

Constitutional Identity: The Connection between National Constitutions and EU Law

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Abstract : European contemporary scientific public opinion considers the concept of constitutional identity as a highlighted issue. Some scholars interpret the matter as the manifestation of a conflict of Europe. Nevertheless, constitutional identity is a bridge between the Member States and the EU rather than a river that will wash away the achievements of the integration. In accordance with the opinion of the author, the main problem of constitutional identity in Europe is the undetermined nature: the exact concept of constitutional identity has not been defined until now. However, this should be the first step to understand and use identity as a legal institution. Having regard to this undetermined nature, the legal-theoretical examination of constitutional identity is the main purpose of this study. The concept of constitutional identity appears in the Anglo-Saxon legal systems by a different approach than in the supranational system of European Integration. While the interpretation of legal institutions in conformity with the constitution is understood under it, the European concept is applied when possible conflicts arise between the legal system of the European supranational space and certain provisions of the national constitutions of the member states. The European concept of constitutional identity intends to offer input in determining the nature of the relationship between the constitutional provisions of the member states and the legal acts of the EU integration. In the EU system of multilevel constitutionalism, a long-standing central debate on integration surrounds the conflict between EU legal acts and the constitutional provisions of the member states. In spite of the fact that the Court of Justice of the European Union stated in *Costa v. E.N.E.L.* that the member states cannot refer to the provisions of their respective national constitutions against the integration. Based on the experience of more than 50 years since the above decision, and also in light of the Treaty of Lisbon, we now can clearly see that EU law has itself identified an obligation for the EU to protect the fundamental constitutional features of the Member States under Article 4 (2) of Treaty on European Union, by respecting the national identities of member states. In other words, the European concept intends to offer input for the determination of the nature of the relationship between the constitutional provisions of the member states and the legal acts of the EU integration.

Keywords : constitutional identity, EU law, European Integration, supranationalism

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