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Equal consideration for the competences of the member states:
what the ECJ can learn from the Belgian Constitutional Court

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If the Court of Justice were interested in addressing the criticism that it lacks sufficient consideration for the competences of the Member States, they might draw inspiration from the work of their Belgian colleagues. They have developed several techniques to guarantee equal consideration for the competences of both levels of government.

Both the Court of Justice of the European Union and the Belgium Constitutional Court review legal acts for compatibility with the division of competences between different levels of government. The methods used by both courts to delineate competences are strikingly different. This lecture will illustrate the differences in the approach towards the judicial review of the division of competences by comparing a few cases. It will contrast the approach in the Pringle (C-370/12), Gauweiler (C-62/14) and Weiss (C-493/17) judgements of the Court of Justice of the European Union with the approach in the Pyro-star (165/2020) judgement of the Belgian Constitutional Court.

There are at least four clear differences that foster the equal protection for the competences of the different levels of government. First, the Belgian Constitutional Court takes into account both the explicitly assigned competences and those implicitly remaining with other levels over government. Secondly, those competences are not understood as goals but as matters. Thirdly, it has a restrictive interpretation of implied powers. Fourthly, the principle of federal loyalty limits the effects that a competence can have on the competences of another level of government.

Lastly, the lecture will address the comparability and transferability problem. Although both courts function in a different institutional environment and perform other tasks, the methods used by the Belgian Constitutional Court are still transferable.



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