

# DRAWING A LINE: WHY IS THE EU COURT RULING AGAINST HUNGARY'S "CHILD PROTECTION LAW" SO IMPORTANT?

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EDITORIAL  
06/2026



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At TEPSA's Pre-Presidency Conference in Dublin on 11-12 June 2026, the opening plenary focused on values as the bedrock of the European Union's (EU) identity. The timing was perfect.

Just weeks earlier, on 21 April, the Court of Justice of the EU (CJEU) delivered a landmark ruling in *Commission v. Hungary* (C-769/22) that sent shockwaves through legal and political circles. For the first time, the Court directly invoked Article 2 of the Treaty on European Union (TEU), enshrining the EU's foundational values, to strike down Hungary's 2021 "child protection law", a measure widely condemned for stigmatising and marginalising LGBTQI+ people.

This judgment is revolutionary, as it places Article 2 TEU at the heart of the EU's constitutional identity and makes it directly justiciable. The Court took this decision in plenary session, with all twenty-seven judges participating, a rare occurrence reserved for cases of exceptional importance.

The CJEU has long been a catalyst for European integration. Its jurisprudence has helped transform the EU from an international organisation into a new legal order, as Jaap Hoeksma explains in his writings.[1] Seminal rulings from the 1960s illustrate how EU law evolved to encompass enforceable rights in national courts and how it took primacy over conflicting national legislation in areas of EU competence.[2]

The *Commission v. Hungary* ruling breaks new ground. The Court referred to infringements of other legal bases within the treaties, such as the freedom to provide services, the Charter of Fundamental Rights, and the General Data Protection Regulation.

That would have been sufficient to strike the law down.

Instead, the CJEU explicitly anchored its decision also in Article 2 TEU, which lists the EU's core values: human dignity, freedom, democracy, equality, the rule of law, and respect for human rights. This was a deliberate choice. The Court had been grappling with how to enforce Article 2 for years, frustrated by the political paralysis of Article 7 TEU (the mechanism to sanction Member States for breaches of EU values) and the limited scope of the 2020 Rule of Law Conditionality Regulation.

The ruling builds on earlier cases, such as *Hungary v. Parliament and Council* (C-156/21) and *Poland v. Parliament and Council* (C-157/21) where the Court referenced the constitutional identity of the EU based on Article 2. But this time, the CJEU crossed the Rubicon: it made Article 2 directly actionable.

The Hungarian law at the heart of the case effectively conflated LGBTQI+ rights with child abuse. The measure was widely seen as a deliberate attack on fundamental rights, part of a broader illiberal backsliding in Hungary. Yet, the EU's political tools to address such breaches so far have proven ineffective. Article 7 TEU procedures failed to achieve the necessary 4/5 majority in the Council required to refer the case to the European Council. As to the Rule of Law Conditionality Regulation, it requires proof of a direct link between rule of law infringements and a negative effect on the EU finances, which is complicated.

The judgment has sparked a fierce debate among legal scholars, non-governmental organisations, and policy-makers. While many hailed it as a breakthrough, others have raised

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[1] See for instance this TEPSA Commentary by Jaap Hoeksma: <https://tepsa.eu/analysis/pragmatic-federalism-and-the-constitutional-identity-of-the-eu/>

[2] See Van Gend en Loos (1963) and Costa v. ENEL (1964)

serious concerns. [3]

Some voices, such as [Meret Plucis](#), argue that the Court's reliance on a "manifest and very serious" breach threshold is too restrictive. By tying its reasoning to a majoritarian conception of society, the CJEU risks excluding systemic but less visible violations of individual rights.

However, the idea that the Court should just focus on individual rights would indeed lead to judicial overreach. Courts must, by necessity, respect a balance between individual rights and societal norms. To abandon this would risk chaos rather than progress.

[Martijn van den Brink](#) adds that the Court's reasoning is inconsistent. 15 years ago, the CJEU would have said Article 2 was not justiciable because it deals with values, not law. Now, it claims the opposite. This, van den Brink argues, is a political position disguised as legal orthodoxy. It would have been better to openly acknowledge that factor rather than hiding behind purely legal arguments.

The Court is making a 'political' statement by declaring Article 2 a key ingredient of the EU identity, but it can only do so based on legal reasoning. It also establishes a clear link to the EU's accession process (Article 49 TEU), which requires candidate countries to respect Article 2 values. If these values are prerequisites for joining the EU, it is only logical that they be enforceable post-accession.

The weightier arguments come from the opposite end of the spectrum. [Heinrich Wefing](#) warns that the ruling goes too far because it risks establishing a "government of

judges." By making the vague concepts of Article 2 justiciable, he writes, the CJEU invites judicial activism and politicisation. Who decides what constitutes a "manifest and very serious" breach? Could this lead to endless conflicts between the CJEU and national constitutional courts?

This is an old debate, as Wefing himself concedes, referring to the numerous acts of judicial self-empowerment of the United States Supreme Court, the German Constitutional Court or the CJEU, for that matter. The question is how to find the right balance.

A careful reading of the CJEU ruling shows that the Court was aware of the sensitive character of this issue and has taken pains to avoid any impression of moving towards a government of judges. In my view, it has succeeded in building a credible case for its admittedly groundbreaking ruling:

- The Court did not rule in a vacuum. Its ruling came because the European Commission appealed against the Hungarian law. Sixteen Member States intervened in the proceedings and supported the Commission's stance.
- The Court limited the use of Article 2 to cases of manifest and very serious breaches, signalling caution. The alternative - inaction in the face of systemic violations - would have been far more damaging to the EU's credibility.
- The EU's legal order has always evolved through judicial interpretation and pathbreaking rulings.

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[3] See, among others, <https://www.leclubdesjuristes.com/international/hongrie-la-justice-europeenne-sanctionne-une-loi-jugee-contre-aux-valeurs-de-lue-15578/>.

See also the proceedings of a Symposium on this issue at the website of EU Law Live, <https://eulawlive.com/symposia/enforcing-article-2-teuthe-cjeus-judgment-in-commission-v-hungary-c-769-22/#>

- The Court maintains regular dialogue with the national supreme courts through the preliminary ruling mechanism of Article 267 of the Treaty on the Functioning of the European Union, reducing the risk of conflict.

The CJEU's ruling in *Commission v. Hungary* is a watershed moment for the EU and extends far beyond Hungary and the internal workings of the EU. It is also highly important against the background of the enlargement debate. By making Article 2 TEU directly justiciable, the Court has sent a strong message to the candidate countries. Finally, the Court signals that the EU will defend its values and its DNA against attacks by the likes of Trump and Putin.

The debate over judicial activism versus restraint will rage on, but one thing is clear. In an era of rising illiberalism, the EU's constitutional identity cannot afford to be toothless. As Daniel Sarmiento from EU Law Live argues, the EU is no longer just about 'integration through law,' it is now also about 'integration through values.' The CJEU's ruling is a bold step in that direction. The challenge ahead is ensuring that this legal milestone translates into tangible change on the ground.

All the opinions expressed in this publication are the sole view of the author, and do not represent the position of the Trans European Policy Studies Association (TEPSA) or of its Members.

Editing & Formatting: Barbara Vanotti & Allegra Wirmer (TEPSA).

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