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Andrzej Jackiewicz, *Associate Professor*
University of Bialystok, Poland

CONSTITUTIONAL IDENTITY AS A "TRAP CARD": THE INSTRUMENTALISATION OF ARTICLE 4(2) TEU IN THE JURISPRUDENCE OF THE POLISH CONSTITUTIONAL TRIBUNAL

Key words: constitutional identity, primacy of EU law, Polish Constitutional Tribunal, Article 4(2) TEU, rule of law, judicial independence, CJEU, legal dualism, sincere cooperation

Summary

This article analyses the evolution of the concept of "constitutional identity" in the Polish legal order in the context of the ongoing constitutional crisis. The main research objective is to demonstrate how the Constitutional Tribunal, through its judgments in cases K 3/21 and P 7/20, redefined this concept, transforming it from a shield protecting constitutional foundations into a tool for questioning the jurisdiction of the Court of Justice of the European Union (CJEU). The author advances the thesis that the Polish interpretation of constitutional identity deviates from the standards developed by constitutional courts of other Member States, notably the German Federal Constitutional Court (BVerfG), insofar as it serves not primarily to protect immutable constitutional values, but rather to legitimise politically motivated changes to the judicial system. The article discusses the consequences of this approach, including the emergence of legal dualism and the erosion of the principle of sincere cooperation enshrined in Article 4(3) TEU. The analysis leads to the conclusion that the instrumentalisation of constitutional identity poses a real threat to the coherence of the European legal space and requires the development of new mechanisms for judicial dialogue between national constitutional courts and the CJEU.

Introduction

The principle that the European Union shall respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, has been enshrined in Article 4(2) of the Treaty on European

Union.[1] This provision, which emerged from lengthy debates on the relationship between European integration and Member State sovereignty, was originally conceived as a mechanism to preserve the constitutional core of Member States while enabling the process of ever closer union. As Giuseppe Martinico observes, the introduction of this clause into the treaties was the culmination of a process aimed at establishing order (*táxis*) in the relations between the Court of Justice and the governments and courts of the Member States, representing a kind of "constitutional crescendo" in the construction of the EU legal order.[2] However, recent developments in Poland have demonstrated that this protective concept can be weaponised against the very legal order it was designed to complement.

The conflict between Warsaw and Luxembourg, which escalated dramatically in 2021, represents more than a mere disagreement over the boundaries of EU competences. It constitutes a fundamental challenge to the architecture of the European legal system, as the Polish Constitutional Tribunal has deployed the concept of constitutional identity not as an exceptional safeguard but as a systematic barrier against EU judicial oversight.[3] Furthermore, the procedural validity of this judgment is heavily contested due to the participation of unauthorized persons in the judicial panel. As Monika Florczak-Wator notes, the presence of judges appointed to already occupied seats means the Tribunal, in light of the ECHR jurisprudence, failed to meet the requirement of a "court established by law".[4] This strategy is part of a broader phenomenon described as "rule of law backsliding" – a deliberate process whereby public authorities

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1 Treaty on European Union. Signed in Maastricht on 07.02.1992. [in the wording of 01.12.2009].

2 Martinico G. What Lies Behind Article 4(2) TEU? In: A. Saiz Arnaiz, C. Alcoberro Llivina (eds.). National Constitutional Identity and European Integration. Cambridge: Intersentia, 2013, pp. 93–108. This "friendly interpretation" (przychylnosc) was rooted in Article 9 of the Polish Constitution, which the Tribunal traditionally interpreted as a constitutional basis for the internationalization of the entire Polish legal system. Such an approach allowed for a "judicial dialogue" that reconciled national constitutional norms with European standards without triggering frontal collisions. Garlicki L. Umiedzynarodowienie Konstytucji [Internationalization of the Constitution]. Panstwo i Prawo, No. 10, 2022, p. 159.

3 Indeed, Gliszczynska-Grabias and Sadurski describe the decision as an unprecedented negation of the principle of sincere cooperation and effective judicial protection, the likes of which can hardly be found in the jurisprudence of any other Member State. They argue that the decision lacks legal validity entirely, as it was handed down by a panel including persons unlawfully appointed to already filled judicial seats. See Gliszczynska-Grabias A., Sadurski W. Is It Polexit Yet? Comment on Case K 3/21 of 7 October 2021 by the Constitutional Tribunal of Poland. European Constitutional Law Review, 19(1), 2023, pp. 164–165.

4 Florczak-Wator M. (Nie)skutecznosc wyroku Trybunalu Konstytucyjnego z 7.10.2021 r., K 3/21. Ocena znaczenia orzeczenia z perspektywy prawa konstytucyjnego [(In)effectiveness of the judgment of the Constitutional Tribunal of 7 October 2021, K 3/21. Assessment of the significance of the judgment from the perspective of constitutional law]. Europejski Przeglad Sadowy No. 12, 2021, s. 10. These procedural flaws lead scholars to describe such rulings as judgments non existens – decisions merely masquerading as judicial acts, handed down by a panel containing "quasi-judges" appointed to already occupied seats. The participation of the judge-rapporteur, who was himself elected in a faulty procedure, further taints these proceedings with absolute invalidity. Gliszczynska-Grabias A., Sadurski W. The Judgment That Wasn't (But Which Nearly Brought Poland to a Standstill): 'Judgment' of the Polish Constitutional Tribunal of 22 October 2020, K1/20. European Constitutional Law Review, Vol. 17, No. 1, 2021, pp. 2, 6–8.

implement governmental blueprints aimed at systematically weakening or capturing internal checks on power. In this framework, the "capture" of the Constitutional Tribunal serves as a prerequisite for achieving authoritarian goals, enabling the ruling majority to bypass constitutional norms at will while parading such actions as legitimate judicial acts.[5]

As Laurianne Allezard points out, constitutional identity often serves an "argumentative function". By determining the interpretation of constitutional norms and the meaning of constitutional concepts, it can give birth to different, often conflicting, forms of constitutionalism in Europe.[6] This article examines whether constitutional identity has been transformed from a legitimate legal concept into what might be termed a "trap card" – a mechanism that enables a Member State to selectively reject EU law obligations while ostensibly remaining within the Union's legal framework. In this perspective, the Polish interpretation deviates from perceiving national identity as a "trump card" that is subject to negotiation within the framework of judicial dialogue, moving instead towards its instrumental use to block EU oversight mechanisms.[7] This creates a constitutional "deadlock" where the simultaneous obedience to both constitutional and international provisions becomes impossible. In this perspective, the invocation of Article 8 of the Constitution against EU law acts as a mechanism that deprives valid international agreements of their binding force within the domestic legal system.[8]

The research methodology employed in this article combines doctrinal analysis of key judgments with comparative assessment of constitutional identity jurisprudence across EU Member States. Particular attention is paid to the contrast between the German Federal Constitutional Court's approach, which has traditionally been viewed as the benchmark for constitutional identity claims, and the novel interpretation advanced by the Polish Tribunal after 2021.

1. Constitutional identity in European legal doctrine: A comparative perspective

The concept of constitutional identity emerged as a response to the deepening of European integration and the concomitant concerns about the preservation

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[5] Pech L., Scheppele K. L. Illiberalism Within: Rule of Law Backsliding in the EU. Cambridge Yearbook of European Legal Studies, Vol. 19, 2017, pp. 7–9.

[6] Allezard L. Constitutional identity, identities and constitutionalism in Europe. Hungarian Journal of Legal Studies, Vol. 63, No. 1, 2022, p. 59.

[7] See Claes M. National Identity: Trump Card or Up for Negotiation? In: A. Saiz Arnaiz, C. Alcoberro Llivina (eds.). National Constitutional Identity and European Integration. Cambridge: Intersentia, 2013, pp. 109–140.

[8] Dabrowski M. The judgment of the Constitutional Tribunal of 7th October 2021, K 3/21. The case study on declaring the unconstitutionality of UE Treaties. European Studies, Vol. 10, No. 2, 2023, p. 272.

of Member State sovereignty. Literature on the subject points to a duality of this concept, distinguishing between the identity of the constitution itself (conceived as a set of norms and principles) and the identity of the people, which refers to a broader political and cultural context.[9] In the German constitutional tradition, the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) developed a sophisticated doctrine that sought to balance European integration with the protection of fundamental constitutional principles. The famous *Solange* jurisprudence established that the BVerfG would defer to European institutions on fundamental rights protection "as long as" the EU provided equivalent protection to that guaranteed by the German Basic Law.[10]

The *Solange II* judgment of 1986 marked a turning point, as the BVerfG determined that the CJEU's interpretation of EU law was authoritative and final, thereby binding all German courts.[11] This approach reflected a cooperative understanding of the relationship between national and European legal orders, built on mutual trust and recognition of the complementary roles played by different judicial institutions.

The Lisbon judgment of 2009 represented a significant further development in this doctrine.[12] The BVerfG introduced the concept of "identity review" (*Identitatskontrolle*), which reserved to the German court the power to review EU acts that might violate Germany's constitutional identity as protected by the eternity clause of the Basic Law (Article 79(3)). Crucially, however, this power was conceived as an instrument of last resort, to be exercised only in exceptional circumstances and within the framework of judicial dialogue with the CJEU.

The key distinction between the German approach and subsequent developments in Poland lies in the nature of the constitutional values being protected. The BVerfG's identity doctrine focuses on truly fundamental principles: democracy, human dignity, the rule of law, the basic structure of the federal state, and the core guarantees of human rights. These are elements that could not be transferred to a supranational entity without fundamentally altering the character of the German constitutional order. The organisation of the ordinary judiciary, while certainly important, was never conceived as belonging to this irreducible constitutional core that is protected from any modification. A similar, though more dialogue-oriented, development can be observed in France. In a landmark decision of October 2021, the French Constitutional Council expressly referred to "Constitutional Identity" to specify its content, for instance by establishing the prohibition of delegating public power to private persons as an inherent

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[9] Marti J. L. Two Different Ideas of Constitutional Identity: Identity of the Constitution v. Identity of the People. In: Saiz Arnaiz A., Alcoberro Llivina C. (eds.). National Constitutional Identity and European Integration. Cambridge: Intersentia, 2013, pp. 17–36.

[10] German Federal Constitutional Court, BVerfGE 37, 271 (Solange I), Judgment of 29 May 1974.

[11] German Federal Constitutional Court, BVerfGE 73, 339 (Solange II), Judgment of 22 October 1986.

[12] German Federal Constitutional Court, BVerfGE 123, 267 (Lisbon), Judgment of 30 June 2009.

principle of the French constitutional order.[13] This strategy often follows a well-organized script of "constitutional capture", where the independent judiciary is one of the first offices to be shut down or captured to resist the consolidation of power. Such a process results in a systemic undermining of the key components of the rule of law, including the requirement for independent and impartial courts.[14]

2. The Polish Constitutional Tribunal's approach before the crisis

Prior to the constitutional crisis that began in 2015, the Polish Constitutional Tribunal had developed a nuanced and balanced approach to the relationship between EU law and the Polish Constitution. In its landmark judgment on the Accession Treaty (K 18/04), the Tribunal acknowledged the primacy of the Constitution as the supreme law of Poland while simultaneously recognising the binding force of international law and the principle of pro-European interpretation.[15] The Tribunal held that the different legal orders existing in Poland should "coexist based on the principle of friendly interpretation and cooperative coexistence."

This balanced approach was maintained in the Lisbon Treaty judgment (K 32/09), where the Tribunal reaffirmed that potential conflicts between EU law and the Constitution should be resolved through pro-European interpretation whenever possible.[16] The Tribunal recognised that membership in the European Union implied certain constraints on the exercise of state sovereignty, which Poland had voluntarily accepted through democratic ratification procedures. This jurisprudence reflected the understanding that Poland's constitutional identity was not threatened but rather enriched by participation in the European legal community.[17]

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[13] Allezard L. 2022, p. 59; see also French Constitutional Council, Decision No. 2021-940 QPC of 15 October 2021, Societe Air France.

[14] Pech L., Scheppele K. L. 2017, p. 6.

[15] Judgment of the Constitutional Tribunal of the Republic of Poland of 11 May 2005 in case No. K 18/04.

[16] Judgment of the Constitutional Tribunal of the Republic of Poland of 24 November 2010 in case No. K 32/09.

[17] It is worth noting that during this period, the Polish line of jurisprudence was cited in the doctrine as a model example of a successful adaptation of the "German pattern" by new Member States, based on the search for harmony between the Constitution and EU law. See Rideau J. The Case-Law of the Polish, Hungarian and Czech Constitutional Courts on National Identity and the 'German Model'. In: Saiz Arnaiz A., Alcoberro Llivina C. (eds.). National Constitutional Identity and European Integration. Cambridge: Intersentia, 2013, pp. 243–261. See also Allezard L. 2022, p. 63.

3. The turning point: Judgments No. K 3/21 and P 7/20

The judgment of 7 October 2021 in case No. K 3/21 marked a radical and unprecedented departure from the Tribunal's previous jurisprudence.[18] Initiated by a request from the Prime Minister, the proceedings asked the Tribunal to assess whether certain provisions of the TEU, as interpreted by the CJEU, were compatible with the Polish Constitution. The Tribunal's response was extraordinary in scope and confrontational in nature, going far beyond any previous national court challenge to EU law primacy.

The Tribunal declared that Articles 1 and 19(1) TEU, in conjunction with Article 4(3) TEU, were incompatible with the Polish Constitution insofar as they enabled or required national courts to apply provisions inconsistent with the Constitution or to disregard Constitutional Tribunal judgments. This ruling effectively denied the binding force of CJEU jurisprudence on judicial independence within Poland, claiming that the organisation of the judiciary constitutes an element of Polish "constitutional identity" that is entirely beyond EU competence. Crucially, the Tribunal did not verify whether the interpreted norms actually followed from EU law, effectively ruling on its own perception of the "new stage" of European integration rather than on the normative content of the treaties. This has led scholars to characterize the case as a "simulated constitutional problem" designed solely to block the implementation of unfavourable CJEU rulings.[19] In this context, retired judges of the Constitutional Tribunal pointed out that the K 3/21 proceedings did not aim to resolve any real, irremovable contradiction between legal orders. Instead, the "illusion of a contradiction" was artificially created to provide legal cover for ordinary legislation intended to lower judicial independence standards below the thresholds required by both the Polish Constitution and EU law.[20]

The earlier judgment in case No. P 7/20, delivered on 14 July 2021, had already prepared the ground for this confrontation.[21] In this case, brought by the Disciplinary Chamber of the Supreme Court itself – the very body whose independence had been questioned by the CJEU – the Tribunal ruled that EU treaty provisions requiring Poland to implement CJEU interim measures concerning the judiciary were unconstitutional. The Tribunal characterised

[18] Judgment of the Constitutional Tribunal of the Republic of Poland of 7 October 2021 in case No. K 3/21. Available: https://trybunal.gov.pl/en/hearings/judgments/art/11662 [last viewed 15.01.2026].

[19] Florczak-Wator M. 2021, pp. 7, 9.

[20] Biernat S., Letowska E. This Was Not Just Another Ultra Vires Judgment! Verfassungsblog, 27 October 2021. https://doi.org/10.17176/20211027-182911-0

[21] Judgment of the Constitutional Tribunal of the Republic of Poland of 14 July 2021 in case No. P 7/20. Available: https://trybunal.gov.pl/en/hearings/judgments/art/11589 [last viewed 15.01.2026].

the CJEU's orders as *ultra vires* acts that exceeded the competences transferred to the Union and violated Polish constitutional identity.[22]

These rulings must be understood in the context of the CJEU's own jurisprudence. In case No. C-791/19, the Grand Chamber found that Poland's disciplinary regime for judges was incompatible with EU law, as the Disciplinary Chamber failed to meet the requirements of independence and impartiality under Article 19(1) TEU.[23] The Court emphasised that while Member States retain competence over the organisation of their judiciaries, this competence must be exercised in compliance with EU law obligations, particularly the guarantee of effective judicial protection under Article 47 of the Charter of Fundamental Rights. The Polish authorities have been described as "eager students" of the Hungarian model, realizing that the EU institutions often act slowly and that a "discursive approach" or "constructive dialogue" remains ineffective when a government is bent on deliberately undermining constitutional checks. Consequently, the Rule of Law Framework may inadvertently provide a "rogue government" with the time necessary to consolidate power in plain sight while the Union dithers over its response.[24]

4. The problem of instrumentalisation

The critical question raised by the Polish Tribunal's judgments is whether constitutional identity is being invoked to protect genuinely fundamental constitutional values or merely to shield politically motivated changes to the judicial system from European scrutiny.[25] The K 3/21 judgment should not be viewed in isolation but as part of a new "anti-EU line of jurisprudence" initiated in 2020. This line is characterized by a confrontational stance towards the CJEU, a rejection of the duty of "EU-friendly" interpretation, and the assumption of

[22] It is important to note that until 2021, the Tribunal traditionally avoided declaring the unconstitutionality of binding international agreements, often seeking interpretations that maintained harmony between legal orders. The shift began with the precedent-setting case regarding the European Convention on Human Rights, which paved the way for the direct challenge to EU Treaties in case No. K 3/21. Dabrowski M. 2023, pp. 275–276. The groundwork for this confrontational use of constitutional identity was laid in the 2020 abortion ruling (K 1/20). In his separate opinion, Judge Muszynski explicitly deployed the concept of "constitutional identity" to ward off what he termed "judicial imperialism", arguing that the Tribunal must act as a defender of national standards against international human rights protection systems. This marked the definitive transition of the concept from a defensive shield to an offensive weapon against supranational oversight. Gliszczynska-Grabias A., Sadurski W. 2021, p. 23.

[23] CJEU judgment of 15 July 2021 in case No. C-791/19 European Commission v. Republic of Poland, EU:C:2021:596.

[24] Pech L., Scheppele K. L. 2017, p. 22.

[25] Florczak-Wator M. 2021, p. 5.

a fundamental divergence between national and European standards.[26] Several considerations strongly suggest the latter interpretation.

First, judicial independence is not a uniquely Polish constitutional value but a universal principle enshrined in Article 2 TEU, to which Poland committed upon accession.[27] The values of democracy, rule of law, and human rights are shared by all Member States and form part of what the CJEU has termed the "very identity of the European Union as a common legal order". A Member State cannot legitimately invoke its national identity to escape obligations flowing from these shared values, which it voluntarily accepted when joining the European project.

Second, the specific judicial "reforms" being protected bear the hallmarks of political interference rather than constitutional necessity.[28] The creation of a Disciplinary Chamber staffed exclusively by judges appointed through a procedure controlled by the ruling majority, combined with the broad definition of disciplinary offences that could encompass the application of EU law, suggests a system designed for political control rather than constitutional protection. These are not time-honoured features of the Polish legal tradition but innovations introduced after 2015 for evident political purposes. This phenomenon aligns with the concept of "abusive constitutionalism", where the ruling majority utilizes the "new" Constitutional Tribunal to create a legal basis for delegitimizing European norms perceived as obstacles to political goals. Under such conditions, judicial interpretation is reduced to a "service activity" for political authorities, stripped of genuine constitutional authority and distance from current political interests.[29]

Third, the manner in which constitutional identity has been invoked differs fundamentally from the German model. Where the BVerfG conceived its identity review as an exceptional safeguard to be exercised with restraint and in dialogue with the CJEU, the Polish Tribunal has deployed constitutional identity as a blanket shield against any EU judicial oversight of the judiciary.[30] This is not a defensive mechanism protecting a constitutional core but an offensive weapon aimed at negating EU law primacy in an entire policy domain.[31] A key element of this instrumentalisation is the misuse of the "organisation of the judiciary" argument.

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[26] Florczak-Wator M. 2021, pp. 5–6.

[27] Von Bogdandy A., Bogdanowicz P., Canor I., Taborowski M., Schmidt M. A potential constitutional moment for the European rule of law. Common Market Law Review, Vol. 55, 2018, pp. 983–1028.

[28] Pech L., Scheppele K. L. 2017, pp. 3–47.

[29] Garlicki L. 2022, pp. 158, 160.

[30] In this light, constitutional identity becomes a "trump card" used by nationalist politicians to protect any government action from scrutiny, regardless of international obligations. It is no longer a concept aimed at celebrating the richness of national traditions, but a weaponized tool used against European integration itself. See Gliszczynska-Grabias A., Sadurski W. 2023, p. 178.

[31] Furthermore, it is argued that the 2021–2022 jurisprudence of the Polish Tribunal was based on "exceptionally weak legal arguments" that ignored the objective reality of the internationalization of contemporary constitutions. These decisions represent a deliberate move away from "normal" constitutionalism towards a model where external legal influences are treated as threats to be combated. Garlicki L. 2022, pp. 164, 166–167.

While Member States remain competent in structuring their court systems, this competence does not extend to the core principle of judicial independence, which is a common denominator for all Member States and a prerequisite for effective legal protection. By blurring this distinction, the Tribunal attempts to shield political interference from European judicial review under the guise of constitutional identity.

5. Consequences: Legal dualism and erosion of sincere cooperation

The practical consequences of the Tribunal's judgments have been severe and far-reaching. Polish judges now face an impossible choice between applying EU law, as required by their obligations under the Treaties and their duty to provide effective judicial protection, and following the Constitutional Tribunal's rulings that characterise such application as unconstitutional.[32] This legal dualism fundamentally undermines legal certainty and places individual judges at risk of disciplinary proceedings for fulfilling their EU law obligations.[33] However, from a strictly constitutional perspective, it is argued that the judgment remains legally ineffective. Since the Tribunal exceeded its powers under Article 188 of the Constitution by ruling on non-normative reality, the contested TEU provisions remain binding, and national courts are still obligated to provide effective judicial protection and bypass conflicting national law.[34]

The European Parliament has condemned the K 3/21 judgment as "an attack on the European community of values and laws as a whole," noting that the Constitutional Tribunal "not only lacks legal validity and independence but is also unqualified to interpret the Constitution in Poland."[35] While this political characterisation may be contested, the legal implications are clear: the judgment creates a fundamental incompatibility between Poland's claimed constitutional position and its obligations under EU law.

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[32] Jaraczewski J. Gazing into the Abyss: The K 3/21 decision of the Polish Constitutional Tribunal. Verfassungsblog, 12 October 2021. Available: https://verfassungsblog.de/gazing-into-the-abyss/ [last viewed 15.01.2026].

[33] The decision has devastating consequences for individuals, as it effectively deprives Polish and EU citizens of the guarantee of a fair trial and access to an impartial tribunal as defined in Article 47 of the Charter of Fundamental Rights. By blocking the application of CJEU case law, the Tribunal denies parties the right to an effective remedy, which is the "very essence" of EU law. Gliszczynska-Grabias A., Sadurski W. 2023, pp. 164, 179.

[34] Florczak-Wator M. 2021, p. 11.

[35] European Parliament resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law (2021/2935(RSP)). Despite its severe rhetoric, the K 3/21 judgment is widely perceived by the legal community as a political statement rather than a functional legal act. Consequently, many domestic courts continue to apply EU law as if the jurisdiction had never been issued, further deepening the state of legal dualism where the Tribunal's authority is increasingly ignored by the judiciary. Dabrowski M. 2023, pp. 271, 279.

The principle of sincere cooperation, enshrined in Article 4(3) TEU, requires Member States to facilitate the achievement of the Union's tasks and refrain from measures that could jeopardise EU objectives.[36] A systematic refusal to implement CJEU judgments, justified by an expansive interpretation of constitutional identity, clearly violates this foundational principle. It transforms a mechanism intended to preserve legitimate constitutional diversity into a tool for legal isolationism that threatens the coherence of the entire European legal order.

Conclusions

The analysis presented in this article leads to several fundamental conclusions regarding the instrumentalisation of constitutional identity in the jurisprudence of the Polish Constitutional Tribunal.

First, the concept of constitutional identity, as developed in European legal doctrine and reflected in Article 4(2) TEU, was designed to protect the genuine constitutional core of Member States: their fundamental political structures, basic values, and irreducible elements of statehood. It was never intended as a mechanism for evading shared commitments to rule of law values that Member States accepted upon joining the Union.

Second, the Polish Constitutional Tribunal's deployment of constitutional identity to shield judicial reforms from EU scrutiny represents a fundamental misuse of this concept. Judicial independence is not a national peculiarity but a universal value that Poland committed to upholding under Article 2 TEU. The organisation of disciplinary proceedings against judges cannot constitute an element of constitutional identity that is beyond EU competence.

Third, the consequences of this instrumentalisation extend far beyond Poland. The emergence of a legal dualism that forces judges to choose between EU law and constitutional tribunal rulings undermines the coherence of the European legal order. If other Member States were to adopt similar approaches, the uniform application of EU law – a fundamental condition for the functioning of the internal market and the protection of citizens' rights – would be fatally compromised.

Fourth, addressing this challenge requires a renewed commitment to judicial dialogue. The German model, despite its imperfections, demonstrates that constitutional identity claims can be accommodated within a framework of mutual respect and cooperation between national and European courts. Furthermore, the Polish case differs fundamentally from the jurisprudence of other national constitutional courts (such as the BVerfG). In other Member States, such judgments were exceptional, concerned specific substantive issues, and generally aimed to raise the level of protection for citizens, whereas the Polish Tribunal's approach systematically challenges the foundations of the Union and effectively

[36] Biernat S., Letowska E. This Was Not Just Another Ultra Vires Judgment! Verfassungsblog, 27 October 2021. https://doi.org/10.17176/20211027-182911-0

lowers the standard of rights protection.[37] The confrontational approach adopted by the Polish Tribunal forecloses such dialogue and ultimately harms Polish citizens who are denied the full protection of EU law.

Finally, the EU institutions must develop more effective mechanisms for responding to systematic violations of rule of law values. The conditionality mechanism linking EU funds to rule of law compliance represents one such tool, but its effectiveness depends on consistent and determined application. Constitutional identity cannot be permitted to become a "trap card" that enables Member States to enjoy the benefits of EU membership while rejecting its fundamental legal obligations.[38]

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[37] Biernat S. 2021.

[38] Ultimately, the "values crisis" represented by the instrumentalization of constitutional identity has far-reaching implications, as a Union without shared common values has few reasons to exist and fails to protect the legal framework upon which it was founded. Pech L., Scheppele K. L. 2017, p. 5.

9. Jaraczewski J. Gazing into the Abyss: The K 3/21 decision of the Polish Constitutional Tribunal. Verfassungsblog, 12 October 2021. Available: https://verfassungsblog.de/gazing-into-the-abyss/
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