

# Summary

## **Protection of a Constitutional Fundamental Rights Standard Higher than European Union's and of Polish Constitutional Identity.**

Constitutional Tribunal  
and Court of Justice of the European Union:  
From a Hierarchical Towards a Sequential Model of Adjudication

The book attempts to investigate and propose a solution aimed at minimizing potential conflict between the European Union's fundamental rights protection standards and constitutional ones, when the latter are higher, but obligations stemming from EU law and Polish membership of the community demand limiting them. The author proposes a braver application of the referral for preliminary judgment procedure to the Court of Justice of the European Union (CJEU) by the Polish Constitutional Court (CC). In such a referral, the CC would invoke art. 4(2) TEU and the obligation expressed within it requiring the EU to respect the constitutional identity of its member states in connection with art. 53 ChFR, as well as in light of other EU law and domestic (constitutional) law provisions in situations in which EU law would not compromise constitutional standards as such, but standards belonging to Polish constitutional identity.

The dissertation attempts to develop a possible cooperative mechanism for arriving at a conclusion regarding which standards should preponderate. The aim is also to present the advantages of such a mechanism in comparison to an isolationist approach aligning constitutional identity protection with the ultra vires doctrine and putting it on another level in the well-known sovereignty conundrum. Moreover, the book also seeks to balance the competences of the CC and the CJEU in that endeavour, as well as trying to show convincing arguments for this and make them cooperate and mutually respect their competences and positions in their respective legal systems through a sequence – not a hierarchy – of adjudication.

This all leads to the development of a sequential and non-hierarchical mechanism of adjudication, within which the “last word” dispute is replaced with an attempt at reaching judgments that are as satisfying as possible for both the EU and domestic legal contexts, and which are commonly agreed on by the CJEU and CC. Within this

procedure, the gravity shifts from the “last word” court to the “first word”, provided that such a judicial stand and the reasoning contained in it meets certain requirements, which are also highlighted in the book.

The book does not favour any of the different philosophical and theoretical approaches to EU and European constitutionalism. It does not support constitutional pluralism in any of its denominations nor constitutional patriotism in any of its denominations or any other EU constitutional theory. It offers a cooperative mechanism which may, in the eyes of the author, limit the collision zone between EU and domestic law without the need to subsume any of the theoretical approaches. In that sense, it is focused on avoiding conflict and resulting from this necessity to establish certain hierarchies before it emerges. The book’s aim is thus more pragmatic than theoretical.

The book is divided into an Introduction and Concluding Remarks, with four chapters in between. The first of these chapters analyses the scope of application of EU fundamental rights to the Member States, according to the EU Charter of Fundamental Rights and the CJEU’s jurisprudence. It shows how the application of EU fundamental rights is, in the eyes of the CJEU, oriented around the principle of the effectiveness of EU law and how it spreads the EU standard. The second chapter shows Polish courts’ practice in that regard. It criticizes Polish courts’ current, rather unreflective approach to that issue and shows the dangers that stem from this fact. Finally, it contains suggestions as to how the courts should improve. The third chapter shows the status of EU law in Poland and the CC’s approach to it, which does not conform to the strict reading of the principles of autonomy, primacy, unity and effectiveness of EU law that the CJEU promotes. It also explores the CC’s claim to preserve scrutiny competence, albeit limited, also over EU law. The fourth chapter develops the aforementioned sequential mechanism of cooperation of the CJEU and the CC in assuring respect of domestic fundamental rights protection standards higher than the EU’s, which belong to the constitutional identity of the state, as well as ensuring the highest respect possible for the primacy, unity and effectiveness of EU law. It also attempts to show that applying this mechanism might bring effects that are beneficial for European integration. It does so against the background of some other Member States’ constitutional courts’ jurisprudential developments, especially those (like the German Federal Constitutional Court or the Italian one) directly engaging the CJEU, which do not share the approach presented in the book and thus lead to losing the cooperative benefits which the sequential adjudication mechanism proposed in the book offers.