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Supremacy of National Constitutions over CJEU Case Law – A Pro-Constitutional Analysis

Nadrzędność konstytucji krajowych nad orzecznictwem TSUE – analiza z punktu widzenia konstytucjonalizmu

Abstract

The article presents an analysis of the supremacy of national constitutions over the case law of the Court of Justice of the European Union (CJEU), in the context of the principles of conferred competences and constitutional identity of the Member States. Referring to the jurisprudence of the Polish Constitutional Tribunal, the German Federal Constitutional Court, the French Constitutional Council, and the Romanian Constitutional Court, the author argues that, under both the EU Treaties and national constitutions, EU law cannot override the fundamental constitutional principles of the Member States.

The study highlights that recent CJEU judgments—particularly those concerning the organization of national judiciaries—often exceed the competences conferred on the Union (*ultra vires*), creating tension between the primacy of EU law and the supremacy of national constitutions. This tension is exemplified in CJEU cases involving Romania, such as C-430/21 RS and C-792/22 Energotehnica, where the CJEU's insistence on primacy has clashed with the Romanian Constitutional Court's defense of constitutional supremacy.

Drawing on Central European perspectives, including recent scholarly works, the author concludes that European integration must respect constitutional identity, and national constitutional courts have the duty to safeguard state sovereignty and fundamental rights.

Keywords: Constitution; Court of Justice of the European Union; supremacy of national law; sovereignty; constitutional identity; ultra vires; Federal Constitutional Court; Constitutional Council; Polish Constitutional Tribunal; Romanian Constitutional Court.

Streszczenie

Artykuł przedstawia analizę nadrzędności konstytucji narodowych nad orzecznictwem Trybunału Sprawiedliwości Unii Europejskiej (TSUE) w kontekście zasad kompetencji powierzonych oraz tożsamości konstytucyjnej państw członkowskich. Odwołując się do orzecznictwa Trybunału Konstytucyjnego Polski, Federalnego Trybunału Konstytucyjnego Niemiec, Rady Konstytucyjnej Francji oraz Rumuńskiego Trybunału Konstytucyjnego, autor dowodzi, że zarówno na mocy traktatów unijnych, jak i konstytucji krajowych, prawo unijne nie może uchylać podstawowych zasad konstytucyjnych państw członkowskich.

W opracowaniu podkreślono, że najnowsze orzeczenia TSUE – zwłaszcza dotyczące organizacji sądownictwa krajowego – często wykraczają poza kompetencje przyznane Unii (*ultra vires*), tworząc napięcie między pierwszeństwem prawa unijnego a nadrzędnością konstytucji narodowych. Napięcie to uwidacznia się w sprawach TSUE dotyczących Rumunii, takich jak C-430/21 RS i C-792/22 Energotehnica, gdzie upór TSUE w dążeniu do pierwszeństwa zderzył się z obroną nadrzędności konstytucyjnej przez Rumuński Trybunał Konstytucyjny.

Opierając się na perspektywie środkowoeuropejskiej, w tym na najnowszych publikacjach naukowych, autor dochodzi do wniosku, że integracja europejska musi szanować tożsamość konstytucyjną, a krajowe sądy konstytucyjne mają obowiązek chronić suwerenność państwową i podstawowe prawa.

Słowa kluczowe: Konstytucja; Trybunał Sprawiedliwości Unii Europejskiej; nadrzędność prawa krajowego; suwerenność; tożsamość konstytucyjna; *ultra vires*; Federalny Trybunał Konstytucyjny; Rada Konstytucyjna; Trybunał Konstytucyjny Polski; Rumuński Trybunał Konstytucyjny.

Introduction

In the European debate on legal primacy, two perspectives often clash: on one side, the principle of the primacy of European Union law,

derived from the jurisprudence of the Court of Justice of the European Union (CJEU).

On the other, the supremacy of the national constitution as the highest law in each Member State. The Constitution of the Republic of Poland explicitly states in Article 8(1) that it is the supreme law of the Republic. Similar principles underpin the constitutional orders of other states: in Germany, the Basic Law (*Grundgesetz*) includes an eternity clause (Article 79(3)) protecting core structural principles from infringement; in France, participation in the EU is based on constitutional provisions (Title XV of the Constitution) that do not relinquish national sovereignty; and in Romania, Article 148 of the Constitution affirms the primacy of EU law over conflicting national laws but preserves the constitution's supremacy.

Consequently, EU law cannot undermine the fundamental structural principles arising from national constitutions—if a collision occurs, the national constitutional order takes precedence.

Below, a pro-constitutional argumentation is presented confirming the supremacy of constitutions over CJEU interpretations, based on the jurisprudence of the Polish Constitutional Tribunal (PCT), the German Federal Constitutional Court (FCC), the French Constitutional Council (FCCo), and the Romanian Constitutional Court (RCC).

Constitution as the Supreme Law and Limits of Integration

The constitution is the highest normative act in the national legal order—as expressly stated in the Polish Constitution and reflected in the constitutional positions of other states. The process of European integration thus occurs within and on the basis of the constitution itself. Poland's accession to the EU followed Article 90 of the Polish Constitution (a special procedure for consenting to the transfer of competences in certain matters to an international organization), meaning the EU received only those competences that the state transferred within constitutional limits. Similarly, Germany remains the “masters of the treaties” (*Herren der Verträge*)—as phrased by the FCC—because the EU is an international organization endowed only with competences conferred by Member States.

In France, the Constitutional Council has emphasized that participation in the European organization cannot deprive the state of its sovereign powers—if EU obligations conflict with the constitution or infringe essential conditions for exercising national sovereignty, a constitutional amendment is required beforehand. For instance, in 1992, the Council found certain provisions of the Maastricht Treaty incompatible with the French Constitution (Decision No. 92-308 DC), necessitating a constitutional revision before ratification¹. From this, it follows that EU law applies in the national order by virtue of and under the constitution, but the constitution does not thereby lose its character as supreme law. The Polish Constitutional Tribunal emphasizes that there are no exceptions to the primacy of the Constitution—membership in the EU is possible only while respecting the supremacy of the Basic Law². Similarly, the FCC in its Lisbon Treaty judgment stated that the EU cannot transform into a supranational entity detached from state control; it remains a union of states to which they have transferred strictly defined competences³. Consequently, the principle of EU law primacy is functional (ensuring uniform application of EU law) but does not establish hierarchical supremacy over the constitution.

In Germany, it is accepted that EU law primacy pertains to its application, not to a hierarchical supremacy—derived both from EU law and the Basic Law itself. Member States have agreed to apply EU law preferentially within transferred competences, however decisions in hypothetical conflicts with constitutional norms belong to the sovereign state. In other words, the interpretation of EU law cannot invalidate constitutional norms; if an irreconcilable contradiction arises, the Polish constitutional legislator retains the right to resolve the collision, including potentially amending the constitution. In practice, however, constitutional courts have developed mechanisms to prevent such extreme conflicts. Jurisprudence promotes “EU-friendly interpretation,” meaning interpreting national norms to harmonize with EU law. However, as noted by the Polish Tribunal, friendly interpretation has limits—it cannot lead to outcomes contrary to the explicit wording of the Polish Constitution or undermine its minimum guarantee functions⁴. Similarly, the French

¹ Conseil constitutionnel, Decision No. 92-308 DC, April 9, 1992.

² Polish Constitutional Tribunal, Judgment K 18/04, May 11, 2005.

³ Bundesverfassungsgericht, Judgment 2 BvE 2/08, June 30, 2009 (Lisbon Treaty).

⁴ Polish Constitutional Tribunal, Judgment SK 45/09, November 16, 2011.

Constitutional Council introduced the concept of “France’s constitutional identity,” indicating that the implementation of an EU directive cannot infringe a principle or rule inherent to the state’s constitutional identity unless the constitutional legislator explicitly consents⁵. The notion of constitutional identity draws from the doctrines of other tribunals (e.g., German) and enables the protection of fundamental systemic principles and basic rights even in the process of European integration. In effect, constitutional identity and state structural principles constitute boundaries that EU law cannot cross—this is confirmed both by Article 4(2) of the Treaty on European Union (TEU), mandating respect for the national and constitutional identity of Member States, and numerous national court judgments⁶.

Position of the Polish Constitutional Tribunal

The Polish Constitutional Tribunal has repeatedly affirmed the primacy of the Polish Constitution over EU law. As early as the judgment of May 11, 2005 (Case K 18/04, concerning the Accession Treaty), the PCT expressed the principle that the Constitution retains supremacy in the area of Poland’s sovereignty⁷. European integration found constitutional grounding (Articles 90 and 91 of the Polish Constitution), but the Constitution remains the supreme law vis-à-vis all international agreements binding Poland, including those transferring competences. In practice, this means no EU provision can repeal or alter norms of the Polish Constitution—in case of collision, the Constitution does not lose its binding force merely because of an irreconcilable conflict with EU law. The sovereign Polish constitutional legislator (the Nation exercising constituent power) has the exclusive right to decide how to resolve such a contradiction. This pro-EU yet pro-constitutional interpretation results in the postulate of seeking amicable solutions—e.g., through constitutional amendment or renegotiation of obligations—rather than automatically subordinating the Constitution to a CJEU interpretation conflicting with its principles. In Case K 18/04, the PCT also addressed the EU supremacy principle itself. It noted that the CJEU promotes

⁵ Conseil constitutionnel, Decision No. 2006-540 DC, July 27, 2006.

⁶ Treaty on European Union, Article 4(2), OJ C 202, June 7, 2016.

⁷ Polish Constitutional Tribunal, Judgment K 18/04, May 11, 2005.

absolute EU law primacy to ensure uniform application, but this does not deprive Member States of the final decision in collisions with their constitutional norms⁸. The Tribunal emphasized that in the Polish legal system, any such decision must consider Article 8(1) of the Constitution, affirming the supremacy of the Basic Law. This view—expressed at the outset of Poland’s EU membership—was subsequently solidified. In the judgment of November 24, 2010 (Case K 32/09, concerning the Lisbon Treaty), the PCT again marked that the Constitution enjoys priority of validity and application over all legal acts, including EU law⁹. The Tribunal explicitly pointed to the close link between the Constitution’s supremacy principle and the sovereignty of the Republic. In other words, transferring certain competences to the EU (Article 90 of the Constitution) does not infringe sovereignty, as it is limited and reversible—the Republic retains its sovereign state status, and the Constitution—as an expression of the sovereign Nation’s will—guards this sovereignty. The Polish Tribunal has also emphasized in its jurisprudence the importance of protecting fundamental rights in relations with EU law. In Case K 18/04 (and e.g., SK 45/09), it was underscored that the standard of individual rights protection guaranteed by the Constitution sets a minimum threshold below which EU law cannot descend¹⁰. If EU law offered a lower level of rights and freedoms protection than the Polish Constitution, it would be incompatible with the Basic Law. In practice, within the EU, the rights protection standard is high (e.g., the EU Charter of Fundamental Rights), but crucially, “pro-European” interpretation of national law cannot question the essence of constitutional guarantees. Thus, the Constitution protects citizens’ basic rights even against potential excessive restrictions from EU regulations. In recent years, the Polish Constitutional Tribunal has articulated even more emphatically the Constitution’s supremacy over CJEU interpretations. The judgment of October 7, 2021 (Case K 3/21) resonated widely, where the PCT examined the Prime Minister’s legal questions on the compatibility with the Constitution of certain TEU provisions as interpreted by the CJEU¹¹. The Tribunal ruled that the EU may not act beyond competences transferred by Poland—insofar as EU bodies do so, their actions contradict the Polish Constitution. Moreover,

⁸ Polish Constitutional Tribunal, Judgment K 18/04....

⁹ Polish Constitutional Tribunal, Judgment K 32/09, November 24, 2010.

¹⁰ Polish Constitutional Tribunal, Judgment SK 45/09, November 16, 2011.

¹¹ Polish Constitutional Tribunal, Judgment K 3/21, October 7, 2021.

the PCT deemed unconstitutional Treaty provisions (Article 19 TEU) interpreted to empower Polish courts to disregard constitutional norms or review the legality of judicial appointments by the President. This is a fundamental affirmation that no court—even an EU one—can effectively order national bodies to act contrary to the Constitution and infringe core structural principles (e.g., the principle that judges are appointed by the President, with direct constitutional supremacy). In this judgment, the PCT noted that its constitutional review encompasses not only treaties but also legal norms shaped by their interpretation by international courts. This means that if a CJEU line of case law effectively shapes a legal norm binding in Poland, such “interpretation” can be assessed for constitutional compatibility. This doctrine—similar to the German *ultra vires* control—serves to safeguard the Polish constitutional order against excessive EU competence expansion at the expense of national democracy and sovereignty. Summarizing the Polish Tribunal’s position: the Polish Constitution takes precedence over EU norms conflicting with it, whether deriving directly from treaties or CJEU jurisprudence. The EU supremacy principle applies only insofar as it does not infringe constitutional integration limits. In conflict, the Constitution does not yield, as it represents the supreme will of the sovereign.

Position of the German Federal Constitutional Court

The German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) has long influenced the definition of relations between German and EU law. As early as the 1970s, in the *Solange I* (1974) and *Solange II* (1986) judgments, it signaled readiness to review Community law acts for compatibility with the German Basic Law, especially regarding fundamental rights protection standards¹². In the famous judgment of October 12, 1993 (concerning the Maastricht Treaty), the FCC emphasized that the EU is a “confederation of states” based on treaties, with Germany remaining a sovereign state whose integration participation stems from the sovereign’s will¹³. States are the authors and “masters” of EU treaties, and every competence delegation has constitutional limits.

¹² Bundesverfassungsgericht, *Solange I* (BvR 248/71), May 29, 1974; *Solange II* (2 BvR 197/83), October 22, 1986.

¹³ Bundesverfassungsgericht, Judgment 2 BvR 2134/92 and 2159/92, October 12, 1993 (Maastricht Treaty).

Accordingly, the BVerfG recognized the right to intervene if the EU exceeds conferred powers (*ultra vires* doctrine) or infringes Germany's constitutional identity protected by Article 79(3) of the Grundgesetz (including democratic rule of law principles, human dignity, and separation of powers). The culmination of this line was the FCC's judgment of June 30, 2009, on the Lisbon Treaty. The Court confirmed that the EU remains an international organization with secondary competences granted by Member States¹⁴. The EU cannot unilaterally become a federal state—all its power derives from Member States' consent. States continuously remain "masters of the treaties," retaining the ability to withdraw competences (even through EU exit). In practice, the BVerfG approved the Lisbon Treaty's ratification but indicated excluded clauses: certain areas critical for democratic sovereignty (e.g., budgetary, military, cultural, or taxation fundamentals) must remain with the Bundestag, otherwise violating Germany's democracy principle. This concept forms part of Germany's constitutional identity—democracy, federalism, social state, human dignity, and other values are non-relinquishable in integration. The *ultra vires* doctrine was developed by the BVerfG precisely to control CJEU interpretations of EU law. If EU bodies exceed conferred competences—especially manifestly and significantly—the German Constitutional Court may deem an EU act (or CJEU judgment) inapplicable in Germany. The second pillar is the constitutional identity doctrine: if EU law infringes fundamental German constitutional principles (e.g., democratic state, national sovereignty, or dignity protection), it cannot be implemented in Germany. Both mechanisms—*ultra vires* and identity control—ensure EU law does not dominate the German constitutional order impermissibly. A real test came with the European Central Bank's bond-buying program. In the judgment of May 5, 2020, the BVerfG for the first time refused to follow a CJEU ruling¹⁵. It concerned the CJEU's December 2018 decision upholding the PSPP program as EU-compliant—the German Court disagreed, finding the ECB exceeded its powers and the CJEU judgment approving it "non-binding" and "objectively arbitrary." In other words, the Karlsruhe judges deemed the CJEU's interpretation beyond reasonable treaty bounds, violating the conferred competences principle. The 2020 BVerfG judgment caused uproar in the

¹⁴ Bundesverfassungsgericht, Judgment 2 BvE 2/08, June 30....

¹⁵ Bundesverfassungsgericht, Judgment 2 BvR 859/15, May 5, 2020 (PSPP).

EU, undermining EU law uniformity. Yet it confirmed the consistent line: in extreme collision, the constitution (*Grundgesetz*) prevails, with the constitutional court defending it even against CJEU judgments.

Notably, the BVerfG does not negate EU law primacy—it recognizes its validity within conferred competences. The German Court also accepts that, in principle, the CJEU has the last word on EU law interpretation. However, it reserves that the CJEU’s adjudicative task “ends where treaty interpretation is incomprehensible or arbitrary”¹⁶. In such cases, the German court has the right (and duty) to independently assess EU action’s compatibility with the German Constitution. The basis for constitutional supremacy here is democratic sovereignty: as Germany is sovereign under its own constitution, no international body can unilaterally decide competence expansion at citizens’ democratic rights’ expense. The BVerfG consistently holds that the German people—as sovereign—define integration scope and limits, with the Constitutional Court as guardian of this will.

Position of the French Constitutional Council

The French Constitutional Council (*Conseil constitutionnel*) also affirms constitutional supremacy in collisions with EU law, though its role in EU law control differs somewhat (due to limited ability to review already enacted laws for constitutionality until the 2008 reform). However, the Council reviews EU treaties’ compatibility with the constitution before ratification, allowing identification of potential conflicts and requiring prior constitutional amendment. This technique was applied to the Maastricht Treaty in 1992—the Council found certain provisions (e.g., EU citizenship granting foreigners local election rights in France) infringing French people’s sovereignty principles, necessitating constitutional change¹⁷. France then added a new Title XV to the Constitution and several amendments to enable EU membership on constitutional terms. The supreme principle in the French order is that the Constitution remains the Republic’s highest law. This derives directly from Article 54 of the Constitution, stating that if an international agreement contains

¹⁶ Bundesverfassungsgericht, Judgment 2 BvR 859/15....

¹⁷ Conseil constitutionnel, Decision No. 92-308 DC....

provisions conflicting with the constitution, it cannot be ratified unless the constitution is amended first. In the EU law context, the Constitutional Council developed this in its December 20, 2007 decision on the Lisbon Treaty¹⁸. It ruled that if EU participation obligations contain provisions conflicting with the constitution or infringing “essential conditions for exercising national sovereignty,” prior constitutional revision is necessary. In other words, the constitution prevails in areas defining sovereignty and state structure. Only a conscious constitutional legislator’s decision (via amendment) can permit derogation from these principles for EU obligations. This occurred before Lisbon Treaty ratification—the Council identified elements requiring change (e.g., expanding integration clauses in Article 88 of the Constitution), which were implemented before final ratification¹⁹. A particular contribution of the French Constitutional Council to collision doctrine with EU law is the concept of “France’s constitutional identity.” This emerged in Decision No. 2006-540 DC of July 27, 2006, concerning a law transposing an EU directive. The Council stated that directive transposition cannot infringe a principle or norm²⁰ inseparably linked to France’s constitutional identity unless the constitutional legislator consents. In practice, this means certain constitutional values—defined as identity elements (e.g., state secularism, basic citizen rights, equality)—cannot be overridden by EU obligations if not covered by transferred competences. The Fifth Republic’s Constitution, though amended multiple times for integration (e.g., adding Article 88-1 confirming France’s EU participation), remains the supreme control standard. While the Council traditionally held it does not assess secondary EU law’s constitutionality (leaving it to European courts and primacy principle), it marked a boundary: EU law cannot undermine the “essence of the Union as a union of sovereign states” or French constitutional principles. If it did, it would require constitutional change or—theoretically—refusal to implement the law. France’s position is emphatically confirmed by State Council (highest administrative court) judgments. In the 2001 SNIP case, it stated that the Community law primacy principle cannot infringe the binding force of the French Constitution²¹. More recently, in April 2021, the State Council in a ruling on

¹⁸ Conseil constitutionnel, Decision No. 2007-560 DC, December 20, 2007 (Lisbon Treaty).

¹⁹ Conseil constitutionnel, Decision No. 2007-560....

²⁰ Conseil constitutionnel, Decision No. 2006-540 DC....

²¹ Conseil d’État, SNIP case, 2001.

telecommunications data retention again emphasized the French Constitution's supremacy over European law²². This means French bodies applying law must, in collisions, seek solutions reconciling constitutional and EU requirements; if impossible, the constitutional order prevails. In France, the practical solution is usually constitutional amendment (done multiple times before ratifying successive EU treaties) to avoid incompatibility. Nonetheless, the Constitutional Council's readiness to define non possumus (integration limits) evidences a strong conviction that the constitution is a higher-order act whose provisions cannot be overturned by international court judgments.

Position of the Romanian Constitutional Court

The Romanian example is particularly intriguing, as Article 148 of the Romanian Constitution explicitly states the primacy of EU law, but only over conflicting laws and lower-ranking national provisions, not over the constitution itself. Article 148(2) reads: "Following accession, the provisions of the founding treaties of the EU and other binding Community regulations shall take precedence over conflicting provisions of internal law, subject to the provisions of the accession act"²³. In the jurisprudence of the Curtea Constituțională a României (RCC), it is interpreted that "internal law" does not encompass the constitution—thus, the constitution retains supremacy over EU law.

The RCC has repeatedly emphasized that EU participation derives from the constitution, but constitutional identity (e.g., principles of a national state, state unity, separation of powers) has not been transferred to the EU. Therefore, when the CJEU issued judgments in December 2021 and February 2022 perceived by the RCC as infringing its prerogatives, the RCC responded with an official statement on December 23, 2021²⁴. It declared that CJEU indications for judges to disregard RCC judgments require prior constitutional amendment—until revised, constitutional provisions (including Article 147(4), making RCC decisions universally binding and final) retain full force. The RCC noted that the CJEU itself acknowledged in its December 21, 2021 judgment that

²² Conseil d'État, Decision on telecommunications data retention, April 2021.

²³ Constitution of Romania, Article 148.

²⁴ Curtea Constituțională a României, Official Statement, December 23, 2021.

constitutional court decisions are binding but derived from primacy the need for their potential disregard—which, per the RCC, is irreconcilable with the Romanian Basic Law without change. In conclusion, the RCC announced that the effects of the CJEU’s December 21, 2021 judgment could materialize only after constitutional revision—otherwise, they are unenforceable under current law.

Furthermore, in its decisions (e.g., No. 390/2021), the RCC went so far as to rule that ordinary courts have no right to ignore RCC judgments by invoking EU law, and in particular, cannot refer preliminary questions to the CJEU on the constitutionality of national provisions already assessed by the RCC²⁵. Decision No. 390/2021 was a response to a flood of preliminary references from Romanian judges seeking to bypass restrictions from RCC rulings (e.g., on limitation periods). The RCC deemed this an attempt to undermine its position and ordered national courts to remain loyal to the constitution and RCC jurisprudence, indicating that the Romanian Constitution takes precedence over all other norms—since it guarantees RCC judgments’ supremacy, judges must adhere to them even if the CJEU says otherwise.

Consequently, Romania finds itself in a dual voice situation: the CJEU calls on judges to disobey the RCC, while the RCC threatens consequences for disobeying the Constitution. This is an extreme example of tension between EU loyalty and constitutional loyalty.

In this dispute, the RCC’s arguments invoke constitutional identity and sovereignty: Romania, like Poland, argues it has not transferred to the EU competences for judicial organization or criminal policy shaping. Moreover, anti-corruption efforts, though important, cannot violate constitutional principles (in Romania, issues included mass annulment of judgments by the RCC on formal grounds—the CJEU saw this as a systemic risk of impunity, but the RCC viewed it as protecting constitutional trial standards)²⁶.

The CJEU judgment of February 22, 2022, in Case C-430/21 (RS) addressed the effects of Romanian Constitutional Court (RCC) decisions on the state’s EU law obligations²⁷. In Romania, the RCC in several decisions (e.g., on limitation periods for certain corruption offenses or the unconstitutionality of special court panels) created a situation

²⁵ Curtea Constituțională a României, Decision No. 390/2021.

²⁶ Curtea Constituțională a României, Various decisions on corruption limitation periods and court panels.

²⁷ Court of Justice of the European Union, Judgment C-430/21 (RS), February 22, 2022.

potentially leading—per EU bodies—to systemic impunity for serious financial abuses harming EU interests (e.g., EU fund embezzlement). Simultaneously, Romanian law and RCC jurisprudence required ordinary courts to unconditionally apply RCC decisions and laws deemed constitutional by it, practically preventing judges from disregarding national provisions even if conflicting with EU law. The CJEU in RS deemed such a solution inadmissible: it ruled that EU law opposes national provisions prohibiting courts from examining national rules' EU compatibility if previously deemed constitutional by the constitutional court. Applying absolute primacy to RCC decisions would hinder EU law effectiveness and the preliminary reference mechanism. Moreover, the CJEU held that the EU primacy principle requires national judges to have the ability to depart from a constitutional court decision conflicting with EU law without facing disciplinary liability. This was directly aimed at Romanian practices of initiating disciplinary proceedings against judges applying EU law contrary to RCC lines. This line was upheld in the subsequent judgment: the September 26, 2024, ruling in Case C-792/22 (*Energotehnica*)²⁸. Though concerning another field (interpretation of Directive 89/391/EEC on safety and health at work), it again collided with the issue of RCC decision conflict with EU law effectiveness. In the background was a Romanian administrative court judgment with *res judicata* effect for a criminal court, and an RCC decision influencing the classification of an event as a work accident. The CJEU reiterated the general principle that EU law takes precedence over national provisions as interpreted by the constitutional court—even in sensitive areas like work accident definitions or organ jurisdiction in proceedings [22]. Importantly, in *Energotehnica*, the CJEU again emphasized that a national judge cannot be disciplinarily punished for refusing to apply an RCC decision conflicting with EU law. The latest jurisprudence toward Romania confirms EU law primacy, while introducing some nuance—the CJEU has begun paying greater attention to fundamental rights protection. In the July 2023 *Lin* judgment (C-91/23 PPU), the Court unexpectedly considered relaxing primacy rigor in favor of criminal legality (certainty of law for defendants)²⁹. However, RS and *Energotehnica* fundamentally remain in the uncompromising enforcement stream of EU law, even at the cost

²⁸ Court of Justice of the European Union, Judgment C-792/22 (*Energotehnica*), September 26, 2024.

²⁹ Court of Justice of the European Union, Judgment C-91/23 PPU (*Lin*), July 2023.

of undermining constitutional courts' positions. For the Romanian RCC, this posed a challenge to its authority—as discussed, the RCC reacted by defending the Basic Law's supremacy.

The RCC holds that it is up to the Romanian people to decide whether to amend the Constitution to comply with CJEU guidelines—the CJEU cannot force this by judgment alone. To date, Romania's Constitution has not been amended, so formally, EU law does not override the binding force of RCC decisions.

However, the state is under pressure, as the European Commission and CJEU (via rule of law mechanisms) push for adjustment to EU standards. Further developments in this conflict are possible unless compromise legislative solutions within Romania remove the “impunity risk” source while allowing the RCC to save face.

Sovereignty, Democracy, Fundamental Rights, and Constitutional Identity as Limits to EU Primacy

The analysis of jurisprudence from the four discussed states indicates a coherent picture: constitutional supremacy serves to protect sovereignty, democratic principles, fundamental rights, and each country's constitutional identity. These values delineate red lines that even deepening European integration cannot cross.

National Sovereignty: Both the PCT, FCC, FCCo, and RCC emphasize that sovereignty remains with the Member State. Competence delegation is conditional and reversible. The Polish Constitution in Article 4(1) states that the nation exercises supreme power—and combined with Article 8(1), this means the nation (via the Constitution) defines the scope of power transfer to international organizations. The German FCC stated outright that Germany retains sovereign state character under its own law and equality with other states, despite indefinite treaties. The French Constitutional Council speaks of “essential conditions for exercising national sovereignty”—if EU law infringed them, it becomes a matter requiring constitutional legislator decision (amendment). The Romanian RCC similarly asserts that EU participation does not transfer sovereignty in core areas, with the constitution as the ultimate arbiter. Sovereignty manifests in the possibility of ultimate EU exit—the

final guarantee that the state does not lose its statehood in the EU. The conclusion from all these judgments is that the EU lacks *Kompetenz-Kompetenz* (competence to decide its own competences)—states define integration limits. Democracy and Rule of Law: Constitutional tribunals ensure integration does not come at democracy's and rule of law's expense. The FCC in the Lisbon judgment indicated certain areas must remain under Bundestag decisions to preserve citizens' influence on key issues (democratic protective principle). If the EU interfered to deprive national parliaments of essential competences deciding citizens' lives, it would contradict constitutionally protected democracy. In Poland, this surfaces in judicial reform—the PCT ruled that EU interpretation cannot prevent national authorities from shaping the judiciary per the Constitution (guaranteeing separation of powers and presidential judicial appointment competences). Democratic legitimacy of state institutions, deriving from the constitution, cannot be abolished by an international court judgment. The rule of law principle (e.g., legal certainty, legality) also belongs to constitutional identity—for instance, the Italian Constitutional Court in the Taricco case refused to follow a CJEU judgment conflicting with the criminal law definiteness principle protected constitutionally; the CJEU ultimately adjusted its line, acknowledging constitutional reasons³⁰. This shows judicial dialogue can lead to incorporating constitutional democracy and rule of law requirements into EU law interpretation. Fundamental Rights: Protection of individual rights and freedoms forms a common constitutional heritage of EU states. In integration history, tensions arose—e.g., pre-Charter of Fundamental Rights era. The German FCC in *Solange I* (1974) reserved that until Community law ensures equivalent fundamental rights protection as the German Constitution, the FCC would review Community acts accordingly. Later *Solange II* (1986) noted improved EU protection, suspending such review, but retaining potential resumption. Similarly, the PCT clearly stated: Constitutional norms on individual rights and freedoms set a threshold below which EU law cannot go. If EU interpretation allowed greater citizen right restriction than the Polish Constitution permits, the PCT would affirm Basic Law primacy. The French Constitutional Council also includes constitutionally guaranteed fundamental rights in France's constitutional identity elements. Notably,

³⁰ Italian Constitutional Court, Taricco case; Subsequent CJEU adjustment.

Article 53 of the French Constitution even provides that ratifying an international agreement resulting in “relinquishment of competences in constitutionally guaranteed rights and freedoms” requires constitutional amendment³¹. Summarizing, human and citizen rights are seen as a hard core not sacrificable for integration. Constitutional Identity: In recent decades, constitutional courts have developed the constitutional identity concept to describe inviolable national order elements. The German FCC explicitly refers to constitutional identity protected by the eternity clause—encompassing democratic principles, federalism, national sovereignty, human dignity. The French Constitutional Council in 2006 used this notion, signaling readiness to defend principles “inseparably linked” to the French system. In Poland, though “constitutional identity” is not explicit in the Constitution, the PCT protects values comprising it (sovereignty, democracy, citizen rights, rule of law, national heritage—Constitution’s preamble, etc.). Romania’s RCC similarly safeguards identity, asserting it has not been transferred to the EU. The existence of an inviolable constitutional core is de facto acknowledged by all four jurisdictions, and others in Europe (e.g., Spain, Italy, Czechia, Lithuania, Denmark have similarly ruled that EU law cannot overthrow state constitutional foundations)³².

Constitutional identity acts as a guardian: reminding that the EU was built as unity respecting diversity—including constitutional traditions diversity. The CJEU acknowledges in jurisprudence (e.g., Omega case, C-36/02) the primacy of certain constitutional values (like dignity) as public order elements justifying EU law derogations³³. Though the CJEU rarely uses “constitutional identity,” Article 4(2) TEU explicitly obliges the Union to respect Member States’ “national identity inherent in their fundamental political and constitutional structures”. Thus, the EU’s foundational agreement assumes respect for Member States’ constitutions—there can be no irreconcilable conflict with them, and if one arises, the law loses validity in that state. From a Central European perspective, recent scholarly analyses underscore these tensions. Bóka and Krajnyák examine supranational rule of law interpretations, highlighting trends

³¹ Constitution of France, Article 53

³² Ordo Iuris, *Analysis of Jurisprudence of Selected EU Member States Courts on Supremacy of Constitutional Regulations over EU Law*, 2021, <https://ordoiuris.pl/analiza/analiza-orzecznictwa-sadow-wybranych-panstw-czlonkowskich-unii-europejskiej-dotyczacego-nadrzednosci-regulacji-konstytucyjnych-nad-prawem-unii-europejskiej/> [access: 28 May 2026].

³³ Court of Justice of the European Union, Judgment C-36/02 (Omega), 2004

where CJEU expansions clash with national constitutional identities, particularly in Central Europe, where historical sovereignty sensitivities amplify resistance to perceived overreach³⁴. Edited by Bóka, a collection of studies from the Central European Professors' Network further explores these dynamics, concluding that rule of law enforcement must balance EU uniformity with respect for diverse constitutional traditions to avoid eroding Member States' democratic legitimacy³⁵.

Conclusion

The conducted considerations lead to an unequivocal conclusion: the constitution, as the highest act in the national legal order, cannot be repealed or limited by international court interpretations. Both the Polish Constitutional Tribunal, German Bundesverfassungsgericht, French Conseil constitutionnel, and Romanian Curtea Constituțională consistently indicate that the ultimate limit of European integration is fundamental constitutional norms. European Union law applies in the internal legal order by virtue of consent expressed in the constitution—it does not constitute a system superior to the Basic Law but a complementary one that must coexist harmoniously with it. When dissonance arises, precedence goes to protecting state sovereignty and constitutional principles. In practice, constitutional jurisprudence serves as a safety valve: ensuring integration does not exceed frames defined by national societies in their highest laws. This does not negate European integration—on the contrary, most courts strive for dialogue and compromise. Examples like the German *ultra vires* doctrine or French identity clause are not used lightly but as *ultima ratio*. Their existence has key systemic significance: reminding that the European Union is built by and for states, not against them. National constitutions are supreme over European law, correlating with the treaties' philosophy—as noted by a Polish MEP, “Article 4 TEU speaks of respecting identity and constitutional structures (...)

³⁴ J. Bóka, E. Krajnyák, *The Supranational Interpretation of the Rule of Law: Trends and Conclusions from a Central European Perspective*, [in:] *The Supranational Interpretation of the Rule of Law: Studies of the Central European Professors' Network*, J. Bóka (ed.), Miskolc-Budapest 2024, pp. 413–478.

³⁵ J. Bóka (ed.), *The Supranational Interpretation of the Rule of Law: Studies of the Central European Professors' Network*, Miskolc-Budapest 2024.

There is thus no such thing as EU law supremacy over constitutions”³⁶. In other words, EU law takes precedence over statutes but not over Member States’ structural foundations. In light of the above, sovereignty, democracy, fundamental rights respect, and constitutional identity principles constitute uncrossable boundaries for CJEU interpretations. If the Court of Justice’s jurisprudence attempts to shift these boundaries, constitutional courts remind of the constitution’s supreme force. Such a pluralistic legal order model—though generating tensions—ultimately protects Europe’s constitutional diversity and prevents judicial power centralization at the supranational level at national core values’ expense. Thus, national constitution supremacy over conflicting CJEU jurisprudence is not only a legal postulate but a requirement stemming from democratic rule of law essence and the agreement underpinning the European Union.

³⁶ [Interia.pl, “Polexit”, “Declaration of War” – World Media on the Judgment](https://wydarzenia.interia.pl/zagranica/news-wypowiedzenie-wojny-druzgocacy-wyrok-polexit-swiatowe-media.nId,5569354), October 2021, <https://wydarzenia.interia.pl/zagranica/news-wypowiedzenie-wojny-druzgocacy-wyrok-polexit-swiatowe-media.nId,5569354> [access: 28 May 2026].

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