MAŁGORZATA PUTO[1]
University of Gdańsk
ORCID: 0000-0002-4391-9469

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European Consensus in Value-Laden Areas: A Constitutional Tool in the Evolution of the Legal Orders of the Council of Europe and the European Union

1. Introduction

In recent decades, European integration has evolved from legal and economic cooperation into a negotiation of shared values. This shift has exposed tensions between national constitutional pluralism and supranational harmonisation, especially in value-laden areas such as bioethics, family law, reproductive rights, and freedom of expression.

To address these tensions, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have developed interpretive tools that balance legitimacy with normative diversity. Among them, the doctrine of European consensus has become central to gradual value harmonisation and constitutional convergence. Yet, its use raises concerns about methodological clarity and the marginalisation of dissenting legal traditions (Dzehtsiarou, 2015, pp. 44–47, 91–94).

The thesis of this article is that European consensus functions as a soft constitutional tool, mediating between national autonomy and the integrative ambitions of the European legal space. It explores whether consensus-based reasoning fosters legitimate convergence or reinforces dominant norms.

Two hypotheses are tested: first, that supranational courts guide domestic legal evolution through convergence without enforcing uniformity; second, that consensus both reflects and drives constitutional development.

The study reconstructs the foundations of the consensus doctrine, analyses its application in selected case law, and assesses its constitutional impact. While focusing on the ECtHR, it also considers emerging CJEU practices.

Selected cases span diverse domains – bioethics (*Pretty, Haas*), reproductive rights (*A., B. and C., Vallianatos*), and identity (*Goodwin, Coman*) – illustrating how consensus operates as a legitimising, transformative, or dialogical force.

The chosen methodology – combining doctrinal, comparative, and case study approaches – is particularly well-suited to analysing the European consensus doctrine. The doctrinal method enables a systematic reconstruction of the legal foundations and interpretive logic underlying consensus-based reasoning. The comparative approach allows for the identification of normative patterns across Member States, which is

essential given that consensus is inherently a cross-national construct. Case study analysis provides depth and contextual nuance, illustrating how consensus operates in practice within specific value-laden domains. Finally, the inclusion of empirical data (e.g., Eurobarometer, 2023; ILGA-Europe, 2022) enhances the normative analysis by grounding it in observable societal trends, which often inform or reinforce judicial reasoning in supranational courts.

2. The Concept of European Consensus in Supranational Jurisprudence

European consensus is one of the most distinctive and simultaneously contested interpretive tools in supranational jurisprudence. Though originally articulated by the ECtHR, the notion has gradually permeated broader discourses on European constitutionalism, finding cautious echoes in the practice of the CJEU and influencing national courts in matters of value-sensitive adjudication (Theilen, 2021, p. 26). As an evolving doctrine, it reflects both the promise and the complexity of navigating normative diversity within an integrated legal space.

At its core, European consensus refers to the identification of common standards, principles, or legal approaches across the Member States. This is exemplified in *Bayatyan*, where the ECtHR for the first time recognised conscientious objection to military service as protected under Article 9 of the European Convention on Human Rights (ECHR, signed 4 November 1950, ETS No 5), marking a shift toward value-sensitive adjudication grounded in European consensus (Bayatyan v. Armenia, 2011). When such convergence is established, the ECtHR has treated it as a legitimate basis for dynamic interpretation of the ECHR, allowing the Court to raise the level of protection of certain rights or to adapt their scope to evolving societal realities. The absence of consensus has also been invoked to justify granting states a broader margin of appreciation, particularly in domains involving moral, ethical, or cultural dimensions.

The ECtHR has deployed this approach in a variety of contexts, ranging from the decriminalisation of homosexuality – as in *Dudgeon v. the United Kingdom* (1981), where the Court found that criminalising consensual same-sex activity violated Article 8 ECHR – to the legal recognition of same-sex partnerships, as in *Schalk and Kopf v. Austria* (2010), where it held that stable same-sex relationships could fall within the scope of “family life”. In *A., B. and C. v. Ireland* (2010), the Court acknowledged the sensitive nature of abortion legislation, but found a violation of Article 8 due to the lack of an effective mechanism for assessing threats to a woman’s life. In the domain of end-of-life decisions, *Pretty v. the United Kingdom* (2002) and *Haas v. Switzerland* (2011) addressed assisted suicide, affirming its relevance to private life while allowing states wide discretion. Finally, in *Christine Goodwin v. the United Kingdom* (2002), the Court recognised the right of a transgender person to the legal recognition of their gender identity, marking a fundamental shift towards inclusive protection under Articles 8 and 12 ECHR.

Consensus is not a static threshold but a malleable construct, shaped by changing political, legal, and social landscapes (Theilen, 2021, pp. 32–35). The Court has often used it both to constrain and expand rights protection, reinforcing the normative authority of the ECHR, and to signal deference to national particularities. This duality

has given rise to divergent interpretations: some view consensus as a principled means of constitutional dialogue, while others criticise it as a vehicle for judicial discretion or even a cloak for ideological choices (Theilen, 2021, p. 433).

The CJEU has traditionally refrained from explicitly employing the language of European consensus. Nevertheless, its jurisprudence reveals a growing attentiveness to normative patterns among Member States – particularly in cases that implicate fundamental rights, equality, and discrimination. In *Coman and Others v. Inspectoratul General pentru Imigrări* (2018) the Court took note of cross-national developments concerning the recognition of same-sex marriages. While it did not invoke a consensus per se, the judgment reflected a sensitivity to shifts in social attitudes and legal norms, aligning with broader integrationist dynamics.

Moreover, recent scholarship suggests that the CJEU is evolving towards a more dialogical model of constitutional adjudication, in which identifying emerging patterns among Member States serves both to legitimise its rulings and to prevent excessive judicial activism. This implicit use of consensus-like reasoning offers a subtle mechanism for value convergence without overtly undermining national identity or constitutional autonomy (Schultz, 2023, pp. 166–179).

Despite its functional utility, the consensus doctrine remains fraught with conceptual and methodological tensions. First, the threshold for establishing consensus is notoriously unclear. Second, the comparability of legal systems is often contested – particularly when sensitive issues are governed not only by law but also by deeply embedded cultural and religious norms (Theilen, 2021, pp. 272–284, 265–267). Third, identifying consensus may risk reifying dominant trends and marginalising dissenting voices (Peroni, Timmer, 2013, pp. 1073–1084).

Nonetheless, European consensus continues to operate as a tool for balancing integration and pluralism (Gerards, 2011, pp. 82–89). Its strength lies in its capacity to facilitate incremental constitutional alignment without resorting to coercive harmonisation. By anchoring interpretive evolution in observed patterns of convergence, supranational courts can foster a sense of collective legitimacy and shared trajectory among legal orders that remain, in many respects, heterogenous.

In the context of European integration, the doctrine represents both a mirror and a motor: it reflects shifting societal attitudes and political commitments, while simultaneously nudging national systems toward greater normative coherence. As the Union deepens its engagement with contested domains of identity and morality, the constitutional potential of consensus may well expand – raising new questions about its scope, legitimacy, and transformative power.

Although the CJEU rarely refers to European consensus explicitly, several of its rulings in value-laden areas suggest an emerging sensitivity to converging legal and societal trends within the Member States. In *Römer* (2011), the Court acknowledged the principle of equal treatment for same-sex registered partners in pension rights, reflecting growing legal recognition of such partnerships across the Union. In *Coman* (2018), it interpreted the term “spouse” for the purposes of free movement to include same-sex partners, implicitly relying on the evolving legal landscape in many Member States. Similarly, in *Egenberger* (2018), the Court addressed the tension between religious autonomy and anti-discrimination principles, while in *NH v. Rete Lenford*

(2020), it balanced freedom of expression against the prohibition of homophobic discrimination – aligning its reasoning with broader European developments in fundamental rights protection. Even though these judgments do not invoke consensus by name, they resonate with the ECtHR’s logic of grounding normative evolution in observable patterns. Such cases illustrate how the CJEU may be engaging in a form of implicit consensus reasoning – especially where fundamental rights intersect with moral or identity-based pluralism.

3. Value-Laden Areas in EU Legal and Political Contexts

While the European Union was founded upon economic cooperation and legal harmonisation, it now faces the difficult task of navigating value pluralism within its Member States – particularly in areas deeply embedded in ethical, moral, or religious convictions (Foret, Vargovčíková, 2022, pp. 97–169). These value-laden areas lie at the intersection of constitutional autonomy and supranational norm-setting, and they include such contested domains as reproductive rights, family law, bioethics, freedom of expression, and the protection of minority identities (Frischhut, 2022; Peroni, Timmer, 2013, pp. 1083–1085; Gerards, 2011, pp. 85–115).

The prominence of these topics in legal and political debates reflects a broader shift within the EU towards a normative project that aspires not only to harmonise markets, but to foster a shared foundation of rights and principles. This normative turn is enshrined in key instruments such as the Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights of the European Union [2012] OJ C326/391) and supported by the jurisprudence of the CJEU and the ECtHR. Yet the implementation of these norms in sensitive areas often reveals fault lines between national constitutional traditions and supranational expectations (Sadurski, 2012, pp. 89–91).

The EU’s commitment to fundamental rights and values is anchored in Article 2 TEU, which affirms respect for human dignity, freedom, democracy, equality, the rule of law and human rights (Treaty on European Union [2012] OJ C326/13).

At the national level, value-laden issues are typically shaped by deep-rooted cultural narratives. Debates over abortion, euthanasia, or same-sex marriage reflect ideological divides across Europe, rooted in competing conceptions of dignity, autonomy, and the state’s role in private life (Robertson, 1994, pp. 457–472, 480–484).

According to research (Eurobarometer, 2023), support for same-sex marriage ranges from over 90% in countries like the Netherlands and Sweden to below 30% in Romania and Bulgaria. Surveys also show wide variation in attitudes toward abortion and euthanasia across EU Member States (Pew Research Center, 2022). These divergences reflect legal fragmentation and deep societal divides, which courts must navigate when interpreting fundamental rights in culturally sensitive domains.

In related domains of institutional or ethical sensitivity, constitutional resistance also arise. In *K 3/21* (2021) the Polish Constitutional Tribunal found that certain provisions of EU law infringed the Constitution by empowering the CJEU to interfere with national judicial structures. In *K 1/20* (2020), it struck down a provision permitting abortion on fetal impairment grounds, reaffirming domestic control over moral choic-

es. Similarly, the Romanian Constitutional Court has refused to give effect to CJEU rulings on judicial reform, asserting constitutional supremacy (Decision 390/2021). Also in Germany, the Federal Constitutional Court has invoked constitutional identity to limit the domestic effect of supranational norms, as in the *Right to be Forgotten II* judgment (2 BvR 2735/14). While some of these rulings concern overtly moral questions, such as reproductive rights (*K 1/20*), others involve normative disputes over institutional autonomy and constitutional identity, which carry distinct but equally significant value-laden dimensions.

These domains are increasingly subject to supranational scrutiny. Cases like *Coman* or *A., B. and C. v. Ireland* illustrate how legal conflicts in value-laden areas can simultaneously engage constitutional and cultural dimensions. This tension also played out in *Ladele v. United Kingdom* (part of *Eweida and Others*, 2013), where the ECtHR upheld sanctions against a registrar who refused to officiate same-sex unions on religious grounds – illustrating the difficult balance between conscience-based objections and anti-discrimination norms.

This growing entanglement of national values and European legal standards gives rise to both opportunities and tensions. On the one hand, it allows for the promotion of universal rights and the progressive development of human dignity across borders. On the other, it risks exacerbating perceptions of supranational overreach and threatening democratic legitimacy in Member States with divergent traditions (Tryfonidou, Öberg, 2024, pp. 3–13).

Within this landscape, value-laden areas function as sensitive barometers of integration and divergence, testing the resilience of constitutional pluralism and the capacity of the EU to manage normative diversity without undermining its foundational commitments (von Bogdandy, Spieker, 2019, p. 104). More than any other field, they raise the question of whether a Union built on unity in diversity can meaningfully accommodate divergent ethical baselines, or whether convergence of values is a necessary and enforceable condition for membership.

From a doctrinal perspective, the treatment of value-laden issues by supranational courts often requires a delicate balancing act. The ECtHR, in particular, has relied on the margin of appreciation doctrine to defer to national authorities in sensitive areas, while simultaneously invoking the idea of a European consensus when sufficient normative alignment is identified (Kleinlein, 2017, pp. 871–890). The CJEU has nonetheless increasingly engaged with such questions under the guise of internal market freedoms, anti-discrimination law, or citizenship rights (Theilen, 2021, pp. 25–43).

Ultimately, value-laden areas are not only legal flashpoints, but also sites of democratic deliberation, identity contestation, and cultural negotiation. They embody the complex relationship between national sovereignty and supranational authority, and they compel the EU legal order to confront the limits of integration (Frischhut, 2022, pp. 91–94; Theilen, 2021, pp. 25–43).

4. European Consensus as a Constitutional Tool

The doctrine of European consensus has evolved as a comparative indicator in human rights adjudication. In recent years, it has increasingly operated as a constitu-

tional tool – one that facilitates the gradual convergence of normative standards across Member States while preserving the formal autonomy of national legal systems. This section examines the catalytic role of consensus in constitutional evolution.

European consensus serves both as a descriptive device and as a normative catalyst – legitimising the evolution of supranational standards. When supranational courts identify a sufficient degree of convergence among Member States, they often treat this as a justification for raising the level of rights protection or narrowing the margin of appreciation granted to national authorities (Kleinlein, 2017, pp. 872–890; Theilen, 2021, pp. 25–43). In this way, consensus becomes a vehicle for soft harmonisation, allowing courts to promote integration without reliance on hard law tools (Kapotas, Tzevelekos, 2019, pp. 22–25; Treaty on the Functioning of the European Union [2012] OJ C326/47).

This dynamic is particularly visible in the jurisprudence of the ECtHR. In cases such as *Goodwin*, the Court relied on emerging consensus among Member States to recognise the right of transgender individuals to legal gender recognition (*Christine Goodwin v. the United Kingdom*, 2002, paras. 84–93). Similarly, in *Alekseyev*, the Court invoked consensus to underscore the incompatibility of blanket bans on LGBT public assemblies with democratic standards (*Alekseyev v. Russia*, 2010, paras. 81–86). These judgments illustrate how consensus can function as a constitutional accelerator, enabling the Court to articulate evolving European values while maintaining a veneer of judicial restraint.

The CJEU has also employed consensus-like reasoning in value-laden cases. In *Coman*, the CJEU interpreted the term “spouse” in the context of free movement rights to include same-sex partners – a move that reflected broader legal trends across Member States (paras. 34–36, 49–56). While the Court did not invoke consensus, its reasoning mirrored the ECtHR’s logic: identifying normative patterns to justify expansive interpretations of EU law.

The Court’s reasoning in *Coman* aligns with broader societal trends: in 2022, ILGA-Europe reported that 18 EU Member States legally recognised same-sex partnerships, while public support for marriage equality exceeded 70% in a majority of Western European countries (ILGA-Europe, 2022). These figures illustrate how legal convergence often mirrors – and is reinforced by – evolving public attitudes.

Consensus plays a structural role in fostering judicial dialogue between national and supranational courts. By grounding their decisions in legal trends, supranational courts can signal openness to national constitutional identities, while simultaneously nudging domestic systems toward convergence (Kleinlein, 2017, pp. 873–875). This dialogical function is particularly important in politically sensitive areas, where direct imposition of supranational norms might provoke resistance or claims of judicial overreach.

Moreover, consensus can serve as a legitimising narrative in the face of accusations of judicial activism. By pointing to existing practices among Member States, courts can frame their decisions as reflective rather than prescriptive – as codifying rather than creating norms (Letsas, 2006, pp. 726–728).

However, critics have noted that the doctrine may reinforce majoritarianism, privileging dominant legal cultures and marginalising dissenting traditions (Kleinlein, 2017, pp. 875–878). Others warn that reliance on consensus may lead to normative

stagnation, especially in areas where progressive change is needed but not yet widespread (Kapotas, Tzevelekos, 2019, pp. 24–25). These tensions underscore the need for a context-sensitive application of the doctrine – one that balances respect for diversity with the aspiration for shared standards.

Despite these challenges, consensus remains a powerful tool of constitutional integration. It allows supranational courts to navigate the delicate terrain between pluralism and unity, offering a flexible framework for aligning national systems without erasing their distinctiveness. In doing so, it helps foster the emergence of a common constitutional space in Europe, constructed through iterative legal reasoning and mutual recognition.

European consensus operates as more than a comparative technique; it is a normative instrument that shapes the trajectory of constitutional development within the EU and the broader Council of Europe. Its effectiveness lies in its subtlety: by tracing convergence rather, it enables courts to foster integration while preserving legitimacy. As the Union continues to grapple with contested values and divergent legal traditions, the constitutional role of consensus is likely to become even more central.

5. The Transformative Potential of Consensus

The ECtHR has long used consensus to justify dynamic interpretation of ECHR, especially in areas where societal attitudes are evolving. In *Bayatyan*, the Court recognised conscientious objection to military service as protected under Article 9, citing a growing consensus among Council of Europe states (paras. 102–110). Similarly, in *Vallianatos* the Court found that excluding same-sex couples from civil unions violated Article 14, relying on the existence of a European trend (*Vallianatos and Others v. Greece*, 2013, paras. 84–92). These cases illustrate how consensus can legitimise progressive rulings that might otherwise provoke resistance, by anchoring them in observable legal developments.

Moreover, the doctrine of European consensus can accelerate the change. By recognising a trend, the Court can encourage states to align with emerging standards. This dynamic has been described as a form of jurisprudential nudging, whereby courts use consensus to signal the direction of normative travel without imposing uniformity (Kleinlein, 2017, pp. 875–878). In this way, consensus becomes a soft mechanism of integration, fostering convergence through persuasion.

Empirical studies suggest that supranational judgments invoking consensus can influence national legal reforms, particularly when aligned with public opinion trends. For instance, in countries where societal support for LGBT rights is growing, courts and legislatures have been more receptive to aligning with ECtHR and CJEU standards – a dynamic observable in recent reforms in Greece, Portugal, and Slovenia (ILGA-Europe 2022; Eurobarometer, 2023).

The CJEU has also contributed to this transformative dynamic. As previously discussed, the Court in *Coman* relied on consensus-like reasoning. Yet from a transformative perspective, this case also illustrates how supranational courts can accelerate legal alignment by embedding emerging norms into binding EU law.

Such rulings contribute to a feedback loop between judicial interpretation and domestic reform, which is particularly potent in value-laden areas. When courts identify consensus, they also create incentives for harmonisation, especially in states that seek to avoid adverse judgments or reputational costs. This may result in gradual constitutional convergence, in which national systems gradually internalise supranational standards through iterative legal adaptation (Helfer, Slaughter, 1997, pp. 293–336). Still, as discussed above, some constitutional courts have resisted convergence, invoking identity or sovereignty in value-sensitive contexts.

Yet, consensus has its critics. Scholars warn that it may privilege dominant legal cultures, marginalising dissenting voices or slower-moving jurisdictions (Kleinlein, 2017, pp. 875–878; Łącki, 2021, pp. 195–198). Moreover, courts rarely explain how many states are required to constitute a consensus, or how they weigh divergent practices. This ambiguity can undermine the doctrine’s legitimacy, especially when used to justify far-reaching normative shifts.

Furthermore, judgments based on consensus may be perceived as judicial activism, triggering resistance from national courts or political actors. The ECtHR has faced such challenges in cases involving religious symbols, reproductive rights, or LGBT protections (Kleinlein, 2017, pp. 873–875). In such contexts, the transformative use of consensus must be carefully calibrated to avoid undermining the Court’s authority or the broader legitimacy of the integration project.

Nonetheless, when applied with contextual sensitivity, consensus can serve as a bridge between pluralism and integration. It allows courts to promote shared values while respecting national diversity, and to foster legal evolution without imposing rigid uniformity. As Kleinlein argues, consensus can open space for democratic deliberation and incremental norm-building, rather than top-down imposition (Kleinlein, 2017, pp. 889–890).

In this sense, the transformative potential of consensus lies in its capacity to structure expectations, guide legal reasoning, and facilitate mutual recognition across legal systems. It is a tool of constitutional diplomacy, enabling supranational courts to participate in the shaping of European public values.

The role of consensus as a normative compass is likely to grow. Whether it can sustain its transformative function will depend on the courts’ ability to balance ambition with restraint, and to ground their judgments in both legal reasoning and democratic legitimacy.

6. Critical Reflection and Limitations

One of the most persistent critiques of European consensus concerns the lack of transparency and consistency. Supranational courts rarely articulate clear criteria for determining when a consensus exists, how many states are required to constitute one, or how divergent legal traditions are weighed in the analysis (Łącki, 2021, pp. 195–198; Kleinlein, 2017, pp. 876–878). This undermines the doctrine’s credibility and opens the door to accusations of judicial arbitrariness, as the Court’s reliance on consensus often lacks a “coherent theory of measurement,” leaving observers uncertain

whether the doctrine reflects genuine convergence or selective interpretation (Dzehtsiarou, 2015, pp. 24–94).

One way to address this methodological opacity is to integrate sociological data into the assessment of consensus. Public opinion surveys (Eurobarometer, Pew Research) and comparative legal databases (European Union Agency for Fundamental Rights, 2022) can provide a more transparent and evidence-based foundation for identifying convergence, especially in morally contested areas.

A second limitation lies in the risk of reifying dominant legal trends at the expense of minority positions. By privileging what is common among Member States, consensus may inadvertently marginalise dissenting voices (Dzehtsiarou, 2015, pp. 44–47, 91–94). This concern is especially acute in areas involving moral pluralism, where premature claims of consensus may suppress legitimate democratic contestation. As Kleinlein argues, if consensus is treated as incontestable, it may stifle rather than stimulate deliberation (Kleinlein, 2017, pp. 880–882).

The use of consensus as a legitimising narrative can be double-edged. While it may shield courts from accusations of activism by grounding decisions in observable trends, it can also be perceived as a rhetorical device that masks normative choices. In politically sensitive cases, invoking consensus without robust justification may provoke backlash from national authorities or publics, thereby weakening the authority of supranational adjudication (Henrard, 2019, pp. 148–163). This is particularly relevant in the context of the ECtHR’s evolving margin of appreciation doctrine, where consensus is often used to calibrate the scope of judicial deference – yet without clear procedural safeguards (Kleinlein, 2017, pp. 876–880).

Another challenge is the potential for normative stagnation. If courts rely too heavily on existing consensus, they may become reluctant to advance rights protection in areas where convergence is lacking – even when such advancement is normatively justified. This creates a paradox: the doctrine that enables dynamic interpretation may also inhibit it, especially in contexts where progressive change is politically contested or geographically uneven (Dzehtsiarou, 2015, pp. 91–94).

Although the CJEU rarely invokes consensus explicitly, its increasing reliance on comparative reasoning and normative trends suggests a de facto engagement with the logic of consensus. However, the absence of a transparent framework for such reasoning risks instrumentalisation, where references to convergence serve strategic rather than principled purposes (Tinière, 2023, pp. 323–330). This may erode the Court’s legitimacy, particularly in states already sceptical of supranational authority.

There is the broader question of whether consensus may meaningfully accommodate deep normative pluralism within the EU. As the Union expands and diversifies, the assumption that shared values can be distilled from legal convergence becomes more tenuous. In this context, consensus must be understood as a contested and evolving construct, open to challenge and reinterpretation. Its legitimacy depends on the quality of the deliberative processes that produce such alignment (Wolthuis et al., 2023, pp. 2–5).

In sum, while European consensus remains a useful tool for balancing integration and diversity, its application must be tempered by methodological rigour, procedural

transparency, and normative humility. Courts should articulate clearly how consensus is identified, remain open to contestation, and avoid treating convergence as a proxy for legitimacy. Only then can the doctrine fulfil its promise as a facilitator of constitutional dialogue.

7. Conclusion

European consensus has evolved into a distinct constitutional technique. While initially serving as a comparative indicator of shared legal norms, it now functions as a subtle mechanism for normative alignment and a safeguard of judicial legitimacy. By identifying convergence in morally sensitive areas, consensus enables supranational courts to promote integration without erasing national particularities.

This article has argued that consensus operates as a soft constitutional tool – one that facilitates legal evolution through persuasion rather than imposition. Its strength lies in balancing unity and diversity, fostering mutual recognition, and guiding the incremental transformation of national legal orders.

Yet its effectiveness depends on context-sensitive application, methodological clarity, and openness to contestation. As value-based conflicts intensify within the EU, consensus cannot be a shield for majoritarianism or a proxy for legitimacy. It must remain a dialogical construct, responsive to pluralism and attuned to democratic deliberation.

Looking ahead, consensus may serve as a constitutional bridge between integration and identity – a tool of jurisprudential diplomacy that enables courts to mediate contested values while preserving institutional credibility. Whether it can sustain this role will depend not only on judicial restraint, but also on the willingness of Member States to engage in a shared constitutional project grounded in both diversity and common commitment.

The analysis confirms both hypotheses: that consensus guides legal evolution without enforcing uniformity, and that it simultaneously reflects and drives constitutional development. This is particularly evident in landmark cases such as *Goodwin*, *Coman*, and *Vallianatos*, where consensus-based reasoning – whether explicit or implicit – contributed to constitutional transformation, even as questions remain about its methodological robustness.

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Summary

This article examines the doctrine of European consensus as a constitutional tool in the case law of the ECtHR and CJEU, particularly in value-laden areas. It argues that consensus facilitates soft convergence of norms among Member States, not only guiding interpretation but shaping constitutional evolution. The article formulates and tests two hypotheses: first, that supranational courts guide domestic legal evolution through convergence without enforcing uniformity; and second, that European consensus both reflects and drives constitutional development. It analyses the legitimising role, transformative capacity, and limitations of the doctrine, including the lack of clear methodology, the risk of majoritarian bias, and political contestation. It concludes that the effectiveness of the doctrine depends on transparency and contextual sensitivity. Amid growing value-based tensions in the EU, European consensus remains a key – though imperfect – mechanism for balancing integration and pluralism.

Key words: comparative constitutionalism, European consensus, European integration, fundamental rights, values of the European Union

Europejski konsensus w obszarach o dużej wartości: narzędzie konstytucyjne w ewolucji porządków prawnych Rady Europy i Unii Europejskiej

Streszczenie

Artykuł analizuje doktrynę europejskiego konsensusu jako narzędzie konstytucyjne w orzecznictwie ETPCz i TSUE, szczególnie w obszarach aksjologicznie wrażliwych. Autorka dowodzi, że konsensus służy nie tylko wykładni, ale wspiera miękką konwergencję norm między państwami członkowskimi. W artykule postawiono dwie hipotezy badawcze: że sądy ponadnarodowe wspierają ewolucję prawa krajowego poprzez konwergencję bez narzucania jednolitości oraz że konsensus europejski jednocześnie odzwierciedla i napędza rozwój konstytucyjny. Omówiono potencjał transformacyjny konsensusu, jego funkcję legitymizacyjną i ograniczenia: brak jasnych kryteriów, ryzyko uprzywilejowania większości, podatność na kontestację polityczną. Artykuł wskazuje, że skuteczność konsensusu zależy od kontekstualnej wrażliwości i transparentności jego stosowania. W warunkach narastających sporów o wartości w UE, doktryna pozostaje kluczowym, choć niedoskonałym, mechanizmem równoważenia integracji z pluralizmem.

Słowa kluczowe: integracja europejska, konsensus europejski, konstytucjonalizm porównawczy, prawa człowieka, wartości Unii Europejskiej

Author Contributions

Conceptualization (Konceptualizacja): Małgorzata Puto

Data curation (Zestawienie danych): Małgorzata Puto

Formal analysis (Analiza formalna): Małgorzata Puto

Writing – original draft (Piśmiennictwo – oryginalny projekt): Małgorzata Puto

Writing – review & editing (Piśmiennictwo – sprawdzenie i edytowanie): Małgorzata Puto

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