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The unbearable heaviness of the German constitutional judge. On the judgment of the Second Chamber of the German Federal Constitutional Court of 5 May 2020 concerning the European Central Bank's PSPP programme

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The reasoning of the German Constitutional Court judges to prohibit the Bundesbank from buying Sate securities on the secondary market if the ECB does not demonstrate within three months the proportionality of its decisions under the PSPP programme is not sustainable. Instead, the judges, who demonstrate unfounded intellectual arrogance in their claim to interpret EU law, make manifest errors in applying the principle of proportionality to the delimitation of competences between the Union and the Member States. They also make methodological errors in their application of the principle of proportionality to ECB decisions, while highlighting their prejudices in the field of monetary and economic policy.

[L'insostenibile pesantezza del giudice costituzionale tedesco] Sulla sentenza della Seconda Sezione della Corte costituzionale federale tedesca, del 5 maggio 2020, relativa al programma PSPP della Banca centrale europea] Il ragionamento dei giudici della Corte Costituzionale tedesca per proibire alla Bundesbank di comprare titoli di Sato sul mercato secondario se la BCE non dimostra entro tre mesi la proporzionalità delle sue decisioni nell'ambito del programma PSPP non è sostenibile. I giudici, che dimostrano un'arroganza intellettuale infondata nella loro pretesa ad interpretare il diritto dell'Unione europea, fanno invece errori evidenti nell'applicare il principio di proporzionalità alla delimitazione delle competenze tra l'Unione e gli Stati membri. Essi sbagliano anche dal punto di vista metodologico nella loro applicazione del principio di proporzionalità alle decisioni della BCE, mettendo invece in evidenza i loro pregiudizi in materia di politica monetaria ed economica.

1. Foreword

The present note is an immediate reaction, based on the sole reading of the judgment of the Second Chamber (*Zweiter Senat) of the* German Federal Constitutional Court (*Bundesverfassungsgericht - BVerfG) of* 5 May 2020 concerning the PSPP programme of the European Central Bank (ECB).[1] That reaction refers to the German language version, the only authentic one, which shows also better the choice of often heavy and peremptory formulations. The *BverfG* is composed of two chambers (*Senat*) of eight judges each; the first chamber is in principle in charge of reviewing the constitutionality of laws and of the protection of fundamental rights on the basis of a complaint of unconstitutionality (*Verfassungsbeschwerde)*, the second chamber is in charge of disputes between federal institutions, between the Federation and the *Länder,* and a series of other matters, including those particularly involving international law. There is no plenary assembly of all the judges. The judgment was adopted by a majority of seven out of eight votes, and at the time of writing the separate opinion, which I assume to be dissenting, is not yet available.

As I am by no means an expert in financial economics, I will obviously not comment on the substance of the *BverfG* judges' reasoning on the PSPP programme, and indeed I doubt that they themselves have any specific expertise in this area. The judgment is based on economic doctrine and grey literature, as well as on statements made by experts during the hearing; the judges quote only arguments against the ECB, although these are still widely debated issues, as far as a lawyer who often works with economists can perceive.

The text has a quite usual length for a *BverfG* judgment: 110 pages, more than half of which is dedicated to the presentation of the arguments of the plaintiffs and interveners as well as to the complete citation of passages from the judgment of the Court of Justice of the European Union (CJEU) in *Weiss,*[2] which is the subject of the German judgment. The English-language version does not highlight the *BverfG*'s cumbersome style, which is due on the one hand to the syntax of the German language, which pushes the verb back at the end of the sentence, and on the other hand to the fact that in the authentic version, the very numerous references to doctrine and case law are introduced in brackets - as is unfortunately also the case with the judgments of the ECJ - and not with

footnotes - as in the conclusions of the Advocates General at the Court of justice. This obliges the reader, even an expert lawyer, to reread the long sentences - almost all of them - more than once in order to understand them.

The judgment of 5 May rules on the applcations of a number of natural persons, including the "serial claimant" *Gauweiler,* who together with others had been at the origin of the first reference for a preliminary ruling by the *BverfG to* the ECJ in the context of the examination of appeals requesting the *BverfG to* prevent by injunction the ratification by Germany of the Treaty establishing the European Stability Mechanism (ESM).[3] The various applications, which have been joined by the court, asked the *BverfG* to declare illegal the ECB decisions establishing and implementing since 2015 the *Public Sector Purchase Programme* (PSPP) on the acquisition of sovereign bonds in secondary markets. On this point the applications were rejected, as the *BverfG* duly admitted that it is not a judge of the legality of acts of EU institutions, bodies, offices and agencies. They also requested the *BverfG* to condemn the *Bundestag* (Federal Parliament) and the Federal Government as well as the Federal Central Bank (*Bundesbank*) for failing to take all necessary action to prevent the Governing Council of the ECB from adopting the incriminated decisions, and to issue injunctions against them to take the necessary measures to counter the ECB's action - applications which were only partially admitted. Finally, the applicants requested the *BverfG* to issue an injunction to the *Bundesbank to* refrain from purchasing securities on the secondary markets under the PPSP. The latter request was fully granted and the *BverfG* therefore prohibited the *Bundesbank* as an institution of the Federal Republic of Germany from making such purchases if the ECB did not convincingly demonstrate within three months that the challenged decisions complied with the principle of proportionality.

The main criticism that can be made to this judgment from the point of view of EU law - beyond its specific effect on the CSPP and on the actions of the ECB and the European System of Central Banks (ESCB) - is that the *BverfG* is for the first time giving effect to its more or less explicit threat not to implement rulings of the ECJ, which was already expressed in several of its earlier judgments, in particular the judgment on the Treaty of Lisbon, and in the text of its references for preliminary rulings in the *Gauweiler* and *Weiss* cases: the *BverfG* arrogates to itself the power to make a final assessment of the legality of an act of the

European Union and thus threatens to dismantle the unity of application of Union law. The constitutional judges are not restraining themselves to reasoning on the basis of German constitutional law - the Basic Law of 1949 as interpreted by its own case law - which would be in line with the institutional mandate of the *BverfG;* they claim to impose, not without arrogance, their own way of reasoning in European Union law.

At first sight and on the basis of a thorough but quick reading, the *BverfG*'s judgment is more than questionable in its claim to assess the legality of ECB decisions on the basis of the principles of conferral and proportionality; and it is extremely dangerous in its rejection of the unity of application of Union law on the basis of the democratic principle and the review of the distribution of competences between the Union and the Member States. From the point of view of appropriateness rather than strict law, the judgment demonstrates the complete lack of relevance of the *BverfG*'s jurisprudential policy on European integration.

2. Assessment of the legality of ECB decisions in the light of the principles of conferral and proportionality

The judgment of May 5 bears the mark of two typical obsessions of German public law doctrine, i.e. *Dogmatik* and the German conception of the principle of conferral. *Dogmatik* is generally understood as the exegetical examination of the applicable legal norms on the basis of which legal scholarship - and its followers the supreme courts - develop legal principles recognised by the majority scholarship, with the primary aim of guaranteeing legal security and the predictability of court decisions.

The word *Dogmatik* does not have the pejorative charge of the adjective dogmatic, which nevertheless applies well to the majority of judges in the Second *Senat.* In other words, pragmatism has a bad press in traditional German public law culture, whereas it is a positive value in the public law culture of countries as different as France or the United Kingdom, for example. Traditional *Dogmatik* is also hardly compatible with the functional interpretation that the Court of Justice took over from the French *Conseil d'Etat* as early as the 1950s, particularly under the influence of Advocate General Lagrange. In my view, this has long

been one of the main sources of friction between the case law of the Court of Justice and EC law scholarship (including German EC lawyers) on the one hand and the German public law scholarship and the *BverfG* on the other.

As for the principle of conferral, known in German as *Grundsatz der begrenzten Einzelermächtigung*, which can be rendered literally by the "principle of restricted individual delegation", saying that it is a German obsession is clearly an understatement. While the authors of the Treaties of Paris and Rome and of Maastricht, like EC scholarship of all countries, have always known that the European Communities and the EU were governed by the principle of conferral, immanent to the multilateral treaties establishing organizations, it was first the governments of the German *Länder,* followed first by constitutional scholarship and then by the federal government, which have insisted, particularly since the preparations for the Maastricht Treaty, on the need to include in the Treaties an exhaustive and precise list of the competences of the Communities and the Union, in order to counter the so-called phenomenon of the creeping enlargement of competences (*schleichende Kompetenzerweiterungen*)[4] of which EU institutions are deemed be for long guilty; the reality of this phenomenon has never in my opinion been convincingly demonstrated.[5]

The combined effect of these two obsessions leads the constitutional judges to a series of reasoning that is particularly open to criticism in the judgment of 5 May. This reasoning is hardly surprising for those who are familiar with the way in which German constitutional judges have proceeded in European matters, particularly since the famous judgment on the ratification of the Maastricht Treaty of 1993[6] and the judgment on the ratification of the Lisbon Treaty of 2009.[7] in the order for a preliminary ruling in the *Gauweiler* case, the judges of the Second *Senat* had already threatened the ECJ in heavy terms that it would not apply a future rule if the EU judges were not to follow the reasoning setout by the German constitutional judges.[8] As is well known, in an incidental addition to their application against the ratification of the ESM Treaty, the applicants had asked the *BverfG* to declare illegal the announcement by ECB President Mario Draghi and the publication on the Internet of the general framework of the OTM programme (*Outright Monetary Transactions*), which was intended, if necessary, to support Greece in order to prevent the euro zone from being undermined. The *BVerfG* eventually acepted the Luxembourg ruling of 16 June

2015.
In the meantime, Mario Draghi had become the pet peeve of many German politicians while he was considered a hero in Italy, and the ECB Governing Council had adopted the first decisions of his PSPP. Hence a new application, and a new order for a preliminary ruling in Weiss on 18 July 2017: the judges of the Second *Senat* stick to their guns. The CJEU answers in its judgment of 11 December 2018 that the ECB did not commit a manifest error of appreciation of the norms and principles of Union law governing its action and therefore refrains from declaring that action unlawful. The appellants then turned again to the *BverfG,* which, while rejecting part of their applications as inadmissible, found in their favour on the merits.
The reasoning of the judges of the Second *Senat* can be summarized as follows. The judges admit that, on the basis of Article 19 TEU, the CJEU has a monopoly on the authentic interpretation and assessment of the legality of acts of the institutions, bodies, offices and agencies of the Union, such as the ECB. The *BverfG,* for its part, is responsible for the authentic interpretation and assessment of the constitutionality of acts of the institutions of the Federal Republic. On the basis of Article 23 of the Basic Law of 1949, the *BverfG* checks, when applying Union law, that the German institutions do not violate fundamental rights or fundamental principles of the German constitutional order or its constitutional identity and that they do not apply acts of the Union institutions which are not based on a clearly conferred competence (*ultra vires*). And this is where the problem lies. For the first time, the judges of the Second *Senat* have taken action and declared *ultra vires* the judgment of 11 December 2018 in response to their reference for a preliminary ruling. To do so, they follow a three-step reasoning.
First of all, the Judges accept that the Court of Justice is empowered to rule on its own jurisdiction, which is conferred on it by Article 19 TFEU, but only "in so far as the Court's judgment can be linked to recognised methodological principles and does not appear to be objectively arbitrary" (*solange sie sich auf anerkannte methodische Grundsätze zurückführen lässt und nicht objektiv willkürlich erscheint*) - an extension to the *Solange* principle applied by the *BverfG* since 1974 to the recognition of the primacy of Community law.Until the Maastricht judgment, *Solange* meant retaining the possibility not to apply acts of Community law which would be contrary to the fundamental rights and

essential principles guaranteed by the Basic Law of 1949 - in particular those of parliamentary democracy and federalism. The *BverfG* then gradually extended the *Solange* reservation to the constitutional identity of Federal Germany - as did several other constitutional courts, including the Italian one with its doctrine of *controlimiti*. What is new is the extension of the *Solange* reservation to methods of legal interpretation.

In the present case, the judges state that the examination of compliance with the principle of conferral must be carried out on the basis of the principle of proportionality, as a principle of interpretation which supposedly constitutes a common constitutional tradition of the Member States. The reasoning of the judges of the Second *Senat* does not hold water. Assuming that the notion of "common constitutional tradition", as recognized by the EU Charter of Fundamental Rights and Article 6 TEU, does indeed include principles of interpretation - which is neither obvious nor demonstrated by the judges of the Second *Senat* - the way in which they proceed is absolutely questionable in comparative law. The assertion that the principle of proportionality "has its roots in the *common law*" (point 124) is far from being unanimously supported common law scholarship and is not confirmed by the case law of *common law* courts, which on the contrary persisted for a long time in the sole application of the *Wednesbury reasonableness* test before gradually agreeing to apply the proportionality test. In fact, the reference to the *common law* is clearly intended to avoid the accusation that the judges of the Second *Senat* wanted to impose their approach to this principle - which is quite different, for example, from the way in which the French administrative judge applied the proportionality test in police matters after the First World War.

This discussion of comparative law would rather trivial if the judges of the Second *Senat* did not use this concept as they do in the judgment of 5 May, i.e. to affirm that the control of proportionality is an indispensable tool for the review of the limits of competences. The problem is that the *BverfG* refers to Article 5(1) and (4) TEU and refers also to points 66 et seq. of the Court's judgment in *Gauweiler*. However, the ECJ never says that the principle of proportionality applies to the delimitation of competences, contrary to the assertions of the judges of the Second *Senat*. And for good reason: it seems that the judges of the Second *Senat,* in their zeal to demonstrate the *ultra vires* nature of the ECB

decisions and the judgment of the CJEU, forgot to read the first sentence of Art. 5 par. 1 TEU: " The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality." One could not be clearer. The premise of the reasoning which follows in the judgment is therefore unfounded. A beginner student of European Union law would deserve a zero score.

Even supposing that the premise is well-founded, and that the principle of proportionality is indeed relevant to the review of the delimitation of the Union's competences - which it is not, by virtue of the Treaties themselves - the question would arise whether the criticisms which the judges of the Second *Senat* make of the Court's judgment in *Weiss* are well-founded. The judges of the Second *Senat* themselves admit that methods of interpretation may differ from one Member State to another - and, it should be noted in passing, their comparative law references tending to show that the German method of interpretation is genuinely shared by the others are surprisingly superficial. They also state that only a manifest error of methodology in the use of the principle of proportionality could lead to *ultra vires*. Here too, however, there is a problem.

One only has to read the rather long and sometimes confuse developments of the judges of the majority of the Second *Senat* on the proportionality of the ECB measures to be convinced. Their entire reasoning is based on the distinction between monetary policy - an exclusive competence of the Union - and economic policy, a competence of the Member States. One wonders whether the judges have understood that the competence in the field of economic policy, although not included among the shared competences listed in Article 4 TFEU, is also a competence of the Union since, as Article 5 TFEU reminds us, the Council - institution of the Union - is empowered to adopt measures useful for the cooperation of the economic policies of the Member States. However, the whole discussion in *Gauweiler,* as in *Weiss,* and already before in *Pringle*,[9] has shown how difficult it is to distinguish between monetary and economic pooicy: although the distinction appears in the Treaties, in particular in Article 119 TFEU, it is not based on clear and shared definitions in economic terms.

When the judges of the majority of the Second *Senat* claim that the CJEU is not entitled to limit itself to a review of the manifest error of assessment in the examination of the decisions of the ECB, that assertion is at first sight completely

at odds with the idea that only a manifest error of methodology on the part of the CJEU could be censured by the *BverfG*. What the judges of the majority of the Second *Senat* do is what the administrative judge or the constitutional judge in the other Member States do: they decide themselves what is a manifest error, and do not apply a transcendental legal methodology to do so.

A more in-depth study of the *May 5* judgment would undoubtedly reveal other methodological failures on the part of the judges of the majority of the Second *Senat,* particularly when they control proportionality. The judges in Karlsruhe are no more infallible than those in Luxembourg. The central point to be stressed is that the method used by the majority of the Second *Senat* to assert that the ECB acts outside its sphere of competence (*ultra vires*) is not founded in Union law, given the content of Article 5 TFEU, contrary to what they assert without demonstrating it.

The present discussion would be solely relevant as didactic exercise if the BverfG's judgment had only minimal consequences, which is not the case. In contrast to the precedents of the rulings of the Czech Constitutional Court of 31 January 2012, *Pl. ÚS 5/12*[10] and of the Danish Supreme Court in *15/2014, Ajos*,[11] which had effect only in cases of limited scope (the pensions of Slovak citizens in the Czech Republic and the application of a general principle of Union law to specific relations between private persons), the judgment of 5 May has very serious systemic consequences for Union law and for the Union itself.

3. The rejection of the application of Union law on the grounds of the principle of democracy and review of distribution of competences

In its judgment of 5 May 2020, the *BverfG* orders the *Bundesbank* an institution of the Federal Republic of Germany, to cease secondary market purchases of sovereign securities under the PPSP if the ECB does not demonstrate within a maximum period of three months that its decisions comply with the principle of proportionality. The judgement also declares that the Federal Government and the Parliament (*Bundestag*) have failed to fulfil their obligations under Article 23 of the Basic Law, which recognises that the FRG "shall contribute to the development of the European Union", by failing to take all appropriate measures

to prevent the Governing Council of the ECB from adopting the contested measures. Need it be recalled that, although the *Bundesbank* is an institution of the FRG, it is independent both under the German law that establishes it and under primary Union law, which makes it a member of the European System of Central Banks?

Assuming that the judicial review exercised by the *BverfG* over federal institutions enables it to issue injunctions against the *Bundesbank* without limitation, it seems clear that attempts by the Federal Government and Parliament to influence the organs of the ECB and the members of the ESCB would be contrary to the independence of the latter as guaranteed by primary Union law. By relying on questionable reasoning to issue its injunction and by claiming that the ECB is not competent to adopt decisions on the PSPP programme, the judges of the Second *Senat are* inciting the Bundesbank and indeed also the Federal Government and Parliament to infringe European Union law. The fact that the judges of the Second *Senat* assert by means of an equally questionable demonstration that the PSPP prevents the realisation of the principle of democracy by restricting the powers of the Federal Parliament does not change anything in the case: there is a violation of Union law.

Apparently in order to clear themselves vis-à-vis the other Member States of the Union, the judges of the Second *Senat* declare that, in the absence of convincing reasons on the part of the ECB that its decisions are sticking to proportionality, those decisions are not applicable, at least in the territory of the Federal Republic of Germany. The judges of the Second *Senat* do not appear to take into account the fact that they thus infringe a fundamental principle of Union law, that of uniform application. Unless there is an explicit exemption, acts of secondary legislation apply in all Member States and must be applied in the same way - unless again primary law explicitly provides for a possibility of differentiation, as in Article 355 TFEU on the outermost regions. Ignoring the principle of uniform application contributes to the fragmentation of the Union into as many different legal regimes as there are Member States. This is an extremely serious matter.

The judges of the *Second Senat* justify their judgment not only by a poorly demonstrated supposed violation of the division of competences between the Union and the Member States by the ECB and the ECJ. They also justify it by

the fact that the incriminated decisions would be contrary to the principle of democracy as they would excessively limit the power of the German Parliament in matters of economic and budgetary policy. A reading of the judgment of 5 May shows how convoluted the reasoning of the judges of the Second *Senat* is, and that, far from being based on an indisputable legal *Dogmatik,* it is based on unproven economic policy presumptions that are contrary to the cohesion of the European Union. It suffices to quote a passage: according to the judges (point 171 of the judgment) " At the time Decision (EU) 2015/774 was adopted, it was already foreseeable that several Member States of the euro area would increase new borrowing in order to boost the economy with investment programmes" – the judges there refer to a Commission document without any legal significance.
Not only do the judges fail to show that financing investment programmes would be contrary to the Treaty - on the contrary, in the medium term one can hope for the opposite, as many economists who are not quoted in the 5 May judgement claim. But what is more, the judges of the Second *Senat* spread their prejudices in matters of economic policy without taking the slightest account of the possibility that such investments might on the contrary contribute to achieving the objective of economic, social and territorial cohesion affirmed in Article 3 TEU. Moreover, if the principle of democracy really requires that the German Parliament should continue to be able to determine its economic policy, does not the same apply to the parliaments of Spain, Greece, Ireland, Italy, Portugal etc.? Such an objection is, of course, not taken into account by the judges of the Second *Senat*.
Assuming that the argument on the principle of democracy is well-founded, it has an immediate effect which the judges of the Second *Senat* obviously did not want to take into account. This argument would in fact justify the refusal of governments such as that of Hungary or Poland, which have a comfortable majority in Parliament, to apply the judgments of the Court of Justice condemning them for violation of Article 19 TEU by their actions that call into question the independence of the judiciary. This would be a further factor in the fragmentation of Union law and of the Union itself.

4. Conclusion: the sense of timeliness as a principle of jurisprudential policy

According to the *Frankfurter Allgemeine Zeitung of* 5 May 2020, "The president of the Federal Constitutional Court, Andreas Voßkuhle, admitted when presenting the ruling that the decision could have an "irritating" effect in times of the coronavirus crisis, but that the decision was supported by the overwhelming majority of the Senat. Only one judge had ruled against the decision".[12] Reading this statement, more than one European citizen will have thought, as I did, of the words of Portuguese Prime Minister Costa the day after the Eurogroup videoconference meeting of 7-9 April, referring to the "repugnant" behaviour of Dutch Finance Minister Hoekstra, who had asked the Commission to open an inquiry to understand why certain Member States had not provided a "budgetary cushion" in anticipation of crises. It was clear that the minister, who later admitted that he had not shown enough empathy, had the upcoming elections in his country in mind and had been trying to win the favour of a section of the electorate that had been prejudiced against the "PIGS" (Portugal, Italy, Greece and Spain) since the beginning of the sovereign debt crisis in 2010. While such an attitude is not acceptable for politicians, is it acceptable for judges whose independence is guaranteed in principle by the absence of a search for a political mandate?

Although many commentators have been quick to point out that the 5 May judgment concerned the PSPP and not the ECB's action during the covid-19 pandemic emergency, it is clear that the reasoning of the Second *Senat* judges would also apply to any secondary market purchase programme for government securities, which may "finance investment programmes to stimulate the economy". Beyond the rigidity of *Dogmatik*, a jurisprudential policy should characterise the action of Constitutional Courts and Supreme Courts aware of their social role in a pluralist democracy. What will be the jurisprudential policy of the new President of the German Federal Constitutional Court, as Professor Voßkuhle's term of office expires without possibility of renewal on 6 May 2020?

1. BVerfG, 05. May 2020 - 2 BvR 859/15
2. Judgment of the Court (Grand Chamber) of 11 December 2018, *Proceedings brought by*

*Heinrich Weiss and Others,*Case C-493/17, ECLI:EU:C:2018:1000

3. Judgment of the Court (Grand Chamber) of 16 June 2015 in Case C-62/14 *Peter Gauweiler and Others v Deutscher Bundestag,* ECLI:EU:C:2015:400
4. See paragraph 156 of the judgment.
5. See the various national reports and my general report to the XVIIth Congress of the International Federation of European Law in 2016 in Budapest in J. Czuczai, P. Darák, P. Lánkos, M. Szabó, A. Zs. Varga (eds.), *Division of Competences and Regulatory Powers between the EU and the Member States - FIDE Congress Proceedings,* Wolters Kluwer, Budapest, 2016, vol; 3, pp. 97-146.
6. Judgment of 12 October 1993, BVERFGE 89, 155; see in particular among many others: Grewe, Constance, *L'arrêt de la Cour constitutionnelle allemande du 12 octobre 1993 sur le traité de Maastricht: l'Union européenne et les droits fondamentaux,* in *Revue universelle des droits de l'homme* 1993, p. 286 - 292.
7. Jugement du 30 juin 2009 (affaires liées 2 BvE 2/08). Voir notamment Müller-Graff, Peter-Christian, *L'arrêt de Karlsruhe sur le Traité de Lisbonne*, in *Regards sur l'économie allemande* 2009/3 (n° 92), pp. 5 à 12 ; Ziller, Jacques, *Zur Europarechtsfreundlichkeit des deutschen Bundesverfassungsgerichts. A foreign evaluation of the Federal Constitutional Court's ruling on the ratification of the Lisbon Treaty* in *Zeitschrift für öffentliches Recht*: Volume 65, Issue 1 (2010), p. 157-176; idem, *Solange III, ovvero la Europarechtsfreundlichkeit del Bundesverfassungsgericht. A proposito della sentenza della Corte Costituzionale Federale Tedesca sulla ratifica del trattato di Lisbona*, in *Rivista Italiana di Diritto Pubblico Comunitario, 5/2009*; idem, *The German Constitutional Courts Friendliness towards European Law*, in *European Public Law Journal*, 16/1,2010, p. 53-73.
8. See note 3.
9. Judgment of the Court (Full Court) of 27 November 2012, *Thomas Pringle v Government of Ireland and Others,* Case- C370/12, ECLI:EU:C:2012:756.
10. See Komárek, J., *Czech Constitutional Court Playing with Matches: The Czech Constitutional Court Declares a Judgment of the Court of Justice of the EU Ultra Vires; Judgment of 31 January 2012, Pl. ÚS 5/12, Slovak Pensions XVII*. In *European Constitutional* Law Review, 8(2), 323-337.
11. See Šadl, U., & Mair, S., Mutual Disempowerment: Case C-441/14 Dansk Industri, acting on behalf of *Ajos A/S v Estate of Karsten Eigil Rasmussen and Case no. 15/2014 Dansk Industri (DI) acting for Ajos A/S v The estate left by A.* in *European Constitutional Law Review, 13*(2), 347-368
12. Author's translation.