

Matteo Vrbán

Central European Academy

matteo.vrbán@centraleuropeanacademy.hu

<https://orcid.org/0009-0005-4986-1068>

Rule of Law Enforcement and National Constitutional Autonomy: Tensions in European Union Law

Egzekwowanie praworządności a autonomia konstytucyjna państw członkowskich: napięcia w prawie Unii Europejskiej

Abstract

The European Union has established rule of law as a foundational value and developed institutional mechanisms to ensure its protection across all Member States. Simultaneously, the founding Treaties guarantee respect for the national constitutional identity and autonomy of Member States. This paper examines the relationship between these two commitments by analyzing how the CJEU and European Commission have expanded the application of rule of law from a procedural principle to a substantive standard that intersects with Member State authority. By analyzing the institutional mechanisms through which rule of law is enforced and their interaction with national constitutional frameworks, the paper assesses different perspectives on the legitimacy of supranational judicial authority and explores the implications for democratic governance in contemporary European integration.

Key words: Rule of Law, European Union, Article 7 TEU, Democratic backsliding, National autonomy

Streszczenie

Unia Europejska ustanowiła praworządność jako jedną z podstawowych wartości oraz wypracowała mechanizmy instytucjonalne mające

zapewnić jej ochronę we wszystkich państwach członkowskich. Jednocześnie traktaty założycielskie gwarantują poszanowanie narodowej tożsamości konstytucyjnej i autonomii państw członkowskich. Niniejszy artykuł bada relację między tymi dwoma zobowiązaniami, analizując, w jaki sposób TSUE i Komisja Europejska rozszerzyły stosowanie zasady praworządności – od zasady proceduralnej do standardu materialnego, który wkracza w sferę kompetencji państw członkowskich. Poprzez analizę mechanizmów instytucjonalnych służących egzekwowaniu praworządności oraz ich oddziaływania na krajowe ramy konstytucyjne, artykuł ocenia różne perspektywy dotyczące legitymizacji ponadnarodowej władzy sądowniczej oraz bada implikacje dla demokratycznego rządzenia we współczesnej integracji europejskiej.

Słowa kluczowe: praworządność, Unia Europejska, art. 7 TUE, kryzys praworządności (regres demokratyczny), autonomia narodowa

Introduction

The concept of rule of law has been at the centre of legal and political thought for centuries, changing its meaning and function depending on the historical context and social circumstances. The rule of law is often described as the fundamental value on which the constitutional order of the European Union (hereinafter: EU) is founded, and as such is clearly expressed in Article 2 of the Treaty on European Union (TEU) and linked to its identity as a community founded on law.¹ It does not just denote a general political slogan, but builds upon the methodology previously used by the Venice Commission.² The European Commission's Communication starts from the premise that in the contemporary European legal space, a consensus has been reached on the core content of the rule of law, whereby this concept is reduced to the respect for six fundamental legal principles, including the principle of legality, legal certainty, equality before the law, prohibition of arbitrariness of executive powers and, in particular, effective judicial protection and the

¹ B. Grabowska-Moroz, J. Grogan, D.V. Kochenov, L. Pech, *Reconciling Theory and Practice of the Rule of Law in the European Union*, „Hague Journal on the Rule of Law” 2022, vol. 14, No. 2, p. 101.

² European Commission for Democracy through Law (Venice Commission), *Report on the Rule of Law*, Study No. 512/2009, CDL-AD(2011)003rev, Strasbourg, 4 April 2011, para. 35.

independence and impartiality of the judiciary.³ These requirements are increasingly being juridified through the case-law of the Court of Justice of the European Union and the development of new oversight mechanisms, thereby creating a relatively coherent set of rule of law rules as a distinct dimension of Union law.⁴

At the same time, we can observe differing perspectives and understandings in the scholarly literature, where some authors see the transformation of European rule of law mechanisms primarily as a response to the backsliding of some Member States, while others interpret the same development as a problematic expansion of the Union's powers into sensitive areas of national constitutional autonomy. Therefore, the literature emphasises the growing gap between the discourse on the rule of law at EU level and the actual situation in certain Member States, as evidenced by numerous judicial rulings, between the application of the rule of law at Member State level and its application by supranational institutions at the supranational level.⁵ This goes to show that it's hard to argue that we have one clear and universal definition of the rule of law between the Member States of the EU. Despite the increase in rule of law protection instruments at EU level, prolonged normative and institutional backsliding in certain Member States demonstrates the limited enforcement capacity of the existing tools⁶ which shows a discrepancy between the strong rhetorical commitment to the values in Article 2 of the TEU and the limited effectiveness of existing mechanisms in practice.⁷ Any attempt to conceptualise and normatively frame the implementation of the rule of law in the EU must therefore take account of this pluralistic context, the internal logic of Article 2 TEU and the case law of the Court of Justice of the EU, but also the ways in which these standards are reflected through national constitutions and judicial practice.

³ D. Kochenov, L. Pech, *Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality*, „European Constitutional Law Review” 2015, vol. 11, No. 3, p. 522.

⁴ D. Kochenov, L. Pech, *Monitoring and Enforcement...*, p. 519.

⁵ B. Grabowska-Moroz, J. Grogan, D.V. Kochenov, L. Pech, *Reconciling Theory and Practice...*, p. 105.

⁶ B. Grabowska-Moroz, J. Grogan, D.V. Kochenov, L. Pech, *Reconciling Theory and Practice...*, p. 102.

⁷ D. Kochenov, L. Pech, *Monitoring and Enforcement...*, p. 514.

Rule of Law through centuries

Before we take a deeper dive into the subject, first we have to understand better the history of the development of rule of law. From its earliest formulations, the idea of the rule of law has been shaped by broader reflections on political authority, order and the limits of power. Aristotle views the rule of law as a form of „rule of reason“, that is, as an ethical and intellectual ideal that spreads through the entire way of life of a community. As such, it is not limited to institutions alone, but implies an order in which reason replaces arbitrary will.⁸ He opposes the rule of law to the rule of the individual. He believes that laws take precedence because they are general, predetermined and the result of long-term deliberation.⁹

On the other hand, Montesquieu's model of the rule of law has a much narrower, yet more universal, character. It refers to the existence of institutional constraints that prevent the abuse of state power. The aim of such a system is to protect every citizen from arbitrary action by public officials. The rule of law, in this sense, does not represent the rule of reason as a moral ideal, but rather a legal framework that guarantees personal security and freedom. Montesquieu emphasises that certain spheres of human activity must remain beyond state coercion, as any attempt to exert full control over them leads to tyranny.¹⁰ He connects rule of law with the principle of separation of powers, especially separating the judiciary from the executive and legislative power. The courts must act as the voice of the law without influences from other branches of the law. In his *De l'esprit des lois* he develops the legal theory that rests on principle the more complex the laws, the more they protect human dignity and provide protection against the arbitrariness of the authorities.¹¹ Another great thinker and theorist of that time, John Locke claims that the government must act under promulgated laws known to the public, which is in contrast with the government based around sudden

⁸ J.N. Shklar, *Political theory and the rule of law*, [in:] A.C. Hutchinson, P. Monahan (eds.), *The rule of law: Ideal or ideology*, Toronto 1987, pp. 2-3.

⁹ J. Waldron, *The rule of law*, [in:] E.N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, 2016, <https://plato.stanford.edu/entries/rule-of-law/> [access: 28 May 2026].

¹⁰ J.N. Shklar, *Political theory and the rule of law...*, pp. 3-4..

¹¹ J. Waldron, *The rule of law...*

and arbitrary, not necessarily repressive but unpredictable, decisions that create legal uncertainty among people.¹²

Later on, British constitutional theorist A. V. Dicey puts the principle of legal equality in the center of rule of law arguing that no person is above the law. Adding to that, he also emphasizes that one can be punished only for acts that are clearly prohibited by law and subject to legal sanction after a trial before the court.¹³ *Magna Carta Libertatum* or The Great Charter from the 1215 is often considered as the first written document that serves as a predecessor of the modern concept of the rule of law.¹⁴ As Tate emphasises, the barons rebelled precisely because of King John's personal intervention in legal disputes, so clauses 39 and 40 of the Charter serve to limit such arbitrary royal power over the judiciary.¹⁵

Principle of Rule of Law in the European Union

The rule of law is one of the fundamental shared values of the European Union and is explicitly stated in Article 2 of the Treaty on European Union. It entails that all public authorities act solely within the limits laid down by law, in respect of democratic principles and fundamental rights, and that their actions are subject to the supervision of independent and impartial courts. Respect for the rule of law is of crucial importance for the functioning of the European Union as a whole, particularly for the effective application of Union law, the proper functioning of the internal market, the preservation of a favourable investment environment, and the strengthening of mutual trust between Member States.

To ensure and promote the rule of law, the EU has developed a range of mechanisms and instruments. The European Union's policy in this area is based on three main pillars. The first pillar concerns promoting a culture of the rule of law within the Union, which includes joint efforts aimed at deepening the understanding and awareness of the significance of the rule of law in the European space. The second pillar focuses on prevention, that is, on preventing the emergence of rule of law issues in Member States, with the possibility of early action to avoid their further

¹² J. Waldron, *The rule of law...*

¹³ J. Waldron, *The rule of law...*

¹⁴ J.C. Tate, *Magna Carta and the definition of fundamental rights*, „Tulsa Law Review” 2024, vol. 59, p. 43.

¹⁵ J.C. Tate, *Magna Carta and the definition...*, p. 46.

deterioration. In this context, the European Rule of Law Mechanism is particularly important, whose central feature is the annual report on the state of the rule of law. The third pillar encompasses the Union's ability to respond effectively in cases where a breach has been established in a Member State.¹⁶ On 11 March 2014, the European Commission defined a procedure for situations where there are clear indications of a threat to the rule of law in a Member State of the European Union by adopting a Communication entitled "A new EU Framework to strengthen the Rule of Law".¹⁷

Furthermore, on 3 April 2019, the Commission published the Communication "Further strengthening the Rule of Law within the Union – State of play and possible next steps", with a goal of raising public awareness and fostering debates on rule of law issues at national and European level.¹⁸ The European Commission's Annual Report on the Rule of Law provides the basis for a structured dialogue between EU institutions, Member States and other relevant stakeholders. Aim of the Rule of Law Report is to look at key developments in the area of the rule of law across the EU and it covers four main pillars: the judicial system, anti-corruption mechanisms, media pluralism and other institutional issues related to the principle of the separation of powers.¹⁹

Worth mentioning is also that in 2011, the European Commission for Democracy through Law (Venice Commission), as an advisory body on matters of democracy and rights, published a report on the rule of law, emphasizing the importance of a common understanding of this concept. In this document, the rule of law is described as a principle according to which all holders of authority must treat individuals with respect, equality, and reasonableness, exclusively within the framework of the law. At the same time, individuals must be guaranteed the possibility of having the legality of such decisions reviewed by independent

¹⁶ EUR-Lex, *Vladavina prava (Rule of law)*, 2023, https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=LE-GISSUM:rule_of_law [access: 28 May 2026].

¹⁷ European Commission, *Communication from the Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law*, COM(2014) 158 final, 2014, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0158:FIN:EN:PDF> [access: 28 May 2026].

¹⁸ European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council: Further strengthening the Rule of Law within the Union – State of play and possible next steps*, COM(2020) 580 final, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52019DC0163> [access: 28 May 2026].

¹⁹ European Commission, *EU Rule of Law Report*, 2025, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/democracy-eu-citizenship-anti-corruption/anti-corruption/eu-rule-law-report_en [access: 28 May 2026].

and impartial courts through fair judicial proceedings.²⁰ In its 2016 report, the Commission found that, despite differing viewpoints, there is consensus on the fundamental components of the rule of law. These fundamental elements include: (1) legality, with transparent, accountable and democratic procedures for adopting regulations; (2) legal certainty; (3) prohibition of arbitrariness; (4) access to justice before independent and impartial courts, including judicial review of administrative acts; (5) respect for human rights; and (6) prohibition of discrimination and equality before the law.²¹ The process of the supranationalisation of the concept of the rule of law is closely linked to the shaping of constitutional federalism in Europe, utilising both soft and hard law instruments.

Today's institutional and normative framework of the European Union enables the further strengthening and development of its constitutional federation. Such development inevitably entails certain limitations on national sovereignty, and the continuation of this trend can reasonably be expected, since the interpretation of the rule of law is increasingly being transferred to the supranational level. In this context, the question is increasingly being raised as to how such an interpretation can be implemented and sanctioned in different Member States, particularly in those where the understanding and application of the rule of law differ from the supranational approach.²² The fundamental framework of the relationship between European Union law and the national legal systems of the Member States stems from the principle of supremacy, which the Court of Justice of the European Union established in the *Costa v. ENEL* judgment in 1964. In that judgment, the Court clearly established that Union law takes precedence over national regulations, even though such a principle is not expressly contained in the Treaties themselves. As primary law does not provide for the direct regulation of the question of primacy, this doctrine has emerged through the development of case law and has become one of the key features of the European legal order.²³

²⁰ European Commission for Democracy through Law (Venice Commission), *Report on the Rule of Law...*, 2011.

²¹ European Commission for Democracy through Law (Venice Commission), *Rule of Law Checklist*, adopted at its 106th Plenary Session (Venice, 11–12 March 2016), Strasbourg 2016, pp. 10–11, https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf [access: 28 May 2026].

²² J. Bóka (ed.), *The Supranational Interpretation of the Rule of Law*, Miskolc–Budapest 2024, p. 21.

²³ J. Bóka (ed.), *The Supranational Interpretation...*, p. 416.

Preventive and Sanctioning Mechanisms for upholding the rule of law in the EU

The fundamental values set out in Article 2 of the Treaty on European Union are protected by two mechanisms, a preventive and a sanctions mechanism, both provided for in Article 7 of the TEU. The preventive mechanism, provided for in paragraph 1 of Article 7, is triggered when there is a clear risk of a serious breach of the values in Article 2, and was first activated against Poland in December 2017. The sanctions mechanism, defined in the second and third paragraphs of the same Article, allows the Council of the European Union to take punitive measures. For example, the temporary suspension of voting rights against a Member State that has committed a serious and persistent violation of the values common to the Union and its Member States.²⁴ On a reasoned request from one third of the Member States, the European Parliament or the European Commission, the Council may, with the prior consent of the European Parliament and by a four-fifths majority of its members, conclude that there is a clear danger that a Member State is seriously breaching the Union's values laid down in Article 2. Before adopting such a decision, the Council shall hear the Member State concerned and, where appropriate, address recommendations to it, and shall periodically review the reasons for the decision. If it is unanimously determined that there has been a serious and persistent breach of the values referred to in Article 2, the Council may by qualified majority, temporarily suspend certain rights of the Member State deriving from the Treaties, including its right of vote in the Council.²⁵ In the context of Article 7 of the Treaty on European Union, according to some authors, the key problem lies in the fact that this provision is perceived in political terms as a last resort, intended for application exclusively in exceptionally serious situations, which is why it is often described as the nuclear option. Furthermore, the procedure is marked by very demanding decision making thresholds, as the imposition of sanctions requires a unanimous decision of the European Council, excluding the vote of the state to which the procedure

²⁴ A. Magen, L. Pech, *The rule of law and the European Union*, [in:] *Handbook on the Rule of Law*, Northampton 2018, p. 237.

²⁵ G. Budó, *EU Common Values at Stake: Is Article 7 TEU an Effective Protection Mechanism?*, „Documents CIDOB (Nueva época)” 2014, No. 1, p. 11.

applies, which in practice makes it almost impossible to apply the most severe measures under Article 7, especially because some countries already expressed their intent to protect each other in this scenario, like Hungary and Poland.²⁶

The Treaty on the Functioning of the European Union (TFEU) prescribes that if the European Commission finds that a Member State has failed to fulfil an obligation arising from the Treaties (TEU and TFEU), it first gives it the opportunity to make its observations, and then adopts a reasoned opinion on the matter. If the Member State fails to act in accordance with the opinion within the period laid down by the Commission, the Commission may refer the matter to the Court of Justice of the European Union (CJEU). A Member State which considers that another Member State has failed to fulfil any obligation arising from the Treaties may bring proceedings directly before the CJEU. However, it must first refer the matter to the Commission, which gives both parties the opportunity to present their arguments and observations, both orally and in writing, and then issues a reasoned opinion. If the Commission does not adopt an opinion within three months of the referral, this does not prevent the case from being brought before the CJEU. Should the Court of Justice of the European Union find that a Member State has failed to fulfil its obligations, that State must take the necessary measures to comply with the judgment. Also, if the Commission considers that these measures have not been taken, it may bring proceedings before the Court again, after giving the Member State concerned the opportunity to make observations, and propose an amount of a lump-sum or a periodic penalty payment which it considers appropriate. If the Court confirms that the state has failed to comply with the judgment, it may impose a lump-sum or periodic penalty payment. When the Commission initiates proceedings for a Member State's failure to notify measures transposing a directive adopted through the legislative procedure, it may immediately propose the amount of the lump-sum or pecuniary penalty it considers appropriate. If the Court finds that there has been a breach, it may impose a penalty not exceeding the amount proposed

²⁶ D. Kochenov, L. Pech, *Better late than never? On the European Commission's rule of law framework and its first activation*, „JCMS: Journal of Common Market Studies” 2016, vol. 54, No. 5, p. 1065.

by the Commission, and the obligation to pay shall arise on the date specified by the Court in its judgment.²⁷

Regulation 2020/2092 introduces a specific regime to protect the European Union budget in situations where the rule of law is undermined in a Member State. The application of this conditionality regime presupposes that the breach of the rule of law has a real, or at least seriously likely, impact on the proper and efficient management of Union funds or on the protection of its financial interests, where this link must be sufficiently direct. In this way, the Regulation simultaneously serves a fiscal function by safeguarding the budget and a constitutional political function by strengthening respect for the rule of law in the Member States.²⁸ Article 322(1)(a) of the TFEU, located among the financial provisions of the Treaty, was chosen as the legal basis, as this article empowers the Union legislature to lay down the regulations or procedures for the adoption and execution of the budget.²⁹

Regulation 2020/2092 provides for a whole range of measures, the choice of which is linked to the way the Commission implements the Union budget. Where the Commission manages the funds itself (directly or through intermediaries), and the beneficiary is a public-law body, the relevant Member State may resort to measures such as suspension of payments or suspension of the implementation of a specific legal relationship, up to and including its termination. Furthermore, the conclusion of new legal obligations may be prohibited, the payment of instalments temporarily or partially suspended, or the early repayment of loans secured by the Union budget may be required, reduce or withhold the economic benefit from budget-supported instruments, and prevent the conclusion of new loan or other financial instrument agreements with a budgetary guarantee. If the budget is implemented in a system of shared management with the Member States, measures such as the temporary suspension of the approval of one or more programmes or their amendments may be applied to the Member State concerned, the freezing or reduction of commitments (including financial corrections or the reallocation of funds to other programmes), the reduction of

²⁷ Consolidated Version of the Treaty on the Functioning of the European Union (2016/C 202/01), art. 258–260, https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF [access: 28 May 2026].

²⁸ J. Łacny, *The Rule of Law Conditionality Under Regulation No 2092/2020 – Is it all About the Money?*, „Hague Journal on the Rule of Law” 2021, vol. 13, No. 1, p. 84.

²⁹ J. Łacny, *The Rule of Law Conditionality...*, p. 89.

pre-financing, the suspension of payment deadlines or the complete suspension of payments.³⁰

Although proceedings under Article 7 of the Treaty on European Union were already underway against Poland and Hungary, the development of the conditionality mechanism was reportedly prompted by the situation in those very countries. Interestingly, on 11 March 2021, both states brought actions for annulment of the Regulation, challenging its legality. This gave rise to cases C-156/21 (Hungary v. the European Parliament and of the Council) and C-157/21 (Poland v. the European Parliament and of the Council). In this context, on 18 September 2022, the mechanism was activated for the first time against Hungary. Some authors point out that although the Regulation itself formally respects the principle of equality, since it applies to all Member States without singling any of them out, the fact that both this instrument and the Article 7 procedure have been initiated against the same state, raises the question of whether the conditionality mechanism was in fact designed as an additional tool to address the same problem, but through a different institution.³¹ They also claim that vaguely defined criteria for the selection and scope of measures call into question the proportionality and transparency of the mechanism itself. This situation arises from the dilemma over whether the European Commission has excessively broad discretionary powers under the procedure.³²

Democratic Backsliding in the European Union

Authors Pech and Scheppele define the rule of law backsliding as the “process through which elected public authorities deliberately implement governmental blueprints which aim to systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic state and entrenching the long-term rule of the dominant party”.³³

³⁰ J. Łacny, *The Rule of Law Conditionality...*, p. 90.

³¹ J. Bóka (ed.), *The Supranational Interpretation...*, pp. 407–408.

³² J. Bóka (ed.), *The Supranational Interpretation...*, p. 408.

³³ P. Laurent, K.L. Scheppele, *Illiberalism within: rule of law backsliding in the EU*, „Cambridge Yearbook of European Legal Studies” 2017, vol. 19, p. 10.

The rule of law backsliding is a key issue for the entire European Union, as its consequences do not affect only the citizens of the state in which this process takes place as the Member States today are so interconnected that the effects of the collapse of the rule of law cannot be confined solely to the territory of the state in which it occurs.³⁴ Pech and Scheppele in this context highlight the examples of Hungary and Poland, but warn that attention should not be confined to these states, since similar phenomena can be observed in other Member States where this trend is also present, particularly where the judiciary is historically weak or burdened by corruption.

They consider problematic precisely that these are the states which have already once achieved the rule of law, and are now systematically dismantling it, which is a qualitatively different problem from situations in which the rule of law was never established in the first place. Such a development, in their view, arises from a deliberate strategy by the public authorities aimed at fundamentally undermining pluralism and creating a *de facto* one-party system.³⁵

The World Justice Project (WJP) Rule of Law Index is an annual indicator that measures citizens' perceptions and experiences of the rule of law worldwide, with results ranging from 0 to 1, where 1 signifies the highest degree of adherence to the principles of the rule of law. The latest data for 2025 show that among the EU Member States, at the bottom of the ranking are Hungary with an index of 0.50 and Bulgaria with 0.55, followed by Greece with a score of 0.60, while Croatia and Romania achieve slightly better results (both 0.61), Slovakia (0.64), and Italy and Poland (both 0.66). At the top of the ranking are the Nordic countries, with Denmark at 0.90 remaining the highest ranked country in the world in this regard.³⁶

Also, the Commission's Rule of Law Report 2025 was officially published on 8 July 2025 which comprises a general communication, a package of recommendations and separate chapters for each Member State. The report is divided into the four usual pillars – the judiciary, the anti-corruption framework, media pluralism and media freedom, and institutional checks and balances, with each country receiving a summary

³⁴ P. Laurent, K.L. Scheppele, *Illiberalism within...*, p. 11.

³⁵ P. Laurent, K.L. Scheppele, *Illiberalism within...*, pp. 11–12.

³⁶ World Justice Project, *WJP Rule of Law Index 2025*, pp. 10–11, <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2025.pdf> [access: 28 May 2026].

of the situation, key issues identified, and recommendations.³⁷ Furthermore, the 2025 General Communication highlights that while some progress has been made in implementing earlier recommendations in most states, it also warns that systemic violations persist in a smaller number of member states, particularly concerning the independence of the judiciary, the politicisation of state institutions, and an insufficiently effective fight against corruption.³⁸

In December 2017 the European Commission for the first time activated the preventive procedure, under Article 7(1) TEU against Poland, submitting a reasoned proposal to the Council to establish a clear risk of a serious breach of EU values, due to the alleged violations of the principle of judicial independence by the Polish government.³⁹ In May 2024, the Commission terminated the procedure on the grounds that there was no longer a clear risk of a serious breach of the rule of law in Poland within the meaning of Article 7(1) TEU, which followed the change in the parliamentary majority following the 2023 election, paving the way for the closure of the procedure.⁴⁰

Alongside the case against Poland, on 12 September 2018 the European Parliament decided to activate the procedure under Article 7(1) of the TEU against the Hungarian government, which is still ongoing at the time of writing, and on the basis of the report by MEP Judit Sargentini, which questioned the compatibility of numerous elements of the Hungarian legal order with the Union's *acquis*, covering various problematic areas, viewed through the prism of the rule of law, such as the reform of the judiciary, the constitutional and electoral system, the right to equal treatment, and the protection of human rights for minorities, migrants, asylum seekers and refugees. The report also addresses a number of interconnected issues, including corruption, the protection of privacy and personal data, freedom of expression, the autonomy of the academic

³⁷ European Commission, *EU Rule of Law Report...*, 2025.

³⁸ European Commission, "Progress in Rule of Law in EU but Further Action Needed, Finds Report", news release, 2025, https://commission.europa.eu/news-and-media/news/progress-rule-law-eu-further-action-needed-finds-report-2025-07-08_en [access: 28 May 2026].

³⁹ N. Daminova, *Rule of law vs. Poland and Hungary – An inconsistent approach?*, „Hungarian Journal of Legal Studies” 2021, vol. 60, No. 3, p. 244.

⁴⁰ M. Krogel, *The closure of the Article 7 (1) TEU procedure against Poland: The weight of intentions and the risk to common values in the twilight of illiberalism*, „Maastricht Journal of European and Comparative Law” 2025, p. 317.

community, freedom of religion and association, as well as the gradual phasing out or curtailment of economic and social rights.⁴¹

Supranationalisation of the rule of law

At multiple levels, one can recognise the process of transferring the concept of the rule of law to the supranational sphere. Although its meaning occupies a central place in the discourse of these institutions, legally binding acts do not offer a direct definition of the term. Instead, the basis is sought in documents that carry political weight or in soft-law instruments, whose role is primarily to set normative guidelines. Over time, there has been a visible trend for the rule of law to gradually become one of the key areas of interest, even within organisations that did not initially address it systematically. In the absence of a precise definition in legally binding acts, institutions often rely on standards and concepts developed by other bodies.⁴²

The general purpose of sanctions is to encourage states to comply with their legal obligations. However, as has already been noted, many of the analysed mechanisms are based on soft-law instruments, which suggests that the process of supranationalisation of the rule of law is taking place in parallel with the gradual hardening of such norms. The most pronounced example of the application of strict sanctions is found in the practice of the European Court of Human Rights, whose judgments are binding on the Member States. In the event that the Court finds a violation, States are obliged to implement the judgment, which may include the payment of monetary compensation, reimbursement of costs of proceedings, or other non-pecuniary forms of reparation.⁴³

The relationship between the Court of Justice of the European Union and national courts is a complex and multidimensional issue that fits within the broader process of the gradual federalisation of the European Union. This process includes the constitutional shaping of the Treaties and the increasingly prominent role of the Court as a kind of constitutional court of the Union. In this context, one can also observe the transfer of certain values, primarily those of national constitutional law,

⁴¹ N. Daminova, *Rule of law vs. Poland and Hungary...*, pp. 245–247.

⁴² J. Bóka (ed.), *The Supranational Interpretation...*, p. 26.

⁴³ J. Bóka (ed.), *The Supranational Interpretation...*, p. 347.

to the supranational level. Examples such as the supranationalisation of the rule of law confirm that the constitutional development of the European Union is still ongoing, with the role of Member States in shaping this process becoming increasingly limited.⁴⁴

Constitutional Identity Versus Judicial Supremacy: The Question of Overreach

In the process of the European Union's constitutional development, the Court of Justice of the European Union plays a particularly important role. Through its rulings, it has gradually established a legal order for the whole Union which, in its structure and effects, resembles a constitution rather than merely a collection of individual legal provisions. In doing so, the principle of the supremacy of EU law over the national laws of Member States was also consolidated alongside institutionalised hierarchy in which European law occupies a higher level.⁴⁵ Some scholars identify difficulties when the supremacy of Union law over national courts is established without a clear and legitimate basis in the transfer of powers. Such practice can be interpreted as a departure from the fundamental requirements of the rule of law in the functioning of the Court of Justice of the European Union. If the constitutional courts of the Member States are permanently sidelined from an equal-footed European constitutional dialogue and reduced to a hierarchically subordinate position, the very stability of European constitutional democracy would be called into question in the long term.⁴⁶

Although the case of *Coman v Romania* primarily concern the tension between free movement rights and the protection of national identity, it also indirectly reflect rule of law principles, particularly the supremacy of EU law, legal certainty and the effective judicial protection of individual rights. Since Member States have not transferred competence in the field of substantive family law to the European Union, that area is nevertheless

⁴⁴ J. Bóka (ed.), *The Supranational Interpretation...*, p. 438.

⁴⁵ J. Bóka (ed.), *The Supranational Interpretation...*, p. 433.

⁴⁶ J. Bóka (ed.), *The Supranational Interpretation...*, p. 438.

not entirely exempt from occasional interventions by EU institutions.⁴⁷ One of the most important judgments of the Court of Justice of the European Union in the context of family law is case *C-673/16*, or the so-called *Coman and others v. Romania*, which represents a conflict between the right to free movement and national identity. The Romanian authorities refused to recognise the marriage of two men because the Romanian Civil Code not only does not recognise marriages contracted between persons of the same sex, but also directly excludes the recognition of such marriages contracted abroad. The Court of Justice of the European Union ruled that the term „spouse“ should be interpreted as gender neutral and that states must recognise the individual legal effects of a marriage solely for the purpose of enabling those persons to exercise the rights which they derive from EU law. However, as Kokić and Šimović note, the functional limitation on recognition is difficult to sustain because once it is required, the relationship can be recognised for other purposes as well. The author points out that the Court explicitly concluded that States cannot invoke national identity and public policy to protect and preserve the traditional family, thereby limiting the autonomy of Member States in assessing their own public policy.⁴⁸

The *Cupriak-Trojan case (C-713/23)* represents the next step in the evolution of the Court of Justice of the European Union's case law on the recognition of same-sex marriages. Two Polish nationals married in Germany in 2018 and requested to be entered in the Polish civil registers. The Polish authorities refused on the grounds that same-sex marriages are not permitted under Polish law. Finally, the Court ruled that Member States must recognise the marriage for all purposes, not just for the purpose of exercising the freedom of movement as in the *Coman* case. Although the Court reiterates that such an obligation does not require a Member State to introduce same-sex marriage, Šimović and Kokić note that this case is qualitatively different: the Court has disregarded the principle of attribution since substantive family law has never been attributed to the EU by the Member States. By obliging Poland to recognise an institution that is contrary to its public policy, the Court calls national sovereignty

⁴⁷ M. Antokolskaia, *Harmonisation of substantive family law in Europe: Myths and reality*, „Child and Family Law Quarterly“ 2010, vol. 22, No. 4, p. 412.

⁴⁸ I. Šimović, J. Kokić, *EU FAMILY LAW AND THE PROTECTION OF TRADITIONAL FAMILY VALUES*, „InterEULawEast: Journal for the international and european law, economics and market integrations“ 2025, vol. 12, No. 2, pp. 55–57.

into question. The authors conclude that with this judgment, the Court has once again stepped into an area which, because of its deep roots in tradition, customs, culture and religion, can in no way become the subject of unification and confirmed that the sovereignty of a Member State to regulate same-sex marriage nevertheless has a (restrictive) impact on the sovereignty of other Member States.⁴⁹

Conclusion

The relationship between the enforcement of the rule of law and national constitutional autonomy in the European Union represents a paradox that strikes at the very heart of European integration. This paper traces how the Union's legitimate concern over democratic backsliding in several Member States has spurred the development of increasingly assertive enforcement mechanisms, yet it is precisely these mechanisms that are creating new tensions over the limits of the EU's competence and the authenticity of its respect for constitutional diversity. A historical analysis shows that, although the rule of law has ancient philosophical roots, its contemporary juridification at the EU level represents a qualitatively new phenomenon. The European Commission's efforts to operationalise the principles of the rule of law through monitoring reports and recommendations, reflect genuine institutional learning. However, the persistence of backsliding in several Member States, despite years of applying the Article 7 procedure, reveals political constraints that limit preventive mechanisms.

The conditionality mechanism introduced by Regulation 2020/2092 represents the Union's latest solution, linking the payment of budgetary funds to compliance with the rule of law. By basing its implementation on the financial interests of the Union rather than exclusively on constitutional values, this mechanism bypasses some of the political obstacles that have paralysed Article 7. The validation of this regulation by the Court of Justice in the Hungarian and Polish cases marked a significant moment, with the Court explicitly articulating the EU's constitutional identity, founded on the values of Article 2, which Member States cannot override by selectively invoking national identity. However, questions of

⁴⁹ I. Šimović, J. Kokić, *Reflections on the CJEU's Judgment in Wojewoda Mazowiecki*, „CEAC Law Blog”, 2025, <https://www.ceaclaw.org/post/reflections-on-the-cjeu-s-judgment-in-wojewoda-mazowiecki> [access: 28 May 2026].

proportionality and the potentially discriminatory targeting of certain states continue to generate scholarly debate and political resistance.

The deepest tensions perhaps do not arise from the cases of democratic backsliding but from the gradual expansion of the Court of Justice's jurisdiction into policy areas that Member States never formally transferred to the Union. Case law on family law, analysed in the *Coman* and *Wojewoda Mazowiecki* cases, illustrates this pattern. While the Court frames its interventions as necessary to protect fundamental freedoms and ensure the uniform application of EU law, national constitutional courts increasingly perceive these moves as *ultra vires* acts that threaten constitutional autonomy.

This produces a paradox: robust enforcement of the rule of law requires strong supranational institutions with the ability to overcome national resistance, but the unlimited expansion of the powers of those same institutions without clear authorisation in the Treaties only breaches the fundamental principles of the rule of law. So, when the Court of Justice requires from Poland to recognise same-sex marriages not just for the purposes of freedom of movement but for all purposes, despite marriage unquestionably falling within retained national competences, this fuels arguments that European Union is striving for ideological uniformity rather than legal integration.

The way forward requires institutional humility on both sides. The European Union must recognise that not all national deviations from Union's preferred policies constitute by itself a regression of the rule of law. Member States possess legitimate diversity in certain areas, reflecting different constitutional traditions and democratic choices. On the other hand, Member States cannot instrumentalise the invocation of constitutional identity to protect the systematic dismantling of judicial independence or the capture of oversight institutions. The challenge lies in developing principled criteria to distinguish legitimate constitutional diversity from illegitimate democratic backsliding. Resolving the paradox between the implementation of the rule of law and constitutional autonomy will determine whether European integration can advance while respecting the democratic pluralism that makes Europe distinctive. The main question is whether the citizens across diverse European societies can recognise the European Union as a legitimate source of authority, or increasingly perceive it as an external force imposing foreign values through legal coercion.

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