

Abstract

National Identity as a Corrective of the Absolute Primacy of European Law.

The aim of this thesis is to analyse national identity within Article 4(2) TEU and the potential of such article to serve as a legal ground for derogation from obligation imposed by EU law. From a wider perspective, the thesis attempts to assess whether introduction of Article 4(2) TEU redefined the relation between national legal orders and EU law.

The thesis is divided into three chapters. The first chapter deals with the pivotal principle of EU law primacy. The chapter explains two distinctive approaches adopted by the CJEU (absolute primacy) and the Member States (relative primacy).

In the second chapter, the author firstly provides brief history of obligation to respect national identity in the Treaties. Secondly, she examines the content of term „national identity“. The author claims that Article 4(2) TEU has a composite (pluralistic) structure, thus, the national courts and the CJEU plays different roles in application of the obligation to respect national identity. The national identity is inherently linked to the constitutional law of Member States, therefore, it must be defined by its constitutional courts. At the same time, the CJEU lacks the competence to interpret national identity as such, however, it is entitled to construe the obligation to respect [national identity].

The third chapter proceeds with analysis of the concept of constitutional identity in the judgments of constitutional courts (Constitutional Court of the Czech Republic and the Federal Constitutional Court of Germany) and, on the other hand, the application of Article 4(2) TEU in case-law of the CJEU.

The author draws a conclusion that Article 4(2) TEU codified an unwritten *usus*, which has always been present in EU law. Nonetheless, the article provides the national courts and the CJEU with an institutionalised platform for a dialogue. In such dialogue, the constitutional courts define the content of national identity, according to the research, they do so upon the fundamental provisions of the national constitutions. The role of the CJEU is to assess the claim to respect national identity in the light of EU law. Pursuant to its case-law, the CJEU requires such claim to be in compliance with the principle of proportionality. Therefore, it diminishes the potential of Article 4(2) TEU to be successfully invoked as a derogation ground.