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**THE FUNCTION AND APPLICABILITY OF CONSTITUTIONAL IDENTITY IN THE
SUPRANATIONAL AREA**

Ph.D. dissertation

THESES

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I. Raising problems and the subject of the dissertation

The concept of constitutional identity is a divisive phenomenon regarding which those who argue for the concept see it as an opportunity and a means to alleviate the tensions (constitutional and political) between the Member States and European integration. Skeptics, on the other hand, see the concept as another feeble attempt to express the dominance of Member States' constitutions over the integration (in principle, but not in practice). In European constitutional discourse, it is becoming increasingly difficult to separate political and constitutional considerations, which is especially noticeable in the case of constitutional identity. We may come across positions that Eurosceptic political blocs seek to use the concept of constitutional identity as a tool against the integration itself.¹

The concept was conceived in an environment significantly different from today's, approximately in the second half of the twentieth century, from a European perspective as a forerunner of the integration-identity debates unfolding today. The definition is nuanced by the fact that the Anglo-Saxon, especially American, interpretation applies it in a context significantly different from that of the European one. With regard to the European interpretation, the concept of constitutional identity has in recent years merged with the definition of the constitutional relationship between the European Union and its Member States, as a result of which the concept itself has become as contradictory as the system of relations in which we are trying to apply and define it.

Irrespective of this view, the scholars of European constitutional law should treat it as a fact that constitutional identity has become a concept of practical significance in recent years within the practice of the constitutional courts of the Member States, whose importance is constantly growing and thus becomes one of the central streams of scientific discourse in constitutional and European law.² This is because the conflict between the EU legal order and the constitutional rules of the Member States is a long-standing central debate on integration in the

¹ Cf.: Matthias Goldmann: *As Darkness Deepens: The Right to be Forgotten in the Context of Authoritarian Constitutionalism*. In German Law Journal, Vol. 21. Issue 1, p. 46.

² Martin Belov: *The Functions of Constitutional Identity Performed in the Context of Constitutionalization of the EU Order and Europeanization of the Legal Orders of EU Member States*. In Perspectives on Federalism, 2017/2, p. 74.

European system of two-level constitutionality.³ Although, the Court of Justice of the European Union has stated in principle that the Member States may not invoke the rules of national constitutions against the integration, we see that this expectation cannot stand unrestricted: Member States do not accept the absolute dominance of EU law over national constitutions. Moreover, since its ratification, the Treaty of Lisbon itself contains the protection of the fundamental constitutional characteristics of the Member States by Article 4 (2) TEU, which states that the European Union shall respect the national identities of the Member States.

Regarding the system of multilevel constitutionalism, simplifying it, we encounter a dual, interacting force field: the Member States working to create the European unity, while protecting their constitutional orders, exercise their rights deriving from national sovereignty by virtue of the transfer of competences and sovereignty through the integration within the framework laid down in the Treaties establishing the European Union. In this system of relations, the need or demand for united action is the force that drives the Member States to harmonize their constitutional systems and to cooperate with each other. In contrast, the constraints in making the necessary compromises to harmonize the constitutional systems of the Member States involved in the integration (the "fear of sovereignty") embody the counterforce to the constitutional tensions that characterize the integration, as Member States jealously preserve their Member State integrities and constitutional characteristics. This is partly due to the contradiction between the "unifying - diverging" nature that has defined the integration from the outset, which has, among many other factors, become a common marker of the decisions by Member States' constitutional courts on constitutional identity. The more indefinite the cohesive force that holds European integration together, the more emphasis Member States will have on creating a system of relations that creates as little uncertainty as possible between the European legal order and the constitutions of the Member States.

However, for the time being, the answers to the identity issues and problems that arise as a result of integration tensions should not be sought specifically at the level of integration, but rather at the level of the Member States. At present, the prevailing view, read from opinions of legal scholars and the practice of national constitutional courts, is that the European concept of constitutional identity must be interpreted and filled with content by the constitutional courts

³ László Trócsányi: *Alkotmányos identitás és európai integráció*. In Acta Universitatis Szegediensis: acta juridica et politica, 2014/76., p. 474.

(as the authentic interpreters of the constitutions of the Member States).⁴ However, the emerging practice is not unlimited: the room for maneuver of the constitutional courts of the Member States is severely limited by the case law of the Court of Justice of the European Union as the authentic interpreter of EU law, and thus of Article 4 (2) TEU. However, a recently released decision of the German Federal Constitutional Court, known as the PSPP decision in scientific discourse, highlighted that the decision-making power of the CJEU is not unlimited neither: it is governed by the Founding Treaties and as such, the CJEU must show humility to enforce the content created by Member States as the masters of the Treaties.

In my view, one of the main problems with the concept of constitutional identity at present is its hard-to-grasp nature and the resulting conceptual uncertainty, which sometimes makes applicability problematic. Constitutional identity is not something that - for the time being - we could point to⁵ by applying a constitutional test or filtering mechanism and then a self-evident protection mechanism would prevail within the legal order of the European Union, which would protect the given elements of identity. At present, the concept is interpreted differently in each Member State, and the CJEU itself interprets it differently from the Member States. If all this did not result in sufficient instability, the views of jurisprudence and legal scholars could be partly different about the concept as well.

Conceptual uncertainty can be traced back to a number of factors, the first and most important of which is the constitutional paradox: we are trying to define a phenomenon by means of (constitutional) law that raises issues of state theory⁶ and sovereignty, in a (supranational) environment that can be considered young, almost nascent from both constitutional and state theory points of view, and which many scientific sources do not consider a state but as the most important non-state actor in contemporary international relations.⁷ In my dissertation, I would like to contribute to the definition of the conceptual framework of constitutional identity in the coordinate system presented above.

⁴ Cf.: Márton Sulyok: *Nemzeti és alkotmányos identitás a nemzeti alkotmánybíróságok gyakorlatában*. In: Anna Mira Jakó (eds.): *Nemzeti identitás és alkotmányos identitás az Európai Unió és a tagállamok viszonylatában*, Nemzetközi és Regionális Tanulmányok 10. Generál, Szeged, 2014, p. 51.

⁵ Attempts to do so can be seen in the case law of the constitutional courts of the Member States. Cf. the identity test in the decision 22/2016 (XII. 5.) AB of the Hungarian Constitutional Court.

⁶ Attila Vincze - Nóra Chronowski: *Magyar alkotmányosság az európai integrációban* (Third, extended edition), HVG Orac, 2018, pp. 20-28.

⁷ Cf.: Márton Sulyok: *Institutions of the European Union*. In Anita Pelle - Szilvia Váradi (eds.): *Basics of EU Law*, Publisher: Innovariant, Szeged, 2017, pp. 37-53.

The European concept of constitutional identity embodies a guiding principle by which European nations seek to reconcile the irreconcilable: to define the relationship between national constitutions and the legal order of the integration. Jumping ahead to the conclusions of the dissertation, the Member States of the European Union identify constitutional values in national constitutions and unique institutions of the political and constitutional system of the Member States which differ from other Member States due to their historical, social context as the elements of constitutional identity.

A particular feature of the elements of constitutional identity is that, by virtue of, *inter alia*, the provision of Article 4 TEU, they are in themselves to be regarded as attributes of the Member States protected by the Treaties. The problem is reflected in the relationship between national constitutional courts and the CJEU with regard to their function. However, the relationship between the national constitutions of the Member States and the EU legal order is an issue which, contrary to current practice, should not be determined by the CJEU and national constitutional courts, but by the Member States' highest decision-making bodies and it should be laid down in the Founding Treaties. However, this presupposes a broad - more precisely unanimous - political consensus and a decision that would fundamentally determine the decades of development of the European Union to come.

Constitutional identity can be a suitable tool for regulating the relationship between national constitutions and EU law to some degree, quasi as one of the organizing principles of the supranational constitutional space. However, this requires a well-defined conceptual framework that is suitable for becoming generally accepted in the Integration and then moving from the cradle of jurisprudence and constitutional court practice to the dimension of European political decision-making. Constitutional identity could thus be one of the defining legal institutions of the European constitutional space, which is partly able to properly shape the system of relations between the EU legal order and national constitutions. However, it needs to be stated that constitutional identity will not, neither now nor in the future, be a suitable tool for a satisfactory settlement of the relationship between the CJEU and the national constitutional courts and the problem of *ultra vires* acts. Due to the content of constitutional identity, it is a concept that must be interpreted by both bodies, but not one that defines the relationship between them.

The conceptual indeterminacy of constitutional identity, the lack of a coherent conceptual system, and the interpretation of the psychological and sociological concept of identity in the

constitutional coordinate system presented above have created such a wide range of interpretations which has led to a broad debate on constitutional identity and which, in many cases, lacks a proper legal basis. Guided by this need, I believe that all attempts to interpret the conceptual scope of constitutional identity must be based on solid legal theories, and it is necessary to create a conceptual system that

- (i) consistently defines the meaning of national identity, Member State identity, constitutional identity, national constitutional identity and constitutional identity,
- (ii) defines the relationship between sovereignty and constitutional identity,
- (iii) clarifies and thus lays down the legal basis for the latter concept, and
- (iv) takes into account the specifics of the supranational space.

In my dissertation, I undertake to develop a conceptual system based on Anglo-Saxon and European legal literature as well as legal theory as far as possible, in order to define the concept of constitutional identity as precisely as possible, and then to determine areas of use in the European constitutional space so that conclusions can be drawn on the future of the concept (legal institution?).

II. Research methodology and structure of the dissertation

As stated above, the aim of my dissertation is to define a coherent conceptual system of constitutional identity based on legal theory, - among others – on the work of American authors Gary J. Jacobsohn and Michel Rosenfeld. In their works on constitutional identity, Rosenfeld and Jacobsohn start from philosophical, legal and constitutional theory, and draw conclusions as well as build identity-theories based on these foundations. Rosenfeld uses, among other things, Hegel's theorems in defining the mechanisms underlying constitutional identity. In my view, this kind of legal theory approach is lacking in many attempts to define a European approach and, among other things, it leads to uncertainties surrounding the concept of constitutional identity. A solid legal foundation is essential for the European content of the concept to stabilize in the future.

After reviewing - and supplementing - the bases of legal theory, and after setting up a coherent conceptual system, I examine the practical applicability of constitutional identity in European integration in the light of the established conceptual network. In view of this, the research and thus the dissertation can be divided into two main logical units: the first, legal theory part is

aimed at examining the concepts developed by legal science and practice and the state theoretical and constitutional processes behind constitutional identity (Chapter II). In the second main part of the dissertation (Chapters III, IV and V), I examine the principles and regularities arising from the supranational system through the spectacles of identity-formation and constitutional identity and the established conceptual system, covering the case law of the CJEU and national constitutional courts. In the dissertation, however, I omit an itemized analysis of this practice, only to the extent necessary for the objectives, given the legal elaboration of the relevant practice and the consideration that the practice of the CJEU and national constitutional courts is a key source of constitutional identity.

In the first main part of the dissertation, starting from the theorems of Rosenfeld and Hegelian philosophy, I consider the homogeneous human group - demos - capable of forming a state as an independent entity as the primary source of identity-formation, which, after the period of the natural constitution⁸, establishes its own constitutional system for the purpose of structural self-organization. In the dissertation, I refer to the conception of the nation as a homogeneous community in terms of this identity-formation as a constitutional community, ignoring the issues of a possible sociological and state theoretical conception of the concept of nation. I do all this with the aim that the created model becomes suitable for presenting the identity-forming ability of the homogeneous community and the process of identity formation by excluding the distorting factors arising from the concept of nation.

I see sovereignty as a fundamental criterion of the entity created by the constitutional community (the state), which is ultimately the self-determination of the constitutional community, the mapping and then concentration of the right to decide after the establishment of the state and as such is the source and at the same time a precondition for the establishment of the state structure and social order, i.e. the constitutional system (“constitutional order” in Article 4 (2) TEU). I state that the formation of the constitutional system is a necessary consequence of the socialization of the constitutional community, which, however, presupposes the requirement for the established structure that it corresponds to the character of the society bringing it to life: which, however, presupposes the requirement for the established structure that it corresponds to the character of the life-giving society: the constitutional community -

⁸ Cf.: Gergely Deli: *Az eleven jog fájáról: elmélet és történet a természetjog védelmében*, Médium, Budapest, 2018, pp. 121-149.

more precisely the members of the community - are able to identify with the resulting structure, thus accept it, i.e. the collective identity is reflected in the structure.

I state that the constitution is, on the one hand, the source of the state and social order in which the constitutional community exists and, on the other hand, embodies it: the social contract establishing the state is expressed in the constitution and, as such, the constitution – forming the inseparable unity of its existence⁹ - will also be the source and at the same time the embodiment of state sovereignty. All this also means, if the state and social structure must correspond to the identity of the community that brought it to life, then this identity must be reflected in the document embodying and constituting the constitutional system: in the constitution. If we approach the issue from the point of view of constitutional values, the values enshrined in the constitution must reflect the values of the community that created it. In connection with the nature of the interaction between the constitution and the constitutional community, I also examine Habermas's theory of constitutional patriotism.

I state that the constitutional system established by the constitutional community - through the constitution expressing sovereignty - necessarily results the existence of unique values, institutions, social organizing principles (legal principles), all special characteristics of the constitutional community, and at the same time defines not only the constitutional community but also the constitutional order itself. These factors, which my dissertation aims to examine, are determined, on the one hand, by the identity of the constitutional community (national identity) and all the factors that form the constitutional system (constitutional community, constitutional power, constitution) and, on the other hand, the process of development progressing in time through which the emerging constitutional system passes: the history of the state or nation.

In the model developed in the dissertation - following the system created by Rosenfeld, I call the entity that incorporates the above factors and is determined by their interaction: the constitutional subject. Similar to the demarcation of the constitutional community and the nation, the separation of the constitutional subject and the state was guided by the consideration of applying a concept focused on the process of identity-formation that was not burdened by a

⁹ Cf.: Hypostatic unity in which the human nature of Jesus Christ was united with the divine person of the Son as the basis of his existence. For more information, see the Hungarian Catholic Lexicon - <http://lexikon.katolikus.hu/H/hüposztatikus%20egység.html>

number of distorting factors beyond the question of identity-formation. Thus, in the process of identity-formation, the state, as a constitutional subject, forms the entity that becomes the carrier of constitutional identity as a result of the interaction of the individual factors named above.

In the model created in the dissertation, I conceive of constitutional identity as a result of the relationship of factors interacting “outside” the constitutional subject, interacting with each other within the constitutional subject, separated from national identity and constitutional identity. By the former, I mean the identity of the constitutional community, but without the interactions with other factors within the constitutional subject.. By the latter, I mean an identity defined by the circumstances in which the constitution was created, which is carried by the document - documents - itself and not by the constitutional system. I make these distinctions in addition to the finding that national identity, identity of the constitution and constitutional identity are not hermetically separable concepts, common elements can be identified in them, but they are separated by their scope and carrier. The entity carrying national identity is the constitutional community, the entity carrying the identity of the constitution is the constitution itself, while constitutional identity is carried by the constitutional subject created by them and forming the constitutional system.

In order to create a model of the formation of identity that takes place during the conceptual system of constitutional identity, I examine the concepts of constitution and identity separately as the two basic components of the concept. In my dissertation, to find the concept of the constitution, I first examine the nature of the constitution following the work of Gergely Deli, and then I identify the function of the constitution according to the system applied by József Petrétei, already in the light of constitutional identity and European integration.

According to my research hypothesis, the nature of constitutional identity can be best understood by analyzing the two conceptual components and their relationship, therefore I examine the concept of constitution separately and the social psychological concept of identity and identity-formation, for which I chose the work of Barna Bodó and Erik H. Erikson. I do all this in order to prove my research hypothesis, according to which the mechanisms realized in the process of identity-formation of natural persons can be applied, *mutatis mutandis*, in the process of identity formation of states and constitutional systems.

After identifying the factors involved in the formation of constitutional identity and examining their relationship with each other, I use the work of Jacobsohn and Rosenfeld as a starting point

to present the process of (constitutional) identity formation and the regularities that affect it. Based on this - already considering the second main logical part of the dissertation, the supranational space - I examine the terminology used by jurisprudence, which, in my opinion, seeks to identify – uniformly – the concept of constitutional identity. My research hypothesis is that the concepts of national constitutional identity and Member State identity refer to phenomena that can be identified with the concept of constitutional identity, but do not contain any actual narrowing or extension, so I omit their application in the formation of the model.

Following the creation of the model of identity formation, the last element in the definition of the conceptual framework is the concept of national identity used by the first indent of Article 4 (2) TEU. The coordinate system of the dissertation, in which I carry out the examination is the European supranational space; therefore, in the second main part of the dissertation (Chapters III and IV) I examine the cited provision of the TEU after the presentation of the specific principles arising from supranationalism and the constitutional paradox in the light of the case law of the CJEU and the constitutional courts of the Member States. Modeling concludes with an analysis of the concept of constitutional identity.

Regarding the concept of national identity used by the TEU and the model I have created, there is an inconsistency regarding the content of the concept of national identity, which also appears in the practice of the constitutional courts of the Member States: namely, the concept of national identity used by the TEU is identified in its content by a significant part of the positions of the constitutional courts and jurisprudence of the Member States with the concept of constitutional identity. My research hypothesis is that the concept of national identity used by the TEU can be equated with the concept of constitutional identity used by jurisprudence and the constitutional courts of the Member States and separated from the concept of national identity identified in the model of identity formation.

The second main part of the dissertation examines the appearance and applicability of constitutional identity in relation to European integration. In the second main part, I extend the model of identity-formation with regard to the findings made in the chapter on the supranational system and the constitutional paradox in relation to European integration as a whole. My research hypothesis is that the supranational nature of integration necessitates the separation of the external and internal sides of constitutional identity, similar to the external and internal sides of sovereignty. I examine the inner side of constitutional identity in the light of eternity clauses.

My research hypothesis is that those Member States that apply an eternity clause in their constitutions seek to protect an inherent, inner core of their constitutional system that is also part of their constitutional identity. (Using the words of the German Federal Constitutional Court as its "source" of the constitutional identity.) My research hypothesis is that those Member States that apply an eternity clause in their constitutions seek to protect an inherent, inner core of their constitutional system that is also part of their constitutional identity.

There are a number of difficulties in interpreting Article 4 (2) TEU, so I also examine some of the possibilities for interpretation as well. My research hypothesis is that the first and second indents of Article 4 (2) TEU must be interpreted with respect to each other but separately. The first indent contains the identity clause in the strict sense, which is intended to protect specific elements of the constitutional order of the Member States: that institutions of the constitutional systems of the member states and values enshrined in the constitution, which are to be considered only as unique features of the given constitutional system (e.g. secularity - France, achievements of historic constitution - Hungary, republican form of government and human dignity - Germany, etc.).

By contrast, according to the second turn, the Union must respect the essential functions of the Member States: this is, in my view, a general issue of Member State sovereignty that applies to all Member States in general. In interpreting Article 4 TEU, I examine the practice of the CJEU to the extent necessary, however, during the examination of the clause, I refer to the work of national and international scholars, who examined the practice of the CJEU in detail.

In mapping the areas of application of constitutional identity in the EU, after examining Article 4 TEU, I present the main practice of the Member States on the content of constitutional identity through fundamental rights and the practice of national constitutional courts, devoting a separate subchapter to the practice established by the Hungarian Constitutional Court and to the PSPP decision of the German Federal Constitutional Court. Prior to the final part of my dissertation (confirmation and rejection of my research assumptions), I examine the constitutional subjectivity of European integration and the possibility and obstacles of the formation of a European (constitutional) identity through the model of (constitutional) identity formation.

In preparing my dissertation, I relied primarily on the methods of comparative constitutional law, grammatical and taxonomic interpretation, historical and teleological interpretation, and model design. My aim was to explore the nature of constitutional identity as much as possible and to model the process of identity-formation, and then to determine on this basis how the supranational nature of European integration influences the process of identity-formation. With regard to the revealed results and the prepared model, I tried to create and apply a coherent conceptual system.

III. Summary of the scientific results of the dissertation

In my dissertation, I focused on the theoretical issues of the European concept of constitutional identity, therefore I did not describe in detail the practice of the constitutional courts of the Member States and the CJEU, but I tried to present all the jurisprudential research that could aim to explore this case law. In view of their importance, the exceptions to this are the decisions of the German Federal Constitutional Court of 5 May 2020 and the 22/2016. (XII. 5.) AB of the Hungarian Constitutional Court, the analysis of which I carried out in detail myself. Overall, my dissertation focused on the development of a theoretical conceptual framework that, although not exclusive, may be suitable to contribute to making the concept of constitutional identity more understandable, clearer, and at the same time applicable.

In the model of identity-formation and in the creation of the theoretical conceptual system of constitutional identity, my research hypothesis was that the nature of constitutional identity can be determined by analyzing the two conceptual components and then their relationship. Therefore, in examining the concept of identity, I started from its social psychological regularities based on the theorems of Barna Bodó and Erik H. Erikson. In the research, I started from the premise that the mechanisms realized in the process of identity-formation of natural persons can be applied in similar processes for states and constitutional systems as well, having regard to the fact that, in the formation of a constitutional identity, the subjects carrying identity are the states and thus a confrontational relationship similar to natural persons may be developed between them, and the experiences of collective identity formation may also be the same as those experienced by natural persons.

In defining the concept of the constitution, based on the work of Gergely Deli, I examined the era of natural and relative constitutions in terms of identity-formation, during which I found that the European integration has the same characteristics as the era of natural constitutions. By

analyzing the concept of the constitution, I supplemented the catalog of the functions of the constitution by establishing a connection between the European legal order and the constitutional systems of the Member States, and by protecting the constitutional identity.

I formed the theoretical foundations of constitutional identity along the lines of the theories of Michel Rosenfeld and Gary J. Jacobsohn, on the basis of which I made the following statements:

- (i) Constitutional identity describes the process of the organic development of the constitutional system, defining elements of which are the constitutional community, the constitutional power, and the constitution. The interaction of these three factors forms the constitutional system itself.
- (ii) The identity of the emerging constitutional system is embodied in a confrontational relationship of these three factors with ensuring the balance: the three factors are determined by each other, so their change can only be imagined in harmony.
- (iii) One of the defining features of constitutional identity is therefore the continuity, that is, the identity of the constitutional system cannot be satisfactorily determined in a single moment of time by a catalog of closed values. The constitutional system can be interpreted as a static phenomenon and the organically evolving entity capable of forming it is the constitutional subject.
- (iv) If we want to name the elements of the identity of a constitutional system at a given moment in time, these are the result of the confrontational relationship between the constituent elements of the constitutional system (constitutional community, constitutional power, constitution), embodied as constitutional values, institutions, and constitutional principles that can appear in constitutional / higher court case law as elements of identity.

I have defined constitutional identity in the European supranational space

- (i) as the self-determination of the constitutional systems of the Member States; as a system of fundamental constitutional values, principles and institutions with historical origin defining constitutional system, as well as which the Union is obliged to respect and
- (ii) which is a quality that accompanies the constitutional system and embodies its uniqueness, manifested in the national constitutions and acts as a result of the

confrontational relationship between the constitutional community, the constitutional power and the constitution itself.

In view of the findings made in the dissertation, I formulate a proposal to omit the concept of ‘national constitutional identity’ and ‘Member-State identity’ in the conceptual system of constitutional identity, and I distinguish between national identity as the identity of the constitutional community and constitutional identity as the identity of the constitutional system. I do all this by stating that the concept of national identity in Article 4 (2) TEU can be identified in the integration’s interpretation as the concept of constitutional identity.

In my dissertation, given the supranational nature of integration, I distinguish between the external and internal aspects of constitutional identity, similarly to the external and internal aspects of sovereignty. In my view, one of the manifestations of the protection of the inner side of constitutional identity is the application of eternity clauses, by which Member States which apply an eternity clause in their constitutions wish to protect the inherent, inner core of their constitutional system. The external side of constitutional identity is embodied in the confrontational relationship between the Member States and the integration, which is manifested in Article 4 (2) TEU at the level of the Founding Treaties. In order to examine the relationship between constitutional identity and eternity clauses, in 2018 we prepared a questionnaire with the assistance of a co-researcher, which was sent to the national constitutional courts of the Member States. The questionnaire was supported by the Hungarian Constitutional Court. The questionnaire aimed at mapping the practice of the constitutional courts of the Member States was filled out and returned by Hungary and eight other Member States (Austria, the Czech Republic, Croatia, Latvia, Malta, Germany, Slovakia and Slovenia).

In my dissertation, I deal with the first and second turns of Article 4 (2) TEU separately, which, in my view, must be interpreted with respect to each other but separately. The first indent contains the identity clause in the strict sense, which is intended to protect specific elements of the constitutional order of the Member States: the institutions of the constitutional systems of the Member States and the values enshrined in the constitution, which are to be regarded only as the unique features of the given constitutional system as a result of historical development.

According to the second indent of Article 4 (2) TEU, the Union shall respect the essential state functions of the Member States, which may be interpreted as a quasi-sovereignty clause. The

definition of essential state functions is a general issue that applies to all Member States uniformly. The question of the conflict between the constitutions of the Member States and the EU legal order presupposes a fundamental system of relations which must have the same content in the context of all the Member States. Cases of conflict between the constitutions of the Member States and the EU legal order, which can be traced back to issues of sovereignty, can be resolved on the basis of the second indent of Article 4 (2) TEU.

In the dissertation, I state that Article 4 (2) TEU defines three dimensions of the protection of the integrity of the Member States:

- (i) on the one hand, the Union must respect the equality of Member States before the Treaties,
- (ii) their national identity, and
- (iii) their essential state functions.

This triple protection is intended to guarantee that in the multilevel constitutional, supranational system of European integration, the basic constitutional system and the integrity of the Member States of the Union are ensured even after becoming a Member State. The first of the two turns of Article 4 (2) TEU is therefore a matter for the Member States individually, on a case-by-case basis and in each case subject to individual consideration (national identity), while the second turn is an EU law clause on the exercise of sovereignty in European integration, which has the same content for all Member States.

On the basis of the separation and the separate interpretation of the turns examined, it can be concluded that this provision of the Treaty of Lisbon constitutes a restrictive interpretation of the concept of national (constitutional) identity: In the European interpretation, the issues of sovereignty arising from the relationship between the Member States and integration do not fall within the conceptual scope of national / constitutional identity, they can be interpreted as state theory from a scientific point of view, and as political issues from a decision-making point of view.

Finally, I approach European integration from the angle of supranationalism on the one hand, and from the angle of the mechanism of identity-formation on the other hand, outlining the possible directions of development that can be outlined on the basis of what has been explained in the dissertation. Throughout my dissertation, I have sought to present my view that constitutional identity is not an artificial institution that can be transformed indefinitely.

Contrary to many beliefs, constitutional identity is not a tool for political endeavors. Its formation cannot be “forced” and thus constitutional identity cannot be “created”. As Jacobsohn writes: It can change, but it is resilient, indestructible - and it can appear differently in different situations.¹⁰

Rather, constitutional identity, like sovereignty, is a feature, a criterion. It is a characteristic of the nature of our legal systems and thus, it is much more born than created. Constitutional identity is a process. A process that shapes and connects society, constitution-maker and the constitution. A projection that unites the past and present of the constitutional system, thus defining its future. Thus, constitutional identity is not being formed exclusively in the case law of constitutional courts. There it is manifested in the most striking way. Constitutional identity coexists and changes with the subject to which it is attached. A mirror that condenses the past, present, and future of the constitutional system into a given moment.

In my dissertation, I have repeatedly used the metaphors of “shield” and “bridge” to illustrate the role of constitutional identity in the process of European integration - more precisely certain aspects of this role. Depending on the approach, however, the “shield” and “sword” dichotomies¹¹ are also known for similar purposes. In my research, I felt the former two were appropriate, because within the integration, despite all the differences and possible different values, the nations of Europe are moving in one direction, they shall move in one direction. So we don't need a sword, and we need to build bridges and not burn them.

¹⁰ Gary Jeffrey Jacobsohn: *Az alkotmányos identitás változásai*. In *Fundamentum*, 2013/1., p. 5.

¹¹ Cf. Pietro Faraguna: *Constitutional Identity in the EU—A Shield or a Sword?* In *German Law Journal*, Volume 18, No. 07, p. 1627.

IV. Publications on the subject of the dissertation

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- 2. Alapvető állami, vagy alapvető tagállami funkciók? Következtetések az EUSZ 4. cikk alapján.** In: Fejes Zsuzsanna - Lichtenstein András - Márki Dávid (szerk.): Jog, erkölcs, kultúra: Értékdilemmák és identitások a jogrendszerekben. Szegedi Tudományegyetem, Állam- és Jogtudományi Doktori Iskola, 2020, pp. 123-132
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