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Report on the International Scientific Conference “Theoretical and practical aspects of constitutional identity”, 13 December 2022

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1. General Concept of the Conference

On 13 December 2022, the Central European Academy (University of Miskolc), in cooperation with Pázmány Péter Catholic University, Ferenc Mádl Institute of Comparative Law and Central-European Association for Comparative Law organised the International Scientific Conference “Theoretical and practical aspects of constitutional identity”, which took place in Pázmány Péter Catholic University in Budapest.

Central European Academy is an institution within the structure of the University of Miskolc that began its work on 1 January 2022. It conducts a wide range of research and internship projects in Central Europe, involving senior and young researchers interested in the various fields of law. Its main aim is to create and support a broad and recognisable network of legal scholars and professionals from Central European countries. Currently, the network is called the Central European Professor’s Network. It was founded on 1 January 2021 and was initially coordinated by the Ferenc Mádl Institute of Comparative Law.

The Professor’s Network includes 47 participants from 7 countries (Czech Republic, Croatia, Hungary, Poland, Serbia, Slovakia, and Slovenia) organised into five research groups. The issues covered by each group are: 1) constitutional protection of national symbols; 2) right to privacy; 3) content of the right to parental responsibility;

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4) constitutional framework for the protection of future generations and the environment; 5) constitutional identity and relations between the European Union (hereinafter: the "EU") law and the domestic law of member states.

The conference aimed to present the research results and summarise the annual activity of the group working on constitutional identity and relations between the EU law and the domestic law of the member states. The leader of the group is Prof. Dr András Zs. Varga, and the other members are Dr Lilla Berkes; Prof. Dr Alexander Graser; Dr Alena Krunková; Prof. Dr Tudorel Toader; Prof. Marieta Safta; Dr Michal Petr; Prof. dr hab. Aleksander Stępkowski; Prof. Giacinto della Cananea; Prof. Dr. Bertrand Mathieu; Prof. Dr. sc. Petar Bačić.

2. The course of the conference

The main focus of the conference was on analysing the constitutional identity of individual European states. In their presentations, the speakers discussed such topics as the relations between the EU law and the domestic law of the Member States; the practice and the jurisprudence of the national constitutional courts and its influence on the concept of constitutional identity; separation and integration of the EU and tried to answer the question whether, at the current stage of development of the European community, it is still possible to maintain the autonomous constitutional identity of the Member States and by what actions and means this may be achieved.

The conference was opened by Prof. Dr János Ede Szilágyi – head of the Ferenc Mádl Institute. He welcomed the attendees and briefly presented the outcomes and results of the Central European Academy's work and its strategy for the future. He also mentioned the publishing updates prepared by the CEA in cooperation with the Ferenc Mádl Institute – Studies of the Central European Professor's Network, a series of course books for PhD programme and scientific journals ("Central European Journal of Comparative Law" and "Law, Identity and Values"). In the last part of his speech, Prof. Szilágyi introduced a new institutional framework – Central-European Association for Comparative Law that was set up to carry out comparative legal research, prepare studies in the field of private law, public law, EU and international law, focusing on the Central European region and provide suggestions and opinions for the scientific community, international organisations and state bodies of the countries of the Central European region in particular with regard to the encouragement and development of the domestic and foreign application of certain legal institutions.

The scientific part of the conference was opened by Prof. Dr András Zs. Varga – pro-dean at the Faculty of Law and Political Sciences of Pázmány Péter Catholic University and current President of the Curia of Hungary. He introduced the research group members and gave an overview of its activities. The Professor pointed out that, through research, it is easier to understand the direction and trends in the evolution of the EU institutions and law, as well as issues of national sovereignty, identity, and constitutional development in the member states, and to explain current phenomena taking place within the EU, such as the expansions of the community, economic crisis,

war, and pandemic. As part of the research, the members of the group examine the roots of the legal systems, legal rules, and customs of the individual states and then, on this basis prepare country reports, which they compare and create joint summary publications.

The next scheduled speaker was Prof. Dr Bertrand Mathieu, but unfortunately, he was unable to appear in Budapest due to other obligations and his paper entitled "Constitutional identity and relations between the EU law and the domestic Law of the Member States" was delivered by Dr Lilla Berkes. Discussing the title topic, Prof. Mathieu highlighted the existence of a dualistic system consisting of common European values on the one hand and specific national values on the other. Furthermore, he pointed out that, in this system, values considered generally European are more and more often created by arbitrary decisions of EU bodies. Their universality is imposed without dialogue and without considering the position and heritage of all the Member States, which may pose the danger of authoritative judgements and disavowal of the promoted values.

The third presenter during this part of the conference was Prof. Dr Alexander Graser. In his presentation entitled "Quite entrenched, but still generic: The concept of constitutional identity in the jurisprudence of the German Federal Constitutional Court", he outlined the practice of the German Federal Constitutional Court in checking the compliance of actions taken by the EU with Germany's constitution. He also discussed how the GFCC understands German constitutional identity and pointed out that this concept is not currently related to any element specific only to the Federal Republic of Germany, but rather concerns minima of democratic legitimacy, vertical division of competencies, and judicial control of executive action.

The following paper entitled "Constitutional identity in Czech jurisprudence" was given by Dr Michal Petr. With an emphasis on jurisprudential practice, Dr Petr outlined the way in which, beginning with fundamental constitutionally protected values such as democracy and a law-abiding state, the notion of constitutional identity in the Czech Republic was shaped and how Czech legal doctrine influenced this process.

The closing paper of the first part of the conference was the paper entitled "Croatian constitutional identity and European integration" presented by Prof. Dr Petar Bačić. He addressed his keynote lecture to the question of how the development of Croatian constitutional identity has been influenced by the recent history of the Croatian state, i.e., its accession to the EU and the related need for constitutional changes, as well as socially significant events such as the citizens' constitutional referendum on the definition of marriage or the decision of the Constitutional Court on the constitutionality of the referendum on the minority language rights and the monetisation of motorways.

After a lunch break, the second section began with Prof. Varga and Dr Berkes delivering a joint paper entitled "The Constitutional Court's uneven road from EU accession to sovereignty control". In the presentation, they focused on how the practice of the Hungarian Constitutional Court has evolved concerning checking the compatibility of the EU law with the Hungarian fundamental law, and what role

the concept of constitutional identity has played in this process. The speakers pointed out that initially, the court shied away from ruling on the constitutionality of the EU law, but after time the notion of Hungary's constitutional identity expanded, and the practice of the court changed. Increasingly, it started to test the constitutionality of the EU law, defining, and referring to the aforementioned constitutional identity.

Another presentation entitled "Determining and reclaiming of the constitutional identity in the case-law of the Polish Constitutional Tribunal" was given by Prof. dr hab. Aleksander Stepkowski. Relying on the judgement of the Polish Constitutional Tribunal of 7 October 2021, which establishes the primacy of the Polish constitution over EU law, he discussed the shape of Poland's constitutional identity and explained in detail the background and course of the current dispute between Poland and the EU concerning the hierarchy of source of law and the scope of national and the EU competences.

The next speaker was Professor Marieta Safta, who presented a joint paper with Prof. Dr Tudorel Toader entitled "Romanian constitutional identity – theoretical and practical aspects". Her presentation explored in detail the notion of Romanian constitutional identity and the impact on it of the incorporation of the EU law into the Romanian legal system. She also discussed the source and shape of the conflict between Romania and the EU over constitutional identity and the separation of competencies.

The subsequent presentation "EU law and domestic law in Italy: from separation to integration" was given by Prof. Giacinto della Cananea. He discussed the process of European integration, focusing in detail on the role played in it by the Italian state after 1945. He also presented the development of Italy's national identity within the European identity and pointed out that, at present, there is no possibility of separating the two. However, he pointed out that specific differences could appear. Therefore, we should emphasise developing mutual tolerance, while at the same time insisting on respecting the constitutional identity of each Member State.

The final paper "Identity and authority of the Constitution of the Slovak Republic" concluding the conference was delivered by Professor Alena Krunková. She outlined the concept of constitutional identity and constitutional authority in the Slovak legal system. She also discussed the issue of how Slovakia's accession to the EU has influenced its development.

3. Conclusion

After all the speeches were delivered, a short discussion took place. Its main topic was how to deal with and prevent conflicts between the EU community and individual states that can appear on the ground of identity. Following the discussion, the conference was summed up by Prof. András Zs. Varga, noting the importance of the discussed conference subject due to its topicality. He also pointed out that currently one of the critical tasks for the European community is to find a balance between a federal union and national states union approach.