

DUE Chair

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Master 2 in European Law : European Constitutional Law

Seminar: Constitutional identity of European Union Member States

Master 2 in European Law: European Constitutional Law Seminar: Constitutional identity of European Union Member States

Introduction: relevance of the issue

**Part One: constitutional identity from the point of view of Member States
Constitutional identity of states as a 'countercheck'**

I. Constitutional identity of states as a "countercheck"

A) Reactions to the rejection by states of constitutional singularity

- a) Position of the Court of Justice
- b) Constitutional case law of dualist states

B) Reactions to the challenge to the constitutional monopoly of states

C) Topicality of counterchecks

- a) Spain: the uneasiness of the *Melloni case*
- b) Czech Republic: the *Slovak pensions case*
- c) Germany: Oxymorons:
 - amicable threat: the *Lisbon* and *Honeywell cases*
 - threatening dialogue: the *Gauweiler case*
 - rejection of productive dialogue: the *European Arrest Warrant case* (ruling of 15 December 2015)
- d) Denmark: the *Ajos case*
- e) Italy: the *Taricco and MAS case*

II. Constitutionality review of secondary legislation in France

Introduction: Identification of the central issue

- 1: Preventive control of secondary legislative proposals
- 2: Direct *a priori* review
- 3: Direct *a posteriori* review

4: Key review: indirect *a posteriori* review

A) Situation prior to 2004

B) Clarification of 2004

1) Review of the law without involving the directive itself:

2) Review of the law on the grounds of the content of the directive: 4 problems

C) systematisation of 2006

Link to previous criteria

Crucial and distinctive

Consent of the principal

Claimed link to the treaty (Art. 4§2 EU)

Legal tightrope

Substantive proposals

Extension of 31 July 2017

D) Detailed explanation by the Council of State in 2007

III) Overall assessment

Part Two: from the constitutional identity of Member States to the constitutional identity of the European Union

1) **Institutional and procedural autonomy and duty of loyal cooperation:**

2) **Respect for the national identity of Member States**

3) **From the national identity to the constitutional identity of Member States**

A) Changes to the treaty framework

B) Changes to the European judicial approach

C) Consideration of national constitutional identity

a) Structural balance

b) Double substantive level

1) *Case of shared values*

2) *Invocation of specific constitutional values*

Type : Course

Dates : Created on January 9, 2018

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