

**OUTLINE  
of the PhD thesis**

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**The requirement to interpret national law  
in accordance with Union law  
as an instrument of ensuring effectiveness  
of European Union law**

Purposes of research

The object of the research under the proposed PhD thesis is the requirement to interpret national law in accordance with European Union law (the duty of consistent interpretation) perceived as an instrument of ensuring effectiveness of EU law. The analysis of this concept has three main purposes: the first one is to justify the assumption that the genesis, evolution and place of the duty of consistent interpretation within the European Union order is determined by the requirements of (the principle of) effectiveness viewed as an evolving concept in the jurisprudence of the European Court of Justice. The second aim is to justify the statement that in the ECJ's case law of the last decade the consistent interpretation doctrine has been strengthened and developed, however there still remain elements whereof which raise concerns and controversies. The third purpose of the research is to justify the observation that the duty of consistent interpretation has been accepted in the jurisprudence of Polish courts and the Constitutional Tribunal respectively, however there can be identified particular problems concerning its application which can undermine its role as a mechanism of ensuring effectiveness of European Union law in Polish legal system.

Methods

The intended analysis has been conducted in the descriptive, analytical and normative perspectives. Within the first one the object of the research, whether courts' practice or legal framework, has been revealed. It is within the second (analytical perspective) that the explanation of the object of the research has been given. The third perspective consists of the propositions concerning the object of research (this perspective seems to be especially relevant in respect of that part of the analysis which deals with the application of consistent interpretation in the practice of Polish authorities).

The ambition of the analysis is to apply the interdisciplinary approach, in particularly in those parts of the analysis which is aimed at benefiting from analytical framework drawn from legal theory and used for comprehension and construction of specific elements of the concept of consistent interpretation (like e.g. its limits).

Order of thesis

As it is determined by purposes of the research (which have been indicated above), the analysis of the consistent interpretation under the proposed PhD thesis is revealed in three

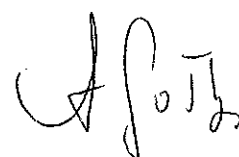
dimensions: (i) within the conceptual framework determined by the principle of effectiveness; (ii) within the analysis of particular elements of the concept of consistent interpretation; (iii) within the investigation as to the practice of Polish authorities. Those three perspectives determine the structure of the thesis.

The analysis begins with the Chapter 1 setting forth the methodological basis of the research, including the indication of its purposes and methods. Chapter 2 consists of: the short excursion as to the concept of consistent interpretation in international law and constitutional law respectively as well the basic outline of the concept of consistent interpretation in EU law. Chapter 3 begins with setting forth the basic conceptual foundation of the analysis, i.e., the principle of effectiveness understood as a constitutional principle determining borders between EU and national legal norms and the scope of intervention required by the former in respect to the latter. The analysis of the concept of consistent interpretation viewed from the perspective of the principle of effectiveness distinguishes two particular issues: (i) the consistent interpretation in the context of other instruments of invoking EU legal norms (like in particularly the principles of primacy and direct effect), and (ii) the consistent interpretation as an instrument of effective judicial protection. It is the first issue which requires the examination of the models of invoking EU legal norms presented in legal writing as well as in the jurisprudence of the European Court of Justice. The main purpose of examination here has been to identify and explain the position taken in this respect by the ECJ.

The analysis in Chapter 4 focuses on particular elements of the concept of the consistent interpretation. The analysis investigates, among others, the scope of the duty of consistent interpretation, its impact on national rules of construction, effects and functions within the national legal systems. The particular attention has been given to the limits of consistent interpretation. It seems that the thorough (i.e. taking advantage of insights provided by legal theory) analysis of concepts effecting the limits of consistent interpretation (like interpretation *contra legem*) may deepen the understanding of that notion and possibilities of its application in practice. The analysis also covers the standards of consistent interpretation, i.e. EU norms acting as standards of interpretation of national law. The particular problems are identified and reviewed in respect of directives.

The contents of Chapter 5, i.e. the review of the application of the duty of consistent interpretation in practice of Polish judicial authorities, has been divided into two subchapters dealing, on the one hand, with the jurisprudence of the Supreme Court and administrative courts and, on the other, with the jurisprudence of the Constitutional Tribunal. The analysis of the practice of the Supreme Court and administrative courts distinguishes between a part in which the interpretative decisions are described and analyzed, and a part which aims at formulating conclusions on the impact of the duty of consistent interpretation on the practice of Polish courts, with a particular focus on the effect of consistent interpretation on models of interpretation applied by Polish interpretative authorities and the role of consistent interpretation in ensuring effectiveness in Polish legal system. The descriptive/analytical as well as normative perspective has been employed in this context. The analysis also reviews and comments on the seminal judgements of Polish Constitutional Court concerning the consistent interpretation in relation to Polish constitutional provisions and the limits which - in view of Polish Constitutional Court - the consistent interpretation reaches in such normative context.

The thesis are completed with Chapter 6 consisting of the conclusions drawn on the basis of the foregoing analysis.

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