



Rule of Law: Supranationalization from the Perspective of Slovakia

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Abstract. This study examines Slovakia's engagement with the European Union's rule of law framework, focusing on the constitutional provisions, institutional reforms, and interactions with EU oversight mechanisms. It traces how Slovakia's legal and judicial structures evolved in response to EU accession requirements, particularly the incorporation of rule of law principles into its constitutional order. The analysis considers the role of EU institutions such as the European Commission, European Parliament, and the Court of Justice of the European Union in shaping Slovakia's commitments to democratic governance, judicial independence, and anti-corruption standards. This study also addresses continuing challenges, including political interference, inefficiencies in the judiciary, and the social exclusion of minority groups. These issues illustrate the ongoing conflict between national sovereignty and the primacy of EU law. This examination clarifies Slovakia's position within the EU's rule of law framework and contributes to a broader understanding of how the rule of law is enforced in Central and Eastern Europe.

Keywords: rule of law, Slovakia, EU legal framework, judicial independence, sovereignty, anti-corruption

1. Introduction

The concept of the 'rule of law', perhaps most aptly captured by the German notion of the *Rechtsstaat* (state ruled by law, or state of law), is often taken for granted in contemporary democratic Europe. Yet such an assumption is misleading. The idea is neither the product of historical inevitability nor the result of linear development. Its emergence was long, complex, and at times violent.

In its most general sense, the *Rechtsstaat*, or rule of law, may be described as a system of governance in which the state and its authorities act solely on the basis of law and within the limits established by law. The intellectual foundations of this concept can be traced back to modern theories of the social contract and the recognition of natural rights. It was further shaped by two major traditions: nineteenth-century German legal positivism and Anglo-Saxon liberalism and constitutionalism between the thirteenth and nineteenth centuries. Within the Anglo-Saxon custom, the English tradition of a strong and independent judiciary – tasked with ‘finding’ law in the general legal consciousness of society – proved decisive.

The German understanding of the *Rechtsstaat*, which crystallized in the nineteenth century before the genuine democratization of Central European societies, emphasized the restriction and regulation of state power through valid law, particularly in instances where state action intrudes upon the lives of individuals and communities. This understanding presupposed a limited sphere of state authority exercised exclusively on the basis of publicly accessible and valid legal norms. By its very nature, the *Rechtsstaat* stands in contrast to the *Obrigkeitsstaat* or *Polizeystaat* (authoritarian or police state) and the *Nichtrechtsstaat* (a state characterized by the arbitrary use of power).

The term *Rechtsstaat* first appeared in the writings of Robert von Mohl (1799–1875), notably in his work *Die Polizei-Wissenschaft nach den Grundsätzen des Rechtsstaates* (The German Science of Internal State Administration According to the Principles of the Rule of Law), written in the nineteenth century.¹ For von Mohl, the *Rechtsstaat* was conceived as the antithesis of the absolutist *Polizeystaat* and, within the nineteenth-century context, could be interpreted as a constitutional state.

At its core, the rule of law entails that law is binding not only on ordinary citizens but also on political power itself, including those who exercise it and those who legislate. Seeking the roots of the rule of law thus involves identifying the historical moment when the conviction emerged that legislators and the state are constrained by law, even by the laws they themselves promulgate.

Understanding the historical roots of the rule of law helps explain why its meaning and application continue to evolve in Central and Eastern Europe. These countries have had to adapt the principle not only to their own constitutional traditions but also to the demands of supranational institutions such as the European Union and the Council of Europe. Within this context, Slovakia provides a particularly telling example.

The principle of the rule of law is at the heart of Slovakia’s constitutional and legal system. Enshrined in Article 1(1) of the Slovak Constitution, it draws on the German *Rechtsstaat* tradition, focusing on legality, legal certainty, and

1 Von Mohl, 1844.

proportionality. In practice, the rule of law in Slovakia is not a purely abstract or formal principle. It operates as a living standard that guides governance, shapes legal interpretation, and ensures that the state remains accountable to both its own constitutional order and its commitments at the supranational level.

Adopted after the breakup of Czechoslovakia, the Slovak Constitution represents a key document in Central European constitutionalism. It sets out a broad catalogue of fundamental rights in Chapter II, protecting individuals while also defining the responsibilities of state authorities. These rights are not merely declaratory but are supported by strong enforcement mechanisms, ranging from ordinary courts to the Slovak Constitutional Court (SCC). Over time, the SCC has been central to giving real meaning to the rule of law. Its decisions have transformed the principle from a formal safeguard into a substantive constitutional value, one that requires well-crafted legislation, respect for democratic standards, and the preservation of citizens' trust in the legal system.

The constitutional amendments adopted in preparation for EU accession, most notably the 2001 EU Amendment, played a decisive role in aligning Slovak law with European standards. These reforms introduced provisions that enabled the transfer of certain competences to the EU and affirmed the primacy of EU law over domestic legislation. These developments opened up a necessary discussion about the relationship between Slovakia's constitutional identity and its obligations as an EU Member State.

This process of alignment has not been without challenges. Tensions between national sovereignty and the primacy of EU law, concerns over judicial independence, and ongoing issues of corruption and minority rights reflect the complexities of Slovakia's rule of law journey. This study examines Slovakia's engagement with the EU's rule of law framework. It considers constitutional provisions, judicial interpretations, and the influence of EU oversight mechanisms, with the aim of exploring both Slovakia's evolving relationship with European values and the broader implications for the enforcement of the rule of law in Central and Eastern Europe.

2. Slovakia's Engagement with the EU's Rule of Law Framework

Slovakia's engagement with the EU's rule of law framework is deeply rooted in its constitutional order, shaped by a post-communist legacy aimed at consolidating democratic governance, judicial independence, and fundamental rights. The Slovak Constitution (*Ústava Slovenskej republiky*),² adopted in 1992 and amended several times to accommodate EU membership requirements, embeds

2 Constitution of the Slovak Republic (1992), Act No. 460/1992 Coll., as amended.

the rule of law as a foundational principle of the state. Commitment to the rule of law is articulated unequivocally in the preamble and foundational provisions of the Slovak Constitution. Article 1 declares: ‘The Slovak Republic is a sovereign, democratic state governed by the rule of law.’

The principle of the rule of law (*právny štát*) mirrors the German *Rechtsstaat* concept, emphasizing legality, legal certainty, and proportionality. These attributes align with the EU’s broader understanding of the rule of law, as enshrined in Article 2 of the Treaty on European Union (TEU).³ Under the Slovak Constitution, the rule of law implies that all state authorities, including the executive, legislative, and judicial branches, are bound by the Constitution and statutory laws.⁴ This principle is further reinforced by the constitutional obligation to protect fundamental rights and freedoms.⁵ Slovakia’s transition to a state firmly rooted in democracy and the rule of law has been marked by substantial progress, especially since its accession to the EU. During the 1990s, Slovakia faced considerable international criticism for failing to uphold democratic norms and the rule of law. This period, often referred to as the ‘*Mečiar* era’, was characterized by a concentration of power, weak checks and balances, and limited judicial independence. Scholars at the time highlighted the challenges Slovakia faced in establishing its own institutions necessary for a functional democracy.⁶

EU accession requirements served as a significant catalyst for Slovakia to adopt institutional reforms aimed at strengthening its democratic foundations. These reforms included enhancing judicial independence, improving mechanisms for protecting fundamental rights, and increasing transparency in governance. The European Commission’s monitoring under the Copenhagen Criteria played a critical role in these developments, ensuring that Slovakia met the standards required for EU membership. In preparation for accession, Slovakia introduced constitutional amendments to harmonize its legal order with EU requirements. Notably, Constitutional Act No. 90/2001 Coll. amended the Constitution to permit the transfer of certain sovereign powers to international organizations, including the EU. Article 7(2) explicitly states that Slovakia may ‘transfer the exercise of certain rights to the European Communities and the European Union’, provided this does not contravene the sovereignty of the Slovak Republic. This provision reflects the tension between national sovereignty and EU legal primacy, a recurring theme in Slovakia’s engagement with the EU’s rule of law mechanisms.

The Constitution of the Slovak Republic, which is currently in force, was adopted in a unique historical and political context. On 31 December 1992, the

3 Treaty on European Union (TEU) (1992) Consolidated version, *Official Journal of the European Union*, C 326, 26 October 2012, p. 13.

4 Constitutional Court of the Slovak Republic, 2014.

5 Bóka, 2024.

6 Kusý, 1999, pp. 101–117.

Czech and Slovak Federal Republic dissolved into two sovereign states, marking a significant milestone in Central European history. The drafting of the Slovak Constitution played a symbolic role in the country's emancipation from the federation, a process that began earlier in 1992. While the dissolution of the federation was politically coordinated between Czech and Slovak leaders, from a domestic legal perspective, the split was initiated by Slovakia's unilateral actions during the summer of 1992. On 17 July 1992, the Slovak National Council (the legislative body of the Slovak part of the federation, separate from the Federal Parliament) adopted the Declaration on the Sovereignty of the Slovak Republic. This document invoked the principle of self-determination and asserted the independence of Slovakia, setting the stage for the constitutional and legal foundations of the modern Slovak state.⁷

The Slovak Constitution reflects elements of the shared constitutional tradition of Czechoslovakia, which existed from 1918 to 1992. This tradition includes key constitutional documents, such as the constitutions of 1920, 1948, and 1960, as well as the federalization legislation of 1969–1970, which transformed Czechoslovakia from a unitary state into a federal state. However, unlike the Czech constitutional approach, Slovak constitutional texts and culture tend to avoid explicit references to this shared heritage. Despite this, Slovak constitutional culture continues to draw inspiration from the Czech Republic. Slovak legal practitioners and academics frequently reference Czech constitutional textbooks and commentaries, whether explicitly acknowledged or indirectly incorporated.

The Slovak Constitution occupies the highest position in the hierarchy of the Slovak legal system. Its role is comparable to that of constitutions in most European states, governing the institutional framework of the state, delineating the separation of powers, and providing a catalogue of fundamental rights for citizens. Article 1(1) establishes the rule of law and the sovereignty of the Slovak Republic. Notably, the Slovak Republic's sovereignty coexists with its international commitments. Articles 1(2) and 7 of the Constitution establish the obligation to respect international commitments and permit the transfer of the exercise of certain state powers through international treaties, including those related to the EU. The conclusion of such treaties should not be seen as a limitation of sovereignty but rather as an expression of it, since only a sovereign state can decide to undertake international commitments.

The Constitution imposes clear limits on state power, emphasizing legality, accountability, and the protection of fundamental rights. Article 2(2) restricts state authorities to act only within the boundaries of the law, reinforcing the principle of legality. This is further elaborated through the institutional provisions that define the specific roles and responsibilities of state powers. Fundamental human rights are enshrined in Articles 12 to 54 under Chapter II, which provides

⁷ Declaration on the Sovereignty of the Slovak Republic (1992) adopted on 17 July 1992.

a comprehensive framework for individual freedoms and rights, aligning with European human rights standards.

Although the principle of the separation of powers is not explicitly mentioned in the Constitution, the document's structure clearly delineates the division of legislative, executive, and judicial powers. Chapters V, VI, and VII detail the organization and functions of the legislative, executive, and judicial branches, respectively, ensuring a system of checks and balances crucial for upholding the rule of law.

The Slovak Constitution underwent significant amendments to align its legal framework with the requirements for EU membership. These changes, encapsulated in Constitutional Act No. 90/2001, commonly referred to as the 'EU Amendment', marked a critical juncture in Slovakia's path towards European integration. Adopted on 23 February 2001 and entered into force on 1 July 2001, this amendment also laid the groundwork for Slovakia's accession to NATO.

The EU Amendment introduced several new provisions to the Slovak Constitution that directly facilitated EU accession, while embedding the principles of international cooperation and legal alignment.

Article 1 was revised to include a new subparagraph explicitly affirming Slovakia's commitment to international law. The added provision states: 'The Slovak Republic recognizes and honours general rules of international law, international treaties by which it is bound, and its other international obligations.'

The most consequential changes were made to Article 7, which delineates Slovakia's relationships with international organizations. Initially limited to a general reference to state unions, the revised Article 7 now includes distinct provisions related to EU membership and international obligations. The amended Article 7 states:

(1) The Slovak Republic may, by its own discretion, enter into a state union with other states. A constitutional law, which shall be confirmed by a referendum, shall decide on the entry into a state union, or on the secession from such union.

(2) The Slovak Republic may, by an international treaty, which was ratified and promulgated in the way laid down by a law, or on the basis of such treaty, transfer the exercise of a part of its powers to the European Communities and the European Union. Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic. The transposition of legally binding acts which require implementation shall be realized through a law or a regulation of the Government according to Art. 120, para. 2.⁸

8 Translation by the author. Unless otherwise specified in the footnotes, all translations from non-English sources are by the author.

The amended text explicitly allows for the transfer of the exercise of certain sovereign rights to the European Communities and the EU through an international treaty. Additionally, it establishes the primacy of legally binding EU acts over Slovak laws, reflecting the principle of EU legal supremacy. To implement binding EU acts requiring transposition, laws or government ordinances can be adopted under Article 120(2). These provisions enabled Slovakia to integrate EU legal norms into its domestic framework, ensuring compatibility with the EU's supranational legal system.

Several amendments addressed fundamental rights and their alignment with international and EU legal standards. The permissible time limits for detention were extended from 24 hours to 48 and 72 hours, providing greater procedural flexibility in Articles 17 and 18. The constitutional prohibition on extradition was abolished in Article 23, allowing Slovak citizens to be surrendered to other states and facilitating compliance with EU extradition mechanisms such as the European Arrest Warrant. Article 30 was amended to grant voting rights to foreigners with permanent residence in Slovakia in local and regional self-administration elections. This provision exceeds EU requirements, which mandate voting rights only for EU citizens, demonstrating Slovakia's progressive approach to inclusivity within its democratic framework.

A new subparagraph was added to Article 120, granting the Slovak Government authority to issue ordinances to implement international treaties, including the Europe Agreement establishing an association with the European Communities. This provision streamlined the domestic adoption of EU laws and facilitated compliance with EU regulations and directives.

The EU Amendment represents a transformation of Slovakia's constitutional order. By embedding the primacy of EU law, facilitating the transfer of sovereign rights, and aligning fundamental rights with EU standards, the amendment ensured Slovakia's readiness to participate fully in the EU's legal and institutional framework.

The transfer of powers to the EU under Slovak constitutional law is explicitly governed by Article 7(2) of the Slovak Constitution. This provision allows the Slovak Republic to 'transfer the exercise of a part of its rights to the European Communities and European Union' through an international treaty. The scope, legal effects, and limitations of this transfer have been the subject of considerable academic debate and jurisprudential interpretation.

Two constitutional provisions form the backbone of Slovakia's approach to EU law: Article 1(2) and Article 7.

Article 1(2) establishes a general obligation for the Slovak Republic to 'respect its international obligation'. While this provision does not explicitly mention EU law, it provides a constitutional basis for incorporating international treaties into the domestic legal system. In the context of EU law, it signals Slovakia's

commitment to its obligations as an EU Member State, ensuring compliance with supranational norms.

Article 7(2) explicitly addresses the transfer of powers to the EU, recognizing its unique legal order. It permits Slovakia to transfer competences via international treaties, such as the Treaty on the Functioning of the European Union (TFEU), which are deemed legally binding acts. Furthermore, this provision enshrines the principle of primacy, granting precedence to EU law over conflicting domestic laws. Article 7(5) further clarifies the legal status of international treaties, including EU treaties. It specifies that international treaties that do not require implementing legislation or directly establishing rights or obligations for individuals 'shall have primacy over the laws'. This constitutional recognition ensures that EU primary law, such as the EU treaties, operates effectively within the Slovak legal framework.

The integration of EU law into Slovakia's constitutional order has sparked debates among legal scholars and within the SCC. These debates focus on the precise constitutional basis for the legal effects of EU law and the nature of its primacy.

Scholars are divided over whether EU primary law derives its legal effects from Article 7(2) or Article 7(5) of the Constitution.⁹ One school of thought argues that Article 7(2) governs the transfer of competences, thereby providing a foundation for the legal status of EU law.¹⁰ Others contend that Article 7(5), which directly addresses the primacy of certain international treaties, is the more appropriate basis for recognizing the special status of EU law within Slovakia's legal hierarchy.

The SCC's jurisprudence has reflected these interpretative tensions. In its earlier decisions, the SCC suggested that the TFEU and other EU treaties constitute a 'special subcategory of international treaties' governed by Article 7(2). For example, in a ruling on health insurance companies, the SCC emphasized that the TFEU is a legally binding act through which Slovakia transferred competences to the EU, thereby situating it within the framework of Article 7(2).¹¹ However, the Court also affirmed that such treaties remain subject to constitutional review under Article 125, suggesting a dual role as both international treaties and constitutional instruments. More recent SCC rulings, such as the judgement on data retention,¹² have departed from this position, introducing further uncertainty regarding the precise constitutional status of EU law. These shifts in jurisprudence highlight the changing approach of the SCC towards EU integration and the balancing act between constitutional sovereignty and supranational obligations.

9 Vikarská and Bobek, 2019.

10 Drgonec, 2013, pp. 1463–1489.

11 Slovak Constitutional Court, 2009, *Judgement Pl. ÚS 3/09 (Health insurance)*, part V.3.4.

12 Slovak Constitutional Court, 2014, *Judgement Pl. ÚS 10/14 (Data retention)*, n. 14, para. 69.

Constitutional courts play a role in shaping a country's relationship with EU law through the opinions expressed in their rulings. These courts possess the authority to interpret constitutional provisions and assess their compatibility with EU obligations. However, their decisions are invariably bound by the framework established by statutory law enacted by the national legislature. The context in which a constitutional court operates – geographical, historical, and political – is crucial to understanding its approach to EU law. In the case of the SCC, its evolution mirrors the broader trajectory of Central European constitutional courts. These courts emerged in a post-communist environment characterized by an aspiration to align with the legal and institutional frameworks of advanced Western democracies. The SCC, endowed with extensive powers of constitutional review, has been credited with contributing significantly to Slovakia's democratic consolidation during the 1990s.

A comparative analysis of Central European constitutional courts reveals both patterns and divergences in their engagement with EU law. While these courts often acknowledge the primacy of EU law, they frequently frame this recognition within the context of 'national constitutional identity'.¹³ This pluralist approach attempts to reconcile the supremacy of EU law with the preservation of domestic constitutional principles. Unlike courts in some Western European jurisdictions, constitutional courts in Central Europe have generally refrained from the outright rejection of EU law. However, their efforts to strike a balance between EU obligations and national sovereignty have not always succeeded, with notable missteps observed in Poland and the Czech Republic.

The SCC's role exemplifies the broader struggle of Central European constitutional courts to reconcile the demands of supranational integration with the imperatives of domestic constitutionalism. The SCC has had several key opportunities to define its stance on the relationship between the Slovak legal system and the EU's legal order. These cases illustrate the challenges of balancing national sovereignty with EU membership obligations.

The first case, initiated in 2005, involved an individual complaint following the Slovak National Council's ratification of the Treaty Establishing a Constitution for Europe.¹⁴ The complainants argued that this Treaty would effectively transform the EU into a 'state union', which, under Article 7(1) of the Slovak Constitution, required approval by a constitutional law confirmed via referendum. They claimed that this omission violated their constitutional right to participate in public affairs (Article 30) and contravened Article 2(1), which stipulates that state power originates from citizens, exercised directly or through their representatives. After a lengthy three-year deliberation, the SCC delivered its ruling in 2008 (No. II. ÚS 171/05), dismissing the complaint. The

13 Cebulak, 2012, pp. 501–502.

14 Slovak Constitutional Court, 2008, *Ruling No. II. ÚS 171/05*.

Court acknowledged the EU's trajectory towards deeper integration but stated that it was impossible to determine when the EU might become a state union. By rejecting this claim, the SCC avoided providing definitive criteria for classifying the EU as a state union or addressing the constitutional implications of such a development. The ruling left critical constitutional questions unresolved. For example, the SCC declared that a referendum on further EU treaties could never be required under Article 93(1) of the Constitution, which mandates referenda for joining or seceding from a state union. This interpretation appears logically inconsistent, as it disregards the constitutional provision for obligatory referenda in cases of significant transfers of sovereignty. Furthermore, the Court invoked human rights concerns in the Treaty to argue against a referendum, despite constitutional provisions prohibiting referenda on such matters.

The second key case, decided in 2011 (PL. ÚS 3/09), concerned a constitutional review initiated by Slovak Members of Parliament (MPs) challenging legislation limiting the profits of health insurance companies.¹⁵ The MPs argued that the law violated not only the Slovak Constitution but also the provisions of the Lisbon Treaty. The SCC ruled the law unconstitutional, citing its inconsistency with property rights under both the Slovak Constitution and EU law. The most significant aspect of the decision was the SCC's acknowledgement of the principle of the primacy of EU law. The Court explicitly stated that all public bodies – not just general courts – are obligated to disapply domestic laws that conflict with EU law. It further emphasized that general courts could refer such cases to the Court of Justice of the European Union (CJEU) for clarification under Article 267 of the TFEU.

Despite the constitutional provisions affirming the primacy of EU law, its position within Slovakia's legal order is not absolute. EU law, as interpreted by the SCC, remains subject to constitutional review, particularly in cases where it conflicts with fundamental constitutional principles or the protection of fundamental rights. This approach aligns with the broader trend of constitutional pluralism in Central and Eastern Europe, where national courts assert the right to review the compatibility of EU law with domestic constitutional norms. In this context, the SCC has emphasized the importance of dialogue between the Slovak constitutional order and the EU legal system. While recognizing the primacy of EU law, the Court has stressed the need to preserve Slovakia's constitutional identity, reflecting broader debates across Europe about the limits of EU legal supremacy.

The SCC has yet to definitively address whether Article 7 of the Slovak Constitution has transformed the nature of sovereignty from an absolute to a relative concept. This question remains open to interpretation. Assessing whether constitutional sovereignty is absolute or relative is inherently political, influenced not solely by the text of national constitutional provisions but also by the specific context of individual cases and the prevailing political and legal climate within

15 Slovak Constitutional Court, 2009, *Judgement Pl. ÚS 3/09 (Health insurance)*, part V.3.4.

Slovakia and the EU at any given moment. The debate on sovereignty is not unique to Slovakia. A comparative example is the Czech Constitutional Court's (CCC) shifting interpretations. In its Lisbon II decision,¹⁶ the CCC embraced a 'shared' or 'pooled' sovereignty model, which is widely celebrated among constitutional pluralist scholars. However, just three years later, in the Holubec case,¹⁷ the CCC adopted a more isolationist stance, effectively reaffirming a *de facto* absolute notion of sovereignty. The Czech Constitution itself did not change during this period, reinforcing the idea that interpretations of sovereignty are not static but dynamic and shaped by the changing political landscape. In Slovakia, the absence of a direct ruling by the SCC on this issue leaves room for speculation. The interpretation of Article 7, particularly regarding sovereignty, is likely to depend on the specific context of future cases.

Article 7(2) of the Slovak Constitution provides the legal basis for Slovakia to transfer 'the exercise of a part of its rights' to the European Communities and the EU. This provision is distinct from the more conventional language of 'transfer of powers' found in some constitutional texts, such as those of Germany or France. The choice of terminology in Article 7(2) mirrors the constitutional language of Belgium and Luxembourg, emphasizing the transfer of the exercise of rights rather than the rights themselves. The Constitution explicitly prohibits the transfer of all sovereign rights, requiring that any delegation be partial. This ensures that the core aspects of national sovereignty remain intact. This provision limits the delegation to the exercise of rights, preserving the theoretical ownership of those rights within the Slovak constitutional framework.

The Slovak Constitution does not explicitly regulate the relationship between EU Law and the domestic constitutional framework. While it recognizes the primacy of EU Law over sub-constitutional domestic legal norms through provisions such as Article 7(5), it remains silent on the issue of whether EU law could supersede the Constitution itself. The absence of explicit regulation has left the question of constitutional supremacy versus the primacy of EU law unresolved in Slovakia. To date, no direct conflict has arisen between EU legal norms and the norms of Slovak constitutional law, allowing the issue to remain theoretical.

Although there has been no direct confrontation between Slovak constitutional provisions and EU law, a potential point of tension is embedded in the Slovak legal order itself. Article 144(2) of the Constitution requires judges who find a provision of Slovak law in conflict with an international treaty, including EU treaties as recognised under Article 7(5), to suspend proceedings and refer the case to the SCC. This procedural requirement appears to contradict the

16 Czech Constitutional Court, 2009, *Pl. ÚS 26/06, 2009*.

17 Czech Constitutional Court, 2012, *Judgement of 31 January, Pl. ÚS 5/12*.

principle established in the Simmenthal ruling¹⁸ of the CJEU, which mandates that national judges set aside conflicting national norms without taking further procedural steps. This conflict raises questions about the practical reconciliation of Slovakia's constitutional provisions with the direct applicability and primacy of EU Law as interpreted by the CJEU.

Slovak legal scholarship and the SCC have grappled with the implications of EU law's primacy, often framing the debate within the broader context of international treaties. Notably, Drgonec has argued that 'European law has primacy over laws, but not over the Constitution'.¹⁹ This interpretation stems from the SCC's jurisprudence, which has traditionally regarded international treaties as tools for interpreting domestic law rather than as instruments with automatic constitutional supremacy.

In its rulings, the SCC has largely avoided directly addressing the potential conflict between EU law and the Slovak Constitution, focusing instead on the general principles governing the relationship between the Constitution and international treaties. The SCC has consistently upheld the idea that international treaties, including EU treaties, are subject to constitutional review under Article 125. This suggests that the SCC considers the Constitution to occupy a superior position within the domestic legal hierarchy, even in the context of EU law. The practical implications of this unresolved relationship are significant. In the absence of a clear constitutional framework addressing the primacy of EU law over constitutional norms, Slovak judges and legal practitioners face uncertainty when confronted with potential conflicts. This ambiguity may lead to inconsistent applications of EU law, and, in extreme cases, tensions between Slovakia's constitutional order and its obligations as an EU Member State. Future developments may compel the SCC to address this issue directly. For instance, if an EU legal norm were to conflict with a fundamental constitutional provision – such as one safeguarding sovereignty or fundamental rights –, the SCC would need to reconcile its traditional interpretation of constitutional supremacy with the EU's principle of primacy. This could either reaffirm Slovakia's constitutional identity or prompt a shift towards a more Europeanist approach.

This debate in Slovakia is not unique. Comparative scholarship on Central and Eastern Europe shows that constitutional identity and the boundaries of EU legal primacy have been recurring themes across the region. Post-communist Central and Eastern European (CEE) countries have navigated a balance between embracing EU legal primacy and protecting their constitutional identity – the core principles and attributes of statehood embedded in their national constitutions. Many new CEE Member States explicitly permitted the transfer of sovereign

18 Court of Justice of the European Union, 1978, *Amministrazione delle Finanze dello Stato v. Simmenthal*, Case 106/77, [1978] ECR 629.

19 Drgonec, 2013, pp. 1463–1489.

powers to the EU in their constitutions, but often with textual safeguards to prevent the erosion of fundamental constitutional principles. For example, several CEE constitutions (e.g. the Czech Republic, Bulgaria, Romania) entrenched an unalterable core of fundamental values,²⁰ implicitly delineating a constitutional identity that EU law must not violate. Constitutions also sometimes limited how sovereignty could be shared. A number of countries (such as Luxembourg, Spain, Belgium, and Romania) specify that only the exercise of certain competences – not the competences themselves – may be transferred to the EU, ensuring that ultimate authority remains with the state.²¹ Even where not explicitly labelled ‘identity’, courts in Poland, Estonia, and beyond have insisted that EU acts respect fundamental national constitutional principles, reflecting a general regional ethos that EU integration ends where the constitution’s core begins.

National constitutional courts in CEE have emerged as guardians of the boundary between EU law and constitutional supremacy. These courts were established in the 1990s following the Austrian/German model, with broad powers of judicial review to protect the constitution.²² Early on, they played an important role in democratic consolidation and generally retained their independence. With EU accession, they also assumed the role of delineating how far EU law may encroach upon the national constitutional order. In Poland, for instance, the Constitutional Tribunal’s jurisprudence asserted clear limits: in its review of the EU Accession Treaty, the Tribunal warned that neither the Constitution’s Article 90 (permitting the delegation of powers) nor Article 91 (on international treaties) could justify a transfer of competences so extensive that Poland ‘would [be] unable to continue functioning as a sovereign State’ or that an international organization ‘would in fact become the sovereign’.²³ Similarly, the CCC’s Lisbon Treaty decisions crafted the doctrine of a protected ‘material core’ of the Czech constitution. Czech judges deliberately avoided exhaustively listing core principles, instead affirming that they would review EU measures against the Constitution’s overarching order and define the content of constitutional identity on a case-by-case basis.²⁴ In other words, the Czech Court signalled openness to EU integration in general, while reserving the ultimate authority to strike down an EU act that breaches the essential elements of Czech constitutional identity. This stance echoes the approach of the German Federal Constitutional Court

20 Ismayr, 2004b.

21 Besselink, Claes, Imamović, and Reestman, 2014.

22 Ismayr 2004a.

23 Constitutional Tribunal of the Republic of Poland [Trybunał Konstytucyjny], 11 May 2005. Judgement in case *K 18/04*: On the constitutional conformity of the Accession Treaty [Wyrok w sprawie K 18/04: o zgodności konstytucyjnej Traktatu akcesyjnego], para. 8.

24 Constitutional Court of the Czech Republic [Ústavní soud České republiky], 26 November 2008. Decision in case *Pl. ÚS 19/08 (Lisbon I)*: Ruling on the constitutionality of the Treaty of Lisbon [Rozhodnutí ve věci Pl. ÚS 19/08 (Lisabon I): Rozsudek o ústavnosti Lisabonské smlouvy].

and has been mirrored in various forms across the region. Hungary's post-2010 jurisprudence went further: under the 2011 Fundamental Law,²⁵ the Hungarian Constitutional Court²⁶ emphasized Hungary's historic constitutional self-identity (including its Christian culture) as a value that the state must protect, laying the groundwork for a potential review of EU obligations on identity grounds.

The Slovak case exemplifies these dynamics. The 1992 Slovak Constitution, as amended in 2001 ahead of EU accession, authorized the transfer of certain powers to the EU but did so within a cautious framework. Notably, Slovakia did not adopt a standalone 'Euro-Atlantic integration' chapter, as Romania did; instead, the provisions on EU membership appear in Article 7 alongside clauses on state unions and other international obligations.²⁷ This placement signalled that EU membership was part of a broader constitutional context of external relations rather than a wholesale redefinition of the polity. The 2001 amendment enabling EU integration was contentious – it polarized the political scene and an already divided society, which in turn lowered public reverence for the Constitution as a stable legal foundation.²⁸ Even after joining the EU, Slovakia's constitutional text continued to frame EU law's domestic status in a qualified manner. Article 7 (as revised) affirms that legally binding acts of the EU have primacy over ordinary Slovak laws, but it pointedly omits any mention of supremacy over the Constitution. In practice, this means that while Slovak authorities and courts generally apply EU law, the Constitution retains the highest rank in the legal order – a latent safeguard for fundamental principles. Indeed, Slovak constitutional jurisprudence has acknowledged an implicit 'material core' of the Constitution (covering principles such as democracy, rule of law, and fundamental rights) that even constitutional amendments cannot abrogate. This concept, akin to constitutional identity, implies that if an EU act were ever to contravene the essence of Slovakia's constitutional order, the national Constitution would prevail unless amended. Notably, to date, the SCC has not nullified an EU measure; Slovak courts have largely avoided direct confrontation with the CJEU. Nevertheless, the constitutional framework in Slovakia, as elsewhere in CEE, clearly keeps the door open to asserting national constitutional primacy in extreme scenarios.

Recent developments in Slovakia demonstrate how the region's ongoing 'identity vs primacy' debates have now reached the country. After years of Slovakia being seen as a relatively EU-loyal jurisdiction, a new wave of constitutional proposals in 2024–2025 explicitly invoked national identity to limit EU law.

25 Fundamental Law of Hungary, 2011. *Magyar Közlöny* [Official Gazette of Hungary], No. 43/2011.

26 Hungarian Constitutional Court, 2016. Decision 22/2016. (XII. 5.) AB on constitutional identity.

27 Galetta, Kämmerer, and Pereira da Silva, 2023.

28 Moormann-Kimáková, 2016.

A comparative look at CEE reveals a shared commitment to constitutionalism, tempered by European integration. Countries such as Poland and the Czech Republic have articulated the doctrine that EU law is welcome as long as it does not mutilate the constitutional identity of the nation. Slovakia's experience fits this pattern: it integrated EU law under constitutional conditions, and its institutions – from the design of Article 7 to the reasoned vigilance of its Constitutional Court – have maintained that the Constitution's primacy endures, at least as a last resort. Thus, the Slovak case illustrates a broader regional theme: post-communist EU members, while largely committed to EU legal primacy, uniformly insist that certain fundamental national constitutional principles remain inviolable. In Slovakia, as elsewhere, this insistence has not led to open rebellion against EU law so far, but it has created a constitutional caveat that hovers in the background of EU–national relations. The ongoing dialogue – sometimes tense – between national courts and the EU legal order in CEE continues to define the evolving notion of constitutional identity in the EU, with Slovakia now actively participating in that conversation.

As the Slovak experience illustrates, several constitutional court decisions and legal developments highlight the tensions between EU law and national constitutional identity. In particular, the jurisprudence of the SCC reveals how core constitutional principles are protected amid European integration. Some notable issues include:

Pre-emptive EU Primacy Clause – In 2001, Slovakia amended its Constitution to recognize the primacy of EU law before actually joining the EU. This proactive move created a paradox: the country effectively guaranteed the supremacy of an international organization's legal acts without yet being a member of that organization.²⁹ Scholars have criticized this pre-emptive primacy clause as conceptually problematic and arguably nonsensical because the authority of EU law should not depend on national affirmation.³⁰ In fact, such an *ex ante* national confirmation could even undermine the effectiveness of EU law, a result at odds with EU legal doctrine. This issue, raised prior to accession, foreshadowed later questions about how EU obligations fit within the Slovak constitutional order.

EU Membership vs State Sovereignty

Shortly after accession, the SCC addressed whether entering the EU meant creating a new 'state union' that would trigger the constitutional provision requiring a special approval (a constitutional law confirmed by referendum). In a 2005 case (decided in 2008), the Court decisively rejected this notion. It held that nothing in the EU's founding treaties indicated that the EU was becoming a state

²⁹ Krunková, 2023.

³⁰ *Ibid.*

union of the kind envisioned in Article 7(1) of the Slovak Constitution.³¹ The Court concluded that Slovakia's EU membership did not constitute the formation of a supranational state federation, and thus no referendum was required. Any claims that the EU would turn into a 'state union' upon the treaty's adoption were unproven and unfounded. This ruling affirmed that, from the Slovak constitutional perspective, the EU remains an international organization; joining it did not violate or fundamentally alter Slovakia's constitutional identity in a manner necessitating special sovereign assent.

The Constitutional Court's Self-Limiting Approach

In its subsequent EU-related jurisprudence, the SCC has adopted a cautious, sovereignty-conscious stance. When reviewing national measures connected to EU law, the Court has insisted that Slovak constitutional norms are the primary frame of reference, with EU law considered only in a secondary, complementary role. For example, in a case challenging national legislation against the EU Charter of Fundamental Rights, the Court first examined compatibility with the Slovak Constitution and only then evaluated consistency with EU law.³² It acknowledged that, where national law falls within the scope of EU law, domestic fundamental rights must be interpreted in harmony with the EU Charter and the case-law of the CJEU. However, this requirement operates only after confirming that the national legislation does not contradict the Slovak Constitution. In practice, this means that the SCC will not strike down Slovak laws solely for breaching EU law unless and until it is sure that those laws pass muster under the national constitution. This self-limiting approach reflects a respect for national constitutional sovereignty even while complying with EU obligations, and it has incrementally strengthened the position of the Slovak constitutional order vis-à-vis EU law (a trend dating back to the Court's early post-accession case-law).

Implicit Material Core of the Constitution

Finally, the SCC has clarified that certain fundamental principles form an inviolable core of the Constitution – essentially, a constitutional identity that even constitutional amendments or government acts cannot breach. Notably, in the *Mečiar amnesties* decision of 2017, the Court invalidated controversial amnesty measures and, in doing so, identified an implicit material core of the Constitution anchored in the principles of a democratic state governed by the rule of law.³³ The Court stated that, while Slovakia's constitution contains no explicit eternal

31 Slovak Constitutional Court, 2008, *Ruling No. II. ÚS 171/05*.

32 Slovak Constitutional Court, 2014, *Judgement Pl. ÚS 10/14*.

33 Slovak Constitutional Court, 2017, *Judgement PL. ÚS 7/2017*.

clauses, these overarching principles (e.g. rule of law, protection of fundamental rights, separation of powers) represent the essence of the constitutional order. Their enumeration is not fixed and may evolve, but any interference with this core must be scrutinized on a case-by-case basis with regard to its intensity. By affirming that certain foundational values cannot be overridden, the Constitutional Court reinforced the notion of a Slovak constitutional identity that persists despite political or legal changes.

3. The Role of Different EU Institutions in the Rule of Law Dialogue with Slovakia

The European Commission plays a central role in monitoring the rule of law across EU Member States, including Slovakia. This is accomplished primarily through two key mechanisms: the Rule of Law Reports and the EU Justice Scoreboard. These instruments serve to assess, compare, and promote adherence to fundamental rule of law principles.

The Rule of Law Reports form part of the European Commission's broader efforts to ensure compliance with the EU values enshrined in Article 2 of the TEU. Slovakia features prominently in these annual assessments, which highlight progress, challenges, and recommendations specific to its national context. Past Rule of Law Reports have highlighted notable deficiencies in areas such as the independence and accountability of the judiciary, corruption prevention, and the transparency of public decision-making processes. The absence of a comprehensive legal framework to regulate lobbying, which has undermined public trust in political and administrative institutions, has been noted in past years. Recommendations have included adopting lobbying legislation, establishing an Office for the Protection of the Public Interest, and improving the framework for conflict-of-interest declarations and asset transparency among public officials. Slovakia has been encouraged to address long-standing issues in its judiciary, such as inconsistent disciplinary proceedings and perceived political influence. Although progress has been made through reforms aimed at improving judicial accountability and efficiency, challenges remain, particularly concerning public perceptions of judicial independence. Despite improvements in anti-corruption measures, the Commission has highlighted the need for systemic changes to effectively combat high-profile corruption cases. For example, the powers of the General Prosecutor have been flagged as overly broad, potentially enabling the misuse of authority.

The last report was published in 2024, at the time of writing this study.³⁴ The 2024 Rule of Law Report for Slovakia offers a comprehensive evaluation of the

³⁴ European Commission, 2024a.

country's adherence to EU rule of law principles, focusing on developments, challenges, and recommendations in critical areas. The report underlines both the progress and setbacks in Slovakia's judicial system, anti-corruption framework, media independence, and civil society engagement.

The report highlights significant concerns about judicial independence in Slovakia. Public and corporate trust in the judiciary remains low, with only 33% of the general population perceiving judicial independence as 'fairly' or 'very good'. A notable issue is the reform of the Judicial Council, whose members were dismissed by government and parliamentary actors without sufficient safeguards. This has raised alarms about political interference, particularly given the lack of progress in ensuring the independence of Judicial Council members, as recommended in previous reports.

Additionally, reforms to criminal law, including provisions addressing judicial decisions categorized as 'abuse of law', have not introduced adequate safeguards. The absence of protections exposes judges to the potential misuse of legal provisions, creating a chilling effect on judicial decision-making.

In terms of efficiency, the judicial map reform, operational since June 2023, has introduced structural changes aimed at specialization and efficiency, such as the establishment of separate administrative courts. While initial disruptions were observed, the system is adapting to the new framework. However, systemic challenges such as prolonged case durations and staff shortages persist.

Slovakia's fight against corruption has faced significant setbacks, with the dissolution of the Special Prosecutor's Office (SPO) being a pivotal issue. A key institution in combating high-level corruption, the SPO was dismantled without adequate safeguards, leading to the redistribution of its cases and prosecutors to less specialized units. This has disrupted ongoing investigations and weakened the institutional capacity to address corruption effectively.

The report also criticizes amendments to the Criminal Code, which reduced penalties for corruption-related crimes and shortened statutes of limitation, potentially benefiting high-level defendants. The report warns that these changes could undermine Slovakia's ability to address high-level corruption, a concern compounded by the unchecked powers of the Prosecutor General to annul prosecutorial decisions.

While a new National Anti-Corruption Strategy (2024–2029) is under development, doubts remain regarding its implementation and the effectiveness of measures addressing lobbying, asset declarations, and ethics in public office.

Media independence remains under threat in Slovakia. Although legal frameworks such as the Media Services Act promote ownership transparency, concerns persist regarding public service media. A new law dissolved the existing public broadcaster and established a new entity, raising fears about its editorial

independence. Additionally, journalists' working environments have reportedly deteriorated, with increased risks and pressures affecting their safety.

The environment for civil society organizations, particularly those involved in oversight and human rights advocacy, has worsened. The report notes insufficient public consultations in the legislative process, with excessive reliance on fast-track procedures that limit stakeholder engagement.

The European Commission provides several recommendations for Slovakia, including:

- Strengthening safeguards for the dismissal of Judicial Council members to ensure independence.
- Introducing legal frameworks to regulate lobbying and conflicts of interest.
- Improving protections for judges, particularly concerning 'abuse of law' provisions.
- Restoring the autonomy and editorial independence of public service media.
- Ensuring the effective prosecution of high-level corruption cases and restricting the Prosecutor General's discretionary powers.
- Improving stakeholder involvement and public consultation in the legislative process.

The 2024 Rule of Law Report for Slovakia paints a mixed picture. While certain reforms aim to modernize the judicial system, persistent challenges, such as political interference, weakened anti-corruption mechanisms, and threats to media independence, continue to undermine the rule of law. The report calls for decisive action to address these shortcomings, emphasizing the need for stronger safeguards, greater transparency, and an inclusive approach to governance.

The EU Justice Scoreboard complements the Rule of Law Reports by providing a comparative assessment of judicial systems across Member States. It evaluates dimensions such as judicial independence, efficiency, and the quality of justice delivery. Slovakia's ranking on perceived judicial independence has fluctuated over the years, often reflecting broader political controversies and public distrust of legal institutions. Efforts to strengthen the independence of the judiciary, such as reforms to the Judicial Council, have been noted but require further implementation. The Scoreboard highlights areas for improvement in the efficiency of Slovakia's judicial system, particularly concerning the resolution of commercial disputes and the enforcement of court decisions. Delays in case handling remain a persistent concern. Another area of focus has been the accessibility of legal processes for citizens, including vulnerable groups such as minorities. Intensifying public awareness of legal rights and judicial processes remains a priority to ensure equitable access to justice. The 2024 EU

Justice Scoreboard³⁵ provided a detailed assessment of Slovakia's justice system, emphasizing critical parameters such as efficiency, quality, and independence. According to the 2024 Scoreboard, Slovakia's justice system demonstrates mixed results in terms of efficiency. The length of proceedings, particularly in civil, commercial, and administrative cases, remains an area of concern. While reforms have streamlined certain processes, significant disparities persist, with some cases taking excessively long to resolve. This inefficiency undermines public trust and creates challenges for economic operators who rely on timely judicial decisions. In terms of case clearance rates, Slovakia shows progress, managing to resolve cases at a rate close to the influx of new cases. However, a backlog of pending cases continues to affect the system, particularly in administrative courts, where unresolved cases impact citizens.

The introduction of judicial mapping reforms, aimed at increasing specialization and optimizing court resources, has yielded positive initial outcomes. However, the benefits of these changes will require continued monitoring and adaptation. The quality of Slovakia's justice system reflects both its strengths and weaknesses. The digitalization of judicial processes, accelerated during the COVID-19 pandemic, has improved access and efficiency. Citizens and businesses benefit from enhanced online services, including the electronic submission of claims and access to case information.

Judicial independence is one of the most scrutinized aspects of Slovakia's justice system. Public perceptions of independence are relatively low, reflecting broader concerns about political influence and systemic integrity. Key issues include:

- The dismissal and appointment of Judicial Council members has been criticized for potential political interference.
- The lack of sufficient safeguards to protect judges from undue influence, particularly concerning disciplinary actions.

The SCC has been instrumental in shaping the country's approach to EU law and constitutional principles. However, inconsistencies in its rulings regarding the primacy of EU law over national constitutional provisions have contributed to ongoing debates on the relationship between domestic sovereignty and European integration. The 2024 assessments accentuate the importance of sustained reform efforts to align Slovakia's justice system with EU standards. While progress has been made in efficiency and digitalization, significant challenges remain in safeguarding judicial independence and combating corruption.

The European Commission's monitoring mechanisms have had a tangible impact on Slovakia's rule of law trajectory. By identifying key weaknesses and

35 European Commission, 2024b.

providing actionable recommendations, these instruments create accountability and serve as catalysts for reform. However, political instability and resistance to change have often slowed the implementation of these recommendations.

The EU has been increasingly concerned about Slovakia's adherence to its foundational values, particularly regarding the rule of law, as outlined in Article 2 of the TEU. Recent developments suggest that the European Commission may initiate formal proceedings against Slovakia due to deteriorating democratic standards. These actions could lead to significant financial penalties, including the suspension of EU funds, potentially marking Slovakia as one of only two Member States, alongside Hungary, to face such sanctions. Infringement proceedings, governed by Article 258 of the TEU, are formal legal mechanisms by which the European Commission ensures that EU Member States comply with EU law. If the Commission identifies a breach, it can refer the case to the CJEU, which may impose penalties. This process is integral to maintaining legal uniformity and upholding the rule of law within the Union. Separately, the EU's Conditionality Mechanism, established under Regulation 2020/2092, allows the Commission to withhold EU funds if violations of the rule of law threaten the EU's financial interests. This mechanism is particularly relevant to Slovakia, given its reliance on EU funds for public investment. At the time of writing, the situation is still unfolding. Some media reports have outlined two proposals to address Slovakia's non-compliance,³⁶ while the government is asserting its ongoing communication with Brussels regarding the Recovery Plan. The outcome of this process will have significant implications for Slovakia's governance, its relationship with the EU, and the broader dynamics of rule of law enforcement within the Union.

The European Parliament (EP) plays an important role in scrutinizing and debating rule of law issues across EU Member States, including Slovakia. Through its resolutions and plenary debates, the EP has consistently addressed concerns about Slovakia's adherence to democratic principles, judicial independence, and the protection of minority rights. In recent years, the European Parliament has expressed concerns about Slovakia's judicial reforms, particularly those perceived as undermining judicial independence. Following the abolition of the SPO and changes to the penal code, the EP debated Slovakia's adherence to EU rule of law principles, emphasizing that such measures could weaken the fight against corruption and erode public trust in democratic institutions. Parliamentarians have emphasized the importance of protecting the judiciary from political interference, calling on Slovakia to ensure strong institutional protection.

The EP has also criticized Slovakia for its treatment of minority groups, particularly the Roma community. The *Moldava nad Bodvou* case, involving police violence against Roma residents, has been a recurring topic in EP discussions.³⁷

36 BNN Bloomberg, 2024.

37 Flašíková Beňová, 2013, pp. 586–587.

Resolutions on minority rights in the EU have frequently highlighted Slovakia's insufficient measures to combat discrimination and integrate marginalized communities.

While criticism has dominated recent discussions, the EP has also acknowledged Slovakia's progress in certain areas. Reforms to improve judicial efficiency and ongoing efforts to implement the Recovery and Resilience Plan have been positively noted. These achievements demonstrate Slovakia's willingness to engage with EU standards despite ongoing challenges.

The Committee on Civil Liberties, Justice, and Home Affairs (LIBE) is instrumental in examining Slovakia's rule of law performance. As one of the most active parliamentary committees in monitoring compliance with EU values, LIBE has undertaken several initiatives to scrutinize Slovakia's adherence to rule of law standards.

LIBE has conducted fact-finding missions in Slovakia to assess the state of democracy, judicial independence, and minority rights on the ground. These missions involve consultations with government officials, civil society organizations, and legal experts to gather comprehensive insights into the country's challenges and progress.

Based on its findings, LIBE has issued detailed reports evaluating Slovakia's adherence to EU values.³⁸ Recommendations from the committee have emphasized the need for the following:

- Strengthening judicial independence through transparent appointment processes.
- Enhancing protections for minority groups, particularly Roma and LGBTQ+ communities.
- Addressing corruption and ensuring the accountability of public officials.

LIBE plays a key role in supporting the EP's involvement in the EU's Rule of Law Review Cycle. By closely monitoring Slovakia's performance in this mechanism, the committee ensures that the Parliament remains informed and actively engaged in addressing systemic challenges.

The Court of Justice of the European Union (CJEU) has been instrumental in interpreting the application and primacy of EU law, particularly when conflicts arise between EU obligations and domestic legal frameworks. Slovakia's engagement with the CJEU reflects its integration within the European legal order, with significant rulings addressing issues of judicial independence and adherence to EU principles. The CJEU has adjudicated several cases involving Slovakia, addressing issues such as the primacy of EU law, judicial independence, and the rule of law.

³⁸ European Parliament, 2024.

In *Slovak Republic v Achmea B.V.* (Case C-284/16),³⁹ the CJEU examined the compatibility of arbitration clauses in bilateral investment treaties (BITs) between EU Member States with EU law. The dispute arose when Achmea, a Dutch insurer, initiated arbitration against Slovakia under the Netherlands–Slovakia BIT, challenging Slovakia’s decision to reverse health insurance liberalization. Slovakia contested the arbitration, arguing that such clauses undermined the autonomy of EU law. The CJEU ruled that the arbitration clause in the BIT adversely affected the autonomy of EU law and was therefore incompatible with it. The Court emphasized that disputes involving the interpretation or application of EU law must remain within the judicial system of the EU to ensure consistent and uniform interpretation. This judgement highlighted the primacy of EU law over national agreements and had profound implications for intra-EU BITs, leading to their reassessment and, in many cases, termination.

Slovak courts have actively utilized the preliminary ruling procedure under Article 267 of the TFEU to seek guidance from the CJEU in interpreting EU law. For instance, in *Križan and Others v Slovenská inšpekcia životného prostredia* (Case C-416/10),⁴⁰ the Slovak Supreme Court referred questions regarding access to environmental information and public participation in environmental decision-making. The CJEU’s interpretation clarified the obligations under the Environmental Impact Assessment Directive, influencing Slovakia’s administrative practices to align with EU standards.

Recent developments in Slovakia have raised concerns at the EU level regarding judicial independence and the rule of law. Reforms such as the abolition of the SPO and amendments to the penal code reducing penalties for corruption-related offences have prompted scrutiny from EU institutions. While specific CJEU rulings on these reforms are pending, the Court’s established jurisprudence emphasizes that any national measures undermining judicial independence or effective legal protection contravene EU law principles.

The European Semester serves as a framework for monitoring and coordinating economic, fiscal, and structural reforms across EU Member States. Beyond its traditional focus on economic governance, the Semester increasingly integrates rule of law considerations, particularly where governance and judicial independence impact the business environment and the implementation of EU policies. In recent cycles, Country Reports for Slovakia have consistently highlighted the reciprocity between rule of law concerns and economic performance. For instance, the 2023 Country Report emphasizes the significance of judicial reforms in stimulating a favourable business climate and improving

39 Court of Justice of the European Union, 2018, *Slovak Republic v Achmea B.V.*, Case C-284/16, ECLI:EU:C:2018:158, Judgement of 6 March.

40 Court of Justice of the European Union, 2013, *Križan and Others v Slovenská inšpekcia životného prostredia*, Case C-416/10, ECLI:EU:C:2013:8, Judgement of 15 January.

investor confidence.⁴¹ Judicial inefficiency, protracted legal proceedings, and concerns about corruption are identified as key obstacles to economic resilience and EU fund absorption.

The 2024 Country Report,⁴² as part of the Semester, reiterates similar themes. It emphasizes the role of Slovakia's SPO in addressing corruption, which is critical for ensuring transparency in public procurement and EU fund management. However, it also flags potential risks associated with legislative changes that could weaken the independence of judicial and prosecutorial bodies. Such developments are noted as undermining Slovakia's ability to attract investment and implement reforms linked to the EU Recovery and Resilience Facility.

Social inclusion remains a persistent challenge in Slovakia, particularly concerning marginalized Roma communities. The report reveals that segregation in education and limited access to quality housing and healthcare exacerbate disparities. Such inequalities not only violate EU fundamental rights but also hinder Slovakia's broader socio-economic development.

The report discusses inefficiencies in Slovakia's public administration, characterized by fragmented governance and inadequate coordination across governmental levels. Such weaknesses are particularly pronounced in public procurement, where a high percentage of contracts are awarded through single-bidder procedures. This lack of competition undermines transparency and strategic policymaking. For instance, Slovakia's public procurement processes are not sufficiently used to advance environmental and social objectives, representing a missed opportunity in transitioning to a sustainable economy.

A critical concern raised in the report is the erosion of judicial independence. Slovakia's judicial reforms, including amendments to the penal code and the restructuring of judicial bodies, have prompted scrutiny from EU institutions. For example, the abolition of the SPO, which is responsible for high-profile corruption cases, and changes to the Judicial Council's composition risk undermining the independence of these institutions. These developments potentially compromise the separation of powers and the ability to prosecute high-level corruption, which is central to the EU's rule of law framework.

The European Semester documents consistently link rule of law challenges to weaknesses in public procurement systems. Slovakia has been criticized for its opaque procurement processes and inadequate oversight mechanisms that hinder the effective use of EU funds. These findings echo the broader concerns raised in the Rule of Law Reports, creating a coherent narrative across EU oversight mechanisms. The 2024 Semester Report identifies specific measures, such as strengthening the independence and capacity of anti-corruption agencies, as prerequisites for addressing these governance gaps. The emphasis on public

41 European Commission, 2023.

42 European Commission, 2024c.

procurement aligns with the Commission's conditionality mechanism, which ties EU fund disbursements to compliance with rule of law principles.

The report offers a range of recommendations to strengthen Slovakia's rule of law framework. Key proposals include:

- Strengthening judicial independence by safeguarding the autonomy of judicial institutions and ensuring compliance with EU standards.
- Improving public administration efficiency, particularly in public procurement, by reducing regulatory burdens and promoting transparency.
- Reinforcing anti-corruption measures through stronger whistleblower protections and more rigorous enforcement mechanisms.
- Advancing social inclusion by addressing regional disparities and improving the integration of marginalized groups, especially the Roma community.

The European Semester findings align closely with the Rule of Law Review Cycle and the EU Justice Scoreboard. All of these instruments converge on key areas of concern for Slovakia: judicial independence, corruption prevention, and public procurement integrity. The Semester's emphasis on actionable reforms, such as digitalization and capacity building, complements the broader EU agenda of furthering resilient and accountable governance. However, the voluntary nature of compliance with Semester recommendations limits their immediate impact.

4. Conclusions

Slovakia's engagement with the EU's rule of law framework illustrates both the opportunities and the difficulties of balancing national sovereignty with supranational obligations. As a post-communist state, Slovakia built its constitution around the principles of democratic governance and legal certainty, and over time it has worked to anchor these values more firmly in its institutions. Joining the EU marked a decisive moment in this process, promoting reforms to strengthen judicial independence, improve transparency, and protect fundamental rights.

Naturally, the political situation in the country affects these questions. While facilitating integration with the EU's legal order, the Slovak Constitution leaves unresolved the question of whether EU law can supersede constitutional norms. This ambiguity highlights a broader theme in Central and Eastern Europe: balancing constitutional sovereignty with the EU's supranational authority. Debates within the SCC and legal academia further deepen this tension, with interpretations of constitutional provisions such as Articles 7(2) and 7(5) reflecting competing visions of Slovakia's role in the EU.

The European Commission, the European Parliament, and the CJEU have played important roles in shaping Slovakia's adherence to EU rule of law standards. Mechanisms such as the Rule of Law Reports, Justice Scoreboard, and European Semester have identified areas requiring improvement, from judicial independence to public procurement transparency and anti-corruption measures. The EU's oversight has served as a significant catalyst for progress, particularly in the digitalization of judicial processes and the enhancement of public administration efficiency. At the same time, EU engagement has highlighted the necessity of addressing social inequalities, with particular emphasis on the persistent marginalization of Roma communities as an essential dimension of upholding the rule of law.

Slovakia currently finds itself at a critical point. It must reconcile its constitutional identity with the obligations arising from its EU membership. This requires addressing deficiencies in governance and judicial independence and resisting broader tendencies that threaten the erosion of democratic standards. The possible initiation of infringement proceedings and the application of conditionality mechanisms considerably raise the stakes, linking compliance to both financial resources and the state's international reputation.

In this context, the rule of law in Slovakia is more than a legal or procedural formality. It serves as a basis of political stability, economic progress, social cohesion, and the protection of national identity and values. Safeguarding this foundation requires ongoing reform, constructive dialogue with EU institutions, and a clear recognition of the common values on which the Union is built.

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