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RELATIONSHIP BETWEEN INTERNATIONAL LAW AND POLISH MUNICIPAL LAW IN THE LIGHT OF THE 1997 CONSTITUTION AND OF THE JURISPRUDENCE (*)

BY

Władysław CZAPLIŃSKI

JEAN-MONNET PROFESSOR OF LAW
INSTITUTE OF LAW STUDIES, POLISH ACADEMY OF SCIENCES

1. The problem of relationship between international law and Polish municipal law attached formerly mostly the attention of international lawyers, even if the issue belonged clearly to constitutional law. The change of political system accompanied by a new policy of openness towards external sources law posed questions relating to the position of international law within the system of sources and its rank in comparison to other sources of domestic law. In order to present this problem under the new Constitution of 1997, we would like to start with a short discussion of previous developments.

According to Art. 49 of the so-called March Constitution of 1921, and subsequently Art. 15 of the Provisional Constitution of 1947, the provisions about international law in Polish municipal law were connected with the participation of Parliament in the ratification process. Certain categories of treaties, including in particular treaties concerning rights and duties of individuals, could be ratified by the President after prior approval by Parliament, the approval being given in the form of a ratification law. Duly ratified and published treaties acquired the status of the laws of Parliament. In fact, the procedure amounted to transformation.

The situation changed radically after the passing of the Constitution of 22 July 1952. It did not contain any express provisions dealing with the place of international law within the Polish legal order except Art. 30 (1) conferring the right to ratify international agreements upon the Council of State, a collective presidential body. The constitutional gap caused a vivid discussion among Polish authors. Some of them maintained that ratified and published international agreements acquired the power and rank of an

(*) The present study is limited to the relatively narrow topic and does not cover foreign relations power as a whole.

Act of Parliament. According to the others, the ratification could not be treated as a law-making act, and no provision of the constitution gave grounds for an assumption that transformation was needed. The dominant view was formulated by S.Rozmaryn. According to him international treaties should be applied directly within the Polish legal order. They are international law instruments and do not rely upon acts of domestic law. Parliament did not taker part in the ratification process nor did any municipal legal act incorporate international agreements into domestic law. Parliament did not take part in the ratification process nor did any municipal legal act incorporate international agreements into domestic law. They are still valid as part of the internal legal order. Rozmaryn supported his position on the lack of express constitutional regulation (1).

The doctrinal dispute has not been resolved by the jurisprudence of the Polish courts. The Supreme Court in the *Pannonia* case decided on 22 November 1972 and upheld on 5 October 1974 stated that the courts could apply only the agreements duly ratified and promulgated in the Official Journal. The decision was based upon the concept of transformation. The judgment of 18 May 1970 in the *Warta* case provided for the possibility to apply international norms (both treaty and customary rules), and if necessary, in the second stage domestic law. The decision of the Supreme Court of 10 February 1981 concerning the application of Art. 22 of the Covenant on Civil and Cultural Rights denied any direct effect of the Covenants, and excluded any derogation from provisions of municipal law incompatible with them. Finally, the decision of 25 August 1978 excluded the application of the ILO Convention No.87 and Art. 22 CCPR by the courts. According to the Supreme Jurisdiction, judges are subordinated only to Parliament's statutes ; as the conventions mentioned above were not clearly transformed into domestic law by an act of Parliament, they could not be applied by courts. In fact, the Court declared that these norms were not self-executing and required transformation.

One can conclude that notwithstanding a dominant opinion of international and constitutional lawyers, the courts under communist rule, for manifestly political reasons, did not accept the possibility of direct application and effectiveness of international law within the Polish legal order. Individuals could not claim any right granted under the human rights treaties.

2. Changes on the political map of Europe effected i.a. in the rapid growth of the number of new constitutions. Not only all new States, but also the former communist states streaming towards liberal democracy and market economy adopted new basic laws ; majority of them contain provi-

(1) S. ROZMARYN, *Ustawa w Polskiej Rzeczypospolitej Ludowej*, Warszawa 1964, at 329, 332 and 340.

sions concerning relationship between domestic legal systems an international law (2). In order to place the Polish regulation in the context of other constitutional provisions, let us quote some examples. The constitutions of Russia (Art. 15.4), Bulgaria (Art. 5.4) and Estonia (Art. 123) state in a general way the supremacy of international treaties over domestic law. Some other constitutions (Belarus, Art. 8 ; Turkmenistan, Art. 6) proclaim *a priority* of general principles of international law or of generally accepted norms of international law over municipal law ; constitutions of Lithuania (Art. 138), Croatia (Art. 134), Romania (Art. 11.2) and Hungary (Art. 7.1) introduce international treaties into a domestic legal order, the latter one proclaims additionally the necessity to ensure harmony between treaties and municipal law. The same principle including the conformity of municipal law with principles of international law and binding international agreements has been included in the constitution of Slovenia (Art. 8). Finally, the constitutions of the Czech Republic (Art. 10), Slovakia (Art. 11) and Russia (Art. 17-18) confirm the primacy of human rights treaties over domestic law. It is therefore manifest that there is a strong tendency among the States of Central and Eastern Europe to confirm a binding force of international law within the domestic legal systems in accordance with the patterns of Western European constitutions.

3. The political, economic and social transformation required also the modification of the Polish Constitution. The President was conferred with the competence to ratify treaties. If a given treaty imposed significant financial burdens or required changes in the valid legislation, the President had to seek an authorisation of the Sejm (Lower House of the Parliament) prior to ratification. A constitutional custom has been established that the consent was to be given in the form of a ratification law. The Constitutional Law of 17 October 1992 on the organisation of state authorities and division of competencies (so-called *small constitution*) confirmed the President's competence to ratify treaties. Certain categories of treaties requires the approval by Parliament in the form of a ratification law prior to ratification. The government could freely decide that an agreement should be ratified with the approval by Parliament or that consent was not needed. The decision of the government in this respect was not subjected to the control of the Constitutional Court. In fact the problems of relationship between international and domestic law were left to practice. The decisions of the Constitutional Court and the Supreme Court dealt with two important questions : the principles governing the validity and

(2) See on this topic in particular V. VERESHCHETIN, « New Constitutions and the Old Problem of the Relationship between International Law and National Law », *EJIL* 7 (1996), p. 29ff ; and E. STEIN, « International Law in Internal Law : Toward Internationalization of Central-Eastern European Constitutions ? », *AJIL* 88 (1994), p. 427ff.

applicability of international law within the Polish municipal legal order, and the rank of international norms in the hierarchy of sources of law (3).

3.1. — *The problem of validity of international law in the Polish legal order*

The first judgment of the Constitutional Court dealing with the new approach to international law after the change of the political system was passed on 7 January 1992. The case concerned the restriction of the competence of the Supreme Administrative Court to review certain administrative decisions regarding the officers of the Border Guard. The motion by the Ombudsman and the President of the Administrative Court stated that international human rights treaties to which Poland was party guaranteed to all individuals without any distinction or exception the access to justice and the right to judicial review of the case concerning them. The Constitutional Court declared itself not competent to control the conformity of domestic legislation with international law, according to Art. 1 of the law of 29 April 1985 on Constitutional Court. However, the constitutional judges invoked Art. 1 of the Constitution providing for the principle of legality or rule of law. International agreements concluded by Poland constituted an important element of the interpretation of Art. 1 as since the moment of ratification they constituted part of the legal system. The agreements should be applied *ex proprio vigore* unless they are not self-executing. Consequently, the Constitutional Court did not draw any distinction between the origin of rules valid in the Polish legal order. In the same manner the Penal Chamber of the Supreme Court introduced international law in the judgment of 29 July 1997 (i.e. after the adoption but before the entry into force of the Constitution of 2 April 1997) while rejecting a possibility to extradite two Chinese nationals to the People's Republic of China. The Court based the interpretation of the constitution upon Art. 3 of the European Convention on Human Rights and Fundamental Freedoms and stated that it was free to decide whether the extradition was allowed in accordance to all legal norms in force including international law. Let us remind that this way of applying international law was characteristic for many Western European States some years ago, before the concept of self-executing norms of international law was elaborated.

(3) See the analysis of Polish practice in international law and in particular of the jurisprudence of Polish courts W. CZAPLIŃSKI, « International Law and Polish Domestic Legal Order », [in :] R. MULLERSON, M. FITZMAURICE, M. ADENAS (Eds.), *Constitutional Change in Central and Eastern Europe and the USSR and International Law*, London 1998, p. 15 ff; A. PREISNER, « Prawo międzynarodowe w orzecznictwie sądów polskich », [w:] M. KRUK-JAROSZ (Ed.), *Prawo międzynarodowe i wspólnotowe w wewnętrznym porządku prawnym*, Warszawa 1997, s.127 ; J. ONISZCZUK, *Umowy międzynarodowe w orzecznictwie Trybunału Konstytucyjnego « Państwo i Prawo »* 1995, No. 7, p. 14 ff; M. MASTERNAK-KUBIAK, *Ulowa międzynarodowa w prawie konstytucyjnym*, Warszawa 1997, p. 142ff.

The decision of the Constitutional Court of 20 October 1992 marks an important step in the jurisprudence of the Constitutional Court. The case concerned the incompatibility of the provision of Article 15 of the Aliens Act of 29 March 1963 as amended on 19 September 1991 with the Constitution. The Aliens Act provided for the detention of an alien subjected to expulsion on the basis of an administrative decision of the competent territorial state agency. The Court decided that according to Art. 29 of the Aliens Act in matters within the scope of this act, international agreements binding Poland should be applied if they regulated certain questions in a different way from domestic law. Under these circumstances, the judicial review of administrative decision on the detention for deportation could have taken place on the basis of Art. 9(4) ICCPR applied *ex proprio vigore* on the ground of Art. 29 of the Aliens Act. The Court referred also to the respective provisions of international agreements including the European Convention on Human Rights of 1950 in order to establish the scope of different institutions introduced by the Aliens Act. The judgment of 20 October 1992 is important for another reason as well. It expressly confirmed the principle that the rights protected by the Constitution are granted not only to Polish citizens but also to aliens residing — even on a temporary basis — in the territory of Poland. Surprisingly the Court did not refer in this context to Art. 1 of the European Convention on Human Rights of 1950.

The judgment of the Penal and Military Chamber of the Supreme Court of 17 October 1991 was enacted in the extraordinary appeal proceeding dealing with one of the judgments on the legality of the martial law proclaimed in Poland in 1981. The Supreme Court pronounced the accused innocent and stated that the introduction of martial law was contrary to the principle of non-retroactivity of law as formulated in Art. 15 ICCPR (ratified by Poland in 1977). According to the Court, the regulation of Art. 15 was operative within the municipal legal system and it was self-executing.

An interesting decision of the Administrative Chamber of the Supreme Court was passed on 15 June 1993. The decision concerned the registration of an organisation called,Union of the former members of the German Wehrmacht in the Republic of Poland organising persons of Polish origin and nationality who lived within the territories belonging to Germany before the Second World War or annexed by the Reich in 1939, and were enlisted in the German Army. They have lived in Poland after the war and they have decided to organise themselves in order to protect their rights. The organisation has been registered according to Polish law by the District Court in Bydgoszcz. The Minister of Justice objected to this decision instituting an extraordinary appeal proceeding. The Supreme Court cancelled the decision of the District Court for formal reasons and returned it for re-examination. The decision of the Supreme Court referred to the

applicability of Art. 11(2) of the European Convention on Human Rights in the Polish legal system. The Court decided that this provision was directed to the legislative body, and not to administrative bodies. Furthermore, the Court stated that the rule of law principle required that the Polish State observed international obligations contained in the duly ratified agreements and conventions ; consequently, the international legal norms can and should be directly applicable in the domestic legal relations, and they do not require any transformation acts. The only condition thereto is a clear or implied intention of the parties to give such an effect to the agreement within the municipal legal order. However, with regard to human rights treaties the intention was clear, as it was hard to presume that the parties had not an intention to apply them directly. This decision constituted in fact a step backwards in the jurisprudence concerning the validity of international law. It made the direct application of international agreements dependent upon the clear or presumed will of the parties, and not upon the simple test of the fulfilment of necessary criteria (precise, clear and unconditional provisions). However, this trend was not upheld in the later decisions of the Supreme Court.

From the rich practice of other State agencies (4), we would like to quote the judgment of the Supreme Administrative Court of 18 January 1994 (5) dealing with a sensitive issue of a possible change of the first name by a person of German origin living in Poland. The applicant based his claim upon general international law and Art. 20.3 of the Polish-German Treaty of 17 June 1991 on Good Neighbourliness and Friendly Cooperation. The Court analysed the merits of the case and decided that the law on organisation of judiciary provided that the judges decided the cases according to the statutes (acts of Parliament) ; as the position of international law within the Polish legal system was supposed to be unclear, the Treaty of 1991 could not constitute a basis for the change of the name. However, the right of a person to use one's name in the reading of one's native language belonged to constitutional rights and justified the change of the name if requested by a person belonging to a minority. The judgment shows some specific features. Firstly, it reflects a certain tendency among the judges of lower courts not to invoke international treaties as a basis of decision but to refer to municipal normative acts (6) ; secondly, the judgment departs

(4) T. ZIELIŃSKI, *The International Covenants on Human Rights in the Practice of the Polish Ombudsman*, and R. HLIWA, L. WISNIEWSKI, *The International Covenants on Human Rights in the Case Law of the Polish Supreme Court, the Constitutional Court and the High Administrative Court*, PolYBIL 22 (1995-1996), pp. 7 and 27ff, respectively.

(5) Case S.A./Gd 114/93, OSA 1995, No. 2, *Item* 56.

(6) Surprisingly newly elected President of the Supreme Court, Lech Gardocki in the interview for Polish newspaper « *Gazeta Wyborcza* » suggested — in fact contrary to the letter of the Constitution — that the application of international law should be left to the Supreme Court as lower courts are not prepared to do it correctly. In a way such a statement is justified. We could refer here to the decision of the Court of Appeals of Cracow of 10 October 1996, Case Akz 429/96,

from the consequent practice of the Administrative Court to apply international law directly ; thirdly, the Court invoked international law in order to interpret the Constitution and to pass its judgment on that basis.

3.2. — *The rank of international law in the hierarchy of sources of law in Poland*

Surprisingly in the very rich jurisprudence concerning the validity of international law within the Polish legal order, only extremely rare decisions have dealt with the position of international law in the hierarchy of sources of municipal law.

In this context the resolution of seven judges of the Civil Chamber of the Supreme Court of 12 June 1992 merits mention. The case concerned certain aspects of international adoption and the relationship between the Polish family code and the Convention on the Rights of the Child. The Court indicated that the place of international law within the Polish municipal legal order was disputable. Even if the majority of authors maintained that international rules were valid *ex proprio vigore*, the contrary view could also be found both in the legal writing and judicial practice. The importance of the latter should diminish as the practice of Parliament on the basis of Art. 32(g) of the Constitution required the approval of international agreements by Parliament in the form of a ratification law prior to the ratification by the President. However, as the Constitution did not clearly establish the principle of absolute priority of international law over the domestic legislation, international treaties ratified on the basis of the consent of Parliament should have the rank of statutes with all the effects thereof.

The position of the Court was fully correct in the light of the actual constitutional provisions ; however, it did not clearly prescribe methods of resolution of conflicts between international agreements and subsequent domestic legislation. If the construction had been applied consequently, later domestic acts would have prevailed over earlier international agreements. From the point of view of the rule of law principle such a solution should have been rejected.

4. The present regulation in the Constitution of 2 April 1997 of the relationship between international law and domestic law marks on important

who mistook the European Convention on Human Rights for the Europe Agreement (Association Agreement between Poland and the European Communities), and subsequently stated that the recognising of priority of international agreements over municipal law would amount to... violation of state sovereignty. It seems to the present author, however, that Polish judges are in principle fit to apply international law and Community law much better than President Gardocki supposes.

step forward comparing to the former ones ; however, it is far of being fully satisfactory.

The constitutional provisions dealing with the relationship between international law and Polish domestic law start with Article 9. It states that the Republic of Poland respects international law binding on it. The provision covers all international law notwithstanding its origin (whether conventional or customary). It is of purely declaratory nature ; it is situated in the chapter of the constitution dealing with the principles of the political, social and legal system of Poland. In fact this provision has been however referred to as a possible basis of validity in the municipal legal order of these norms which have not been indicated in the remaining provisions of the constitution as sources of Polish domestic law : i.e. customary law (7), non-ratified treaties and covenants, unilateral obligations, and binding norms elaborated by international organisations (if any).

Article 87 of the Constitution opens the Chapter III concerning sources of law. According to it, international agreements duly ratified constitute the source of Polish law. There are two kinds of ratified treaties. Certain treaties can be ratified by the President directly on the basis of his personal prerogatives. The other categories of agreements can be ratified exclusively after the prior approval by the Parliament expressed in the form of so-called ratification law (Art. 89.1 of the Constitution). The Constitution extends the competence of the Parliament upon : treaties dealing with peace, alliances, political and military treaties : treaties concerning fundamental freedoms, rights and duties defined in the Constitution ; membership in international organisations ; treaties imposing important financial burdens upon the state budget ; and international agreements reserved for the regulation by the laws of the Parliament. Every case of ratification of the agreement by the President must be notified to the Parliament. It is interesting that although the competence of the Constitutional Court has been extended upon the control of compatibility of international agreements with the Constitution, and of domestic law with international agreements duly ratified, but it does not cover the legality of the ratification itself. The competence of the Court is limited to the control of conformity of legal (legislative) acts, and not with the legality of administrative acts (and it seems to be indisputable that the nature of the President's act of ratification is administrative and not legislative).

(7) The only decision of a Polish court dealing with customary law concerned the state immunity (Supreme Court, 15 May 1959, *OSPiKA* 1960, *Item* 2). Customary rules can be applied on the basis of renvoi by specific municipal acts (like maritime law, aerial transportation law etc.). We would like, however, to quote the regulation of the Minister of Foreign Affairs of 17 June 1998, *Dz.U.* 1998, No. 78, *Item 512*, on the rules of granting visas to diplomatic representatives according to which visas should be granted in accordance with domestic acts in force, binding international agreements, and existing international customs. The regulation introduces therefore customary law into municipal law without any specific constitutional basis.

The position of ratified international agreements in the Polish legal order has been regulated in Art. 91(1) of the Constitution. According to this provision, ratified treaties upon their publication in the Official Journal of the Polish Republic form part of the domestic legal order and are directly applicable unless their application is dependent upon the adoption of an act of Parliament. The wording of this Article has been modified comparing to the draft presented by the Constitutional Commission of the Parliamentary Assembly. The draft situated ratified international agreements among sources of Polish domestic law, so that it suggested a requirement of transformation of international agreements into domestic law (either by the law of Parliament or by the act of ratification by the President of Republic) and the provision on direct applicability was meaningless. Furthermore, the Constitution suggests making a distinction between the position of the treaties ratified after the prior approval by the Parliament and other ratified treaties. The former one should enjoy priority before laws (acts of Parliament) while the latter are subordinated to them.

Such a solution does not exclude a possibility for the Government to conclude international agreements which are contrary to municipal instruments in force. The ratification of such a law should simply be accompanied by measures amending and modifying domestic acts.

Summing up the above considerations, it should be emphasised that from the theoretical point of view ratified international agreements are incorporated into the municipal law rather than transformed into domestic law.

The position of other international agreements in the Polish domestic legal order remains unclear.

In theory, the agreements of this kind should not be directly applicable and should not concern issues listed in Art. 89(1) ; according to the Constitution, they do not constitute a source of Polish domestic law and they are not directly applicable. In practice, numerous international agreements and compacts are concluded in a simplified form, they are neither published in Official Journal nor (sometimes) translated. As example of such a treaty, we could indicate e.g. the statute of the EBRD. It might be supposed that they are subordinated to laws of the Parliament ; such a solution however would be contrary to Article 9 of the Constitution. On the other hand, it is unclear on what basis the agreements concluded in the simplified form should be applied in the Polish legal system. The Constitution neither incorporates them nor transforms into domestic law. The position of these agreements should be regulated by the proposed law on conclusion and implementation of international treaties (to be passed by the Parliament in the forthcoming months) or it should be left to the decisions by Constitutional Court or Supreme Court. It might be suggested that the agreements concluded in simplified form require an implementation by specific domestic act. The rank of such an act is, however, unclear as the catalogue

of instruments of municipal law contained in the Chapter III of the Constitution is exhaustive, and in particular governmental regulations can be passed exclusively on the basis and within the limits of prior authorisation by the law (act of the Parliament). In principle these agreements should not create rights nor obligations for individuals and they should be addressed to different state agencies responsible for their implementation. If so, they could be transformed into domestic law by resolutions of the Council of Ministers and ordinances by Prime Minister or respective ministers under Art. 93 of the Constitution. According to this provision, the acts of these kind are binding exclusively upon the state administration and they are of internal nature. In reality, however, they often touch issues of direct concern for individuals. In such cases the agreements concluded in simplified form should be implemented either by law or by governmental regulation according to a pattern adopted in domestic law. In the former case, a risk is present that the Parliament does not adopt the act required on time or that it changes its content comparing to the agreement concluded (in violation of Art. 9 of the Constitution). In the latter hypothesis, the legal basis of the regulation would be unclear as the Constitution does not provide for regulations passed on the basis of international agreements. Finally, it is also possible to introduce a delegation by a general agreement ratified upon the prior approval of the Parliament or by the specific law of the Parliament for the Government to conclude an agreement in simplified form dealing with questions reserved for the competence of the Parliament according to Article 89, if the need to conclude such an instrument urgently occurs (8).

It is important to notice that according to Art. 241 of the Constitution, the provision of Art. 91 concerning the position of international instruments in the Polish domestic legal order should be applied to international agreements concluded before the entry into force of the Constitution, provided that these agreements were ratified and published in the Official Journal, and that their content concerns the matters referred to in Art. 89(1) of the Constitution (i.e. international agreements subjected to the approval by the Parliament).

The Constitution invokes international law not only in the context of sources of law but also by some other occasions. So e.g. Art. 42(1) proclaims the rule *nullum crimen sine lege*, and states that this principle does not exclude punishing of perpetrators of crimes under international law. The provision can cause important difficulties in connection with the possible entry into force of international instruments on crimes against peace and humanity when the judges will be forced to decide whether specifie acts do

(8) Agreements concerning rights and (mainly jurisdictional) immunities of members of foreign armed forces stationing temporarily for the time of manœuvres in the territory of Poland has been invoked in this context.

constitute crime of aggression or other acts prohibited directly under customary international law. Difficulties connected with the application of customary law within the Polish municipal legal order would be multiplied be the necessity to interpret international rules themselves (like the question whether specific activities can constitute aggression without being qualified as such by the UN Security Council). Furthermore Art. 56(2) provides for a possibility of granting of the refugee status according to norms of binding international agreements. Here the situation is clear as the 1997 Aliens Act is fully conform with the Geneva Convention of 1951 on the Status of Refugees. However, problems might occur after the future accession of Poland to the EU and the acceptance of the Schengen and Dublin *acquis*. Art. 116 and 117 deal with the state of war and movements of foreign armed force invoking international agreements in this field (by the way, the problem is relatively complicated because of the manœuvres of the NATO troops in Poland ; the agreements dealing with this question are mostly technical but, on the other hand, they contain provisions concerning jurisdictional immunity of the foreign armed forces so that they should be ratified by the Parliament).

New solutions were adopted in respect to the competence of the Constitutional Court. Formerly, under the Law on Constitutional Court of 1985, the Court was competent neither to control the conformity of the international agreements with the constitution nor the conformity of domestic acts of lower rank with the international agreements. In the resolution of 30 November 1994 (9) the Court decided that it has power to control the conformity of a ratification law with the Constitution (ratification laws belong to the domestic legal order and cannot be distinguished from other laws passed by the Parliament). According to Art. 188(2) of the Constitution of 1997, the Court can control the conformity of international agreements with the Constitution, and of municipal acts with international agreements in force. It is unclear whether the Court is competent to control the conformity with the Constitution of acts of international organisations binding according to Art. 91(3).

Anticipating future membership in the European Union, the fathers of the Constitution proposed the introducing of provisions dealing with the transfer of certain competencies of the state powers to international organisations and international organs, as well as with the implementation of law enacted in the framework of international organisations in the Polish legal system. This problem has become actual under the present state of international obligations of Poland, in particular as far as it concerns resolutions of the UN Security Council (decisions within the meaning of Art. 25 of the UN Charter which are based upon Chapter VII), decisions of the Council of OECD and of the Council of the GATS. The latter are

(9) Case W.10/94, OTK 1994, Part 2, *Item* 48, p. 236.

addressed to the Member States (decisions of the Council of the OECD are based on Art. 5(2) and leave to the Member States the choice of measures of municipal law to implement them, Art. 6(3) ; the same applies to acts adopted on the basis of GATS). As to the decisions of the Security Council, they were implemented in a following way (10) : the government passed resolutions or enacted regulations addressed to respective competent ministers requiring them to take necessary measures to implement the UNSC resolutions, and subsequently the ministers adopted these measures taking into account the requirements of municipal law. Except one act, the said instruments did not invoke the UNSC resolutions but referred to municipal acts (statutes) as their bases. They were published in Dziennik Ustaw (Official Gazette) or in Monitor Polski (promulgation organ of the rank lower than Dziennik Ustaw). This practice cannot be upheld under the new Constitution in particular when the UNSC resolutions include provisions dealing with the status of individuals (11). The catalogue of sources of domestic law is exhaustive, and it does not provide for the enactment of regulations in order to implement international agreements. It seems necessary therefore either to implement UN S.C. resolutions by Parliament's statutes (what would not necessarily be enough effective) or to pass a law allowing the government to act in order to implement the S.C. decisions.

The nature of decisions of the Association Council Poland-EC in the Polish municipal law is also unclear. The practice was that the decisions were published in Monitor Polski. The decisions however can be divided into three categories : decisions modifying the Europe Agreement, interpreting it, and settling disputes between the parties concerning the application of the Agreement. At least the former ones can be directly effective within the Polish legal order. In our opinion they should be treated as implementing (executive) agreements to the Europe Agreement and published in Dziennik Ustaw.

According to Art. 90(1) of the Constitution of 1997, the Republic of Poland can transfer to the international organisations or international agencies certain powers (belonging to legislative, executive or judiciary, according to Art. 10(1) of the Constitution). The treaty transferring these powers should be either ratified by the President of the Republic upon the prior approval by qualified 2/3 majority of the members of both Houses of the Parliament or should be subjected to a popular referendum. In the latter case therefore the referendum would replace the approval by the act of Parliament what is regular procedure in respect of international agreements supposed to be directly effective. We must emphasise that the referendum

(10) Cf. P. DARANOWSKI, *The Resolutions of the Security Council of the United Nations Aimed at Maintenance or Restoration of International Peace and Security and the Polish Legal Order. The Practice of Implementation and Its Prospects*, PolYBIL 21(1994), p. 55 ff.

(11) Not to say that they can contain provisions contrary to the Constitution of 1997, like e.g. the requirement to extradire Polish nationals to foreign courts.

concerning the possible accession creates potentially difficult problems like e.g. what would happen if the participation would not exceed 50 % of voters. The law enacted by the organisation should be directly applicable and directly effective if the statute of that organisation so provides, and it should enjoy priority over statutes (Art. 91(3)). This provision should constitute a basis for the implementation of the *acquis communautaire* within the Polish domestic legal system. It will, however, require modification and amendment in the Accession Act, as certain elements of the *acquis* are not based directly on the founding treaties (like the question of direct effect of directives).

5. — Final Remarks

It is manifest that the provisions of the Polish Constitution of 2 April 1997 constitute an important step forward in the regulating of the relationship between international law and Polish municipal law. They precise the position of international agreements and legal acts of international organisations (ditto : European Union) within the domestic law, and establish the bases of implementation of international obligations by Poland. The regulation is not sufficient. Chapter III of the Constitution was drafted by experts, especially specialising in constitutional law. Because of the experience from the communist era they tried to construct the exhaustive system of sources of law in order to avoid possible abuses. Because of that the Constitution contains too many gaps which should be fulfilled by the legislation and jurisprudence of the courts, in particular — but not exclusively — of the Constitutional Court and the Supreme Court.