

The obligation to interpret national law in accordance with the European Union law in the jurisprudence of Polish Constitutional Court – focus on limits

ABSTRACT

The Polish Constitutional Court (PCC) has recognized the need of a constitutional dialogue with the Court of Justice of the European Union (CJEU). In view of the PCC's case law one of the crucial means of effecting such a dialogue is conforming interpretation, i.e. the interpretation of national law, including constitutional law, in accordance with EU law. It is therefore the limits of conforming interpretation, as established in the case law of the PCC, that to a high degree determine the effectiveness of the dialogue between the two Courts. This article discusses the PCC's position on the limits of the obligation of conforming interpretation – formulated in general terms and on the basis of specific examples in which the issue of limits of conforming interpretation of constitutional norms was crucial for decisions taken by the PCC. The article accentuates the significance of the principle of preserving sovereignty in the European integration process, as elaborated in the jurisprudence of the PCC, for establishing the limits of conforming interpretation in the PCC's case law.

KEY WORDS: Polish Constitutional Court, conforming interpretation, interpretation favorable to the European integration, interpretation “sympathetic to European law”, the supremacy of the Polish Constitution over EU law, constitutional dialogue

Introduction

Polish Constitutional Court (hereinafter the “PCC”) has firmly recognized the need of constitutional dialogue with the Court of Justice of the European Union (hereinafter the “CJEU”). It stems from that jurisprudence that one of the crucial means of effecting such a dialogue is conforming interpretation, i.e. the interpretation of national law, including constitutional law, in accordance with Union law. Those two observations imply that it is the limits of conforming interpretation, as established in the case law of the PCC, that to a high extent determine the effectiveness of the dialogue between the two Courts. The limits of (the obligation of) conforming interpretation in the jurisprudence of the PCC shall be the subject of this article. The

structure thereof will be as follows: the PCC's position on the limits of the obligation of conforming interpretation – formulated in general terms – shall be reviewed (point II); part of this review will be the PCC's jurisprudence on the obligation of conforming interpretation perceived as an instrument of dialogue between the PCC and the CJEU (point III). This presentation of the jurisprudence of the PCC shall be supplemented by the analysis of the limits of the obligation of conforming interpretation on the basis of specific examples, in which the issue of limits of conforming interpretation of constitutional norms was crucial for decisions taken by the PCC (point IV). This analysis shall be preceded by some general comments on the obligation of conforming interpretation in the jurisprudence of the CJEU and the PCC (point I) and closed with the conclusions.

I. The obligation of conforming interpretation in the jurisprudence of the CJEU and the PCC

The obligation to interpret national law in conformity with European Union law was shaped in the case law of the CJEU as one of the instruments for ensuring the effectiveness of Union law in the national legal systems – beside the principle of direct effect, supremacy and Member States liability for infringement of Union law. In the light of this obligation, the courts of the Member States (and other authorities) are obliged to interpret national law in conformity with European Union law, its content and purpose¹. National courts are required to do whatever lies within their jurisdiction, so far as possible, applying the interpretative methods recognized by domestic law, in order to give full effect to EU law². The obligation of conforming interpretation concerns the whole body of domestic law; it is at the same time closely linked to the scope of EU law, in other words – applies only to matters which are subject to regulation of European Union law. In its case law the CJEU sets boundaries to such understood duty. In particular, the conforming interpretation can not lead to an interpretation of national law that is *contra legem*³.

¹ Cf., among others, the CJEU's judgments in cases: *von Colson* (14/83), para. 26; *Murphy* (157/86), para. 11; *Marleasing* (C-106/89), para. 8; *Faccini Dori* (C-91/92), para. 26; *Pfeiffer* (C-397/01–C-403/01), para. 113; *Pupino* (C-105/03), para. 43; *Adeneler* (C-212/04), para. 108; *Angelidaki* (C-378/07–C-380/07), para. 197; *Mono Car Styling* (C-12/08), para. 60; *Küçükdeveci* (C-555/07), para. 48; *Dominguez* (C-282/10), para. 24; *Amia* (C-94/11), para. 28; *AMS* (C-176/12), para. 38; *OSA* (C-351/12), para. 44; *Árpád Kásler* (C-26/13), para. 64.

² Cf., among others, the CJEU's judgments in cases: *Pfeiffer* (C-397/01–C-403/01), para. 118–119; *Impact* (C-268/06), para. 101; *Adeneler* (C-212/04), para. 111; *Angelidaki* (C-378/07–C-380/07), para. 200; *Mono Car Styling* (C-12/08), para. 64; *Küçükdeveci* (C-555/07), para. 48; *Dominguez* (C-282/10), para. 27; *Amia* (C-94/11), para. 29.

³ Cf., among others, the CJEU's judgments in cases: *Pupino* (C-105/03), para. 47; *Adeneler* (C-212/04), para. 110; *Impact* (C-268/06), para. 100; *Angelidaki* (C-378/07–C-380/07), para. 199;

The obligation of conforming interpretation (the interpretation of domestic law in accordance with European Union law) has been accepted by the PCC. Still in the pre-accession period – the PCC established principle of interpreting domestic law in a manner “sympathetic to European law”, related to the constitutional principle of favourable predisposition towards the process of European integration⁴. In the post-accession period – within a new legislative context – the PCC, in a series of judgments, confirmed the recognition of the obligation of conforming interpretation, most recently in judgment P 40/13⁵. This obligation was reflected in the principle of “mutually friendly interpretation and a cooperative application”⁶. The legal basis for conforming interpretation the PCC derived both from the Polish Constitution (from the Preamble, Art. 9 and Art. 91), as well as from EU law (Art. 10 of the EC Treaty (now replaced by Art. 4 paragraph 3 TEU))⁷.

In practice one can identify a number of examples of decisions in which the PCC referred – in the process of conforming interpretation – to the jurisprudence of the CJEU⁸.

II. The PCC’s position on the limits of the obligation of conforming interpretation – formulated in general terms

For the effectiveness of the obligation of conforming interpretation, in particularly as the means of the constitutional dialogue between the CJEU and the PCC, the crucial issue is the limits of such obligation – as established in the jurisprudence of the PCC. The comments in this respect should be preceded by one important observation: the obligation of conforming interpretation performed within the framework of constitutional control can refer both to the subject of control (rules of national law being assessed from the point of view of its compliance with the Constitution), as well as standard of control (constitutional regulation which is the point of reference for such an evaluation). The analysis presented in this article refers to the limits of

Mono Car Styling (C-12/08), para. 61; *Dominguez* (C-282/10), para. 25; *AMS* (C-176/12), para. 39; *OSA* (C-351/12), para. 45; *Arpád Káslér* (C-26/13), para. 65.

⁴ Cf. PCC Judgment of 28 January 2003, Ref. No. K 2/02, OTK 2003, series A, No. 1, item 4; Judgment of 27 May 2003, Ref. No. K 11/03, OTK 2003, series A, No. 5, item 43; Judgment of 21 April 2004, Ref. No. K 33/03, OTK 2004, series A, No. 4, item. 31.

⁵ Judgment of 21 April 2015, Ref. No. P 40/13, OTK 2015, series A, No. 4, item 48.

⁶ Cf. PCC Judgment of 11 May 2005, Ref. No. K 18/04, OTK 2005, series A, No. 5, item. 49 (“judgment on the Accession Treaty (K 18/04)”).

⁷ Cf. PCC Judgment of 2 July 2007, Ref. No. K 41/05, OTK 2007, series A, No. 7, item 72; Judgment of 7 November 2007, Ref. No. K 18/06, OTK 2007, series A, No. 10, item 122 and the cases referred therein.

⁸ Cf., among others, PCC Judgment of 2 July 2007, Ref. No. K 41/05, OTK 2007, series A, No. 7, item 72 and Judgment of 21 April 2015, Ref. No. P 40/13, OTK 2015, series A, No. 4, item 48.

the obligation of conforming interpretation – with regard to the interpretation of the norms of the Constitution.

The PCC's position as to the limits of the obligation of conforming interpretation – with regard to the interpretation of the norms of the Constitution – in general terms has been formulated in the judgment on the Accession Treaty (K 18/04). The position presented there was subsequently confirmed by the PCC in its judgment on the Treaty of Lisbon (K 32/09)⁹.

In the judgment on the Accession Treaty (K 18/04) the PCC stated: “The standards of the Constitution in respect to the rights and freedoms set the minimum and the absolute threshold that can not be reduced or called into question as a result of the entering into force of EU regulations. The Constitution plays in this regard its role as a guarantee for the protection of rights and freedoms clearly defined in it, and in relation to all entities active in the sphere of its application. **Interpretation “sympathetic to European law” has its limits. In no circumstances it may lead to results contrary to the clear wording of constitutional norms and irreconcilable with the minimum guarantee functions realized by the Constitution.** The Constitutional Court therefore does not accept the possibility of challenging the binding force of a constitutional norm by the very fact of an introduction to the system of European law of the Community law regulations contrary to such norm” [Emphasis added].

In the judgment on the Treaty of Lisbon (K 32/09) – characteristically, in section 2.2 entitled “Membership in the EU and sovereignty of Poland. The principle of preserving sovereignty in the European integration process” – the PCC said: “Ruling on the request requires taking into account both **the principle of preserving sovereignty in the European integration process and the principle of favourable predisposition towards the process of European integration and the cooperation between States** [...]. From the point of view of that principle, reconstructing a higher-level norm, in the light of which the assessment of constitutionality is carried out, one should not only refer to the text of the Constitution, but also – to the extent the said text refers to the terms, concepts and principles present in the EU law – one should refer to those particular meanings [...]. **However, an interpretation favorable to the European law in no circumstances may lead to «results contrary to the clear wording of constitutional norms and irreconcilable with the minimum guarantee functions realized by the Constitution»** (the statement of reasons for the judgment in the case K18/04” [Emphasis added]. The reference to the judgment on

⁹ PCC Judgment of 24 November 2010, Ref. No. K 32/09, OTK 2010, series A, No. 9, item 108 (“judgment on the Treaty of Lisbon (K 32/09)”).

the Accession Treaty (C 18/04) and limits to interpretation “sympathetic to European law” indicated therein has also been included in the judgment SK 45/09¹⁰.

In the light of such an approach to the limits of conforming interpretation of constitutional norms the following conclusions can be drawn. Firstly, it can be argued that the PCC has emphasized the connection between “clear wording” of constitutional regulation and the guarantee function of that regulation – that function, as it seems, essentially determines the limits of conforming interpretation in respect to the norms of the Constitution. It should be noted that in the doctrine it was suggested that the quoted passage of the judgment on the Accession Treaty (K 18/04) could be read as the acceptance by the PCC of the primacy of directives of linguistic interpretation¹¹. The assessment presented in this article complements such an approach, emphasizing that what has been essential for the PCC is a connection between the linguistic meaning of the constitutional regulation and the guarantee function performed by that regulation¹². This fact seems to be of fundamental importance for establishing limits of conforming interpretation in the jurisprudence of the PCC. Since, as can be argued, such an approach of the PCC represents deliberative reasoning in determining the linguistic border of interpretation. General position of the PCC formulated in the judgment on the Accession Treaty (K 18/04) and reaffirmed in the judgment on the Treaty of Lisbon (K 32/09) justifies therefore the expectation that the limits of conforming interpretation in the jurisprudence of the PCC will be determined not only by reference to semantic meanings of constitutional norms being subject to interpretation, but also by taking into account the guarantee function of these regulations. This, in turn, in specific cases before the PCC, provides an opportunity to determine the limits of conforming interpretation of constitutional norms by weighing the values – which enables the realization of the constitutional dialogue, the need whereof the PCC has recognized and accentuated.

The analysis of the above quoted judgments of the PCC leads to further conclusions. In particular, it stems from the position adopted by the PCC that a conforming interpretation may not lead to the implementation of the principle of primacy of EU law in relation to the norm of the Constitution. That – as is clear in view of the judgment on the Treaty of Lisbon (K 32/09) – is justified in light of the principle of preserving sovereignty in the European integration process. It should be emphasized that this conclusion is confirmed by that part of the

¹⁰ PCC Judgment of 16 November 2011, Ref. No. SK 45/09, OTK 2011, series A, No. 9, item. 97.

¹¹ Cf. S. Biernat, *Annotation of the Constitutional Court judgment dated 11.5.2005, K 18/04*, “Kwartalnik Prawa Publicznego”, 2005, No. 4, p. 192.

¹² In this regard, the particular attention can be drawn to the conjunction “and” contained in the above-highlighted passages of cited judgments: “results contrary to the clear wording of constitutional norms **and** irreconcilable with the minimum guarantee functions realized by the Constitution” [Emphasis added].

judgment on the Treaty of Lisbon (K 32/09), in which the PCC referred to the delegation of powers. The PCC stated clearly that “transfer of powers does not make the possibility to change the Constitution by way of interpretation favorable to the European integration”¹³.

In light of these findings it can be reasoned that the limits of the obligation of conforming interpretation with respect to the norms of the Constitution in the jurisprudence of the PCC is determined by guarantee function realized by the Polish Constitution, or – more broadly – the need to preserve the identity of the Constitution. In other words, it can be argued that, in the jurisprudence of the PCC, interpretation *contra legem* as the criterion for determining the limits of the obligation of conforming interpretation¹⁴ of the norms of the Constitution is such an interpretation, which would be contrary to the minimum guarantee function performed by the Polish Constitution, or – more broadly – such an interpretation which would violate the identity of the Constitution¹⁵.

In such a context, coherent and consistent seem those objections of the PCC which have been formulated with regard to the interpretation of European Union law made by the CJEU and with regard to the significance of the CJEU’s decisions issued in result of (potential) preliminary questions of the PCC. Recognizing the role of the CJEU for the interpretation of EU law and declaring openness for cooperation with the CJEU within the framework of the preliminary ruling procedure, the PCC expressed at the same time its reservations as to the limits of possible interference of EU law with the domestic law¹⁶. Bearing in mind those reservations, the position of the PCC with regard to the limits of conforming interpretation, as presented above,

¹³ Cf. PCC judgment on the Treaty of Lisbon (K 32/09).

¹⁴ As has been noted above, according to the CJEU, the obligation of conforming interpretation has its limits. In particular, the conforming interpretation can not lead to an interpretation of national law that is *contra legem*. Cf. the CJEU’s judgments referred to in note 3 above.

¹⁵ With regard to what constitutes an “identity of the constitution”, the PCC ruled in detail in its judgment on the Treaty of Lisbon (K 32/09). Having referred to the views presented in the doctrine of constitutional law, the PCC stated in that judgment that the identity of the constitution is determined by powers which are not transferable and by the same reflect the values on which the Constitution is based. The PCC specified at the same time that “[r]egardless of the difficulties related to setting a detailed catalogue of inalienable competences, the following should be included among the matters under the complete prohibition of conferral: decisions specifying the fundamental principles of the Constitution and decisions concerning the rights of the individual which determine the identity of the state, including, in particular, the requirement of protection of human dignity and constitutional rights, the principle of statehood, the principle of democratic governance, the principle of a state ruled by law, the principle of social justice, the principle of subsidiarity, as well as the requirement of ensuring better implementation of constitutional values and the prohibition to confer the power to amend the Constitution and the competence to determine competences”.

¹⁶ In the judgment on the Accession Treaty (K 18/04) the PCC said: “If The Constitutional Court decided to request a preliminary ruling [...] concerning the validity or content of the act (provision) of Community law, it [...] shall do so [...] only in cases in which **in compliance with the Constitution** it would apply Community law”. Such reservations leads to the conclusion that judgment of the CJEU

seem to be consistent and coherent – one can understand it in such a way that the PCC has not allowed the possibility of violation of the identity of the Constitution by way of “interpretation favorable to the European integration”¹⁷.

III. The obligation of conforming interpretation perceived as an instrument of the dialogue between the PCC and the CJEU

It should be emphasized that the obligation of conforming interpretation – being subject to such limitations determined by the PCC – has been seen in the jurisprudence of the PCC as an instrument of dialogue between the PCC and the CJEU in the context of complex relationships in which remain national and EU legal systems. In the judgment on the Accession Treaty (K 18/04) the PCC said: “If [...] the future evolution of Community law has led to a collision between the values on which the Constitution is based and those contained in Community law, a collision impossible to be solved in a way of favorable to Community law interpretation of the Constitution, only then one should consider either amendment to the Constitution or withdrawal from the European Union. In the Polish territory there exist legal subsystems, binding at the same time, coming from various centers of legislation. They should coexist on the basis of a mutually friendly interpretation and a cooperative application”. One should recall in this context the position the PCC has taken in respect of the interpretation made by the CJEU. According to the PCC, the interpretation of the CJEU should remain within the powers delegated by the Member States to the EU and should be based on the assumption of mutual loyalty between the EU institutions and Member States¹⁸. In view of the PCC, “this assumption generates – on behalf of the Court of Justice – the duty of favor for national legal systems, on behalf of the Member States – the duty of the highest standard of respect for Community norms”¹⁹.

Importantly, the claim of the PCC referring to “coexistence of legal subsystems” and the need (requirement) of their “mutually friendly interpretation and a cooperative application” the PCC repeated in its judgment on the Treaty of Lisbon (K 32/09). Clearly pointed out at the same time that its position formulated in

issued in result of the preliminary procedure can not – according to the PCC – lead to a breach of the principle of the supremacy of the Constitution.

¹⁷ As to the “identity of the Constitution” in context of “interpretation favorable to the European Union law” cf. M. Laskowska, M. Taborowski, *Obowiązek wykładni przyjaznej prawu Unii Europejskiej – między otwartością na proces integracji a ochroną tożsamości*, [in:] *Prawo Unii Europejskiej a prawo konstytucyjne państw członkowskich*, S. Dudzik, N. Półtorak (ed.), Warszawa 2013, p. 79 and subsequent.

¹⁸ Cf. judgment on the Accession Treaty (K 18/04), point 10.2.

¹⁹ Cf. judgment on the Accession Treaty (K 18/04), point 10.2.

judgment K 18/04 remains valid regardless of the changes that have occurred in European primary law. References to “mutually friendly interpretation and a cooperative application” as basis for coexistence of legal subsystems derived from various legislation centers were also included in the PCC’s judgment in case SK 45/09. The PCC, consistently to its previous position, pointed out there that “any contradictions should be eliminated using interpretation respecting the relative autonomy of European law and national law”.

Constitutional dialogue between the PCC and the CJEU – from the point of view of the PCC – has been therefore conditioned upon mutual “loyalty” and openness to the other, equally binding, legal system. What is important, in light of the case law of the PCC such dialogue is enabled and conditioned upon the axiological consistency (identity) of both systems: the constitutional and European Union’s²⁰.

It is worth noting that a possible conflict of EU law and the Constitution, the PCC has perceived as a conflict of values – conforming interpretation appears then as an instrument which serves its avoidance. In its judgment on the Accession Treaty (K 18/04) the PCC said: “If [...] the future evolution of Community law has led to a collision between the values on which the Constitution is based and those contained in Community law, a collision impossible to be solved in a way of favorable to Community law interpretation of the Constitution, only then one should consider either amendment to the Constitution or withdrawal from the European Union”. In the light of such a position the conforming interpretation appears as an instrument which serves to ensure the axiological consistency (identity) of both legal systems: the constitutional and European Union’s²¹.

This instrument has however its limits: in view of “coexistence of legal subsystems” derived from various legislation centers it can be used only with respect for the “relative autonomy of European law and national law”.

²⁰ Cf. PCC judgments: on the Accession Treaty (K 18/04), on the Treaty of Lisbon (K 32/09) and Judgment of 16 November 2011, Ref. No. SK 45/09, OTK 2011, series A, No. 9, item. 97. In the judgment on the Accession Treaty (K 18/04) the PCC stated: “The Constitution of the Republic of Poland and Community law are based on the same shared values defining the nature of the democratic state, rule of law and the catalog and content of fundamental rights. [...] This fact significantly simplifies mutual application and mutually friendly interpretation of national and Community law”. That was confirmed in the PCC’s judgment on the Lisbon Treaty (K 32/09) where the PCC said: “The values being expressed in the Constitution and the Treaty of Lisbon determine the axiological identity of Poland and the European Union” and in the PCC judgment in case SK 45/09, where the PCC appealed to “the similarity of the values expressed in the Constitution and the treaties” and “substantial axiological convergence of Polish and EU law”.

²¹ Cf. the judgments cited above.

IV. The PCC's position on the limits of the obligation of conforming interpretation – application in particular cases

The above comments outlined the position of the PCC with regard to the limits of conforming interpretation of constitutional norms – where such position was formulated in general and abstract terms. It is worth supplementing this picture by providing specific examples, in which the issue of limits of conforming interpretation of constitutional norms was crucial for decisions taken by the PCC.

The important judgment in this respect is the PCC's decision in case P 1/05 (judgment on the European arrest warrant (EAW))²². The controversy in the doctrine has been caused by the position of the PCC, according to which the institution of “surrender” on the basis of a European arrest warrant has been perceived as “extradition” within the meaning of the Constitution. In particular, such a position of the PCC met with criticism which pointed out that the PCC did not take into account the preamble of the Framework Decision on EAW, which indicated that the European arrest warrant is a new institution of EU law which differs from extradition and which constitutes the next stage in the development of judicial cooperation within the EU²³.

Alternatively, however, it can be argued that the PCC's judgment should be read in such a way that the PCC was considering the qualification of ENA adopted on the basis of EU law²⁴, however, did not proceed with the conforming interpretation of the term “extradition” included in the constitutional provisions, due to the guarantee functions performed by the constitutional norms²⁵. In other words, it can be argued that in the EAW judgment it was the limits of conforming interpretation of the norms of the Constitution, as perceived by the PCC, that had a crucial significance for deciding the case. These limits, from the point of view of the PCC, were determined

²² PCC Judgment of 27 April 2005, Ref. No. P 1/05, OTK 2005, series A, No. 4, item 42.

²³ Cf. W. Czapliński, *Annotation of the Constitutional Court judgment dated 27 April 2005, P 1/05*, “Państwo i Prawo”, 2005, No. 9, pp. 108–109. Cf. also the opinion of Advocate General Ruiz-Jarabo Colomer presented in case *Advocaten voor de Wereld VZW* (C-303/05), para. 38–47.

²⁴ It should be noted at the same time that in the doctrine and jurisprudence the issue of qualification of the EAW was not clear. Cf. summary of views in this respect referred to in the opinion of Advocate General Ruiz-Jarabo Colomer, presented in case *Advocaten voor de Wereld VZW* (C-303/05), para. 38–39.

²⁵ Cf. PCC Judgment of 27 April 2005, Ref. No. P 1/05, OTK 2005, series A, No. 4, item 42: “Therefore, the conclusion is justified (*argumentum a minori ad maius*) that as the constitutional lawmaker by prohibiting extradition of a Polish citizen sought to rule out the possibility of his/her being surrendered to a foreign state for the purposes of conducting criminal proceedings against him/her or of serving punishment, to which he/she was convicted, by the procedure of extradition regulated by statute and by treaty, so the same prohibition applies even more to surrender based on the EAW, which is realized for the same purpose (i.e. is essentially identical) and is subject to a more painful regime”.

by the guarantee function of Art. 55 paragraph 1 of the Constitution²⁶. As a result, the PCC gave primacy to guarantee functions of the constitutional norms over the effectiveness of EU law, thus recognizing a case of conflict between EU law and the Constitution.

Important from the point of view of the discussed limits of conforming interpretation of constitutional norms is the PCC's judgment in case Kp 1/09²⁷. It can in fact be treated it as an example of the PCC's ruling, in which the assessment (reconstruction) of the guarantee function of the constitutional norms made by the PCC has raised substantial controversies.

The PCC ruled that the regulation of the Act on the organization of the fish market, to the extent that authorizes the Minister responsible for fisheries, to identify the "other place of first sale" of fish species whose resources require particular protection or increased supervision, is incompatible with Article 22 of the Polish Constitution and the principle of the specificity of legal provisions resulting from Article 2 of the Constitution. The ruling on the unconstitutionality stemmed from the PCC's assessment that the statutory authorization for the Minister is blanket. The statutory provisions did not regulated the "other place of first sale" because all the elements (features) of this category were left to be determined by the Minister. This violated, according to the PCC, the requirement that the economic freedom can be limited "only by statute" (Article 22 of the Constitution) as well as the requirement of the specificity of legal provisions. According to the PCC, all relevant requirements of the formal restrictions of economic freedom should be included in the statute.

In this respect, it can be argued that the PCC referred to guarantee functions of the constitutional provisions too formalistically – failing to recognize that in the context of co-existence, in the discussed area, of Polish and European regulations such guarantee functions should be read anew. This observation was succinctly captured in one of the dissenting opinions where it was pointed out that if: (i) the purpose of the constitutional principle of the specificity of legal provisions (Article 2 of the Constitution) and the exclusivity of the statute, as an act which determines the conditions for the limitation of economic freedom in the implementing provisions, is that the statutory regulations fulfill the guarantee function protecting against arbitrariness of the authority implementing the Act, (ii) Regulation no 1224/2009 forming a part of the Polish legal system does not allow for arbitrary actions of the Minister designating the place of first sale, (iii) regulation of the Community law legally enters into the Polish legal sources, functionally binding as the statute,

²⁶ Article 55 paragraph 1 of the Constitution stated at the time of issuing the judgment: "The extradition of a Polish citizen is forbidden". In order to ensure the compliance with the European law this provision was subsequently amended.

²⁷ PCC Judgment of 13 October 2010, Ref. No. Kp 1/09, OTK 2010, series A, No. 8, item. 74.

therefore – objection of blanket character of the authorization can not stand²⁸. In other words, one could argue that the executive authority (the Minister responsible for fisheries) in the implementation of the mandate entrusted to him to issue a regulation on the basis of the provisions of the Act on the organization of the fish market had no arbitrariness – due to the requirements prescribed under the EU Regulation No. 1224/2009. Given the significance and place of the EU regulations in the legal system, the argument that the authorization of the minister remains “blanket” because the limitation of economic activity is permitted only “by the statute”, does not seem well-founded.

In the light of this argument, one can conclude that the literal interpretation of Article 22 of the Polish Constitution made by the PCC was not justified by the guarantee function of this constitutional norm. In the discussed case, there was no collision of values: legal certainty (protection of legitimate expectations) and the effectiveness of EU law. Quoting one of the dissenting opinions, one can argue that the literal interpretation of Article 22 of the Constitution made by the PCC did not consider the changes that have occurred in the Polish legal system, as a result of Polish accession to the European Union, in particular: “one has not drawn the right conclusions from the co-existence of regulations of EU law and Polish law and the relationships between them”²⁹.

Conclusions

The PCC’s position as to the limits of the obligation of conforming interpretation – with regard to the interpretation of the norms of the Constitution – has been formulated primarily in the judgment on the Accession Treaty (K 18/04) and the judgment on the Treaty of Lisbon (K 32/09). This position has remained unchanged in the subsequent jurisprudence. The analysis of the case law of the PCC leads to the conclusion that the limits of the obligation of conforming interpretation with respect to the norms of the Constitution in the jurisprudence of the PCC has been determined by guarantee function realized by Polish Constitution, or – more broadly – the need to preserve the identity of the Constitution. In particular, a conforming interpretation can not lead to the implementation of the principle of primacy of EU law over the constitutional norms, which – as is clear from the judgment on the Treaty of Lisbon (K 32/09) – is justified in the light of the principle of preserving sovereignty in the European integration process. As can be argued, such position of

²⁸ Cf. dissenting opinion of Judge Ewa Łętowska.

²⁹ Cf. dissenting opinion of Judge Stanisław Biernat.

the PCC's – formulated in general terms – finds its confirmation on the grounds of the particular cases³⁰.

It should be emphasized that the obligation of conforming interpretation – being subject to such limitations determined by the PCC – has been seen in the jurisprudence of the PCC as an instrument of dialogue between the PCC and the CJEU. Such dialogue is allowed and determined by the axiological consistency (identity) of both legal orders: domestic and European, which has been firmly confirmed by the PCC. Importantly, the recognition by the PCC of the supremacy of the Constitution over EU law reinforces the significance of conforming interpretation as an instrument for the removal of (potential) collision of these two orders of law.

Bibliography

- Biernat S., *Annotation of the Constitutional Court judgment dated 11.5.2005, K 18/04*, “Kwartalnik Prawa Publicznego”, 2005, No. 4.
- Biernat S., *Członkostwo Polski w Unii Europejskiej w świetle orzecznictwa Trybunału Konstytucyjnego*, [in:] *Doświadczenia prawne pierwszych lat członkostwa Polski w Unii Europejskiej*, S. Biernat, S. Dudzik (ed.), Warszawa 2011.
- Czapliński W., *Annotation of the Constitutional Court judgment dated 27 April 2005, P 1/05*, “Państwo i Prawo”, 2005, No. 9.
- Hofmański P., *Annotation of the Constitutional Court judgment dated 27 April 2005, P 1/05*, “Państwo i Prawo”, 2005, No. 9.
- Laskowska M., Taborowski M., *Obowiązek wykładni przyjaznej prawu Unii Europejskiej – między otwartością na proces integracji a ochroną tożsamości*, [in:] *Prawo Unii Europejskiej a prawo konstytucyjne państw członkowskich*, S. Dudzik, N. Półtorak (ed.), Warszawa 2013.
- Łazowski A., *Half full and half empty glass: The application of EU law in Poland (2004–2010)*, “Common Market Law Review”, 2011, No. 48.
- Sadurski W., *Solange, Chapter 3: Constitutional Courts in Central Europe – Democracy – European Union*, “EUI Working Papers, Law”, 2006, No. 40.
- Safjan M., *Central and Eastern European Constitutional Courts Facing New Challenges: Ten Years of Experience*, [in:] *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, M. Bobek (ed.), Hart Publishing 2015.

³⁰ Cf. PCC Judgment of 27 April 2005, Ref. No. P 1/05, OTK 2005, series A, No. 4, item 42, discussed in point IV above. However, the jurisprudence of the PCC is not always consistent in this respect, cf. PCC Judgment of 13 October 2010, Ref. No. Kp 1/09, OTK 2010, series A, No. 8, item. 74, discussed in point IV above.