of Auditors (No. C-64/16)³, Komstroy (No. C-741/19)⁴, RT v. Specialised Prosecutor's Office (No. C-432/22)⁵. The paper analysed the decisions of the EU Court of Justice in cases that directly related to judicial reform in Poland (for example, European Commission v Republic of Poland No. C-204/21⁶). The Constitution of the Republic of Poland⁷, the EU Treaty as amended by the Lisbon Treaty⁸, and the draft Constitution for Europe⁹ were used as the regulatory framework.

The analysis of this source base helped not only to recreate the dynamics of the escalation of the conflict between Polish Constitutional Court proceedings and EU law, but also to assess potential legal risks to the integrity of the legal order of the European Union. The results provided a deeper understanding of the mechanisms of legal conflict between the Polish and European levels, which contributed to the achievement of the main goal of the study – identification of the legal consequences of the Polish case for the future development of EU integration law.

Results and Discussion

The principle of the rule of law in the European Union is a key element of the EU legal order and ensures its effective functioning. For the first time, it was clearly formulated by the Court of Justice of the European Communities in the decision on *Costa v. ENEL*¹⁰ of 1964, in which the court concluded that the rules of law of the European Communities could not be overruled by national legal norms without undermining the very foundation of the Union. This decision laid down a fundamental

postulate: member states, by joining the EU, limit their sovereign power in certain areas, and therefore, cannot continue to refuse to comply with the provisions of Union law, considering their own national legislation. This principle was further developed in the 1970 judgment in the case of *Internationale Handelsgesellschaft*¹¹, where the EU Court of Justice confirmed that the principle of supremacy covers even the norms of the constitutional level of national law. The court stressed that the validity of Union acts cannot depend on their compliance with national legal acts of any level, including constitutional provisions. The principle of supremacy is not only a formal requirement of priority, but also a mechanism for maintaining the unity and effectiveness of the EU legal system. This approach makes it impossible for a single member state to unilaterally restrict EU law by referring to its own constitution. In the case of *Simmenthal*¹² of 1978, the EU Court of Justice reiterated that the courts of the Member States are obliged to apply EU law without waiting for the amendment or repeal of conflicting national rules, regardless of their hierarchy in the country's legal system. Not only the doctrine of the rule of law was formulated, but also the direct action of EU law in the Polish legal order. The court pointed out that any public authority, including national courts, is obliged to ensure the full effectiveness of EU norms and refrain from applying any national provisions that contradict them. This became the basis for understanding EU law as an autonomous and self-sufficient order that can directly affect national legal systems.

The legal nature of the principle of supremacy was formulated not in the texts of the constituent treaties, but in the practice of the Court of Justice of the EU. This demonstrates the key role of judicial interpretation in shaping the constitutional foundations of the EU legal order. Subsequently, during the ratification of the

¹ Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011>.

² Judgment of the Court of Justice in Case No. 106/77 "Amministrazione delle Finanze dello Stato v. Simmenthal SpA. Reference for a Preliminary Ruling: Pretura di Susa – Italy". (1978, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61977CJ0106>.

³ Opinion of Advocate General Saugmandsgaard in Case No. C-64/16 "Trade Union Association of Portuguese Judges v. Court of Auditors Case". (2017, May). Retrieved from https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62016CC0064#t-ECR_62016CC0064_EN_01-E0001.

⁴ Judgment of the Court (Grand Chamber) in Case No. C-741/19 "Republic of Moldova v. Komstroy LLC". (2021, September). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CA0741&qid=1746626089797>.

⁵ Opinion of Advocate General Pikamäe in Case No. C-432/22 "RT v. Specialised Prosecutor's Office". (2022, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CC0432#t-ECR_62022CC0432_EN_01-E0001.

⁶ Opinion of Advocate General Collins in Case No. C-204/21 "European Commission v. Republic of Poland". (2022, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CC0204&qid=1746628032991>.

⁷ Constitution of the Republic of Poland. (1997, April). Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

⁸ Lisbon Treaty. (2007, December). Retrieved from https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.5.pdf.

⁹ Treaty on a Constitution for Europe. (2003, July). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003XX0718\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003XX0718(01)).

¹⁰ Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L.". (1964, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006>.

¹¹ Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011>.

¹² Judgment of the Court of Justice in Case No. 106/77 "Amministrazione delle Finanze dello Stato v. Simmenthal SpA. Reference for a Preliminary Ruling: Pretura di Susa – Italy". (1978, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61977CJ0106>.

Treaty on the Constitution for Europe¹, and later – the Lisbon Treaty², the principle of supremacy has been indirectly legitimised through relevant declarations and practices. Although the EU Treaty³ does not contain an explicit article stipulating primacy, Declaration No. 17⁴, annexed to the Lisbon Treaty, confirms the postulate of primacy of EU law as interpreted by the Court of Justice of the European Union.

From the standpoint of a systematic approach to law, the principle of supremacy performs a key function – ensuring legal unity within the European Union. In the context of multiple legal systems and traditions of member states, it is the primacy that guarantees that EU law is applied equally in all countries. This, in turn, is a necessary condition for the functioning of the common market, the customs union, and the freedom of movement of persons, goods, services, and capital. Without the rule of law, EU law would lose its integrity and binding force, which would actually negate the very idea of an integrated legal space.

The evolution of the principle of supremacy in judicial practice also reflects the EU Court's attempt to adapt it to the challenges of the time, especially in the context of the expansion of the Union and the growing number of constitutional conflicts between EU law and national systems. In particular, recent decades (2010-2025) have witnessed growing tensions between the EU Court of Justice and national Constitutional Courts, which are increasingly refusing to unconditionally recognise the rule of European law. The EU Court of Justice continues to insist that EU law takes precedence in the event of any contradiction. This principle has been confirmed in such modern solutions as *Associação Sindical dos Juízes Portugueses*⁵, *Komstroy*⁶ and *RT v. Spetsializirana prokuratura*⁷, which emphasised the need to ensure the independence of the judiciary as an element of the rule of law and fulfil obligations under EU law.

Despite the fundamental importance of the rule of law for the European Union, its legal nature remains debatable. On the one hand, this principle has no direct contractual fixation in the constituent acts of the EU,

since none of the norms of the Treaty on the European Union⁶ does not contain a direct article formulating primacy. On the other hand, it has been implicitly enshrined in the constant practice of the EU Court of Justice, starting with the decisions of *Costa v. ENEL*⁸ and *Internationale Handelsgesellschaft*⁹. In this context, primacy takes on the features of a customary norm that has a precedent origin and a quasi-constitutional character.

It should also be pointed out that the principle of supremacy is closely linked to the principle of direct action formulated in the *Van Gend en Loos* case¹⁰, which argues that EU law can directly give rise to rights and obligations for individuals and legal entities in member states. This direct action – supremacy link creates the basis for the autonomy of EU law, while simultaneously giving it a binding character, regardless of recognition by national authorities. The legal force of the principle of supremacy is derived not from the normative text, but from the system logic of the integration rule of law.

The principle of supremacy is not only a legal doctrine, but also an instrument of constitutional balance within the European Union. Its judicial development shows that the unity of EU law is based not on the formal supremacy of the constituent acts, but on the daily practice of their unconditional application by all national courts. The deviation from this principle is a challenge to the very existence of the EU as a legal community, and that is why the analysis of conflicts like the Polish case is crucial for understanding the boundaries of sovereignty in a supranational legal order.

K.L. Scheppele (2023) and A. Sołtys (2023) argued that the legal conflicts between the Constitutional Court of Poland and the EU Court of Justice are the result of the incomplete process of constitutionalisation of the European Union, which lacks a well-established mechanism for coordinating jurisdictions. This study partially confirmed this thesis, recognising systemic shortcomings in the EU legal primacy vertical. However, the above analysis shows a different and more detailed picture: the decisions of the Constitutional Court of Poland had not only a legal, but also a political dimension,

¹ Treaty on a Constitution for Europe. (2003, July). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003XX0718\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003XX0718(01)).

² Lisbon Treaty. (2007, December). Retrieved from https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.5.pdf.

³ Treaty on European Union. (1992, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT>.

⁴ Lisbon Treaty. (2007, December). Retrieved from https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.5.pdf.

⁵ Opinion of Advocate General Saugmandsgaard in Case No. C-64/16 "Trade Union Association of Portuguese Judges v. Court of Auditors Case". (2017, May). Retrieved from https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62016CC0064#t-ECR_62016CC0064_EN_01-E0001.

⁶ Judgment of the Court (Grand Chamber) in Case No. C-741/19 "Republic of Moldova v. Komstroy LLC". (2021, September). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CA0741&qid=1746626089797>.

⁷ Opinion of Advocate General Pikamäe in Case No. C-432/22 "RT v. Specialised Prosecutor's Office". (2022, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CC0432#t-ECR_62022CC0432_EN_01-E0001.

⁸ Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L.". (1964, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006>.

⁹ Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011>.

¹⁰ Judgment of the Court of Justice in Case No. 26-62 "NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration". (1963, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0026&qid=1746626815221>.

because they served as a tool for legitimising the actions of the executive branch in the confrontation with European institutions. Instead of limiting itself to legal arguments, the Constitutional Court of Poland actively appealed to the categories of national sovereignty used in political discourse as a means of mobilising support for the ruling party. This is not consistent with the normative interpretation of the conflict as “technical uncertainty” and allows considering the court’s actions as part of a broader political strategy.

The question of applying the principle of supremacy is increasingly linked to the concept of “constitutional identity” of member states, in particular, after the decision of the German Federal Constitutional Court in the case of *Lisbon Urteil*¹, where for the first time the limits of EU law were clearly outlined, considering the fundamental constitutional norms at the national level. This rule, as consolidated in Article 4 (2) of the EU Treaty², obliges the European Union to respect the national identity of states, which finds expression, in particular, in fundamental political and legal structures, including the organisation of state power, the judicial system, and fundamental constitutional principles. In this context, member states are increasingly appealing to their right to preserve their own constitutional traditions as a limit to the rule of law. This approach has led to the emergence of a new form of resistance – the concept of “constitutional pluralism”, according to which the rule of law of the EU is not absolute, but should co-exist with national constitutions on the basis of dialogue, not subordination. In this regard, there is a real legal tension: on the one hand, the EU Court of Justice continues to insist on the absolute priority of EU law^{3,4} on the other hand, the Constitutional Courts of member states are increasingly declaring the right to have the last word in matters concerning their “constitutional foundations”. As a result, an unstable balance is formed between the integration logic of EU law and the legitimate desire of states to preserve their fundamental constitutional identities.

The conceptual juxtaposition of the EU rule of law and national constitutional identity creates the basis for a doctrinal conflict that is becoming increasingly relevant in practice. The ideas of “constitutional

pluralism” are gradually being transformed from an academic discussion into a real tool for protecting domestic jurisdiction, as demonstrated by a number of decisions of the constitutional courts of member states, in particular Poland. This contributes to a rethinking of the very nature of legal integration into the EU, in which the binding nature of the Union’s norms faces a claim to preserve its own sovereign constitutional space. In this regard, the interaction between the EU Court of Justice and national courts is increasingly losing the features of dialogue and becoming confrontational. This situation is clearly illustrated in the Polish case, where the legal confrontation went beyond theoretical doctrines and turned into a real legal conflict between two autonomous legal orders.

The conflict between the Polish national rule of law and EU rule of law is not exclusively empirical, but has a complex theoretical basis. At the centre of the discussion are two opposing doctrines: the monistic concept of EU law, according to which Union norms have direct effect and primacy over all national norms, including constitutional ones; and the concept of constitutional pluralism, which recognises the existence of multiple centres of legal autonomy with mutual respect for the boundaries of jurisdiction. The EU Court of Justice consistently adheres to a monistic position, considering the rule of law of the EU absolute, even in cases of contradiction with national constitutional norms. However, the Constitutional Court of Poland in its decision⁵ relies on ideas close to the pluralistic model, arguing that the Constitution of the Republic of Poland⁶ is the “highest right of the Republic” and takes precedence over international obligations if they contradict its fundamental provisions. Such arguments contradict the established practice of the EU Court of Justice. This discrepancy highlights a fundamental difference in the vision of the legal nature of the Union: as a single autonomous legal system – or a set of legal orders, where each state reserves the last word in matters of constitutional identity.

The most revealing in this context were the decision in cases *K 18/04*⁷ and decision *K 3/21*⁸ of October 7, 2021, which caused a significant response at the level of both European institutions and the national legal

¹ Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany. (2009, June). Retrieved from https://www.bverfg.de/e/es20090630_2bve000208en.

² Treaty on European Union. (1992, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT>.

³ Judgment of the Court of Justice in Case No. 11-70 “Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel”. (1970, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011>.

⁴ Judgment of the European Court in Case No. 6/64 “Flaminio Costa v. E.N.E.L”. (1964, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006>.

⁵ Judgment of the Constitutional Tribunal of Poland No. K 3/21 “Assessment of the Conformity to the Polish Constitution of selected provisions of the Treaty on European Union”. (2021, October). Retrieved from https://images.dirittounioneuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

⁶ Constitution of the Republic of Poland. (1997, April). Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁷ Judgment of the Constitutional Court of Poland in Case No. K 18/047. (2005, May). Retrieved from <https://sip.lex.pl/akty-prawne/dzudziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-18-04-17187437>.

⁸ Judgment of the Constitutional Tribunal of Poland No. K 3/21 “Assessment of the Conformity to the Polish Constitution of selected provisions of the Treaty on European Union”. (2021, October). Retrieved from https://images.dirittounioneuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

systems of other member states. In case K 18/04¹, the Constitutional Tribunal of Poland, considering the correlation between the norms of the Constitution of the Republic of Poland and the norms of the law of the European Union, unequivocally recognised that the Polish Constitution has the highest legal force in the national legal system. In its decision, issued shortly after Poland's accession to the European Union, the Tribunal noted that no rule of EU law can take precedence over the provisions of the Constitution. If there is a conflict between the constitutional norm and EU law, such a contradiction cannot be resolved by assuming the priority of supranational law – on the contrary, it is the Constitution that remains the highest measure of legal force. This opinion was confirmed and developed in case K 3/21², in which the judge-rapporteur of the Constitutional Tribunal directly referred to the legal conclusions of case K 18/04³ regarding the approach to the protection of constitutional sovereignty. The Polish Constitutional Tribunal not only never recognised the rule of law of the EU over the National Constitution, but also systematically defended the thesis that it is the Polish Constitution that should remain the final criterion in determining the permissibility of applying any legal norm on the territory of the state. This doctrinal line of the Polish court testifies to the deep legal autonomy of the national legal order, which directly contradicts the integration principles proclaimed by the EU Court of Justice.

N. Daminova (2021) and A. Nowak-Far (2021) raised the question that the European rule of law system is dependent on the political will of member states, which significantly limits its ability to ensure uniformity of standards. The study supports this claim, as it has been found that the formal primacy of EU law can be called into question when national institutions consider it politically advantageous. The analysis of the situation in Poland shows that the legal disobedience of this country is not an exception, but an example of a general trend, where the principle of the rule of law comes into conflict with national doctrines of constitutional identity, which are increasingly used to justify the legal autonomy of national courts. This expands the researcher's opinions, emphasising that the current legal conflict between the EU and its member states is caused not only

by political will, but also by the intersection of national and supranational interests. In addition, the analysis indicates the importance of considering the dynamics of political changes in the member states themselves, which can contribute to strengthening nationalist sentiments and abandoning European standards. It also demonstrates the need to improve the mechanisms for protecting EU principles so that they can effectively counteract attempts to weaken integration processes. In particular, this requires the creation of new tools that would more clearly define the boundaries of jurisdiction of national and European courts.

In case No. K 3/21⁴, the Constitutional Court of Poland considered the compliance of the provisions of the Treaty on the European Union⁵ (in particular Articles 1, 2, 4(3) and article 19 with the Polish Constitution⁶. The central element of the court's reasoning was the claim that the interpretation of these articles of the treaty given by the EU Court of Justice leads to an unjustified expansion of the competence of the Union institutions beyond the powers transferred to them. In its ruling, the Constitutional Court concluded that certain provisions of the Treaty, in the light of the interpretation of the EU Court of Justice, do not comply with the Polish Constitution and therefore cannot prevail in Polish legal order. This position is a direct negation of the fundamental principle of the rule of law of the EU and represents a qualitatively new stage in the development of legal pluralism within the European Union. The Constitutional Court formulated the legal basis for this approach through the consistent application of the provisions of the Polish Constitution⁷ defined by the Constitution itself. The court concluded that granting the EU Court of Justice the power to assess the functioning of the Polish judicial system and recognise it as inconsistent with the standards of the rule of law contradicts the basic principles of state sovereignty and the principle of democratic control over authorities. The judgment paid special attention to Article 2 of the Polish Constitution⁸, which establishes the principle of the rule of law, which, according to the court, is violated if the national jurisdiction system is subject to the interpretation of the EU Court of Justice without the procedural consent of the parliament. In Judgment No. K 3/21⁹,

¹ Judgment of the Constitutional Court of Poland in Case No. K 18/047. (2005, May). Retrieved from <https://sip.lex.pl/akty-prawne/dzuzdziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-18-04-17187437>.

² Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

³ Judgment of the Constitutional Court of Poland in Case No. K 18/047. (2005, May). Retrieved from <https://sip.lex.pl/akty-prawne/dzuzdziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-18-04-17187437>.

⁴ Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

⁵ Treaty on European Union. (1992, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT>.

⁶ Constitution of the Republic of Poland. (1997, April). Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁷ Ibidem, 1997.

⁸ Ibidem, 1997.

⁹ Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

the Constitutional Court also referred to the concept of national sovereignty, referring to the provisions of the preamble and articles of the Constitution guaranteeing the supremacy of the Polish people as a source of power. In particular, it was emphasised that expanding the jurisdiction of a supranational court without direct legitimation through national mechanisms contradicts the principle of democratic legitimacy enshrined in the Constitution. This approach demonstrates the attempt of the National Constitutional body not only to protect jurisdictional autonomy, but also to defend the model of state structure, in which control over the division of power is carried out exclusively within the national constitutional field.

P. Popelier *et al.* (2021) and K.A. Poulou (2024) highlighted the erosion of the principle of mutual trust, arguing that Poland's actions have undermined not only jurisprudence, but also the political foundations of solidarity within the EU. The above study partially confirmed this thesis, demonstrating a decrease in the level of confidence in Poland on the part of other member states within the EU Council, which is especially noticeable in the issues of voting for the distribution of funds and support for pan-European initiatives. However, the analysis revealed a more complex picture, as the European Commission continued to avoid political escalation of the conflict by resorting to tools of financial influence, in particular, the mechanism of conditional access to funds. This indicates a more flexible and adaptive response from European institutions, which strive to preserve the integrity of the EU even in situations of serious legal and political differences. The reason for different assessments of the effect of the Polish crisis may lie in underestimating the EU's pragmatic approach, which balances the need for a legal response and the political stability of the Union. A. Kustra (2022) and T.T. Koncewicz (2022) interpreted the actions of the Constitutional Court of Poland as undermining the contractual nature of the European Union, emphasising that such decisions call into question the very existence of the EU as a legal entity. The current study allowed critically reconsidering this thesis, since even in the context of a deep legal confrontation, the EU's institutional structure has remained stable, and its ability to coordinate politically has been preserved. The analysis showed that the decision-making mechanisms, the functioning of the European Commission, and the application of EU law continue to operate, despite the existing legal contradictions with individual member states. This indicates a higher degree of stability of the EU legal order to institutional challenges than critical discourse suggests. The reason for differences in the

interpretation of the consequences of the decisions of the Constitutional Court of Poland may lie in underestimating the flexibility of the EU legal system, which is not reduced to an absolute consensus on the jurisdiction of the EU Court of Justice, but instead functions through adaptive institutional mechanisms that allow responding to crisis situations without destroying the overall legal unity.

The decision of the Constitutional Court of Poland regarding the superiority of the National Constitution over the law of the European Union entailed significant legal consequences both at the domestic and supranational levels. One of the primary consequences was a change in the legal approach of Polish courts to the application of EU law. Judgment No. K 3/21¹ by which the Constitutional Court of Poland² recognised certain provisions of the EU treaty as incompatible with the Constitution of the Republic of Poland, Polish judges faced a legal dilemma: either to adhere to the decisions of the EU Court of Justice and European norms, or to obey the position of the national Constitutional Court. This bifurcation has led to an increase in legal uncertainty and a dispersion of the unity of jurisprudence, in particular, in cases where the application of EU law is mandatory. The administrative institutions of Poland, in particular, those responsible for the implementation of legal acts that have a source in EU law, found themselves in a situation of double subordination. The implementation of European directives and regulations requires consistency with the norms of the Constitution of Poland, but the opinion of the Constitutional Court called into question such consistency in many areas, especially in the field of the judicial system, disciplinary responsibility of judges, and access to justice. This has complicated law enforcement practices and reduced the predictability of legal decisions, which directly contradicts the principle of legal certainty as one of the fundamental principles of the EU. The European Commission has initiated a breach of obligations procedure under Article 258 of the Treaty on the Functioning of the European Union³, considering that Poland violated the principle of the rule of law of the EU and the requirements for effective judicial protection. The EU Court of Justice, within the framework of this procedure, found that the legal structure established by the Polish legislator regarding the disciplinary responsibility of judges was contrary to the requirements for the independence of the judiciary under Article 19(1) of the TEU. Based on this decision, the EU Court of Justice applied interim measures, in particular, the requirement to terminate the activities of the Disciplinary Chamber of the Supreme Court of Poland. Despite this, the Polish authorities did not fully

¹ Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

² Ibidem, 2021.

³ Treaty on the Functioning of the European Union. (2016, June). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>.

implement these measures, which led to the imposition of financial sanctions in the form of a daily fine. In 2021, the EU Court of Justice decided to recover EUR 1 million daily from Poland for failure to comply with the previous decision in the Case No. C-204/21 R¹. This was an unprecedented measure in the court's practice, confirming the seriousness of the legal consequences of a breach of obligations by a member state. In this context, a comparative analysis of the decisions of the

Constitutional Court of Poland in Cases Nos. K 18/04 and K 3/21 is of particular importance (Table 1), which have become key in articulating the position on the limits of the application of EU law at the national level. Both decisions, although adopted at intervals of more than 15 years, demonstrate the consistent doctrine of the Polish constitutional body regarding the priority of the Constitution of the Republic of Poland over the norms of primary law of the European Union.

Table 1. Main provisions of the decisions of the Polish Constitutional Tribunal in Cases Nos. K 18/04 and K 3/21

Parameter	Case No. K 18/04 (2005)	Case No. K 3/21 (2021)
Context	The decision was made after Poland joined the EU; assessment of compliance with the Constitution of the Republic of Poland with the provisions of the EU treaty	The decision was made during the conflict with the EU on judicial reform; verification of compliance with the Constitution with certain provisions of the TEU
Constitutional Court of Poland (Tribunal)	The Constitution of the Republic of Poland has the highest legal force; EU law cannot take priority in the event of a conflict	The supremacy of the Constitution of Poland is confirmed; the provisions of the TEU are recognised as incompatible with the Constitution
Substantiation	Any conflict should be resolved in favour of the Constitution; amendments to the Constitution are possible only through national mechanisms	Interpretation of EU law by the EU Court of Justice exceeds the limits of delegated competence; this violates the principle of the supremacy of the Constitution
Assessment of the EU rule of law	The rule of law of the EU is recognised only within the limits that do not contradict the Constitution	Supremacy is completely rejected in cases where it affects the organisation of the judiciary
EU response	There was no public criticism; the decision was interpreted as a formal clarification of the boundaries of jurisdiction	Sharp criticism from the European Commission; initiation of proceedings under Article 258 of the Treaty on the Functioning of the European Union, blocking of funding, political escalation
Political overtones	The discussion was mainly of a technical and legal nature	The decision was made in the context of the actual politicisation of the Constitutional Tribunal

Source: developed by the authors based on the materials of the Constitutional Tribunal of Poland^{2,3}

Summarising the key aspects of the decisions of the Polish Constitutional Tribunal in Cases Nos. K 18/04 and K 3/21 allows clearly outlining the evolution and the consistency of the approach of Polish constitutional justice to the problem of the correlation between national and supranational law and order. Both decisions are based on the concept of preserving sovereignty within the limits provided for by the Constitution, and emphasise that the delegation of powers to the supranational level is not unconditional. The focus of both cases is the idea of limited integration, which is allowed only insofar as it does not contradict the internal constitutional order. This approach, despite its formal compatibility with the principle of constitutional identity, has put the Polish legal order in conflict with the fundamental principle of EU law – its supremacy and unified application throughout the Union. The result of such a doctrinal line was the weakening of the effectiveness of the European legal order in Poland, the growing legal uncertainty, the risk of fragmentation of the EU legal system and the creation of a precedent for other member states that can appeal to their own constitutional identity in order to restrict the operation of EU law.

R.D. Kelemen (2024) and D. Saracino (2024) interpreted the conflict between Poland and the European Union as a point of no return, arguing that this makes it impossible for the principle of solidarity to continue functioning within the Union. However, the analysis shows a different picture, because, despite the political tension, EU institutions continue to use alternative mechanisms of influence, in particular, the conditions for access to structural and recovery funds. The study revealed that financial instruments are increasingly being used as a means of political and legal pressure, which indicates the evolution of approaches to ensuring compliance with general norms. The reason for the differences in the interpretation of the situation may be to ignore the flexible nature of the EU legal regime, which can adapt to political challenges without completely dismantling key principles. The findings of this study complement the existing assessments, showing that this is not the collapse of the solidarity system, but the transformation of its tools in a new institutional context.

The legal implications for the implementation of European law in Poland are also critical. There are significant difficulties in transposing EU directives,

¹ Opinion of Advocate General Collins in Case No. C-204/21 "European Commission v. Republic of Poland". (2022, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CC0204&qid=1746628032991>.

² Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

³ Ibidem, 2021.

particularly in areas related to justice, migration policy, personal data protection, and environmental regulation. Due to systemic changes in the functioning of the Polish judicial system, in particular, the interference of the executive in the appointment processes of judges and the reform of disciplinary responsibility, the guarantees of independent proceedings were called into question, which led to a significant legal reaction from other member states. One of the significant consequences was the practice of individual domestic courts refusing to execute a European Arrest Warrant issued by Poland, given the risk of violating a person's right to a fair trial. For example, Case No. C-216/18 PPU¹, in which the Court of Justice of the European Union allowed the possibility of blocking the execution of the warrant based on the existence of systemic deficiencies in the domestic judicial system that create a real risk of violation of fundamental rights. The judicial practice of Ireland, Germany, the Netherlands, and Belgium further consolidated the approach to individual assessment of threats related to the lack of guarantees of judicial independence in Poland. This trend shows a deep crisis of mutual trust between the courts of member states, which is a fundamental element of the principle of mutual recognition within the European Union's space of freedom, security, and justice.

M. Kaiafa-Gbandi (2020) and J. Odermatt (2022) pointed to the lack of clear institutional boundaries for resolving conflicts of jurisdiction between national courts and the EU Court of Justice, considering this a threat to the stability of law enforcement in the European Union. The results of this study confirmed these comments, showing that there is legal uncertainty, in particular in the interpretation of fundamental constitutional norms. The analysis carried out also revealed that this uncertainty was often used by domestic courts to legitimise political decisions, which extends the problem beyond the purely legal sphere and includes political and social aspects. This suggests a significant politicisation of law enforcement, which undermines confidence in the independence of the judiciary and in the legal order as a whole. It was found that such use of legal uncertainty is a strategy that allows national authorities to achieve political goals through legal means. This process leads to increased risks to legal stability and is potentially dangerous for

the long-term development of the rule of law state. Therefore, it is important to find ways to create clearer institutional mechanisms that would ensure proper resolution of conflicts of jurisdiction without risking the rule of law in the EU.

The Polish constitutional and legal precedent related to the refusal to recognise the binding nature of the judgments of the Court of Justice of the European Union calls into question the stability of the implementation of the EU rule of law principle in the national legal orders of the member states. The EU member state, in an official form, by a decision of its body of constitutional jurisdiction, declared certain provisions of the constituent treaties incompatible with its own constitution, which called into question the very idea of legal integration within the Union. The decision of the Constitutional Court of Poland showed an attempt by the national body to review the legitimacy of the principle of primacy of European law, which is consolidated in the established body of judicial practice of the Court of Justice of the EU. This position revealed deep tension between the concept of national sovereignty in the constitutional and legal doctrine of individual states and the obligation to adhere to the unified legal system of the EU, which follows from the EU treaties. The Polish case can be considered as a serious challenge to the principle of legal integration, because it calls into question the mechanism of effective law enforcement on the territory of member states. This case is indicative of the analysis of the limits of permissible interpretation of national sovereignty in the context of the implementation of European norms. In contrast to previous separate decisions of national constitutional courts, for example, the Federal Constitutional Court of Germany in the PSPP Case² in 2020, which raised the question of the limits of delegated powers, the Polish position departs from the idea of constructive dialogue and actually denies the very possibility of supranational coercion. This is a qualitative difference that takes the Polish case beyond the established paradigm of correlation between the national and supranational legal order within the EU. Against this background, a comparative analysis of the approaches of other national constitutional courts to the principle of the rule of law of the EU is appropriate (Table 2), which helps to more clearly outline the exclusivity of the Polish case.

Table 2. Comparison of approaches of national constitutional courts to the rule of law of the EU (Poland, Germany, France, Italy)

Country	Judicial instance	Key case	Position on the rule of law of the EU	Defined limits/conditions for applying EU law
Poland	Constitutional Court	K 3/21 (2021)	Recognises the priority of the Polish Constitution over EU law	EU supremacy cannot contradict the principles of national sovereignty and democracy

¹ Judgment of the Court of Justice in Case No. C-216/18 PPU. (2018, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CA0216&qid=1746628167400>.

² Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany. (2020, May). Retrieved from https://www.bverfg.de/e/rs20200505_2bvr085915en.

Table 2, Continued

Country	Judicial instance	Key case	Position on the rule of law of the EU	Defined limits/conditions for applying EU law
Germany	Federal Constitutional Court	PSPP (2020)	Recognises, but under the condition of protecting fundamental rights	Intervention is possible if EU institutions go beyond their competence (<i>ultra vires</i>)
France	Constitutional Council	Décision 2004-505 DC	Recognises priority, but cannot restrict "constitutional identity"	The basic principles of the constitutional system are not subject to change due to EU law
Italy	Constitutional Court	Taricco (2018)	Recognises supremacy with the condition of compatibility with the basic principles of the Constitution	It is possible to block EU norms if they violate basic national principles

Source: created by the author based on Decision of the Constitutional Court of France No. 2004-505¹, Judgment of the Constitutional Court of the Republic of Italy No. 115², Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany³, Judgment of the Constitutional Tribunal of Poland No. K 3/21⁴

The above table shows that, despite general reservations about the limits of EU law, most Constitutional Courts of member states recognise its priority, provided that the fundamental principles of the national constitutional order are preserved. In the cases of Germany, France, and Italy, national courts declared their right to a final interpretation of the Constitution, but did not deny the very binding nature of EU Court decisions or declare the norms of EU constituent treaties invalid. The Polish approach, on the other hand, is qualitatively distinguished by the categorical denial of the jurisdiction of the EU Court of Justice and the refusal to recognise the universality of its decisions in the national legal order.

According to S. Baer *et al.* (2023), the consequence of decisions of the Constitutional Court of Poland that call into question the primacy of EU law is the growing fragmentation of the legal space of the Union and the risk of its gradual disintegration. The conclusions made by the researcher are partly relevant, since the investigation of the reactions of EU institutions and member states to the decision of the Constitutional Court of Poland conducted within the framework of this study showed that this process is not unambiguous or automatic. EU institutions are showing moderate restraint in trying to avoid an escalation of the conflict, while individual member states (Ireland) have taken a more critical position, directly condemning the actions of the Polish authorities. This indicates that the risk of legal disintegration largely depends not only on the jurisprudence of national courts, but also on political interaction between key EU actors. The findings complement previous research, highlighting that the adaptive capacity of EU institutions can slow down the destructive effects of judicial separatism through political balancing.

The legal and political implications of the Polish precedent go far beyond the domestic legal system and

affect the stability and integrity of the entire legal space of the European Union. In addition to direct violations of legal obligations, the actions of the Constitutional Court of Poland have created risks of imbalance between the legal order of the member states and the EU, calling into question the effectiveness of the rule of law as a fundamental principle of the Union. The situation has created a number of specific consequences – from the strengthening of monitoring mechanisms and legal responsibility to the political reaction of EU institutions and complications in interstate legal cooperation. The analysis of the legal and political consequences of the Polish precedent shows the development of new challenges for the stability of the legal space of the European Union. First of all, there is a steady trend towards the erosion of mutual trust between member states, which is a fundamental prerequisite for the functioning of joint legal mechanisms, in particular, in the field of mutual recognition of judicial decisions. The Polish precedent sets a dangerous example for other member states, which also records cases of political pressure on the judiciary or discussions around "constitutional identity" as grounds for restricting EU law. In this context, there is a real risk of a domino effect, in which individual countries can use the Polish model as an argument for politicising constitutional control, which, in turn, will call into question not only the implementation of EU law, but also the very idea of legal integration. The key trends identified based on the analysis of the consequences of the Polish case indicate a profound transformation of the relationship between the national legal order and the EU legal system. There is a need for a clear rethinking of the mechanisms for ensuring the rule of law within the European Union, in particular, through normalising the boundaries of interaction between national courts and the EU Court of Justice,

¹ Decision of the Constitutional Court of France No. 2004-505. (2004, November). Retrieved from <https://www.conseil-constitutionnel.fr/en/decision/2004/2004505DC.htm>.

² Judgment of the Constitutional Court of the Republic of Italy No. 115. (2018, May). Retrieved from https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_2018_115_EN.pdf.

³ Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany. (2020, May). Retrieved from https://www.bverfg.de/e/rs20200505_2bvr085915en.

⁴ Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittonioneuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

formalising standards for the independence of the judiciary, and strengthening the institutional responsibility of member states for compliance with the fundamental principles of the legal community.

P. Bárd (2021) and L.D. Spieker (2024) noted that the conflict between the Constitutional Court of Poland and the EU Court of Justice reflects deeper transformations in Polish constitutionalism, in particular, the subordination of the judicial branch to the executive branch. This study confirmed the researchers' general thesis about the weakening of the principle of separation of powers in Poland, but the above analysis shows a different and more detailed picture: a key role in changing the balance of power is played by party control over the process of selecting judges, which allows the ruling coalition to actually level judicial control. This is not consistent with the interpretation of the conflict as an exclusively legal problem, since it takes on a distinct political dimension and is used as a means of strengthening internal legitimacy. The conducted research allowed expanding the existing approaches, showing how legal conflict is transformed into a communicative strategy that legitimises the concentration of power in executive structures.

However, despite the obvious conflict, the Polish precedent actualises the need to rethink and update approaches to legal dialogue between national courts and the EU Court of Justice. Formally, the system of preliminary inquiry in accordance with Article 267 Treaty on the Functioning of the European Union¹. The Polish case showed that in the event of politicisation of constitutional control and erosion of the independence of the judiciary in a member state, this mechanism loses its ability to ensure the unity of law enforcement. This means that in the long run, there is a need to formalise the principles that would ensure the binding nature of EU Court decisions, regardless of the national constitutional context. Legally, this may mean the need to amend the Constituent treaties that would clearly define the limits of constitutional supervision in the context of European integration. At the level of legal doctrine, the Polish case emphasises the relevance of normalising the relationship between the sovereignty of a member state and its obligations within a single legal space. The constitutional identity of states, which is recognised and respected at the EU level, cannot be used as a legal basis for denying the fundamental principles of the functioning of the Union. The EU Court of Justice has repeatedly stressed^{2,3,4}, that the primacy of

EU law is a necessary condition for its effectiveness, and giving national courts the power to independently determine the limits of EU norms would lead to fragmentation of the legal space, which contradicts the very idea of integration. Consequently, the legal normalisation of relations between the national and European legal order requires not only declarative wording, but also effective procedural guarantees.

M. Bobek *et al.* (2023) and C.I. Nagy (2023) interpreted the conflict between the Constitutional Court of Poland and the EU Court of Justice through the prism of legal pluralism, recognising the possibility of the existence of several centres of constitutional authority in Europe. The above analysis showed a different picture, because in practice in the case of Poland, legal pluralism does not function as an instrument of balance or constructive dialogue between jurisdictions, but rather as a means of unilateral separation from the EU legal order. The study established that the appeal to pluralism is used by political actors to legitimise decisions of the Constitutional Court aimed at limiting the jurisdiction of European institutions. The reason for different interpretations may lie in the authorities' underestimation of the concept of legal pluralism of its potential for abuse in the context of politicised constitutional control. Thus, the statement about the equality of national and supranational constitutional authority seems debatable, since in the Polish context this approach does not promote legal interaction, but instead strengthens the institutional separation. C.Y. Matthes (2021) and E. Stark (2023) calls for reform of the mechanisms for protecting the rule of law in the European Union, pointing out the ineffectiveness of existing legal instruments in the context of the conflict with Poland. The study confirmed the researchers' general thesis, in particular, regarding the limited effectiveness of Article 7 of the EU Treaty⁵, which in practice is blocked due to the requirement of political consensus between member states. However, this analysis also showed that in addition to legal measures, financial conditions for access to EU funds and pressure from public opinion are becoming increasingly important. This expands the available knowledge, demonstrating that the effectiveness of protecting the rule of law requires an integrated approach that includes both legal instruments and political and economic mechanisms that can influence the behaviour of national governments in the multi-level European governance space.

¹ Treaty on the Functioning of the European Union. (2016, June). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>.

² Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L". (1964, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006>.

³ Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011>.

⁴ Judgment of the Court of Justice in Case No. 106/77 "Amministrazione delle Finanze dello Stato v. Simmenthal SpA. Reference for a Preliminary Ruling: Pretura di Susa – Italy". (1978, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61977CJ0106>.

⁵ Treaty on European Union. (1992, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT>.

In a broader context, the Polish case serves as an indicative indicator of the politicisation of constitutional control in the member states. The functioning of the Constitutional Court of Poland in 2020-2025 has been criticised by European institutions, and non-governmental organisations due to the loss of institutional independence and control by the executive branch. The legal analysis of the Polish case shows that the conflict with EU law is not only the result of doctrinal differences, but also the result of deeper institutional deformations that pose a threat to the stability of the legal system in the member state. The Polish case sets a legal precedent that forces us to review both the mechanisms for monitoring compliance with the rule of law and the ways to ensure the independence of national judicial bodies within the EU. This case actualises the need to form a common legal standard that would guarantee the coordinated application of EU law in all member states, regardless of the political context. The decision of the Constitutional Court of Poland regarding the priority of the National Constitution over EU law in specific areas has led to a serious aggravation of relations with European institutions, in particular the European Commission. The EU responded by launching a mechanism to protect the rule of law, and by suspending payments from recovery funds, which increased economic pressure on the government in Warsaw. However, the Polish government continues to insist on its own interpretation of the principle of sovereignty, supporting it with a political mandate obtained through elections. This points to differences in understanding the nature of European integration: between the federal logic of the EU common legal space and the intergovernmental logic of maintaining national control. In addition, the Polish precedent has already affected the positions of other countries, in particular, Hungary and Romania, which could potentially create a dangerous domino effect.

The European Court of Justice insists on the absolute primacy of EU law, but the lack of effective sanctions against states that systematically violate this principle reduces the effectiveness of this approach. This calls into question the EU's ability to ensure the same legal standards in the face of internal political fragmentation. In this context, the importance of proposals for reforming the EU's institutional mechanism is growing – in particular, the introduction of procedures that would allow a quick response to violations of the rule of law. The Polish case demonstrates that current instruments, in particular Article 7 of the EU Treaty¹, are politically limited and ineffective due to the requirement of unanimity among member states. In addition, the conflict between the Polish court and the EU Court of Justice revealed a deeper crisis of confidence in supranational institutions, which complicates the normal functioning of the single legal space.

Summarising, the Polish case reveals not only a lack of legal coherence between national and European courts, but also the weakness of existing mechanisms to guarantee the rule of law. This situation points to the need for an integrated approach that combines legal, institutional, and political tools to preserve the integrity of the EU legal order. To ensure stability and trust within the Union, it is necessary not only to respond to individual violations, but also to rethink the model of interaction between national sovereignty and supranational obligations. In the long run, the conflict between Poland and the EU may become an impetus for deeper institutional integration or, conversely, for fragmentation of the European legal space. Thus, the Polish case is not only a challenge for the EU, but also a critical test of its ability to adapt, consolidate and preserve fundamental values in a changing political environment.

Conclusions

In this study, a systematic legal analysis of the conflict between the principle of the rule of law of the European Union and the sovereignty of Member States was carried out on the example of decisions of the Constitutional Court of Poland. The Polish case was considered as a legal and political precedent that sharpened the institutional discussion about the limits of jurisdiction of the EU Court of Justice and the role of national constitutional bodies in ensuring the legal unity of the Union. The study confirmed that Polish practice calls into question the sustainability and continuity of the EU rule of law, undermines the integrity of the *acquis communautaire* and sets a dangerous precedent for selective interpretation and application of Union law by member states.

An analysis of judicial practice has shown that the EU Court of Justice invariably defends the enforcement of European law, including its unconditional application in national jurisdictions, regardless of internal constitutional provisions. But the Constitutional Court of Poland, relying on the doctrine of “constitutional identity” and national sovereignty, has repeatedly questioned the binding nature of EU Court decisions. As a result, a situation of legal dualism arose, in which the Polish courts found themselves in a conflict between European obligations and national requirements. This state of affairs demonstrates a violation of the principle of mutual loyalty and legal integration enshrined in Articles 4 and 19 of the Treaty on European Union. It was revealed that the institutional response from the EU authorities was aimed at activating the supervisory and sanctions mechanisms provided for in Article 7 of the TEU, including restricting access to EU funds, introducing conditional funding and initiating procedures for violation of obligations by a member state. These actions contributed to strengthening the EU's rule of

¹ Treaty on European Union. (1992, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT>.

law regulatory and procedural framework and revealed existing limitations on the Union's legal arsenal in the context of sovereign constitutional jurisdictions. Especially important is the trend towards the development of new standards of judicial independence and procedural control over the implementation of EU Court decisions in national legal systems.

The results obtained allowed conceptualising the Polish precedent as a manifestation of a deeper transformation of the EU legal architectonics, within which the relationship between supranational obligations and constitutional independence is being rethought. The Polish case is a critical marker of the crisis tension between regulatory integration and political decentralisation. The legal response of EU institutions to it has become a catalyst for revising the mechanisms of sanctions influence, strengthening monitoring procedures and enhancing the importance of the principle of loyal cooperation.

The problems of unification of doctrinal approaches to the correlation between EU law and national constitutionalism, formalisation of preventive mechanisms for avoiding jurisdictional conflicts, and improving the dialogue between national courts and the EU Court of Justice within the framework of constitutional pluralism remain promising areas of further research. Special attention should be paid to the study of how such conflicts affect the democratic legitimacy of the EU legal order as a whole.

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Conflict of Interest

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References

- [1] Baer, S., Kovacs, K., & Vogel, M. (2023). Constitutionalism Today: The Prospects of the European Constitutional Community. In K. Kovacs (Ed.), *The jurisprudence of particularism: National identity claims in Central Europe* (pp. 187-208). Oxford: Hart Publishing. doi: [10.5040/9781509960156.ch-008](https://doi.org/10.5040/9781509960156.ch-008).
- [2] Bárd, P. (2021). In courts we trust, or should we? Judicial independence as the precondition for the effectiveness of EU law. *European Law Journal*, 27(1-3), 185-210. doi: [10.1111/eulj.12425](https://doi.org/10.1111/eulj.12425).
- [3] Bobek, M., Bodnar, A., von Bogdandy, A., & Sonnevend, P. (2023). Transition 2.0. re-establishing constitutional democracy in EU Member States. In *Nomos. Vol. 320* (pp. 361-382). Baden-Baden: Nomos. doi: [10.5771/9783748914938](https://doi.org/10.5771/9783748914938).
- [4] Daminova, N. (2021). Rule of law vs. Poland and Hungary – an inconsistent approach? *Hungarian Journal of Legal Studies*, 60(3), 236-259. doi: [10.1556/2052.2019.00015](https://doi.org/10.1556/2052.2019.00015).
- [5] Deshko, L.M., & Boiko, V.S. (2024). Striking a balance: The interplay of CJEU rulings and international human rights obligation with national constitutional identities. *Scientific Bulletin of Uzhhorod National University*, 1(80), 124-129. doi: [10.24144/2307-3322.2023.80.1.17](https://doi.org/10.24144/2307-3322.2023.80.1.17).
- [6] Kaiafa-Gbandi, M. (2020). Addressing the problems of jurisdictional conflicts in criminal matters within the EU. *Eucrim*, 3, 209-213. doi: [10.30709/eucrim-2020-017](https://doi.org/10.30709/eucrim-2020-017).
- [7] Kelemen, R.D. (2024). Will the European Union escape its autocracy trap? *Journal of European Public Policy*, 32(2), 341-364. doi: [10.1080/13501763.2024.2314739](https://doi.org/10.1080/13501763.2024.2314739).
- [8] Konciewicz, T.T. (2022). From POLEXIT to E(U) EXIT?: Poland, European Union and beyond: The essay in constitutional pessimism. In *The rule of law as a universal value: Professor Krzysztof Wojtowicz's jubilee book* (pp. 597-618). Wrocław: Wrocław University. doi: [10.34616/145224](https://doi.org/10.34616/145224).
- [9] Kustra, A. (2022). European integration-ineffable aspiration or the object of concern? About ambiguity of Europe in the Polish constitutional imaginary. About ambiguity of Europe in the Polish constitutional imaginary. SSRN. doi: [10.2139/ssrn.4287385](https://doi.org/10.2139/ssrn.4287385).
- [10] Makushev, P.V., & Khridochkin, A.V. (2023). Actual problems of correlation and interaction of the European Union law system with the national legal systems of the Member States. *Scientific and Information Bulletin of the Ivano-Frankivsk University of Law named after King Danylo Halytskyi*, 2(15), 62-71. doi: [10.33098/2078-6670.2023.15.27.2.62-71](https://doi.org/10.33098/2078-6670.2023.15.27.2.62-71).
- [11] Matthes, C.Y. (2021). Safeguarding democracy and the rule of law by civil society actors? The case of Poland. In A. Lorenz & L.H. Anders (Eds.), *Illiberal trends and anti-EU politics in East Central Europe* (pp. 263-281). Cham: Palgrave Macmillan. doi: [10.1007/978-3-030-54674-8_11](https://doi.org/10.1007/978-3-030-54674-8_11).
- [12] Mulyavka, V.S. (2024). Factors of content formation in the definition and species characterization of sanctions in public international law. *Analytical and Comparative Jurisprudence*, 1, 714-718. doi: [10.24144/2788-6018.2024.01.126](https://doi.org/10.24144/2788-6018.2024.01.126).
- [13] Nagy, C.I. (2023). The rebellion of Constitutional courts and the normative character of European Union law. *International and Comparative Law Quarterly*, 73(1), 65-101. doi: [10.1017/S0020589323000519](https://doi.org/10.1017/S0020589323000519).

- [14] Nowak-Far, A. (2021). The rule of law framework in the European Union: Its rationale, origins, role and international ramifications. In A. von Bogdandy, P. Bogdanowicz, I. Canor, C. Grabenwarter, M. Taborowski & M. Schmidt (Eds.), *Defending checks and balances in EU Member States* (pp. 305-311). Berlin, Heidelberg: Springer. doi: [10.1007/978-3-662-62317-6_12](https://doi.org/10.1007/978-3-662-62317-6_12).
- [15] Odermatt, J. (2022). The Court of Justice of the European Union and international dispute settlement: Conflict, cooperation and coexistence. *Cambridge Yearbook of European Legal Studies*, 24, 88-110. doi: [10.1017/cel.2022.9](https://doi.org/10.1017/cel.2022.9).
- [16] Pech, L., Wachowiec, P., & Mazur, D. (2021). Poland's rule of law breakdown: A five-year assessment of EU's (in)action. *Hague Journal on the Rule of Law*, 13. doi: [10.1007/s40803-021-00151-9](https://doi.org/10.1007/s40803-021-00151-9).
- [17] Popelier, P., Gentile, G., & Van Zimmeren, E. (2021). Bridging the gap between facts and norms: Mutual trust, the European arrest warrant and the rule of law in an interdisciplinary context. *European Law Journal*, 27(1-3), 167-184. doi: [10.1111/eulj.12436](https://doi.org/10.1111/eulj.12436).
- [18] Poulou, K.A. (2024). Rule of law (crisis) and the principle of mutual trust. In *The rule of law under threat* (pp. 132-153). London: Edward Elgar Publishing. doi: [10.4337/9781035330690.00012](https://doi.org/10.4337/9781035330690.00012).
- [19] Saracino, D. (2024). Understanding solidarity in the European Union: An analytical framework. *Theory and Society*, 53, 1093-1118. doi: [10.1007/s11186-024-09566-3](https://doi.org/10.1007/s11186-024-09566-3).
- [20] Scheppele, K.L. (2023). *The treaties without a guardian: The European Commission and the rule of law*. Retrieved from <https://cjel.law.columbia.edu/files/2023/04/9.-SCHEPPELE-PROOF.pdf>.
- [21] Serovanets, M. (2022). Is "Polexit" next? The Constitutional Tribunal of Poland on the Status of EU Law. *Ukrainian Journal of Constitutional Law*, 4(25), 3-12. doi: [10.30970/jcl.4.2022.1](https://doi.org/10.30970/jcl.4.2022.1).
- [22] Sołtys, A. (2023). The Court of Justice of the European Union in the case law of the Polish Constitutional Court: The current breakdown in view of Polish constitutional jurisprudence pre-2016. *Hague Journal on the Rule of Law*, 15, 19-49. doi: [10.1007/s40803-022-00186-6](https://doi.org/10.1007/s40803-022-00186-6).
- [23] Spieker, L.D. (2024). The lighthouse of EU Law shines on the Polish Constitutional Tribunal. *Verfassungsblog*. doi: [10.59704/dc70a0d68ada4d38](https://doi.org/10.59704/dc70a0d68ada4d38).
- [24] Stark, E. (2023). *Rule of Law infringements in Hungary and Poland and the EU institutions safeguarding processes. Between years 2017-2022*. Retrieved from <http://lup.lub.lu.se/student-papers/record/9105523>.
- [25] Voronov, M., & Voronova, I. (2022). Problems of constitutional law of the European Union. *The Journal of V.N. Karazin Kharkiv National University. Series Law*, 34, 37-46. doi: [10.26565/2075-1834-2022-34-04](https://doi.org/10.26565/2075-1834-2022-34-04).
- [26] Yakoviuk, I.V., Asiryanyan, S.R., & Lazurenko, A.V. (2022). Legal conflict between the EU and the Republic of Poland regarding the Polish judicial reform. *Law and Innovative Society*, 2(17), 71-77. doi: [10.37772/2309-9275-2021-2\(17\)-10](https://doi.org/10.37772/2309-9275-2021-2(17)-10).
- [27] Yukhymyuk, O.M. (2022). EU law and its principles in the decisions of the Constitutional Tribunal of the Republic of Poland before accession to the EU: Experience for Ukraine. *New Ukrainian Law*, 2, 215-221. doi: [10.51989/NUL.2022.6.2.33](https://doi.org/10.51989/NUL.2022.6.2.33).

Конфлікт між правом ЄС і національним суверенітетом: аналіз рішень Конституційного Суду Польщі в контексті верховенства права в Європейському Союзі

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Анотація

Актуальність дослідження зумовлена загостренням суперечностей між принципом верховенства права Європейського Союзу й тенденціями розвитку національного правового суверенітету в державах-членах, що загрожує цілісності спільного правового простору Європейського Союзу. Метою дослідження було вивчення правових наслідків рішень Конституційного Суду Польщі щодо взаємодії національного суверенітету й верховенства права в Європейському Союзі, а також оцінка їх впливу на правову інтеграцію в межах Європейського Союзу. У дослідженні використано методи правового аналізу, порівняльного аналізу, а також методи тлумачення судових рішень, які дають змогу оцінити правові наслідки рішень Конституційного Суду Польщі та їх вплив на взаємодію національного та європейського права. У межах дослідження з'ясовано, що рішення Конституційного Суду Польщі щодо верховенства національної конституції над правом Європейського Союзу призвело до правової колізії, яка унеможлиблює повноцінне функціонування верховенства права Європейського Союзу. З'ясовано, що така позиція створювала правові складнощі для національних судів у застосуванні рішень Суду ЄС й імплементації права Союзу. З'ясовано, що реакція інституцій Європейського Союзу, зокрема Суду ЄС і Європейської комісії, ґрунтувалася на механізмах контролю за дотриманням верховенства права, однак була обмеженою в умовах національного спротиву. Доведено, що приклад Польщі продемонстрував процес політизації конституційного контролю, який ставить під сумнів незалежність національних судових органів у державах – членах ЄС. Брак єдиного механізму вирішення конфлікту між національним суверенітетом і правовою інтеграцією спричиняє системні ризики для стабільності спільного правового простору Європейського Союзу. Здійснений аналіз засвідчив необхідність нормативного унормування співвідношення національного конституційного контролю з правовими зобов'язаннями держав-членів у межах єдиного правового простору. Практичне значення полягає в розробленні засад для вдосконалення механізмів юридичної відповідальності держав-членів у разі відхилення від принципу верховенства права в Союзі

Ключові слова:

інститут; юрисдикція; плюралізм; нормативна неузгодженість; суверенітет