

COUNTRY REPORT

# SOVEREIGN:

## The Revival of Sovereignty in Central and Eastern Europe and the European Union

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# COUNTRY STUDY:

## UKRAINE

### **INTRODUCTION**

Ukraine offers a compelling case study because its sovereignty is not just a legal abstraction, but a lived, existential struggle. During the Soviet era, the Ukrainian republic was formally declared a sovereign state; however, it was only in 1991 that Ukraine became truly independent and sovereign. This process was initiated on July 16, 1990, with the Declaration of State Sovereignty of Ukraine. The state sovereignty of modern Ukraine is guaranteed by the Act of Declaration of Independence of Ukraine (1991), the Constitution of Ukraine (1996), the results of the All-Ukrainian Referendum of December 1, 1991, and other legislative and political acts. According to the Constitution, the bearer of sovereignty and the sole source of power in Ukraine is the People.

Ukraine currently serves as a global case study for "dynamic sovereignty"—where a state must simultaneously defend its physical borders while ceding certain competencies to supranational bodies (like the EU) to ensure its long-term survival. Therefore, the appeal to the problems of state sovereignty in general and the problems of territorial supremacy and territorial sovereignty of Ukraine and mechanisms for maintaining its integrity, determined by the ongoing war in Ukraine and the corresponding violation of the state sovereignty of our country, the needs for the implementation of the prospects for Ukraine's entry into the European Union and the participation of its institutions in the implementation of certain sovereign rights of Ukraine, the formation of the latest principles of international law and order.

### **EVOLUTION AND CONTEMPORARY MEANINGS OF THE CONCEPT OF SOVEREIGNTY IN UKRAINE**

The doctrinal concept of sovereignty in Ukraine has gone a path from declarative self-determination to the modern model of 'protected and integrated sovereignty.' In Ukrainian legal thought, sovereignty is considered not merely as a legal category, but as an existential basis for the survival of the nation. Generally speaking, sovereignty is transitioning from traditional 'westphalian' (territorial control) to so called 'Effective' (due to the institutional capacity) or 'Integrated Sovereignty'. There

were also theoretical observations on distinguishing between '*De Jure*' sovereignty (international recognition) and '*De Facto*' sovereignty (the ability to govern occupied or contested territories). At the same time it worth stressing that this process was not just shifting and not being replaced, but reinforced: Rather than being replaced by terms like "globalization," sovereignty in Ukraine is being reinforced through the concept of "Strategic Autonomy." In Ukrainian doctrine, sovereignty does not belong to the apparatus of the state; it is derived from the will of the people. According to Article 5 of the Constitution of Ukraine, "the people are the only source of power". The doctrine emphasizes that the state is only an instrument to which the people delegate part of their rights. Another aspect of the doctrine of sovereignty is characterized by the supremacy of power within the country and independence on the international stage. In international law, this is called territorial sovereignty. Article 2 of the Constitution of Ukraine states that "the sovereignty of Ukraine extends over its entire territory".

Constitutional Court of Ukraine plays a pivotal role on describing the concept of sovereignty from variety of dimensions. In its decisions (for example, in the case regarding the adoption of the Constitution or on state independence), the Constitutional Court of Ukraine consistently emphasizes that: (i) sovereignty is an inherent characteristic of the state. It extends to its entire territory; (ii) Ukraine is a unitary state, and any attempts to limit sovereignty through federalization or the withdrawal of territories are unconstitutional; (iii) the source of sovereignty is the people.

Under the doctrinal approaches Ukrainian legal scholars and the Constitutional Court of Ukraine distinguish inalienable elements that cannot be limited even by international treaties: (i) territorial integrity that analyzes sovereignty as an absolute and indivisible concerning the entire territory within internationally recognized borders; (ii) constitutional identity that means a set of principles (democracy, human rights, rule of law) that constitute the genetic code of the state; and (iii) state language that considered as a doctrinal 'shell' of sovereignty that ensures the unity of the political nation. These elements are prescribed as a sovereignty core.

Each historical period poses questions to states, the answers to which determine not only their fate but also their very existence. The need to address the issues of state sovereignty in general, and the problems of territorial supremacy and territorial sovereignty of Ukraine and the mechanisms for maintaining its integrity,

is now more relevant than ever due to the ongoing war in Ukraine and the corresponding violation of the state sovereignty of Ukraine, the need to implement the prospects of Ukraine's accession to the European Union and the participation of its institutions in the realization of certain sovereign rights of Ukraine, and the formation of new principles of the international legal order. This will also necessitate amendments and additions to the Constitution of Ukraine. In this regard, it is important to find the most optimal legal solution for Ukraine, based on national interests and preserving sovereignty as the ability to independently formulate and implement domestic and foreign policy<sup>1</sup>.

Modern Ukrainian doctrine of legal order is shifting into "Europeanized" due to the process of European integration<sup>2</sup>. After amendments to Constitution of Ukraine in 2019) doctrine moves away from the classical westphalian understanding toward a model of shared exercise of sovereignty. Especially it covers the notion of delegation, not loss, that could be described as transferring powers to EU bodies is seen as a way to strengthen real sovereignty (through economic growth and collective security), rather than reduce it. And at the same time functional approach lies into the notion of sovereignty that is defined as the ability of the state to effectively protect the interests of its citizens in a globalized world.

## **SOVEREIGNTY IN STATE DOCTRINE AND POLITICAL DISCOURSE IN UKRAINE**

During the last decade the concept of sovereignty in Ukraine has moved beyond academic debate to become the central pillar of national survival. Aggression and territorial occupation started in 2014 accelerated the political and legal discourse of sovereignty. Its usage by authorities and within society reflects a state that is actively redefining its boundaries in the face of external aggression, European integration, and the influence of global technology.

In the official rhetoric sovereignty is the dominant doctrinal term, but it is increasingly paired with subjectivity and constitutional identity. Full scale invasion to Ukraine 2022 accelerated official political statements of sovereignty as agency. It's obvious in representative statements by President V. Zelenskyy and other

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<sup>1</sup> Parkhomenko N. (2024). The Modern Concept of the Territorial Sovereignty of the State in the Context of Geopolitical Challenges. Ukrainian Journal of Constitutional Law. No. 3(32). 3-12. DOI: <https://doi.org/10.30970/jcl.3.2024.1>

<sup>2</sup> Det.: Smyrnova K.V., Kot O.O. (2025) Development of the legal system of Ukraine in the context of European integration // Legal support for the post-war reconstruction of Ukraine: monograph / edited by R.O. Stefanchuk, Kyiv: Yurinkom Inter, 2025. - Pp. 209-242.

leaders often frame sovereignty not just as "non-interference," but as the capacity to be a 'subject' (an active decision-maker) rather than an 'object' of global politics; the capacity of the state to be an independent actor on the world stage rather than an object of negotiations between great powers. Currently, sovereignty is defined as the supremacy of the will of the Ukrainian people over their territory and their right to choose their own security and political future (as in accordance with Art. 5 of the Constitution of Ukraine). The core is no longer just "territorial integrity" in a static sense, but geopolitical agency. Recent sociological research suggests that for many Ukrainians, the ability to choose alliances (EU/NATO) is as critical a component of sovereignty as the physical control of territory.

Methods of changing state territory such as annexation and military occupation cannot be recognized as lawful<sup>3</sup>. The modern list of legal grounds for changing state territory is based on the prohibition of using force or the threat of force for this purpose. This means that territorial changes should not pose a threat to or violate international peace and security. Exceptions are national liberation wars, the conduct of which is not yet prohibited by international law, and as a result of which territorial changes may occur. Thus, military occupation is an unlawful method of changing territory. However, the territories of Ukraine temporarily occupied by the Russian Federation were subsequently also annexed. Annexation in international law is considered an aggressive criminal activity of the occupying state involving the unilateral incorporation of occupied territory in violation of international law norms. The change in the legal regime of certain territories of Ukraine led to a change in the status of these territories and determined the specifics of legal regulation of social relations within them.

At the same time, illegal decisions and actions do not create legal consequences; accordingly, the annexed territory cannot acquire the status of part of the aggressor state. The issue of territorial dispute in this case does not arise. It is correct to speak of a unilateral unfounded claim<sup>4</sup>. Thus, at present, within the territory of Ukraine, it is possible to note the presence of state territories where a constitutionally defined legal regime operates, and occupied territories for which a special legal regime has been introduced, as provided by the Law of Ukraine "On

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<sup>3</sup> International Law: Textbook / Edited by M.V. Buromensky. Kyiv: Yurinkom Inter, 2006. P. 97

<sup>4</sup> Kononenko V., Tarakhonch T., Tymchenko L., Parkhomenko N. (2023) Title to Territory in Europe in the Context of the Russian-Ukrainian Armed Conflict: Methods, Illegal Claims and Legal Assessments. European Studies – the Review of European law, Economics and Politics. Volume 10, Issue 1, 2023. URL: <https://intapi.sciendo.com/pdf/10.2478/eustu-2023-0006>. P. 133.

Ensuring the Rights and Freedoms of Citizens and the Legal Regime of the Temporarily Occupied Territory of Ukraine". Regarding the transformation of the concept of state borders and state sovereignty in the context of states being part of supranational unions, it should be noted that the transfer by a state of its own right to exercise functions and competences to such unions and organizations should be considered as one of the ways by which a state exercises its sovereign rights in the form of voluntary self-limitation of its own jurisdiction.

The ongoing war in Ukraine has also caused significant changes in the perception of the purpose of existing international blocs and interstate alliances. Alongside economic cooperation, the issue of ensuring collective security through military cooperation and safeguarding the state sovereignty and territorial integrity of member countries has come to the forefront, which is of key importance for any state, as it is an inseparable attribute of it, a condition for its existence.

The term "constitutional identity" has surged in importance, particularly in rulings by the Constitutional Court of Ukraine. It is used to argue that while Ukraine joins the EU, there is a 'core' of Ukrainian values (language, unitary state structure, historical memory) that cannot be bargained away or harmonized. Independence remains the emotional and historical term, used primarily for public holidays and symbolic unity, whereas 'sovereignty' is the technical term for state power.

## **SOVEREIGNTY THROUGH CONSTITUTIONAL COURT DECISIONS IN UKRAINE**

The practice of the Constitutional Court of Ukraine regarding the concept of sovereignty is fundamental for understanding how the state balances between independence and international integration. The CCU acts as a 'filter' and 'guarantee'. Any international agreement can be reviewed by the Court for compliance with the Constitution before its ratification (as a preventive control). If the agreement threatens sovereignty, the Constitutional Court of Ukraine has the right to declare it unconstitutional, which blocks its entry into force.

In recent years, the Court has also emphasized national security as an integral part of sovereignty. With the aim to describe the evolution of fundamental foundations of sovereignty there are key decisions of Constitutional Court of Ukraine on that issue:

(i) Decision of July 13, 1994 No. 1-rp/1994 (Case on State Independence). This is one of the first decisions in which the Constitutional Court of Ukraine interpreted the Declaration of State Sovereignty. The court emphasized that sovereignty is the

completeness, indivisibility, and autonomy of state power within its territory and independence in international relations. This decision effectively legitimized the transition from the Soviet legal system to a sovereign state. For the first time, the Constitutional Court clearly distinguished between "declarative" and "real" power. Currently, this case is used as an argument in discussions about external sovereignty. The court's position on "independence in international relations" is the legal basis for Ukraine to independently determine its security alliances, despite any external pressure.

(ii) Decision of July 11, 2001 No. 9-rp/2001 (Case on the Rome Statute). A historic decision regarding the limitation of sovereignty. At that time, the Constitutional Court of Ukraine recognized the Rome Statute as inconsistent with the Constitution, since it allowed the "complementary" jurisdiction of the International Criminal Court to the national judicial system. This demonstrates the classic approach to sovereignty as a system that does not tolerate external interference in justice. (Later, the Constitution was amended to allow ratification). "The Constitution of Ukraine does not provide for the possibility of supplementing Ukraine's judicial system through international judicial institutions... Recognition of the jurisdiction of the International Criminal Court... is possible only after the relevant amendments to the Constitution of Ukraine are made". This quote demonstrates the protection of legal sovereignty by not allowing external justice without the direct consent of the Constitution.

(iii) Decision of April 1, 2003 No. 9-rp/2003 (Case on Territorial Structure): The Constitutional Court of Ukraine confirmed that Ukraine's sovereignty extends over its entire territory, which is integral and inviolable, and any changes in the territorial structure must comply with the principle of unity. The court established that Ukraine is unitary and its sovereignty cannot be 'divided' among the regions. This was aimed at preventing federalization. Currently, this case serves as a legal shield against any attempts to impose 'special statuses' on certain territories of Ukraine. The constitutional principle of unity (Art. 2) makes it impossible to legally recognize any autonomies that could threaten the integrity of the state.

(iv) Decision of October 5, 2005, No. 6-rp/2005 (Case on the Exercise of Power by the People). Delimitation of people and state sovereignty. The Constitutional Court of Ukraine indicated that no one (neither authorities nor individuals) can usurp the people's right to make decisions. This is important for the section on democracy as the basis of sovereignty. "The bearer of sovereignty and the only source of power in Ukraine is the people. This right... is exclusive and cannot be appropriated by the

state, its bodies, local self-government, or individual persons. Any action... that constitutes a usurpation of people's power is unconstitutional and illegal".

(v) Decision of November 22, 2018 No. 3-v/2018 (Opinion on the course towards the EU and NATO). The Constitutional Court of Ukraine supported the enshrinement in the Preamble of the Constitution of the irreversibility of the European and Euro-Atlantic course. The Court recognized that the aspiration to membership in these organizations does not contradict sovereignty, but is a way of effectively protecting it. "Ukraine's strategic course towards gaining full membership in the European Union and the North Atlantic Treaty Organization is a guarantee of ensuring its sovereignty and territorial integrity".

Later decisions where the Constitutional Court of Ukraine began stating about constitutional identity as a defense of sovereignty in the context of globalization:

(vi) Decision of October 27, 2020 No. 13-r/2020 (the case on anti-corruption reform). Although it was controversial, it was the first time the Constitutional Court of Ukraine actively spoke about the fact that Ukraine's international obligations should not contradict its Constitution. This laid the foundation for the concept of 'constitutional identity'.

(vii) Decision of July 14, 2021 No. 1-r/2021 (Case on the language law). The Constitutional Court of Ukraine directly associated the status of the Ukrainian language with sovereignty. The Court noted that language is an instrument for exercising state power and a guarantee of national identity. Weakening the language's status is regarded as a threat to national security and sovereignty. "The Ukrainian language is a fundamental factor in the existence of the Ukrainian nation and its unity, an integral attribute of the Ukrainian state... A threat to the state status of the Ukrainian language is equivalent to a threat to Ukraine's national security, its sovereignty, and territorial integrity".

(viii) Decision of April 28, 2021 No. 1-p(II)/2021 (Regarding land reform). The Court considered the issue of land ownership through the lens of sovereignty. Land is defined as an object of property rights of the Ukrainian people, which is the material basis of sovereignty. "Land is an object of property rights of the Ukrainian people... the territorial basis of Ukraine's sovereignty. The subject of the property right to land is not the state, but the Ukrainian people as a collection of citizens of Ukraine of all nationalities".

(ix) Decision of November 1, 2022 No. 2-r(II)/2022: The Court emphasized that Ukraine's European integration (enshrined in the preamble) does not mean a renunciation of sovereignty, but is a way to strengthen it.



In the context of harmonizing legislation with the EU, the Constitutional Court of Ukraine increasingly uses the '*solange*' doctrine. This doctrine became the main legal tool for protecting sovereignty in the process of joining the European Union. Ukraine recognizes the supremacy of EU law as long as it does not violate the fundamental principles of our constitutional order (state language, veterans' rights, unity).

In the process of negotiations for EU accession in 2024–2026, Ukraine faced the need to implement thousands of EU acts (*acquis*). The question arose what to do if an EU directive contradicts the fundamental principles of the Constitution of Ukraine? Here, the adapted 'Ukrainian version' of the Solange doctrine can be used. The Constitutional Court of Ukraine and the legal community of Ukraine defined the 'inviolable core' (constitutional identity), which includes: the unity of the state (impossibility of federalization upon external demand); the state language (protection of the Ukrainian language as identity); territorial integrity. So the Solange doctrine allows Ukraine to be on the way for European integration without completely dissolving into it.

So these abstracts and references to the practice of Constitutional Court of Ukraine shows us the diversity of dimensions of sovereignty doctrine. The practice of the Constitutional Court of Ukraine is evolving from 'absolute sovereignty' (of an isolationist type) to 'sovereignty within the limits of constitutional identity,' where Ukraine is ready for deep integration with the EU, but on the condition of preserving its basic institutional and territorial foundations. Sovereignty is impossible without effective protection. At the same time the Constitutional Court of Ukraine confirms the legitimacy of restricting certain citizens' rights in order to protect sovereignty under martial law.

### **“EUROPEANIZATION” OF DOCTRINE OF SOVEREIGNTY IN UKRAINE**

Europeanization is described as the reorientation of state policy through the dynamism of the EU. It involves the development, dissemination, and institutionalization of formal and informal rules, shared beliefs, and norms developed at the EU level, which are later incorporated into national legislation. These mechanisms include (i) reception and transposition as the formal adoption of EU rules; (ii) adaptation and approximation that include aligning national legal and regulatory frameworks with the EU *acquis*. Europeanization is the gradual transformation of the national legal order, including constitutional dimension of sovereignty.

The "Europeanization" of the sovereignty doctrine in Ukraine represents a profound shift from a closed, post-Soviet model of absolute control to an open, integrated model of shared authority. Ukraine faces a unique "Sovereignty Paradox" regarding the European Union. Unlike some EU member states that view Brussels as a threat to sovereignty, the Ukrainian legal discourse often views EU accession as a guarantor of sovereignty against Russian imperialism. This "identity" includes the unitary nature of the state, the status of Ukrainian as the state language, and the independence of the judiciary. There is a tension between the desire for "European Sovereignty" to protect against external threats and the domestic need to maintain strong national identity after centuries of imperial suppression. It's worth mentioning that the 2019 constitutional amendment enshrining the "European identity of the Ukrainian people" effectively defines sovereignty as the right to choose a specific civilizational path. Building on the landmark decision of July 14, 2021 (No. 1-r/2021), recent 2025 rulings emphasize that while Ukraine is on an "irreversible strategic course" (Preamble of the Constitution), this path must respect the core values that define the Ukrainian people's historical state-building experience.

The process of European integration of Ukraine is no longer just a legal ambition but a technical reality driven by the "Cluster phase" of EU accession. Traditionally, Ukrainian sovereignty was viewed as a "monologue"—the state's absolute power within its borders. Europeanization has turned this into a "dialogue" with European institutions. The "*solange*" logic in Ukraine could be described within the approach of Constitutional Court of Ukraine that has increasingly adopted a stance similar to Germany's *Solange* doctrine. It accepts the supremacy of EU law so long as the EU ensures a level of protection for fundamental rights and democratic values equivalent to the Ukrainian Constitution. The approach of 'guardrail' allows Ukraine to delegate powers to Brussels (e.g., in trade, customs, and digital regulation) without "losing" sovereignty. Sovereignty is now viewed as something that is exercised through integration rather than protected through isolation. As Ukraine adapts its legislation to the EU *acquis*, the concept of constitutional identity has become the primary defense mechanism for its sovereignty. In recent rulings (2024–2026), the Constitutional Court of Ukraine has identified certain "non-negotiable" elements of the Ukrainian state: the unitary structure, the status of the Ukrainian language, and territorial integrity. By defining what cannot be changed even for the sake of EU membership, Ukraine is "Europeanizing" its doctrine—aligning with other EU member states (like Poland, Germany, and France) that also maintain

a "constitutional core" that limits the reach of EU law. The Europeanization process has forced a distinction between symbolic sovereignty (the flag, the name, the borders) and functional sovereignty (the ability to actually govern). Ukrainian leaders currently argue that a state which cannot protect its citizens or provide economic stability is not truly sovereign. Therefore, joining the EU's "Single Market" and "Security Umbrella" is seen as an enhancement of functional sovereignty.

There are some legal observations on this process. According to Article 8 of the Constitution of Ukraine, it has the highest legal force. No international treaty can contradict it. At the same time the doctrine of *Costa v ENEL* establishes that EU law has supremacy over national law, including the constitutions of member states. How to recognize the primacy of EU acts (for example, regulations) without changing the fundamental article on the supremacy of the Constitution? The powers should be implied and transferred into supranational regulation. This is no longer just cooperation, but a restriction of sovereign rights 'forever'. EU supranationalism also predicts the creation of a system where the Court of Justice of the EU (Luxembourg) becomes the final authority in interpreting norms that operate in Ukraine. In this situation the role of Constitutional Court of Ukraine is pivotal in maintaining the role of the "ultimate guardian" of national identity if the EU Court's decisions are mandatory for Ukrainian judges. It's obvious that by constitutionally enshrining the foreign economic course of Euro-Atlantic integration, Ukraine must ensure the transformation of its political-legal and economic systems, while receiving economic, political, and military support and assistance. The prospect of Ukraine's accession to the EU will require amendments and additions to the Constitution of Ukraine.

Ukraine successfully completed the comprehensive screening process in September 2025. This was a massive technical undertaking where the European Commission and Ukraine compared Ukrainian laws against the entire body of the *acquis*. The positive result allowed negotiations to move into the substantive phase. The EU's current enlargement methodology groups 35 "chapters" into six thematic clusters. In late 2025, the European Commission confirmed that Ukraine met the requirements to open the first three: Cluster 1: Fundamentals (Justice, security, and the rule of law), as the most critical cluster that opens first and remains open until the very end; Cluster 2: Internal Market (Free movement of goods, people, and services); Cluster 6: External Relations. At the same time, by the end of 2025, the

Ukrainian government finalized negotiation positions for all 35 chapters across 6 clusters.

The most significant event was the Informal Meeting of European Affairs Ministers, which took place on December 10–11, 2025. This was a historic occasion as it was one of the first times such a top-level EU ministerial meeting was held on Ukrainian soil during the active accession process. Main points of agenda were "frontloading" Reform, especially discussions focused on accelerating Ukraine's internal reforms so that the country is technically ready for membership even while political hurdles (like specific vetoes) remain; to review the results legislative screening with the aim to assess accession progress. And one of the decisions were taken was the financial support with finalizing the details of the €90 billion financial aid package for 2026–2027, which was officially approved shortly after by the European Council. Its symbolically, that holding the meeting in Lviv was intended to send a "clear and united political message" that Ukraine's future is irrevocably within the EU. While the Ukrainian government has set an ambitious goal of being ready for membership by 2027, many EU officials suggest that a realistic window for full accession is between 2028 and 2030, depending on the pace of domestic reforms.

Its obvious that the concept of sovereignty has variation of dimension, political and legal discourses and there are a lot of dilemmas that could be solved by the evolution of the concept of sovereignty. Currently Ukraine's discourse increasingly views economic resilience and energy independence as the true foundations of a sovereign state. Effective sovereignty could be also a measure on state resilience. Global challenges also lead for modern transformations. A new direction of Ukrainian thought is the analysis of digital sovereignty. The ability of the state to control the information space and protect digital borders under the influence of global platforms (Big Tech). Cybersecurity as a new dimension of state sovereignty in the 21st century as new transformative vision for digital sovereignty.

# ABOUT AUTHOR

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Kseniia Smyrnova is a Doctor of Law and professor at the Institute of International Relations of Taras Shevchenko National University of Kyiv, where she also chairs the Scientific and Methodological Council. After working as a practicing lawyer from 2000 to 2005, she served as a senior lecturer at the Diplomatic Academy of Ukraine. Since 2006 she has been affiliated with the Department of Comparative and European Law, becoming an associate professor in 2011 and a full professor in 2019. She defended her doctoral dissertation on EU competition law in 2015 and has headed the Institute's Scientific and Methodological Commission since 2016. She has completed academic internships in several EU countries and the United States and has lectured internationally, including in the EU, the United Kingdom, Turkey, and Hong Kong. She leads the EU Law Section of the Jean Monnet Center of Excellence and is the author of around 200 scholarly and educational publications, supervising four doctoral researchers. Her work has been recognized with distinctions from the High Council of Justice, the Prime Minister of Ukraine, Taras Shevchenko National University, and the Ministry of Education and Science. Since 2017 she has served on the Scientific Expert Council of the Antimonopoly Committee of Ukraine and, since 2019, on the Presidential Commission on Legal Reform.