CONSTITUTIONAL ADAPTATION TO EUROPEAN INTEGRATION: A COMPARATIVE ANALYSIS OF THE ROMANIAN AND SPANISH LEGAL FRAMEWORKS AS EU MEMBER STATES

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Abstract

This paper undertakes a comparative analysis of the constitutional adaptations of Romania and Spain to European Union membership, examining the distinct legal frameworks established through art. 148 of the Romanian Constitution and art. 93 of the Spanish Constitution (SC), respectively. Despite sharing a civil law tradition, their different historical trajectories towards and within the EU have shaped divergent approaches to integrating supranational law. The study contrasts the CCR's assertion of the Constitution's absolute supremacy over EU law, limiting primacy to infra-constitutional norms and leading to direct jurisprudential challenges to the CJEU, with the Spanish Constitutional Court's doctrine distinguishing constitutional supremacy from the primacy of application of EU law within ceded competences, allowing for greater accommodation while reserving ultimate constitutional safeguards based on „fundamental structures". It explores the differing roles these courts play as guardians or gatekeepers, their varying engagement in judicial dialogue, and their distinct operationalization of „constitutional identity" – linked to Romania's unamendable provisions versus Spain's fundamental structures – as a limit to integration. The analysis highlights how these contrasting judicial philosophies and interpretations result in different strategies for balancing national sovereignty with EU obligations, offering insights into the diverse manifestations of constitutional pluralism within the European legal order.

Keywords: *EU Law, constitutional supremacy, national sovereignty, judicial review, comparative constitutional law.*

1. Introduction

The process of European integration, particularly since the entry into force of the Treaty of Lisbon, has transcended its initial economic approach to assume an increasingly profound political and constitutional character. This evolution necessitates adjustments within the domestic legal frameworks of the EU Member States, and the accession[1] of any new state to the EU is not merely a matter of international agreement but entails a fundamental commitment by the candidate state to adapt its entire legal order to conform with the *acquis communautaire*. Crucially, this includes ensuring that its national constitution aligns with the foundational values upon which the Union is built. This adaptation process engages a complex interplay, and often a tension, between the obligations arising from supranational law and the enduring tenets of national sovereignty. The study of how national constitutions accommodate, resist, or mediate the influence of EU law is therefore of paramount importance, encompassing both substantive limitations – such as the protection of fundamental rights, the delineation of transferred powers (including *ultra vires* review), and the safeguarding of constitutional identity – and the procedural mechanisms that govern this interaction.[2] The very nature of the EU's development, especially its expansion, has underscored that the primary burden of adaptation rests upon the acceding state; the EU's foundational legal structure is not typically renegotiated with each enlargement, establishing a dynamic that shapes the subsequent legal and political interactions.

This article undertakes a comparative legal analysis of the constitutional adaptations implemented by Romania and Spain following their accession to the EU. It focuses on the specific legal mechanisms, pivotal constitutional provisions, and the jurisprudential evolution within these two Member States that define the

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[1] Governed by art. 49 TEU. For more on the EU accession process, see A. Fuerea, *Manualul Uniunii Europene*, 6th ed., Universul Juridic Publishing House, Bucharest, 2016.

[2] See European Parliament, *National constitutional avenues for further EU integration*, PE 493.046, 2014, available at *https://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493046/IPOL-JURI_ET(2014)493046_EN.pdf*, last consulted on 08.05.2025.

relationship between their national legal systems and EU law. The central thesis posits that while both Romania and Spain, as nations sharing a civil law tradition yet possessing distinct historical trajectories towards and within European integration, acknowledge the principle of primacy of EU law, their constitutional frameworks and the interpretative stances of their respective constitutional courts exhibit significant divergences. These differences are particularly manifest in their approaches to managing the intricate balance between supranational legal obligations, the preservation of national sovereignty, and the imperative to safeguard their unique constitutional identities.

The approach adopted within the article involves a comparative examination of the Romanian Constitution, with a particular focus on art. 148, and the Spanish Constitution, concentrating on art. 93. These provisions, often termed „European clauses", are fundamental to understanding the domestic constitutional basis for EU membership and the reception of EU law. The analysis will extend to a meticulous scrutiny of the CCR case-law and the Spanish Constitutional Court case-law (Tribunal Constitucional – TC). Furthermore, relevant CJEU judgments that have interacted with, and indeed shaped, these national legal orders will be considered. The insights derived from academic legal scholarship, including significant contributions from Romanian legal scholars whose works are integrated throughout this study[3], will provide critical depth and diverse perspectives to the analysis.

2. The principle of primacy of EU law and its reception in national legal orders

The architecture of the EU's legal system rests upon several foundational principles, among which the primacy of EU law stands as a cornerstone, ensuring its effectiveness and uniform application across all Member States. Although not explicitly enshrined in the original founding Treaties, this principle was judicially recognised by CJEU, whose landmark decisions have profoundly shaped the relationship between EU law and national legal orders. The very impetus for the CJEU to develop such a robust principle can be understood as an existential necessity for the nascent European Economic Community. Without primacy, the uniform application of Community law would be compromised, and the entire edifice of European integration could be undermined by diverging national legislative or judicial actions. This proactive judicial stance, while crucial for the EU's development, inherently set the stage for a complex, and at times contentious, dialogue with national constitutional courts, themselves the ultimate guardians of their respective domestic legal orders.

2.1. The CJEU's landmark jurisprudence

The CJEU articulated the principle of primacy through a series of seminal rulings. In the landmark case of *Flaminio Costa v. E.N.E.L.* (Case 6/64)[4], the Court declared that, by establishing the European Economic Community, Member States had limited their competences, albeit in specific fields, and created a body of law binding on both their nationals and the States themselves. The Court reasoned that the law emanating from the Treaty, an independent source of law, could not, owing to 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. This judgment was foundational, asserting not only the primacy but also the autonomy of the EU legal order. The context of this case, involving an Italian nationalisation law and a symbolic refusal to pay a minor electricity bill, underscores how individual legal challenges can precipitate rulings with far-reaching constitutional implications.

Subsequently, in *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (Case 11/70), the CJEU reinforced this stance by holding that the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to fundamental rights

[3] See: A. Fuerea, *Manualul Uniunii Europene*, *op. cit.*; A. Fuerea, *Dreptul Uniunii Europene. Principii, acțiuni, libertăți,* Universul Juridic Publishing House, Bucharest, 2016; M.A. Niță (Dumitrașcu), *Dreptul Uniunii Europene I*, 3rd ed., Universul Juridic Publishing House, 2025; R.-M. Popescu, M.A. Niță (Dumitrașcu), *Dreptul Uniunii Europene - Sinteze si aplicații*, Universul Juridic Publishing House, 2011; R.-M. Popescu, *Features of the Unwritten Sources of European Union Law*, in Lex ET Scientia International Journal, XX(2), 2013, pp. 99-108; G.A. Oanță, *Interdependenta dreptului internațional cu dreptul Uniunii Europene*, in O. Predescu, A. Fuerea, A. Dutu-Buzura (eds.), *Actualitatea și perspectivele interdependențelor dreptului Uniunii Europene cu dreptul intern al statelor membre*, Universul Juridic Publishing House, Bucharest, 2022, pp. 49-63.

[4] CJEU, *Case 6/64, Flaminio Costa v. E.N.E.L.*, judgment from 15.07.1964, ECLI:EU:C:1964:66. See also European Parliament, *Costa v Enel judgment: 60 years on The making of the doctrine of primacy of EU law*, PE 762.361, 2024, available at *https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762361/EPRS_BRI(2024)762361_EN.pdf*, last consulted on 08.05.2025.

as formulated by the constitution of that State or the principles of its national constitutional structure. This judgment extended the reach of primacy, from the CJEU's perspective, even over national constitutional law, including fundamental rights provisions, thereby prefiguring decades of dialogue and sometimes friction with national constitutional courts.

The practical application of primacy at the level of national courts was decisively clarified in *Amministrazione delle Finanze dello Stato v. Simmenthal S.p.A.* (Case 106/77, „Simmenthal II"). The CJEU ruled that every national court, in a case within its jurisdiction, has the duty to give full effect to EU law and, consequently, must set aside any provision of national law which may conflict with it, whether prior or subsequent to the EU rule, without having to request or await the prior setting aside of such provision by legislative or other constitutional means. This empowered all national judges to act as primary enforcers of EU law, ensuring its immediate and uniform application by disapplying conflicting national norms.

The significance of this judicially developed principle was such that an attempt was made to codify it explicitly in the Treaty establishing a Constitution for Europe. Art. I-6 of the proposed Constitution stated: „The Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States". However, this Treaty was never ratified, following rejections in referendums in France and the Netherlands. This failure suggests that an explicit, politically endorsed, treaty-based assertion of absolute primacy over national constitutions remains a sensitive issue for some Member States, leaving the CJEU's jurisprudential doctrine as the primary, albeit continuously debated, foundation for the principle.

2.2. National constitutional courts and the challenge to absolute primacy: the assertion of constitutional supremacy

The reception of the principle of primacy in the national legal orders of the Member States has been characterised by a general acceptance of its application to ordinary national legislation. However, the notion that EU law holds supremacy over national constitutions themselves has proven far more contentious. Many national constitutional courts, while acknowledging the need for EU law to be effective, have reserved the right to review EU legal acts for conformity with fundamental principles of their national constitutions or what is often termed „constitutional identity".[5] This reservation, sometimes articulated as the „counter-limits" doctrine, reflects a deep-seated concern for preserving the core tenets of national sovereignty and constitutionalism.

The German Federal Constitutional Court (Bundesverfassungsgericht), for instance, has a long history of engaging with this issue. Its *Solange I* and *Solange II* decisions articulated a conditional acceptance of EU law primacy, contingent upon the EU providing a level of fundamental rights protection equivalent to that guaranteed by the German Basic Law. Later, in its *Lisbon* judgment, the Court further delineated its powers to review EU acts for compliance with fundamental rights, for exceeding conferred powers (*ultra vires* review), and for infringing Germany's unamendable constitutional identity.[6]

Similarly, the Polish Constitutional Tribunal has, in recent years, issued judgments that explicitly challenge the primacy of certain provisions of EU law and CJEU rulings over the Polish Constitution, asserting the latter's ultimate supremacy within the Polish legal order. These rulings have generated significant tensions with EU institutions and have been widely condemned as undermining the foundational principles of the EU legal order.[7]

Even in Member States with a strong tradition of international law integration, nuances exist. In Belgium, while the Court of Cassation, in its 1971 *Franco-Suisse Le Ski* („Cheese Spread") ruling, affirmed the precedence of self-executing international treaties (including EU law) even over subsequent national law and potentially the Constitution, the Belgian Constitutional Court later qualified this by asserting that the core of Belgium's constitutional identity cannot be overridden by EU law.

These varying national responses are not arbitrary but are deeply embedded in the specific constitutional traditions, historical experiences with sovereignty, and the evolving perceptions of the adequacy of fundamental rights protection within the EU legal order at different historical junctures.[8] For example, the initial concerns of the German and Italian constitutional courts were significantly motivated by a perceived deficit in fundamental

[5] See European Parliament, *National constitutional avenues for further EU integration*, *op. cit*.
[6] *Ibidem*.
[7] See P. Eleftheriadis, *The Primacy of EU Law: Interpretive, not Structural*, in European Papers, vol. 8, no. 3/2023, pp. 1255-1291.
[8] See European Parliament, *National constitutional avenues for further EU integration*, *op. cit.*

rights protection at the Community level. This dynamic interaction, often characterised as a „judicial dialogue" but sometimes escalating into a „clash of courts"[9], reflects an ongoing negotiation over the ultimate authority and the precise boundaries of EU law's penetration into the national legal sphere. It underscores the fact that while the CJEU may assert a more absolute vision of primacy, its practical realization is mediated through the constitutional frameworks and judicial interpretations of the Member States.

3. Romania's constitutional journey within the EU

Romania's path to EU membership, culminating in its accession on 1 January 2007, necessitated constitutional adjustments to align its domestic legal order with the extensive body of EU law and its foundational principles. This process was formally anchored by the 2003 revision of the Romanian Constitution, which introduced specific provisions to govern the relationship between national law and the supranational legal order of the EU.[10] CCR has since played a pivotal role in interpreting these provisions, navigating the complex interplay between EU obligations and national constitutional imperatives. This journey has been marked by both a willingness to facilitate European integration and a firm assertion of certain constitutional red lines, particularly concerning the ultimate supremacy of the Romanian Constitution and the safeguarding of its core identity.

3.1. Art. 148 of the Romanian Constitution and the transfer of powers

The cornerstone of Romania's constitutional framework for EU integration is art. 148 of the Constitution, as revised in 2003.[11] Art. 148 para. (1) stipulates that Romania's accession to the EU constituent treaties, and to any acts revising these treaties, shall be effected by means of a law adopted in a joint session of the Chamber of Deputies and the Senate, requiring a qualified majority of two-thirds of their members. This provision establishes the formal legal basis for the transfer of certain powers to EU institutions. CCR has interpreted this act of accession not as an abandonment of sovereignty, but as an expression of Romania's sovereign will to participate in the European project, involving a sharing in the exercise of certain powers with other Member States.[12]

Crucially, art. 148 para. (2) addresses the principle of primacy. It states that, following accession, the provisions of the EU's constituent Treaties, as well as any other binding Community rules, „shall prevail over conflicting provisions of national laws, in accordance with the provisions of the Act of Accession". This clause is the primary domestic legal anchor for the application of EU law primacy within the Romanian legal system. Furthermore, art. 148 para. (4) imposes a duty upon the Parliament, the President of Romania, the Government, and the judiciary to ensure the fulfilment of the obligations arising from the Act of Accession and the provisions of paragraph (2) concerning primacy.

Prior to Romania's accession, CCR, in its dec. no. 148/2003, reviewed the constitutionality of the proposed constitutional revisions, including the introduction of art. 148. The Court affirmed their compatibility with the existing constitutional order, thereby paving the way for EU membership.[13] This decision implicitly, if not explicitly, addressed the fundamental question of the compatibility of transferring powers with the Romanian constitutional framework, signalling a commitment to integration.

3.2. CCR on EU law

CCR's jurisprudence since Romania's EU accession reveals a complex and evolving understanding of its relationship with EU law, characterised by an acceptance of EU law's precedence in many areas, but also a defence of the Romanian Constitution's ultimate supremacy and its own role as its final interpreter.

CCR consistently acknowledges the primacy of EU law over infra-constitutional national laws, as mandated by art. 148 para. (2) of the Constitution. This means that ordinary legislation and governmental acts must yield to conflicting EU provisions. However, a feature of the CCR's doctrine is its repeated assertion that this primacy does not extend to the Romanian Constitution itself. The Constitution is posited as the supreme law of the land,

[9] See P. Eleftheriadis, *op. cit*.

[10] See R.-M. Popescu, *Interpretation and enforcement of Article 148 of the Constitution of Romania Republished, according to the decisions of the Constitutional Court*, in CKS Journal, 2019, Conference Proceedings, pp. 300-309.

[11] *Ibidem*.

[12] *Ibidem*.

[13] *Ibidem*.

and EU law is viewed as being „interposed in the framework of constitutional control", meaning it can be considered alongside the Constitution in certain review processes, but not above it.

This hierarchical distinction was starkly articulated in dec. no. 390/2021. In this ruling, CCR stated that the principle of primacy enshrined in art. 148 para. (2) „cannot remove or negate national constitutional identity".[14] A significant consequence drawn by the CCR from this premise is that once it has declared a provision of domestic law to be constitutional, a national ordinary court no longer has the power to examine the conformity of that same provision with EU law. This stance effectively positions the CCR as the final arbiter not only of constitutionality but also, indirectly, of the applicability of EU law in cases where it has previously vetted the national law in question. Such a position creates a direct hierarchical challenge to the CJEU's established doctrine of primacy, representing not merely a nuanced interpretation but a fundamental disagreement on the ultimate authority in instances of conflict involving core constitutional norms.

This approach has inevitably led to direct confrontations with the CJEU. Following dec. no. 390/2021, the CJEU, in Case C-430/21 (*RS*), delivered a judgment that directly contradicted the CCR's position. The CJEU held that EU law, particularly the principle of primacy, precludes national rules or practices whereby ordinary courts are prevented from removing from application, of their own motion, national provisions that conflict with EU law, even if those national provisions have been declared constitutional by a national constitutional court. The CJEU further emphasised that national courts are obliged to ensure the full effect of EU law and that a national constitutional court cannot, by invoking national constitutional identity or by claiming the CJEU acted *ultra vires*, shield national law from the primacy of EU law or from the binding effect of CJEU judgments.[15] This judicial impasse highlights a fundamental divergence on the ultimate authority to resolve conflicts between EU law and national constitutional provisions.

In its interpretive methodology, the CCR has occasionally employed the „living law" theory, which posits that law is not static but must evolve and adapt to societal changes and contemporary realities.[16] This doctrine has served as a mechanism for the CCR to reinterpret constitutional provisions in a manner that can facilitate alignment with evolving European standards, including those derived from EU law and from ECHR. For example, in the dec. no. 799/2011, CCR referenced an EU Framework Decision concerning the proceeds of crime during its review of a proposed constitutional amendment related to the presumption of lawful acquisition of assets. By doing so, the Court adapted its interpretation of a constitutional presumption to better align with EU objectives in combating serious crime, thereby demonstrating the „living law" doctrine's potential to foster a *modus operandi* within the EU's normative pluralism.[17] However, this doctrine is a double-edged sword: while it can promote harmonious interpretation, its reliance on the CCR's evolving assessment of societal needs could also be invoked to justify interpretations that prioritise national particularities over the uniform application of EU law, should the CCR perceive a fundamental conflict.

Beyond the pivotal dec. no. 148/2003 (validating constitutional revisions for accession) and the contentious dec. no. 390/2021 (asserting constitutional supremacy and limiting ordinary courts' review), other CCR decisions illustrate its engagement with EU law. For instance, in the context of the *Coman case* (which led to CJEU ruling C-673/16 on the free movement rights of same-sex spouses), the CCR, by referring questions to the CJEU and subsequently interpreting national law in light of the CJEU's response, demonstrated a complex interaction with EU fundamental rights law. Decision no. 68/2017, which found art. 277 CC concerning marriage constitutional only to the extent that it allows the granting of residence rights under EU law to spouses – including those in same-sex marriages legally concluded abroad – illustrates an attempt to reconcile national provisions with EU free movement directives through interpretative means, even where domestic law does not generally recognise such unions.[18] This case shows the CCR engaging in a form of conditional constitutionality, tethering the validity of the national provision, in its application to EU citizens, to compliance with EU law.

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[14] CJEU, *Case C-430/21, RS (Effect of the decisions of a constitutional court)*, judgment from 22.12.2022, ECLI:EU:C:2022:99.

[15] *Ibidem*.

[16] See T. Toader, *The „living law" theory: constitutional interpretation and the development of the EU legal order*, CEACL, 2025, available at *https://www.ceaclaw.org/post/the-living-law-theory-constitutional-interpretation-and-the-development-of-the-eu-legal-order*, last consulted on 08.05.2025.

[17] *Ibidem*.

[18] See CCR dec. no. 68/2017 *(Coman case context)*, available at *https://cjc.eui.eu/data/data/data?idPermanent=772&triial=1*, last consulted on 08.05.2025.

3.3. Defining and defending Romanian constitutional identity: limits to European integration

The CCR has repeatedly invoked the concept of „national constitutional identity" as a fundamental limit to the primacy and application of EU law within the Romanian legal order.[19] This concept is intrinsically linked by the CCR to the foundational principles and unamendable provisions of the Romanian Constitution, particularly those enumerated in art. 152, which sets out the limits of constitutional revision. These clauses protect core values such as the national, independent, unitary, and indivisible character of the Romanian State, the republican form of government, territorial integrity, judicial independence, political pluralism, and the prohibition of suppressing fundamental rights and freedoms.

The CCR views these elements as constituting an „unamendable core" of the Constitution that EU law cannot override.[20] Constitutional identity, in this view, is not merely a political aspiration but a set of legally binding principles that safeguard the essential features distinguishing the Romanian nation and its constitutional order.

However, this robust defence of national constitutional identity by the CCR exists in tension with the CJEU's own jurisprudence. While art. 4(2) TEU obliges the Union to respect the national identities of Member States, inherent in their fundamental structures, political and constitutional, the CJEU has consistently maintained that such respect cannot serve as a justification for Member States to disregard their obligations under EU law or to unilaterally set aside CJEU judgments. The CJEU reserves for itself the ultimate authority to interpret the scope of art. 4(2) TEU and to determine whether a national measure genuinely falls within the protection of national identity in a manner compatible with EU law. This creates an ongoing dialogue, and potential for conflict, over who defines the limits of national identity and how those limits interact with the principle of primacy.

4. Spain's constitutional engagement with the EU

Spain's accession to the European Communities in 1986 marked a significant step in its post-Franco democratic consolidation and modernisation. The 1978 Spanish Constitution provided the framework for this integration, primarily through art. 93, a dedicated „European clause".[21] The Spanish Constitutional Court (Tribunal Constitucional – TC) has since developed a distinct and nuanced jurisprudence regarding the relationship between Spanish constitutional law and EU law, characterised by a sophisticated doctrinal construction that seeks to reconcile EU membership with the foundational principle of constitutional sovereignty. This approach, while generally accommodating of EU law's effectiveness, reserves an ultimate safeguarding role for the Constitution and its core principles. The TC's historical trajectory, initially marked by a degree of „deliberate distancing" from EU law matters as it focused on domestic constitutionalisation post-dictatorship[22], may have paradoxically contributed to a smoother long-term integration by allowing for a more gradual and less confrontational development of its doctrine on EU law.

4.1. The „European Clause": art. 93 SC and the framework for integration

The primary constitutional gateway for Spain's participation in the EU is art. 93 SC.[23] This provision authorises the conclusion of treaties that attribute to an international organization or institution the exercise of competences derived from the Constitution. Such authorisation must be granted by means of an organic law, a legislative instrument requiring an absolute majority in the Congress of Deputies. This mechanism was employed for Spain's accession to the EU and for subsequent Treaty revisions, facilitating the transfer of specific sovereign powers to the EU institutions.

The second sentence of art. 93 SC mandates that „it is incumbent on the Cortes Generales or the Government, as the case may be, to guarantee compliance with these treaties and with the resolutions

[19] See R.D. Popescu, *The Constitutionalization and the Europeanization of Private Law in Romania*, in Rafał Szczepaniak (ed.), *The Constitutionalization of Private Law versus the Europeanization of Private Law*, Constitutional Law Library, vol. 8, Brill, 2025, pp. 203-242.

[20] CJEU, Opinion of Advocate General Collins delivered on 20 January 2022*, Case C-430/21, RS (Effect of the decisions of a constitutional court)*, ECLI:EU:C:2022:44.

[21] See European Parliament, *The notion of constitutional identity and its role in European integration*, PE 760.344, 2024, available at *https://www.europarl.europa.eu/RegData/etudes/STUD/2024/760344/IPOL_STU(2024)760344_EN.pdf*, last consulted on 08.05.2025.

[22] See X. Arzoz, *Avoiding the Rain or Learning to Dance in It: The Hesitations of the Spanish Constitutional Court*, in Al. Heger, M. Malkmus (eds.), *On the Relation between the EU Charter of Fundamental Rights and National Fundamental Rights*, Springer, Cham, 2024.

[23] See European Parliament, *The Spanish Parliament and EU affairs*, PE 757.579, 2023, available at *https://www.europarl.europa.eu/cmsdata/284043/Spanish%20Parliament_EPRS_BRI(2023)757579_EN.pdf*, last consulted on 08.05.2025.

emanating from the international and supranational organisations in which the powers have been vested".[24] This assigns responsibility for the enforcement and implementation of EU law within the Spanish legal order.

TC has interpreted art. 93 SC as a general and open-ended clause that has nonetheless proven highly functional, serving as the fundamental constitutional basis for the intricate relationship between Spanish law and EU law. A notable aspect of the interpretation of art. 93 SC is the understanding that it permits the „attribution of the *exercice* of competence" rather than an outright transfer of the competences themselves. This has been interpreted to imply a „cession-attribution" model, where the Spanish State retains ultimate ownership of the ceded competences, suggesting a conditional and potentially revocable transfer, at least in theory.[25]

4.2. The Spanish Constitutional Court (Tribunal Constitucional – TC) on EU Law

TC's jurisprudence on the interaction between Spanish constitutional law and EU law is characterised by several key doctrinal elements, most notably the distinction between constitutional supremacy and EU law primacy, and the role of art. 10(2) SC in interpreting fundamental rights.

A central tenet of the TC's doctrine is the distinction it draws between the supremacy (*supremacía*) of the Spanish Constitution and the primacy (*primacía*) of EU law.[26] The Constitution is unequivocally affirmed as the supreme norm within the Spanish legal order; its hierarchical superiority is not questioned. EU law, however, enjoys primacy of application in those areas where competences have been transferred to the EU under art. 93 SC. This primacy means that in the event of a conflict between a provision of EU law and a provision of national law (including, in some interpretations by scholars, constitutional provisions if the conflict arises within the scope of ceded powers and does not impinge upon fundamental constitutional structures), EU law will be applied preferentially.[27] Critically, this preferential application does not entail the annulment or declaration of invalidity of the national norm; rather, the national norm is rendered inapplicable in the specific case to ensure the effectiveness of EU law. This conceptual distinction allows the TC to ensure the effectiveness of EU law without formally ceding the ultimate hierarchical authority of the Spanish Constitution.[28]

This doctrine was significantly articulated in **Declaration 1/2004 (DTC 1/2004)**, issued in response to a governmental request concerning the compatibility of the (ultimately unratified) Treaty establishing a Constitution for Europe with the Spanish Constitution.[29] TC found no inherent contradiction between the Spanish Constitution and the proposed EU Constitutional Treaty, including its explicit primacy clause (art. I-6). The TC interpreted this primacy clause not as an assertion of EU law's hierarchical superiority over the Spanish Constitution, but as a rule for resolving normative conflicts between two distinct but interconnected legal orders, ensuring the effectiveness of EU law within the competences validly transferred under art. 93 SC. Importantly, the TC also stated that the Spanish state, through its Constitution, reserves the „right to sovereignty" and that the compatibility of EU law is conditioned upon respect for Spain's fundamental national foundations.[30] It further reserved the right for the TC itself to intervene in an „hardly conceivable case" of an irreconcilable conflict between EU law and the Spanish Constitution to defend the latter's integrity.[31]

Art. 10(2) SC is another pivotal provision in this context. It mandates that „provisions relating to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by

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[24] *Ibidem*.

[25] *Ibidem*.

[26] See D. Sarmiento, *El Tribunal Constitucional Español y el diálogo judicial europeo*, in Revista Española De Derecho Europeo, (82), 2021, pp. 9-34.

[27] *Ibidem*.

[28] See J.M. Y Pérez de Nanclares, *Constitutional Identity in Spain: Commitment to European Integration without Giving Up the Essence of the Constitution*, in Christian Calliess, Gerhard van der Schyff (eds)., *Constitutional Identity in a Europe of Multilevel Constitutionalism*, Cambridge University Press, 2019, pp. 268-283.

[29] *Ibidem*.

[30] See T. Karakamiseva-Jovanovska, *Constitutional Identity and National Identity—Two Sides of the Same Coin,* Constitutional Discourse, 2024, available at *https://constitutionaldiscourse.com/constitutional-identity-and-national-identity-two-sides-of-the-same-coin/*, last consulted on 08.05.2025.

[31] See Á. Rodríguez, *¿Quién debe ser el defensor de la Constitución española? Comentario a la DTC 1/2004, de 13 de diciembre*, in Revista de Derecho Comunitario Europeo, (23), 2006, available at *https://www.ugr.es/~redce/ReDCE3/18angelrodriguez.htm*, last consulted on 08.05.2025.

Spain".[32] This clause has served as a vital conduit for aligning Spanish fundamental rights protection with international and European human rights standards, including those emanating from EU law, such as the EU Charter of Fundamental Rights, and the ECtHR jurisprudence.[33]

The landmark **Sentencia 26/2014 (STC 26/2014), known as the *Melloni* case**, provides a compelling illustration of art. 10(2) SC in action and the TC's approach to judicial dialogue with the CJEU.[34] Faced with a preliminary ruling from the CJEU (in Case C-399/11, *Melloni*), which indicated that Spain could not apply a higher national standard of protection for the right to a fair trial in *in absentia* convictions if doing so would undermine the uniform application of the EU Framework Decision on the European Arrest Warrant (EAW), the TC modified its prior, more protective, doctrine. It did so by reinterpreting the scope of the constitutional right to a fair trial under art. 24(2) SC, explicitly guided by the CJEU's ruling and relevant ECtHR case-law, as channelled through art. 10(2) SC. This decision demonstrated a significant willingness to adjust national constitutional interpretations of fundamental rights to ensure the effectiveness of EU law in an area extensively harmonised at the EU level, even when it meant lowering a previously afforded higher national standard of protection. TC framed this as an autonomous reinterpretation of the Spanish Constitution, rather than a direct subordination to EU law, thereby preserving its doctrinal distinction between supremacy and primacy.

Beyond DTC 1/2004 and STC 26/2014 (Melloni), other decisions further illuminate the TC's stance. Declaration 1/1992 (DTC 1/1992), concerning the Maastricht Treaty, found the Treaty largely compatible with the Constitution, necessitating only a minor constitutional amendment regarding the right of EU citizens to vote and stand in municipal elections.[35] This early decision set a generally accommodative tone for European integration. Later, Sentencia 232/2015 (STC 232/2015) (and the related STC 145/2012) reiterated the TC's understanding of the primacy of EU law as a normative technique designed to ensure its effectiveness. These judgments recognized the direct effect and preferential application of EU primary and secondary law over domestic law within the scope of transferred competences. They also underscored the obligation of ordinary national courts to ensure the full efficacy of CJEU judgments, indicating that a failure by a national court to apply EU law as interpreted by the CJEU could potentially constitute a violation of the fundamental right to effective judicial protection under the Spanish Constitution.[36] It would see, that the primary focus of Sentencia 140/2018 (STC 140/2018) was on universal jurisdiction and international human rights treaties, with less direct bearing on the core EU law primacy or constitutional identity doctrines central to this comparative analysis.[37]

4.3. Protecting Spanish constitutional identity: „fundamental structures" as a bulwark

The Spanish Constitutional Court, in line with a broader trend among European constitutional courts, acknowledges that there is an inviolable core of the Spanish Constitution – its „constitutional identity" or „fundamental structures, political and constitutional" – that acts as an ultimate limit to European integration and the primacy of EU law.[38] This concept implies that the transfer of powers under art. 93 SC, while extensive, is not unlimited and cannot extend to undermining these foundational elements of the Spanish constitutional order.

This notion was implicitly present in DTC 1/2004, where the TC affirmed that the cession of the exercise of competences to the EU is acceptable provided it „respects the sovereignty of the State, its basic constitutional structures, and fundamental rights".[39] The Court emphasized that the Spanish nation, through its Constitution, reserves the „right to sovereignty", and the application of EU law is contingent upon its compatibility with these „fundamental national foundations".[40]

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[32] See X. Arzoz, *op. cit*.

[33] *Ibidem*.

[34] See M. García, *STC 26/2014: The Spanish Constitutional Court Modifies Its Case Law in Response to the CJEU's Melloni Judgment*, European Law Blog, March 2014, available *at https://www.europeanlawblog.eu/pub/stc-262014-the-spanish-constitutional-court-modifies-its-case-law-in-response-to-the-cjeus-melloni-judgment/release/1*, last consulted on 08.05.2025.

[35] See X. Arzoz, *op. cit*.

[36] See M.S. Santana Herrera, *La 'integración' del Derecho de la Unión Europea en los procedimientos constitucionales del Tribunal Constitucional español*, in Revista Española de Derecho Europeo, no. 73-74, Marcial Pons Ediciones Jurídicas y Sociales, 2020, pp. 135-176.

[37] See J. Chinchón Álvarez, *Réquiem por la jurisdicción universal según el Tribunal Europeo de Derechos Humanos: de Naït-Liman c. Suiza a la sentencia en el caso Couso Permuy c. España*, in Revista de Derecho Comunitario Europeo, 80, 2025, pp. 175-206.

[38] See European Parliament, *The notion of constitutional identity and its role in European integration*, *op. cit*.

[39] See M. García, *op. cit*.

[40] See T. Karakamiseva-Jovanovska, *op. cit.*

As previously mentioned, art. 4(2) TEU provides a significant EU law anchor for this national doctrine,[41] and the TC's references to „fundamental structures" align closely with the language and intent of this Treaty provision. While the precise contours of these „fundamental structures" may not be exhaustively defined, they are understood to encompass the essential elements of Spain's democratic state under the rule of law, its system of fundamental rights, and its territorial organization. The *Melloni* case, despite leading to an alignment with EU law, saw concurring opinions that reiterated the existence of material limits to the transfer of sovereign powers under art. 93 SC, underscoring the enduring relevance of this safeguard.[42] The critical juncture represented by *Melloni* showed the TC's commitment to the EU legal order within transferred powers, yet the internal judicial debate revealed ongoing consideration of the precise constitutional pathways and ultimate limits of such deference, ensuring that the dialogue on constitutional identity remains alive.

5. A tale of two legal systems: comparative insights and divergences

Romania and Spain, both inheritors of the civil law tradition and active participants in the European integration project, offer compelling case studies in constitutional adaptation. Their shared legal heritage, particularly the influence of French civil law, provides a common conceptual framework, including an emphasis on codified law and a structured hierarchy of norms. This background might be expected to foster similar approaches to the integration of supranational EU law. However, their distinct national histories, the specific timing and context of their EU accession, and the particular evolution of their constitutional jurisprudence have led to noteworthy divergences in how they mediate the relationship between their domestic constitutional orders and the EU legal system. These differences are particularly evident in their judicial responses to the primacy of EU law, the role their constitutional courts assume in reviewing EU-related matters, and the manner in which they articulate and defend their national constitutional identities.

5.1. Approaches to EU law primacy: a spectrum of judicial responses

Both Romania and Spain formally accept the principle of EU law primacy as a consequence of their EU membership, anchoring this acceptance in their respective constitutional „European clauses" – art. 148 of the Romanian Constitution and art. 93 SC. This shared acceptance forms the bedrock of their participation in the EU legal order.

However, the interpretation and application of this principle diverge significantly. As shown before, **CCR**, interpreting art. 148 para. (2), confines the primacy of EU law to infra-constitutional national legislation. It explicitly and consistently asserts the hierarchical supremacy of the Romanian Constitution over EU law.[43] This interpretation has led to direct challenges to the CJEU's authority, particularly when the CCR perceives EU law or CJEU interpretations as encroaching upon what it defines as fundamental constitutional principles or its own exclusive competence to interpret the Constitution.

In contrast, **TC** employs a more nuanced doctrinal construction: the dichotomy between the „supremacy" of the Spanish Constitution and the „primacy" of EU law. According to this doctrine, the Constitution remains the ultimate supreme law of the Spanish legal order. However, EU law enjoys primacy of application within the sphere of competences validly transferred to the EU. This means EU law can „displace" conflicting national norms, ensuring its effectiveness, without annulling them or challenging the Constitution's ultimate hierarchical position. While the TC reserves the right to protect Spain's „fundamental structures"[44], its jurisprudence, notably in the *Melloni* case (STC 26/2014), has demonstrated a considerable capacity for accommodation, even to the extent of adjusting national standards for fundamental rights protection to align with harmonised EU law.[45]

Thus, while both courts operate within a framework acknowledging EU law's special status, Spain's TC has arguably developed a more flexible doctrinal framework that facilitates the operational primacy of EU law while safeguarding constitutional sovereignty through a conceptual distinction. Romania's CCR, on the other hand, has

[41] See P. Faraguna, *Unconstitutional Constitutional Identities in The European Union*, in Ran Hirschl, Yaniv Roznai (eds.), *Deciphering the Genome of Constitutionalism: The Foundations and Future of Constitutional Identity*, Comparative Constitutional Law and Policy, Cambridge University Press, Cambridge, 2024, pp. 300-311.

[42] See M. García, *op. cit*.

[43] See R.-M. Popescu, *Interpretation and enforcement of Article 148 of the Constitution of Romania Republished, according to the decisions of the Constitutional Court, op. cit*.

[44] See J.M. Y Pérez de Nanclares, *op. cit*.

[45] See M. García, *op. cit*.

adopted a more explicitly hierarchical and assertive stance regarding constitutional supremacy, leading to more direct and potentially irreconcilable confrontations with the CJEU's conception of primacy.

5.2. The role of Constitutional Courts in reviewing EU acts: guardians or gatekeepers?

The constitutional courts of both Romania and Spain see themselves as the ultimate guardians of their respective constitutions.[46] However, the manner in which they exercise this guardianship in the context of EU law differs.

The **Romanian CCR** positions itself as a powerful gatekeeper. Its assertion, particularly in Decision 390/2021, that ordinary national courts are precluded from examining the EU law compatibility of a national law once the CCR has declared it constitutional, significantly limits the direct effect and uniform application of EU law as envisioned by the CJEU.[47] This effectively channels the review of EU law compatibility through the CCR in such instances. Furthermore, the CCR's use of the „living law" doctrine[48], while potentially facilitating alignment with European standards, also consolidates its interpretative authority, allowing it to make evolving assessments that could impact the application of EU law based on its understanding of national societal needs.

The **Spanish TC**, while also the ultimate interpreter of the Spanish Constitution[67], has, particularly in more recent times, shown a greater inclination to engage in judicial dialogue with the CJEU and to adapt its interpretations to ensure the effectiveness of EU law in areas of ceded competence. The *Melloni* case is a key example, where the TC, prompted by a CJEU preliminary ruling, adjusted its fundamental rights jurisprudence.[49] This suggests a role that combines guardianship with a pragmatic acceptance of the requirements of EU membership. However, its historical „deliberate distancing" from EU law issues in the early years of membership[50] and the consistent reservation concerning the protection of "fundamental structures"[51] also point to an underlying gatekeeping function, albeit one that has often been exercised with a view to accommodation.

Regarding judicial dialogue, both courts are, by virtue of their position, participants in the broader European judicial conversation. However, the nature and intensity of this dialogue vary. The Spanish TC was historically characterised by some scholars as more reluctant to make preliminary references to the CJEU compared to other constitutional courts[52], although the *Melloni* reference marked a significant engagement. The Romanian CCR's more recent jurisprudence, however, has led to very direct, and at times confrontational, interactions with the CJEU, as evidenced by the sequence of dec. no. 390/2021 and the CJEU's response in *RS*.[53]

5.3. National identity [art. 4(2) TEU]: converging concepts, diverging applications

The concept of national or constitutional identity serves as a crucial reference point for both Romanian and Spanish constitutional courts in defining the limits of European integration. This identity is generally understood to encompass a core set of fundamental constitutional values, principles, and structural arrangements that are deemed essential and non-negotiable by the Member State.

In **Romania**, the CCR explicitly links „national constitutional identity" to the unamendable provisions of the Constitution, particularly those outlined in art. 152 (regarding the national character of the state, form of government, territorial integrity, judicial independence, pluralism, and fundamental rights). This identity is invoked as a hard limit against the primacy of EU law over the Constitution itself and has been a central pillar in its more assertive and potentially confrontational rulings vis-à-vis the CJEU.

In **Spain**, the TC refers to the need to respect „fundamental structures, political and constitutional", aligning with the language of art. 4(2) TEU, and the inviolable „core of the Constitution" as inherent limits to the transfer of powers under art. 93 SC and, consequently, to the reach of EU law.[54] While Declaration no. 1/2004 clearly reserved the TC's ultimate role in defending these fundamental elements in „hardly conceivable" cases

[46] See R.D. Popescu, *op. cit*.

[47] CJEU, Opinion of Advocate General Collins delivered on 20 January 2022*, Case C-430/21, RS (Effect of the decisions of a constitutional court)*, ECLI:EU:C:2022:44.

[48] See T. Toader, *op. cit*.

[49] See M. García, *op. cit*.

[50] See X. Arzoz, *op. cit*.

[51] See J.M. Y Pérez de Nanclares, *op. cit*.

[52] See X. Arzoz, *op. cit*.

[53] See G. Di Federico, *In the Name of Primacy. Opinion C-448/23 and the EU's Existential Principle of Primacy*, Verfassungsblog, 2025, available at *https://verfassungsblog.de/in-the-name-of-primacy/*, last consulted on 08.05.2025.

[54] See European Parliament, *The notion of constitutional identity and its role in European integration*, *op. cit*.

of conflict[55], the TC's practical application of this concept has generally been more cautious. It has often sought means of accommodation or interpretation that avoid a direct invalidation of EU law based on identity claims, as seen in its handling of the *Melloni* case, where the focus was on reinterpreting the national fundamental right in light of EU harmonisation.

The divergence lies not so much in the conceptual acknowledgment of constitutional identity but in its operationalisation. The Romanian CCR appears to deploy the concept more assertively as a direct shield for constitutional supremacy with immediate hierarchical implications for EU law. The Spanish TC, while holding the concept in reserve, has tended towards a more nuanced application, often finding ways to reconcile EU obligations with constitutional principles without resorting to a direct invocation of identity as an absolute bar, unless fundamental structures are genuinely threatened. This reflects the broader trend of the „judicialization of constitutional identity", where courts are central to defining these limits, but the degree of assertiveness and the threshold for triggering such limits vary significantly.[56]

5.4. The Shadow of Legal Tradition and Historical Experience

The constitutional responses of Romania and Spain to European integration are inevitably shaped by their shared civil law heritage and their unique historical experiences. Both nations belong to the Romance legal family, with considerable influence from French legal codification and thought. This tradition typically emphasizes a clear hierarchy of norms and the centrality of the written constitution, providing a familiar conceptual apparatus for engaging with the structured legal order of the EU.

However, the specific historical trajectories of each nation have profoundly influenced their contemporary constitutional approaches. **Romania** experienced a relatively recent and rapid transition from a communist regime to a democratic system, with EU accession in 2007 occurring when the EU's supranational legal framework was already highly developed and its primacy doctrine firmly established.[57] The 2003 constitutional revision was explicitly undertaken to facilitate this accession.[58] This context of swift adaptation to a powerful and mature supranational legal order, combined with the national experience of regaining sovereignty after decades of authoritarian rule and external influence, may contribute to the CCR's more pronounced vigilance in delineating and defending national constitutional red lines. The institution, established as a key „guardian of the Constitution" in the post-1989 era[59], may perceive its role in asserting constitutional identity as particularly vital.

Spain, on the other hand, joined the European Communities in 1986, a decade after the end of the Franco dictatorship and shortly after the adoption of its democratic Constitution in 1978.[60] For Spain, European integration was intrinsically linked with the consolidation of democracy, modernization, and a return to the European mainstream. The Spanish TC's initial institutional focus was predominantly on resolving domestic constitutional questions arising from the transition and the new autonomous regional structure.[61] This allowed for a more gradual engagement with the implications of EU law, leading to the development of sophisticated doctrines like the „supremacy versus primacy" distinction over a longer period. This more incremental adaptation, perhaps less marked by immediate, high-stakes confrontations with a fully formed supranational legal order, may have fostered a judicial approach that, while firm on ultimate constitutional sovereignty, is often characterized by pragmatic accommodation.

These differing timelines and historical contexts of EU engagement likely contribute to the distinct institutional postures and jurisprudential strategies adopted by the Romanian and Spanish Constitutional Courts when confronted with the challenges and complexities of EU law.

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[55] See Á. Rodríguez, *op. cit*.

[56] See K. Krzyżanowska, *Judicialization of Constitutional Identity*, in European University Institute Working Paper LAW 2024/01, available at *https://cadmus.eui.eu/bitstream/handle/1814/77715/Judicialization_constitutional_2024.pdf?sequence=1&isAllowed=y*, last consulted on 08.05.2025.

[57] See R.D. Popescu, *op. cit*.

[58] See R.-M. Popescu, *Interpretation and enforcement of Article 148 of the Constitution of Romania Republished, according to the decisions of the Constitutional Court, op. cit*.

[59] See R.D. Popescu, *op. cit*.

[60] See European Parliament, *The Spanish Parliament and EU affairs*, *op. cit*.

[61] See X. Arzoz, *op. cit*.

6. Conclusions

The constitutional adaptations of Romania and Spain to European integration, while rooted in the common soil of civil law traditions and the shared objective of participating in the European project, reveal distinct national pathways. Both nations have embedded their EU membership within their constitutional frameworks – Romania primarily through art. 148 and Spain through art. 93 of their respective Constitutions. These provisions authorise the transfer of sovereign powers and acknowledge the special status of EU law. However, the subsequent judicial interpretation of these clauses, particularly by their Constitutional Courts, has charted different courses in managing the inherent tension between supranational obligations and national constitutional sovereignty.

TC has developed a nuanced doctrine distinguishing the „supremacy" of the Spanish Constitution from the „primacy" of EU law. This allows for the preferential application of EU law within the sphere of ceded competences, ensuring its effectiveness, while simultaneously affirming the Constitution as the ultimate source of authority within the Spanish legal order. This approach, while reserving the right to safeguard „fundamental constitutional structures", has generally facilitated a pragmatic accommodation of EU law, as exemplified by the *Melloni* case, where national fundamental rights interpretations were adjusted in light of EU harmonisation.

CCR, conversely, has adopted a more direct stance on this hierarchical relationship, asserting the supremacy of the Romanian Constitution over EU law. While art. 148 para. (2) mandates the prevalence of EU law over conflicting *infra-constitutional* national laws, the CCR maintains that this does not extend to the Constitution itself. Its invocation of „national constitutional identity", closely linked to the unamendable core of the Constitution (art. 152), serves as a robust shield against perceived encroachments by EU law, a position that has led to more direct and pronounced jurisprudential clashes with the CJEU, notably in the aftermath of dec. no. 390/2021.

These diverging approaches underscore that the relationship between national constitutions and EU law is not static but is dynamically shaped by ongoing judicial dialogue, political contexts, and the evolving nature of the EU itself. The „national identity clause" in art. 4(2) TEU provides a formal EU law basis for Member States to articulate limits to integration based on their fundamental constitutional structures. However, as the experiences of Romania and Spain demonstrate, the interpretation and application of this clause are far from uniform and remain a fertile ground for complex legal and political debate, often involving the CJEU as a key interlocutor.[62]

The enduring tension between national sovereignty and European integration is thus managed through distinct constitutional and judicial strategies in Romania and Spain. Their experiences contribute significantly to the broader discourse on constitutional pluralism within the European legal order – a system characterized by the interaction, and sometimes collision, of multiple, autonomous yet interconnected, legal authorities. This dynamic necessitates continuous efforts towards conflict resolution, mutual understanding, and accommodation. The comparative analysis of Romania and Spain illuminates that „constitutional adaptation" to the EU is not a linear process of convergence towards a single model. Instead, it is a path-dependent journey where national legal traditions, historical experiences, and specific constitutional choices profoundly shape how Member States articulate their relationship with the EU. This challenges any overly simplistic notion of a monolithic „European constitutionalism", highlighting instead a more complex tapestry woven from diverse national constitutional threads. While these interactions can be conflictual, they can also be viewed as a vital, if imperfect, mechanism for democratic legitimation and the articulation of substantive limits within the EU's multi-level governance system, compelling both national courts and the CJEU to clarify and defend their foundational principles.

Future research could fruitfully extend this comparative analysis to include other Member States, particularly those from different legal traditions or distinct waves of EU accession. Further investigation into the impact of contemporary challenges, such as rule of law backsliding in certain Member States, on the established doctrines of primacy and constitutional identity would also be highly pertinent. Additionally, exploring the evolving role of national parliaments in scrutinizing EU law and safeguarding constitutional principles, alongside the functions of constitutional courts, would offer a more complete picture of the democratic and constitutional checks and balances operating within the EU.[63]

[62] CJEU, *Case 106/77, Amministrazione delle Finanze dello Stato v Simmenthal S.p.A.,* judgment from 09.03.1978, ECLI:EU:C:1978:49.
[63] See European Parliament, *National constitutional avenues for further EU integration*, *op. cit.*

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