

MULTILEVEL CONSTITUTIONALISM

From Košice to Salzburg



Name: Radoslav Pavlinský

Age: 30

Education:

Doctoral candidate, Bachelor's and Master's degree in Law from the University of Košice since March 2024 Research Stay at the University of Salzburg (PLUS)

Dissertation topic:

Multilevel Constitutionalism –
Legal Theoretical Basis and Practical Implication

Contact: radoslav.pavlinsky@stud.plus.ac.at

Why did you choose Salzburg for your research stay?

My trip to Salzburg was mainly influenced by the recommendation of my supervisor, doc. JUDr. Marta Breichová Lapčáková, PhD. She also went to Salzburg for a research stay during her doctoral studies in the late 2000s and told me a lot about the excellent academic environment and the broad cultural programme. The prospect of having access to the resources of the fantastic libraries and online materials that were not available at my home university further strengthened my decision to go to Salzburg. I applied for an Erasmus to go to the University of Salzburg. In November I also met Professor Stephan Kirste at a Radbruch Lecture organised by our institute in Slovakia and he told me to get in contact with him about my research stay in Salzburg.

Could you give us a brief overview of your dissertation topic "Multilevel Constitutionalism - Legal Theoretical Basis and Practical Implication" and what inspired you to pursue this area of research?

Multilevel constitutionalism is a theory and model of the relationship between national, international and transnational law, in our case European law. The founder of the theory, Ingolf Pernice, sees national, international and transnational legal systems as constitutional levels that form a common constitutional framework. The citizen is the source of legitimacy and power at all these levels. In this way, the EU is perceived as a union of citizens rather than states. The theory has also gained attraction outside the EU, particularly in South America, where many parallels can be drawn between the two regions. The theory of multilevel constitutionalism is one of the theories of constitutional pluralism that was first developed in the 1990s, also in relation to the EU. The most significant event during this period was the landmark decision of the German Federal Constitutional Court in the Maastricht judgment, which challenged the principle of the supremacy of EU law. This led to profound changes both in our understanding of the relationship between national, international and transnational legal systems and in the constitutional structure of the entire European legal area.

Could you elaborate on some of the key challenges and debates within the field of multilevel constitutionalism that your research addresses?

There are many critics of both constitutional pluralism and multilevel constitutionalism in particular. One of the biggest criticisms is the claim that such theories are dangerous. Both theories are based on judicial dialogue between the European Court of Justice and the constitutional courts of the member states. Proponents of constitutional pluralism believe that this dialogue can be both useful in resolving constitutional conflicts and lead to a better outcome for participants in the overall judicial process. If the constitutional authority of each legal system is in dispute, the legal system that can produce the best result for all concerned should be used. Critics, on the other hand, see the theory as dangerous because it invites dissent from constitutional courts, weakens the principle of legal certainty in the rule of law and breaks up the unity and coherence of the legal system. The key challenge in recent years has therefore been to try to limit some of the dangers of the theory itself, while increasing the usefulness of judicial dialogue.

How does your research contribute to our understanding of the relationship between national and supranational legal systems, especially in the context of the European Union?

The theory of multilevel constitutionalism is often overshadowed by other theories of constitutional pluralism. I hope to shed some light on the theory itself and how it might prove useful in our current political and legal situation. Indeed, one of the main aims of my thesis is to point out some of the key differences between the theory of multilevel constitutionalism and the rest of the theories of constitutional pluralism. Finally, I cannot leave out the discussion of the dangers of the theory as perceived by its critics. My ultimate aim, however, is to put an end to the debate between monism and constitutional pluralism. In my view, the theory of legal monism simply no longer reflects reality and should be considered obsolete, at least as a descriptive theory. Whether we should also abandon its normative claims is another question entirely.

How do you see the concepts and principles of multilevel constitutionalism evolving in the future, especially in light of ongoing developments in international law and governance structures?

Since the globalisation movement earnestly began, we have seen an unprecedented growth in international and transnational law in particular. According to Jürgen Habermas in his book *Postnational Constellation*, on which Pernice based some of his theoretical concepts, states are currently unable to satisfy all the needs of their citizens. This leads to the fragmentation of their sovereignty, which in turn leads to the creation of new constitutional levels where these needs are met. The whole structure of governance is changing and the law must reflect these changes if it is to serve its purpose. Otherwise, we will be working with legal theories that no longer reflect reality. Multilevel constitutionalism and constitutional pluralism in general, reflects these changes and seeks to provide solutions to the challenges of this new global era.

As an exchange student doing research at the University of Salzburg, what has been your experience of working with scholars at the Department of Legal Philosophy? Have you gained any insights or perspectives from this academic exchange that have influenced your research?

It has been great so far. I could never have imagined the warm welcome I received from the department. The best I had hoped for was some advice on some points of my thesis. I got so much more. My discussions with some of the members of the department gave me a new perspective on some of the ideas I had been working with. My whole chapter on South America grew, as did my understanding of human dignity. Some of the key parts of my thesis have been challenged, which I would say could prove even more useful in the long run, as it forces you to articulate your points better and leads to a better outcome overall. Any new perspective is useful and my time here has been very productive so far.

Finally, what has been your experience of living and studying in Salzburg so far? Are there any particular aspects of the city or the university environment that have stood out to you or enriched your academic journey?

The overall experience has been great so far. I live in a dormitory that is very close to the Salzach river, which is perfect for taking afternoon walks and relaxing. The city is incredibly clean and the city centre, where most of the university campus is located, is breathtakingly beautiful. I came to Salzburg to gain access to the university library, as it has access to resources that I simply do not have at my home university. I think that access to such a wide variety of study material is something you really start to appreciate when you start to conduct real academic research. Lastly, some of Europe's brightest minds in legal theory and philosophy work here in Salzburg. Being able to pick their brains and ask for their opinions on my research is invaluable. A university environment is only as strong as the people who work in it and in this respect I believe that the Paris-Lodron University in Salzburg is a role model.

Interviewer: Pia Möslinger-Gehmayr