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Master Thesis

Protection of National Identity in the Court of Justice of the European Union

Nacionalinio tapatumo apsauga Europos Sąjungos Teisingumo Teisme

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ABSTRACT AND KEY WORDS

The present work deals with the topic of protection of national identity in various aspects, examining the concept of identity itself, the differences between national identity and constitutional identity and developing notion of European identity. The approach of the European Union (EU) to the concept of national identity is studied, on the background of the ongoing process of European integration. The features of the structure of the EU as a supranational organization are emphasized, which raises the question of the contradiction between European integration and national identity. The paper analyzes the decisions of the Court of Justice of the European Union (CJEU) and legal practice based on the factor of national identity following the entry into force of the Treaty of Lisbon, particularly in the light of the rephrased national identity guarantee under Article 4(2) of the Treaty on European Union (TEU). Based on the analysis of EU approaches and the judicial practice of the CJEU, the main problems and challenges of national identity are outlined and possible solutions are proposed.

Keywords: European integration, Article 4(2) TEU, supremacy of EU law, European identity, constitutional identity, pluralism.

Šiame darbe įvairiais aspektais nagrinėjama tautinio tapatumo apsaugos tema, nagrinėjant pačią tapatumo sampratą, tautinio tapatumo ir konstitucinio tapatumo skirtumus bei naujai besiformuojančią Europos tapatumo sampratą. Nagrinėjamas Europos Sąjungos požiūris į tautinio tapatumo sampratą, vykstančio Europos integracijos proceso fone. Išryškinami Europos Sąjungos, kaip viršnacionalinės organizacijos, struktūros bruožai, todėl kyla klausimas dėl europinės integracijos ir tautinio tapatumo prieštaravimo. Straipsnyje analizuojami Europos Sąjungos Teisingumo Teismo sprendimai ir nacionalinės tapatybės veiksniu pagrįsta teisinė praktika įsigaliojus Lisabonos sutarčiai, ypač atsižvelgiant į perfrazuotą nacionalinio tapatumo garantiją pagal 4 straipsnio 2 dalį.) TEU. Remiantis ES požiūrių analize ir ESTT teismine praktika, nubrėžiamos pagrindinės tautinio tapatumo problemos ir iššūkiai bei siūlomi galimi jų sprendimo būdai.

Raktiniai žodžiai: Europos integracija, ES sutarties 4 straipsnio 2 dalis, ES teisės viršenybė, Europos tapatybė, konstitucinė tapatybė, pliuralizmas.

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INTRODUCTION

The relevance of the topic. The topic “Protection of National Identity in the CJEU” is highly relevant in the context of EU law and governance. National identity plays a crucial role in shaping the cultural, social, and political fabric of Member States. However, as the EU aims for deeper integration and harmonization, tensions can arise between preserving national identity and adhering to EU laws and regulations.

The CJEU, as the highest judicial authority in the EU, plays a pivotal role in interpreting and applying EU law. In doing so, it often grapples with cases involving conflicts between national identity and EU law. These cases may involve issues such as language policies, cultural heritage protection, religious freedoms, or national sovereignty. Understanding how the CJEU addresses these conflicts and balances the protection of national identity with the principles of EU law is essential for ensuring coherence and legitimacy in the EU legal framework. Moreover, it has significant implications for the relationship between the EU and its Member States, as well as for the rights and identities of European citizens. The European Court is one of the most important promoters of European integration, and it is often achieved through its judicial decisions and has played a significant role in promoting European integration through its judicial decisions.

Scientific originality of the final project: even though plenty of studies focus on the concepts of national identity, but most of them only cover the problem from a point, either focusing on some court cases, or on the problem of the supremacy of the EU. There is a lack of works that would comprehensively investigate the issue starting from the concept of identity itself, its types, through the approach of the EU and its structure and with the analysis of problems that arise in judicial practice. What makes the topic particularly interesting is the fact that the protection of national identity is related to the changes in the society, with the process of European integration.

The research aims to assess the extent to which the CJEU recognizes and protects national identity within the framework of its judicial practice and identify problem areas.

In order to achieve the aim, the following **objectives** are established: 1) upon analyzing the concept of national identity to find out the main characteristics and elements and to investigate the differences between constitutional and national identity; 2) to establish the peculiarities of the functioning of the EU and its approaches to the concept of national identity in connection with the European integration; 3) to analyze the judicial practice of the CJEU and main cases in matters of national identity; 4) to identify problematic points of national identity protection and propose ways to solve them.

In order to achieve the objectives, the following **tasks** are established**:**

- to find out the key characteristics of identity, by reviewing the approaches of various scientists and existing literature to the concept of national identity;
- to analyze the possibility of using the terms national and constitutional to the concept of identity;
- to evaluate the concept of European identity;
- to establish the structural features of the functioning of the EU;
- to determine EU approaches to the concept of national identity, by looking over EU legal instruments and frameworks on the issue of protecting national identity, taking into account the changes introduced by Article 4 (2) after the Treaty of Lisbon;
- to look over the most famous court of CJEU cases related to national identity clause;
- to identify challenges regarding national identity within the CJEU;
- to suggest potential ways of improvement.

Methods were used:

Literature Review: This involves a comprehensive review of existing academic literature related to the topic. It helps to delineate the state-of-the-art and identify research gaps.

Case Law Analysis: This involves a detailed examination of the rulings made by the CJEU related to national identity. It helps to understand how the CJEU interprets and applies the concept of national identity in its rulings.

Legal Analysis: This involves a thorough examination of the relevant laws, treaties, and legal principles. It helps to understand the legal framework within which the CJEU operates.

Comparative Analysis: This involves comparing the approach of the CJEU to national identity with that of other courts or legal systems. It helps to understand the unique aspects of the CJEU's approach.

The most important sources. The sources of work materials consist of legal and non-legal sources. Legal sources include EU Treaty, implementations regarding the protection of national identity, as well as relevant CJEU cases. As non-legal sources books, scientific articles and journal publications are used in this work to present researchers\` opinions such as Endre Orban, Jan Burda and Sinisa Rodin etc. on the presented topic. Detailed information is given in the list of references.

1. GENERAL CONCEPT OF NATIONAL IDENTITY

If we look at the Oxford English Dictionary, the origin of the concept of "identity" dates back to the end of the XVI century and has the Latin root "identitas", from the Latin idem "the same". In order to draw logical connections from the origin of the concept of "identity" to its meaning, author Richard Jenkins cites two main meanings such as the identity of objects, and sequence or continuity in time, which is the basis for establishing and comprehending the certainty and distinctiveness of something (Jenkins, 2014, p. 18). Which leads to the conclusion that "the concept of identity includes two criteria for comparison between people or things: similarity and difference," and adds that the verb "identify" is "a necessary accompaniment of identity, which allows us to identify our similarities and differences with others and, finally, with ourselves" (Jenkins, 2014, p. 18). Summarizing the origin of identity and the reasons for its existence, Jenkins defines identity as "our understanding of who we are and who other people are, and, accordingly, other people's understanding of themselves and others (including us)". (Jenkins, 2014, p.18)

According to Tajfel, social identity is a part of an individual's self-image that arises from their understanding of belonging to a social group, along with the emotional significance and value they associate with this group membership. In the realm of international relations, the concept of the nation is central to individual social identities (Hjerm, 2001, pp. 37-60). Like all social identities, national identity is a multifaceted concept that encompasses various elements of an individual's bond or affiliation with their nation (Tajfel, 1978, pp. 61-76).

The concept of national identity is complex and multifaceted, and it is not explicitly defined in international treaties or customary international law. However, various aspects related to national identity are addressed in different contexts. The concept of national identity is implicitly recognized in international treaties. For instance, the "National Identity Clause" is a legal principle enshrined in Article 4 (2) of the Treaty on EU. Its original purpose was linked to the protection of cultural identity, threatened by the free movement of services and goods in the cultural domain. Customary international law, which consists of rules derived from "a general practice accepted as law," does not explicitly define national identity. However, it recognizes the principle of self-determination, which allows peoples to freely determine their political status and pursue their economic, social, and cultural development. This principle indirectly relates to the concept of national identity (Dieckhoff, 2023, pp 467-484). The concept is often discussed in doctrine, i.e., academic literature and legal scholarship. It is commonly understood as

referring to a constitutional identity, a legal doctrine, rather than national identity *stricto sensu*[1], which is not a legal term. There is extensive scholarship on constitutional identity in general, elaborating different meanings of this term (Greenfeld, Eastwood, 2009, 256-273). And also, the term "national identity" in national law refers to the collective identity of a people as recognized by the laws of a specific country. It encompasses elements such as citizenship, shared history, culture, language, and values that are legally acknowledged and protected within a nation's constitution and legal framework. National identity is often tied to the concept of the nation-state[2] and is a basis for an individual's personal identification with their citizenship, whether single or multiple.

There is not a universally accepted definition of national identity in international law, national law or doctrine, the concept is recognized and discussed in various contexts, each offering a different perspective on what constitutes a nation's identity. It is a fascinating area of study that intersects law, politics, sociology, and history.

National identity is often linked to the concept of "We the People" as the source of constitutional power. This identity, belonging to the citizenry governed by the constitution, is rooted in the belief that constitutions are legitimized by the populace who establish and empower them. Moreover, national identity exists independently and prior to any constitution. Timing thus plays a crucial role, distinguishing national identity from the later concept of constitutional identity. The constitution itself is seen as changeable or even revocable by the people, who typically share common national characteristics such as language and heritage.

It is reasonable to assert that national and constitutional identities are frequently interwoven, as the principles embedded within a constitution reflect the identity of the people. Constitutional identity, which includes aspects of national identity, is manifested in constitutional law and derives from the codified principles that give substance to national constitutions. This specific identity has been recognized by national courts as a standalone principle, safeguarded under Article 4(2) of the Treaty on European Union (TEU) as "fundamental constitutional structures". (Konstandinides, 2015, p. 4)

Despite this, the Treaty's identity clause appears to offer a defense mechanism for Member States against the overarching influence of EU law, aiming to protect diversity and maintain national competences valued by the states. However, "constitutional identity" is

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[1] The term "stricto sensu" is Latin for "in the strict sense". It is used to refer to a narrow interpretation or the most specific meaning of a word or phrase (Aaron X. Fellmeth and Maurice Horwitz; 2009).

[2] A "nation-state" is a political entity characterized by the congruence of the boundaries of a state, which is a centralized political organization ruling over a population within a territory, and a nation, which is a community based on a common identity (Cederman, Lars-Erik, p. 19).

distinct from the "national identity" mentioned in Article 4(2) TEU, leading to two separate realms of protection. This distinction is significant for future legal interpretations.

While Article 4(2) of the Treaty on European Union (TEU) mandates respect for "national identity", it does not explicitly mention "constitutional identity". Despite this, much scholarly work and some rulings of Member States' constitutional courts, as well as opinions from advocates general, equate national identity with an obligation to respect constitutional identity. Furthermore, Cloots argues against conflating these concepts (Cloots, 2015, pp. 236). She suggests that constitutional identity reflects the unique sovereignty upheld by Member States' constitutional courts, whereas national identity is rooted in liberal principles of equal treatment. Cloots believes that the TEU's recognition of national identity aims to foster social justice through equal dignity, thereby enhancing the inclusivity of Europe's multi-ethnic political community and, in turn, securing the allegiance of its constituents. Therefore, she posits that national identity encompasses the cultural attributes, such as historical and linguistic traits, that are enshrined in the texts of national constitutions (Cloots, 2015, pp. 195-225).

The wording of Article 4 (2) of the TEU protects the right of Member States and their citizens to determine, regardless of EU law, such elements of their constitutional and political order that make them unique and distinct from any other Member State or even from the EU as a whole. Such essential elements constitute the specific content of national identity. We can assume that the creators of the Treaty did not want to limit the protection of Member States and citizens only to elements of identity contained in national constitutions, because these constitutions themselves rarely contain a definition of identity at all. The legislator rather wanted to focus on the national element, giving scope to cultural, linguistic, and historical issues as well, and not only to elements of the constitutional system, such as the state and social system, the system of people's power, the organization of state power, local self-government, and the territorial system. We agree that in such a sensitive issue it was better to leave a wider field where it is difficult to name an exhaustive list of its elements, therefore, supporting this approach of the EU, we will use the term national identity further in the work.

National identity generally encapsulates the depth of emotional connection and affinity an individual feels towards their nation. Despite the growing relevance of regional and global identities like the EU, nations continue to form the bedrock of individual social identities (Hjerm, 2001, pp. 37-60; Mansfield and Mutz, 2009, pp. 425-457). However, the nature of the relationship between an individual and their nation can differ greatly, as

evidenced by the diverse ways in which individuals interpret their national identities (Davidov, 2009, pp. 64-82).

In the field of social psychology, national identity is often viewed as a construct with two dimensions: "exclusive" and "inclusive" (Davidov, 2009, pp. 64-82; Schatz et al., 1999, p. 151-174). The "exclusive" dimension of national identity, sometimes referred to as "chauvinism" or "blind patriotism", encompasses feelings of superiority or hostility towards other nations or cultures (Blank, Schmidt, 2003, pp. 289-312). This viewpoint sees national identity as an idealization of the nation, coupled with a sense of national superiority and unquestioning allegiance to national, state and political authorities (Blank, Schmidt, 2003, pp. 289-312).

On the contrary, the "inclusive" dimension of national identity, also known as "constructive patriotism", "positive patriotism" (Schatz et al., 1999, pp. 151-174), or "constitutional patriotism" (Habermas, 1996, pp. 118-132), is associated with positive emotions towards one's country that are linked to civic national pride. This form of pride is rooted in respect for the country's political institutions, culture, economy, and social welfare system (Hjerm, 1998, pp. 335-347). As such, it is considered the inclusive aspect of national identity, as it signifies a positive association with a nation's societal, economic, and political successes without necessitating a critical stance towards other groups (Blank, Schmidt, 2003, pp. 289-312). The concept of ethnic citizenship emphasizes the role of national identity, which is often defined by cultural homogeneity and ethnic groups. On the other hand, civic citizenship is typically more accessible to those who adhere to the constitutional regulations of the country. Despite these conceptual differences, it's worth noting that in practice, the attitudes that form the inclusive and exclusive components of national identity often show a moderate and positive correlation (Davidov, 2009, pp. 64-82).

In conclusion, the concept of national identity is a complex and multifaceted construct that is deeply rooted in the historical, cultural, and legal fabric of a nation. It is a dynamic entity, shaped by various factors such as social, political, and legal developments. The exploration of national identity in this chapter has revealed its intricate relationship with the concepts of identity, social identity, and constitutional identity. The discussion has underscored the significance of national identity as a cornerstone of individual self-image and as a critical element of a nation's constitutional framework. The "National Identity Clause" in Article 4 (2) of the Treaty on EU exemplifies the legal acknowledgment of national identity at the international level. However, the definition and interpretation of national identity remain subject to ongoing scholarly debate and legal interpretation.

As the transition to the next section, we will delve deeper into the exploration of Article 4 (2) of the Treaty on EU, also known as the "National Identity Clause". This will provide further insights into the legal dimensions of national identity and its interplay with EU law. The forthcoming discussion promises to add another layer of understanding to our ongoing exploration of national identity, its implications, and its significance in the contemporary member states global landscape.

2. NATIONAL IDENTITY IN THE CONTEXT OF THE EUROPEAN UNION

The European Union (EU), a unique supranational political and economic entity, unites 27 Member States primarily located in Europe. Unlike a conventional federation, the EU's Member States retain their sovereignty and independence, but choose to share some of their sovereignty in areas where they believe collective action is more beneficial. This balance between sovereignty and collaboration characterizes the relationship between the EU and its Member States. The EU operates based on a system of rules agreed upon by all Member States, designed to foster peace, uphold its values, and promote the well-being of its peoples (Pinder, Usherwood, 2018, p. 9).

The essence of the national character of Member States is intricately intertwined with their global positioning. Specifically, affiliation with the EU sets them apart from non-member nations, becoming a fundamental aspect of their identity. Embracing certain EU-centric principles enriches the distinctiveness of their national ethos. Through EU membership, the fabric of national identity is woven with the foundational values outlined in Article 2 TEU, including reverence for human dignity, freedom, democracy, equality, adherence to the rule of law, and safeguarding human rights, especially those of minority groups. These values shape a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity, and gender equality. Respect for these principles serves as a fundamental criterion for EU accession. Once a state embraces these principles through EU membership, it establishes a rebuttable presumption, which can only be contested through the procedures outlined in Article 7 TEU. Article 2 TEU delineates the essential elements of national identity necessary for both Member States and the EU to assert legitimacy.

However, national identity encompasses more than just the values in Article 2 TEU. Factors such as constitutional identity and fundamental structures, independent of the EU context, are construed domestically. While national identity and European values may not fully align, EU membership mandates adherence to Article 2 TEU values. History demonstrates that neglecting this requirement could lead national structures to pursue morally questionable objectives. Thus, EU membership necessitates a national identity that either aligns with or remains neutral towards EU foundational values.

Initially introduced by the Maastricht Treaty, the identity clause succinctly stated the Union's obligation to acknowledge the national identities of its Member States. The Lisbon Treaty expanded on this clause, linking national identity to fundamental political and constitutional structures. This shift moved away from cultural or linguistic interpretations towards using national constitutions as indicators of a Member State's

identity, thus emphasizing a concept of constitutional identity. As Faraguna points out, this alteration broadened the scope of the identity clause significantly (Faraguna, 2016, p. 491).

Since its inclusion in the Treaties, particularly after the Lisbon Treaty, national identity has garnered considerable academic interest. Its allure lies not only in its elusive and flexible nature but also because it serves as a tool within EU law itself. Unlike claims of sovereignty or references to domestic laws, national identity is a tool provided to Member States by EU Treaty provisions.

Consequently, the acknowledgment of national identity, enshrined in Article 4(2) of TEU, has, for some, made sovereignty as a shield for Member States against EU law interference in sensitive areas. The rationale is straightforward: given that EU law mandates the respect of national identity and national arguments are inherently politically charged, invoking the identity clause in conflicts between national and EU law should theoretically make the EU more amenable to Member States' arguments.

National identity has been part of EU law from the beginning. It has been present in the Treaties since the adoption of the Treaty of Maastricht, where it was introduced in Article F(l) of the TEU, which states that The Union shall respect the national identities of its Member States, whose systems of government are based on the principles of democracy. The Article was subsequently renumbered and rephrased to become Article 6(3) of the Treaty of Amsterdam. The Amsterdam provision simply provided that The Union shall respect the national identities of its Member States. Article 1-5 of the Treaty establishing a Constitution for Europe rephrased the provision, the identical wording of which subsequently became paragraph 2 of Article 4 of the TEU. The European Convention, which prepared the text of the Constitutional Treaty, discussed a number of proposals as to what should be explicitly mentioned as a part of national identity. Among the proposals, there were: “constitutional and political structures including regional and local self-government and the legal status of churches and religious bodies” and also language, national citizenship, military service, the educational systems, the welfare systems, including the public health systems, the system for personal taxation, the right of abortion. (Rodin, 2011, p. 13).

While the EU respects the national identities of its Member States, this respect is conditioned by the identity of the EU as a common legal order. Member States are expected to respect this common identity when exercising their respective identities, which is a balancing act between maintaining national uniqueness and adhering to the EU’s overarching principles and laws.

The term “European identity” refers to an individual’s sense of personal identification with Europe, either culturally or politically. This concept, often discussed in the context of European integration, has gained prominence since the EU’s establishment in the 1990s. The notion of a “pan-European” identity first surfaced with the idea of a unified Christendom, which defined “Europe” as a cultural entity (Hahm, Hyeonho, Hilpert, König, 2022, pp. 705-731).

European identity is perceived as an “intermediary” identity that exists between the national and global levels. It is founded on shared historical links, ideas, and values, but does not negate national identities. The term “European” encompasses geographic, historic, and cultural factors that contribute to the formation of a European identity (Thierry Chopin, 2018, p. 1-6).

However, it’s crucial to note that established cultures can present challenges to the development of a cosmopolitan culture, such as a European identity. If this identity is to do more than weakly coexist alongside national and subnational identities, it may come at a cost – only if Europe defines itself exclusively against other global actors (Smith, 1992, pp. 55-76). The European identity and national identities coexist in a complex interplay. While they can reinforce each other, they can also pose challenges to each other. The balance between these identities is a key aspect of the ongoing project of European integration.

The coexistence of European identity with national identities is a complex issue, and the European approach to national identity differs from that of general international law. This identity is constructed at two levels: the individual level, where European identity is constructed in the minds of European citizens (social identity), and the collective level, where it is established in public discourses about the EU (collective identity). At the individual level, it refers to how strongly EU citizens identify as Europeans (intensity of European identity) and the specific social representations or identity frames coexisting in the minds of European citizens (content of European identity). At the collective level, the construction of collective European identity takes place in public discourses. This process of identity construction encompasses two different dimensions – the intensity and the content of European identity (Starke, 2021, pp. 73-113).

The EU’s constitutional framework, as suggested by Article F (1) of the Maastricht Treaty, differentiates between favorable and unfavorable national identities, protecting the former while disregarding the latter. This ties national identity to democratic principles.

General international law, as noted by James Crawford (Crawford, 1988, p. 5), tends to focus more on the sovereignty of states and traditional principles of nationality. The

national idea, according to Gaetano Pentassuglia (Pentassuglia, 2023, pp. 238-270.), serves as the primary source of legitimation of a state's sovereignty, and national identity acts as a mechanism for merging the national idea and the state's sovereignty.

Support for the EU, as Hobolt and De Vries (Hobolt, De Vries, 2016, pp. 413-432) point out, stems from various factors. One of these, which has been increasingly highlighted, is the bond individuals have with their nation, or in broader terms, their national identity (Carey, 2002, pp. 387-413; Hooghe, Marks, 2009, pp. 1-23). The interpretation of national identity varies, but substantial evidence supports the idea that the depth of one's patriotic sentiments , the extent of national attachment in comparison to other territorial units (Carey, 2002, pp. 387-413), and the apprehension of foreign identities and cultures posing a threat to the nation's prevailing culture (Kentmen-Cin, Erisen, 2017, pp. 3-25), all negatively correlate with EU support and could potentially compromise the EU project's legitimacy (Easton, 1975, pp. 435-457; Lipset, 1960, pp. 265-267).

However, over time, the academic community, as noted by Cram (Cram, 2009, pp. 109-128), has come to understand that national identity and EU support are not inherently contradictory. This has led to the acknowledgment that national identity has a dual nature (Diez Medrano, 2003, pp. 21-64) and can both amplify (Citrin, Sides, 2007, pp. 477-504) and weaken (Luedtke, Givens, 2005, pp. 1-22) EU support. Consequently, national identity does not necessarily pose a barrier to the support for the European integration process (Hooghe, Marks, 2009, pp. 1-23).

While international law does not explicitly define national identity, it provides a framework for understanding the rights and responsibilities of nations. Within this context, unique entities like the EU, challenge traditional definitions and our understanding of sovereignty and national identity.

The EU, as Simon Bulmer and Christian Lequesne note (Bulmer, Lequesne, 2005), has its own legal system, separate from international law. This system is based on the Treaty on EU and the Treaty on the Functioning of the EU, which were unanimously agreed upon by the governments of the Member States. The EU's legal system includes primary legislation (the Treaties and general legal principles), secondary legislation (based on the Treaties), and supplementary law. Politically, the EU transcends nation-states for the purpose of cooperation and human development. Its political system is based on democratic principles, and decisions are taken as openly and as closely as possible to the citizen.

In the context of the EU, national identity is acknowledged and respected as part of the fundamental political and constitutional structures of its Member States, including regional and local self-government, as stated in Article 4(2) of the TEU. The EU aims to

balance the integration of Member States within the EU framework while accommodating their national diversity. This balance is a testament to the power of cooperation and shared values, and it continues to evolve and adapt to the changing needs and aspirations of its Member States and their citizens. It’s a fascinating example of regional integration that challenges traditional concepts of national identity and sovereignty. This is reflected in the EU’s policies and legislation, which often allow for certain derogations based on national identity considerations. The EU’s approach seeks to harmonize the respect for national identities with the cosmopolitan project of European integration, ensuring that both integration and accommodation of national diversity are pursued.

The EU's treaty-based duty to respect national identity has been central to various domestic legal disputes between individuals and Member States. These disputes can be broadly categorized into two types that invoke Article 4(2) TEU concerning national identity.

Firstly, we encounter cases involving core constitutional values identified by national courts as part of a shared national identity, common to both the Member States and the EU. Such cases could challenge the enforcement of an EU Directive that potentially compromises the right to privacy, a right safeguarded by both national and EU laws. The CJEU adjudicates these cases in favor of Member States only after a thorough proportionality test, which balances competing objectives and principles, such as justifying privacy restrictions to prevent terrorism. (Konstandinides, 2015, p. 4)

Secondly, there are cases tied to specific constitutional provisions, like a language requirement for all professionals. For example, a mandate that all teachers in Irish state colleges must be proficient in the Irish language could be argued by national judges as a measure to protect Irish national identity. Similar to the first type, these cases undergo a proportionality test at the CJEU, ensuring that language proficiency requirements are necessary to protect and promote a language that is both the national and first official language. These instances illustrate that invoking national identity provides additional protection, complementing what would have previously been argued based on fundamental rights protection or public policy. Since the amendment of Article 4(2) TEU, domestic courts appear to increasingly rely on the concept of identity, particularly in disputes where national regulations significantly hinder an individual’s Treaty freedoms, such as the freedom of movement, residence, and professional practice. In these scenarios, EU law is traditionally engaged by examining the extent of the fundamental freedom and the allowable deviation from it. National courts often use the preliminary reference procedure, citing Article 4(2) TEU as a derogation from their Member State’s obligations under EU

law. For instance, a national court might argue that the transposition of EU legislation into national law clashes with deeply ingrained constitutional principles or interests, ranging from diversity and transparency to equal treatment and nationality conditions for professional access. Thus, Article 4(2) TEU grants Member States a specific EU law derogation to preserve their national identity. While this use of Article 4(2) TEU as a justified restriction on EU law application may seem novel, it does not fundamentally alter the CJEU's established practice on express Treaty derogations from EU fundamental freedoms under Articles 36, 45 (paragraphs 3 and 4), 62, and 65 TFEU.

The EU acknowledges the ethnic and cultural aspects of its Member States' identities, striving for a culturally diverse union. The EU-funded CHIEF project[3], for instance, aims to move beyond ethnonationalism and ensure that all forms of cultural heritage are recognized, especially among young people experiencing exclusion. Identification with Europe is often weaker compared to national or ethnic/regional identities, and the EU's values sometimes clash with narratives that oppose them to national and ethnic identity.

The EU project questions the concept of nation-states and our very understanding of the origins and identity (Habermas, 1996, pp 118-132). It disrupts the nation-state by pushing nations towards a process of standardization (Kriesi et al., 2006, pp. 921-959), and it promotes the immigration of culturally diverse individuals (De Vreese, Boomgaarden, Hobolt et al., 2011, pp. 359-379). This implies that the EU project simultaneously interacts with various facets of national identity (Medrano, 2003, pp. 21-64).

We anticipate that individuals whose national identity is primarily shaped by inclusive elements, such as patriotism, will have a positive attitude towards the EU. In contrast, those whose identity profiles are driven by exclusive elements, such as chauvinism, are likely to view the European integration project with more skepticism, resulting in lower average levels of EU support.

This is because patriotism, an inclusive component of national identity, does not necessarily reject integration or cooperation with other nations. Moreover, national pride in accomplishments can be extended to the economic and cultural achievements that the EU represents, such as democratic values like freedom and equality, the rule of law, and respect for human rights. Therefore, national patriotism should correlate positively with EU support.

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[3] The EU-funded CHIEF (Cultural Heritage and Identities of Europe's Future) project is an interdisciplinary, transnational initiative that spans nine countries within and outside the EU. The project aims to explore the influence of informal interactions on young Europeans' understanding of their cultural heritage. https://cordis.europa.eu/project/id/770464

Conversely, chauvinism, characterized by feelings of superiority and demarcation, should correlate negatively with EU support. Chauvinism might foster fears that the blurring of boundaries between EU Member States allows "out-groups" to become part of one's nation, and that the "ideal" national political sovereignty is compromised as EU institutions gain more control.

The EU project introduces a new framework for determining who belongs to the in-group (such as nationals) and who is considered part of the out-group (like other EU nationals or non-EU nationals). Consequently, the more a national identity is oriented towards distinguishing between in-groups and out-groups (i.e., endorsing ethnic citizenship), the more it is likely to be negatively correlated with EU support. In this perspective, other EU citizens cannot be included in one's nation-state, as inclusion is based on lineage. However, the implementation and enforcement of EU regulations (for instance, freedom of movement) could challenge this notion. The more a national identity is oriented towards inclusivity (i.e., endorsing civic citizenship), the greater the support for the EU. The EU introduces a new layer to the social contract that is accessible to all. When we consider these dimensions of national identity together, we formulate several expectations. We hypothesize that citizens who value all these dimensions of national identity – patriotism, chauvinism, ethnic and civic citizenship – and thus exhibit a comprehensive national identity, are likely to have ambivalent attitudes towards the EU. While certain aspects of this comprehensive national identity would undoubtedly be receptive to the EU, others might resist it, likely resulting in average to lower EU support. Conversely, those citizens who place a higher emphasis on exclusive identity dimensions while downplaying inclusive aspects are expected to be the staunchest opponents of EU integration.

So, the concept of "European identity" has gained prominence since the EU's establishment and is perceived as an intermediary identity that exists between the national and global levels. It is founded on shared historical links, ideas, and values, and does not negate national identities. However, the coexistence of European identity with national identities presents challenges and requires a delicate balance, which is a key aspect of the ongoing project of European integration.

In order to better understand the approach of the European Union, we will proceed to the study of the practice of the CJEU as one of the main institutions of the EU and the analysis of its main decisions on the issue of national identity.

3. THE APPROACH OF THE COURT OF JUSTICE OF THE EUROPEAN UNION TO THE PROTECTION OF NATIONAL IDENTITY

The CJEU is the judicial institution of the European Union. It's based in Luxembourg and was originally established in 1951 as a single court called the Court of Justice of the European Coal and Steel Communities. With the formation of the Euratom and the European Economic Community in 1957, its name changed to the Court of Justice of the European Communities (CJEC).

In 1988, the Court requested the Commission to create a Court of First Instance to handle certain types of cases. This led to the formation of the General Court, which hears applications for annulment from individuals, companies, and, less commonly, national governments.

The CJEU interprets EU law to ensure it is applied uniformly in all EU countries. It also settles legal disputes between national governments and EU institutions. The CJEU is composed of two major courts:

1. **Court of Justice**: This court deals with requests for preliminary rulings from national courts, certain actions for annulment, and appeals. It consists of one judge from each EU member country, as well as 11 advocates general.

2. **General Court**: This court rules on actions for annulment brought by individuals, companies, and, in some cases, EU governments. In practice, this court deals mainly with competition law, state aid, trade, agriculture, and trademarks.

The CJEU is the chief judicial authority of the European Union and oversees the uniform application and interpretation of European Union law, in cooperation with the national judiciary of the Member States. It ensures that European law is interpreted and applied in the same way in every Member State.

The CJEU resolves legal disputes between national governments and EU institutions. It can also take action against EU institutions on behalf of individuals, companies, or organizations whose rights have been infringed. The CJEU gives rulings on cases brought before it, including interpreting the law (preliminary rulings), enforcing the law (infringement proceedings), annulling EU legal acts (actions for annulment), ensuring the EU takes action (actions for failure to act), and sanctioning EU institutions (actions for damages) (Moser, Rittberger, 2022, pp. 1038-1070).

The CJEU's prominence stems from its unique role and responsibilities within the EU. It is the chief judicial authority of the European Union and oversees the uniform

application and interpretation of European Union law, in cooperation with the national judiciary of the Member States.

The CJEU also resolves legal disputes between national governments and EU institutions, and may take action against EU institutions on behalf of individuals, companies, or organizations whose rights have been infringed.

Its mission is to ensure that "the law is observed" "in the interpretation and application" of the Treaties of the European Union. To achieve this, it reviews the legality of actions taken by the EU's institutions, enforces compliance by Member States with their obligations under the Treaties, and interprets European Union law.

This evolution and the unique role of the CJEU have contributed to its prominent position within the EU's political and legal order. The CJEU plays a crucial role in interpreting EU law, including the protection of national identity within the EU framework. The CJEU's approach to national identity is primarily guided by Article 4(2) of the TEU, which requires the EU to respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.

The EU law respects the national identities of its Member States. The EU law approaches the relationship between national identity and EU law from a very interesting angle: it develops a general adjudication scheme for the CJEU when applying and interpreting EU law in cases where national identity issues are invoked (Cloots, 2005, pp. 118-225).

The EU is committed to respecting the "national identities" of its Member States, but this respect is conditioned by the identity of the EU as a common legal order. Member States are expected to respect this common identity when exercising their respective identities (Schyff, 2023, pp. 89-110). This approach aims to balance the preservation of national competences and cultural uniqueness with the overarching principles and laws of the EU. It would be useful to note some key points which show that CJEU played a significant role in promoting European integration through its judicial decisions:

- The CJEU has been transforming the Treaty of Rome into a European Community (EC) constitution, thereby increasing the impact and scope of EC law.
- The CJEU has been described as the "dark horse" of European integration, with its power often taken for granted by legal scholars and overlooked by political scientists (Boin, Fahy, Hart, 2020, pp. 1-35).

- The CJEU started as a small court overseeing the legality of the High Authority's activities. Over time, it evolved into a fully-fledged constitutional court of an expanding Union, prevailing over national courts and carrying an ever-growing caseload.
- The CJEU's rulings have had far-reaching effects on the integration of the EU. For instance, its rulings in the Van Gend en Loos (Case 26-62) and Costa v ENEL(Case 6-64) established the principle that EU laws directly apply to the citizens of the Member States and prevail over national laws.
- The CJEU has consistently interpreted the founding treaties to further an ever-closer Union (Burley, Mattli, 1993, pp. 41-77).

This transformation has not only increased the impact and scope of EU law but also challenged traditional concepts of sovereignty and national identity. It has led to a complex system that continues to evolve and adapt to the changing needs and aspirations of its Member States and their citizens (Boin, Schmidt, 2021, pp. 135-159).

As the EU continues to evolve and face new challenges, the topic of protecting national identity in the CJEU remains pertinent, reflecting broader debates about the nature of sovereignty, diversity, and integration within the EU.

The CJEU has been known to provide a proportionate and relative protection of national identity, balancing it against other legal interests. This is in contrast to some national constitutional courts that may offer absolute protection of constitutional identity, which cannot be balanced against other legal interests. The CJEU's interpretation of national identity under Article 4(2) TEU does not cover particular national conceptions of fundamental rights but focuses more on the organizational or structural elements of national identity and their impact on the fundamental rights of individuals.

The CJEU's reading of Article 4(2) TEU seems to diminish the scope of constitutional identity. Post-Lisbon Treaty, Member States have been inclined to define aspects of their identity to the CJEU through preliminary reference procedures. Yet, the CJEU has determined that the national identity protected by Article 4(2) TEU is limited and does not serve as a blanket means to restrict the transfer of sovereignty to the EU, nor as an exemption from the supremacy of EU law.

The concepts of "supremacy" and "direct effect" of EU law are fundamental principles that were introduced and developed by the CJEU. The principle of supremacy, also referred to as "precedence" or "primacy", establishes that EU law takes precedence over national laws of the Member States. This principle ensures that EU law is uniformly applied across all Member States and that the objectives of the EU can be effectively pursued. The CJEU has played a crucial role in developing this principle through its case

law. For instance, in the landmark case of Costa v ENEL (Case 6-64), the CJEU ruled that EU law takes precedence over any provision of national law, including constitutions. The principle of direct effect allows individuals to invoke EU law directly before national and European courts. This principle was first established by the CJEU in the Van Gend en Loos case, where it ruled that EU laws can create legal rights for individuals, which they can enforce in their national courts. The CJEU has further clarified that direct effect applies to all EU acts that are clear, precise, and unconditional.

The CJEU actively promotes the application of these principles to ensure the uniform interpretation and application of EU law across all Member States. These principles have significantly shaped the EU's legal order and continue to play a vital role in the process of European integration. They underscore the unique nature of the EU as a supranational entity, where Member States have chosen to pool some of their sovereignty to achieve common objectives.

In practice, the CJEU has established that the concept of national identity protected by Article 4(2) TEU is limited. It is not a catch-all tool to limit the transfer of sovereign powers to the EU, nor is it an exception to the principle of EU law primacy. This interpretation aligns with the concept of constitutional pluralism, which allows for a dynamic relationship between the EU legal order and the national legal orders of Member States.

The CJEU's stance reflects an understanding that while the EU must respect the unique constitutional identities of its Member States, this respect must be harmonized with the objectives and principles of the EU. This approach facilitates the avoidance of direct conflicts between EU law and national law, promoting a cooperative relationship between the CJEU and national courts.

The CJEU has made several significant rulings related to national identity. Here are a few examples, more detailed cases will be discussed in the next chapter.

The case known as V.M.A. v Stolichna obshtina, rayon "Pancharevo" (C-490/20), was brought before the Court of Justice of the European Union and the judgment was delivered by the Grand Chamber on 14 December 2021. This case pertains to the Citizenship of the Union and the Right to move and reside freely within the territory of the Member States. It involves a child born in the host Member State of her parents, with a birth certificate issued by that Member State mentioning two mothers in respect of that child. The case challenged the refusal by the Member State of origin of one of those two mothers to issue a birth certificate for the child in the absence of information as to the identity of the child's biological mother. The possession of such a certificate being a

prerequisite for the issue of an identity card or a passport. The case also highlighted that persons of the same sex are not recognized as parents under the national legislation of that Member State of origin. The CJEU stated that this obligation does not undermine the national identity or pose a threat to the public policy of that Member State.

Another case, known as RS (Effet des arrêts d'une cour constitutionnelle) (Case C-430/21), was brought before the Court of Justice of the European Union and the judgment was delivered by the Grand Chamber on 22 February 2022. The case pertains to the Rule of law, Independence of the judiciary, Second subparagraph of Article 19 (1) TEU, Article 47 of the Charter of Fundamental Rights of the European Union, and Primacy of EU law. It involves a request for a preliminary ruling from the Curtea de Apel Craiova — Romania. The case challenged the lack of jurisdiction of a national court to examine the conformity with EU law of national legislation found to be constitutional by the constitutional court of the Member State concerned. It also highlighted that a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law. In this case, the CJEU ruled that EU law precludes a national rule under which national courts have no jurisdiction to examine the conformity with EU law of national legislation which has been held to be constitutional by a judgment of the constitutional court of the Member State. The CJEU stated that the application of such a rule would undermine the principle of the primacy of EU law and the effectiveness of the preliminary-ruling mechanism.

The CJEU has also made several rulings related to the interpretation and application of the National Identity Clause in Article 4(2) of the Treaty on EU. The CJEU has interpreted this clause in various cases to balance the principles of EU law with the protection of national identities. These rulings highlight the CJEU's role in interpreting and applying EU law in a way that respects and protects national identities while also upholding the principles and objectives of the EU.

The National Identity Clause established in Article 4 (2) of the Treaty on the EU, that was already analyzed in the second chapter can be linked to the protection of cultural identity, apparently threatened by the free movement of services and goods in the cultural domain. Today it is most typically associated with limits to European integration and protection of core competences of the nation states within the EU (Guastaferro, 2012, p. 265).

CJEU's rulings highlight the CJEU's commitment to the protection of national identity. They provide important guidance on the interpretation of national identity in the

context of EU law. Finding an acceptable rationale for deviating from a Member State’s commitments under EU law is a delicate balancing act. While the principle of sincere cooperation and domestic legal norms typically compel a Member State to fulfill its obligations, various other EU principles and provisions afford the Member State some latitude should there be a compelling reason to waive those obligations. This balancing act, often referred to as proportionality, is regarded as “the very essence of justice”, “the fundamental aspect of fairness and equality”, and, within the realm of EU law, “its fundamental principle”. Indeed, the assessment of proportionality can be seen as a product of European constitutionalism. As observed by others, few other general principles have had as profound an impact on the evolution of European public law.

The acknowledgment of national identity can function as a mechanism to enrich judicial discourse within the Union. However, arguments derived from it are not functioning on a separate level compared to those arising from conventional Treaty exceptions, like justifications based on public policy. Consequently, identity-based arguments may amplify and influence the Court’s balancing act, steering it toward what the Member State considers significant. Nevertheless, the ultimate assessment remains firmly within the jurisdiction of the CJEU.

3.1 Analysis of cases and their impact on legal practice

After the Lisbon Treaty reforms, the first notable case involving national identity protection was related to Article 21 of the TFEU, focusing on the right to a name. This issue also surfaced in subsequent cases.

In the initial case known as Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien (C-208/09), an individual adopted by Lothar Fürst von Sayn Wittgenstein, a German citizen, received the prefix “Fürstin von”. However, the Viennese authorities later mandated the removal of this prefix, reverting the surname to “Sayn Wittgenstein”. This action was based on Austrian constitutional law, specifically the 1919 Act on the Abolition of Nobility, which prohibits the use of noble particles like “von”. Conversely, the German Constitution from the Weimar era allows noble titles as part of surnames but forbids their reacquisition.

The Austrian Constitutional Court ruled on a similar case in 2003, concluding that Austrian law, under the equality principle, bars citizens from adopting surnames with noble titles. Following this decision, the Viennese authorities deemed the plaintiff’s surname registration incorrect and sought to amend it. This led the plaintiff to challenge the decision

in court, prompting a suspension of the proceedings and a request for a preliminary ruling from the CJEU. The central question was whether denying recognition of a surname containing a noble title, as prescribed in another Member State, violated the freedom of movement, given that such titles are constitutionally banned in Austria.

In this particular case, the concept of constitutional identity was pivotal. Interestingly, the case involved a constitutional ban with political underpinnings. Alongside this, the right to freedom of movement and the safeguarding of fundamental rights were also invoked. The CJEU underscored the importance of a person's name as a core part of their identity and privacy, protected under both the EU Charter of Fundamental Rights and the European Convention on Human Rights. The court recognized that changing the established name on official documents like passports and driving licenses would be significantly disadvantageous for the individual. Moreover, the individual might face ongoing challenges due to discrepancies between the name used for fifteen years and the one corrected in Austrian records. Thus, not recognizing a surname in its entirety could potentially infringe upon the freedom of movement stipulated in Article 21(1) of the TFEU.

The CJEU's jurisprudence allows for restrictions on free movement if they are objectively justified and proportionate to the legitimate aims of national law. The crux of the matter was the proportionality of the restriction. The Austrian Government defended the restriction, citing historical context and the Republic of Austria's core values, claiming it fell under public policy exceptions. Additionally, it argued that the restriction did not exceed what was necessary to achieve the intended objective. Echoing this argument, the Commission noted during the hearing that the nobility abolition law is an aspect of Austrian national identity given the country's constitutional history. Therefore, it was necessary to balance the constitutional interest in removing noble elements from the name against the individual's interest in maintaining the name as registered in Austria for 15 years.

The CJEU, aligning with the Commission's view, acknowledged that the Austrian Law on the Abolition of Nobility is an aspect of national identity that can be considered when weighing it against the right to free movement under EU law. The Court also integrated Article 4(2) into the broader context of public policy, interpreting the Austrian constitutional provision as a reflection of a fundamental public interest. Furthermore, the CJEU highlighted the EU's commitment to the principle of equality as a fundamental legal principle, as stated in the Charter of Fundamental Rights. Consequently, the Court found that respecting equality aligns with EU law and that it is not disproportionate for a Member State to prevent its citizens from using noble titles or name elements that suggest nobility.

Thus, the Austrian authorities' refusal to acknowledge such name elements aligns with the pursuit of a key constitutional goal.

In 2016 case known as Nabiel Peter Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe, Zentraler Juristischer Dienst der Stadt Karlsruhe (C-438/14), the debate over noble titles resurfaced, highlighting the tension between free movement and constitutional identity. The individual in question, originally named Nabiel Baghdad in Karlsruhe, became a naturalized British citizen named Peter Mark Emanuel Graf von Wolffersdorff Freiherr von Bogendorff after relocating to London and undergoing several name changes. Upon returning to Germany, he encountered resistance from Karlsruhe's registry office, which declined to update his birth certificate with the noble components of his surname acquired abroad. This led to a legal dispute and the case's referral to the CJEU by the Amtsgericht Karlsruhe.

The CJEU confirmed that not recognizing legally registered names impinges on the freedom of movement guaranteed by Article 21 TFEU. However, it also considered the principle of equality before the law, a cornerstone of both the Weimar Constitution and EU law, as a potential public policy concern. The CJEU noted that this principle, as part of national identity mentioned in Article 4(2) TEU, could justify restrictions on free movement rights. Unlike Austrian law, which outright bans noble titles, German law only prohibits the creation of new titles. Thus, the CJEU maintained its stance on protecting constitutional identity, invoking Article 4(2) TEU as a basis for public policy exemptions and indicating that authorities need not recognize a name change if deemed disproportionate by the national court.

In the case known as Commission v Luxembourg (C-566/07), the initial ruling post-Lisbon Treaty on national identity delved into the cultural implications of Article 4(2) TEU. This emerged from a legal challenge against Luxembourg, which had imposed nationality as a prerequisite for practicing as a notary. The crux of the matter was the compatibility of this requirement with the freedom of establishment as per Article 43 EC, alongside Council Directive 89/48/EEC, which pertains to the acknowledgment of higher-education diplomas following professional education of at least three years. Luxembourg defended its stance by asserting that notaries partake in official authority roles and that the nationality condition is deeply rooted in the nation's historical, cultural, and traditional identity.

The CJEU based its judgment primarily on the absence of public authority exercise, while also considering the relevance of the identity clause. The court recognized that safeguarding Member States' national identities is a legitimate goal upheld by the EU's legal framework, as affirmed in Article 4(2) TEU. However, referencing the Commission v

Luxembourg case, the CJEU determined that Member States' interests could be safeguarded through means other than outright exclusion of other Member States' nationals, rendering the identity-based argument unsuccessful due to the availability of less restrictive alternatives.

In another case Anton Las v PSA Antwerp NV (C-202/11) concerning language requirements in employment contracts, which posed a potential hindrance to free movement rights, the CJEU employed the proportionality test. This test mandates that any Member State measures that could impede the exercise of Treaty-guaranteed freedoms must serve a public interest, be appropriate for achieving that interest, and not exceed what is necessary for its attainment.

The CJEU acknowledged that fostering the use of the Dutch language in Belgium is a legitimate interest that could, in theory, justify restrictions under Article 45 TFEU. The court supported this view by citing the EU's commitment to cultural and linguistic diversity in Article 3(3) TEU and the protection of official national languages as part of national identity in Article 4(2) TEU. Despite this, the legislation failed the proportionality test.

The CJEU noted that participants in a cross-border employment contract might not speak the official language of the concerned Member State. Therefore, to establish a clear agreement, it is necessary for the contract to be drafted in a language understood by all parties. A more flexible approach could have permitted the authentic version of the contracts to be written in a language spoken by all parties involved.

In the next case known as Cátia Correia Moreira v Município de Portimão (C-317/18), the CJEU examined a novel interpretation of Article 4(2) of the TEU in relation to Council Directive 2001/23/EC. This Directive deals with the protection of employees' rights during the transfer of businesses. The case involved Cátia Correia Moreira and the Municipality of Portimão, Portugal, and questioned the legality of terminating an employment contract.

Moreira had multiple service contracts with Portimão Urbis, which were terminated by the municipality. While some company activities were transferred to the municipality, others were outsourced to a different municipal company. Employees affected by the outsourcing were required to compete for their positions, and despite Moreira's high ranking, she faced a salary reduction, which she refused. Consequently, her contract was terminated due to the company's closure.

The Court's request for a preliminary ruling brought up Article 4(2) TEU, marking its first appearance in the CJEU's operative judgment. The CJEU clarified that this article should not be interpreted to undermine the protections provided by EU law in areas where

Member States have transferred authority to the EU, such as employee rights during business transfers. Thus, the CJEU determined that Directive 2001/23 must be read to prohibit national laws that necessitate workers to compete for their positions and form new legal relationships with the receiving municipality during such transfers.

Since the Treaty of Lisbon's enactment, several more cases have touched upon the interpretation of Article 4(2) TEU. One such instance involved an incidental mention of a breach of this article by a Member State. This occurred in a lawsuit initiated by Italy against the European Commission's decision to retract European Regional Development Fund commitments for the Italy-Malta cooperation program as of the end of 2013.

In the lawsuit, Italy's second argument referenced the need to uphold constitutional identity. However, this was merely supplementary to the main argument centered on the principle of partnership defined in Article 11 of Council Regulation (EC) No 1083/2006. Essentially, Italy's complaint was about the European Commission's delay, making the constitutional identity point more of an auxiliary mention rather than a Despite the Court of Justice of the EU's initial hesitance to engage with the identity clause, invoking constitutional identity has frequently emerged as an effective legal tactic. This was evident in a case concerning Luxembourg's teaching staff (C-473/93), where the CJEU acknowledged the protection of identity as a valid objective for imposing limits on EU law. Although not successful in that instance, subsequent cases have seen the constitutional claims of Member States upheld, both explicitly and implicitly. Notable successes include the recognition of local government associations' significance in Remondis, the upholding of a constitutional ban on nobility titles in Sayn-Wittgenstein, and the defense of national language in Vardyn. An implicit victory occurred in the M.A.S. case, where the CJEU reversed a prior ruling based on the safeguarding of Italian constitutional identity.

Judgment No. 62/2016 by the Belgian Constitutional Court marked a significant shift in the Court's stance towards the primacy of EU law over national constitutions. The Court, widely regarded as one of the most Europhile constitutional courts in the EU, unexpectedly joined the list of constitutional courts that do not fully accept the European Court of Justice's viewpoint on this matter. The judgment seems to follow the Bundesverfassungsgericht's example by setting some limits to the primacy of EU law over the Constitution. This was particularly notable in relation to the Belgian national identity, which was articulated more explicitly than the limit related to ultra vires review. The judgment stands out for two main reasons:

1. It denied standing to a wide range of petitioners.

2. It developed criteria limiting the primacy of EU law over the Belgian Constitution.

The judgment is very succinct on this important novelty, leaving several questions open. These include the procedure for raising an *ultra vires o*r a national identity issue, the competent court for review, the criteria for addressing such an issue, the possibility of the Constitutional Court declaring a piece of EU law unconstitutional, and the definition of Belgian national identity.

This judgment has significant implications for the full effect of EU law within the Belgian legal order. It suggests that while the judgment may limit the primacy of EU law in some respects, it does not necessarily undermine the overall effectiveness and uniformity of EU law within the Belgian legal order. This analysis provides a comprehensive understanding of the implications of Judgment No. 62/2016 and its impact on the relationship between EU law and national constitutions (Philippe Gerard, Willem Verrijdt, 2017, pp 182-205.

Additionally, there have been instances where the CJEU did not directly address the identity clause, yet the final judgments favored arguments supported by references to it. Cases like Tjebbes (2019, C-221/17), concerning national community composition, Samira Achbita (2017, C-157/15), involving the French principle of legality, and matters of linguistic diversity in EU job applications, as well as the Brexit revocation issue, where sovereignty absorbed the national identity argument, are examples of this trend.

Conversely, there have been occasions where appeals to Article 4(2) TEU were not persuasive. Sometimes, the CJEU dismissed identity-based arguments during proportionality assessments, as seen with the nationality requirement for notarial positions in Luxembourg (C-51/08) and the language stipulations in Anton Las's contract (C 202/11), which were deemed excessive. In other cases, the concepts of identity under national and EU law diverged, or Member States attempted to frame irrelevant issues as matters of constitutional identity. Such unconvincing references to constitutional identity include disputes over part-time British judges' pension rights (O'Brien, 391 U.S. 367), the implementation of the Water Framework Directive (C-51/12), the resettlement of lawyers under EU law (Torresi, (Joined cases C-58/13 and C-59/13), and issues concerning Spanish gift taxes. These examples illustrate the nuanced application of constitutional identity within the CJEU's jurisprudence.

The identity clause has the potential to offer a heightened level of protection within a Member State's discretion, aligning with Article 53 of the Charter. Yet, the Melloni doctrine, which allows for varying degrees of fundamental rights protection among

Member States, may limit this potential. The CJEU emphasized the principles of primacy, unity, and effectiveness over the broader application of Article 53, especially when Member States have enacted harmonized, explicit rules in a specific domain.

Constitutional courts hold significant sway in this context. For instance, in cases like Weiss (C-493/17), the CJEU strategically chose not to comment on certain issues, while in others, like C-151/12 Commission v Spain, it gave considerable weight to the constitutional courts' interpretations. The Sayn-Wittgenstein case is notable, where the CJEU's decision to uphold a complete ban on nobility titles was influenced not solely by the republican form of government but also by a desire to respect the constitutional court's prior ruling. Moreover, constitutional courts play a crucial role, as demonstrated in the pre-Lisbon M.A.S. case, where they provided compelling arguments that influenced the CJEU, underscoring their expertise in defining MSs' constitutional identity.

In the case under discussion (C-673/16), R. A. Coman, a citizen of both Romania and the United States, resided in Brussels and married an American citizen, R. C. Hamilton. In December 2012, they approached the Romanian General Inspectorate to inquire about securing a legal residence permit for R. C. Hamilton in Romania for a period exceeding three months, given that Hamilton was a family member of R. A. Coman. The Inspectorate informed them that Hamilton was only entitled to a right of residence for three months as the Romanian state did not recognize their same-sex marriage under the Romanian Civil Code.

Following this, Coman and others initiated a lawsuit against the General Inspectorate before the Fifth District Court, Bucharest. They sought a declaration that the discrimination based on sexual orientation was a hindrance to the freedom of movement within the EU. They also requested the Court to order the General Inspectorate to cease this discrimination and compensate them for nonpecuniary damages. During the dispute, Coman also raised an objection of unconstitutionality against Article 277 (2) and (4) of the Civil Code. The Fifth District Court of Bucharest referred the case to the constitutional court, which in turn referred the case to the CJEU.

The CJEU recognized that marital status, including the rules about marriage, falls within the competence of Member States, and Member States have the freedom to decide whether or not to recognize same-sex marriage. However, in exercising that power, Member States must adhere to EU law, especially the provisions of the Treaty that guarantee the right of all citizens of the Union to move and reside freely within the territory of the Member States.

The Latvian Government, intervening in the proceedings before the CJEU, submitted its opinion. It stated that even if a refusal to recognize a same-sex marriage in another Member State constitutes a restriction under Article 21 TFEU, such a restriction may be justified on the grounds of public policy or respect for national identity in line with the meaning of Article 4 (2) TEU.

In light of this, the CJEU distinguished the obligation of a Member State to recognize a marriage concluded in another Member State in accordance with its legal order and the exercise of those persons' rights under EU law from the issue concerning the definition of the institution of marriage provided by the national law of a Member State. The CJEU stated that the obligation to recognize the former "does not require that Member State to provide, in its national law, for the institution of marriage between persons of the same sex. Accordingly, an obligation to recognize such marriages for the sole purpose of granting a derived right of residence to a third-country national does not undermine the national identity or pose a threat to the public policy of the Member State concerned".

The CJEU's decision is notable for its commentary on the potential justification of the public policy clause in light of fundamental rights. A national measure hindering free movement could only be justified if it adhered to the fundamental rights as interpreted by the European Convention of Human Rights. The European Court of Human Rights' case law recognizes a homosexual couple's relationship under the same "private life" and "family life" categories as a heterosexual couple's relationship. This suggests that fundamental rights limit public policy grounds and references to national identity when invoked as possible derogation grounds under EU law. This interpretation aligns with the Sayn-Wittgenstein (C-208/09) and Vardyn/Wardyn (C-391/09) cases, where freedom of movement, reinforced by a fundamental right, was proportionately limited by public interest and Article 4 (2) TEU. This could be concluded because the derogation in those cases was supported by general principles of European law and articles of the Charter of Fundamental Rights, specifically the principle of equality and the right to cultural, religious, and linguistic diversity.

The conclusion of this case underscores the delicate balance between national sovereignty and EU law. The CJEU's decision affirms that while Member States have the freedom to define marital status within their territories, they must also respect the fundamental rights guaranteed by the EU, particularly when these rights impact the free movement of EU citizens.

The case highlights the evolving role of the CJEU in mediating conflicts between national laws and EU directives, particularly in sensitive areas such as marriage and family

life. It also raises important questions about the interpretation of public policy and national identity clauses, and their use as potential grounds for derogation from EU law.

Ultimately, the case serves as a reminder of the complex interplay between national identity, fundamental rights, and the principles of free movement within the EU. It underscores the need for ongoing dialogue and legal interpretation to navigate these complexities and ensure the rights of all EU citizens are upheld.

Legal proceedings at the CJEU regarding national identity act as a mechanism for resolving conflicts, with a track record of recognizing the protection of national constitutional claims as a valid objective. This is particularly relevant in the context of movements like Brexit, where Article 4(2) TEU serves as a tool within the exit-voice-loyalty paradigm proposed by Albert O. Hirschman. Instead of withdrawing from the EU, Member States are encouraged to voice their concerns and seek reform from within. This approach, which requires significant effort and engagement, is often preferred over the potential costs of leaving the Union. Loyalty to the EU goes beyond legal obligations; it encompasses a sense of European identity and commitment to the ideals of peaceful coexistence and European unity, as reflected in the constitutions of the Member States.

The Court frequently refers to shared concepts among Member States to resolve cases with implications for national identity. By basing the case on considerations not specific to a particular Member State's national identity, the judgment's normative potential is increased, making it readily applicable to similar situations in different Member States. If the considerations were primarily tied to a specific Member State's national identity, the theoretical applicability of rules arising from that case in another Member State would depend not only on distinguishing the substance or factual circumstances surrounding the case, but also on distinguishing the national and constitutional identities of the two Member States.

For instance, consider a hypothetical scenario where the CJEU decides to include comprehensive identity considerations in a case similar to the M.A.S. judgment. In theory, the CJEU could frame the judgment in a way that allows a derogation from the normative part of Taricco (C-105/14), since according to Article 4(2) TEU, the EU respects the national identity of Member States and since Italy demonstrated that the prohibition of retroactivity and the principle of legality are not only constitutionally protected but are also components of Italy's national identity. The answer for the referring Court would be that it is indeed possible to disapply the Taricco rules. However, such a ruling would have a clear drawback – its conclusions would be applicable only in circumstances such as those in Italy

as the reasons for rendering the judgment would be precisely that – constitutional specificities of the Italian Republic.

However, shifting from the national perspective to shared requirements of foreseeability, precision, and non-retroactivity of criminal law – also highlighted by the CJEU's explicit reference to the European Convention on Human Rights – makes the ruling deployable in other Member States without the need to assess the role that protection of the accused person in criminal proceedings plays in their respective (constitutional) orders. This approach is not new. In preliminary reference proceedings, the Court's answer is also framed by the wording of the reference which may be general in nature or tied to specific national circumstances. In the latter situation, the Court may then reformulate the question in sufficiently general terms both to avoid too strict scrutiny of facts of the case or of national law, and to create a meaningful precedent in future similar cases in other Member States.

The same conclusion can be applied to identity cases as identities are inherently very tightly related to a specific legal order from which the identity claim arose. Hence, omitting identity argumentation, mitigating its prominence, or repacking the case to rely more on concepts shared by the Member States or on policy derogations allows the Court to create a decision that has a far wider scope of application than it would have had were it decided solely on the basis of identity. These cases illustrate the complex interplay between national and EU considerations in CJEU judgments.

4. PROBLEMS AND POTENTIAL SOLUTIONS OF THE ISSUE OF PROTECTION OF NATIONAL IDENTITY IN THE COURT OF JUSTICE OF EUROPEAN UNION

As we can see over the decades of the existence of the article on national identity in the Treaty on EU, the Court has not been able to form a unified practice and clear approach to this issue. This vagueness is caused, first of all, by the question of the conflict between the desire for integration on the one hand and sovereignty and the demand for respect for the constitutional system of the Member States on the other, which in its depth is generated by the phenomenon of the existence of the EU itself. And as one of the manifestations of this global problem is the contradiction between the supremacy of the EU and the national identity of the Member States on the other hand. Attempts by legal theorists and judges to find this balance cause many challenges that will be discussed in this Charter.

In the context of the EU, where the principle of direct effect and supremacy exists, the position of national constitutional law has significantly changed (Shaw, 2000, p.27). The traditional theory of constitutionalism can no longer fully explain the process of European integration, the existence of the EU legal system, and the relationship between this system and national law (Polish Trybunał Konstytucyjny decision on the Accession Treaty). Some scholars talk about the problem of overlapping of these two orders within the same geographical territory (Twining, 2000, p. 83; Visser, 2014, p. 31). Furthermore, an issue of the final arbiter emerges under the conditions that the legal orders of the two systems may contradict on particular matters. Some scholars propose the theory of constitutional pluralism to solve this issue. Others defend the opposition of this approach by the impossibility of determining the final arbiter and the role of the principle of primacy in a pluralistic setting (Bobic, 2017, p. 1400). Some authors quite radically insist on this issue that if the Member States have already delegated a certain part of their sovereignty at the stage of the formation of the EU, then they must recognize the consequences of this, since in other circumstances a proper safeguard of the inviolable core of a national constitution is only in the ultimate withdrawal of the Member State from the EU (Kelemen, 2016, p. 136). In my opinion, in such a radical discussion, one can forget about its main purpose – finding the most successful model of cooperation in the already established organization of order, and not measuring power between political institutions.

Leaving open the issue of the final arbitrator facilitates more open coordination between the courts exercising institutional control, without plunging into the conflict itself (Bobic, 2017, p. 1396). In addition, the supremacy of EU law should not be seen as universal subordination to national law. After all, considering it together with the EU's

obligation to respect the national identity of the Member States leads to a more balanced application of the principle of primacy. I support the idea that the interaction between national and EU legal systems should not be considered in a strict hierarchy, a heterarchy approach is more acceptable (Krisch, 2012, p. 358). This reduces the importance of competition between courts and allows us to focus on interaction under conditions of mutual respect and sincere cooperation. Cooperation between courts is much more fruitful when they operate within a self-imposed constraint, when neither jurisdiction considers the nefarious use of heavy weapons theoretically available to them (Claes, 2012, p. 106). The doctrine of the supremacy of EU law should not be conflated with any all-purpose subordination of Member State law to Community law. Dougan's suggestion to use "trigger primacy" is intriguing. In cases of conflict between national law and EU law, the latter takes precedence, but only if it satisfies the criteria of direct influence. In essence, Dougan is right, arguing that the trigger of the primacy model takes into account the constitutional requirements of national legal systems, while respecting the primacy of the EU under direct action (Dougan, 2007, p. 934).

It is often claimed that EU law is not really law, or at least not what is understood by law in national legal systems, that it has a less comprehensive, less institutionalized and less sophisticated structure, something "sui generis", or a more loosely defined "order". However, Hart's social constructivist theory of law may offer the most convincing intellectual backing for the well-known assertion that the Treaty of Rome "constitutes a new legal order of international law" and that it "created its own legal system" by creating an autonomous source of law (Hart, 1980, p. 116-117). Nevertheless, disputes about whether this system is a law in the classical sense or not, does not affect the fact that such a state of affairs already exists, and it is necessary to resolve the issues that exist in connection with the creation of such a system. The EU cannot claim the political sovereignty that states have. The conceptual similarity of EU law to national law is directly related to the disconnection between the political and legal nature of the EU (Lindeboom, 2018, p. 351).

That is, the specificity of the existence of the EU itself, its legal system, also caused the problem of the primacy of EU law against the right of each state to have respected its national identity. However, this specific constitutionalism of the EU does not lead to the annulment or replacement of the constitutional orders of the Member States, but to their new interpretation within the framework of the EU. In this context, the Member States and the EU have developed a new multi-level constitutional space where debates about norm-pluralism and the hierarchy of systems take place. And accordingly, one of the main

linguistic tools of this discussion is the concept of constitutional or national identity. However, national identity clause cannot mean that all constitutional norms are indiscriminately recognized as elements of identity, because in this case it would allow Member States to easily deviate from EU norms and question the existence of the Union as such. The main method of solving is to finally move away from disputes about who is the most important in the hierarchy, because not all newly created problems can be solved by old methods. And in this context, the approach of balancing between the existing EU norms, which, in cases of necessity, are not the only possible ones and leave the opportunity for Member States to appeal to their identity and the "trigger primacy" technique are considered as a possible solution.

The next visible problem of the study of national identity is the reluctance of the Court to enter into a deep analysis of the concept of national identity and the definition of its elements, the desire to bypass the sharp corners of such a sensitive issue for each state. On the one hand, this still preserves a narrow playing field for the Member States, on the other hand, it does not contribute to legal certainty and stable judicial practice at all. The reasons for this are the inherent potential of national identity to hinder European integration, the delicacy of defining the content of this identity, attempts to hide the Court's favorability to the concept of identity under the argument of other related norms. I agree with Burda's opinion that even in cases in which national identity played a key role, the Court does not provide any guidance or understanding of its approach to the topic of national identity, and as a result, there is no actual judicial clarification of the concept of national identity in EU law (Burda, 2021, p. 69). As we can see from the previous chapter, the Court rather fragmentarily allows us to understand what the concept of national identity can be.

Naturally, the Court's "silence" is criticized by scholars who call it a "missed opportunities" (Bruggeman, 2020, pp. 20-34); it has been said that a comprehensive framework for the interpretation and application of national identity is "at best, under construction" (Cloots, 2015, p. 9). The CJEU is very careful when it comes to expanding the scope of national identity, as constitutional courts are opening new ways of countering the primacy of EU law. Constitutional courts use the article on national identity to thereby limit EU law, which is constantly expanding its scope. Constitutional courts have developed quite different conceptions of constitutional identity to control the expansion of EU competence and to overcome the absolute primacy of EU law over national constitutional law (Gamba, Lentzis, 2017, p. 1683-1702). In its decisions, the Court either simply recognizes the existence of Article 4(2) of TEU, but does not go further than the definition of the part of identity in question, or less often – participates in legal arguments about identity, or

altogether skips the arguments of national identity in cases and bases its position on other legal grounds. I believe that this is a rather poor approach, if we do not want this article of the Treaty to become simply decorative in the future. At most the Court simply recognizes Article 4(2) that it plays a certain role in this case, but the closest it allows itself is to indicate that a certain element of national identity can be a reason to limit the effect of EU law. For example, in the Commission v Luxembourg case mentioned in the previous section, the Court established that the protection of a language can forms part of national identity, and in the Sayn-Wittgenstein case that republicanism, as well as the abolition of the nobility, do form part of national identity. Sometimes the Court may simply point to Article 4(2) without even commenting on what role it plays (if at all) in the Court’s reasoning. As in Coman case, where he recognized the obligation to recognize national identity, but then noted that recognition of same-sex marriages from another Member State for the sole purpose of obtaining residence rights for spouses does not undermine the institution of marriage in the first Member State. Admittedly, in some cases the Court goes a little further. The Court, in response to the Luxembourg government’s arguments about requiring citizenship for teachers to transmit traditional values, recognized that the protection of national identity was a legitimate aim and implicitly hinted that Luxembourg’s requirements were suitable for achieving that aim in the Court’s view, however, this measure failed at the necessity step of the proportionality test, since the interest can “still be effectively safeguarded otherwise than by a general exclusion of nationals from other Member States”.

Third, there are cases where national identity is completely absent from the Court's reasoning, even if these claims have been raised by a party or a Member State or their relevance to the case at hand has been outlined by the Advocate General. Scientists say that an example of this situation are the Taricco and M.A.S. cases. They were practically identical, but the result of the solution is different. Since the main essential difference between the cases was identity argument, it seems reasonable to conclude that it was the national identity argument and the implications of the previous decision highlighted by the ICC before the CJEU that made the difference (Burda, 2021, p. 80-81).

As Fabbrini and Sajo point out, the category of national identity is too mysterious for the rule of law and too vague for European integration, and at the same time too politically risky due to populist movements (Fabbrini, Sajo, 2018, p. 36-75). Perhaps it is for this reason that the provision on national identity, which is fashionable today, is very carefully developed by the European Court. It seems that the CJEU hesitates when it comes to national identity and refers to this concept only in specific cases.

On the example of the well-known cases about national identity, Sayn-Wittgenstein (C-208/09) or Runevič-Vardyn (C-391/09), it can be noted that the Court takes into account the arguments of national identity only as an additional weight, tilting the scales of proportionality in favor of this Member State. The reason is that the Court also tries to emphasize grounds for justification based on arguments other than national identity. For example, like the principle of equal treatment in Sayn-Wittgenstein or the protection of the official national language in Runevič-Vardyn or Las. That is, the weighing of scales is not between compliance with EU law and national identity, but rather between compliance with EU law and the general interest recognized by EU law, but the importance of a specific case for the state is still emphasized by the argument about national identity (Burda, 2021, p. 73).

To put it differently, the Court is motivated by the caution of dealing with the principle, the clarification of which can hinder European integration, the desire to avoid clashes regarding the content of national identity for each of the Member States and their self-perception of own identity, the desire to prevent the appearance of a huge number of cases based on the clause of national identity, actually being caused by the desire to retreat from EU legislation and reluctance to expand the scope of national identities, only contributes to the situation of uncertainty on this issue. However, I would like to emphasize that Article 4 (2) is a construct of a pluralistic nature and requires concessions from both the highest constitutional national judicial bodies and the CJEU. After all, the very operation of this provision assumes that none of the judicial bodies has the last word by presumption or authority over the other. The best solution can be found only through constructive and open dialogue and cooperation. Both parties have their say and both listen and the cycle is allowed to repeat. On the one hand, there is the procedure of *ultra vires*[4], on the other – revision on the basis of identity. At first, such interaction may seem chaotic, but it is a manifestation of the same pluralistic model, the full functioning of which is still ahead.

In the same context, I would like to mention Joxeramon Bengotsea, who in his seminal work presented the metaphor of the EU Court as a "Dworkinian court": a court that is obliged to follow globally agreed case law in the light of the general goal of promoting European integration (Bengoetxea, 1993). According to this concept, law is what justifies state coercion, and this requires the most consistent and morally best interpretation of

[4] "Ultra vires" is a Latin phrase used in law to describe an act that requires legal authority but is done without it. The term literally translates to "beyond the powers". Its opposite, an act done under proper authority, is "intra vires" ('within the powers'). Acts that are intra vires may equivalently be termed "valid", and those that are ultra vires termed "invalid".

available legal materials and practice. Therefore, the value of integrity and the need for courts to uphold it can only be properly understood on the basis of Dworkin's key thesis that legality is ultimately rooted in objective morality, and that legal validity is always (in part) a matter of moral judgment (Lindeboom, 2018, p.331). The CJEU is not only required to operate within legal boundaries but also adheres to a broader set of enduring factors, which encompass political-judicial legitimacy. However, the assertions made by the Court of Justice of the EU remain unaffected by external influences precisely because the Court also claims that EU law is what the Court says it is. Unwritten principles should guide the formation of morally optimal decisions within the context of the entire legal system. Rather than viewing EU law as "supranational", "international", or "sui generis", the CJEU perceives the EU legal system—constructed in its own manner—as an autonomous system mimicking national law. It asserts supremacy not because it positions itself hierarchically above national legislation, but because it is an essential component of this imitation (Lindeboom, 2018, 355).

Another problem of national identity is the absence of a definition of this concept in the EU law or decisions of CJEU. As we found out above, the Court has its own reasons for not drawing clear boundaries of the concept, however, in my opinion, it is still worth adding clarity, at least by outlining characteristic features or by providing a non-exhaustive list of elements that can constitute national identity. At the moment, from the EU Treaty, such elements are fundamental political structure, fundamental constitutional structure, regional and local self-government, territorial integrity, maintaining law and order, safeguarding national security. Of course, the presence of these elements is already a significant improvement of the Lisbon Treaty in comparison with the Maastricht or Amsterdam Treaty. But taking into account the significant number of cases mentioned above about surnames with noble titles, language requirements, which in my point of view are filled with more historical-cultural than constitutional-political coloring, calls into question the possibility of adding other elements at least to this article of the Treaty. The historical relations of certain states, wars and oppressions have a strong influence on the way in which they define their national identity and which seemingly not obvious elements they can defend. For example, if we can consider the potential possibility of Ukraine, which not so long ago received the status of a candidate for the EU, joining the Union, then the ongoing war, the fundamental issues of language protection, historical memory and self-determination will undoubtedly affect what this country will define as a national identity.

The issue of defining and adding new elements is quite delicate, because as Sinisa Rodin said "If defined too broadly, it can undermine the uniform application and

effectiveness of EU law. If defined too narrowly, it would be devoid of any useful effect" (Rodin, 2011, p. 11). For example, Martin Belov emphasizes the oscillation of identity between universalism and particularism and articulates the need to deconstruct the concept of identity based on the Westphalian tradition in order to fulfill the true function of twenty-first century constitutional identity as a point of contact between Member States (Belov, 2020, p. 73-89).

The principle of proportionality serves as the primary criterion to be used by the Court in its operations, including its consideration of matters related to national identity. Proportionality assessment can be said to be a lovechild of European constitutionalism. As others have stated, hardly any other general principle has had more profound influence on the development of European public law (Young, 2013, p. 133). Once defined as a legitimate aim, it is subject to the same test that is consistently used in the context of restrictions on free movement (Bobic, 2017, p. 1404). It should be some kind of balance what will harm more, to unite the approach for all MS forcing one of the states to amend used rules, or to allow MS to dodge that in future can lead to the situation when everybody will try to trade a better position. In situations involving non-essential aspects, the CJEU will conduct a proportionality assessment, whereby a mere assertion of nationality will not automatically justify the restriction of economic freedoms. Even if the regulatory objective is legitimate, the national measure must still meet the criteria of being appropriate and necessary, irrespective of its classification as a component of national identity. Member States retain discretion, provided their actions align with the broader normative framework of EU law. However, when essential elements are at stake, the CJEU defers the decision to national judicial or legislative bodies, either with or without reserving the proportionality assessment (Rodin, 2011, p. 26).

That is, the uncertainty of the elements of the concept of national identity remains problematic and requires further judicial processing, not point-wise in Court's decisions, but comprehensively. Even if giving a definition seems difficult, the Court could at least give a general direction on how to assess whether a phenomenon falls under the concept of national identity. On the part of the EU, it could be Recommendations or Opinions issued. Contrary to the Court's fear that the formulation of a clearer position will cause more cases to be referred to this article, we believe that, on the contrary, this clarity will allow the parties to understand from the beginning exactly in which cases protection under Article 4 (2) cannot be counted on and weed out them, that will save the Court's efforts to examine the case.

As a final point, in view of the situation that has developed, first of all, the CJEU needs to find a balance between supranational integration on the one hand and national identity on the other. In judgments related to national symbols, language or other cultural elements, the Court often underestimates the importance of the national, causing dissatisfaction among Member States. It seems necessary to establish dialogue and cooperation between the EU, the CJEU, national judicial bodies and law makers in order to find the best possible balancing way to satisfy the interests. There is a high need to facilitate regular consultations and exchanges of information between the CJEU and national authorities and another possible way of improvement is to conduct cultural awareness and sensitivity training for judges to ensure a better understanding of the nuances of national identity. It is necessary to include such trainings in professional development programs for CJEU staff. In addition, ambiguous legal frameworks and conflicting interpretations contribute to the inaccuracy of the interpretation of national identity. It is necessary to develop a clearer legal framework. The urgent thing in this problem is to get a clear interpretation of the Court, guidelines, opinions or comments of the EU, so that if it is impossible to create clear boundaries, then at least to outline the field of existence, to form a beacon by which the Member States could orient themselves. It is also important to supplement the existing Article 4(2) with new elements that have already been partially mentioned in the Court's decisions and are more nationally identical (with an emphasis on the cultural component) than purely constitutionally identical as it is now. The capacity of national courts to deal with matters of national identity needs to be strengthened by providing resources and support from the EU institutions, promoting a decentralized approach to identity protection within the EU legal system.

5. CONCLUSIONS

1. National identity as a multidimensional concept outlines the relationship of a person or a group of persons, belonging to a certain nation, which may include citizenship, language, common history, culture, values and other elements. International customary law and international treaties in force, unfortunately, do not contain a clear definition of the concept of national identity and an exhaustive list of elements, which could improve the understanding of this concept and thus increase the potential of using this protection mechanism. In the scientific literature, there is also a proposal to use the concept of constitutional identity, however, in my opinion, the attachment to constitutions and thus to the state system in a general philosophical dimension could narrow the scope of using the concept of identity, leaving aside cultural and value orientations. Therefore, the approach used in the EU Treaty seems justified.
2. Tracing the chronological development of the concept of national identity in the process of the formation of the EU, it is worth noting that the provision on identity initially introduced by the Maastricht Treaty briefly indicated the obligation of the EU to recognize the national identity of the Member States, but thanks to the Treaty of Lisbon and the new Article 4(2) this concept was expanded by linking national identity with fundamental political and constitutional structures. This article protects the Member States from possible abuse of the Union in the issuance of acts that encroach on matters that are within the sovereignty and jurisdiction of the states. This mechanism became a helpful balancing stick in a kind of legal system that arose as a result of the creation of a hitherto unknown supranational organization with the principle of primacy law. However, a kind of challenge was thrown to traditional ideas about national identity, because at the same time we can talk about the close interweaving of the national character of Member States with their global position. The adoption of certain EU-oriented principles in the process of integration enriches the originality of their national ethos. Due to EU membership, the fabric of national identity is woven with the fundamental values set forth in Article 2 of the TEU, which allows us to talk about a new concept of European identity. The EU's approach seeks to harmonize the respect for national identities with the cosmopolitan project of European integration, ensuring that both integration and accommodation of national diversity are pursued.
3. Within the framework of the existence of the European Union, the Court of Justice of European Union is the main body from whose activities and decisions we can draw knowledge about the interpretation of the concept of national identity and its practical

application. In general, after the Treaty of Lisbon, the Court considered quite a few cases related to the concept of national identity. It is important to note that they were not built only on Article 4(2) and the national identity clause, but touched on this topic along with the application of other articles of the Treaty. The Court is quite brief in its explanations and usually gives an assessment of whether a certain element refers to the concept of national identity, such as the abolition of nobility and nobility prefixes in the surnames of citizens, the requirement of nationality for the profession of notary, the use of the national language in contracts, the recognition of same-sex marriages, and so on, and at the same time, it uses other arguments and other articles of the Treaty for assessment, such as public order, thereby showing the auxiliary of this mechanism. Nevertheless, the CJEU determined that the national identity protected by Article 4(2) TEU is limited and does not serve as a general means of limiting the transfer of EU sovereignty, nor as an exception to the rule of EU law. After all, the recognition by the Court that a certain area of the life of the state, its legislation is an element of national identity is only the first step, which must pass the test of proportionality of the limitation of the right of an individual motivated by national identity for the successful conclusion of the case.

4. The national identity clause was created as a mechanism for balancing two processes – European integration and the primacy of European law on the one hand, and the existence of sovereignty and the need to respect the national identity of Member States on the other. In this connection, the problem of the final arbiter and hierarchical relationships between the law of the EU and Member States' law arises. The supremacy of EU law should not be considered as universal subordination to national law, it seems reasonable to rely on pluralism theories and the mechanism of "trigger primacy" in this issue. The provision on national identity cannot mean that all constitutional norms are indiscriminately recognized as elements of identity, as this would allow Member States to easily depart from EU norms and question the existence of the Union as such. Another problem of national identity is the reluctance of the Court to engage in a deep analysis of the concept of national identity and the definition of its elements, which prevents the formation of a clear judicial practice, Court either simply recognizes the existence of Article 4(2) of TEU, but does not go further than the definition of the part of identity in question, or less often – participates in legal arguments about identity, or altogether skips the arguments of national identity in cases and bases its position on other legal grounds. In continuation of this, the absence of a clear definition of the concept of national identity and its elements in EU legislation is a further problem. Possible solutions to the outlined issues appear to be: to establish dialogue and cooperation between the EU, the CJEU, national

judicial authorities and legislators in order to find the best possible way of balancing to satisfy interests; to organize regular consultations and exchange of information between the CJEU and national authorities; to provide resources and support from the EU institutions, promote a decentralized approach to personal protection within the EU legal system; to promote cultural awareness and organize training for judges to ensure a better understanding of the nuances of national identity and include such training in the professional development programs of CJEU employees; to develop a clearer legislative basis, but the key is to obtain a clear interpretation of the Court, guidelines, opinions or comments of the EU on the issue of national identity.

LIST OF REFERENCES

1. Legal acts

Council of the European Union, 2001. Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. OJ L 82, 22.3.2001, p. 16–20. Available at: http://data.europa.eu/eli/dir/2001/23/oj [Accessed 13 May 2024].

Council of the European Union, 2006. Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999. *Official Journal of the European Union* L 210, pp. 25-78. Available at: http://data.europa.eu/eli/reg/2006/1083/oj [Accessed 22 April 2024].

European Parliament and Council of the European Union, 2000. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. Available at: http://data.europa.eu/eli/dir/2000/60/2014-11-20 [Accessed 3 April 2024].

European Union, 2012. Consolidated version of the Treaty on European Union. OJ C 326, 26.10.2012, p. 13–390. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT [Accessed 3 March 2024].

European Union. (1992). Treaty on European Union (Consolidated Version), Treaty of Maastricht. Official Journal of the European Communities C 325/5, 24 December 2002, 7 February 1992. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF [Accessed 3 March 2024].

2. Special literature

Bengoetxea, J. (1993). *The Legal Reasoning of the European Court of Justice*. Oxford: Clarendon Press.

Berbauer, S. (2018). *Explaining European identity formation.* Springer Cham. Germany.

Bulmer, S., Lequesne, C. (2005). *The Member states of the European Union*. Oxford University Press. ISBN 0199252815, 9780199252817.

Barrett, M., Lyons, E., and del Valle, A. (2004). The development of national identity and social identity processes: Do social identity theory and self-categorization theory useful heuristic frameworks for developmental research? In M. Bennett & F. Sani (Eds.), The development of social self, 159–188.

Barrett, K. (2020). Customry international law. *Oxford University Press*. DOI: https://doi.org/10.1093/acrefore/9780190846626.013.531.

Belov, M. (2020). Constitutional Identity – Westphalian Reflection of the Constitutional Heritage of the Nation State or Post-Westphalian Alternative to Sovereignty in the Context of Supranational Constitutionalism? in Mercescu, A. (ed), Constitutional Identities in Central and Eastern Europe. *Peter Lang*, 73–89.

Bobic, A. (2017). Constitutional Pluralism Is Not Dead: An Analysis of Interactions Between Constitutional Courts of Member States and the European Court of Justice. *German Law Journal* , 18 (6) , p. 1395-1428.

Burley, A., and Mattli, W. (1993). Europe before the Court: A political theory of legal integration. *International Organization*, 47 (1), 41–76. DOI: https://doi.org/10.1017/S0020818300004707.

Boin, A., Lauren A. Fahy, and Paul't Hart.(2020). How Public Organizations become and remain institutions. Guardian of European Integration, 1-35. DOI: 10.1007/978-3-030-51701-4_1.

Boin, A., Schmidt, S.K. (2021). The European Court of Justice: Guardian of European Integration. In: Boin, A., Fahy, L.A., 't Hart, P. (eds) Guardians of Public Value. Palgrave Macmillan, Cham,135-159. https://doi.org/10.1007/978-3-030-51701-4_6

Bruggeman, R. (2020). The Elusive Contours of Constitutional Identity: Taricco as a Missed Opportunity. *Utrecht Journal of International and European Law*, 35(1), p. 20–34.

Burda, J. (2021). National Identity and Judicial Minimalism: Exploring The CJEU's Restraint in Adjudicating National Identity. *ICLR*, 21 (2), 68-95. DOI: 10.2478/iclr-2021-0014.

Blank, T., Schmidt, P. (2003). National identity in a united Germany: Nationalism or patriotism? An empirical test with representative data. *Political Psychology*, 2, 289-312. DOI: http://dx.doi.org/10.1111/0162-895X.00329

Brownlie, I. (1988) 'The Rights of Peoples in Modern International Law', in James Crawford (ed.), The Rights of Peoples, *Oxford University Press, Oxford*. p. 5

Claes, M., Visser, M. (2012). Are you networked yet? On dialogues in European judicial networks. *Utrecht Law Review*, 8 (2), 100-114.

Cederman, Lars-Erik (1997). Emergent Actors in World Politics: How States and Nations Develop and Dissolve. Vol. 39. *Princeton University Press*, 19. DOI:10.2307/j.ctv1416488

Chopin, T. (2018). Europe and the identity challenge: who are “we”? Fondation Robert Schuman / European Issues N°466, 1-6.

Cram, L. (2009). Identity and European integration: diversity as a source of integration. *Wiley Research DE&I Statement and Publishing Policies*, Vol. 15, Issue 1. 109-128. DOI: https://doi.org/10.1111/j.1469-8129.2009.00367.x

Cloots, E. (2015). *National identity in EU law*. Oxford: Oxford University Press.

Davidov, E. (2009). Measurement Equivalence of Nationalism and Constructive Patriotism in the ISSP: 34 Countries in a Comparative Perspective. *Political Analysis,* Vol. 1, Issue 1. 64-82

Dougan, M. (2007). When worlds collide! Competing visions of the relationship between direct effect and supremacy. *Common Market Law Review,* 44 (4), 931-963.

Dieckhoff, A. (2023). Nationhood and nationalism. Vol.11. Nationalism’s fields of interaction. Cambridge university Press, 467-484.
DOI: https://doi.org/10.1017/9781108551458.023.

Drinoczi, T. (2020). Constitutional Identity in Europe: The Identity of the Constitution. A Regional Approach. *German Law Journal*, Volume 21, Issue 2, 105-130.
DOI: https://doi.org/10.1017/glj.2020.1

Easton, D. (1975). A re-assessment of the concept of political support. *British Journal of Political Science,* Vol. 5, Issue 4. 435-457.
DOI: https://doi.org/10.1017/S0007123400008309

Fabbrini, F., Sajo, A. (2018). The dangers of constitutional identity. *European Law Journal*, 25 (4), 36-75.

Faraguna, P. (2016). Taking Constitutional Identity Away from the Courts. *Brooklyn Journal of International Law, Vol. 41*, 491

Gamba, D., Lentzis, D., (2017). Crafting Constitutional Identity in the Era of Migration and Financial Crisis – The Case of Greece. *German Law Journal*, 18 (7), 1683-1702.

Gerard van der Schyff, G. (2023). Parameters of EU and Member State Constitutional Identity: A Topic in Development. *European Yearbook of Constitutional Law, vol 4. T.M.C. Asser Press,* The Hague. 89-110. https://doi.org/10.1007/978-94-6265-595-9_5

Guastaferro, B., (2012). Beyond the Exceptionalism of Constitutional Conflicts: The Ordinary Functions of the Identity Clause. *Yearbook of European Law.* 31 (1), 263-318.

Gerard, P., Verrijdt, W., (2017). Belgian Constitutional Court adopts national identity discourse. *Cambridge University Press,* 182-205. DOI: https://doi.org/10.1017/S1574019616000444.

Givens, T., Luedtke, A. (2005). European Immigration Policies in Comparative Perspective: Issue Salience, Partisanship and Immigrant Rights. *Comparative European Politics* 3, 1–22. DOI: https://doi.org/10.1057/palgrave.cep.6110051.

Greenfeld, A., Eastwood, J. (2009). *The Oxford handbook of Comparative politics*. Oxford university Press, 256-273. DOI: https://doi.org/10.1093/oxfordhb/9780199566020.003.0011.

Hahm, H., Hilpert, D., König, T., (2022). Divided by Europe: affective polarisation in the context of European elections. *West European Politics*. 46 (4), 705-731.

Hjerm, M. (1998). National identities, national pride and xenophobia: A comparison of four Western countries. *Acta Sociologica* 41(4), 335–347.

Hjerm, M. (2001). Education, xenophobia and nationalism: A comparative analysis. *Journal of Ethnic and Migration Studies,* Vol 21, issue 1, 37-60. DOI: https://doi.org/10.1080/13691830124482

Habermas, J. (1996). Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy (Trans. William Rehg). Cambridge, MA: The MIT Press, 118-132.

Hobolt, S., de Vries, C. (2016). Public Support for European Integration. *Annual Review of Political Science,* Vol. 19, 413-432. DOI: http://dx.doi.org/10.1146/annurev-polisci-042214-044157

Hobolt SB, Van der Brug W, De Vreese CH, et al. (2011) Religious intolerance and Euroscepticism. *European Union Politics* 12(3), 359–379.

Hooghe, L., Marks, G. (2009). A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus. *British Journal of Political Science*, vol. 39, issue 1, 1-23.

Kelemen, D. (2016). On the unsustainability of constitutional pluralism. European supremacy and the survival of the Eurozone. *Maastricht Journal of European and Comparative Law*, 23(1), 136-150.

König, P. (2023). Nationalities Papers. In: Forms of National and European Identity: A Research Note Reviewing Literature of Cross-National Studies. *Cambridge University Press,* 1-28. DOI: https://doi.org/10.1017/nps.2023.66.

Konstadinides, T. (2015). Dealing with Parallel Universes: Antinomies of Sovereignty and the Protection of National Identity in European Judicial Discourse. *Yearbook of European Law*, Volume 34, Issue 1, 127–169. DOI: https://doi.org/10.1093/yel/yev012

Kosterman, R., Feshbach, S. (1989). Toward a measure of patriotic and nationalistic attitudes. *Political Psychology*, 10*(2),* 257-274. DOI: https://doi.org/10.2307/3791647.

Kentmen-Cin, C., Erisen, C. (2017). Tolerance and perceived threat toward Muslim immigrants in Germany and the Netherlands. *European Journal of Political Research, Vol.19,* Isuue 1, 3-25. DOI: https://doi.org/10.1177/1465116516675979 .

Kriesi, H. et al (2006). Globalization and the transformation of the national political space: Six European countries compared. European Journal of Political Research, 921-956. DOI: https://doi.org/10.1111/j.1475-6765.2006.00644.x.

Krisch, N. (2012). *Beyond Constitutionalism – The Pluralist Structure of Postnational Law*. Oxford, New York: Oxford University Press. 358.

Llewellyn, K. *The Common Law Tradition: Deciding Appeals*. Boston: Little, Brown & Co.

Lebow, R. (2016). *National identities and international relations*. Cambridge University Press. 44-72. DOI: https://doi.org/10.1017/CBO9781316710982.

Linderboom, J. (2018). Why EU Law Claims Supremacy. *Oxford Journal of Legal Studies*, 38 (2). 328–356.

Lipset, S. (1960). Political Man: The Social Bases of Politics. *Oxford University Press*, Vol. 75, 2, 265-267. DOI: https://doi.org/10.2307/2146160.

Mandler, P. (2006). Modern intellectual history, Volume 3, Issue 2. *Cambridge University Press*, 271-297. DOI: https://doi.org/10.1017/S1479244306000746.

Mansfield, E.D. and Mutz, D.C., 2009. Support for Free Trade: Self-Interest, Sociotropic Politics, and Out-Group Anxiety. Cambridge University Press, 425-457. DOI: https://doi.org/10.1017/S0020818309090158.

Medrano, J. (2003). Framing Europe: Attitudes to European Integration in Germany, Spain, and the United Kingdom. *Princeton Studies in Cultural Sociology,* 21-64. DOI: https://doi.org/10.2307/j.ctv1mjqv8n

Orban, E. (2022). Constitutional identity in the jurisprudence of the Court of Justice of the European Union. *Hungarian Journal of Legal Studies 63*, 142-173. DOI: https://doi.org/10.1556/2052.2022.00374

Pentassuglia, G., (2023). Conceptualizing national identity in self-determination practice. A cross cutting international law analysis. *Hungarian Yearbook of International Lawnand European Law,* Vol. 11, 238-270.

Rodin, S. (2011). National Identity and Market Freedoms after the Treaty of Lisbon. *CYELP* (71), 11-41.

Rosenfeld, M. (2013). "Constitutional Identity". In Rosenfeld, Michel; Sajó, András (eds.). Oxford Handbook of Comparative Constitutional Law (Reprint ed.). *Oxford University Press.*

Raz, H. (1970). *The Concept of Legal System*. Oxford: the Clarendon Press.

Shaw, Jo (2000). Process and Constitutional Discourse in the EU. *Journal of Law and Society*, No. 1 (27), 4-37.

Smith A., (1992). National identity and the idea of European unity. International Affairs, Volume 68, Issue 1, 55–76.

Starke, C. (2021). The Concept of European Identity. In: European Solidarity Under Scrutiny. Palgrave Studies in European Political Sociology. *Palgrave Macmillan*. 73-113. DOI: https://doi.org/10.1007/978-3-030-67179-2_4.

Siklodi, N. (2018). The European Union and its eastern neighbourhood. In: Defining contemporary European Identity/ies. *Oxford University Press*, 25-37.

Sourugge, S. and Terpan, F. (2019). The European Court of Justice (ESJ). *Oxford University Press*. DOI: https://doi.org/10.1093/acrefore/9780190228637.013.1143.

Schnettger, A. (2019). Constitutional identity in a Europe of Multilevel Constitutionalism. 2 - Article 4(2) TEU as a Vehicle for National Constitutional Identity in the Shared European Legal System from Part I - Constitutional Identity Introduced and Its EU Law Dimension. *Cambridge University Press*. 9-38.

Schatz R., Staub E. and Lavine H. (1999) On the varieties of national attachment: blind versus constructive patriotism. *Political Psychology* 20, 151-174.

Sides, J. and Citrin, J. (2004). European Opinion about Immigration: The Role of Identities, Interests and Information. British Journal of Political Science, Vol. 37, No. 3. *Cambridge University Press*, 477-504. DOI: 10.1017/S0007123407000257.

Tajfel, H. 1978. Social Categorization, Social Identity and Social Comparison. In H. Tajfel (Ed.), Differentiation between Social Groups: Studies in the Social Psychology of Intergroup Relations, *London: Academic Press*, 61-76.

Toader, C. (2017). *The National Judge and Preliminary Rulings: Recent CJEU Case Law on Articles 101 and 102 TFEU.* In: Almăşan, A., Whelan, P. (eds) The Consistent Application of EU Competition Law. Studies in European Economic Law and Regulation, vol 9. Springer, Cham, 165-175. DOI: https://doi.org/10.1007/978-3-319-47382-6_9.

Twining, W. (2000). *Globalization and Legal Theory.* Cambridge: Cambridge University Press.

Tierney, S., (2005). *Constitutional law and national pluralism.* Oxford University Press, 20-45.

Usherwood, S., Pinder, J. (2018). The European Union: A Very Short Introduction (4th edn). In: Ch 2. How the EU was made. *Oxford University Press*, 9.

Visser, M. (2014). *Constitutional Review in Europe: a comparative analysis*. London: Bloomsbury Publishing.

Walters, R. (2020). *The Nation State, National Identity and Citizenship. In: National Identity and Social Cohesion in a Time of Geopolitical and Economic Tension: Australia – European Union – Slovenia*. Springer, Singapore. DOI: https://doi.org/10.1007/978-981-15-2164-5_2 .

Young, A. (2017) Proportionality. In: Vogenauer, S. and Weatherill, S. (eds.). General Principles of EU Law. *European and Coparative Principles*, 38-67.

3. Court practice

1963 of the Court of Justice of EU, February 5 decision in C-26-62 (Van Gend & Loos v Netherlands Inland Revenue Administration).

1964 of the Court of Justice of EU, July 15 decision in C-6-64 (Flaminio Costa v E.N.E.L.).

1968 of the United States Supreme Court, May 27 decision on 391 U.S. 367 (United States v. David Paul O'Brien).

1996 of the Court of Justice of EU, July 2 decision in C-473/93 (Commission of the European Communities v Grand Duchy of Luxemburg).

2005 of the Polish Trybunał Konstytucyjny [Polish Constitutional Tribunal] May 11 decision in case no. K 18/04 (decision on the Accession Treaty).

2008 of the Court of Justice of EU, June 24 decision in C-566/07 (Commission v Luxembourg).

2010 of the Court of Justice of EU (Second Chamber), December 22 decision in C-208/09 (Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien).

2011 of the Court of Justice of EU, May 12 decision in C-379/87 (Malgožata Runevič-Vardyn).

2011 of the Court of Justice of EU, May 24 decision in C-51/08 (European Commission v Grand Duchy of Luxemburg).

2011 of the Court of Justice of EU, July 17 decision in joined cases C-58/13 and C-59/13 (Angelo Alberto Torresi and Pierfrancesco Torresi v Consiglio dell'Ordine degli Avvocati di Macerata).

2011 of the Court of Justice of EU, May 12 decision in C-391/09 (Malgožata Runevič-Vardyn and Łukasz Paweł Wardyn v Vilniaus miesto savivaldybės administracija and Others).

2014 of the Court of Justice of EU, May 24 decision in C-51/08 (European Commission v Grand Duchy of Luxemburg).

2015 of the Court of Justice of EU, September 8 decision in C-105/14 (Taricco and Others case).

2016 of the Court of Justice of EU, June 2 decision in C-438/14 (Nabiel Peter Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe, Zentraler Juristischer Dienst der Stadt Karlsruhe).

2017 of the Court of Justice of EU, December 5 decision in C-673/16 (Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne).

2017 of the Court of Justice of EU, March 14 decision in C-157/15 (Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV).

2018 of the Court of Justice of EU, June 5 decision in C-42/17 (M.A.S. and M.B.).

2018 of the Court of Justice of EU (Grand Chamber), December 11 decision in C-493/17 (Proceedings brought by Heinrich Weiss and Others).

2019 of the Court of Justice of EU, June 13 decision in C-317/18 (Cátia Correia Moreira v Município de Portimão).

2019 of the Court of Justice of EU, March 12 decision in C-221/17 (M.G. Tjebbes and Others v Minister van Buitenlandse Zaken).

2021 of the Court of Justice of EU, December 14 decision in Case C-490/20 (V.M.A. v Stolichna obshtina, rayon "Pancharevo").

2022 of the Court of Justice of EU (Grand Chamber), February 22 decision in Case C-430/21 (RS (Effet des arrêts d'une cour constitutionnelle))

SUMMARY

Protection of National Identity in the CJEU

Ruslan Akhundov

This master's thesis provides an academic exploration of the evolution of national identity within the formation of the European Union (EU). The Maastricht Treaty initially introduced a provision that briefly stipulated the EU's obligation to acknowledge the national identities of its Member States. However, this concept was broadened by the Treaty of Lisbon and the introduction of Article 4(2), which connected national identity to fundamental political and constitutional structures, thereby safeguarding Member States from potential EU encroachments.

The EU's strategy seeks to harmonize the respect for national identities with the cosmopolitan project of European integration. This process enriches the distinctiveness of each nation's ethos, intertwining the fabric of national identity with the fundamental values delineated in Article 2 of the Treaty on European Union (TEU).

The author explores the main elements of identity, outlines the differences in the application of terms of national and constitutional identity. The paper examines the approach of the European Union to the concept of national identity, the challenge to the traditional concept by the emergence of the European Union and the concept of European identity. A large part of the work is devoted to the analysis of the main cases of the Court of Justice of European Union in order to outline the general practice of the Court's approach to the concept of national identity and to clarify examples of the elements that national identity can consist of. After the analysis of judicial practice, the main problematic points of the existence and protection of national identity and its interpretation by the Court were identified. At the end, possible options for solving existing challenges related to national identity and its protection by the CJEU are proposed.