UDC: 341 DOI: https://doi.org/10.56461/iup_rlrc.2022.3.ch8

Dmitriy V. GALUSHKO*
Department of Legal Regulation of Economic Activities,
Financial University under the Government of the Russian Federation

INTERACTION BETWEEN EU LAW AND DOMESTIC LAW IN THE CONTEXT OF BREXIT

The study analyses some contemporary issues and challenges related to the interaction between EU law and domestic legal systems of the EU member states in the context of Brexit. The focus of the work is on the legal system of Great Britain, exploring the dualist approach of UK law to the law of the European Union. The Brexit process has raised issues of legal pluralism in the implementation of the EU integration law in the UK's legal system, which will also be addressed in the paper.

Keywords: European Union, legal order, interaction, dualism, pluralism, Brexit.

1. INTRODUCTION

The European Union, during its functioning and development, has formed its own unique legal order, within which it regulates the entire set of legal phenomena that arise within the framework of this international integration association, which reflects the modern trend of international law focusing mainly on domestic legal regimes (Sweet, 2003).

According to H. Kelsen, in law, a special place is occupied by the international legal order, which determines the territorial, personal and temporal spheres of the validity of national legal orders, making the simultaneous existence of different states possible. At the same time, international law determines the content of national law, regulating those issues that states would otherwise freely regulate unilaterally. In this regard, the relationship between international law and national law is "reminiscent of the relationship between the national legal order and the internal norms of a corporation" (Kelsen, 2007, p. 191).

A special place among these legal orders is occupied by the interstate "integration" legal order. The legal order of the EU manifests itself as a process of integration due to its formation on the basis of the unification and "melting" of separate, independent national legal systems and legal orders operating on their basis into a fairly stable and integral supranational legal entity.

* PhD, Associate Professor, ORCID: 0000-0002-9301-9565; e-mail: *galushkodv@gmail.com.*

Despite the perception and recognition of coherence and supremacy of EU law and its implementation in the national legal orders of the member states, EU law cannot ignore the constitutional and legal foundations of the legal orders of its member states, according to which their national legal systems interact with each other and with international and EU law. Thus, the effectiveness of the process of transposition of EU law into the national law of the member states will depend on the place of EU law in the «pyramids" of national norms. Moreover, this place in each country differs, first of all, from the way the national legal system regulates the relationship between international and national law, which for many comes down to the issue of choosing between monism and dualism, the two concepts which for a long time represent the two principal frameworks through which this issue is approached (Von Bogdandy, 2008, p. 399).

2. EU LAW, AS AN INTEGRATIONIST LEGAL ORDER, SEEN THROUGH THE MONIST AND DUALIST THEORY

The legal systems of the EU member states can be divided into two groups according to the way in which they approach the presence of international norms in their national legal orders. The first adheres to the monist concept of interaction of national and international law, and the other is dualist. The way international law is integrated into the national legal order, *i.e.* its operation and interaction with the national law, depends on whether the country applies the monist or the dualist approach.

In the continental legal systems, monist theory prevails. The dualist approach is characteristic, first of all, for states adhering to Anglo-Saxon legal traditions. In the UK legal system, ratification by the Parliament is mandatory for international treaties affecting the rights of individuals or requiring amendments to common law or statutes, treaties in the field of financial obligations and taxes. If an international treaty can be implemented within the limits of existing laws, then an administrative act of incorporation is adopted by the government or a competent ministry, which can take various forms. In the literature, this approach of the United Kingdom has been called the "Westminster tradition" (Council of Europe, 2001, p. 93).

British courts adhere to the rule that if there were no special national act of incorporation, the international treaty is not valid; that is, it does not apply in the national legal practice. In other words, the court applies the norms of a legislative act issued on the basis of an international treaty for its incorporation, while such a law does not have advantages over other laws of the state (Mendez, 2013). Material incorporation excludes a direct conflict between subsequent national legislation and international treaties. However, the law on the basis of which the incorporation of an international treaty is carried out is influenced by the principle "*lex posterior derogat legi priori*". In the event of a conflict, national legislation takes precedence over an international treaty and, although in practice subsequent law is adopted by taking into account the provisions of an existing international treaty, British courts proceed from the fact that such law should ensure consistency and not cause controversy because the UK Parliament when concluding the international treaty intends to fulfil its international obligations under international

law, and not be held responsible for their violation. The texts of international treaties are often used as a means of interpretation. It should be noted that such a dualist approach is based on the principle of separation of the branches of government in Great Britain, the essence of which lies in the fact that the right to ratify treaties belongs to the Royal Power, which could to a certain extent carry out legislative activities without the consent of the Parliament (Brownlie, 1998, p. 43).

In parallel with the expansion and transformation of the European Communities, the development of the very integration law of these entities took place. EU law is an independent and special legal system, the norms of which are integrated into the national law of the member states, and which regulate the development of complex integration processes between states and peoples united in the organisation of political power under the supranational entity called "the European Union". One of the fundamental principles of EU law is its supremacy over national legal systems. After the entry of Great Britain into the European Communities, not only the question of the relationship between national and European law but also questions of a constitutional order emerged. We are talking about the competition between the different forms of sovereignty because if the law of the European Communities had supremacy in relation to national legal systems, this conflicts with the constitutional principle of the supremacy of the Parliament of the United Kingdom in the legislative sphere.

Today, EU law's supremacy is recognized by all member states. And there is no dispute about the formula that in the event of a conflict between the norms of national law and EU law, the latter prevails (Entin *et al*, 2013, p. 77). It is noteworthy that most scholars in the field note the universal nature of the principle of the supremacy of EU law. Such "universality" is manifested in the fact that, firstly, this principle operates on the territory of all member states. Secondly, in relation to the provisions of national law, not only the founding treaties, as a kind of European constitutional acts, but also all other regulatory legal acts of the EU (the so-called "communitarian law") have priority. Thirdly, EU law has primacy not only in relation to the norms of ordinary national legislation but also to constitutional law.

3. UK LAW AND EU LAW FROM THE HISTORICAL PERSPECTVE

Great Britain became a member of the EU in 1973. The Treaty on the accession of the United Kingdom to the European Economic Community and the European Atomic Energy Community was concluded in Brussels on January 22, 1972. On the same day, the Council of the European Communities decided on the UK's accession to the European Coal and Steel Community. These international treaties were incorporated into the national legislation of Great Britain on October 17, 1972, when the Parliament adopted the European Communities Act.[1] As the researchers in the field have pointed out, the EU law, which derives from the Treaty of Rome and subsequent treaties, such as the Lisbon Treaty of 2007, and was developed by the EU Court of Justice, fundamentally limited the concept of parliamentary sovereignty in the UK (Leyland, 2012, p. 52). At the same time,

[1] European Communities Act 1972. Available at: https://www.legislation.gov.uk/ukpga/1972/68/contents (1. 8. 2022).

the European Communities Act did not contain special constitutional provisions but, in general terms, laid down the procedure for the direct application of the EU law and the supremacy of the law of the Communities. Accordingly, the practice of the EU Court of Justice and British courts was of great importance for eliminating the problems that arose as a result of the implementation of EU law in the national legal system, in particular, in coordination with the fundamental constitutional principle of the UK parliamentary sovereignty in the context of the dualist concept of the relationship between British law and EU law. The conflicts, which arose as a result of the interaction of two legal orders, were identified and eliminated.

The *Macarthys Ltd. vs Smith* (1979) case played a key role in the process of implementing EU law into the UK legal order. In his judgement, Lord Justice Denning stated that acts of the British Parliament must be interpreted in accordance with EU law unless the legislator provides otherwise.[2] At the same time, he noted that "[…] Parliament, whenever it passes legislation, intends to fulfil its obligations under the Treaty. If the time should come when our Parliament deliberately passes an Act with the intention of repudiating the Treaty or any provision in it or intentionally of acting inconsistently with it and says so in express terms, then I should have thought that it would be the duty of our courts to follow the statute of our Parliament. I do not, however, envisage any such situation. […] But if Parliament should do so, then I say we will consider that event when it happens. Unless there is such an intentional and express repudiation of the Treaty, it is our duty to give priority to the Treaty" (Leyland, 2012, p. 52). Since the decision was made, a new stage has begun in the development of the British judicial practice and the national legal system, where the British judiciary managed to make room for effective interaction between EU law and the British legal system (Brownlie, 1998, p. 46). Thus, the foundation was laid for the recognition of the principles of the supremacy and direct application of EU law in the British legal order, which were expressed in the fact that, in the event of conflicts between the national law of Great Britain and EU law, communitarian law will take precedence in cases where this is possible.

Another important case that contributed to the interaction of the EU and UK legal orders was the *Factortame* case, during which, in the UK Court of Appeal, Lord Bridge stated that "the presumption that an act of Parliament is compatible with Community law as long as it recognised as such shall be as strong as the presumption that the delegated legislation is valid until otherwise established" (Barnett, 2000, p. 351). In particular, it was stated that "the effectiveness of Community law as a whole would be threatened if national law could prevent the Court from deciding on the introduction of provisional measures of judicial protection, which concerned Community law, which would guarantee the absolute effectiveness of this judicial decision and confirm the existence of rights claimed under Community law" (Barnett, 2000, p. 351). Therefore, Community law must be interpreted in such a way as to require national courts to disregard rules of the national legal system that become an obstacle to deciding on provisional remedies (Hartley, 1998, pp. 224-225). In fact, in this case, the judgement once again confirmed the supremacy of European law

[2] Court of Appeal (Civil Division), 1979. *Macarthys Ltd. vs Smith*. Available at: https://vlex.co.uk/vid/macarthys-ltd-v-smith-793944417 (1. 8. 2022).

and filled in the gaps in legal regulation that arose as a result of the interaction of two legal orders — the EU and the UK.

As noted, in the *Factortame* case, such an important step of the House of Lords as the issuance of a ban that suspends the operation of a law passed by the Parliament was not accompanied by a discussion of the impact of this decision on the essence of the principle of the sovereignty of Parliament (Elliott, 2004, p. 549). This case brought a rather indirect assessment of the impact of the EU "supremacy principle" on the decisions of the Parliament. The court also did not sufficiently explain the nature of the relationship between the two legal orders — the national and EU legal order (Gordon, 2016).

Thus, many perceived *Factortame* as a decision that confirmed the supremacy of the EU law over British law and by which the sovereignty of the British Parliament in the domain of law-making was significantly undermined. However, in our opinion, there was no violation of parliamentary sovereignty. The courts did not set aside the relevant piece of legislation but only tried to interpret it in accordance with the British obligations under EU law by applying a dualist approach to the interaction of two legal orders. By repealing the law, the House of Lords actually forced the Parliament to voluntarily limit its sovereignty. In relation to this, Lord Justice Bridge noted that "whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act 1972, it was entirely voluntary".[3] Moreover, under the provisions of the 1972 Act, the courts are required to interpret UK law in accordance with EU law. The decision in the *Equal Opportunities Commission*,[4] another important ruling on the matter, called into question and, in relation to communal law, cancelled the validity of the concept of implied non-application of EU law according to the principle "*lex posterior derogat legi priori*". The 1972 Act was considered a special constitutional law that could not be repealed by a subsequent law without a special decision of the Parliament.

Subsequently, the case of *Thoburn v Sunderland City Council* [2002] offered a more thorough constitutional and legal analysis of this issue. In the decision, the court recognised the primacy of EU law over the laws adopted by the UK Parliament, with only one exception. The British Parliament may, by derogating from the principle of the supremacy of EU law, change the effect of a provision of European law in the territory of the United Kingdom only if, in passing the Act, in an explicit way, it would communicate its desire to do so. By this, the Parliament's sovereignty is preserved since it could at any time express its intention to repeal any law. In this way, the House of Lords was able both to uphold the principle of parliamentary sovereignty and secure the supremacy of EU law.

While evaluating its own approach to the problem of competition of sovereignties, the Administrative Court noted in § 64 of the *Thoburn* judgment that: "This development of the common law regarding constitutional rights, and […] constitutional statutes, is highly beneficial. It gives us most of the benefits of a written constitution, in which fundamental rights are accorded special respect. But it preserves the sovereignty of the legislature and

[3] House of Lords, 1990. Factortame Ltd, R (On the Application Of) v Secretary of State for Transport. Available at: https://www.casemine.com/judgement/uk/5a8ff8de60d03e7f57ecec34 (1. 8. 2022).

[4] House of Lords, 1994. Equal Opportunities Commission v. Secretary of State for Employment. Available at: https://www.casemine.com/judgement/uk/5a8ff8cb60d03e7f57ecd7ed (1. 8. 2022).

the flexibility of our uncodified constitution". In this context, Lord Judge J. Laws noted that "[t]he conditions of Parliament's legislative supremacy in the United Kingdom necessarily remain in the United Kingdom's hands. But the traditional doctrine has, in my judgment, been modified. It has been done by the common law, wholly consistent with the constitutional principle".[5] British scholars analyzing the *Thoburn* case agree that the Administrative Court, in this decision, for the first time provided a convincing legal interpretation of the status of EU law in the constitutional order of Great Britain. At the same time, the proposed version of the solution to the constitutional dilemma regarding the competition of sovereignties successfully combines the legal sovereignty of the Parliament with what can be called the pragmatic supremacy of the European Union legal norms (Elliott, 2004, p. 551).

However, the judgment in the *HS2* case added further nuance to the relationship between the EU "supremacy principle" and the parliamentary sovereignty in the absence of any clear guidance from the 1972 Act.[6] The UK Supreme Court held that where EU law requires that one of the key manifestations of the doctrine of the Parliament's sovereignty — the ban on judicial review of legislative procedure — has been suspended, the court will not be able to conduct such a review. In such a situation, the Supreme Court held, the EU law's supremacy may have to give way to the supremacy of the UK legislature.[7]

4. UK LAW AND EU LAW AFTER BREXIT: A SWITCH TO PLURALISM

The UK's decision to withdraw from the European Union raised a number of issues of international and national legal significance, in particular, with regard to the place of EU law in the country's legal system and the interaction of the two legal orders. In the *Miller* case, further clarification of the relationship was given by the Supreme Court. In order to answer a question on the exercise of prerogative powers on the application of Article 50 of the EU Treaty, the internal constitutional status of the EU law and the 1972 Act had to be analyzed anew. While addressing this question, the Supreme Court concluded that the impact of EU law on the UK legal order was of "unprecedented" character, so that the 1972 Act made EU law not only a source of law in the UK but also created "an entirely new, independent and overriding source of domestic law", which "takes precedence when compared with all other sources of law, including statutes".[8] Moreover, the Supreme Court found that although the 1972 Act gives effect to EU law, "it is not itself the originating source of that law". However, all the exclusivity that surrounded the 1972 Act as a constitutional statute and EU law as a special source of national law ultimately depended on the power of the UK Parliament to decide on the UK's membership in the EU and repeal the 1972 Act. Thus, despite its exceptional nature, the role of EU law in the legal order of the United

[5] High Court, 2002, Thoburn v Sunderland City Council. Available at: https://www.bailii.org/ew/cases/EWHC/Admin/2002/195.html (1. 8. 2022).

[6] Supreme Court, 2014. R (HS2 Action Alliance Ltd.) v. Secretary of State for Transport [2014] UKSC 3. Available at: https://www.supremecourt.uk/cases/uksc-2013-0172.html (1. 8. 2022).

[7] Supreme Court, 2014. R (HS2 Action Alliance Ltd.) v. Secretary of State for Transport [2014] UKSC 3. Available at: https://www.supremecourt.uk/cases/uksc-2013-0172.html (1. 8. 2022).

[8] Supreme Court, Miller & Anor, R (on the application of) v Secretary of State for Exiting the European Union (Rev 3) [2017] UKSC 5. URL: http://www.bailii.org/uk/cases/UKSC/2017/5.html (1. 8. 2022).

Kingdom was ultimately subject to the "rule of recognition", which defines Parliament as the supreme source of law under the constitution. According to that, the Parliament could repeal the 1972 Act, and EU law would cease to be the source of the national legal system in accordance with the constitution. Thus, EU law can only have a status of a source of law consistent with the principle of Parliamentary sovereignty.

An analysis of the key features of the adopted legislative and judicial measures regarding the interaction of the national legal order and the EU integration legal order in the context of Brexit reveals the transition from a specific internal organizational and legal mechanism for the implementation of EU law to the ambiguity regarding the specific status of EU law in the UK legal system and the relationship between the principle of the supremacy of EU law and the principle of sovereignty of the British Parliament. As noted in the doctrine, this particular "non-regulation" of the status of EU law in the UK quite clearly illustrates the pluralistic approach characterizing the interaction between the legal orders of the UK and the EU (Walker, 2014, p. 529).

Legal pluralism can be viewed through the prism of the possibility of the coexistence of various, potentially conflicting legal norms within the same legal system, which can have an exclusionary effect on each other. Although the doctrine states that due to legal pluralism, the existing conflict between legal norms expressed and enshrined in legal acts of different legal force can be overcome (Jansen, 2012), in our opinion, in practice, it is extremely difficult to create a legal mechanism for a selective application of norms in order to avoid the occurrence of conflict of laws in this or any other legal system. At the same time, until recently, when the scope of international law was expanded through international treaties, legal pluralism was viewed exclusively through the prism of a clear distribution of monist national legal orders and common, but limited in regulatory terms, international law, which, as a rule, did not intersect (Tanchev, 2014, p. 1053). In the context of Brexit, at the national level, are already applied not only the national legal norms and the integrated norms of the EU law but also the norms of international treaties ratified by the UK, as well as the norms of international treaties concluded between the UK and third countries, as well international organizations which, in contrast to the interaction of national and integration legal orders during the period of EU membership, now creates numerous problems and obstacles for effective legal regulation.

The idea is that within one state, different legal orders can coexist, given that there is a pluralism of legal forms and plurality of legal orders, and that no ethnic or state hierarchy exists in this regard. Thus, active cooperation and the functioning of various legal orders within a certain legal field are possible. Where a plurality of normative legal orders exists, each, together with a valid constitution, recognizes the legitimacy of the other within its own jurisdiction as long as neither imposes constitutional precedence over the other (MacCormick, 1999). Legal pluralism is possible thanks to a wide range of different instruments, which do not need necessarily be of a purely legal character, through which conflicts are resolved and social relations regulated (Twining, 2000, p. 84). The stable coexistence of various legal orders is provided through the fulfilment of certain requirements for the supremacy of relevant laws in order to avoid the emergence of legal chaos when an individual invokes only the norms belonging to his/her own legal order.

Some researchers analyse legal pluralism seen as a sum of inherently different regulatory orders that intersect, interact and are characterised by internal diversity. These national, regional and global regulatory orders can often be applied simultaneously beyond the national borders of states (Santos, 1995, p. 473), which, in its own way, can cause numerous problems of legal regulation.

Legal pluralism is an ambiguous concept that can be used both to denote the plurality of existing legal norms within one legal order and to the plurality of legal orders existing at the global level (Besson, 2008). The meaning of this concept is reduced to the fact that such a legal field is being created in which different legal orders interact and compete with each other regarding a set of actions that relate to the legal regulation of social relations of the same kind (Viola, 2007). This position is especially clearly and vividly reflected in the example of Brexit and the subsequent interaction of the EU integration legal order with the UK national legal order, modifying and thereby emphasizing its pluralistic nature.

Accordingly, one of the fundamental constitutional changes brought about by Brexit was the severing of the structural link between the UK constitution and the EU legal order and between the UK and EU courts based on the 1972 Act. As explained in Article 1 of the European Union (Withdrawal) Act of 2018, the 1972 Act will be cancelled on the "exit day".[9] Thus, it seems that relations between EU and UK law end with the formal repeal of the 1972 Act. It could be expected that, in the future, the interaction between the two legal orders will move towards a pluralistic approach, which is facilitated by a number of features of the agreements concluded between the two parties that regulate the future relations between the legal orders of the EU and the UK after Brexit.

The first important feature of the Withdrawal Agreement is that it does not, as might be expected with the repeal of the 1972 Act, repeal all EU laws in force in the UK prior to the exit day.[10] To a greater extent, it explicitly incorporates all EU acts in force prior to Brexit into the UK legal system by keeping existing EU law in force until the day of exit. Moreover, much of the provision of EU law retained in the UK legal system under this Act have the same effect as the highest norms of domestic law adopted by the UK Parliament.[11] According to the EU Court of Justice, the retained right of integration of EU law is preserved in the Withdrawal Agreement in such a way that the "validity, meaning or operation" of any EC law in force in the legal order of the UK before the day of withdrawal is to be interpreted and applied in accordance with the case law of the EU courts in relation to these communitarian acts.[12] Thus, when it comes to the need to secure the validity of the

[9] European Union (Withdrawal) Act 2018. Available at: https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted (1. 8. 2022).

[10] Agreement of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. OJ L 29, January 31, 2020, pp. 7-18. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12019W%2FTXT%2802%29 (1. 8. 2022).

[11] Agreement of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. OJ L 29, January 31, 2020, pp. 7-18. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12019W%2FTXT%2802%29 (1. 8. 2022).

[12] Agreement of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. OJ L 29, January 31, 2020, pp. 7-18. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12019W%2FTXT%2802%29 (1. 8. 2022).

EU law in the British legal system in the period after Brexit, the Withdrawal Agreement created the most pluralistic relationship between the two legal orders that was possible.

An essential factor in the development of the pluralistic approach was the obligation to recognize and apply EU law in the British legal system and to recognize the authority of the EU Court of Justice as the final interpreter of the European Union law. The changes made in this respect by the Withdrawal Agreement are significant as they assumed that the UK courts would not be bound by the jurisprudence of the EU Court of Justice and would not be able to issue pre-trial requests after the withdrawal. However, as noted above, the courts in the United Kingdom are obliged to apply the "retained" EU laws from the date of withdrawal in accordance with the case law of the Court of Justice of the EU, which is binding on them.[13] More importantly, the link between the EU courts and the UK courts in matters concerning the "post-withdrawal" EU law has not been completely severed. Article 6 of the European Union (Withdrawal) Act of 2018 provides that:

"2. […] a court or tribunal may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal".

Thus, as it is clear from Article 6, the decisions of the EU courts are not completely excluded from the UK legal order upon exit. There is still a statutory link between the UK courts and the EU courts, preserved by the Withdrawal Agreement and the UK national legislation. However, it is much weaker than the similar obligation under the 1972 Act. The fact that the UK courts are required by the statute to take into account "anything done" by the EU courts if it relates to any relevant matter, provides an essential link between the two legal orders.

Moreover, the Withdrawal Agreement, in contrast to the 1972 Act and the subsequent European Union Act of 2011, for the first time legislated the principle of the supremacy of EU law, which will continue to apply "on or after the day of withdrawal" to the extent in which it refers to the application of "retained" EU law (Agreement 2020). In this regard, it can be expected that the existing EU law, as adopted by its institutions, including EU courts, will continue to play a role in the UK's national legal order after the country's withdrawal from the Union. If future EU laws or decisions of the EU courts change, revise or develop the areas of EU law retained in the UK legal system under the Withdrawal Agreement, both during and after the "transition period", this might be decisive for the interpretation and application of the EU-related UK legislation laws for the foreseeable future (Mac Amhlaigh, 2019). Indeed, if, after Brexit, the UK continues to apply the relevant EU regulation, then the importance of the role that future EU law will play in the UK national legal order might become even more pronounced (Craig, 2018). This is a logical result of the retention of the existing EU law in the UK legal system even upon its departure from the Union. If there are gaps, deviations or ambiguities in the interpretation of this body of Union law, its interpretation by the EU courts could not but affect how the UK courts interpret and apply the retained law, even if it might seem to conflict with the post-Brexit statutes of the British Parliament.

[13] Agreement of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. OJ L 29, January 31, 2020, pp. 7-18. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12019W%2FTXT%2802%29 (1. 8. 2022).

5. CONCLUSION

In our view, EU law will have a significant impact on UK constitutional law after leaving the EU, given the relationship between the UK courts and the EU courts provided for in the 2018 Act. The types of situations that have led to constitutional pluralism — multiple sources of law claiming power, interacting and conflicting with each other — are supported to a certain extent by the structural link established between the courts under Article 6 of the 2018 Act. As already noted, its provisions provided that the UK courts may take into consideration a decision of an EU institution even post-Brexit, provided that it "is relevant to any matter before a court or tribunal».[14] The scope for recognition of the EU acts, in particular judgments of the EU Court of Justice, is particularly broad given that it applies to "any question" before a court or tribunal and is not limited to the interpretation or application of the retained EU law. Moreover, the interpretation and meaning of the term "take into account" is equally broad and, therefore, open to the British courts' own interpretation. In the context of Brexit, despite the Withdrawal Agreement's formal removal of the structural links between the EU and the UK courts established in the 1972 Act - which maintained a pluralistic relationship between them - the statutory norm allowing the courts to take into account future decisions of the EU institutions could have enormous pluralistic potential.

Despite the traditional adherence to the dualist conception of the relationship between international law and the national law of Great Britain, the analysis of the legal mechanisms created in the process of the UK's withdrawal from the European Union points to a pluralism of interactions between the law of the EU and the United Kingdom, which is expressed in the presence of at least two legal orders of equal status, each claiming supremacy by acting side by side and interacting through the transformational 1972 Act (Walker, 2016, p. 333). Moreover, unlike monism or dualism, pluralism explicitly rejects any universal solution for the prevalence of one system over another. Rather, these two orders are mutually adaptable without directly challenging the authority of one or another (MacCormick, 1999, p. 117), which can result in the reduced effectiveness of legal regulation.

LIST OF REFERENCES

Literature

Barnett, H. 2000. *Constitutional and Administrative Law*. London: Routledge.

Besson, S. 2008. *How International is the European Legal Order?* Available at: https://doc.rero.ch/record/28184/files/BESSON_S.__How_international_is_the_European_legal_order.pdf (1. 8. 2022).

Brownlie, I. 1998. *Principles of Public International Law*. Oxford: Clarendon Press.

Council of Europe. 2001. *Treaty Making – Expression of Consent by States to Be Bound by a Treaty.* The Hague: Kluwer Law International.

[14] European Union (Withdrawal) Act 2018. Available at: https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted (1. 8. 2022).

Craig, P. 2018. Miller, EU Law and the UK. In: Elliot M, Williams J. & Young A. (eds.), *The UK Constitution after Miller and Beyond*. London: Hart, pp. 109-130.
Elliott, M. 2004. United Kingdom: Parliamentary sovereignty under pressure. *International Journal of Constitutional Law*, 2(2), pp. 545-627. https://doi.org/10.1093/icon/2.3.545
Entin, L. M. *et al.* 2013. *Evropejskoe pravo. Pravo Evropejskogo Sojuza i pravovoe obespechenie zashhity prav cheloveka : uchebnik.* Moscow: Norma. INFRA-M.
Gordon, M. 2016. Brexit: A challenge for the UK constitution, of the UK constitution? *European Constitutional Law Review*, 12(3), pp. 409-444. https://doi.org/10.1017/S1574019616000341
Hartley, T. C. 1998. *The Foundations of European Community Law*. Oxford: Oxford University Press.
Jansen, N. 2012. *Legal Pluralism in Europe - National Laws, European Legislation, and Non-Legislative Codifications*. Available at: https://ssrn.com/abstract=1840356 (1. 8. 2022).
Kelsen, H. 2007. *General Theory of Law and State.* The Law Book Exchange.
Leyland, P. 2012. *Constitution of the United Kingdom: A Contextual Analysis.* Portland: Hart Publishing.
Mac Amhlaigh, C. 2019. Back to a Sovereign Future? Constitutional Pluralism after Brexit. *Cambridge Yearbook of European Legal Studies*, 21, pp. 41-58. https://doi.org/10.1017/cel.2019.8
MacCormick, N. 1999. *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth*. Oxford: Oxford University Press, pp. 97-123. https://doi.org/10.1093/acprof:oso/9780198268765.003.0008
Mendez, M. 2013. The Legal Effects of Treaties in Domestic Legal Orders and the Role of Domestic Courts. In: *The Legal Effects of EU Agreements.* Oxford: Oxford Academic. Available at: https://academic.oup.com/book/27017/chapter/196253263 (1. 8. 2022). https://doi.org/10.1093/acprof:oso/9780199606610.001.0001
Santos, B. S. 1995. *Toward a new common sense: Law, science, and politics in the paradigmatic transition*. New York: Routledge.
Sweet, A. S. 2003. *European Integration and the Legal System*. In: Börzel, T.A. & Cichowski, R.A. (eds.), *The State of the European Union, 6: Law, Politics, and Society.* Oxford: Oxford academic, pp. 18-47. Available at: https://academic.oup.com/book/32572/chapter-abstract/270362139?redirectedFrom=fulltext (1. 8. 2022).
Tanchev, E. 2014. Konstitucionnyj pljuralizm i mnogourovnoe upravlenie v Evropejskom Sojuze. *Zhurnal zarubezhnogo zakonodatel'stva i sravnitel'nogo pravovedenija,* 5 (49), pp. 1052-1062.
Twining, W. 2000. *Globalisation and Legal Theory.* London/Edingburgh/Dublin: Butterworths.
Viola, F. 2007. The Rule of Law in Legal Pluralism. In: *Law and Legal Cultures in the 21st Century. Diversity and Unity*. Warszawa: Oficyna, pp. 105-131. Available at: https://www1.unipa.it/viola/Rule_of_law.pdf (1. 8. 2022).
Von Bogdandy, A. 2008. Pluralism, Direct Effect, and the Ultimate Say. *International Journal of Constitutional Law*, 6, pp. 397-413. https://doi.org/10.1093/icon/mon015
Walker, N. 2014. Our Constitutional Unsettlement. *Public Law*, 2014(3), pp. 529-548. https://doi.org/10.2139/ssrn.2419437

Walker, N. 2016. Constitutional Pluralism Revisited. *European Law Journal*, 22(3), pp. 333-355. https://doi.org/10.1111/eulj.12177

Legal sources and case law

Agreement of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. OJ L 29, January 31, 2020, pp. 7-18. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12019W%2FTXT%2802%29 (1. 8. 2022).

Court of Appeal (Civil Division), 1979. *Macarthys Ltd. vs Smith*. Available at: https://vlex.co.uk/vid/macarthys-ltd-v-smith-793944417 (1. 8. 2022).

European Communities Act 1972. Available at: https://www.legislation.gov.uk/ukpga/1972/68/contents (1. 8. 2022).

European Union (Withdrawal) Act 2018. Available at: https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted (1. 8. 2022).

High Court, 2002, *Thoburn v Sunderland City Council.* Available at: https://www.bailii.org/ew/cases/EWHC/Admin/2002/195.html (1. 8. 2022).

House of Lords, 1990. *Factortame Ltd, R (On the Application Of) v Secretary of State for Transport.* Available at: https://www.casemine.com/judgement/uk/5a8ff8de60d03e7f57ecec34 (1. 8. 2022).

House of Lords, 1994. Equal Opportunities Commission v. Secretary of State for Employment. Available at: https://www.casemine.com/judgement/uk/5a8ff8cb60d03e7f57ecd7ed (1. 8. 2022).

Supreme Court, 2014. *R (HS2 Action Alliance Ltd.) v. Secretary of State for Transport* [2014] UKSC 3. Available at: https://www.supremecourt.uk/cases/uksc-2013-0172.html (1. 8. 2022).

Supreme Court, *Miller & Anor, R (on the application of) v Secretary of State for Exiting the European Union (Rev 3)* [2017] UKSC 5. URL: http://www.bailii.org/uk/cases/UKSC/2017/5.html (1. 8. 2022).