



*Together in defense of
Life, family, liberty
and sovereignty!*

Do the September 2025 Amendments to the Slovak Constitution Violate International and European Law?

A Legal Analysis

prepared by

Ordo Iuris Institute for Legal Culture

Table of Content

1. Introduction.....	2
2. Response to the Main Criticisms of the Constitutional Amendments.....	5
2.1. Allegations made by the Venice Commission	5
2.2. Allegations made by the European Commission.....	8
2.3. Allegations made by the Fundamental Rights Agency.....	11
3. EU law does not take unconditional precedence before the Slovakian constitution	14
3.1. Introduction.....	14
3.2. EU law's default position: unconditional primacy.....	15
3.3. National identity (Article 4.2 TFEU) does not safeguard the constitutional amendments against the CJEU's scrutiny.....	18
3.4. The primacy of EU law is not conditional and may not serve to resolve the conflicts between the EU law and the Slovakian constitutional law	22
3.5. Table no 1: Member States top court's and constitutional bodies' decisions asserting the primacy of national constitutional law over the EU leading to overriding EU law	26
3.6. Table no 2: Member States top court's and constitutional bodies' decisions asserting the primacy of national constitutional law over the EU law without overriding the EU law.....	33
4. Conclusions.....	35



*Together in defense of
Life, family, Liberty
and sovereignty!*

1. Introduction

1. On September 26, 2025, the National Council of the Slovak Republic adopted the following amendments to the 1992 Constitution by a three-fifths majority¹:

Article 7 (6): *The Slovak Republic retains its sovereignty above all in matters of national identity, consisting in particular of fundamental cultural and ethical questions involving the protection of life and human dignity, private and family life, marriage, parenthood and the family, public morality, personal status, culture and language, as well as decision-making in matters related thereto in the fields of healthcare, science, upbringing, education, personal status and inheritance.*

(7): *Nothing in this Constitution or in constitutional acts may be interpreted as consent by the Slovak Republic to the transfer of the exercise of any part of its powers in matters forming its national identity."*

Article 15 (5): *An agreement to give birth to a child for another shall be prohibited."*

Article 36 (3): *Equality between men and women in remuneration for work done shall be guaranteed.*

Article 41: (2) *The parents of a child shall be the mother and the father; the mother of the child shall be a woman and the father of the child shall be a man.*

(4): *A minor child may be adopted by the spouses or by a spouse who is married to either of the parents of the child or by the surviving spouse of the parent or adoptive parent of the minor child. Exceptionally, a single person may also adopt a minor child if the adoption is in the best interests of the child. The adoption shall be decided by the court*

(8): *Education and schooling of children in the area of intimate life formation and sexual behaviour may be provided only with the consent of the legal representative. Education aimed at the protection of health, physical integrity and the prevention of abuse shall form part of the general education of children in a form appropriate to their age.*

¹ Ústavný zákon z 26. septembra 2025, ktorým sa mení a dopĺňa Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších predpisov, <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2025/255/20251101> (access: 27/11/2025).



*Together in defense of
Life, family, liberty
and sovereignty!*

Art. 52a: *The Slovak Republic recognises only the biologically determined sexes of male and female.*

2. The adopted amendments have been met with alarmist criticism from the media and certain European institutions, alleging that they pose a threat in the form of Slovakia's purported breach of obligations arising from binding international treaties. In the assessment of the Ordo Iuris Institute, there are no grounds for such concerns. The adopted amendments fall within the limits of Slovakia's competences as a Member State of the European Union and the Council of Europe and are not in conflict with any treaties binding upon it.
3. It should also be noted that the constitutional amendments adopted on September 26 remain in full compliance with Resolution No. 1853 adopted by the National Council of the Slovak Republic on January 30, 2002². In this very document, Slovak parliamentarians adopted the text of a declaration prepared by MP Vladimír Palko, according to which, among other things, "the National Council of the Slovak Republic considers it useful and necessary to respect the principle of sovereignty of the Member States of the European Union and the states applying for membership in the European Union in cultural and ethical issues, which consists in leaving the decision-making on cultural and ethical issues
 - of the protection of life and dignity of the human being from conception to death,
 - of the protection of the family and the institution of marriage as the foundation of society,
 - as well as the decision-making on matters related thereto in the areas of healthcare, upbringing and education, within the exclusive competence of the Member States."
4. The adoption of this resolution by the Slovak parliament inspired the Polish parliament, where the first draft of a similar resolution was submitted immediately afterwards, on April 2, 2002³. Ultimately, Polish parliamentarians adopted a resolution similar to the Slovak one on April 11, 2003. Like its Slovak counterpart, it also stated that "Polish legislation on the

² *Deklarácia Národnej rady Slovenskej republiky o zvrchovanosti členských štátov Európskej únie a štátov kandidujúcich na členstvo v Európskej únii v kultúrno-etických otázkach Schválené Národnou radou Slovenskej republiky uznesením z 30. januára 2002 č. 1853,* https://www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/v_deklaracia-o-zvrchovanosti.rtf (access: 27/11/2025).

³ *Draft resolution "Declaration on the sovereignty of the state in the field of morality and culture,"*, print no. 448, April 2, 2002, <https://orka.sejm.gov.pl/SQL.nsf/poskomprocla?OpenAgent&4&448&KSP> (access: 27/11/2025).



*Together in defense of
Life, family, Liberty
and sovereignty!*

moral order of social life, the dignity of the family, marriage and upbringing, and the protection of life is not subject to any restrictions by international regulations.”⁴

5. Therefore, in its official statement of September 24⁵, the Ministry of Justice of the Slovak Republic rightly refers to the 2002 resolution. It also accurately cites the current trend of returning to a biologically determined definition of gender, pointing to the recent ruling of the Supreme Court of the United Kingdom of Great Britain and Northern Ireland of April 16, 2025⁶, which confirmed that the definition of “woman” in the British Equality Act of 2010 covers only biological women and does not apply to men who self-identify as “trans women.” This ruling was cited as relevant shortly after its announcement by the Ordo Iuris Institute⁷. Moreover, such a definition reflects the definition established in international law, as according to the Rome Statute (Article 7(3)), the term "gender" refers to "the two sexes, male and female, within the context of society.”⁸
6. The Ministry of Justice of the Slovak Republic also accurately quotes the position of Reem Alsalem (United Nations Special Rapporteur on violence against women and girls), who, in her report of June 16, 2025⁹, recognized the biological understanding of gender as key to effectively combating violence against women, emphasizing that international law protects women as female persons and calls on states to reflect this in their laws and policies. This report was also popularized by the Ordo Iuris Institute¹⁰.

⁴ Resolution of the Sejm of the Republic of Poland of April 11, 2003, on the sovereignty of Polish legislation in the field of morality and culture, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20030190290> (access: 27/11/2025).

⁵ Reakcia Ministerstva spravodlivosti SR na naliehavé stanovisko Benátskej komisie zo dňa 24. septembra 2025, <https://www.justice.gov.sk/aktualne-temy/reakcia-ministerstva-spravodlivosti-sr-na-naliehave-stanovisko-benatskej-komisie-zo-dna-24-septembra-2025/> (access: 27/11/2025).

⁶ For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent), 16 April 2025, <https://supremecourt.uk/cases/uksc-2024-0042> (access: 27/11/2025).

⁷ UK Supreme Court: the term “woman” does not include men who identify as “trans women”, <https://ordoiuris.pl/informacje-prasowe/brytyjski-sad-najwyzszy-pojecie-kobieta-nie-obejmuje-mezczyzn-identyfikujacych-sie-jako-trans-kobiety/> (access: 27/11/2025).

⁸ Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> (access: 26/11/2025).

⁹ Sex-based violence against women and girls: new frontiers and emerging issues Report of the Special Rapporteur on violence against women and girls, its causes and consequences, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session59/advance-version/a-hrc-59-47-aev.pdf> (access: 27/11/2025).

¹⁰ UN expert calls for the reinstatement of the biological definition of sex in the protection of women, <https://ordoiuris.pl/komentarz/ekspertka-onz-wzywa-do-przywrocenia-definicji-plci-biologicznej-w-ochronie-kobiet/> (access: 27/11/2025).



*Together in defense of
Life, family, liberty
and sovereignty!*

7. This analysis is divided into two parts. In the first part, we will address the substantive objections raised against the constitutional amendments by the bodies of the Council of Europe and the European Union: the Venice Commission, the European Commission, and the Fundamental Rights Agency and demonstrate their unfounded character.
8. In the second one, we will demonstrate that even if any violations of EU law were to be found, the EU law still could not take precedence over the fundamental norms of the Slovakian constitution.

2. Response to the Main Criticisms of the Constitutional Amendments

9. The adoption by Slovakia of the 2025 constitutional amendments has been met with severe criticism from numerous media outlets, politicians, and institutions. Many of these criticisms are repetitive. This paper focuses on the objections formulated by the leading European institutions: the Venice Commission, the European Commission, and the Fundamental Rights Agency.

2.1. Allegations made by the Venice Commission¹¹

10. The Venice Commission put forward the following allegations against the aforementioned provisions:

the use of vague and indeterminate formulations, such as references to "national identity" or "cultural and ethical issues," which are not defined in the Slovak legislation, creates a significant risk of unpredictable and expansive interpretation in practice. Such a degree of vagueness could enable different state authorities to interpret and apply these notions arbitrarily or inconsistently, leading to legal uncertainty, undermining constitutional principles, weakening the protection of human rights, and providing a pretext for selectively disregarding Slovakia's international obligations.¹²

As will be explained in detail below, they are clearly unfounded.

¹¹ Venice Commission, Urgent Opinion no. CDL-PI(2025)011 of 24 September 2025 (hereinafter: Urgent Opinion), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2025\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2025)011-e) (access: 27/11/2025).

¹² Urgent Opinion, §38.



*Together in defense of
Life, family, Liberty
and sovereignty!*

11. To begin with, the new Article 7(6) of the Slovak Constitution does not conflict with EU law; rather, it provides an additional guarantee of respect for sovereignty in areas that have not been transferred to the competences of the European Union. The constitutional provision merely confirms what already follows from Art. 4 (2) TEU, according to which EU is obligated to “respect the national identities of the Member States, inherent in their fundamental structures, political and constitutional” and from Art. 3 (3) para. 4, according to which EU is obligated to respect their “rich cultural and linguistic diversity”.
12. Moreover, *a contrario* from Articles 3–4 TFEU clearly follows that Slovakia has not transferred to the European Union powers in areas such as family life, marriage, cultural or ethical matters, and therefore reserves the right to regulate them in a manner consistent with its legal tradition and the expectations of the democratic majority.
13. Therefore, the guarantees contained in the Treaties imply the preservation of freedom to regulate matters fundamental to the cultural and ethical values of each Member State.
14. The allegation that the constitutional provision lacks definition, precision, or uses vague terminology is entirely unfounded.
15. Firstly, as already mentioned, the concept of “national identity” is taken directly from Article 4(2) TEU. If – as the Venice Commission claims - it “leads to legal uncertainty” or “weakens the protection of human rights”, the same accusation would have to be levelled against the EU Treaty itself, which would be absurd.
16. Secondly, the other terms invoked in the provision are indeed new, but the use of general clauses in legal language — especially constitutional and international law — is entirely natural. Terms such as “the principle of sincere cooperation” (Article 4(3) TEU), “remedies sufficient to ensure effective legal protection” (Article 19(1) paragraph 2 TEU), or “the right to respect for his private and family life” (Article 8(1) ECHR) are likewise undefined and imprecise, yet Venice Commission never expressed concern that they “could enable different state authorities to interpret and apply these notions arbitrarily or inconsistently”.
17. Furthermore, the Commission made also the following, equally unfounded allegations:

The Commission has already stated that it is tempting for states to use public education for ideological goals, and to favour the most influential!



*Together in defense of
Life, family, Liberty
and sovereignty!*

philosophy of life'. However, in the light of Article 2 Protocol No. 1 to the ECHR, in itself and in conjunction with Article 14 ECHR, states are obliged to abstain from such instrumentalisation of the public education system, and instead must ensure an objective and pluralist curriculum and avoid indoctrination in a dominant philosophy. (...) The Venice Commission observes that international human rights standards, especially in light of Article 2 of the Convention on the Rights of the Child (CRC) related practice, support the right to receive age-appropriate information concerning sexuality, in a non-discriminatory manner.¹³

18. In response, one should stress that no provision of international law grants “the right to receive information concerning sexuality.” The provisions cited by the Venice Commission relate only to the right to education in general, and the new constitutional rules do not deprive children of that right. Children in Slovakia continue to enjoy a full guarantee of the right to education. Furthermore, Slovak Constitution does not even prohibit sex education; it merely places the primary responsibility in this area on parents, who may voluntarily share that role with teachers at school.
19. Furthermore, no provision of international law formulates a “right to sex education,” let alone any “obligation to compel children to participate in sex education.” By contrast, international law **does** guarantee parents “the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions” (Article 18(4) ICCPR and the analogous Article 2 of Protocol No. 1 to the ECHR).
20. In addition, the question of providing children with information about sexuality by persons designated by the state, without parental involvement, is highly controversial and must be resolved by domestic law adopted by a democratically elected parliament, in accordance with national values. Slovakia has not transferred to any international organization the competence to regulate school curricula, including the power to determine whether, and on what terms, Slovak children should receive information about sexuality in schools. The design of the education curriculum falls within the broad margin of appreciation enjoyed by member States of the Council of Europe, the European Union and the United Nations.

¹³ Urgent Opinion, §56-57.



*Together in defense of
Life, family, liberty
and sovereignty!*

21. The new Article 41(8) of the Slovak Constitution not only does not amount to an “instrumentalisation of the public education system”, but actually protects against it by guaranteeing parents a degree of control over the beliefs conveyed to their children in an especially sensitive domain such as sexuality.

22. Further, the Venice commission made the allegation that:

under international human rights law, individuals have a "right to a self-identity" based not only on their "sex at birth" but also on their "gender". In this regard, international human rights covenants have consistently been interpreted as recognising that self-identity is also shaped by gender, the socially constructed characteristics and roles for women and men while the choice of recognition of a third or neutral sex falls within the margin of appreciation of Slovakia, entrenching a strict binary understanding of sex in the Constitution cannot justify discrimination based on sexual orientation or gender identity in subsequent legislation or state measures. The Venice Commission recommends deleting the words "biologically determined" from draft Article 52a and developing a sufficiently detailed and precise law, providing expeditious, transparent and accessible procedures for changing the registered sex marker of transgender people.¹⁴

23. To this, it is to reply shortly that none of the “international human rights covenants” binding upon Slovakia contains any provision requiring sex to be defined by reference to “the socially constructed characteristics and roles” rather than biological criteria. Moreover, primary European law itself uses exclusively the term “sex” and consistently avoids the term “gender” — this is true of the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union, as well as the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (see more about this particular issue in 2.3).

2.2. Allegations made by the European Commission¹⁵

¹⁴ Urgent Opinion, §62 and 65.

¹⁵ The letter of formal notice to Slovakia (INFR(2025)2208) – full text has not been published. See press release of 21 November 2025, point 5: https://ec.europa.eu/commission/presscorner/detail/en/inf_25_2481 (access: 27/11/2025).



*Together in defense of
Life, family, Liberty
and sovereignty!*

24. The European Commission decided to open an infringement procedure (Art. 258 TFEU) by sending a letter of formal notice for breaching fundamental principles of EU law. According to the Commission, the constitutional amendments made by Slovak Republic *contravene the principle of the primacy of EU law, which is a fundamental element of the EU legal order, together with the principles of autonomy, effectiveness, and uniform application of Union law. Even when a Member State amends its constitution, such an exercise of national competence cannot circumvent the need to comply with fundamental principles of Union law.*
25. In view of the lack of access to the full version of the Commission's letter, it is possible to address only the selected and general allegations that have been made public. The crux of these allegations is the breach of the principle of the primacy of EU law, derived from the principle of sincere cooperation (Article 4(3) TEU).
26. The Commission's allegations are unfounded.
27. First, the essence of the introduced amendments is the affirmation and clarification of the principle of the primacy of the Constitution as the highest act in the Slovak legal order. The very principle of the primacy of the Constitution can hardly be regarded as controversial: it applies in almost all EU Member States since the beginning of the idea of constitutionalism. The special legal force of a constitution belongs to the very nature of this type of legal act, which has regulated the most fundamental matters of each state for more than 200 years. The Treaty on European Union and the Treaty on the Functioning of the European Union do not contain provisions indicating the abolition of the principle of the primacy of the Constitution, which had been in force long before the creation of this organization.
28. Second, mere recognition that Slovak Republic "retains its sovereignty above all in matters of national identity" does not violate EU law in any way, considering— as already mentioned - that the Treaty on the EU itself recognizes that Member States have national identity that ought to be respected (Art. 4 (2) of the TEU). National identity is expressed above all in a constitution, which is a charter of the fundamental principles, values, and ideas that are most salient for a given state: "The national identity of a State or a people contains a stock of ideas and values which characterize the self-conception and the peculiarity of each State or people. These have a historical, linguistic, cultural, religious, economic and also legal



*Together in defense of
Life, family, liberty
and sovereignty!*

element. However, they are relevant to Union law only insofar as they are directly laid down in the national constitution or in its procedures.”¹⁶

29. By introducing the recent constitutional amendments, Slovakia exercised its right to express its national identity in its constitution. Initiating an infringement procedure on this basis calls into question the very purpose of Article 4(2) TEU. Article 4(2) TEU should be interpreted and applied in a manner that renders it practical and effective, rather than theoretical and illusory. The obligation to respect national identities naturally implies respect for constitutional identity. Some scholars interpret Art. 4 (2) of TEU as allowing limits to the primacy of EU law in case of conflicts with the constitution¹⁷ and as prohibiting the Union from intervening in the identity-creating exclusive powers of the Member States¹⁸.

30. One of the Advocates General of the CJEU specifically recognized that:

(...) a Member State may, in certain cases and subject, evidently, to review by the Court, assert the protection of its national identity in order to justify a derogation from the application of EU law (...). If respect for the constitutional identity of the Member States can thus constitute a legitimate interest which, in principle, justifies a restriction of the obligations imposed by Community law, it can all the more be relied upon by a Member State to justify its assessment of constitutional measures which must supplement Community legislation in order to ensure observance, on its territory, of the principles and rules laid down by or underlying that legislation. ¹⁹

31. Even the CJEU itself – although it rejects the possibility of primacy of constitution²⁰ - has at least acknowledged that

¹⁶ H.-J. Blanke, *Article 4 [The Relations Between the EU and the Member States]*, in: H.-J. Blanke, S. Mangianelli (ed.), *The Treaty on European Union. A Commentary*, Berlin-Heidelberg 2013, pp. 198-199.

¹⁷ A. von Bogdandy, S. Schill, *Overcoming Absolute Primacy: Respect for National Identity under the Lisbon Treaty*, (2011) 48 CMLRev 1417.

¹⁸ H.-J. Blanke, *Article 4 [The Relations Between the EU and the Member States]*, in: H.-J. Blanke, S. Mangianelli (ed.), *The Treaty on European Union. A Commentary*, Berlin-Heidelberg 2013, p. 195

¹⁹ Opinion of Advocate General Poiares Maduro of 8 October 2008, C-213/07, *Michaniki AE v Ethniko Simvoulío Radiotileorasis*, §§32-33.

²⁰ CJEU judgment of 17 December 1970 in case C-11/70, *Internationale Handelsgesellschaft*,



*Together in defense of
Life, family, liberty
and sovereignty!*

(...) the preservation of the Member States' national identities is a legitimate aim respected by the Community legal order"²¹.

32. Third, the recently adopted constitutional amendments do not, as a matter of principle, undermine the primacy of EU law over national law. Article 7(2) of the Constitution remains in force, according to which *"Legally binding acts of the European Communities and the European Union shall have primacy over the laws of the Slovak Republic."* Moreover, Article 7(5) of the Constitution also remains in force, according to which *"International treaties on human rights and fundamental freedoms, international treaties whose executions does not require a law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law shall have primacy over the laws."*

33. Fourth, the European Commission has never initiated infringement proceedings against any Member States solely on the basis of an abstract recognition of the principle of the primacy of the Constitution. This also applies to Slovakia, which, when acceding to the Union in 2004, already had in its Constitution Article 152(4), according to which: *"The interpretation and application of constitutional laws, laws, and other generally binding legal regulations must be in compliance with this Constitution."* The most recent constitutional amendments merely confirm and clarify what already follows from Article 152(4), to which the Commission has never raised any objections.

2.3. Allegations made by the Fundamental Rights Agency²²

34. On its part, the Fundamental Rights Agency made the following claims:

The amendment provides that only married couples, namely a man and a woman who are married (or in certain other specified legally recognised relationship) may adopt a child. This poses clear risks to the fundamental rights of same-sex couples. For instance, it restricts their right to form a

²¹ ECJ judgment of 2 July 1996 in case C-473/93, *Commission v Luxembourg*, §35.

²² FRA statement on recent developments affecting fundamental rights in the EU, 7 October 2025, <https://fra.europa.eu/en/news/2025/fra-statement-recent-developments-affecting-fundamental-rights-eu> (access: 27/11/2025).



*Together in defense of
Life, family, Liberty
and sovereignty!*

family (C-127/08 Metock), and their freedom of movement by making it harder to move freely as a family across the EU (C-673/16 Coman).

35. In response one should stress that the European law does not guarantee the right to marry and found a family to anyone other than a woman and a man, as follows directly from Article 12 of the ECHR: “Men and women of marriageable age have the right to marry and to found a family.” The analogous Article 9 of the Charter of Fundamental Rights, in turn, provides that “[t]he right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.” Unlike the ECHR, the Charter does not determine the sex of the spouses, but leaves this matter to the discretion of the Member States. Substantive family law remains an exclusive competence of the Member States, which means that they also retain the authority to decide how marriage and family are to be defined and, consequently, to whom adoption rights are to be granted. The CJEU itself has confirmed the freedom of the Member States in this respect: “civil status and the benefits flowing therefrom are matters which fall within the competence of the Member States and Community law does not detract from that competence.”²³ Moreover, the CJEU has likewise explicitly confirmed the freedom of the Member States to decide whether to recognize same-sex relationships: “The Member States are thus free to provide or not provide for marriage for persons of the same sex, or an alternative form of legal recognition of their relationship, and, if they do so provide, to lay down the date from which such a marriage or alternative form is to have effect.”²⁴ The Court limited the discretion of the Member States only with regard to the recognition of a same-sex spouse as a “spouse” within the meaning of Article 2(2) of Directive 2004/38²⁵. Furthermore, there is no provision of EU law (whether primary or secondary), nor any judgment of the CJEU, that would require Member States to grant same-sex couples additional rights like the right to adopt children.

36. Further, the Agency claims that:

The amendment recognises only the “biologically determined sexes of male and female”. This definition ignores the lived experiences of transgender, non-binary, gender diverse and intersex people, and may lead to discrimination and violations of their fundamental rights.

²³ CJEU judgment of 1 April 2008 in case C-267/06, *Maruko*, §59.

²⁴ CJEU judgment of 24 November 2016 in case C-443/15, *Parris*, §58.

²⁵ CJEU judgments of 5 June 2018 in case C-673/16, *Coman* and of 25 November 2025 in case C-713/23, *Trojan*.



*Together in defense of
Life, family, liberty
and sovereignty!*

37. This position is also clearly unfounded. The FRA's position disregards the established understanding of sex prevailing in international law. Nearly all international human rights treaties employ the term "sex" as a biological category referring to female or male, rather than the term "gender," which refers to subjective and culturally conditioned perceptions of one's own identity. By the way of example:

- The Charter of Fundamental Rights of the European Union establishes a prohibition of discrimination on grounds of sex (Article 21(1)), which is clearly understood as a biological category, as evidenced by the later provision on "equality between women and men" (Article 23);
- The European Convention on Human Rights likewise prohibits discrimination on grounds of sex, not gender (Article 14), and it expressly recognizes only two sexes: women and men (Article 12);
- The International Covenant on Civil and Political Rights likewise repeatedly uses the term of "sex" (Articles 2(1), 4(1), 24(1), and 26), also in the biological sense, as confirmed by Article 3, which requires States Parties "to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."
- The term "sex," rather than "gender," is also used in numerous other human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on Human Rights and Biomedicine.

38. The only European treaty that employs the concept of "gender" is the Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), which Slovakia has not ratified. There is therefore no legal basis for deriving any international obligation on the part of Slovakia to recognize sexes other than female and male.

39. Further, the Agency claims that:

The amendment introduces a requirement for parental consent for a child's participation in sex education. At a time when bullying and harassment of LGBTIQ+ people are frequent across the EU, such restrictions can make it harder for schools to provide objective, reliable and age-appropriate information. This can help promote understanding and respect and prevent hate and violence in schools.

40. In reply, one is compelled to say the following.



*Together in defense of
Life, Family, Liberty
and sovereignty!*

41. *Firstly*, the new Article 41(8) of the Constitution in no way alters the existing provisions of criminal law, which categorically prohibit violence, criminal threats, and psychological abuse against any persons, including LGBT individuals.
42. *Secondly*, the Agency ignores the fact that a child's first educators are their parents, who instil in them fundamental values such as basic respect for every human being, regardless of sexual orientation.
43. *Third*, the Agency has failed to present any empirical research demonstrating a link between a lack of compulsory sex education in public schools and violence against LGBT persons.
44. *Fourthly*, when referring to "objective" sex education, the Agency disregards the fact that, in practice, curricula for this subject are most often developed by organizations with a liberal or left-wing worldview. As a result, they contain not only objective components, such as information on anatomy or condemnation of physical aggression against others, but also subjective elements promoting a particular lifestyle, in particular sexual permissiveness, the reduction of sexual relations to a purely physical act detached from emotions, as well as abortion and early abortifacient measures presented as a form of "emergency contraception." The constitutional amendment does not prohibit the organization of sex education classes; it merely grants parents freedom of choice by allowing them to decide whether their children will participate.
45. Consequently, in this respect, Article 41(8) of the Constitution merely affirms "the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions" (Article 18(4) of the ICCPR and the corresponding Article 2 of Protocol No. 1 to the ECHR).

3. EU law does not take unconditional precedence before the Slovakian constitution

3.1. Introduction

46. In the unlikely event of there being a substantive conflict between the provisions of the Slovakian constitution and EU law, one should consider the legal framework for its resolution. As will be explained below, from the standpoint of the EU institutions the



*Together in defense of
Life, family, liberty
and sovereignty!*

resolution of this conflict would be found on the basis of EU law, with the prominent role played by the primacy principle. Furthermore, it will be demonstrated that the constitutional identity exception from Article 4(2) TEU would most likely play a minor role, due to it being devoid of practical meaning by the CJEU's jurisprudence. Thirdly, and most importantly, it would be demonstrated that Slovakia would not be bound by the CJEU's assessment due to Luxembourg court lacking competence to resolve the conflicts between EU law and the constitutional laws of the Member States.

3.2. EU law's default position: unconditional primacy

47. Primacy of EU law, although not written into the Treaties,²⁶ has been one of the cornerstones of the EU legal system since the beginning of the EU. As the Tribunal put it in its seminal judgment of 5 February 1963 in case C 26/62 *van Gend & Loos* (§3):

It follows (...) that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.

48. The Court was quick to expand this principle to encompass also the primacy of EU law also to the primacy vis-à-vis the conflicting constitutional laws of the Member States. In another landmark ruling, judgment of 17 December 1970 in case C-11/70 *Internationale Handelsgesellschaft* (§3), the CJEU made it clear that:

The validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that state or the principles of a national constitutional structure.

49. Since then the rule has been repeatedly upheld by the Tribunal, such as in the CJEU judgment of 5 June 2023 in case C-204/21 *Commission v. Poland* (§77):

²⁶ The only mention is the Declaration 17. Concerning the primacy of EU law to the Lisbon Treaty, OJ 115. 09/05/2008 P. 0344 – 0344



*Together in defense of
Life, family, Liberty
and sovereignty!*

*It follows from that settled case-law that, by virtue of the principle of the primacy of EU law, **a Member State's reliance on rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of EU law.** In accordance with settled case-law, the effects of the principle of the primacy of EU law are **binding on all the bodies of a Member State**, without, *inter alia*, provisions of domestic law, **including constitutional provisions**, being able to prevent that (...). Compliance with that obligation is necessary in particular in order to ensure respect for the equality of Member States before the Treaties and constitutes an **expression of the principle of sincere cooperation set out in Article 4(3) TEU** (...).*

The CJEU was also explicit in linking the primacy of EU law with the exclusive jurisdiction of the CJEU (§79):

*In that regard, it must, finally, be borne in mind that, given that the Court has exclusive jurisdiction to give a definitive interpretation of EU law, it is for the Court, **in the exercise of that jurisdiction, to clarify the scope of the principle of the primacy of EU law in the light of the relevant provisions of EU law**, with the result that that scope **cannot turn on the interpretation of provisions of national law or on the interpretation of provisions of EU law by a national court which is at odds with that of the Court** (...). Accordingly, it is, where appropriate, **for the national court concerned to alter its own case-law which is incompatible with EU law, as interpreted by the Court of Justice** (...).*

50. Needless to say, the aforesaid jurisprudence was problematic, be it only due to the fact that, at the time, EU law offered no guarantees of fundamental rights. As a result, a consequent enforcement of the primacy principle at the time, led to an effective deterioration of the legal position of an individual due to his fundamental laws guaranteed by the national constitutions being trumped by a supranational legal system offering no comparable guarantees. Unsurprisingly say, this created certain amount of frictions. On the part of the national courts, this led to the creation of the *Solange* doctrine limiting the effectiveness of EU law in relation to the national fundamental rights. The CJEU, on the



*Together in defense of
Life, family, Liberty
and sovereignty!*

other hand, reacted by trying to develop unwritten fundamental laws by deriving them from the “*common constitutional traditions of the Member States*”.²⁷

51. The problem, however, ran much deeper. As explained in the section 3.4 of the Opinion, EU law and individual constitutional legal systems of the Member States constitute self-contained regimes. This means that within each of these regimes the exact scope of the particular fundamental rights would be the result balancing of this right against different values. And the result of this balancing may differ between the different legal systems. To give an example, most of the modern legal systems recognize both, the freedom of expression and the right to privacy. Despite this fact, different balancing between these values in different systems leads to great differences between the scope of editorial freedom in different countries. Coming back to the case at hand, the aforesaid principle means that even if the EU law contains fundamental rights formulated in a manner similar to these of the Member States’ constitutions, their interpretation and interplay with other values may wildly differ from the one of the Member State’s, also to the detriment of the affected individual. And it was soon to be demonstrated by the *Melloni* case.
52. The CJEU’s judgment of 26 February 2013 in case C-399/11 *Melloni* concerned a request to surrender an Italian criminal by the Spanish courts on the basis of an European Arrest Warrant. The Spanish court had constitutional doubts as to the execution of the warrant, as Mr Melloni was sentenced *in absentia* which contradicted the very basic tenets of the Spanish constitutional law. The Spanish court based its reasoning, among others, on Article 53 of the Charter of Fundamental Rights, stipulating that in case of the applicability of national and EU standard of protection to the same case, the more beneficial to the individual is to be followed. The CJEU, however, was not impressed by the Spanish Court’s questions and brushed aside its doubts by underlining that the primacy and effectiveness of EU law demand unconditional execution of the arrest warrant, even at the expense of the national fundamental rights. Thus, the CJEU reaffirmed the primacy of EU law against the conflicting national fundamental rights even in a situation, where the EU law provided a viable leeway for safeguarding these rights. While it is true that the later jurisprudence somewhat limited the automaticity of the application of EU law in case of a possible threat

²⁷ See the aforementioned CJEU judgment of 17 December 1970 in case C-11/70 *Internationale Handelsgesellschaft*, §4.



*Together in defense of
Life, family, Liberty
and sovereignty!*

to the fundamental rights²⁸, it did so on the basis of the values native to the EU legal system, not the Member States' fundamental values.

53. It follows that, should the CJEU find the values enshrined in the amendments to the Slovak constitution contrary to EU law, it could declare them incompatible with EU law by virtue of the primacy of EU law. As shall be explained in more detail below, however, this would not mean in any way any illegality of these provisions.

3.3. National identity (Article 4.2 TFEU) does not safeguard the constitutional amendments against the CJEU's scrutiny

54. One should consider whether the aforesaid constitutional amendments should not be guarded by the national identity exception. The answer, however, would most likely be negative.

55. Article 4.2 TEU reads:

*The Union shall respect the equality of Member States before the Treaties as well as **their national identities, inherent in their fundamental structures, political and constitutional**, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.*²⁹

56. The provision on the protection of national identities at first appeared in Article F.3 of the 1992 Maastricht Treaty³⁰ and it is commonly accepted that its introduction served the purpose of addressing the national constitutional courts' jurisprudence setting limits to the applicability of EU law in the interest of protection of their own fundamental rights and constitutional orders. Rather unsurprisingly, this provision has not fulfilled the hopes attached thereto: rather than serving as a sort of general clause granting a certain degree

²⁸ See e.g. CJEU judgments of 21 December 2011 in case C-411/10 *N.S.* concerning right to asylum or of 5 April 2016 r. in case C-404/15 *Aranyosi and Căldăraru* or of 25 July 2018 in case C-216/18 *PPU* concerning the automatic applicability of the European Arrest Warrant.

²⁹ Treaty on European Union, OJ C 202, 7.6.2016.

³⁰ Treaty on European Union of 7 February 1992, OJ C 191, 29.7.1992.



*Together in defense of
Life, family, liberty
and sovereignty!*

of deference to the national courts, it was clearly reduced to one of the EU law exceptions allowing to somewhat soften the EU law obligations of the Member States to the degree foreseen by the Treaties, tightly controlled by the CJEU exercising its exclusive jurisdiction.

57. This limited scope of the national identity review became apparent already with the first judgments, concerning introducing certain national detractions from the freedoms guaranteed by the EU law, such as banning noble surnames³¹ or limiting the foreign media outlets from the participation in public tender proceedings.³² In any case, it were the “new” Member States cases, where the CJEU robbed this provision of any substantial meaning.
58. In case CJEU judgment of 2 February 2022 in case C-430/21 *RS* concerning the Romanian’s constitutional court’s ban on surveying by the ordinary courts the conformity with EU law of the national regulations that have been examined by the Romanian Constitutional Court, the CJEU explained that (§§69-71):

*69. In that regard, it is indeed true that the **Court may, under Article 4(2) TEU, be called upon to determine that an obligation of EU law does not undermine the national identity of a Member State (...).***

*70. By contrast, that provision **has neither the object nor the effect of authorising a constitutional court of a Member State, in disregard of the obligations under, in particular, Article 4(2) and (3) and the second subparagraph of Article 19(1) TEU, which are binding upon it, to disapply a rule of EU law, on the ground that that rule undermines the national identity of the Member State concerned as defined by the national constitutional court.***

*71. If a constitutional court of a Member State considers **that a provision of secondary EU law, as interpreted by the Court, infringes the obligation to respect the national identity of that Member State, that constitutional court must stay the proceedings and make a reference to the Court for a preliminary ruling under Article 267 TFEU, in order to assess the validity of that provision in the light of Article 4(2) TEU, the Court alone having jurisdiction to declare an EU act invalid (...).***

Needless to say, the Romanian pleadings based on Article 4.2 were unsuccessful.

³¹ CJEU judgment of 22 December 2010 r. in case C-208/09 *Sayn–Wittgenstein*.

³² CJEU judgment of 16 December 2008 r. in case C-213/07 *Michaniki*.



*Together in defense of
Life, family, Liberty
and sovereignty!*

59. The CJEU was similarly direct in its brushing aside the Hungarian action against the rule of law conditionality, based on the argument that by assessing the rule of law the Commission could assess certain constitutional arrangements not falling directly within the remit of EU law:

*232. In that regard, it must be borne in mind that **Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values** which, as noted in paragraph 127 above, are an integral part of the very identity of the European Union **as a common legal order, values** which are given concrete expression in principles containing legally binding obligations for the Member States.*

*233. Even though, **as is apparent from Article 4(2) TEU, the European Union respects the national identities of the Member States**, inherent in their fundamental structures, political and constitutional, such that **those States enjoy a certain degree of discretion in implementing the principles of the rule of law**, it in no way follows that **that obligation as to the result to be achieved may vary** from one Member State to another.*

*234. Whilst they have separate national identities, inherent in their fundamental structures, political and constitutional, which the European Union respects, **the Member States adhere to a concept of ‘the rule of law’ which they share, as a value common to their own constitutional traditions**, and which they have undertaken to respect at all times.*

60. As further elaborated by the CJEU in its judgment of 5 June 2023 in case C-204/21 *Commission v. Poland* (§ 73):

*Thus the Court has held that, even though, as is apparent from Article 4(2) TEU, the European Union respects the national identities of the Member States, inherent in their fundamental structures, political and constitutional, such that **those States enjoy a certain degree of discretion in implementing the principles of the rule of law**, it in no way follows that that obligation as to the result to be achieved may vary from one Member State to another. Whilst they have separate national identities, inherent in their fundamental structures, political and constitutional, which the European Union respects, **the Member States adhere to a concept of ‘the rule of law’** which they*



*Together in defense of
Life, family, liberty
and sovereignty!*

share, as a **value common to their own constitutional traditions**, and which they have undertaken to respect at all times (...).

To avoid any doubts, the CJEU makes it clear that these values are not limited to rule of law, but extend to all the Article 2 TFEU values (paras 66-67):

66. *As the Court has repeatedly held, the European Union is thus composed of States which have freely and voluntarily committed themselves to the values set out in Article 2 TEU, which respect those values and which undertake to promote them. Furthermore, mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premiss that the Member States share those common values (...).*

67. *Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values which are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States (...).*

The aforesaid reasoning, backed up by the court's insistence on the Article 4.2 TFEU being a part of EU law and, thus, being interpreted by the CJEU, led the Luxembourg Court to the foreseeable conclusion that Poland could not have invoked the constitutional identity exception, even when it was based on an explicit ruling of the national constitutional tribunal.

61. Furthermore, it lies at hand that the CJEU was ostensibly unwilling to relate to the concept of the national identity even when this concept was expressly relied on by the referring courts and the CJEU limited the applicability of EU law in accordance with these courts' requests. Such as the situation in *Taricco II* case³³, where the CJEU corrected the position taken in *Taricco I*³⁴ ruling, excluding the applicability of Italian fundamental laws, pursuant to another referral from the Italian constitutional court.³⁵

³³ CJEU judgment of 5 December 2017 in case C-42/17 *Taricco II*.

³⁴ CJEU judgment of 8 September 2015 in case C-105/14 *Taricco I*.

³⁵ Italian Constitutional Court ruling 24/2017
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/O_24_2017.pdf



*Together in defense of
Life, family, liberty
and sovereignty!*

62. In light of the preceding paragraphs, this jurisprudence is hardly surprising. After all, the national identity exception as a concept of EU law, later written into the Treaties, is part of EU law and, as such, should be interpreted by the CJEU. And given the Luxembourg Court's lack of respect for the constitutional arrangements of the Member States (see the preceding section), it could have been expected that it would effectively devoid this provision of any substantial meaning. Thus, it follows that there may be reasonable doubts as to whether Slovakia would be able to rely on the national identity concept in order to effectively *preclude* the EU's scrutiny of the introduced constitutional changes.
63. This, however, in no way makes the adopted changes into a transgression against EU law. For at least three reasons. *Firstly*, the fact that the CJEU asserted jurisdiction to scrutinize national measures, also of constitutional character, from the standpoint of EU law, does not prejudge the outcome of such a survey, particularly granted that the CJEU has not analysed provisions corresponding to the Slovakian measures so far. *Secondly*, the CJEU has not assessed the conformity of democratically adopted constitutional amendments, enjoying particular legitimacy so far. *Thirdly*, the CJEU is empowered only to interpret the EU law. While it asserts also the power to assess the scope of the competence transfer by the EU Member States, this notion is unequivocally rejected by the Member States' top courts, asserting that the Member States' role as the gatekeepers.
64. It follows that, even if the CJEU was to conclude that the adopted constitutional amendments contradict substantial provisions of EU law and are covered by the EU law national identity exception, this decision would be binding only as a matter of EU law. Nonetheless, as evidenced by the unanimous practice of the Member States' courts, it would be up to Slovakia and its constitutional tribunal to decide what would be the effects of this pronouncement on the Slovakian legal system and whether the Luxembourg Court has not acted *ultra vires*.

3.4. The primacy of EU law is not conditional and may not serve to resolve the conflicts between the EU law and the Slovakian constitutional law

65. Before going further into details, it has to be stressed that the EU law does not and cannot take precedence before the Slovakian constitution. This conclusion stems not only from the Slovakian constitution itself but also from more general considerations pertaining to the relationship between EU law and different legal systems.



*Together in defense of
Life, Family, Liberty
and sovereignty!*

66. After all, the CJEU itself explained, while defining the autonomy of EU law, that *EU law is characterised by the fact that it stems from an independent source of law, the Treaties, by its primacy over the laws of the Member States, and by the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves.*³⁶ Coming from independent source of law, however, is by no means a feature exclusive to the EU law. The same can be said of any other legal order. As described by the prevailing pluralistic paradigm, the EU law should be viewed as a one of the elements forming the patchwork of co-existing legal (sub-)systems. From this perspective, none of these legal systems is inherently more important than the other. Each stems from its own source and has its own rules of recognition. A procedural correlate of this situation is the existence of different adjudicative bodies exercising jurisdiction within each of these spheres.³⁷

67. What is important, is that the aforesaid theoretical approach is reflected by the actual practice, both international and of the member states. Regarding, the international law, it has to be stressed that this pluralistic, multi-polar legal landscape has been long recognized under the umbrella term of *fragmentation of international law*.³⁸ A jurisdictional consequence of this fragmentation finds its jurisdictional expression in the fact that the jurisdiction of the international bodies is typically limited to their own instruments. In any case they have also a strong tendency to favour their own *native* legal systems over the *external* law. In any case this is precisely what happened with regard to EU law from the side of the European Court of Human Rights, Investment Tribunals and the Aarhus Compliance Committee.

68. The ECHR made it clear on at least several occasions that it has the competence to check the conformity with the Convention also of the actions undertaken by the Member States while enforcing EU law, occasionally going so far to find a breach. This happened most

³⁶ CJEU judgment of 10 December 2018, *Andy Wightman and Others v Secretary of State for Exiting the European Union*, case C-621/18, para 45.

³⁷ See e.g. Lando Kirchmayr, *Rethinking the Relationship between International, EU and National Law. Consent-Based Monism*, CUP 2024; Ewa Łętowska, *Multicentryczność współczesnego systemu prawa i jej konsekwencje*, „Państwo i Prawo” 4/2005, pp. 3-11; Nele Matz-Lück, Mathias Hong, (eds.), *Grundrechte und Grundfreiheiten im Mehrebenensystem – Konkurrenzen und Interferenzen*, Springer Heidelberg 2012 ; Nele Matz-Lück, Mathias Hong, (eds.), *Grundrechte und Grundfreiheiten im Mehrebenensystem – Konkurrenzen und Interferenzen*, Springer Heidelberg 2012;

³⁸ International Law Commission *Report of the study group on the fragmentation of international law*, ILC Report A/61/10, 2006.



*Together in defense of
Life, family, Liberty
and sovereignty!*

notably with regard to the asylum law³⁹ and the automatic mutual recognition of Member States' courts' judgments.⁴⁰ Similar process took place with regard to the investment tribunals, which not only largely ignored the pleas based on EU law, but also directly disregarded the CJEU *Achmea* judgment forbidding the investment arbitration within the EU.⁴¹ In all these cases the international courts made it clear that EU law cannot claim primacy before their "own" legal systems and may be either ignored by them, or even become a part of their scrutiny. Moreover, in doing so, these arbitral tribunals ignored pleadings of the EU Member States (or even the EU institutions) for granting the EU law a special status.

69. Even more importantly, similar considerations pertain to the Member States adjudicating organs decisions. Actually, the vast majority of the Member States top courts (constitutionality control organs) pronounced themselves with regard to the primacy of their constitutions (fundamental laws) over EU law. This jurisprudence being as varied, as the adjudicating courts' native legal systems, is surprisingly consistent in denying the unconditional precedence to EU law. Since it is this outcome that matters, there is no need to decide at this place to which category does each and every judicial decision belong.
70. Firstly, there are decisions stating that the participation of the states in the EU may take place only in accordance with the national constitutions and that the national organs retain the competence to control the conformity of the states' participation in EU law with the constitution, without finding the violation of the constitutions. At this place one could think, in particular, of decisions related to the accession or the reform of the Treaties (e.g. Germany, Ireland, Poland, Estonia, Latvia, Spain), extraordinary measures to combat the consequences of the COVID 19 pandemic or the financial crisis (Belgium, Finland).
71. Secondly, there are decisions where the national courts effectively enforced the primacy of their national vis-à-vis EU law. At many instances, this targeted the very decisions of EU institutions. Firstly, many national courts explicitly denounced the CJEU decisions. This were the cases of Polish Constitutional court denying the EU the competences to interfere with the Polish judiciary; the German court denying the legality of the debt financing or

³⁹ ECtHR judgment of 21 January 2011 in case 30696/09 *M.S.S. v. Belgium and Greece*.

⁴⁰ ECtHR judgment of 23 May 2016 in case 17502/07 *Avotiņš v. Latvia*.

⁴¹ See e.g. Award of 3 February in case *Theodoros Adamakopoulos and others v. Republic of Cyprus*, ICSID Case No. ARB/15/49; Final Award of 29 December 2022 in case *Mercuria Energy Group Limited v. Republic of Poland*, SCC Case No. 2019/126; Decision on Annulment of 8 May 2023 in case *BayWa r.e. Renewable Energy GmbH and BayWa r.e. Asset Holding GmbH v. Spain*, ICSID Case No. ARB/15/16.



*Together in defense of
Life, family, Liberty
and sovereignty!*

the Czech court denying the CJEU's decision concerning the pension system, the French Conseil d'Etat openly dismissing the CJEU's decisions concerning data retention, Danish Supreme Court limiting the applicability of the principles of EU law or Romanian Court dismissing the CJEU's rulings infringing the organization of the Romanian judicial system. At other cases the national court dismissed the measures adopted by the EU institutions, like Hungary in the migrant relocation case. In other instances the review took the form of indirect control of EU law, where the national courts opined on the illegality of certain measures implementing EU law, such as in cases of European Arrest Warrant (Cyprus, Poland) anti-discrimination norms (Slovakia). Furthermore, there were also cases where the national courts defied the very CJEU's preliminary rulings rendered in their proceedings even if not admitting to it, as in the cases of the citizenship and same-sex parents (Bulgaria) or the immunity of the European Parliament MEPs (Spain).

72. The above shows unequivocally that there can be no doubt that the primacy of EU law is a principle relevant only within the EU legal system and, as such, has no normative power outside of its scope of application. Furthermore, as an intra-EU rule, the primacy cannot and does not regulate between the EU law and other legal systems, including the constitutional law of the individual Member States. Lastly, the Member States practice clearly indicates that they do not accept the primacy of EU law as the principle governing the interactions between the EU law and their constitutional laws.
73. It follows that even if the amendments to the Slovakian constitution were to violate certain substantive provisions of EU law and not be covered by the *national identity* exception (*quod non*), this would not render them illegal.
74. Last but not least, granted the degree of the homogeneity of the Member States' jurisprudence negating the CJEU's absolute primacy claims and the more general considerations related to the interaction of different sub-systems of international law, the CJEU is clearly acting *ultra vires* while reserving itself the powers to assert the primacy of EU law against the central values of the Member States' constitutions.



*Together in defense of
Life, family, Liberty
and sovereignty!*

3.5. Table no 1: Selected decisions Member States top courts and constitutional bodies' asserting the primacy of national constitutional law over the EU leading to overriding EU law

1. Bulgaria		
a)	Supreme Administrative Court judgment of 1 March 2023 in case 2185	Bulgarian Supreme Administrative Court decided, contrary to the earlier CJEU preliminary ruling <i>Pancharevo</i> issued in the same set of proceedings, that a child of a same-sex couple cannot be granted Bulgarian citizenship when no parent is inscribed as the mother. In doing so it defied both, the general content of the <i>Pancharevo</i> judgment, but also the CJEU's specific findings. https://info-adc.justice.bg/courts/portal/edis.nsf/e_act.xsp?id=2060937&code=vas&guid=1443879393
2. Cyprus		
a)	Supreme Court of the Republic of Cyprus of 7 November 2005 in case 294/2005 <i>Konstantinou</i>	Cypriot Supreme Court refused surrendering an individual on the basis of the European Arrest Warrant due to the conflict of such possibility with the Cypriot constitution. The provisions of national law analysed by the Court mirrored the provisions of the EU law and the court rejected the arguments based on the primacy of EU law. https://www.unodc.org/cld/uploads/res/case-law-doc/othercrimetype/_irb/2005/decision_of_supreme_court_of_the_repubus_with_regards_to_the_framework_decision_on_the_european_arrest_w/Cyprus_2005-11-07.pdf
3. Czechia		
a)	Constitutional Court Judgment of 8 March 2006 in case Pl. ÚS 50/04 <i>Sugar Quotas III</i>	Conditional character of the conferral of the competences to the EU, constitution as the normative point of reference. National regulations conflicting with EU law annulled. https://www.usoud.cz/en/decisions/2006-03-08-pl-us-50-04-sugar-quotas-iii
b)	Constitutional Court	<i>Lisbon Treaty</i> judgments. The Czech constitutional court elaborated the concept of the constitutional identity, Czech constitution as the legal basis for



*Together in defense of
Life, family, liberty
and sovereignty!*

	Judgments of 26 November 2008 in case Pl.US. 19/08 and of November 3 2009 in case Pl.US 29/09	the EU integration and its ultimate jurisdiction in matters related to Czech participation in the EU integration. No violation found. https://www.usoud.cz/en/decisions/2008-11-26-pl-us-19-08-treaty-of-lisbon-i https://www.usoud.cz/en/decisions/2009-11-03-pl-us-29-09-treaty-of-lisbon-ii
c)	Constitutional Court Judgment of January 31, 2012, Pl. US 5/12 <i>Slovak Pensions</i>	Czech Constitutional Court declared CJEU <i>Landtova</i> judgment issued in preliminary reference proceedings initiated by the Czech Supreme Administrative Court as an <i>ultra vires</i> act and declared that, as such, it cannot produce legal effects in Czechia. https://www.usoud.cz/en/decisions/2012-01-31-pl-us-5-12-slovak-pensions
4. Denmark		
a)	Judgment of the Danish Supreme Court of April 6, 1998, case no. I 361/1997	The Supreme Court made it clear in response to a claim related to the scope of competence transfer in the aftermath of the Maastricht Treaty, that the Danish constitution sets certain limits to the competence transfer and it is up to the Danish court to decide the extent of this transfer. No incompatibility was found in the case at hand. https://www.cvce.eu/en/obj/judgment_by_the_danish_supreme_court_on_accession_to_the_treaty_on_european_union_6_april_1998-en-d2bdcdb1-d988-4020-9f13-e2164f485b5b.html
b)	Judgment of the Danish Supreme Court of December	In <i>Ajos</i> judgment the Danish Supreme Court refused to apply one of the fundamental principles of EU law (non-discrimination principle) due to it being judge-made law not covered by the Denmark's accession documents. Importantly, it did so in blatant disregard of the CJEU's preliminary ruling <i>Dansk Industries</i> issued in the same proceedings.



*Together in defense of
Life, family, liberty
and sovereignty!*

	6, 2016, case no. 15/2014	https://www.domstol.dk/media/2udgvvvb/judgment-15-2014.pdf
5. France		
a)	Constitutional Council decision 2011-631 DC of 9 June 2011	The Constitutional council reaffirmed its right to examine the compatibility of the acts transposing the directives independently of the primacy of EU law. It did not conduct such a review in the case at hand. https://www.conseil-constitutionnel.fr/en/decision/2011/2011631DC.htm
b)	Council of State Decision of 21 April 2021 in case 393099	The Council of State, acting in the proceedings initiated by the French government to counter the effects of the CJEU <i>French Data Retention</i> judgment reminded that the EU law does not enjoy the primacy vis-à-vis the French Constitution. Furthermore it made it clear that the earlier CJEU judgment <i>French Data Network</i> run against the French Constitution. On rhetorical level, however, the Council denied the existence of conflict. https://www.legifrance.gouv.fr/ceta/id/CETATEXT000043411127
6. Germany		
a)	Constitutional Tribunal Order of 29 May 1974 BvL 52/71	<i>Solange I</i> decision. German constitutional court set limits to the primacy of EU law, in particular by stating that it cannot enjoy the primacy vis-à-vis the German fundamental rights for so long there are no comparable guarantees of fundamental rights. https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/1974/ls19740529_2bvl005271en.html
b)	Constitutional Tribunal Order of 22 October 1986, case no 2 BvR 197/83	<i>Solange II</i> decision. The Constitutional Tribunal said that for the moment the EU law ensures a sufficient degree of fundamental rights protection so that it would not review the constitutional acts in individual constitutional complaints proceedings. https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/1986/10/rs19861022_2bvr019783en.html



*Together in defense of
Life, family, liberty
and sovereignty!*

c)	Constitutional Tribunal judgment of 12 December 1993, case no. 2BvR 2134, 2159/92	<p><i>Maastricht</i> judgment. The Judgment concerned the conformity of the Maastricht Treaty with the German constitution. The Constitutional Court made it clear that the integration process must conform to the German constitution, in particular its core values and the principle of democracy. It declared the Maastricht Treaty to conform to the constitution.</p> <p>https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/1993/10/rs19931012_2bvr213492en.html</p>
d)	Constitutional Tribunal judgment of 30 June 2009, case no. 2 BvE 2/08	<p><i>Lisbon</i> judgment. The Constitutional tribunal confirmed the primacy of German constitution and its right to review the constitutionality of Germany's participation in the EU. Development of the sovereignty core doctrine.</p> <p>https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/06/es20090630_2bve000208en.html</p>
e)	Constitutional Tribunal Order of 6 July 2010, case no 2 BvR 2661/06	<p><i>Honeywell</i> decision. German constitutional court made it clear that it is empowered to review the EU's acts (CJEU decisions included) from the standpoint of <i>ultra vires</i>. No violation found in the case at hand.</p> <p>https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2010/07/rs20100706_2bvr266106en.html</p>
f)	Constitutional Tribunal Order of 15 December 2015, case no 2 BvR 2735/14	<p>German Constitutional Tribunal conducted <i>de facto</i> identity review. It refused to surrender a criminal sentenced <i>in absentia</i> by Italian courts on the basis of the European Arrest Warrant despite the matter having been settled in earlier <i>Melloni</i> case. On rhetorical level, however, despite relying on its national understanding of fundamental rights and declining to make a preliminary reference, it claimed that its decision was based on EU law.</p> <p>https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2015/12/rs20151215_2bvr273514en.html</p>
g)	Constitutional	<p><i>OMT Judgment</i>. Constitutional Tribunal conducted <i>ultra vires</i> review of the outright monetary transactions mechanism and declared that it had no basis in</p>



*Together in defense of
Life, Family, Liberty
and Sovereignty!*

	Tribunal judgment of 5 May 2020, case no. BvR 859/15	the Treaties and, thus, the German authorities were precluded from participating in it. Further, it declared the CJEU having no jurisdiction on the matter. Importantly, it did so after the CJEU pronounced itself on the matter in the consequence of a preliminary reference from the German constitutional court. https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/05/rs20200505_2bvr085915en.html
7. Hungary		
a)	Constitutional Tribunal Decision 22/2016. (XII. 5.) AB of 5 December 2016	Hungarian Constitutional declared the Council Decision 2015/1601 concerning the compulsory relocation of migrants as an <i>ultra vires</i> act that, in addition, violates Hungarian constitutional identity. https://public.mkab.hu/dev/dontesek.nsf/0/1361afa3cea26b84c1257f10005d4958/\$FILE/EN_22_2016.pdf
8. Poland		
a)	Constitutional Tribunal judgment of 11 May 2005 in case K 18/04	Polish accession treaty judgment. The Constitutional Tribunal made it clear that the limits for the European integration are set by the Polish constitution and that It is the Constitutional Tribunal who is competent to check whether these constitutional requirements were met. https://trybunal.gov.pl/s/k-1804
b)	Constitutional Tribunal Judgment of 27 April 2005 in case P 1/05	Constitutional Tribunal assessed the mechanism of the European Arrest Warrant as incompatible with Polish constitution. As a result, the Polish constitution was amended to allow the use of the warrant. https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/5329-europejski-nakaz-aresztowania
c)	Constitutional Tribunal Judgment of 24 November	Polish <i>Lisbon Treaty</i> judgment. Reassertion of the constitutional limits for the EU integration, constitutional identity and the Constitutional Tribunal's competencies. Accession Treaty was found to be compatible with the Constitution.



*Together in defense of
Life, family, Liberty
and sovereignty!*

	2010 in case K 32/09	https://trybunal.gov.pl/fileadmin/content/omowienia/K 32 09 EN.pdf
d)	Constitutional Tribunal of 16 November 2011 in case SK 45/09	Polish Constitutional Tribunal confirmed its competence to control the constitutionality of EU secondary law with regard to the Brussels I regulation. It found no violation in the case at hand. https://trybunal.gov.pl/s/sk-4509
e)	Constitutional Tribunal Judgment of 7 October 2021 in case K 3/21	Polish Constitutional Tribunal declared the measures applied by the CJEU to the Polish judiciary as enacted ultra vires and, thus, producing no legal effects in the Polish legal system. https://trybunal.gov.pl/en/hearings/judgments/art/11662-ocena-zgodnosci-z-konstytucja-rp-wybranych-przepisow-traktatu-o-unii-europejskiej
9. Romania		
a)	Judgment of the Romanian Constitutional Court of 8 June 2021, case no. 390-2021	The Romanian Constitutional Court, in response to a CJEU judgment allowing its courts to disregard the Romanian Constitution in the event of a conflict with EU law (the case concerned judicial reform), stated that the Constitution retains its superior hierarchical position, and that a national court has no authority to assess the compatibility of a provision deemed constitutional by a ruling of the Constitutional Court with EU law. Furthermore it made clear that the CJEU acted ultra vires in that matter. https://www.ccr.ro/wp-content/uploads/2021/07/Decizie_390_2021_EN.pdf
10. Slovakia		
a)	Constitutional Court judgment of 18 October 2005 in case PL. ÚS 8/04	Slovakian Constitutional Court declared unconstitutional provision of national law mirroring a provision of the anti-discrimination directive. https://www.ustavnysud.sk/docDownload/a84fd30d-e326-4c9c-a263-dd28e919e469/%C4%8D.%205%20-%20PL.%20%C3%9AS%208_04.pdf
11. Spain		
a)	Judgment of the Spanish	The constitutional declared in relation to the envisaged Constitution for Europe that the primacy of EU law is reconcilable with the Spanish constitution



*Together in defense of
Life, family, liberty
and sovereignty!*

	Constitutional Tribunal of December 13, 2004, case no. DTC 1/2004	insofar as it is the constitution that delimits the scope of application of the EU law within the Spanish legal order (<i>primacy</i> of EU law and <i>supremacy</i> of the constitution). https://www.tribunalconstitucional.es/ResolucionesTraducidas/Declaration%201-2004.pdf
b)	Judgment of the Spanish Constitutional Tribunal 13. February, case no 2014, STC 26/2014	Aftermath of the CJEU <i>Melloni</i> judgment. The Spanish court lowered the constitutional standard to conform to the CJEU's interpretation, but while doing so, voiced strongly the existence of its right to conduct an ultra-vires examination of the CJEU's rulings. https://www.tribunalconstitucional.es/ResolucionesTraducidas/STC%2026-2014%20EN.pdf
c)	Supreme Court judgment of 9 January 2020 in special proceedings No. 20907/2017	Spanish Supreme court decided to put Mr Junqueras involved, among others, into Catalan separatist movement into prison despite the earlier CJEU's preliminary ruling (C-502/19 <i>Junqueras</i>) stating that being elected to the European Parliament, he should enjoy the immunity. While <i>de facto</i> contradicting the decision of the CJEU, in its reasoning the Spanish court argued that its decision pertains to different factual circumstances. https://www.poderjudicial.es/cgpj/en/Judiciary/Supreme-Court/Judicial-News/Press-Release--Special-Proceedings-20907-2017



*Together in defense of
Life, family, Liberty
and sovereignty!*

3.6. Table no 2: Selected decisions of Member States' top courts and constitutional bodies asserting the primacy of national constitutional law over the EU law without overriding the EU law

1. Belgium		
a)	Constitutional Court Decision Nr. 62/2016 of 28 April 2016	Belgian constitutional court examined the compatibility of the OMT mechanism with the Belgian constitution and the scope of power transfer to the EU. While finding no violation, the court made it clear that it has the competence to examine whether the EU institutions are not acting <i>ultra vires</i> . https://de.const-court.be/public/d/2016/2016-062d.pdf
2. Estonia		
a)	Supreme Court Decision nr 3-4-1-6-12 of 12 July 2012	Decision concerned signing the Lisbon Treaty. The Estonian Supreme Court made it clear that it is up to Estonia, its organs and judiciary, to assess the scope of powers transferred to the EU. https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-6-12
3. Finland		
a)	Constitutional Legal Committee Decision of 5 June 2020: PeVL 16/2020 vp;	Finnish parliamentary Constitutional Legal Committee, in practice serving a similar role to the constitutional court, stated that the adoption of the post COVID-19 measures on the basis of the Treaties could be viewed as exceeding the constitutional act of the EU's empowerment and that it is up to Finnish organs to assess whether the EU has not exceeded its mandate. While seeing potential ground for applying the <i>ultra vires</i> doctrine in its first decision, eventually, after the unprecedented opposing statement of the Grand Committee, the CLC decided that the proposed measures do not constitute an <i>ultra vires</i> act. https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/PeVL_16+2020.aspx https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/StVL_14+2021.aspx https://www.eduskunta.fi/EN/tiedotteet/Pages/Finnish-Grand-Committee-adopts-initial-parliamentary-position-on-COVID-19-recovery-plan.aspx
b)	Statement of the Grand Committee of 12 June 2020: SuVL 6/2020	
c)	Constitutional Legal	



*Together in defense of
Life, family, Liberty
and sovereignty!*

	Committee Decision of 27 April 2021: PeVL 14/2021 vp 18;	https://verfassungsblog.de/who-is-ultra-vires-now-the-eus-legal-u-turn-in-interpreting-article-310-tfeu/
4. Ireland		
a)	Supreme Court judgement of 9th April, 1987 No. 12036P <i>Crotty</i>	Irish supreme Court Judgment confirming it has an implied power to review an international agreement for constitutionality prior to ratification at the instance of an individual citizen, which extends also to the modifications of EU Treaties. https://www.cvce.eu/content/publication/2013/5/6/187e7d4f-aa3e-43da-a1e2-bb3fc41d2fbd/publishable_en.pdf
b)	Supreme Court judgement of 11 November 2022 [2022] IESC 44 <i>Costello</i>	Irish Supreme Court decided that joining by the Ireland a mixed agreement concluded by the EU (but requiring also the participation of the Member States) would violate the substantive provisions on Irish constitutional Identity. First formulation of the Irish constitutional identity. https://www.europeanrights.eu/public/sentenze/Suprem_Court_11.11.2022.pdf
5. Italy		
a)	Constitutional Court Judgment of 18 December 1973 <i>Frontini v. Ministero delle Finanze</i>	Italian constitution sets limits to the European integration and it is up to the Constitutional Court to interpret these limits. Signalling essential elements forming the constitutional identity. No violation found. https://www.cortecostituzionale.it/scheda-pronuncia/1973/183
b)	Constitutional Court of 5 June 1984 <i>Granital</i>	Italian constitutional court confirmed its competence to check whether the EU law as interpreted by the CJEU has not outstepped the limits set by the Italian Constitution. No violation found. https://www.cortecostituzionale.it/scheda-pronuncia/1984/170



*Together in defense of
Life, family, Liberty
and sovereignty!*

c)	Tarrico saga	While not directly negating the applicability of EU law, the Constitutional Court effectively pressed the CJEU to change its jurisprudence in Italian cases. (para 57 above).
6. Latvia		
a)	Constitutional Court of Latvia of 7 April 2009 in Case No. 2008-35-01	The Court confirmed the compatibility of the Lisbon Treaty with the Latvian constitution. While doing so, it stated explicitly that it is competent to assess whether the competence to the EU would not infringe to sovereignty core of Latvia. https://www.satv.tiesa.gov.lv/wp-content/uploads/2008/09/2008-35-01_Spriedums_ENG.pdf

4. Conclusions

4.1. The constitutional amendments adopted by the Slovak Parliament on September 26, 2025 fall within the state's margin of appreciation and do not violate any of its binding international obligations. The cornerstone of these amendments is anchored directly in Article 4(2) TEU itself, which requires the European Union to respect the national identity of the Member States, as expressed primarily in their constitutions.

4.2. The objections raised by the Venice Commission, the European Commission, and the Fundamental Rights Agency are entirely unfounded and lack any basis in international and European law; instead, they rather reflect those bodies' political views. No rule of international law obliges Slovakia to force children to participate in sex education against their parents' wishes, to grant adoption rights to same-sex couples, or to recognize more than two sexes.

4.3. The principle of constitutional supremacy reflects a legal tradition spanning many centuries and predating the European Union. When acceding to the European Union, the Member States did not agree to subordinate their constitutions to EU law, as evidenced by the wording of most national constitutions (including Slovakia's), which affirm their special legal status, as well as by the extensive case-law of European constitutional courts. Although the interpretation advanced by the Court of Justice of the European Union takes the opposite view, it finds no support in the EU Treaties. the CJEU is clearly acting *ultra vires* while reserving itself the powers to assert the primacy of EU law against the central values of the Member States' constitutions



*Together in defense of
Life, family, liberty
and sovereignty!*

4.4. The primacy of EU law is not conditional and may not serve to resolve the conflicts between the EU law and the Slovakian constitutional law. The vast majority of the Member States top courts pronounced themselves with regard to the primacy of their fundamental laws over EU law (e.g. Germany, Ireland, Poland, Estonia, Latvia, Spain, Belgium, Finland, Cyprus, Bulgaria). This jurisprudence being as varied, as the adjudicating courts' native legal systems, is surprisingly consistent in denying the unconditional precedence to EU law.

4.5. The Member States practice clearly indicates that they do not accept the primacy of EU law as the principle governing the interactions between the EU law and their constitutional laws. Even if the amendments to the Slovakian constitution were to violate certain substantive provisions of EU law and not be covered by the *national identity* exception, this would not render them illegal.