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Practical issues of constitutional identity and national sovereignty in the European Union

Introduction

In this study I aim to examine the problems of constitutional identity and national sovereignty, the possible reactions of Member States in this regard, and finally, the potential ways for our country to break out of this situation relying on constitutional law so as to defend our constitutional identity. As an introduction to the matter, it is worth clarifying the definitions of national sovereignty and European integration, and to examine the limits of the competences of EU institutions as defined in the founding treaties.

In order to get a full picture, we should briefly look at the decisions of Member State Constitutional Courts that have founded the concept of constitutional identity over the last decade and a half, with particular regard to the related decisions of the French, German, Czech and Polish constitutional watchdogs. We will also give a short presentation of an innovative approach taken by the Hungarian Constitutional Court after the main conclusions of the quota case lost before the European Court of Justice in Luxembourg.

From the outset, the study intends to handle the issues of national sovereignty and identity with especial attention to constitutional law and state law; and while the paper is constructed in a heterarchical way, the author intends to draw attention to the links and interconnections between the individual sub-issues.

1. National sovereignty and European integration

Sovereignty is a political umbrella term which describes the self-governance of a nation, country or organisation, where the nation, country or organisation is the subject of sovereignty. Sovereignty is a legal order that comprises all significant expressions of the state. There are several theories on sovereignty. Although political science and social sciences do not generally agree on a single paradigm, sovereignty still has a more or less generally accepted interpretation which can also be derived from the definition presented above.

Both sides of sovereignty should now be scrutinized. The first is internal sovereignty, which means the supreme power, the final repository of power, and the rules (the constitution and laws) adopted by it in relation to the population living in the territory of the state.

The second aspect is external sovereignty, also known as state sovereignty. This means that the given state has its own statehood and independence, and that it essentially makes its own decisions without any coercive control from outside. The rules relating to this derive from international law.

Generally speaking, the term integration means convergence, accommodation or assimilation, but as a matter of fact, in the sense of the European integration, this will not be construed as the "assimilation" of the Member States or the nation states, but as the process of convergence, alignment and cooperation of a broader community.

In the legal and institutional order created in the course of European integration, instead of being a supra-state legal order, Community law rather fits into and becomes part of the legal orders of individual states by way of individual legal acts and norms. The principle of the primacy of Community law is designed to ensure that the direct effect of Community norms overrides any domestic norms that conflict with the former. Some specialised textbooks, which, by default, prefer schematic interpretation, explain this in a way that a kind of supremacy of Community law does not follow from constitutional law concessions of the Member States, but rather from their very nature, since we are speaking of a legal order that has been mutually accepted by the states. In this context, being a part of the European Union raises the question of compatibility between national law and an overarching legal order.[48]

The powers of the state which are based on international law also derive from sovereignty, and these powers (as well as the sovereignty they embody) tend rather to merely complete the legal and institutional framework of Community integration, and make it an operational whole, while its individual parts are still separate from one another.

48 Márta Dezső, Klára Fürész, István Kukorelli, Imre Papp, János Sári, Bernadette Somody, Péter Szegvári, Imre Takács (2007): *Alkotmánytan I. [Constitutional Studies I]* Osiris Kiadó https://www.tankonyvtar.hu/hu/tartalom/tamop425/2011_0001_520_alkotmanytan_i/ch05.html

2. Limits of the competence of EU institutions in the founding treaties

Article 5 of the EU Treaty enshrines a key fundamental feature of European integration, the principle of conferral, which is clearly defined in para (2) as follows:

"Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States."

According to the principle of conferral, a Union institution must have a competence conferred upon it by the Member State in order to be able to decide on specific measures. Pursuant to Article 13(2) of the EU Treaty: "Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them." Article 263 states that the lack of competence of the institution entails that the adopted legal act will be void (although the Lisbon Treaty has since revised the system of legal acts).[49]

In the Treaties, several provisions in various regulatory fields authorise an EU institution to adopt further acts or individual regulatory measures, but such competence may also follow from a secondary, derived norm (in the case of implementing acts).

László Blutman argues that the extent of conferred sovereignty is necessarily the extent of competence that has been granted to the Union for the regulation of a specific matter or field; that is, whether the European Union or the Member State has the right to adopt a legal act or take a measure. The conferral cannot, in any case, be exclusive, since the founding treaties stipulate that the Member States will simultaneously retain their own powers. The exercise of Community powers is based on the principles of subsidiarity and proportionality. The general principle of the differentiation of competences is enshrined in Articles 4 and 5 of the Treaty on the European Union and Articles 2-6 of the Treaty on the Functioning of the European Union (TFEU). Accordingly, there are four types of competences under EU law currently in force.[50]

49 László Blutman (2014): *Az Európai Unió joga a gyakorlatban. [European Union law in practice.]* HVG-ORAC Lap- és Könyvkiadó Kft.

50 Idem.

First, there is the exclusive Union competence (see Article 3 TFEU), which means an authorisation to regulate a specific matter at the EU level. Shared competence (see Article 4 TFEU) means that an area can be regulated by both the EU and the Member States, but the Member State only has this right until there is no EU legislation, and any measures related to the matter will apply as long as the EU institutions do not regulate the matter or do not take any measure.

In the so-called supporting, coordinating and supplementing competence (see Article 6 TFEU), Member State legislation retains its primacy, while in certain subfields, Community (EU) legislation supplements the Member State's legislation. The fourth type is exclusive Member State competence, which means that the Union has no powers in the given area (the Treaties refer to this indirectly).

In several of its decisions, the Polish Constitutional Court has discussed the problem mentioned here. One of them stated that Poland's accession to the EU had not compromised the supremacy of the Polish Constitution "over the entire legal system in the territories under the sovereignty of the Republic of Poland". The decision states that the Constitution is the supreme law that expresses the nation's will, whose provisions "would not lose their binding force and their contents would not be modified just because there was an insoluble contradiction between these norms and a Community norm". The tribunal is of the opinion that in such a case, the Polish constitutional body would be responsible for independently deciding on an appropriate way to resolve the contradiction, or on the necessity of a constitutional amendment, as the case may be. The process of integration, whereby powers have been conferred to Community (EU) bodies in certain areas, is based on the Constitution. They also state that: "The mechanism of Poland's accession to the European Union is expressly based on the constitutional terms, and the validity and efficiency of accession depends on compliance with the constitutional elements of the integration process, including the procedure of the conferral of powers." (K 18/04, 11 May 2005)[51]

51 Grounds for CC decision 22/2016. (5 December), section [39]

3. Constitutional identity as a means to protect national sovereignty – Appearance of the term "national identity" in the case law of the ECJ

The seventh amendment to the Fundamental Law of Hungary, effective as of 29 June 2018, has supplemented Article R) with the following paragraph (4): "The protection of the constitutional identity and Christian culture of Hungary shall be the obligation of every organ of the State." The original version would have stipulated "the protection of Hungary's constitutional identity" as an obligation of every organ of the State, which was later supplemented with the protection of Christian culture.

The exact definition of constitutional identity has been subject to debate within the legal profession up to this day, and some hold that it has no real legal relevance at all. The concept of constitutional identity is also worth examining in relation to national identity in EU law. László Trócsányi notes in a paper[52] that the Court of Justice refers to the national identity of Member States only in exceptional cases. In the Ilonka Sayn-Wittgenstein case, the Court of Justice stated that the prohibition of using a title of nobility in Austria that had been obtained by adoption in Germany was not contrary to Community law. In its ratio, the Court invoked Article 4(2) of the TEU, under which the European Union must respect the national identities of its Member States, including the status of the State as a Republic (case C-208/09).

Constitutional identity can actually be defined as a *sui generis* core of Member State or national constitutions which comprises all the norms, values and principles that distinguish the state or nation in question from other states and nations. Constitutional identity is an inseparable part or segment of national identity. The expression "national identity" was first used in Community law in the Maastricht Treaty, and was later clarified in Article 4(2) of the Lisbon Treaty:

"The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the

52 László Trócsányi: *Nemzeti alkotmányok, európai integráció és alkotmányos identitás. [National constitutions, European integration and constitutional identity.]* Acta Universitatis Szegediensis : Acta juridica et politica – Tom. 77. 1. Fasc. 1-64 / 2015 319–328. p. http://acta.bibl.u-szeged.hu/45281/1/juridpol_078_319-328.pdf

territorial integrity of the State, maintaining law and order and safeguarding national security."

Consequently, the Union must respect the national identity of each Member State, including their fundamental political and constitutional structures. This enables us to better pinpoint the essence of constitutional identity, which essentially acts as a safety net in the field of Community law, embodying a protection that is to be taken into account in all cases of the application of EU law for the joint consideration of the different interests and rights also recognised by Union law. This is a necessary and always consequential starting point following from the fundamental principles for the application of Community law.

Another reference by the ECJ to national identity is in the Runevič-Vardyn case, where the tribunal stated in a preliminary ruling procedure that the national identity of a Member State also comprises the protection of the official language of the state.[53] In his concurring opinion to CC decision 143/2010 (VII. 14.) (the Hungarian Lisbon decision), László Trócsányi explains that constitutional identity is connected to statehood, in particular to its elements related to the people's representation and judicial bodies and the government's mandate.[54]

In the case of any conflict between European law and national law, as a general rule, Union acts have primacy or priority over national law. This principle has been clearly stated in several ECJ judgments. Nonetheless, since national constitutions have (as stated above) a *sui generis* core which enjoys special protection, when determining the applicable law in a given situation, and with regard to the specific conflicting powers, there is an easily observable division of roles between the European Court of Justice (ECJ) and the "constitutional judicature" of Member States.[55]

The interpretation of Article 4(2) of the Treaty on the European Union, that is the identity clause, expresses how EU law and national Constitutional Courts develop the meaning of this national identity clause in close cooperation with each other. This means that although Article 19(1) grants this competence to the ECJ, the opinions of Member State Constitutional Courts

53 Tímea Drinóczi: *Az alkotmányos identitásról. Mi lehet az értelme az alkotmányos identitás alkotmányjogi fogalmának? [On constitutional identity: How to make sense of the constitutional law concept of constitutional identity.]* MTA Law Working Papers 2016/15. 4. p.

54 CC decision 143/2010. (VII. 14.)

55 Kis Kelemen Bence: *Alkotmányos identitás Magyarországon [Constitutional identity in Hungary.]* – arsboni.hu, 20 November 2016

must always be taken into consideration.[56]This mechanism is described by the term "composite constitutionality".[57] When interpreting the term "composite constitutionality", Tamás Sulyok concludes that the Union has no sovereignty, and the Member States do not transfer a part of their sovereignty but only their related powers to the Union; they are exercising the part of their sovereignty that is connected to the realisation of Union objectives together with the other Member States of the Union. According to Sulyok: due to the joint exercise of certain parts of Member State sovereignties, the Union receives conferred powers from the Member States which are necessary for the realisation of their common objectives.[58]

With regard to the above, it is important to what extent the ECJ, in its argumentation in cases where a Member State Constitution is in conflict with Union law, touches upon the relationship between the constitutional rule concerned and the constitutional identity of the Member State, and in what way the judicial body interpreting the Member State Constitution construes the same. So far, the Court has been reluctant to go into this type of assessment, or any argumentation along these lines.[59]

4. Ultra vires in the context of the European Union – "stealth legislation"

As noted by Márta Dezső and Attila Vincze in their joint publication,[60] a dynamic interpretation of Union competences can be substantiated by the rapid social and geopolitical changes of our age, as a result of which European integration may face a number of problems that could not have been considered at all at the times when the founding treaties were drafted or modified. In such cases Community action is justified by efficiency, but the argumentation rely-

56 Idem.

57 László Trócsányi: *Nemzeti alkotmányok, európai integráció és alkotmányos identitás. [National constitutions, European integration and constitutional identity.]* Acta Universitatis Szegediensis : Acta juridica et politica – Tom. 77. 1. Fasc. 1-64 / 2015 319–328. p.

58 Tamás Sulyok: *A kompozit alkotmányosság időszerű kérdései. [Current issues related to composite constitutionality.]* Acta Universitatis Szegediensis : acta juridica et politica, (79). pp. 607-614. (2016)

59 Idem.

60 Márta Dezső, Attila Vincze: *Magyar alkotmányosság az európai integrációban. [Hungarian Constitutionality in the European Union.]* (2014). HVG-ORAC Lap- és Könyvkiadó Kft.

ing on the efficiency of Union law ("effet utile") is also justified under international law (Vienna Convention on the Law of Treaties (1969, Article 31.1)).

The dynamic interpretation of competences cannot amount to a rewriting of the provisions of the Treaties nor to the right to do so, and as stated by the Federal Constitutional Court of Germany in its Maastricht decision, where the legislator acts beyond the scope of its competence (*ultra vires*) the application of the law or individual act in question may be rejected.

In the case of an *ultra vires* act, its application may be refused where the exceeding of competence is properly qualified, i.e. it is obvious and unambiguous, and thus leads to a grave misalignment of competences to the detriment of the Member States (BVerfGE 89, 155, 210-211. BVerfGE 126, 286).[61] However, Ernő Várnay notes in a study of his that, in its decisions, the German Constitutional Court has progressed incrementally towards discretionary cooperative constitutionality.[62]

5. Exercise of the jurisdiction of Member State Constitutional Courts – Decisions from the last decade and a half that lay the foundation of the concept of constitutional identity

There has been precedent in the practice of national Constitutional Courts with regards to the institutional (interventional) possibility open to the Constitutional Court of an EU Member State to make a decision revising Union legal acts or ECJ judgments. In the same way as Community law, as indicated before, will not become internal law, regardless of its integration into the domestic laws of the Member States, there can be cases where Member States must be granted some margin of manoeuvre needs with regards to the boundaries on the limitations of sovereignty. In this context it is worth looking at some examples where tribunal-like organisations acting as national constitutional watchdogs (usually constitutional courts) have overridden Community law.

61 Idem.

62 Ernő Várnay: *Karlsruhétól Luxembourgig, avagy a német Alkotmánybíróság első előzetes döntési kérelme a gazdasági és monetáris unió tárgykörében 2. rész. [From Karlsruhe to Luxembourg; the first application for preliminary ruling before the German Constitutional Court related to the economic and monetary union Part 2.]* (March 2014). HAS Centre for Social Sciences – Lendület-HPOPs Research Group

In the sense of a decision of the French Constitutional Council, the transposition of an EU directive may not contravene any basic principles or provisions that embody the constitutional law identity of France without the consent of the constitutional power [Cf. decision No. 2006-540 DC of 27 July 2006, reaffirmed by decision no. 2011-631 DC of 9 June 2011, section 45]

In an important decision, the Czech Constitutional Court established that its "jurisdiction thus covers, in theory, all Czech domestic legal norms that meet the obligations which the Czech Republic has towards the European Union, in accordance with Article 10a. and Article 1(2) of the Constitution." According to Article 10a., Czechia's EU accession in 2004 has resulted in certain restrictions to the competences of the Constitutional Court, similarly to those of other state organs. Based on the ECJ doctrine on the primacy of Community law, the Constitutional Court may only exercise its jurisdiction in regard to Community legal norms under certain circumstances. The decision states that: "In its decision No. Pl. ÚS 50/04 of 8 March 2006, the Constitutional Court did not recognise the ECJ doctrine insofar as it stipulates the unconditional primacy of Community law. It establishes that the conferral of certain parts of the competences of national bodies may only remain valid as long as the institutions of the European Union exercise these competences in a way that is compatible with the preservation of the fundaments of state sovereignty of the Czech Republic and if it does not threaten the innermost essence of the state based on substantive law. [...] Member States can enjoy freedom at least to the extent that allows them to choose among the possibilities available to them under Community law and that are compatible with the constitution of the given state, and to dismiss those that are in conflict with their constitutions. (See 8 March 2006, case No. ÚS 66/04)[63]

The Federal Constitutional Court of Germany explained in its decision on the Lisbon Treaty that European integration as a contract-based union of sovereign states cannot be implemented without leaving sufficient room for Member States to politically shape their economic, cultural and social relationships. This relates, in particular, to the living conditions of citizens, especially their privacy protected by fundamental rights and their living spaces that comprise their responsibilities for independent decisionmaking on issues related to their personal and social security, as well as the political decisions that are particularly dependent on the linguistic, historical and cultural traditions and continuously evolve in political public opinion through party poli-

63 Grounds for CC decision No. 22/2016 (XII. 5.), section [41]

tics and in the parliaments in discursive debates." The Federal Constitutional Court of Germany "always examines whether the legal acts and institutions of European integration have come into being in compliance with the subsidiarity of Community and Union law, whether the sovereign rights granted to them have been established within the scope of the restricted and individual mandates, in accordance with the first and second sentences of Article 5(3) of the Lisbon Treaty. As a part of this, the Federal Constitutional Court always examines whether or not these Union acts have damaged the untouchable core of constitutional identity, which follows from the third sentence of Article 23(1) of the Grundgesetz, in conjunction with Article 79(3) of the Grundgesetz. The exercise of this right to review, derived from constitutional law, follows the principle of European law friendship enshrined in the Grundgesetz, so it does not contradict the principle of loyal cooperation. Without this power to review, it would be impossible to preserve the independent fundamental political and constitutional structures of sovereign Member States in the ongoing process of European integration, which is also mentioned in the first sentence of Article 4(2) of the Lisbon Treaty. Therefore constitutional identity and its guarantees in Union law are compatible with each other." (BverfG, 2 BvE 2/08, 30 June 2009)[64]

A decision of the Administrative Court of England and Wales states that: "The 'limitation of sovereignty' [...] only applies to the context of the provisions of substantive Community law. The case concerns the primacy of these substantive law provisions. This does not apply to cases where there is a question as to the legal basis which justifies the primacy of these substantive law provisions, and on which the relationship between the European Union law and institutions and the British state is based. The foundation is English law." [See (2002) EWHC 195][65]

The Polish Constitutional Court stated on one occasion that "the assumption and management of international obligations does not lead to any loss or restriction of the sovereignty of the state, it rather reinforces this, and membership in European organisations is not a limitation on state sovereignty but demonstrates the same. [...] According to Article 4(1) and 5(2) of the Treaty on the European Union [hereinafter: TEU], the Union acts only within the limits of the competences conferred upon it by the Member States in the Treaties, and all competences not conferred upon the Union remain with the

64 Grounds for CC decision No. 22/2016 (XII. 5.), section [44]
65 Grounds for CC decision No. 22/2016 (XII. 5.), section [42]

Member States. [...] Article 352(1) TEU may not be construed as a legal basis for granting the Union not yet conferred competences, so the provisions mentioned in Article 352(1) TFEU cannot establish any competences not yet conferred." (See case K 32/09, 24 November 2010)[66]

In summary: an established practice has developed whereby the Member State Constitutional Courts focus on the law determined by them, asking whether a national, that is, a Member State Constitutional Court, always has the right to examine whether the Community legal acts have compromised the untouchable core of constitutional identity, and if they have, whether the state concerned may exercise the right to refuse the application of the legal act in a way that is compatible with the preservation of the fundaments of Member State sovereignty.

6. The Hungarian example: the quota case – How can we defend our constitutional identity?

Hungary and Slovakia brought actions before the Court of Justice of the European Union for the annulment of the Council decision of 22 September 2015[67], and sought to have the Court of Justice of the European Union declare that the Council decision (adopted by the EU Ministers of the Interior) on the mandatory distribution of asylum-seekers was contrary to the founding treaties of the European Union. In the end, on 5 September 2017, the Court dismissed the application filed against the Union mechanism serving the distribution of asylum-seekers among the Member States.

The opinion of the Advocate General preceding the ECJ judgment was published on[68] 26 June 2017, and it envisaged dismissal of the applications. Accordingly, in its judgment of 6 September,[69] the Court dismissed the Hungarian and Slovak argumentation, and did not even agree to the request of the

66 Grounds for CC decision 22/2016. (5 December), section [39]

67 Council Decision (EU) 2015/1523 (14 September 2015) establishing provisional measures in the area of international protection for the benefit of Italy and of Greece https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015D1523&from=HU

68 European Court of Justice: Advocate General's Opinion in Cases C-643/15 and C-647/15 (Slovakia and Hungary v Council) https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-07/cp170088en.pdf

69 Judgment in Joined Cases C-643/15 and C-647/15 (Slovakia and Hungary v Council) https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170091en.pdf

two countries for an exemption from the implementation of the quota decision. In its application, the Hungarian Government requested the annulment of the Council decision or at least its part on the reception of asylum-seekers based on ten substantive and procedural law arguments; first of all because, according to the Hungarian party, the European Council, which comprises the leaders of the Member States, had agreed several months before the contested Council decision that only voluntary quotas were possible.

However, the Court argued that the document had been issued by a body that was not a Union decisionmaker (EU decisionmakers are the European Parliament and the Council of the European Union). The European Council, comprised of heads of states and governments, adopts "conclusions" rather than decisions. Therefore the Court was of the view that "the European Council cannot under any circumstances alter the voting rules laid down by the Treaties". As a result, the Court dismissed the application.

As regards Hungary and the constitutional situation here, the Constitutional Court could be the institution to provide constitutional assistance concerning the implementation of any future Union distribution quota (the distribution of asylum-seekers) even despite the case lost by Slovakia and Hungary on 6 September 2017.

In December 2016, the Constitutional Court answered[70] three of the four questions raised by László Székely, the Commissioner for Fundamental Rights back at the end of 2015, but it isolated one question which concerned whether it constitutes a violation of the Fundamental Law if the Union divests Member States of more (or other) competences than those permitted by the founding treaties. If the Constitutional Court finds that this is against the Fundamental Law, then in the future, this body could declare as unconstitutional any Union decision which is not adopted within the competence vested in the Community legislator by the founding treaty.

Székely argues that what actually happens is that, by the relocation of asylum applicants between the Member States, the asylum application is also "transferred", which, however, could lead to the expulsion of many applicants without a substantive review of their application (collective expulsion of aliens), which is clearly prohibited by the Fundamental Law of Hungary. The question is whether the same applies to the case where another state proceeds in this way, and the Hungarian administration is also involved in this procedure.

70 CC motion of László Székely: http://public.mkab.hu/dev/dontesek.nsf/0/1361afa3cea26b84c1257f10005dd958/$FILE/X_3327_0_2015_inditvany.002.pdf/X_3327_0_2015_inditvany.pdf

At the XVII[th] Congress of the Conference of European Constitutional Courts held in Batumi, Georgia on 29 June 2017, Tamás Sulyok, President of the Constitutional Court, explained that,[71] although the European Union's system for the protection of fundamental rights and the Court of Justice of the European Union are able to effectively ensure that fundamental rights are upheld in the Community, the Hungarian Constitutional Court still has a "subsidiary responsibility". Essentially, this means that it has to intervene in cases where the right to human dignity or any other fundamental right, or the sovereignty or national identity of Hungary is infringed.

Tamás Sulyok proposed a solution that transfers the concept of "subsidiary responsibility" known from civil law to constitutional law that regulates the issue in its entirety, which responsibility originally meant an obligation to provide a guarantee for a financial obligation of another party (the principal), assuming that there is a person who bears the obligation in the first place (i.e. there is a primary and a subsidiary obligor). It should be briefly noted here that, similarly to corporate law, this concept of responsibility "can also be construed in a broader sense if we do not only mean a guarantee for the consequences of an unlawful act, but also include all cases where someone is obliged to fulfil an obligation, whether it is his/her own obligation or that of a *third party*. Responsibility in this broad sense means providing a guarantee for an obligation or for the violation of an obligation."[72]

As regards the protection of fundamental rights, Sulyok argues that the "primary obligor" is the EU framework for the protection of fundamental rights and the Court of Justice of the European Union, while the "subsidiary obligor" is the Hungarian Constitutional Court, which is required to intervene *hic et nunc* into the process concerned at the right moment as a subsidiary obligor, based on its subsidiary obligation.

71 Tamás Sulyok Tamás (presentation): *A magyar kvótahatározat úttörő Európában. Fókuszban az alapjogok és a nemzeti identitás védelme [The Hungarian quota-decision is a pioneer step in Europe. Fundamental rights and the protection of national identity are in the focus]* (Statement of the CC) https://www.hunconcourt.hu/announcement/tamas-sulyok-the-hungarian-quota-decision-is-a-pioneer-step-in-europe-fundamental-rights-and-the-protection-of-national-identity-are-in-the-focus//

72 György Wellmann: *A mögöttes felelősségről, különös tekintettel annak elévülésére [On subsidiary responsibility, with special regard to its prescription period]* (Magyar Jog 2006/9, 535. p.)

Conclusion

We can establish that in recent years, the matter of national sovereignty has become an increasingly important topic in constitutional law. In essence, the precedent-type decisions adopted by Member State Constitutional Courts or other judicial bodies of restrictive powers that are designed to protect the (national) constitutional identities have, in recent years, aimed to strengthen the exercise of sovereign powers, and do nothing else than rein in or restrict Union powers in *ultra vires* cases, in line with the spirit of the founding treaties.

In line with the above described practice, the new, innovative solutions of the Hungarian Constitutional Court may help to clarify, in disputed cases, where the boundaries of the impermissible extension of competences lie in the EU.