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Conference report: International Scientific Conference on ‘Theoretical and Practical Aspects of Constitutional Identity’

- **ABSTRACT:** *One of the most significant questions in Europe is constitutional identity. The progression of globalisation and the federalisation of the European Union (EU), hindered sovereignty of the member states. In this climate, the notion of constitutional identity, which is a component of national identity enshrined in constitutions, has become one of the key tools for regaining autonomy. Many conflicting opinions have emerged in the scholarly world regarding the application of constitutional identity. One view is that it is just a vague instrument that aims to obstruct European integration, while another group of experts states that it is the last resort to stop the enforcement of an ideologically filled common identity generated by judicial organs, which is often contrary to national identities. To discuss this topic, a research group titled ‘Constitutional Identity and Relations Between the EU Law and the Domestic Law of the Member States’ was established. The group of renowned experts from France, Germany, the Czech Republic, Croatia, Hungary, Poland, Romania, Italy, and the Slovak Republic led by Professor András Zs. Varga conducted structured scientific research using a common questionnaire. The first outcome of their work was the International Scientific Conference on the ‘Theoretical and Practical Aspects of Constitutional Identity’ presented at the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University in Budapest. The event served as an extraordinary opportunity to observe the meaning of constitutional identity in member countries, how it is protected, and the similarities and differences between member states. In this short report, I summarised the fundamental points of each presentation to provide key themes and messages.*
- **KEYWORDS:** constitutional identity, federalisation, sovereignty, national identity, Constitutional Court, CJEU, principle of primacy

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1. About the event

On the 13th of December 2022, in the Ceremonial Hall of the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University, the findings of one of the Central European Professors Network research groups were presented regarding the theoretical and practical aspects of constitutional identity. The event was jointly organized by the University of Miskolc and the Central European Academy. The Pázmány Péter Catholic University, the Ferenc Mádl Institute of Comparative Law, and the Central-European Association for Comparative Law contributed as partners to the success of the conference.

2. Introductory speech

Professor János Ede Szilágyi, Director of the Ferenc Mádl Institute of Comparative Law and Head of the Department of Labour and Agricultural Law at the University of Miskolc, opened the conference. In his opening speech, he elaborated on the role of the Central European Academy and the Central European Professors Network. Professor Szilágyi explained that the Central European Academy is an institution established within the framework of the University of Miskolc, focusing on Central European research projects. In pursuit of this objective, the Academy operates the Central European Professors Network which gathers 47 senior researchers, mainly from seven countries in the Central European region, to undertake joint research that results in numerous publications, books, and conferences. This year, five separate scientific groups are researching the following topics: Constitutional Protection of National Symbols, Right to Privacy, Content of the Right to Parental Responsibility, Constitutional Framework for the Protection of Future Generations and the Environment, and Constitutional Identity and Relations between EU Law and the Domestic Law of Member States. In addition to the network of established researchers, the Central European Academy also operates the Central European Junior Program that comprises a joint four-year comparative law-focused Doctorate of Philosophy at the Deák Ferenc Doctoral School of the University of Miskolc and an internship program at the Central European Academy. Currently, there are two grades with 19 students from Hungary, Slovakia, Poland, Romania, Serbia, Croatia, and the Czech Republic. Finally, Professor Szilágyi introduced the third branch of the Academy, Central European Academy Publishing, which provides an opportunity for researchers from the Central European region to publish in books and journals.

3. Presentations of the research group

Following Professor Szilágyi's introduction, Professor András Zs. Varga, Member of the Venice Convention, Head of the Department of Administrative Law at Pázmány Péter Catholic University, and the leader of the research group on 'Constitutional Identity and Relations Between the EU Law and the Domestic Law of the Member States' introduced the research group and its members. He explained that as a result of their activities he is convinced that one of the most important issues in the coming years is the relationship between common European and national values. He further pointed out that the research focused on whether there are similar patterns regarding EU law's primacy, the EU's competencies, and member states' constitutional identity. In his opinion, this research facilitates a better understanding of the current tendencies and directions of EU institutions and law. Moreover, this research helps in better understanding the nature of the guiding principles. Regarding the research methodology, he stated that it followed a comparative approach, and its methodology was based on a questionnaire.

■ 3.1. France

The first researcher to present on constitutional identity and relations between the EU law and the domestic law of the member states was Professor Bertrand Mathieu, a member of the Venice Convention and a Professor à l'École de droit de la Sorbonne.¹ Due to his other obligations, he was unable to be present at the conference; therefore, his speech was delivered by Dr. Lilla Berkes. In his presentation, he explained that fundamental and human rights were born within a national framework, although their current development questions these state frameworks. He elaborated that currently in the EU there is no recognition of a dualist system where, on the one hand, there are shared values and, on the other, there are individual values specific to each country. Furthermore, he explained that the Charter of the Fundamental Rights of the EU defines common values in extensive terms. However, these new arbitrary values are disconnected from the national melting pot, which, combined with judges' broad interpretations, can result in judgments of conflicting national values. He further expanded on this through the example of the rule of law, which, when interpreted as respecting an individual and protecting against arbitrary action, is part of the common heritage; however, it can also be used to introduce ideological concepts. To combat this, he mentioned that the relationship between national and EU competencies must be redefined and that constructive dialogue must be established between the EU and national courts.

1 See more Bertrand, 2022, pp. 21–39; Bertrand, 2007, pp. 977–987; Viala, 2011, pp. 7–24.

■ 3.2. *Germany*

Professor Alexander Graser from Regensburg University gave the next presentation titled ‘Quite Entrenched, But Still Generic: The Concept of Constitutional Identity in the Jurisprudence of the German Federal Constitutional Court.’² First, he briefly explained how supranationality was entrenched in German Basic Law and outlined the importance of the eternity clause. Subsequently, he answered the questions of the common questionnaire. The Professor described how the German Federal Constitutional Court assumed its authority to check the legal actions of the EU. It repeatedly expressed concerns about fundamental rights issues, democratic legitimacy, principles of conferral, and budgetary sovereignty. However, it has only held a legal measure of the EU contrary to the Basic Law once—the “PSPP decision.” Regarding the academic position of EU law from accession to the present, he stated that currently the remaining battleground is not substantive and mainly revolves around the role of the German Federal Constitutional Court. In his conclusion, he explained that the position of the German Federal Constitutional Court in this regard might not be related to the German Constitutional identity, but it acts as a “supervisor” of the European Court of Justice and the EU institutions concerning democracy and the rule of law.

■ 3.3. *Czech Republic*

The fourth presenter was Professor Michal Petr, Head of the Department of International and European Law at the Palacky University Olomouc, who talked about the ‘Constitutional identity in Czech jurisprudence.’³ First, he said that uniquely in the Czech Republic the term constitutional identity is not used by the Court itself; instead, it refers to the core of the Constitution, which is actively protected. Thereafter, Professor Petr introduced the audience to the “core” protecting jurisprudence of the Czech Constitutional Court. Regarding the relationship between Czech law and EU law, the Professor mentioned that in the “Sugar Quotas III judgment”, the Court declared that the primacy of EU law is not limitless. Nevertheless, he explained that the Czech Constitutional Court is pro-European and applies a European-friendly interpretation. The only case in which the Czech Constitutional Court opposed the ruling of the European Court of Justice was the Slovak pension case, but this was not reasoned on protecting the Czech Constitutional identity. In closing he posed the following theoretical question: If the Czech Constitutional Court is aligned with the EU, is there anything that could be considered part of the Czech Constitutional identity? He answered this by saying the principle of not applying today’s criteria to a situation over a century old, enshrined in the “Benes decrees” case, – can be considered a part of the Czech Constitutional identity.

2 See more Calliess, 2019, pp. 153–181; Simon, 2021, pp. 185–205; Polzin, 2016, pp. 411–438.

3 See more Knob, 2017, pp. 325–337; Belling, 2016, pp. 641–662; Baroš, 2013, pp. 1–10.

■ 3.4. Croatia

The closing speech in the first phase of the conference was delivered by Professor Peter Bačić, Head of the Department of Constitutional and Political Sciences at the University of Split, on the topic of 'Croatian Constitutional Identity and European Integration'.⁴ He began his speech by stating that, until now, constitutional identity has rarely been discussed in Croatia, only in exceptional cases, such as the right of national minorities. He explained that in general, the term constitutional identity lacks clarity in Croatia. Following the introduction, he briefly familiarised the audience with the Constitution of Croatia, with a particular focus on EU accession amendments. Subsequently, he highlighted the parts of the Constitution that could be considered for the basis of constitutional identity. According to the Professor, among other provisions, the Preamble of the 1990 constitution, especially the part that defines Croatia as a 'state of Croatians and of its national minorities,' and Article 1, which defines Croatia as a 'unitary indivisible democratic welfare state in which the power derives from the people and rests in the people' can be regarded as a part of Croatian Constitutional identity. He followed with detailed examples of cases in which the Constitutional Court referred to constitutional identity. Concluding his presentation, Professor explained that until now, the Croatian Constitutional Court had only once declared its general legal standpoint regarding EU law in the 2015 monetisation of motorways case, where the Court eventually declared the supremacy of the Constitution.

■ 3.5. Hungary

The second part of the conference began with a joint presentation by Dr. Lilla Berkes, a professor at Péter Pázmány Catholic University, and Professor András Zs. Varga titled 'The Constitutional Court's uneven road from EU accession to sovereignty control'.⁵ First, Professor Berkes elaborated on the constitutional amendment that, on the one hand, determined the division of competencies between the EU and Hungary, and on the other, served as the basis for the integration of EU law. This was followed by insights into the practice of the Constitutional Court, which she explained that initially the Constitutional Court only examined the constitutionality of the legislation implementing EU Law and not the EU Law itself. However, this approach started to change with the adoption of the Fundamental Law of Hungary in 2012. Professor Varga first explained the provisions of the Fundamental Law that resulted in the non-acceptance of the absolute and unconditional primacy of EU Law and then the relevant case law of the court. The 32/2022 (XII. 20.) decision was highlighted, which silently created Hungary's eternity clause through its interpretation of the Fundamental law.

4 See more Smerdel, 2014, pp. 513–534; Brajković, 2021, pp. 269–289; Čičak and Žuškić, 2013, pp. 97–103; Vujević, 2007, pp. 379–404.

5 See more Trócsányi, 2014, pp. 1–280; Trócsányi, 2019, pp. 31–41; Varga, 2021, pp. 155–178; Tribl, 2022, pp. 491–500.

■ 3.6. *Poland*

The second presentation titled ‘Determining and Reclaiming of the Constitutional Identity in the Case Law of the Polish Constitutional Tribunal’ was delivered by Professor Aleksander Stępkowski from the University of Warsaw. He spoke of two landmark cases of the Constitutional Tribunal, the first defined constitutional identity and the latter tried to implement this concept.⁶ In the first case the constitutionality of certain provisions of the Lisbon Treaty was reviewed. He explained that in its judgment the Polish Constitutional Tribunal declared that limiting sovereignty does not result in its abolition, and in their view, constitutional identity consists of a range of state powers that are not transferable. As mentioned by Professor Stępkowski, these include human dignity, democracy, and the rule of law. As further explained the most significant outcome of the case was the declaration of the constitutional principle of the protection of sovereignty in the European integration process, which set constraints on integration. Regarding the second case, the Professor explained that the Constitutional Tribunal, in its judgment, declared that the integration had reached a point where certain legal solutions were outside

■ 3.7. *Romania*

The next speaker was Professor Marieta Safta from the Titu Maiorescu University in Bucharest, who presented a joint paper with Professor Tudorel Toader from the Alexandru Ioan Cuza University titled ‘Romanian Constitutional Identity.’⁷ In her presentation, Professor Safta summarised their research by following the structure of the questionnaire. She first elaborated on the provisions of the Constitution that reference EU law and the conferral of competencies. Subsequently, she talked about cases where the Constitutional Court acted in defence of the national law and concluded that the integration clause of the Constitution allows for this as it declares the supremacy of the Constitution. The Professor also explained that the eternity clause and other provisions of the Constitution gave birth to the concept of constitutional identity. Further elaborating on the concept of constitutional identity, Professor Safta mentioned that the concept is becoming more dynamic in the court’s practice, and she talked about the cases where Constitution was enshrined.

■ 3.8. *Italy*

The penultimate speaker was Professor Giacinto della Cananea from the Bocconi University of Milano, who delivered a lecture titled ‘EU law and domestic law in Italy: from separation to integration.’⁸ Professor Cananea provided a brief

6 See more Florczak-Wątor and Krzemiński, 2022; Sobczak, 2018, pp. 165–174; Muszyński, 2023, pp. 5–40.

7 See more Guțan, 2022, pp. 109–128; Cochintu and Titirișcă, 2019, pp. 62–68.

8 See more Fabbrini and Pollicino, 2019, pp. 201–221; Faraguna, 2019, pp. 329–344; Piccirilli, 2022, pp. 261–273.

overview of European integration, with a particular focus on Italy's contribution to the process. He followed by introducing the most critical cases of the Italian Constitutional Court and emphasised that the doctrine of Italian and EU legal orders being separated changed over time. First, the new doctrine regarded them as autonomous but coordinated; this later changed again and regarded them as coordinated and communicating. Dr. Cananea then explained how Italy's European community funding position and the practice of the Constitutional Court shaped the relationship between the EU and Italy. In conclusion, he mentioned that the building of the Italian national identity is not separate from the integration process and, ultimately, from European identity.

■ 3.9. *Slovak Republic*

Professor Alena Krunková from Pavol Jozef Safárik University gave the conference's final presentation titled 'Identity and Authority of the Constitution of the Slovak Republic.'⁹ She began with a theoretical consideration reading the factors that influence the constitution's authority and whether authority influences identity or the other way around. This was followed by distinguishing between authority and power where Professor Krunková explained that the essence of authority is that it is lined with legitimacy and can increase and decrease the power of the Constitution. In the latter part of the presentation, Dr. Krunková discussed issues such as the turbulent creation of the constitution and its amendments and how accession to the EU has influenced its development. In conclusion, she highlighted the relationship between EU Law and the provisions of the Constitution.

4. Conclusion

After the last presentation, a short discussion took place that focused on how conflicts between the EU and member states concerning national identity can be prevented and resolved.

Overall, the conference provided an impressive opportunity to see how constitutional identity is formulated in member countries, the differences and similarities in the protection of constitutional identity, and the reactions of member states when the European Union threatens their constitutional identity. Distinguished speakers presented interesting examples from which valuable conclusions could be drawn regarding constitutional identity. For anyone interested in the topic, I would highly suggest visiting the YouTube channel of the Central European Academy as the full recording of the conference is available there.

⁹ See more Hamulák, 2013, pp. 222–239; Hodás, 2018, pp. 108–127; Miháliková, 2018, pp. 39–52.

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