

**Conference of European Constitutional Courts
XIIth Congress**

*The relations between the Constitutional Courts
and the other national courts,
including the interference in this area
of the action of the European courts*

**Report of
the Constitutional Tribunal
of the Republic of Poland**

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I. The constitutional court, the other courts and the constitutionality review

A. The judicial organisation of the State

1. The judicial system

1. The Republic of Poland is a unitary state and, as such, has a uniform judicial system binding in the entire territory of the state.

The system consists of common courts, whose jurisdiction is to rule in criminal and civil cases, in cases of crimes committed by juvenile offenders, in family and economic matters, in matters of labour, social insurance, and criminal administrative offences.

Depending on the importance of the case district courts (296) and regional courts (41) act as common courts of 1st instance (trial courts). Courts of appeal act as courts of 2nd instance.

The second category of courts are military courts competent for criminal cases against persons in active military service. Military judicial system consists of 10 garrison courts and 2 regional courts.

Until October 2002 the administrative cases remain in the jurisdiction of one-instance Supreme Administrative Court with the operating structure of the Supreme Administrative Court and field branches. The jurisdiction of the SAC is the judicial survey of public administration.

The Supreme Court exercises the judicial review of decisions of common courts and military courts. It is a cassation court for judgements of common and military courts; it also considers extraordinary appeals against the judgements of the Supreme Administrative Court.

Tribunals are a special category of judicial organs - a Tribunal of State and the Constitutional Tribunal (Court). The Tribunal of State is charged with cases concerning constitutional accountability of persons in highest state positions. i.e. with considering allegations of violation of statutes by persons acting in his/her official capacity.

2. The Constitutional Court

2. In the system of division of power the Constitutional Court (Tribunal) is considered a judicial organ (art. 10 para. 2 of the Constitution of the Republic of Poland). However, it is a separate organ, remaining outside any structural, organisational or procedural associations with the court system. The constitutional provisions common for courts and tribunals establish only that both categories of organs are separate and independent of other authorities, and that they issue decisions in the name of the Republic of Poland. The remaining constitutional provisions regulate separately the scope of operation and the organisation of these organs. Also the statutory regulations concerning the Constitutional Court and [other] courts are different.

B. The respective jurisdiction of the constitutional court and the other courts in the area of constitutionality review

1. Review of laws and other acts

§ 1. Type of review

3. The Constitutional Court has the power to review the compliance of statutes and international agreements with the Constitution, compliance of statutes with international agreements ratified with the consent of the parliament, and compliance of regulations issued by central state organs with the Constitution, ratified international agreements and statutes.

4. The fact that the power to review the acts mentioned in para. 3. is vested exclusively with the Constitutional Court raises controversies between the CC and [other] courts. The CC's exclusive competence to exercise abstract review of these acts as to their compliance with regulations of higher rank is unquestionable. It is only in proceedings before the CC that a motion to recognise an act as non-complying with a norm of higher rank may be submitted, and only the CC's ruling may result in the normative act losing its binding force.

The different positions in the controversy concern the refusal by a court to apply a statute it considers as non-complying with the Constitution or a ratified international agreement. The supporters of such an approach quote art. 8 para. 2 of the Constitution, which establishes that the provisions of the Constitution are applied directly, unless the Constitution provides otherwise. The opponents of such interpretation of the concept of direct application of the Constitution quote the constitutional norm establishing subordination of the judges to Constitution and statutes (art. 178 para.1), and the fact that the Constitution specifies the procedure which any court, uncertain as to the compliance with the higher norm of the regulation which should be applied, may address the CC for an appropriate decision (art. 193).

5. Generally the CC exercises an *ex post facto* control. A motion to review the compliance of an act with the norm of a higher rank may be submitted only after the act in question comes into force.

There are two exceptions to this rule.

The prior review may be carried out by the CC only upon the motion of the President of the Republic of Poland, who, before signing a statute (which is a condition for its promulgation and entering into force) may refer it to the CC for a ruling on compliance with the Constitution of the whole statute or its individual provisions. Should the Court find the statute to be in compliance with the Constitution the President is obliged to sign it. If, however, the CC decides otherwise the President does not sign the statute, unless the ruling concerns individual provisions, and the Court states that they do not make the entire statute *ultra vires*. In such cases the President, after seeking the opinion of the Marshal [Speaker] of the Sejm [the lower house of the Polish Parliament] signs the statute without the provisions which had been ruled unconstitutional.

The other case of a prior review relates to the President referring an international agreement to the CC to examine its compliance with the Constitution before ratifying it.

6. The CC review is of an abstract nature because it always relates to the constitutionality of a normative act (also if it is initiated in the form of a court's question of law, or a constitutional appeal), and not to the way the act is applied by courts or other organs of public authority (for more see no. 26).

§ 2. Referral to the constitutional court

a. Types of referral

7. The proceedings before the CC may be initiated by the following referrals:

- 1) a motion for a ruling on compliance of a normative act with the norm of a higher rank;
- 2) a court's question of law;
- 3) a constitutional appeal.

In the years 1998, 1999 and 2000 successively the CC received as follows:

- 1) motions for rulings on compliance with the Constitution or statute, submitted by subjects authorised to do that on the basis of art. 191 of the Constitution: 1998-50; 1999-44; 2000-53
- 2) questions of law: 1998-3; 1999-11; 2000-16
- 3) constitutional appeals: 1998-6; 1999-19; 2000-31.

b. Actions for annulment

8. A motion for a ruling on compliance of a normative act with the act of a higher rank may concern the compliance of statutes with the Constitution or international agreements ratified with the consent of the parliament, and to the compliance of provisions issued by the central organs of the state with the Constitution, international agreement, or statutes.

The motion has the form of a plea formulated in an abstract way, i.e. it is not related to any legal proceedings under way, in which the challenged legal norm would be applied.

9. A motion concerning the compliance of a normative act with the norm of a higher rank may be tabled without any restrictions as to the topical scope of the challenged act by: the President of the Republic of Poland, the Speaker of the Sejm, the Speaker of the Senate, the Prime Minister, a group of 50 deputies (out of the total number of 460), 30 senators (out of 100), the First President of the Supreme Court, the Head President of the Supreme Administrative Court, Prosecutor General, President of the Supreme Chamber of Control, the Commissioner for Citizens' Rights (the Ombudsperson).

The right to table motions with the CC concerning compliance of a normative act with a norm of a higher rank is also granted to the councils of local governments elected in general elections, national organs of trade unions, professional organisations, employers' associations, churches, and religious societies, if the challenged act relates to matters within the scope of activity of the given entity.

Moreover, the National Council of the Judiciary may bring a motion to the CC concerning the compliance with the Constitution of acts insofar as these acts are relevant to the notion of independence of courts and judges.

A motion concerning the compliance of a normative act with the norm of a higher rank may be submitted by the subject authorised to do so, regardless of the period that elapsed since the act has come into force.

10. The Constitutional Court may not suspend application of statutes or other normative acts under its review. The CC may pronounce a statute or other normative act non-compliant with a norm of a higher rank only in the form of a judgement rendered in a case before it. It may not issue any temporary decisions concerning such acts.

However, in proceedings carried out in the form of a constitutional complaint the issuing of a temporary decision to suspend the execution of a ruling in the case to which the complaint relates is allowable. Such a decision, however, applies only to the execution of an individual legitimate ruling, and not to the normative act, which remains in force until a possible decision of the CC concerning its non-compliance with a norm of a higher rank is promulgated.

c. Preliminary issues - plea of unconstitutionality

Who can refer cases to the constitutional court?

11. The question of law concerning compliance of normative act with norm of higher rank may be addressed to the CC by any court, if the decision in a case before that court depends on the answer to the question of law.

The court is defined here as the judges sitting in a given case. This may be a trial court (1st instance), an appellate or cassation court. Questions of law may be put to the CC by common courts, military courts, the Supreme Administrative Court, and the Supreme Court.

12. As it has been stated in no. 4. there are some differences in opinions concerning the admissibility of the courts' ruling on non-compliance of a statute with the Constitution or ratified international agreement, and non-application of such a statute in a specific case.

The Constitutional Court and a good part of the legal doctrine hold that if the court has any doubts as to the compliance or non-compliance of the statute with the Constitution or a ratified international agreement, and even if the court is convinced as to the non-conformity of the ruling applied in a case it is then bound to submit a legal question to the CC.

13. Submission by a court of a question of law to the CC does not involve referring the case under consideration, in part or as a whole, to the CC. The CC does not deal with the facts of a given case, nor does it consider the application of the statute to the given set of facts. The CC carries out an abstract analysis to find whether or not the statute provision indicated by the court is in compliance with the constitutional norm.

The Polish court procedures do not provide a possibility to argue against the court's decision to ask a question of law, nor to appeal such a question, therefore there is no need for procedures in such matters.

14. Referring a question of law to the CC takes place by a decision of a court, i.e. the judges dealing with the case under consideration.

The question of law is raised *ex officio*, and the parties involved in the proceedings have no function defined by law, either in the decision to put such a question, or in formulating it.

The parties may present their positions in respect of the question of law in the form of procedural motion, but the contents of such opinions is not binding on the courts, for the question of law is raised by the court *ex officio*.

The contents of the question of law and the decision to put it to the CC do not constitute part of the proceedings in a case, but are made by the court in a closed session, without participation of the parties.

15. In the Polish system of constitutional review of normative acts the constitutionality of an act promulgated in the official publishing organ is a binding presumption. The court which is bringing a question of law to the CC on constitutionality of a regulation should point to the arguments that undermine this presumption.

Screening

16. In the case of questions of law the CC may not refuse to conduct the proceedings, and, in this sense, it may not make any pre-screening of these questions. However, after initiation of the proceedings the CC may discontinue it at a closed session, if it decides that a ruling is unnecessary or inadmissible.

Rulings in the cases of proceedings concerning the constitutionality of a provision that the CC had already ruled upon in the past (*ne bis in idem*) are considered unnecessary.

Proceedings in the case which is identical in its substance and parties to the case in which a ruling had already been issued (*res judicata*) is inadmissible.

It is also inadmissible for a CC to rule by the procedure of the question of law, if the answer to the question is irrelevant for the ruling in the case before the court.

Scope of referral of the constitutional court

17. A court [*a quo*] which addresses a question of law to the CC should present comprehensive arguments as to the unconstitutionality of the provision or provisions which the question concerns. First of all, the particular constitutional provision with which the contested provision is in conflict must be specified. Then comes a reasoning indicating the conflict between the contents of the contested provision and the constitutional principle which serves to assess the provision, using the interpretation accepted by the legal doctrine. In the

reasons for its ruling the CC should respond to the arguments of the court [*a quo*] which formulated the question of law.

The CC is bound by the constitutional principle indicated by the court which put the question of law, i.e. it may refer in its examination [of the contested provision] only to the specific provision's compliance with this provision of the Constitution that the court has quoted.

Bound both by the provision to be examined and the constitutional principle specified in the question of law, the CC may use arguments for unconstitutionality other than those included in the reasoning of the question.

The CC is also limited by the boundaries of the question of law, and it is not authorised to extend the review onto norms linked to the given question of law, but not raised in this question.

18. In the reasons as to the question of law the actual facts and legal problems of the pending case are usually presented. The CC may ask the court to refer the file of the case for examination, if it considers it useful.

Relevance of the question

19. If the CC decides that the answer to the question of law is not necessary for issuing a decision in the case before the court *a quo* it may dismiss the question in a closed session.

Interpretation of the question

20. The CC may not, by itself, reformulate the question of law, nor change its contents. It may, however, ask the court to make corrections. This, however, requires the court to make a new decision containing the modified question. Therefore, the representative of the court appearing before the CC is not allowed to introduce any changes in the formulation of the question of law.

Interpretation of the reviewed question

21. The CC is not bound by the interpretation of the examined norm made by the court *a quo* in its formulation of the question of law. Ruling on the constitutionality of the examined norm the CC may determine the interpretation of the examined provision.

Jus superveniens

22. If the legislator amends the challenged norm after the decision to refer the case, and before the CC issued a ruling, the CC may discontinue the proceedings, or it may continue and issue a ruling, if it is necessary for protection of constitutional rights or freedoms .

Parties

23. Only the court, and not the parties of the case pending before that court participate in the proceeding before the CC initiated as a result of question of law.

The participants in the proceeding before the CC initiated as a result of the question of law are: the organ that issued the law to which the question refers, and if the act is an international agreement ratified with the consent of the parliament - the Sejm, the President and the Minister of Foreign Affairs.

Neither other courts in which cases similar to the one which generated the question of law are pending, nor the parties in such cases have the right to participate in the proceedings.

The parties to the case before the court *a quo* are informed on the ruling on the question of law by a publication of the decision in the official publishing organ, and by the court, which, after the CC issues a judgement, resumes the proceedings adjourned for the duration of the proceedings before the CC.

24. Because it is the court *a quo*, and not the parties to the case before that court, that participates in the proceedings before the CC, which have been opened by the question of law, there is no obligation for the counsels' presence.

The prosecutor appears in all the cases before the CC.

For cases examined by the full-bench CC the Prosecutor General or his deputy have the competence to appear. For cases examined by three or five judges a prosecutor from the National Prosecution Office can appear.

Points of law in the constitutional proceedings

25. As it is the significance of the CC's answer for the ruling that the court must issue that is the basis for addressing a question of law to the CC, the course of the proceedings before the CC depends on the impact of such developments as withdrawal of the action or death of a party to the case on the duration or discontinuation of the case before the court *a quo*. If the death of a party results in discontinuation of proceedings before the court *a quo*, the proceedings before the CC are discontinued as a consequence. If a legal successor of the party in the case before the court *a quo* may be involved, the proceedings before the CC are continued.

d. The constitutional appeal (for example *recours d'amparo*, *Verfassungsbeschwerde*, etc.)

Object of the constitutional appeal

26. In the Polish legal system a provision of a statute or other normative act which was the basis for a final ruling made by a court or organ of administration may be the subject of a constitutional appeal, if, in the plaintiff's opinion, the provision violates his/her constitutional rights or freedoms.

A constitutional appeal may only be raised against these provisions, the application of which affects human rights and freedoms.

In principle, in its examination of a constitutional appeal the CC does not study the actual facts in the case, but the mutual relation between the provision of a statute (or other normative act) which was the basis for a particular ruling concerning human rights or freedoms, and the constitutional norm which guarantees these rights. The CC may examine the facts of the case only exceptionally, if lack of clarity concerning the actual facts may influence the findings relating to the provisions applied.

Allowability of the appeal

27. A constitutional appeal may be raised by any person (in cases of appropriate laws also a legal person) if a court or organ of administration issued a final ruling concerning his/her rights and constitutional freedoms.

The constitutional appeal against a violation of a person's constitutional rights may also be raised by persons who are not Polish citizens.

The constitutional appeal is filed with the CC in writing not later than three months following the reception by the plaintiff of the judgement, final decision, or any other final ruling.

The constitutional appeal may only be made by an counsel or a legal advisor. The appeal should contain a precise description of the statute or other normative act which was the basis for the final ruling concerning the rights, freedoms or duties of the plaintiff. It should point out these rights or freedoms that have been violated, and in what manner, and contain an argument presenting in detail the actual facts.

28. The condition for admissibility of a constitutional appeal is the exhaustion of all means of appeal available to a party as part of the given procedure. A party which fails to resort to the avenue of appeal and permits the ruling to become legitimate deprives itself of the right to bring a constitutional appeal. The objective of such a solution is to prevent an establishment of parallel proceedings leading to questioning of a ruling issued by a court or other appropriate organ.

However, it is not mandatory that procedures for an extraordinary means of appeal, the application of which rests with a state organ (extraordinary appeal) be exhausted.

Screening

29. Every constitutional complaint brought before the CC is examined from the point of view of its meeting the requirements by one CC judge. If any formal errors which may be amended by the plaintiff are found, the CC directs the plaintiff to provide the lacking elements within a specified period of time.

In case the CC decides that the appeal has been entered before the legal avenue of appeal has been fully exhausted, or after the period of three months from the receipt of the final ruling, or that it does not relate to the constitutionality of the statute or other normative act, but [that it

relates] to the way the law is applied, or that the ruling is irrelevant or inadmissible - it shall dismiss the appeal. The plaintiff has the right to lodge a complaint against the CC's decision to dismiss the appeal to a bench of three judges.

Parties

30. The plaintiff is a fully-fledged participant in the proceedings before the CC. He may table formal substantive and procedural motions, take a position *vis a vis* the position[s] of other participants in the proceedings, both in a writing and orally during hearings.

Other participants obliged to partake in the proceedings are the organ that issued the challenged normative act (in the case of a statute a representation of the issuing body, i.e. the Sejm, is obliged to appear in the person of one Deputy), and a Prosecutor General.

The Commissioner for Citizens' Rights may attend the proceedings of a constitutional appeal. When joining the proceedings of a constitutional appeal the Commissioner for Citizens' Rights may support the appeal strictly within the limits defined by the appeal; he is not authorised to extend it, or to modify the constitutional model.

31. In the proceedings of a constitutional appeal the assistance of a counsel is obligatory in drawing the appeal and in appealing against a decision to refuse to initiate the proceedings. The counsels' participation in the case before the CC is not obligatory. The plaintiff may appear before the CC in person or delegate a representative.

The Prosecutor General is obliged to participate in all the proceedings before the CC, including the constitutional appeals. If the case is considered by the full bench CC the Prosecutor General may participate in person or he may be represented by his deputy. In cases considered by benches of 3 - 5 judges the Prosecutor General may be represented by a prosecutor from the National Prosecution Office.

2. Settlements of conflicts between courts

32. The CC has no mandate to determine the jurisdiction of other courts.

II. The relations between the constitutional court and the other courts

A. The organic link

33. The CC is not organically related to other courts operating in the Republic of Poland.

B. The procedural link

34. In cases before the CC initiated by the question of law addressed by a court the CC may address the court for specification of the question. Such cases, however, are very rare. The court which puts the question remains entirely sovereign throughout the entire proceedings in respect of formulation of the contents of the question of law.

C. The functional link

§ 1. The review and its effects

35. In the Polish legal system it is difficult to apply the concept of case law either binding or not, to the rulings of the CC. The ruling of the CC in the strictly obligatory part (the conclusion of the judgement) relates to the compliance or non-compliance of the challenged provision with the norm of a higher rank. If the provision is found to be non-compliant it loses its binding force, i.e. it may not be applied in the future. Following a CC ruling, it is a normative act whose contents is shaped as a result of that ruling, and not the ruling itself that becomes the basis for rulings for other courts.

In the case the CC rules that the provision of an act of a lower rank, interpreted by the CC in a specific way, is compliant with a higher norm the courts are bound by the interpretation of the contents of the subject provision, presented in the conclusion of the verdict .

36. The CC may rule on the non-compliance of a normative act (as w whole or of its individual provisions) with the constitution, and, if the examined act is one of a lower rank - on its non-compliance with a statute.

A ruling on the non-compliance with the constitution or statute of a normative act is promulgated in the official publishing organ, and sets legal consequences in the form of retraction of the binding force of the provision which the CC found to be non-compliant with a higher norm.

The CC occasionally issues rulings stating the compliance of a provision with a higher norm on the condition of specific interpretation of the examined provision.

The nature of CC rulings is identical regardless of the procedure initiating the proceedings (a motion to review constitutionality, a question of law or a constitutional appeal).

37. The CC rulings affect, above all, the contents of normative acts they relate to, and to such an extent they have the *erga omnes* effects. As concerns the consequences of the CC rulings in the time aspect, the generally adopted principle is that the CC rulings are binding *ex nunc*. In special cases, when a new provision must be introduced to replace the one considered unconstitutional (in order to avoid any legal loophole), or when the non-compliance of the provision in force with a higher norm may affect the budget, the CC may postpone the implementing of the ruling of non-compliance for not more than 18 months in case of statutes, and [not more than] 12 months in case of other provisions.

A CC ruling of non-compliance with a higher norm of a provision on which a court or an organ of administration issued a final, legitimate ruling may become the basis for re-opening of the proceedings, in compliance with the principles binding within the procedure applied due to the nature of the case (civil, criminal or administrative).

38. The binding force of a ruling stating the non-compliance of a provision with a higher norm is always respected, because the ruling results in retraction of the provision from the legal system. If the provision is found to be constitutional, or, particularly, if the CC rules on constitutionality of the provision in a specific interpretation of the contents of the provision the courts occasionally question the contents of the CC rulings quoting the constitutional provision establishing that „the provisions of the Constitution are applied directly, unless the Constitution provides otherwise” (art. 8 para.2 of the Constitution).

§ 2. Interpretation by the constitutional court

a. The case law of other courts accepted by the constitutional court in the exercise of its own jurisdiction

39. Examining the compliance of the challenged provision with a higher norm the CC generally considers the interpretation of the given provision by the Supreme Court, the Supreme Administrative Court, or other courts. Usually, the interpretation made by the Supreme Court or the Supreme Administrative Court is a basis for recognition that it reveals the actual contents of the provision. Assuming the statutes' constitutionality the CC recognises that if the interpretation of the provisions adopted by the courts is constitutional this is the only admissible interpretation of that provision.

In the case the courts' interpretation results in unconstitutional understanding of the provision the CC may accept it and rule, therefore, that the provision is unconstitutional, or offer interpretation which reconciles the contents of the provision with the Constitution.

The CC is not formally bound by the interpretation made by any court or any other organ applying law, and may make interpretation disregarding the one applied by these organs. In practice the CC takes into consideration the interpretation made by other courts in shaping a uniform system of law.

b. The effects of the interpretation of the constitutional courts and the acceptance of the case law in the constitutional court by the other courts in the exercise of their own jurisdiction

40. The Polish Constitution clearly establishes that the rulings of the CC have a generally binding force (art. 190 para.1). This provision of the Constitution obliges the courts to adopt such an interpretation of the provisions of the constitution and statutes as was included in the conclusion of the rulings of the Constitutional Court. If the courts do not adhere to such interpretation procedures applied in the cases of infringement of the law by the court may be used.

41. The CC has repeatedly ruled that a provision is constitutional if it is interpreted in a certain way. As it has been said in no. 39 the CC is not formally bound by the previous judicial decisions of other courts.

42. Since 1997 the CC has not issued purely interpretative rulings. Rulings of the Court contain, above all, a decision concerning the compliance of the provision with the Constitution, international agreement, or statute. In some cases the decision is accompanied by an explanation on how to interpret the provision to assure its compliance with the Constitution or other act of higher rank (see no. 38).

III. The interference of the European courts

A. The constitutional court and the other courts vis-a-vis the European Convention on Human Rights and the case law of the European Court of Human Rights

43. The CC is not bound by the rulings of the European Court of Human Rights, because the Polish Court does not rule in specific cases of application of law, but is competent only and exclusively to assess the compliance of provisions of lower rank with the provisions which are higher in the hierarchy of the sources of law. However, since, firstly, the European Convention of Human Rights has the status of an international agreement ratified with the consent of the parliament in the Polish legal system, and, therefore, statutes in force must comply with it, and, secondly, the system of rights and freedoms of the persons and citizens adopted in the Polish Constitution is based on the European Convention, the rulings of the European Court of Human Rights significantly influence the scale and the way of consideration of human rights and freedoms in the rulings of the CC.

44. The courts may - from the constitutional point of view - adopt the European Convention as the basis of their decision, as the Convention is an element of internal legal order. However, it seems rather unlikely for a Polish court to apply only the European Convention norm. This approach is illustrated by the fact that all the European Convention norms have their more developed counterparts in the national legislation. Secondly, the judges are much less willing to resort to the norms of international law than to those of the domestic law, especially when they can decide in a case on the basis of the latter. In particular, this applies to the situations where the domestic norms are more precise and detailed than those of the international law. Application of the European Convention norms is not an obstacle to possible consideration of a constitutional appeal by the CC, if it adopts an interpretation of the notion of „a normative act” which is friendly towards the international law (art. 79 of the Constitution of the Republic of Poland) - see comments below, in B.

45. The issue of lodging a constitutional appeal with the CC as a condition of exhausting domestic legal means before the referring the complaint to the European Court of Human Rights is a controversial one. The prevailing opinion is that the lodging of an appeal with the CC should not be considered a condition for meeting the provisions of art. 35 para 1 of the European Convention. An extraordinary and subsidiary nature of the constitutional appeal, different from the system of regular means of judiciary or administrative procedures is mentioned, as is the essence of the appeal, i.e. it first checks the constitutionality of the legal basis for a decision or a ruling by a court or other organs of public authority (administrative),

and then claims the rights resulting from finding the legal basis for a decision to be unconstitutional. The time necessary for the CC to consider the case, thus extending in time the proceedings in a given case is also mentioned.

B. The constitutional court and the other courts vis-à-vis the case law of the Court of Justice of the European Communities

Poland is not yet a member of the EU, thus the European Court of Justice's judgements are not formally binding. This does not mean, however, that that Court's decisions are not reflected in the presently binding constitutional and statutory regulations. Constitutional regulations - analysed against the background of decisions of the European constitutional courts, especially in Italy and Germany - pertain to such issues as:

- a) the competence of the President to address the CC before ratification of the accession treaty to check the compliance of the treaty with the Constitution;
- b) competence of the CC to decide on the constitutionality of the act consenting to the ratification of the treaty on Poland's accession to the EU possibly entailing the necessity to amend the Constitution (should the act on ratification be found unconstitutional the procedure provided in art. 235 of the Constitution should be applied to introduce the necessary constitutional changes);
- c) the issue of constitutional possibility to control the constitutionality of the Community norms needs to be analysed, in view of the position of the European Court of Justice concerning the primacy of the Community law over all national norms, including constitutions;
- d) a potential conflict of competence may occur in relation to the constitutional appeal. The Polish Constitution holds that an appeal be lodged „on constitutionality of a statute or other normative act on the basis of which a court or an organ of public administration issued a final decision on a person's freedoms or rights, or his/her duties defined in the Constitution”. A literal interpretation of this norm may lead to a conclusion that the constitutional regulation accepts only normative acts issued by the appropriate authorities of the Republic of Poland. Interpretation favourable for the Community law, particularly where it considers the situation of that law in relation to the domestic legal order, leads to a conclusion that a Community regulation may also be a normative act against which an appeal is lodged with the CC. Nevertheless, in the domestic literature the issue is considered to be controversial.