

DESCRIPTION FOR THE GENERAL PUBLIC

European constitutionalism. Pluralistic concept of the relation between EU and national law in case law

1. Globalization processes lead to the emergence of new legal phenomena which cannot be fully described using concepts and terminology developed in the context of the dichotomy: national v. international law. In the European legal area, the emergence of these phenomena is determined by the transnational nature of the EU legal order and the multiplicity of claims to authority, which can be observed especially in the context of the relation between the Court of Justice of the European Union (CJEU) and constitutional courts of the EU Member States. This determines the possibility of a conflict between legal orders: EU and national. The subject matter of the potential dispute may be, in particular, effectiveness and primacy of EU law clashing with fundamental rights of the individual as envisaged by the national courts and tribunals. The answer to these challenges is a trend in legal studies aimed at conceptualizing new transnational legal phenomena: constitutional pluralism.

The aim of the research project is to present and analyse the pluralistic concepts of European constitutionalism in the context of the current challenges for the relationship between EU and national law identified in the case law (selected CJUE and constitutional courts (supreme courts) of the EU Member States). The research is intended to provide an answer to the question whether the theories on constitutional pluralism in the EU are reflected in the judicial decisions as well as whether those theories bring an adequate tool for description and analysis of EU law in the light of its dynamic relation with national law.

2. The research will be conducted on two levels: dogmatic and theoretical (European and constitutional). It proved necessary to distinguish the theories of European and constitutional law, both from the theory of law and dogmatic per se. The theories of European and constitutional law shall be based on the dogmatic findings, as well as shall aim to explain the meaning and structure of dogmatic concepts. The dogmatic method will be used to analyse the provisions of the treaties, the Charter of Fundamental Rights, selected Member States' constitutions, as well as judicial decisions and doctrine. The theoretical method will be used to describe and analyse concepts and paradigms on EU law viewed in the context of its constitutionalisation. In particular, the terminology and research perspectives used in the theory of EU law shall be employed. Two levels of statements on law will be clearly separated: descriptive and normative. This will make it possible to differentiate, on the one hand, the explanatory statements and, on the other, normative statements on law. Interpretation of legal acts will be performed using all methods of legal exegesis, such as linguistic, systematic, historical way of interpretation as well as various types of interpretation methods based on the notion of functionality.

3. The theme of the project is justified by the need to find an adequate tool for analysing the dynamic relationship between EU and national law. It should be submitted that globalization processes, political, social and economic changes taking place in the EU Member States bring new and important challenges for the EU and national legislators as well as the judicial authorities, that affect the European constitutional pluralism in action. Moreover the research shall provide theoretical and dogmatic tools for the analysis of the constitutional cases with the European element as well as shall help to build the scientific platform for further discussion between EU law and constitutional law scholars.