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On the topic

The relationship between the European Union's legal order and the Constitutions of its Member States

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Summary of the PhD thesis

INTRODUCTION

The aim of this scientific work is to study, identify, systematize and define various aspects of the relationship between European Union law and the 27 constitutions of its Member States and to prove the original nature of the existing relationship between the two legal orders.

The study is based on the thesis that the relationship between the acquis communautaire and the national constitutions stems follow from the mutual entry of Union law into the national constitutions and *vice versa*, with fundamental importance of the role of national constitutions. The author argues that exists a part of the national constitutions, called *"the inviolable core of the constitution"* which expresses the basic elements of the State, such as its sovereignty, constitutional identity and fundamental human rights, fundamental values, principles and rules in the state, and if this core is violated, this would lead to a violation of the relationship between the two legal orders, and in some cases to its termination. The author proves that this *core* of the national constitutions cannot be identified in advance, but can be identified *ad hoc* and be protected in three ways: by the clause for the protection of constitutional identity, by declaring *ultra vires* the actions of the opposing court and by verifying the conformity of EU law with the constitution under the doctrine of *national constitutional review*.

CHAPTER ONE: CONSTITUTIONAL RELATIONS BETWEEN THE EU LEGAL ORDER AND THE NATIONAL LAW

- Section one: *European union law and the national constitutions*

Within this section the author presents the notion of a "national constitution" from the perspective of an analysis of the provisions of 27 EU constitutions, the doctrine and the practice of the constitutional courts of the MS; the notion of "EU law' from the perspective of the Founding treaties, CJEU practice and the practice of the Constitutional courts. Both notions are enriched by the view of the Bulgarian and foreign legal doctrines.

This sections follows the importance of the European constitutionalism and suggests an approach what to do in situations in which a Member State's constitution (or a candidate country) is in collision with EU law.

- Section two: *Constitutional dialogue*

Here one may find the author's idea of the 7 basic functions of the constitution in relation with the EU legal order. This section examines the possibility of Constitutional courts to refer preliminary questions to the CJEU, incl. how, when and under what circumstances. It examines what happens if a national constitutional court has ruled on the constitutionality of a national norm with the same content as a norm of EU law and does it need to make a reference for a preliminary ruling in the event of both unconstitutionality and breach of EU law on a national rule.

CHAPTER TWO: PECULIARITIES OF THE EFFECT OF THE NATIONAL CONSTITUTIONS IN THE CONTEXT OF THE LAW OF THE EUROPEAN UNION.

- Section one: *Principles determining the effect of EU law in its relationship with the national constitutions. Indirect effect and national constitutions*

Here one may find comparative analysis between the principle of direct applicability of the national constitutions and the direct applicability of EU law; between principle of supremacy of national constitutions and principle of supremacy of EU law and the relationship between direct and indirect effect of EU and national constitutions.

- Section two: *Constitutional conditions for interaction with the principle of supremacy*

In this section the author analyzes the provisions of the constitutions of the Member States and suggests a possible classification of the national constitutions into three types according how their provisions treat the principle of supremacy of EU law: 1. European constitutional sovereignty (if they accept it); 2. National constitutional sovereignty (if they try to deny it) and 3. Constitutional tolerance (if they tacitly accept it), using the approach of Damian Chalmers[1] who suggests such classification of Constitutional courts actions towards EU law.

- Section three: *Challenges related to the legal grounds for assistance between the two legal orders*

In this section the study focuses on the topics of constitutional identity, abuse with constitutional identity, the difference between sovereignty and constitutional identity. Here the author argues that exists a part of the national constitutions, called *"the inviolable core of the constitution"* which expresses the basic elements of the State, such as its sovereignty, constitutional identity and fundamental human rights, fundamental values, principles and rules, and if this core is violated, this would lead to a violation of the relationship between the two legal orders, and in some cases to its termination. And that this inviolable core cannot be violated neither by another country, nor by EU Law, meaning it serves as a limit of the effects of EU law.

CHAPTER THREE: PROBLEMATIC ASPECTS OF THE RELATIONSHIP BETWEEN THE EU LAW AND THE CONSTITUTIONS OF ITS MEMBER STATES

- Section one: *Conflicting relations with the constitutions of the Member states*

In this section, the author proposes and examines three ways to defend the *inviolable core* of the national constitutions: 1. Through the *constitutional identity clause*; 2. Through the doctrine of *ultra vires*; 3. Through the doctrine of *national constitutional review*.

This section also examines the relationship between the protection of the human rights granted by the EU legal order and the one granted in the national constitutions. It gives answers what happens if the national constitutions envisage higher standards of protection of human rights than EU Law (in both cases where the relevant policy is harmonized and where it is not) and what happens if the constitutions envisage lower standards of protection than those put in place by EU law.

- Section two: *Mechanisms for conformity of the constitutions of the Member states with the law of the European union. Mechanisms of judicial, constitutional and institutional aspect*

The first part of the section identifies mechanisms, both on EU and national level, which aim to reduce the collisions between the two legal orders through ensuring sufficient level of conformity between them.

In the second part of the section, the author presents its view that the two legal orders have to be ready to defend themselves one from another and identifies different way to do so under the topic: Protection of the national constitutions from the EU Law and Protection of the EU from the national constitutions.

CONCLUSIONS

In the concluding part of the PHD thesis, the author presents the outcomes of the study and the identified *de lege ferenda* proposals.

[1] Damian, Davies, Gareth., Monti, Giorgio. European Union Law, Cambridge University Press, Second Edition, p. 184, 2010.