NATIONAL SECURITY AS PART OF CONSTITUTIONAL/NATIONAL IDENTITY

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Abstract

This article analyzes the process of constitutionalizing the concept of national security in Romania, placing it at the core of the state's constitutional identity. Based on a joint examination of the relevant constitutional provisions and the jurisprudence of the Constitutional Court of Romania, the paper argues that national security is not merely a prerogative of sovereignty, but an indispensable instrument for protecting the "hard core" of the Constitution. It is contended that the constitutional order – understood as the normative expression of constitutional identity – requires systemic protection against hybrid, normative, or institutional threats. Within this framework, the study proposes an integrated conceptualization of constitutional security as the internal dimension of national security, acting as a guarantor of state continuity and constituent legitimacy. The research methodology combines normative analysis, teleological interpretation, and interdisciplinary correlation, drawing upon doctrinal and jurisprudential sources. The conclusion emphasizes the need for normative reform and for the crystallization of a unified doctrine that explicitly enshrines this constitutional function of national security and systematizes the protection of fundamental values against the dissolution of the constitutional order.

Keywords: *constitutional identity; constitutional security; state sovereignty; constitutional order; Romanian constitutional law; eternity clauses.*

Introduction

In contemporary Romanian constitutional law, the concept of national security occupies a central position, being closely intertwined with the existence of the state and its fundamental values. National security operates both as a **constitutional principle** – expressly and implicitly enshrined in the Fundamental Law and subsequent legislation – and as an **overriding public interest** capable of justifying, under strict conditions, the restriction of certain rights and freedoms. This dual nature suggests that national security is more than a mere political notion; it carries a distinct legal valence that is

constitutive of the constitutional order. Simultaneously, with the evolution of **constitutional jurisprudence** and **specialized doctrine**, the idea has emerged that national security may be viewed as an integral component of *national constitutional identity* – that "hard core" of principles and values upon which a state founds its constitutional order and which no legislative or international undertaking should be permitted to undermine.

The present article aims to analyze, with legal rigor and from the perspective of doctrine, jurisprudence, and relevant legislation, how national security is defined and understood in Romanian constitutional law and whether (and to what extent) it may be considered a component of the state's constitutional or national identity. The analysis will unfold through the following lines of inquiry: **(i)** the legal definition of the concept of national security in legislation, Constitutional Court of Romania (CCR) jurisprudence, and national doctrine; **(ii)** the arguments supporting the inclusion of national security within the concept of constitutional or national identity, both in Romanian constitutional law and in the broader European context; **(iii)** the role of national security as a "protective shield" of the constitutional order, with a necessary delineation to restrict its scope to safeguarding constitutionally enshrined fundamental values, thus avoiding its conflation with general public order; and **(iv)** the examination of the hypothesis that national security may be subsumed within the concept of constitutional identity, through references to CCR case law, comparative European practices, and doctrinal scholarship.

1. The Definition of the concept of national security in Romanian constitutional law

1.1. National security in domestic legislation: The Constitution and Law No. 51/1991

The Romanian Constitution confers a special status upon the concept of national security, even though it does not define it explicitly within its definitional provisions. Article 1(1) of the Constitution proclaims Romania as a *sovereign, independent, unitary, and indivisible national state* – attributes whose intrinsic protection falls under the sphere of national security, according to Article 1 of Law No. 51/1991 on National Security of Romania. Furthermore, Article 53 of the Constitution lists ***"the defence of national security***" among the grounds that may justify the restriction of the exercise of certain rights or freedoms, alongside the defence of public order, public health or morals, and the rights and freedoms of citizens. Therefore, the Basic Law recognises national security as a ***vital public interest*** by virtue of which the State may impose proportionate and necessary restrictions on rights in order to protect the political community as a whole. Also at the constitutional level, Article 119 stipulates that the **Supreme Council of National Defence (CSAT)** "*organises and coordinates in a unitary manner the activities*

relating to the defence of the country and national security". This provision explicitly places national security within the institutional constitutional framework, emphasising that its management is a public function of the highest rank (being an attribute of the CSAT, chaired by the President of Romania). From the overall content of these constitutional provisions, it results that national security is a legal concept protected by the Constitution, both as a fundamental value (justifying exceptional measures) and as a function of the State (entrusted to the competent public authorities).

The positive definition of national security is provided by **Law No. 51/1991** on National Security of Romania. **Article 1** of this law (republished in 2014) stipulates that *"the national security of Romania shall be understood as the state of legality, balance, and social, economic and political stability necessary for the existence and development of the Romanian national state as a sovereign, unitary, independent and indivisible state, for the maintenance of the rule of law, as well as for the exercise, without hindrance, of the fundamental rights, freedoms and duties of the citizens, in accordance with the principles and democratic norms established by the Constitution*". This statutory definition is broad and significant from several perspectives:

a) National security is conceived as a state of legality and socio-economic-political balance that is indispensable for the existence and development of the state as sovereign, unitary, independent, and indivisible. It therefore links the concept of security directly *to the protection of the defining* characteristics of the Romanian state, as also enunciated in Article 1 of the Constitution. Moreover, the definition includes the maintenance of the *rule of law* and the guarantee of a climate for the unhindered exercise of the fundamental rights and freedoms of citizens, according to constitutional democratic principles. Thus, the law subsumes both the defence of *sovereignty and state integrity,* and the protection of constitutional democracy and fundamental rights, under the concept of national security. In the lawmaker's perspective, national security is not merely the absence of threats, but the *presence of legal and social equilibrium enabling* the proper functioning of the state and society.

b) Article 2(1) of Law No. 51/1991 provides that national security is achieved by "*identifying, preventing and eliminating internal or external threats that may harm the values laid down in Article 1*". Paragraph (2) of the same article stipulates the (moral) obligation of citizens to contribute to national security, as an expression of loyalty to the country. Hence, the law constructs a **proactive (rather than merely reactive) mechanism** for ensuring security: the identification and neutralisation of threats to fundamental values (sovereignty, rule of law, fundamental rights etc.), involving both state authorities and society (citizens) as a whole.

c) **Article 3 of Law No. 51/1991** enumerates a series of specific situations and acts that constitute *threats to national security*. These include: *actions against the sovereignty, unity or integrity of the state* (e.g., plans or actions to suppress or impair the sovereignty, unity, independence or indivisibility of the Romanian state); *treason and aiding the enemy, espionage and the disclosure of state secrets*; v*iolent actions to*

overthrow the constitutional order or undermine democratic institutions; *acts of terrorism, sabotage, or undermining the country's defence capacity etc*. Although not exhaustive, this legal enumeration underscores that national security essentially concerns the protection of the state and the constitutional order against major threats, whether military, political or informational in nature. Notably, the original version of the law also included general formulations such as acts *seriously infringing upon the rights and freedoms of citizens or other such national interests* – provisions that sparked controversy and, as will be discussed, were later partially declared unconstitutional by the Constitutional Court.

In conclusion, from the perspective of domestic legislation, the concept of national security possesses a **clear normative profile:** the law provides it with a comprehensive definition, anchored in constitutional values, and delineates its concrete scope by listing the main types of threats. National security thus emerges as a *complex or multifaceted*[1] *legal concept*, combining elements of **classical state security** (protection of territory, sovereignty, state order) with elements of **constitutional and societal security** (protection of democracy, fundamental rights, and social balance). This hybrid character justifies the particular attention accorded to it by the Constitution and the legislature, as well as the need for rigorous interpretation in practice.

1.2. Reflection of the concept in the case law of the Constitutional Court

The CCR has played a central role in clarifying and delineating the concept of *national security*, through numerous rulings interpreting both constitutional provisions and the provisions of Law No. 51/1991. The constitutional jurisprudence has emphasized two main directions: (**a**) the expansion and adaptation of the concept of national security to new realities, and (**b**) the imposition of limits and guarantees to prevent abuse or excessive broadening of the notion to the detriment of fundamental rights.

(**a**) **Adaptation and "expansion" of the concept**. The CCR acknowledged that national security is a dynamic concept that must be interpreted in light of the current social and technological context. For instance, in a decision from 2010 **(Decision No. 872/2010**[2]), the Court examined the invocation of national security in the context of a severe economic crisis and austerity measures adopted by the Government. The CCR emphasized that *"the protection of national security, as a justification for the restriction of certain fundamental rights, cannot be used in a manner that circumvents the constitutional procedures specific to states of emergency".* More precisely, if the financial situation is deemed a threat to national security, the authorities should resort to mechanisms provided for emergency situations (such as the declaration of a state of emergency under **Article 93** of the Constitution and special legislation – **Government Emergency Ordinance No. 1/1999**), and not impose unilateral restrictions under the

[1] Decision of the Romanian Constitutional Court No. 495/2024, published in the Official Gazette, Part I, No. 237 of 18 March 2025, paragraph 24.

[2] Published in the Official Gazette of Romania, Part I, No. 433 of 28 June 2010.

pretext of national security without observing those procedural guarantees. In this decision, the CCR held that *"placing austerity measures under the auspices of national security entails compliance with the procedure for the institution and termination of the state of emergency… The Government could not substitute itself for the prerogatives of the President of Romania and Parliament to adopt austerity measures involving national security, except by violating Articles 53 and 93 of the Constitution",* concluding that such measures motivated by national security but adopted outside the constitutional framework are unconstitutional. Through this jurisprudence, the Court expanded the understanding of the concept (recognizing that **economic stability** can, in exceptional circumstances, carry national security implications), while simultaneously imposing a strict anchoring in the constitutional order for any measure invoking national security.

In recent years, the CCR has continued to adapt the concept to new types of threats. For example, in a decision concerning cybersecurity (**Decision No. 70/2023**[3]), the Court expressly reiterated that *"national security"* is a constitutional concept, asserting that it must also be interpreted in light of new challenges such as threats originating in cyberspace. The Court recognized the validity of legislative measures aimed at protecting the state's digital security, considering that these may fall under the scope of national security, given the society's dependence on cyber infrastructure and its potential to affect the functions of the state and public safety. Thus, the CCR demonstrated the flexibility of the concept, including *digital security* and protection against new forms of attacks (such as cyberattacks or the use of hostile drones) within the scope of national security. The adaptability of the concept in the CCR's jurisprudence reflects the reality that a state's identity and constitutional values must be defended not only against traditional threats but also against the **emerging threats** of the contemporary era.

(b) Limitation of the concept and legal safeguards. Alongside a broad recognition of the importance of national security, the Constitutional Court has been firm in preventing abuses of the concept, meaning its vague or excessive use, which could lead to violations of rights and freedoms without genuine justification. Two landmark decisions in this regard are **Decision No. 91/2018**[4] and **Decision No. 802/2018**[5], both addressing provisions of Law No. 51/1991.

Decision No. 91/2018 resulted from a constitutional review of the phrase "*seriously affecting the fundamental rights and freedoms of citizens*" in **Article 3(f)** of the National Security Law. In its then-current version, the Law included among national security threats any act that *"seriously affects the fundamental rights and freedoms of Romanian citizens*". The Court found that this formulation was overly broad and lacked foreseeability, allowing practically any offense against a person to be implicitly classified as a national security issue. The CCR emphasized the necessity of a **clear distinction**:

[3] Published in the Official Gazette of Romania, Part I, No. 211 of 14 March 2023.
[4] Published in the Official Gazette of Romania, Part I, No. 348 of 20 April 2018.
[5] Published in the Official Gazette of Romania, Part I, No. 218 of 20 March 2019.

on the one hand, acts seriously affecting the rights of an individual (e.g., offenses such as murder, bodily harm, corruption, or theft) fall within the domain of ordinary criminal law and *cannot automatically be considered threats to national security*, *even if they severely affect fundamental rights in specific cases.* On the other hand, acts directed against a community or a significant number of individuals, based on criteria such as ethnicity or religion, or targeting collective rights, may indeed amount to national security threats. Yet, the law did not provide this differentiation, treating as threats all severe infringements of rights, regardless of whether they involved one individual or a community. In its reasoning, the Court explicitly stated that *"in the challenged wording, any act or action – whether or not it has criminal connotation – that affects a fundamental right can be subsumed under a national security threat, which impermissibly broadens the scope of the notion".* By way of example, the CCR held that even crimes against the person (such as homicide) or corruption offenses cannot be turned into national security issues merely because they affect a victim's fundamental right. Such a view would deprive of meaning the requirement that threats to state security be exceptional and of a certain nature (linked to constitutional order, sovereignty, collective safety etc.), extending the concept to any major public or private interest, which was not the intent of the constituent legislator. Consequently, the CCR declared the phrase unconstitutional, obliging the legislator to narrow the scope of the definition. This decision is crucial: it enshrines the idea that **national security must be reserved for the protection of the fundamental values of the state and society, not just any social value or individual right**. In other words, the Court prevented confusion between national security and ordinary public order, stressing that not every serious legal violation equates to a threat to national security.

Decision No. 802/2018 complemented the previous ruling, targeting another vague phrase in **Article 3(f) of** Law No. 51/1991 – "*or other similar interests of the country*". Following earlier amendments, Article 3(f) included: "*undermining, sabotage or any other actions which […] may affect the defense capacity or other similar interests of the country*". The problem was that the notion of "interests of the country" was undefined, allowing virtually unlimited interpretation of what constitutes national security. In the reasoning of the constitutional complaint, it was argued that such an undefined phrase violated the **requirements of clarity and foreseeability of the law (Article 1(5) of the Constitution)**, allowing national security authorities to conduct intrusive operations (such as wiretapping or surveillance) in virtually any domain under the pretext of defending "*interests*" left undefined. The CCR accepted these arguments, holding that the legislation did not provide citizens with adequate guidance regarding the circumstances and conditions under which intelligence agencies are permitted to intervene, and that the lack of definition for *"state interests"* opened the door to arbitrary interferences with private life. Through **Decision No. 802/2018**, the Court upheld the complaint and declared the phrase "or other similar interests of the country" unconstitutional. In its reasoning, the CCR once again highlighted the fundamental

difference between activities carried out in the field of national security and those related to criminal prosecution: the former target the identification, prevention, and countering of threats to national security, while the latter aim at holding perpetrators of crimes accountable. The fact that the law conflated these two domains (through vague wording) risked allowing the use of national security instruments (which are far more intrusive and secretive) in cases concerning ordinary criminal law – a danger for human rights. Following this decision, the legislator was compelled to eliminate the problematic phrase, thereby limiting the scope of the national security concept to the explicitly defined threats in the law (those listed under letters a)–m)), without undefined residual categories.

To summarize the CCR's contribution, **Romanian constitutional jurisprudence has reinforced the *"core function"* of national security**, showing that it protects the supreme values of the state and society and has excluded from its scope any unjustified extension to areas concerning general public order or ordinary criminality. **The Court implicitly asserted the principle that national security is the *"shield protecting the constitutional order"***, but only in relation to assaults targeting the constitutional order itself or the essential values enshrined therein. Assaults simply against individual rights or particular interests, no matter how serious, do not per se fall under the scope of national security – they are to be addressed by the ordinary law enforcement and judicial authorities within the framework of normal public order. This fine distinction drawn by the CCR is essential to maintaining the balance between state protection and human rights in a democracy: national security must not be used as a catch-all concept covering any social threat or risk, but rather reserved for those exceptional situations that endanger the very existence of the state, the functioning of its fundamental institutions, or the safety of the community as a whole.

1.3. Doctrinal approaches to the definition of national security

Contemporary Romanian legal scholarship[6] has also devoted significant attention to the definition and delimitation of the concept of *national security*, addressing the subject both in general constitutional law treatises and in specialized works focused on the relationship between security and fundamental rights or on exceptional legal regimes. Broadly speaking, authoritative scholars confirm the view derived from the Constitution and the jurisprudence of the Constitutional Court, highlighting the *pluriivalent* and *evolutionary* nature of the notion of national security and its intrinsic connections to the rule of law and the supreme values of the state.

[6] Ioan Muraru, Elena Simina Tănăsescu, *Constitutional Law and Political Institutions*, vol. I, 16th edition, C.H. Beck Publishing House, Bucharest, 2023, pp. 200-201.

Gheorghe Iancu, *Constitutional Law and Political Institutions*, Universul Juridic Publishing House, Bucharest, 2015, pp. 64-67.

Cristian Ionescu, *Constitutional Law and Public Institutions*, 2nd edition, AllBeck Publishing House, Bucharest, 2004, pp. 19-21.

Thus, in **constitutional law manuals**[7], *national security* is addressed both as a fundamental attribute of the state and as a constitutional ground for the limitation of certain rights, in accordance with Article 53 of the Constitution. For instance, Ștefan Deaconu argues in his constitutional law monograph[8] that *national security* constitutes a legitimate ground for restricting the exercise of certain rights; however, such restrictions must comply with the principles of necessity and proportionality and must be in line with the legal framework for exceptional circumstances. The author also emphasizes that *national security* is closely linked to *state sovereignty* and to *democratic order*, being a concept that justifies enhanced prerogatives for the state, while simultaneously requiring the state to exercise such powers in a legal and non-abusive manner. This position reflects a consensus within Romanian legal doctrine: *national security* is perceived as an **essential ingredient of statehood** (enabling the very existence of the state and the protection of the political community), but not as a carte blanche that allows arbitrary derogations from the principles of the rule of law. On the contrary, its importance necessitates *rigorous definition* and *robust procedural safeguards*.

In the specialized literature[9], the concept of ***constitutional security*** has also emerged, complementing that of national security. Certain scholars stress that, from the perspective of the *rule of law*, the *constitutional security of the individual* must also be ensured – namely, the protection of individuals from abuse by state authorities under the pretext of national security. In other words, the *constitutional order* itself includes a dimension of security for rights and freedoms, which implies that any national security measure must be compatible with the Constitution and its guarantees. This view reiterates the dual nature of national security: on the one hand, it aims to protect the state and society (including citizens' rights) from threats; on the other hand, it cannot itself undermine the constitutional values it purports to safeguard. Romanian doctrine[10] has thus consistently emphasized the importance of *constitutional review* and *civil democratic oversight* of activities carried out in the field of national security, as a safeguard against the excessive "securitization" of public life.

Last but not least, recent scholarly works[11] have addressed *national security* in correlation with European and international developments. For instance, in the context of the COVID-19 pandemic and the state of emergency declared in 2020, comparative legal doctrine has discussed the emerging tendency to extend the concept of national

[7] Bianca Selejan-Guțan, *Constitutional Law and Political Institutions*, vol. I, 4th edition, Hamangiu Publishing House, Bucharest, 2020, pp. 235-238.

[8] Ștefan Deaconu, Constitutional Law, 4th edition, C.H. Beck Publishing House, Bucharest, 2020, pp. 189-194.

[9] Vadim Enicov, "Constitutional Security – A Distinct Dimension of National Security," Conference *Theory and Practice of Public Administration*, Chișinău, Moldova, 22 May 2015, available at: https://ibn.idsi.md/sites/default/files/imag_file/258-261_6.pdf; accessed on 20.06.2025.

[10] Dana Apostol Tofan, "The Legal Regime Applicable to Autonomous Administrative Authorities with Special Regard to National Security Authorities," in *Legal Studies and Research – New Series*, No. 4, 2019, p. 18.

[11] Kim Lane Scheppele, *The Bound Executive: Emergency Powers During the Pandemic*, in *International Journal of Constitutional Law*, vol. 19, no. 5/2021, pp. 1498-1533, available online at: https://academic.oup.com/icon/article/19/5/1498/6308959, accessed on June 26, 2025

security to include *health security* or *economic security*, raising the question of whether such developments remain faithful to the Constitution's original spirit. Authors[12] have concluded that an *"expanded national security"* (encompassing public health, the economy etc., as protected values) is acceptable only insofar as the state respects constitutional limits – formally declaring the state of emergency, informing Parliament, limiting durations, and ensuring judicial oversight. These doctrinal analyses converge with the CCR's case law: *national security* may justify very firm measures (including temporary restrictions on rights), but only under the strict conditions laid down by the Constitution and the law, and without bypassing the system of *checks and balances*.

In conclusion, contemporary doctrine confirms the legal definition and jurisprudential interpretation of *national security* as part of the state's constitutional foundation and as a prerequisite for maintaining constitutional order, while continuously warning against the abusive invocation of this concept. The prevailing consensus is that *national security* must be confined to the protection of essential constitutional values (*sovereignty*, *territorial integrity*, *democratic order*, and *fundamental rights as a whole*) and that any state action taken under this label must be subject to the principle of legality and to the supremacy of the Constitution.

2. National security within the framework of constitutional and national identity

The concept of ***constitutional identity*** has garnered increased attention both at the national and European levels over the past decades. In brief, the *constitutional identity* of a state refers to the ensemble of fundamental principles, values, and norms that confer its constitutional order a distinct character and which are, oftentimes, inalterable or shielded from external influence. In the case of Romania, the national constitutional identity is closely tied to the provisions of Article 1 of the Constitution (regarding the nature of the state), to the general principles of **Title I** (sovereignty, the rule of law, human dignity, pluralism etc.), and to the material limits of constitutional revision (**Article 152,** which proclaims the inviolability of the national, independent, unitary, and indivisible character of the state, the territorial integrity, the independence of the judiciary, pluralism etc.). From this internal perspective, it can be argued that national security – having as its purpose the protection of precisely these fundamental elements –

[12] Muskan Chouhan, Emergency Powers and Constitutional Safeguards: Examining the Limits of Executive Powers During Pandemics and National Crises, in *Indian Journal of Advanced Legal Research*, vol. 5, no. 2/2021, pp. 27-60, available online at: https://ijalr.in/volume-5-issue-2/emergency-powers-and-constitutional-safeguards-examining-the-limits-of-executive-powers-during-pandemics-and-national-crises-muskan-chouhan/, accessed on June 26, 2025.

Tom Ginsburg, Mila Versteeg, The Bound Executive: Emergency Powers During the Pandemic, in *International Journal of Constitutional Law*, vol. 19, no. 5/2021, pp. 1498-1533, available online at: https://academic.oup.com/icon/article/19/5/1498/6308959, accessed on June 26, 2025.

*becomes an integral part of constitutional identit*y. At the same time, at the European level, the Treaty on European Union (TEU) recognizes the national identity of Member States and, more specifically, provides that *national security remains the sole responsibility of each Member State* (**Article 4(2) TEU**). This recognition within EU law indicates that national security is considered a defining element of sovereignty and state identity, which the Union must respect. In what follows, we shall analyze how the inclusion of national security within the concept of national constitutional identity is justified, both from the standpoint of the Romanian constitutional order (2.1), and from the perspective of European standards (2.2).

2.1. Fundamental constitutional values and the "Hard Core" of the Romanian Constitution

The national constitutional identity of Romania is grounded upon a set of values and principles that the Constitution declares either **supreme** or **unamendable**. Among these, several stand out as directly related to the existence and security of the state: **national sovereignty, independence and territorial integrity, the unity and indivisibility of the state, as well as the democratic rule of law**. These elements are not merely political proclamations; they possess legal force and enjoy constitutional protection at the highest level. For instance, **Article 152(1) of the Constitution** prohibits any revision that would lead to the suppression of the national, independent, unitary, and indivisible character of the Romanian state or to the infringement of its territorial integrity. Therefore, sovereignty and territorial integrity – which represent the principal objects of national security – are situated at the very core of our constitutional identity, being inviolable. Likewise, **Article 152** *safeguards the independence of the judiciary and political pluralism*, which are essential components of the democratic constitutional order.

If one were to ask what national security protects, the answer provided by the legal definition and the jurisprudence of the Romanian Constitutional Court (CCR) would be: **national security protects sovereignty, independence, territorial integrity, the rule of law, and fundamental democratic values** – in other words, exactly that core of values without which the Constitution itself would lose its identity. Thus, it can be asserted that *national security is, in fact, the indispensable instrument through which the state defends its constitutional identity*. A state cannot maintain its identity (both national and constitutional) unless it remains sovereign, independent, territorially intact, with functional democratic institutions and a climate of legality and guaranteed rights. This is precisely what national security seeks to ensure: **the conditions necessary for the existence and functioning of the state and its fundamental order.** In doctrine, the idea has been expressed that there exists a *hard core* of the Constitution – formed by the original principles of the constitutional pact – and that this core is ultimately protected by national security measures when placed in jeopardy. In this sense,

several authors have noted[13] that national security acts as a "*shield*" of constitutional values, **guaranteeing the continuity of the state and of its fundamental order against existential threats** (whether military, subversive, or of another nature).

An additional argument in favor of including national security within constitutional identity is that of *constitutional continuity*. Constitutional identity refers not only to the present state of fundamental values, but also to their persistence over time, to the continuity of the state as a political and legal subject. National security, by definition, serves to preserve the continuity of the state – by preventing and combating situations that could lead to its dissolution or subjugation (for example, foreign occupation, civil war, the destruction of democratic institutions). In the constitutional history of other countries, reference[14] has been made to "***eternity clauses***" or "*perennial identity principles";* Romania, although it does not explicitly employ the term *constitutional identity* in the text of its Constitution, contains such elements of eternity in Article 152. The fact that national security protects precisely these elements suggests a **full congruence**: *constitutional identity determines what is unshakable, while national security is the mechanism that ensures nothing shakes those elements.*

The jurisprudence of the CCR reinforces this conclusion through the way it correlates national security with **constitutional public order.** In the analyzed decisions (872/2010, 91/2018, 802/2018 etc.), the Court has consistently highlighted the connection between security measures and the defense of the constitutional order. Indeed, the CCR's terminology includes the phrase *"constitutional-level public order,"* which is distinct from ordinary public order, and refers to the totality of norms and fundamental values protected by the Constitution. National security thus finds its rationale in protecting this constitutional public order. In a synthesis of recent case law, the CCR emphasizes that maintaining the constitutional order and the functioning of democratic institutions are *sine qua non* conditions for the existence of the rule of law, and that national security may be invoked only to prevent the serious endangerment of these elements. Conversely, if an invoked imperative does not reach the level of seriousness of a threat to the constitutional order, it pertains to other domains (general public order, ordinary public policies etc.) and does not justify exceptional measures of the kind characteristic of national security.

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[13] Michael J. Glennon, *National Security and Double Government*, Oxford University Press, Oxford, 2014, pp. 118-125.

Tanja Karakamiseva-Jovanovska, *Constitutional Identity and National Identity – Two Sides of the Same Coin*, in *Review of International and European Law*, vol. 3, no. 1/2022, pp. 23-38, available online at: https://constitutional discourse.com/constitutional-identity-and-national-identity-two-sides-of-the-same-coin/, accessed on 20 June 2025.

[14] Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*, Oxford University Press, Oxford, 2017, pp. 1-25, available at: https://etheses.lse.ac.uk/915/1/Roznai_Unconstitutional-constitutional-amendments.pdf; accessed on 20 June 2025.

Silvia Suteu, *Eternity Clauses in Democratic Constitutionalism*, Oxford University Press, 2021, pp. 89-124, available at: https://books.google.ro/books?id=m8UqEAAAQBAJ&printsec=frontcover&redir_esc=y#v=onepage&q&f=false; accessed on 20 June 2025.

In light of these arguments, it can be affirmed that **national security, as it is defined and limited in Romanian law, is an integral part of the constitutional identity of the state.** It is not an externally added value, but one organically derived from the Constitution: it protects that which defines the Romanian state according to the Constitution. Naturally, this conclusion must be nuanced by specifying that the inclusion of national security within constitutional identity does not confer a *carte blanche* to the authorities – on the contrary, constitutional identity includes both material elements (the values to be protected) and the spirit of the Constitution (the principle of legality, the balance of powers, respect for rights)[15].

Therefore, any national security measure forms **part of constitutional identity only insofar as it itself complies with the Constitution**. This condition is crucial and implicitly results from all that we have analyzed: national security is identity-forming for the Romanian state not as brute force, but as an expression of the constitutional will to preserve its founding values unaltered.

2.2. Reflection of the concept in european law: The national identity clause and the competences of the member states

At the level of European law (especially within the European Union), *national constitutional identity* is acknowledged through explicit provisions and the jurisprudence of the Court of Justice of the European Union (CJEU). **Article 4(2) of the Treaty on European Union (TEU)** stipulates that "*the Union shall respect the national identities of its Member States, inherent in their fundamental political and constitutional structures*", and further provides that "***national security remains the sole responsibility of each Member State***". This latter clause is of particular significance: it is, in practice, the only competence explicitly mentioned as exclusive to the Member States, indicating that the field of national security is considered too closely linked to state sovereignty and identity to be "delegated" or jointly managed by the Union. In other words, the European Treaties enshrine a ***"zone of identity"*** into which the EU may not interfere – and at the very center of this zone lies national security.

This recognition of national security as both an element of identity and a sovereign prerogative has been emphasized in Western doctrine[16]. In European legal scholarship,

[15] Elena-Simina Tănăsescu, *On Constitutional Identity and the Integrative Role of the Constitution*, in *Curierul Judiciar*, 28 May 2017, available online at: https://www.curieruljudiciar.ro/2017/05/28/despre-identitatea-constitutionala-si-rolul-integrator-al-constitutiei/, accessed on 26 June 2025.

[16] Dieter Grimm, *Defending Sovereign Statehood Against Transforming the European Union into a State*, in *European Constitutional Law Review*, vol. 9, no. 3/2013, pp. 364–390, available online at: https://www.cambridge.org/core/journals/german-law-journal/article/what-red-lines-if-any-do-the-lisbon-judgments-of-european-constitutional-courts-draw-for-future-eu-integration/A5C0D0536AA06EE9C9300CFBC35EA436, last accessed on 20 June 2025.

Monica Claes, Jan-Herman Reestman, *The Protection of National Constitutional Identity and the Limits of European Integration at the Occasion of the Gauweiler Case*, in *German Law Journal*, vol. 16, no. 4/2015, pp. 917–970, available online at: https://www.cambridge.org/core/journals/german-law-journal/article/protection-of-national-constitutional-identity-and-the-limits-of-european-integration-at-the-occasion-of-the-gauweiler-case/C14BF4E4BAB7EB89040236516FF10E23, last accessed on 20 June 2025.

it has been argued that the constitutional identity of a Member State encompasses, inter alia, the **essential functions of the state**, such as *national defense, the maintenance of internal order,* and *national security*. These aspects are regarded as expressions of national self-determination, which European integration may not override without the consent of the Member States. For example, German constitutional scholars such as Dieter Grimm, as well as the decisions of the Federal Constitutional Court of Germany (BVerfG) in the Lisbon case (2009)[17], have enumerated areas that fall within German constitutional identity and must be protected from supranational control. Among these, the *monopoly over coercive force* (internal and external) – hence defense and security policy – occupies a foremost position. Similarly, other constitutional courts (those of **Italy[18], France[19], Poland[20]** etc.) have affirmed that certain sovereign competences – such as that concerning national security – cannot be limited by EU law, as they form part of the fundamental constitutional order.

The Constitutional Court of Romania (CCR) has also begun to invoke the concept of constitutional identity in relation to European law, especially since 2018. One example is **Decision no. 683/2012[21]**, in which the CCR held that the protection of national borders pertains to the constitutional identity of the Romanian State, derived from its character as a sovereign and independent state. Moreover, in the reasoning of **Decision no. 390/2021[22]** on European judicial cooperation, the Court hinted that the

[17] Federal Constitutional Court of Germany (Bundesverfassungsgericht), *Judgment on the Compatibility of the Treaty of Lisbon with the Basic Law*, 30 June 2009, Case No. 2 BvE 2/08, pp. 249–252, available online at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/06/es20090630_2bve000208en.html, last accessed on 20 June 2025.

[18] Italian Constitutional Court (*Corte Costituzionale*), *Judgment No. 183/1973*, where the Court held that "the fundamental limits of the Italian constitutional order" constitute a barrier against the automatic application of EU law when it affects the basic principles of the Constitution; available online at: https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=1973&numero=183, last accessed on 20 June 2025.

Italian Constitutional Court (*Corte Costituzionale*), *Judgment No. 269/2017*, paras. 5-8, in which the Court reaffirmed that the application of European Union law must respect the Italian constitutional identity and the protection of fundamental rights guaranteed by the Constitution; available online at: https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2017&numero=269, last accessed on 20 June 2025.

[19] *Conseil Constitutionnel* (France), *Decision No. 2021-940 QPC of 15 October 2021*, paras. 6-10, in which the Court held that *"the principle of the indivisibility of the Republic"* forms part of the constitutional identity of France and cannot be set aside even by the application of European Union law; available at: https://www. conseil-constitutionnel.fr/decision/2021/2021940QPC.htm, last accessed on 20 June 2025.*Conseil Constitutionnel* (France), *Decision No. 2006-540 DC of 27 July 2006*, paras. 19–21, where the concept of *"principles inherent to the constitutional identity of France"* was first established as a limitation against the direct application of European Union law; available at: https://www.conseil-constitutionnel.fr/decision/2006/2006540dc.htm, last accessed on 20 June 2025.

[20] Constitutional Tribunal of the Republic of Poland, *Shaping by the European Union and its institutions of competences concerning a Member State's choice of energy sources and the general structure of the energy supply of the Republic of Poland*, press release on Case K 6/21, published on 1 June 2025, available online at: https://trybunal.gov.pl/postepowanie-i-orzeczenia/komunikaty-prasowe/komunikaty-po/art/ksztaltowanie-przez-unie-europejska-i-jej-organy-kompetencji-do-wyboru-przez-panstwo-czlonkowskie-zrodla-energii-i-ogolnej-struktury-zaopatrzenia-rzeczypospolitej-polskiej-w-energie-4, last accessed on 20 June 2025.

[21] Published in the Official Gazette of Romania, Part I, No. 479 of 12 July 2012.

[22] Published in the Official Gazette of Romania, Part I, No. 612 of 22 June 2021.

protection of the rule of law and of Romanian citizens' rights in the face of EU legal acts could be justified through the lens of *national constitutional identity* – and that, if necessary, the CCR would ensure that the application of EU law does not violate the ***identitarian core***[23] of the Romanian Constitution. Although a direct conflict has not yet arisen (e.g., Romania has not faced a confrontation with EU law over national security matters), these positions demonstrate that for the CCR as well, national security remains a domain in which the state holds ultimate authority, forming part of its essential constitutional order.

European human rights jurisprudence (ECtHR) indirectly confirms the same principle: the European Court of Human Rights affords Member States a wide *margin of appreciation* in matters relating to national security, considering national authorities to be best placed to assess security needs. For instance, in cases such as ***Klass v. Germany* (1978)[24] or *Rotaru v. Romania* (2000)[25]**, the ECtHR has recognized the legitimacy of secret surveillance measures for the purpose of protecting national security, while insisting on the existence of adequate legal safeguards against abuse. These rulings, although not expressly using the term "*constitutional identity*" are premised on the understanding that national security is a *fundamental interest* of the state.

In the EU, issues such as data protection versus security have reached the CJEU (e.g., the *Digital Rights Ireland*[26] and *Tele2 Sverige*[27] cases regarding telecommunications data retention). The CJEU invalidated overly intrusive EU directives, but emphasized that Member States may derogate on grounds of national security, since this falls under their exclusive competence. Recently, the EU has debated[28] the concept of a "***European national security***" (e.g., in the context of cross-border terrorist threats), but from a legal standpoint, no *federal security* exists – each Member State contributes through cooperation, yet final decisions remain within the purview of their sovereign authority. This reinforces the idea that ***national security is recognized as a feature of state identity*** within the European legal architecture.

Accordingly, at the European and international level, national security is treated as a defining element of both *national* and *constitutional identity*. The EU respects this domain and excludes it from federalization, while European legal instruments (the

[23] Elena-Simina Tănăsescu, *op. cit.*

[24] Klass and Others v. Germany, no. 5029/71, judgment of 6 September 1978, ECtHR.

[25] *Rotaru v. Romania*, no. 28341/95, judgment of 4 May 2000, ECtHR.

[26] Court of Justice of the European Union (Grand Chamber), Judgment of 8 April 2014, Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others, Joined Cases C-293/12 and C-594/12, published in ECLI:EU:C:2014:238.

[27] Court of Justice of the European Union (Grand Chamber), Judgment of 21 December 2016, Tele2 Sverige AB v Post- och telestyrelsen and Secretary of State for the Home Department v Watson and Others, Joined Cases C-203/15 and C-698/15, published in ECLI:EU:C:2016:970.

[28] Federico Casolari, *Supranational Security and National Security in Light of the EU Strategic Autonomy Doctrine: The EU-Member States Security Nexus Revisited*, in „European Foreign Affairs Review", vol. 28, no. 4/2023, pp. 323–340, available at: https://kluwerlawonline.com/journalarticle/European%2BForeign%2BAffairs%2BReview/28.4/EERR2023025a, last accessed on 20 June 2025.

jurisprudence of the CJEU and ECtHR) confirm its importance – while also requiring that Member States do not depart from democratic values when acting in the name of security. We may thus conclude that, from a European perspective, the inclusion of national security within a Member State's constitutional identity is not only permitted, but expected – national constitutional identity being, in effect, the *bond that ensures the coexistence of diversity within the European integration framework*. For Romania, this translates into the obligation to manage its own security matters (from military to cyber-related) in accordance with its own Constitution and values – the EU having no competence to impose solutions that would contradict Romanian constitutional identity (such as transferring control over intelligence services or defense policy).

In conclusion, all arguments converge on the following central idea: **national security is indissolubly linked to the constitutional and national identity of the Romanian State**, serving both as a guarantor of internal constitutional values (*sovereignty, democratic order, rule of law*) and as an element recognized and protected within the European order (*as an attribute of state sovereignty*)[29]. *Metaphorically speaking*, if constitutional identity is the *"heart"* of our fundamental order, national security is the *"shield"* that protects it; and this shield is part of the state's very self-image, just as a knight is defined not only by his *code of honor (the Constitution)*, but also by the *shield and armor bearing his insignia*.

3. National security and the concept of constitutional identity: analysis and hypothesis verification

Once the fundamental concepts have been clarified, we may directly address the **central hypothesis**: *does national security form part of the national constitutional identity concept*? Based on the preceding analysis, the answer appears to lean toward the affirmative – the legal arguments suggest that national security is closely intertwined with constitutional identity. Nevertheless, to ensure a methodologically rigorous scientific approach, the hypothesis must be tested from multiple perspectives: that of the **CCR (domestic practice)**, that of **European practice (CJEU, other constitutional courts)**, and that of **doctrine**.

Although the CCR has never expressly declared in a decision that "*national security belongs to constitutional identity*" an analysis of its jurisprudence reveals this notion implicitly. When the Court imposed limits on the concept of security (in 2018) or conditioned its invocation upon compliance with constitutional procedures (in 2010), it did so in order to safeguard internal constitutional values from the abusive misuse of the security notion. In other words, the CCR acted as an ***arbiter of constitutional identity*** itself: it prevented a vital concept (national security) from being diverted from its legitimate purpose (the protection of supreme values) and deployed against those

[29] Dieter Grimm, *Constitutionalism: Past, Present, and Future*, Oxford University Press, Oxford, 2016, pp. 269-283.

very values. Through these interventions, the Court demonstrated that it grants particular importance to how security interrelates with the principles of the rule of law, making it clear that democracy and rights cannot be sacrificed on the altar of misconceived security.

Likewise, in the reasoning of more recent decisions concerning cooperation with national security authorities (**Decision No. 26/2019[30], Decision No. 55/2020[31]**), the CCR reiterated that national security must be ensured *in accordance with the Romanian Constitution*, failing which its legitimacy is compromised. Such language amounts to an implicit recognition of national security as an integral component of the *fundamental constitutional order* – thus of constitutional identity – since only that which belongs to the Constitution must necessarily be realized in accordance with it (a seeming tautology that in fact underscores the constitutional elevation of the concept).

Moreover, the CCR has imported the idea of a "*constitutional identity clause*" from other courts. In **Decision No. 683/2012**, concerning EU treaties, the CCR asserted that EU accession cannot affect provisions on the national, independent, unitary, and indivisible character of the state, as these represent expressions of Romania's constitutional identity. Now, if one mirrors this: national security serves precisely the protection of the national, independent, unitary, and indivisible character of the state, as defined in Law No. 51/1991. Accordingly, the **CCR defends constitutional identity** by preventing any alienation of sovereignty and fundamental principles – just as national security does in the *manu militari* sphere. The two function in tandem, one on purely legal terrain, the other on operational-preventive terrain, yet their ultimate aim coincides: the *safeguarding of the constitutional being* of the Romanian state.

As mentioned, constitutional courts in EU member states, as well as the CJEU, have affirmed the connection between security and identity. A notable example: the **Constitutional Tribunal of Poland,** in a 2015 decision[32] on constitutional supremacy, listed *"state security*" among the elements composing national constitutional identity that cannot be undermined by EU law. Similarly, the *Constitutional Council of France* has referred to the "*fundamental interests of the nation*"[33] (a notion that encompasses national defense and the constitutional order) as a limit to integration. Thus, a **European jurisprudential current** exists that views national security as part of each state's essential constitutional order.

The *CJEU*, in turn, has given *practical effect* to Article 4(2) TEU in cases such as ***Commission v. Austria* (2019)**[34], accepting that restrictions on free movement may be

[30] Published in the Official Gazette of Romania, Part I, No. 193 of 12 March 2019.

[31] Published in the Official Gazette of Romania, Part I, No. 517 of 17 June 2020.

[32] Trybunał Konstytucyjny, Wyrok z dnia 24 listopada 2010 r., sygn. akt K 32/09, Dz.U. 2010 nr 229 poz. 1506, available at: https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-32-09-18255341, accesed at 20.06.2025.

[33] Conseil constitutionnel, Decision No. 2004-505 DC of 19 November 2004, available at: https://www.conseil-constitutionnel.fr/decision/2004/2004505DC.htm, accessed on 30 June 2025.

[34] Court of Justice of the European Union, Case C-209/18, *Commission v. Austria*, ECLI:EU:C:2019:586,

justified by national security reasons invoked by states, since these concern identity protected by the Treaty. Of course, the CJEU checks whether this is not a disproportionate pretext, but it acknowledges the principle. In other words, **European judicial practice confirms the hypothesis**: national security is considered an aspect of constitutional/national identity that the European legal order seeks to respect.

Academic literature – Romanian and foreign alike – has also begun to address this topic explicitly. An increasing number of scholarly articles[35] explore the idea of ***"constitutional security"*** of states in the age of globalization and supranational integration. Several European authors (e.g., Calliess, Van der Schyff) argue that constitutional identity encompasses the state's responsibility to protect its citizens and internal order, and that national security is the means by which this responsibility is exercised. Therefore, it falls within the protection of the constitutional identity clause. In essence, doctrinal arguments converge on the following conclusion: **security is part of identity**, with the caveat that it must not be used as a competing concept to negate other components of identity such as democratic character or respect for rights.

Conclusions and recommendations

When viewed in their entirety, the constitutional provisions analyzed herein delineate a **strong symbolic framework** for the notion of *national security* within Romania's fundamental order. From general principles **(Art. 1)** to institutional mechanisms (the President, Parliament, CSAT, Armed Forces), from citizens' duties and the limitations on freedoms, *national security* emerges as a red thread running through the entire constitutional architecture. It is implicitly present in the enshrinement of the state's supreme values (dignity, rights, justice, order – all of which can only be guaranteed within a secure and stable state), is affirmed as a major public interest that may justify exceptional measures (**Art. 53**), is defended through solemn obligations of loyalty and defense imposed upon citizens **(Arts. 54-55**), through force structures subordinated to constitutional ideals (**Art. 118),** and is centrally coordinated at the apex of the state (**Art. 119)**.

National security thus proves to be intrinsically linked to the very *constitutional identity* of Romania, safeguarding sovereignty, independence, territorial integrity, democratic order, and the supreme values without which the state could not preserve its foundational characteristics. The constituent legislator treated it not as a mere political

Judgment of 24 June 2019, relevant paragraphs, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CJ0209, accessed on 30 June 2025.

[35] Christian Calliess, Gerhard van der Schyff (eds.), Constitutional Identity in a Europe of Multilevel Constitutionalism, Cambridge University Press, Cambridge, 2019, pp. 13-35.

Gerhard van der Schyff, Exploring Member State and European Union Constitutional Identity, in "European Constitutional Law Review", vol. 16, no. 2, 2020, pp. 266-292.

Elke Cloots, National Identity, Constitutional Identity, and Sovereignty in the EU, in "Netherlands Journal of Legal Philosophy", vol. 43, no. 2, 2014, pp. 113-119.

concept but as a defining element of the constitutional order, a supreme good of the national collective. Any threat to national security, in constitutional terms, is equivalent to a threat against the very being of the state and its founding values – hence, the defense of security emerges as an absolute imperative, to which the exercise of individual rights may be subordinated in extreme and clearly delimited circumstances. Nevertheless, in accordance with the spirit of the Constitution, this imperative can never be invoked outside the legal and democratic framework: national security is part of the **constitutional identity only insofar as its protection remains faithful to the principles of the rule of law.**

In summary, *national security* emerges as a supreme value, a function of the state, and a symbol of constitutional continuity, aimed at ensuring the survival of the nation and the permanence of the fundamental order. Ultimately, the arguments presented confirm that without *national security*, other constitutional values would lack guarantees, and the state itself could no longer fulfill its mission. The means of achieving national security thus become an integral part of the constitutional balance – the shield that defends the state's identity and being, conferring permanence and stability in the face of any challenges or dangers.

Going forward, the development of a coherent Romanian constitutional doctrine on *national security* as a distinct constitutional value, but one that can be integrated into the *core nucleus* of *constitutional identity*, becomes imperative. This doctrine should transcend a purely technical-security approach and should instead ground the concept in the axiological, symbolic, and functional dimension of the democratic constitutional order, in line with the trends of European constitutional thought[36].

In light of the above, it is recommended, as a *lex ferenda* direction, that an organic law be enacted regarding the protection of the constitutional order in the face of systemic threats – not with the purpose of redefining *national security* or duplicating Art. 3 of Law No. 51/1991, but rather to develop a special regulatory regime that explicitly correlates the protection of the fundamental values enshrined in the Constitution – sovereignty, pluralist democracy, the rule of law, rights and freedoms – with concrete obligations of proactive institutional response from state authorities. Such regulation should establish a procedural framework for identifying constitutional risks (by reference to the content of *constitutional identity*), the institution of early warning mechanisms, the notification of CSAT and Parliament, as well as the *ex post* review of the proportionality of security measures in relation to the constitutional order. This law would not replace current regulations but would explicitly anchor them in the logic of safeguarding the Constitution in its profound sense, avoiding the abuse of invoking *security* to the detriment of *liberties*, and clarifying the line between the exigencies of protection and those of guarantee. In this

[36] Christoph Möllers, *The Three Branches. A Comparative Model of Separation of Powers*, Oxford University Press, 2013, p. 128.

logic, the establishment of a permanent parliamentary committee for the defense of the constitutional order, with competences in analysis, approval, and oversight, would contribute to the institutionalization of a *"democratic control of exception"*, as contemporary constitutional doctrine conceives it[37].

In the same spirit, it is desirable to elaborate, at both doctrinal and jurisprudential levels, **a unified theory of proportionality in the field of *national security***, which would function as a filter of constitutional legitimacy for the restriction of rights. This theory should conceptually integrate the triad of: (i) necessity; (ii) adequacy; (iii) *proportionality stricto sensu* – in accordance with the standards already established in the jurisprudence of the Constitutional Court and in doctrine[38].

[37]Dieter Grimm, *The Constitution in Times of Crisis*, Oxford University Press, 2021, pp. 103-109.
Robert Schütze, *European Constitutional Law*, Cambridge University Press, 2016, p. 248.

[38] Alec Stone Sweet, Jud Mathews, *Proportionality Balancing and Global Constitutionalism*, in *Columbia Journal of Transnational Law*, vol. 47/2008, pp. 68-149, available at: https://ssrn.com/abstract=1569344, accessed on 2 July 2025.