SUMMARY

The submitted dissertation thesis analyses the principle of primacy of EU law from the basic point of view of legal theory. It points out different approaches to the primacy principle and examines the arguments on which these approaches are based.

The fist part of the thesis deals with the examination of the primacy principle related to its legal basis, using the sources most frequently listed in the literature: the founding treaties, the case law of the Court of Justice, legal theory (Kelsen's basic norm, Hart's rule of recognition and the legal sociology approaches), and international and national law. I have focused on the historical documents (Treaty Establishing the European Coal and Steel Community, Treaty Establishing the European Economic Community), the concepts based on them (doctrine of the conferred powers and the principle of subsidiarity), and the non-ratified Treaty Establishing a Constitution for Europe and legally non-binding Declaration No. 17 attached to the Lisbon Treaty.

I have applied a critical approach to the argumentation of the Court of Justice in the decisions establishing the principle of primacy: *Van Gend en Loos*, *Costa*, *Internationale Handelsgesellschaft*, *Simmenthal*. Taking into account the existing objections against the arguments used by the Court of Justice, I have focused on several theories that could overcome the shortcomings (those of *H. Kelsen*, *H. L. A. Hart* and others as mentioned above), and also on the allegations based on general public international law, or conversely, on national law.

I have reached the conclusion that since the decisions of the Court of Justice (if we omit its power to act as a negative European lawmaker) are not formally binding sources of law and a common understanding of the Member States and the Court of Justice is lacking, it is not possible to unequivocally determine the basis of the primacy principle according to any of the prevailing conceptions. Moreover, the legal doctrine provides no generally accepted answer. It is also necessary to take into account the broader political and legal development of the European integration and its potential to be reflected in the case law of the Court of Justice.

In the second part of the dissertation, I concentrate on the manifestations of the principle of primacy as decided by the Court of Justice, which to a great extent have been accepted by the Member States, primarily by their courts. The divergence between authors on the primacy principle demonstrated in the introduction to this part can be explained by the small number of decisions containing substantial arguments on the primacy principle. The actual research on the scope of application of the principle (ratione materiae, loci, personae, temporis) in my view

confirms the claim that the primacy principle is concerned with the relationship between two legal systems, not the concretely identifiable norms belonging to these systems.

Significantly, I found that according to the decisions of the Court of Justice, the scope of application of the primacy principle is in certain cases narrower that the scope of application of European law, i.e. certain exceptions exist. Although it is labelled as a *"principle",* the principle of primacy is not handled uniformly in the literature. It therefore became necessary to examine the actual nature of the principle of primacy: whether it presents 1.) a rule of interpretation, 2.) a rule of conflict of laws, 3.) a derogation rule, 4.) a legal principle (in the concept of *R. Alexy*), or 5.) an essential characteristic of EU law that presents a general expression of the relationship between EU and national law, exceeding the notion of legal principle. I assume that even if we disregard the advantages and disadvantages associated with individual conceptions, the conception that is most in compliance with the case law of the Court of Justice is that of the legal principle that can be balanced against other colliding principles.

The third part of the dissertation builds on this conclusion and deals with the decisions of the Member States' constitutional courts. During the decades, the shared objections against the absolute principle of primacy (i.e. that the European law should prevail over any national law, including constitutional) have crystallised. In my opinion we can consider these objections to include some colliding principles balancing the principle of primacy of European law.

The starting point lies in the dispute over 1.) the legal basis of the principle of primacy, which has no clear solution, as I outlined above, and also in 2.) objections based on the protection of the fundamental rights and other values enshrined in the national constitutions, 3.) national limitations on the possible transfer of competences, 4.) the principle of conferred powers and the compliance with the limits of the conferred powers, 5.) the *kompetenz-kompetenz* and 6.) the requirement of the a priori control of EU lawmaking to be connected with the principle of democratic legitimacy.

I have focused on the case law of the Constitutional Court of the Czech Republic in a separate chapter. With regard to the primacy principle, the Constitutional Court deals not only with the issue of the legal basis for the application of EU law, but also with other specific issues related to lawmaking (especially the transposition and implementation of EU law) and the application of EU law by courts and administrative (executive) governmental bodies.

As the national courts have played an important role in the acceptance of the principle of primacy and the examination of this role is a current subject of interest within the European legal doctrine, this separate chapter deals with the legal and non-legal factors that could have

influenced the standpoint of the national courts. These include in particular 1.) changes in the broader interpretational frame in connection with the intensity of the European integration, 2.) objective limitations, notably institutional factors, 3.) subjective factors relating to judges, 4.) factors relating to other relevant players, such as other state bodies (mainly national parliaments), various interest groups and individuals, and the legal doctrine.

The fourth and final part of the dissertation thesis again starts with a focus on legal theory, and concerns the conceptions of European legal pluralism. These, in my opinion, react most appropriately to the shortcomings of other conceptions demonstrated previously. In this part, I point out the historical, political and philosophical links that are included in the concepts of the principal writers. In order to demonstrate the variety of the approaches I deal in detail with the original pluralistic model of *N. MacCormick*, the cooperative pluralism of *P. Kirchhof*, the theory of constitutionalism beyond the state of *M. Kumm*, the contrapunctual principles of *M. Maduro* and the neutral model of constitutional pluralism of *N. Walker.* I also point out that these authors are not politically neutral in their outcomes, and that either they are attracted by the more pro-federal conceptions or they prefer outcomes that are more in line with the objections of the national constitutional courts as stated in the third part.

A critical assessment of the new theories of legal pluralism (especially their suitability and necessity in comparison with the "classical" doctrines of constitutionalism) is followed by the application of their conclusions to the operation of the bodies of the Czech Republic. Discussed in detail are the ability of the national parliament in specific circumstances to adopt a law contrary to EU law, the possibility of influencing the consequences of the primacy principle in the process of EU lawmaking, and the consequences of the principle of primacy for the courts, and even more so, for the public administrative bodies that find themselves in the position of the "servant of two masters" and from whom double loyalty is required.

Finally, I come to the conclusion, on the basis of the above, that the role of the legal doctrine is neither to provoke alarm at the first reference to European federalism, not to pompously welcome it. Instead, the most accurate analysis of the situation must be found *sine ira et studio* using the instruments available to legal science (elaborated theories, notions, etc.). Work in this vein could have useful consequences for the operations of the legal systems both *de lege lata* and *de lege ferenda,* but in any case must strictly distinguish between them.