

UNIVERSITY OF MONTPELLIER

**European Master's Programme in Human Rights and
Democratisation
A.Y. 2025/2026**

Drawing the line on the Union's values:
Commission v Hungary (C-769/22) and the (queer)
politics of LGBTQ+ rights in the EU

Assessing the promises and uncertainties of the self-standing Article 2 TEU

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Word Count Declaration: 24.671

Abstract

In 2021, the Orbán-led government adopted an anti-LGBTQ+ law prohibiting the promotion and portrayal of LGBTQ+ content across several domains in the name of child protection. Against the background of sixteen years of constitutional backsliding in Hungary and a contrasting expansion of LGBTQ+ protection at EU level, the European Commission initiated an infringement action before the Court of Justice, invoking not only secondary EU law and Charter rights but, most significantly, a breach of Article 2 TEU, containing the core values of the Union.

This thesis examines the resulting landmark judgment, *Commission v Hungary C-769/22*, through a dual methodology, combining a doctrinal analysis with Queer Legal Theory as a critical lens. It traces the Court's argumentative logic in earlier LGBTQ+ case law together with the political developments in Hungary leading up to the anti-LGBTQ+ law. The thesis further reveals the fundamental rights dimension underlying the Court's reasoning on secondary law and Charter rights and addresses the novelties, uncertainties and questions raised by the first-ever finding of an Article 2 TEU breach. The analysis is completed by adding a political dimension to assess the paradoxical effects this judgment generates and the queer experiences that remain unaddressed within a rights-protective framework.

Acknowledgments

First and foremost, I would like to thank my supervisor Professor Claire Vial: thank you for your excellent guidance during my thesis process. Not only for your input and feedback but also for our interesting conversations and shared interest in the topic. It motivated me all the more to write and to share my work with you. *Merci beaucoup.*

A very big thank you to my family for their unconditional love and support. To my parents: you are both a great source of inspiration and provided me with a warm home to finish this thesis.

And to all my dear friends, from Venice and Montpellier, thank you for brightening both semesters. I returned home fulfilled, grateful and as *cliché* as it is, full of memories I will never forget. A special thanks to Hanne: our friendship slowly grew in Venice but really started flourishing in Montpellier. I truly enjoyed our endless conversations at the dinner table or on the balcony, our shared humour and our wholesome bike rides through the city.

And to my lovely girlfriend Merel: no words quite do justice to how grateful I am for your support all year long. You were my biggest cheerleader from the very first line and you became equally passionate about this topic. This thesis carries a message of hope for us and many others like us, to be represented in children's books, on tv shows, in schools and to be able to simply hold hands in the street.

Lastly, I want to thank *Forbidden Colours*. Thank you for your extraordinary advocacy work, which led to a judgment that will fill its place in history books. Your work and courage have inspired me and will continue to do so.

List of Abbreviations

AG	Advocate General
AI	Artificial Intelligence
ASJP	Associação Sindical dos Juízes Portugueses
AVMS	Audiovisual Media Services
CEE	Central and Eastern European
CFREU	Charter of the Fundamental Rights of the EU
CJEU	Court of Justice of the European Union
GQA	Global Queer Agonism
LGBTQ+	Lesbian, Gay, Bisexual, Transgender and Queer (+ all others)
QLT	Queer Legal Theory
SOGI	Sexual Orientation & Gender Identity
SOGIESC	Sexual Orientation, Gender Identity & Expression and Sex Characteristics
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union

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Introduction

In her 2025 State of the Union address, President of the European Commission von der Leyen stated: “Europe’s independence is about protecting our freedoms. The freedom to decide. To speak out. ... To love ... To live in a Union of equality.”¹ This quote, however, does not reflect the lived reality of LGBTQ+ persons across all Member States. The tension between that aspiration and the reality is precisely what this thesis seeks to examine.

When discussing rising homophobia in Europe, fingers tend to point to Central and Eastern European (hereinafter ‘CEE’) countries. With Hungary as the central focus of this thesis, that reflex may seem logical. Yet a broader look reveals that LGBTQ+ rights are eroding in all corners of Europe, including in countries long considered progressive.²

The annual Rainbow Map published by the non-governmental organisation ILGA-Europe illustrates this tendency.³ By ranking all 49 European countries on the basis of their legal and policy practices for LGBTQ+ persons, the map confirms that CEE countries generally score lower but also shows that countries such as the United Kingdom, Sweden and France have been regressing in their ranking in recent years.⁴ Discourse within the European Parliament confirms this trend, pointing to the rise of homophobia and extreme right in France, Germany and the United Kingdom. Trans- and homophobia has, in short, become present “all over Europe”.⁵

More significant here than a geographical divide is the correlation between illiberal right-wing governments and the rise of political polarisation, homophobia and norm contestation.⁶ It is therefore no surprise that an increasingly LGBTQ+ inclusive European Union finds itself confronted with a wave of resistance against gender equality and LGBTQ+ rights. Illiberal governments across Europe have put forward an alternative normative framework, which centres on the “natural family” and cisheteronormative values.⁷ Among the Member States that

¹ European Commission (Directorate-General for Justice and Consumers), ‘Union of Equality. LGBTQ+ equality strategy 2026 – 2030’ (8 October 2025) COM(2025)725, 3.

² Laura Eigenmann, ‘This Is a Union of Values: The Rise of the LGBTI Rights Norm as Part of the EU’s Identity Construction.’ (2022) 29(1) Social Politics: International Studies in Gender, State & Society 95, 109.

³ ILGA Europe, ‘2026 Rainbow Map’ <<https://rainbowmap.ilga-europe.org/>>.

⁴ International Bar Association (IBA), ‘Fears of LGBTQI+ rights erosion in multiple Western countries’ (2024) <<https://www.ibanet.org/fears-of-erosion-of-lgbtqi-rights-in-multiple-western-countries>>; *Ibid*.

⁵ Eigenmann (n 2) 109.

⁶ Saskia Brechenmacher, ‘The new global struggles over gender, rights and family values’ (Carnegie Endowment for International Peace May 2025) 1, 9.

⁷ *Ibid* 1.

have most aggressively tested the limits of EU's foundational values enshrined in Article 2 of the Treaty of the European Union (hereinafter 'TEU'), Hungary is particularly notable.

Hungary's erosion of those values did not happen overnight. It is the product of a sixteen-year process of democratic backsliding under the Orbán-led government, which spread a discourse of LGBTQ+ identities as a threat to children's development and the traditional family. One of the most striking legislative initiatives of this trajectory was Hungary's anti-LGBTQ+ law of 2021 (hereinafter also 'Act 79') which prohibits television programmes, books, media advertising and childcare activities that portray or promote LGBTQ+ content in the name of minor protection.⁸ It is this law, and the European Commission's decision to challenge it through an infringement action before the Court of Justice of the European Union (hereinafter 'CJEU' or 'Court'), that lies at the heart of this thesis.

The judgment delivered by the Court in *Commission v Hungary* C-769/22 is widely recognised as a landmark ruling.⁹ For the very first time, the Court recognised Article 2 TEU, entailing *inter alia* the values of human dignity, equality and respect for human rights, as a self-standing and legally enforceable provision.¹⁰ The Court thus steps out of its technical role and fully embraces a values-based reasoning, signalling that Member States can be held accountable for violating the core values upon which the Union rests. This novelty raises curiosity about how the Court decides on such a violation, the effects of this judgment, its strengths and the future concerns and questions it raises. Aspects that will thoroughly be discussed throughout this thesis.

At the same time, a judgment of such constitutional and historical weight demands an analysis that goes beyond the purely doctrinal level. The political dimension surrounding *Commission v Hungary*, specifically the debate over values, the construction of a European identity and the question who remains excluded even within a rights-protective judgment (or how *queer* the judgment is), extends beyond the courtroom in Luxembourg. These dimensions invite a queer and critically reflexive lens alongside legal analysis, in order to expose assumptions and exclusions that doctrine alone leaves invisible.

⁸ Act LXXIX of 2021 on taking more severe action against paedophile offenders and amending certain Acts for the protection of children (Hungarian Official Gazette 2021).

⁹ Case C-769/22 *Commission v Hungary* EU:C:2025:408.

¹⁰ Article 2 Consolidated version of the Treaty of the European Union [2016] OJ C202/1 ('TEU').

Commission v Hungary both draws clear lines on how far Member States can stretch the limits of the Union's values and raises questions to what extent litigation can resolve the underlying problem. Both the legal innovation and the political dimension are thus central to this analysis, which unfolds in four chapters. The first presents the research framework, including the research questions, methodology, theoretical framework and reading guide. The second outlines the legal and political context giving rise to the case, while the third offers a thorough analysis of the judgment itself and the novelties it introduces. The fourth and final chapter complements the analysis by examining the wider political dimension surrounding the judgment.

Chapter 1. Research framework: Questions, Method and Theoretical Lens

1.1. Research Problem, Research Aim & Research Question(s)

1.1.1. Research Problem

Among many actors responding to Hungary's anti-LGBTQ+ legislation, the EU institutions also took an active stance. The European Parliament explicitly condemned the legislation as incompatible with EU law, while the European Commission initiated infringement proceedings before the Court of Justice.¹¹ Supported by sixteen Member States, the case became one of great importance and high visibility, widely expected to become a historic one.

While LGBTQ+ issues have been addressed before the Court of Justice on numerous occasions, *Commission v Hungary* largely centred on one unprecedented element: the Commission's separate invocation of Article 2 TEU, which enshrines the Union's foundational values of human dignity, equality and respect for human rights.

Even though the Court confirmed that Article 2 TEU constitutes an independent and legally binding provision, the implications of that finding remain contested. Some authors regard the ruling as a constitutional breakthrough in the protection of EU values, whereas others criticise the Court for providing limited methodological guidance on how these values should be identified and applied. This raises further questions about legal certainty and the added value of invoking Article 2 TEU alongside secondary legislation and Charter rights.

The significance of *Commission v Hungary* also extends beyond these legal questions. The case emerged in context of growing tensions between the European Union and Hungary over the meaning of equality, national identity and European values. The judgment therefore invites for broader inquiry into how the judicial enforcement of EU values affects these constitutional and political tensions. More specifically, it raises the question whether the Court's reliance on Article 2 TEU contributes to resolving such tensions or instead reinforces competing narratives about European identity, sovereignty and LGBTQ+ equality.

¹¹ Resolution No 2021/2780 of 8 July 2021 of the European Parliament on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament [2021] OJ C99/218, C99/222 ('Resolution LGBTIQ breaches in Hungary'); European Commission, 'Commission refers Hungary to the Court of Justice of the EU over violation of LGBTIQ rights' (Press Release 15 July 2022).

1.1.2. Research Aim

Against this background, this thesis aims at examining both the legal and broader societal implications of *Commission v Hungary*. It seeks to analyse the position of LGBTQ+ rights within EU legal order, the Court's interpretation of Article 2 TEU and the relationship between EU values and constitutional identity.

While initial commentary of *Commission v Hungary* has primarily focused on the juridical-technical and constitutional implications of the ruling for the EU legal order, this master's thesis also includes a Queer Legal Theory (hereinafter 'QLT') to examine how the Court addresses stigmatisation, visibility and social inclusion of LGBTQ+ individuals and to identify the opportunities for EU institutions to strengthen LGBTQ+ equality in the judgment's aftermath.

1.1.3. Research Question(s)

Against the background of the research problem and aim, this thesis answers the following central research question: *To what extent does the Court of Justice's ruling in Commission v. Hungary advance, or fail to advance, LGBTQ+ equality in the EU and what does the Court's chosen legal pathway reveal about the deeper constitutional tensions within the EU?*

This research question aims to generate descriptive, evaluative and prescriptive knowledge.¹² To generate this knowledge, this central research question will be supported by several sub-research questions:

- 1) How did the legal developments of LGBTQ+ rights within the EU and the political developments in Hungary converge in the infringement action leading to *Commission v Hungary*?
- 2) How did the Court address the Commission's pleas concerning secondary EU law, the Charter and Article 2 TEU, and what are strengths and weaknesses of the recognition of Article 2 TEU as a separate ground of infringement?
- 3) What does *Commission v Hungary* reveal about the paradoxical effects of embedding LGBTQ+ equality in the identity of European society, both in terms of the political contestation it provokes and the representational limits it leaves unaddressed?

¹² Wim Hardyns & Frederik Peeraer, *Onderzoeksmethoden* (Institute for International Research on Criminal Policy – Ugent 2019), 155 – 159.

The three sub questions operate at different analytical and temporal levels, ranging from the historical and political context of the dispute to its doctrinal and constitutional implications. Together, they provide the necessary knowledge to assess both the legal significance of *Commission v Hungary* and its broader implications for the protection of LGBTQ+ equality within the European Union.

1.2. Methodology

The analysis essentially relies on desk-based qualitative research, by combining two methodological layers. A first layer consists of doctrinal legal research of the case, combined with a second critical layer, mainly through the lens of Queer Legal Theory.

The primary layer will give an overview of existing legal material, including primary legal sources (such as existing legislation and case law) and secondary sources (such as diverse scholarly literature). It will go beyond a descriptive dimension by applying detailed, critical and contextualised reflection as it revolves around topical issues that have generated a significant and diverse amount of doctrinal debate.¹³

The second layer consists of an interdisciplinary socio-legal method by using a critical analytical framework. This method offers a wide theoretical and (sometimes) experimental space for understanding the law.¹⁴

1.2.1. Queer, Queer Theory and Queer Legal Theory

First, the interdisciplinary layer of Queer Legal Theory will be outlined in a comprehensive and clear way. This section will mainly explain how QLT will guide, and be incorporated in, the subsequent chapters.

The section also aims to establish which characteristics of QLT will serve as a common thread, without implying that there is a single, homogenous understanding of Queer Legal Theory. The

¹³ Luke Dimitrios Spieker, *EU values before the Court of Justice: Foundations, potential, risks* (Oxford University Press 2023), 6.

¹⁴ Margaret Davies, 'Doing Critical-socio-legal theory' in Naomi Creutzfeldt, Marc Mason & Kirsten McConnachie (eds.) *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2019) 83, 84.

theoretical foundations of Global Queer Agonism, a sub stream of QLT will also be outlined in Chapter 4.¹⁵

The use of QLT is reflected in various ways across the three separate chapters. In the second chapter, it will mainly serve a descriptive purpose by elaborating on previous Queer Legal Critique on developments in CJEU case law. In the third chapter, it takes on a more experimental approach as to where QLT can offer insights or identify and fill in gaps within a legal LGBTQ+ victory. In the last chapter, QLT is most clearly present as Global Queer Agonism prominently guides the chapter's analysis.

1.2.1.1. *Queer*

The following section first examines the notion of 'queer' before bringing together the key elements necessary to develop an understanding of Queer Legal Theory.

The term queer was initially used to insult people as being 'weird or unnatural' and has been reclaimed over time by many queer people to demonstrate their "otherness" outside of the norm.¹⁶ Queer specifically seeks to avoid binaries and labels and instead recognises the diversity of sexual expressions that exists and that is always open to ever-shifting signification.¹⁷ Sedgwick thereby interprets queer more as a form of representation, rather than an essential sexual category.¹⁸

Cannoot et al. mention that queer embraces the disruptive, anti-essentialism and subversive and in contrast rejects normality, identity and heteronormativity. The authors therefore label it as a reactive rather than a prescriptive concept.¹⁹ As queer represents inclusion and diversity, Valdes and Cannoot et al. argue that it is *in se* also intersectional.²⁰ A queer focus thus expands to

¹⁵ See section 4.2.1 Chapter 4; Malte Breiding, 'Global Queer Agonism: Normative Theory of the European Union in Times of Dissensus over LGBT Equality' (2025) 63(5) Journal Common Market Studies 1460 – 1480.

¹⁶ Alexander Maine, 'Queer Legal Theory' in Chris Ashford & Alexander Maine, *Gender, Sexuality and Law: A textbook* (Edward Elgar Publishing 2024) p. 38.

¹⁷ Alcardo Zanghellini, 'Queer, Anti-normativity, Counter-normativity and Abjection' (2009) 18(1) Griffith Law Review 1, 1; *Ibid* 38 & 51.

¹⁸ Maine (n 16) 46.

¹⁹ Pieter Cannoot, Elise Goossens, & Marie Spinoy, 'Feministische en queer rechtstheorie: genese, bloei en wasdom.' in Pieter Cannoot, Elise Goossens, & Marie Spinoy (Eds.), *Feministische en queer onderzoeksmethoden in het recht* (Intersentia 2025) 3, 39.

²⁰ Cannoot et al. (n 19) 40 – 41.

intersecting issues of sex and gender with race, class, social inequality, disability, age and other grounds.²¹

1.2.1.2. *Queer Theory*

‘Queer theory’, a term first coined by de Lauretis, emerged as an alternative approach within ‘gay and lesbian studies’.²² Unlike feminist studies, which centre around the specific female gender, Queer Theory seeks to move beyond an essentialising idea of gender and to deconstruct binary ways of thinking.²³ It operates at the intersection of law, society, gender and sexuality.²⁴

The theory draws heavily on social constructionism, as developed by philosopher and psychoanalyst Foucault, which holds that knowledge and identity are produced through social interaction rather than reflecting any natural or pre-given reality.²⁵ Accordingly, binary categories such as “homo/heterosexual” are not neutral descriptions or pre-existing identities, but products of dominant social discourses that determine which identities are recognised as normal and legitimate.²⁶ Butler captures this through the concept of the “heterosexual matrix”: the socially dominant assumption that a stable sex (female/male) is expressed through a corresponding gender (woman/man), which in turn constitutes desire towards the opposite sex (heterosexuality).²⁷ This matrix, reinforced through laws, education, media, films, stories and upbringing, renders certain identities intelligible while marginalising others.²⁸ This connects back to Foucault’s broader understanding of language and discourses as sites of power and systems of meaning, through which social norms are produced and sustained.²⁹

1.2.1.3. *Queer Legal Theory*

That Queer Legal Theory reached the law is, according to Cannoot et al., not very surprising: Law is, just as language, a system of power that shapes societal normativity and directly impacts

²¹ Francisco Valdes, ‘Afterward and Prologue: Queer Legal Theory’ (1995) 83 California Law Review 344, 371 – 372; Maine (n 16) 53.

²² Edoardo Stoppioni, ‘Epistemologies out of the closet: Thinking through queer theory’s intellectual shifts in international law.’ in Tamsin P Paige & Claerwen O’Hara, *Queer Encounters with International Law* (Routledge 2024) 262, 266; Cannoot et al. (n 19) 37.

²³ *Ibid*; Maine (n 16) 38 – 39.

²⁴ Maine (n 16) 38 – 39.

²⁵ Michel Foucault, *The History of Sexuality: An introduction* (Pantheon Books 1978), 56; *Ibid*, 40 & 52.

²⁶ Nico J. Beger, ‘Queer Readings of Europe: Gender Identity, Sexual Orientation and the (Im)potency of Rights Politics at the European Court of Justice’ (2000) 9(2) *Social and Legal Studies* 249, 257.

²⁷ Judith Butler, *Gender Trouble* (Routledge 2006), 208 (note 6).

²⁸ *Ibid*.

²⁹ Foucault (n 25) 26 & 56; Cannoot et al. (n 19) 38.

populations.³⁰ Queer Legal Theory forms part of Critical Legal Studies and focuses on the societal understandings of gender and sexuality that are inherent in and regulated by law.³¹

1.2.1.3.1. Queer Legal Theory and its paradox

QLT evokes an inherent tension: where queer is linked to resistance and the challenging of dominant norms, law expresses dominant societal values, ideologies and aspirations.³² Equally distinctive for the concept of queer is its resistance to be pinned down into a fixed definition.³³

Yet it is precisely this paradox that makes QLT a valuable analytical tool. A queer *conceptual* perspective perceives law simultaneously as a disciplining instrument and as a potential site of resistance and subversion.³⁴ In this reading, QLT takes the mainstream conceptual inquiries of the law as the object of its analysis.³⁵ The task of queer legal theorists is therefore to deconstruct normalising, regulating and excluding legal discourses and to identify and expose the binary assumptions enshrined in them.³⁶ In this way, QLT seeks the law to remain sensitive to the contingency of gender and sexual identity categories.³⁷

1.2.1.3.2. Scope and limitations

QLT is an inherent reflexive project, which starts with self-reflection on its own limits as a theory. Several authors, including Valdes and Stychin, caution that QLT lacks a *normative* aspiration. Instead, they position it mainly as a methodological tool that offers, what Halperin calls, a critical reactive (*op*)*positionality* in relation to the normative, rather than a *positivity* towards the law.³⁸

Zanghellini challenges this understanding of QLT as too modest. For him, queer critique and normative commitments cannot logically be separated.³⁹ Even where left implicit, queer legal

³⁰ Cannoot et al. (n 19) 42; Kseniya A Kirichenko, 'Queer Intersectional Perspectives on LGBTI Human Rights Discourses by United Nations Treaty Bodies' (2023) 49 Australian Feminist Law Journal 55, 58.

³¹ Kirichenko (n 30) 57; Maine (n 16) 39; Cannoot et al. (n 19) 42.

³² Adam P Romero, 'Methodological descriptions: "Feminist" and "Queer" Legal Theories' in Martha Albertson Fineman et al. (eds.) *Feminist and Queer Legal Theory* (Routledge 2009) 179, 191.

³³ *Ibid* 192; Zanghellini (n 17) 1 – 2.

³⁴ Cannoot et al. (n 19) 44.

³⁵ Zanghellini (n 17) 3.

³⁶ Kirichenko (n 30) 58; See also Beger (n 26) 250; Maine (n 16) 50.

³⁷ Zanghellini (n 17) 2.

³⁸ David Halperin, *Saint Foucault: towards a gay hagiography* (Oxford University Press 1995), 62; Valdes (n 19) 364 – 365; Carl F Stychin, 'Couplings: Civil Partnership in the United Kingdom' (2005) 8(2) NY City Law Review 543, 546; Romero (n 32) 180; Cannoot et al. (n 19) 44.

³⁹ Zanghellini (n 17) 6.

analysis is always underpinned by substantive values, mostly being a commitment to personal autonomy and diversity. It is precisely these underlying commitments that give QLT its critical force: without them, the claim that law's disciplinary power normalises and constrains individual identities would lose much of its meaning.⁴⁰

Zanghellini therefore regrets the lack of self-reflection by QLT about its own values and normative commitments. Doing so would elevate the quality and persuasiveness of an analysis grounded in QLT.⁴¹

1.2.1.3.3. The methodological function of Queer Legal Theory

Apart from understanding the conceptual and (anti-)normative view of QLT, it is equally important to understand how QLT can contribute meaningfully to the analysis below.

QLT serves a concrete methodological function in legal analysis. First, it enables critical reflection on judicial decisions. QLT signifies a self-defined and self-sustaining body of legal scholarship, which aims at voicing the interests and needs of sexual and gender minorities in order to end their oppressed position within the realm of law and jurisprudence.⁴²

It does not only focus on judgments that threaten LGBTQ+ equality but equally on those that appear to constitute legal victories. QLT can be used to *queer* the jurisprudence, that is in Zanghellini's words, to "unleash Queer's full potential for making original and distinctive contributions to jurisprudential knowledge".⁴³ Building on Valdes' queer principles, QLT allows for constructive output by offering an alternative pathway and demonstrating how a case could or should have been decided differently.⁴⁴

In this thesis, Queer Legal Theory serves as the methodological lens through which the Court's earlier jurisprudence is analysed. Further, QLT offers insights on the queer strengths and weaknesses of the judgment *Commission v Hungary* and allows to ground Chapter 4 in the sub stream of Global Queer Agonism.

⁴⁰ Zanghellini (n 17) 6.

⁴¹ *Ibid* 8.

⁴² Maine (n 16) 50.

⁴³ Zanghellini (n 17) 14; See also Maine (n 16) 51.

⁴⁴ Valdes (n 21) 365 – 372; Maine (n 16) 54 – 55.

1.3. Positionality

Applying a Queer Legal Theory, necessitates the researcher first to reflect on its own positionality.⁴⁵ Valdes namely describes positionality, together with intersectionality, as one of the pertinent strategies for QLT.⁴⁶ Recognising the own social position, privileges and blind spots allows to seek collaboration, solidarity and to address power dynamics and potential assumptions at play.⁴⁷

This connects to Haraway's theory of situated knowledge, in which she argues that positionality is not the opposite of objectivity, but its very precondition.⁴⁸ True and embodied objectivity, Bredler argues, requires transparency about the researcher's perspective, which in turn creates space for examination, critique and to challenge the existing system.⁴⁹

It is therefore appropriate to outline my own positionality as a researcher: I am a white, cisgender, bisexual woman. I have obtained a Belgian master's degree in law and my interests lie primarily with human rights law. The combination of my personal background and my academic education allow me to approach LGBTQ+ issues from an empathetic point of view, but to research it from a juridical angle. The choice to apply a Queer Legal Theory can be traced back to inspiring courses from previous Law Professors such as Professor Pieter Cannoot and Professor Edoardo Stoppioni and aligns well with Haraway's call to stay critical, produce situated knowledge and engage enough with reflexivity.

Positionality does not only inform the reader but also serves for the author to reflect on its own research process. This becomes particularly relevant with the use of Artificial Intelligence (hereinafter 'AI'), which claims to produce "objective" knowledge. Bredler therefore calls for more situated human research, instead of algorithmically polished output.⁵⁰

⁴⁵ Stoppioni (n 22) 277.

⁴⁶ Valdes (n 21) 371 – 372; Maine (n 16) 52.

⁴⁷ Danielle Jacobson & Nida Mustafa, 'Social Identity Map: A reflexivity Tool for practicing Explicit Positionality in Critical Qualitative Research' (2019) 18(1) International Journal of Qualitative Research Methods 1, 2; Maine (n 16) 53.

⁴⁸ Donna Haraway, 'Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective 1' in Mary Barbercheck et al. (eds.), *Women, Science, and Technology* (Routledge 2014) 455, 461 – 462; Eva Maria Bredler, 'The Human Trick: Scholarship from Somewhere' (*VerfBlog* 1 May 2026) DOI: [10.59704/61f5631ec7e5fe98](https://doi.org/10.59704/61f5631ec7e5fe98) accessed 15 May 2026.

⁴⁹ Bredler (n 48).

⁵⁰ *Ibid.*

It leads to the question whether and how the use of AI, which contains biases that are difficult to trace, is appropriate within this research. I made use of generative AI in my analysis with a very conscious and diligent approach, and I ensured full compliance with the EMA policy on Artificial Intelligence. In order to avoid, as Bredler warns, that the own creativity is replaced by automatic generated texts from a language model, I solely used it for phrasing-suggestions or double checks (such as grammar mistakes).⁵¹ I remained aware for possible false or biased outputs and the use of AI was strictly subordinate to my own creation and ideas.⁵²

1.4. Queer terminology

Lastly, the use of Queer Legal Theory as an analytical tool involves some novel, and perhaps complex, terms that require clarification.

Cisheteronormativity (also: cishet) is a portmanteau of ‘cisgender’ and ‘heterosexual’.⁵³ It describes a norm in which heterosexuality and cisgender identities are seen as ‘default’ positions, which are naturalised, assumed and privileged.⁵⁴ It can be described as a set of ideas, social norms, beliefs and culture that shapes a dominant and hierarchical position for people that fit into Butler’s heterosexual matrix.⁵⁵

The term ‘cishet(eronormativity)’ was coined in the 1990s as part of queer theory to make visible the oppression against people who did not feel part of this social construct.⁵⁶ It namely recognises the diversity of experiences and identities beyond the majority’s experience and raises awareness on the privileges often associated with being cisgender and heterosexual in many societies.⁵⁷

LGBTQ+ stands for Lesbian, Gay, Bisexual, Transgender and Queer individuals and populations (+ all others). This term is used throughout the following analysis in combination with a “people first” language. The latter means that ‘LGBTQ+’ is always followed by the

⁵¹ Bredler (n 48).

⁵² The applications of artificial intelligence used in this analysis are Chat GPT-5.5. (OPENAI (2026) <<https://chatgpt.com/>>), Claude.ai (Claude.ai (2026) <<https://claude.ai/>>) and DeepL Translator (DeepL Translator (2026) <<https://www.deepl.com/nl/translator>>).

⁵³ ‘The Complete LGBTQIA+ Glossary of Terms’ (*The Gaygency*) <<https://www.thegaygency.com/glossary>> accessed 16 June 2026.

⁵⁴ Maine (n 16) 42.

⁵⁵ Butler (n 27) 208 (note 6).

⁵⁶ ‘Cisheteronormativity’ (*Modii*) <<https://modii.org/en/cisheteronormativity/>> accessed 17 June 2026

⁵⁷ ‘The Complete LGBTQIA+ Glossary of Terms’ (n 53).

relevant person/community/identity/right. This avoids reducing a person to the LGBTQ+ characteristic and instead highlights that it constitutes only one of many parts of a person's identity.

Noteworthy here is that Advocate-General Ćapeta uses the term 'LGBTI' instead of 'LGBTQ+' in her opinion, thereby following the terminology used by ILGA Europe.⁵⁸ It should be noted that there is not a single term considered as the "correct" one and that language constantly evolves.⁵⁹ The reason for using LGBTQ+ in this analysis is first of all to include the 'Q' for 'queer', which is coherent to applying a Queer Legal Theory.⁶⁰ Second, the '+' serves as an inclusive term, to represent all other sexual orientations and gender identities not specified by the initials in the acronym and to recognise the diversity of the community.⁶¹

Sex and Gender: it is important to distinguish the contrast between 'sex' and 'gender'. Where 'sex' is often associated with biological characteristics, such as chromosomes, genitals and hormones, it is also perceived as an essentialist concept trying to draw a social and exclusive divide between male and female.⁶² 'Gender' on the other hand is mainly perceived as a social construction of femininity and masculinity, which relates to expected behaviours and attitudes and role patterns.⁶³

SOGI stands for 'Sexual Orientation and Gender Identity' and is inherently linked to social power structures, logically connecting to the notions 'sex and gender'. Maine describes 'Gender Identity' as "a social, psychological and emotional phenomenon", of which gender is the expression.⁶⁴ 'Sexual Orientation' is established in the authoritative Yogyakarta principles as generally referring to each person's capacity for emotional, affectional and sexual attraction and

⁵⁸ Case C-769/22 *European Commission v Hungary* EU:C:2025:408, Opinion of AG Ćapeta, point 2; International Lesbian, Gay, Bisexual and Intersex Association (ILGA), 'Glossary' (*Ilga Europe* October 2015) <https://www.ilga-europe.org/sites/default/files/glossary_october_2015_edition.pdf> 1, 6.

⁵⁹ 'List of LGBTQ+ Terms and Inclusive Definitions' (*Stonewall*) <https://www.stonewall.org.uk/resources/list-lgbtq-terms?gad_source=1&gad_campaignid=20401001017> accessed 17 June 2026.

⁶⁰ Maine (n 16) 44.

⁶¹ 'List of LGBTQ+ Terms and Inclusive Definitions' (n 59).

⁶² Maine (n 16) 45.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

relationships, irrespective of gender(s).⁶⁵ The Court does not employ the acronym ‘SOGI’ as such but regularly refers to ‘gender identity or sexual orientation’ throughout its judgment.⁶⁶

1.5. Reading Guide

To provide a clear, comprehensive overview of *Commission v Hungary*, the analysis proceeds in three chapters:

- **Chapter 2: LGBTQ+ rights in context: EU legal developments and the Hungarian pushback.**

This chapter focuses on two main temporal elements preceding *Commission v Hungary*. First, it outlines the evolution in the case law of the Court of Justice on LGBTQ+ rights, alongside the relevant legislative developments. It shows how LGBTQ+ issues have moved from the periphery to the centre of the Court’s case law, which argumentative lines are recurring and how *queer* these judgments are.

The second part of the chapter turns to the domestic political situation in Hungary. It examines the anti-LGBTQ+ political and legal developments that preceded the case, focusing in particular on Hungary’s discourse framing LGBTQ+ persons as a threat to the cisheteronormative family and children’s development and the association with paedophiles. This discourse is discussed alongside the circumstances that led to the adoption of Act 79, which gave rise to the infringement action.

Discussing these developments at two different levels, namely the EU and Hungary, reveals a paradoxical tension between increasing LGBTQ+ protection at EU level and LGBTQ+ rights backsliding in Hungary, a tension which ultimately led to the introduction of the infringement action *Commission v Hungary*.

- **Chapter 3: The judgment *Commission v Hungary* C-769/22**

This chapter offers an in-depth discussion of the judgment in *Commission v Hungary* itself. It first examines Hungary’s breaches of secondary law across the domains of television broadcasting, publishing, media advertising, sex education and childcare activities. It demonstrates the far reach of Hungary’s Act 79 and exposes the discriminatory nature of the

⁶⁵ International Commission of Jurists (ICJ), ‘The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity’ (2007) 1, 8.

⁶⁶ For example: *Commission v Hungary* (n 9) para 98.

law. This discussion bridges naturally into the analysis of Hungary's violation of Charter rights and shows how the Court addressed stereotyping, as one of the key strategies identified in Queer Legal Theory.

A substantial part of the chapter is devoted to the Commission's invocation of Article 2 TEU. It discusses the Court's recognition of this provision as a separate and legally binding ground and its finding that Hungary breached it. The chapter then turns to the doctrinal concerns this recognition raises, as well as its added value. It closes with forward-looking concerns regarding Article 2 TEU. Here, the concern that an infringement action alone cannot capture the case's wider political dimension forms the bridge to the fourth and final chapter.

- **Chapter 4: The paradox of values enforcement: constitutional identity, political contestation and the remainders of EU LGBTQ+ Equality**

This chapter includes the wider political dimension surrounding the case *Commission v Hungary*. It sheds light on the interplay between the political context of rising right-wing nationalism and homophobia and the values of the European Union.

This chapter touches on European identity construction through the contestation of values and connects these observations to the mentioning by the Court in *Commission v Hungary* of the "very identity of the Union as a common legal order of a society in which pluralism prevails".

The lens of Global Queer Agonism reveals a we/them divide this interplay can bring along and which autoimmune counter-effect this creates on LGBTQ+ equality. This theory produces new insights on Hungary's national identity argument in *Commission v Hungary*.

Lastly, the chapter highlights 'queer remainders', referring to those whose experiences are under-represented in the dominant understanding of LGBTQ+ rights and experiences. The main aim is to explain that constructing a collective identity inevitably comes with exclusions and how the EU institutions can become more sensible to include a diverse range of knowledges and experiences.

Chapter 2. LGBTQ+ rights in context: EU legal developments and the Hungarian pushback

This chapter splits up in two main contextual aspects: first, it will outline the necessary historical context and juridical developments on the position of LGBTQ+ rights in the EU. It clarifies the EU's initial position on LGBTQ+ rights and how it evolved within the market logic. A Queer Legal Critique perspective will be applied where it illuminates the limits of the EU's approach.

Second, the political developments in Hungary will be brought forward, followed by the (re)actions from the European Parliament, the European Commission and Advocate-General Ćapeta. This approach allows to comprehensively introduce the case *Commission v. Hungary* itself.

The elements provided by this chapter allow to answer the first sub-research question: How did the legal developments of LGBTQ+ rights within the EU and the political developments in Hungary converge in the infringement action leading to *Commission v Hungary*?

2.1. The evolution of LGBTQ+ rights in the EU legal framework

The recognition of LGBTQ+ rights in the EU mainly evolved along two lines: the gradual prohibition of discrimination against sexual and gender minorities across different areas of EU competence and the extension of rights to LGBTQ+ persons that have long been granted by default to their heterosexual peers, in areas such as partnership recognition, family life and parental status.⁶⁷ The latter has primarily been developed through the case law of the CJEU, several key cases of which will be examined below.

This twofold evolution is necessary background in support of the subsequent chapters, that will provide the central analysis of the case *Commission v. Hungary*. This context namely reveals how a specific argumentative logic of the Court was developed, within the confines of its competences.

⁶⁷ Alina Tryfonidou, 'Law and sexual minority rights in the EU: navigating a political minefield' in Paul James Cardwell & Marie-Pierre Grainger (eds.), *Research Handbook on the Politics of EU Law* (Edward Elgar 2020) 204, 206 – 207.

2.1.1. Sexual orientation and gender identity in early EU law: economic roots and sexual minority protection

In the 1950s, three economic communities (European Coal and Steel Community, European Economic Community and Euratom) were created with a central aim to build a common market among its Member States.⁶⁸ This initial predominantly economic project expanded, geographically and materially, and resulted in the EU of today.⁶⁹ The founding Community Treaties did not contain any reference to fundamental (human) rights. Consequently, any reference to LGBTQ+ rights was absent too.⁷⁰ The few non-discrimination provisions that were present, were functional to the achievement of the EU internal market-building aims.⁷¹

In the absence of an explicit protective framework for LGBTQ+ persons, early jurisprudential steps in the 1990s towards the recognition of LGBTQ+ rights in EU law emerged primarily in the context of employment equality cases. For Beger, this sector-specific solution by the Court is hardly surprising, given that equality between men and women in employment constituted one of the foundational pillars of the EU at the time.⁷²

A notable illustration of the Court's early approach can be found in two contrasting rulings. In *P v. S and Cornwall* (1996), the Court of Justice extended protection against sex discrimination in employment to a transgender employee, relying on the Directive 76/207/EEC on equal treatment between men and women.⁷³ It clarified that such discrimination based on gender identity is essentially, if not exclusively, based on the sex of the employee.⁷⁴ The Court used a classic method of comparison by comparing a transgender woman with a cisgender man.⁷⁵

⁶⁸ Luuk Van Middelaar, *The Passage to Europe: How a Continent Became a Union* (Yale University Press 2014) 45; Tryfonidou (n 67) 207.

⁶⁹ Tryfonidou (n 67) 207.

⁷⁰ Policy Department for Citizen's Rights and Constitutional Affairs, 'Obstacles to the Free Movement of Rainbow Families in the EU ('Rainbow families in the EU study')' PE 671.505 (2021) 33; Lina Triantafyllia Papadopoulou, 'Sexual Orientation and Gender Identity Law in the European Union and Its Court of Justice' in Andreas R. Ziegler et al (eds), *Oxford Handbook of International LGBTI Law – SOGIESC Law from an International-Comparative Perspective* (Oxford University Press 2023) 1, 2 – 3.

⁷¹ Tryfonidou (n 67) 207.

⁷² Beger (n 24), 252; Tryfonidou (n 67) 207; Alina Tryfonidou, 'Chapter 29: The politics of sexual identity and the emerging constitutional battles in Europe' in W Sandholtz and CA Whytock (eds.), *Research Handbook on the Politics of Constitutional Law* (Edward Elgar Publishing 2023) 532, 539.

⁷³ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ 039/40; Case C-13/94 *P v S and Cornwall* EU:C:1996:170, paras 20 – 21.

⁷⁴ *P v S and Cornwall* (n 73) para 21; Papadopoulou (n 70) 7.

⁷⁵ Papadopoulou (n 70) 7.

Two years later, in *Grant* (1998), the Court refused to identify the denial of travel benefits to Lisa Grant's same-sex partner as sex discrimination.⁷⁶ The Court of Justice equally used a classic comparison but compared Mrs Grant as a female homosexual employee to a male homosexual employee and concluded that both categories were treated equally. It therefore found no direct discrimination on the grounds of sex.⁷⁷ Although the Court recognised the differential treatment as discrimination on the ground of sexual orientation, it nevertheless held that this ground fell outside the scope of Community law at the time.⁷⁸

Wintemute criticised the choice of the comparator by the Court in *Grant*, arguing that a different comparator would have led to a different outcome. Instead of changing both the sex and sexual orientation of the comparator (from *female* attracted to *women* to *male* attracted to *men*), he argues that the Court should have only changed the sex (from *female* attracted to *women* to *male* attracted to *women*). Wintemute stresses the dependency of sexual orientation on the sex, without wanting to conflate them, and therefore suggests that sexual orientation discrimination can be understood as direct sex discrimination.⁷⁹

An early and pertinent queer critique of these divergent rulings *P v S* and *Grant* was developed by Beger, who argues that both judgments rest on identity-based reasoning embedded in a binary, cisheteronormative structure.⁸⁰ The Court thereby assumes that non-cisheteronormative individuals can be neatly slotted into stable, separate identity categories: transgender identity in *P v S* (gender identity) and lesbian identity in *Grant* (sexual orientation).⁸¹

According to Beger, this reflects a dominant normative construction in which gender identity and sexual orientation are aligned: being born female (sex) presumes identification as a woman (gender identity), which in turn presumes attraction to opposite sex (heterosexuality).⁸² Non-cisheteronormative identities are thus conceptualised only as deviations from this framework,

⁷⁶ Case C-249/96, *Grant v South-West Trains Ltd* EU:C:1998:63, para 50.

⁷⁷ *Ibid.* paras 27 – 28; Papadopoulou (n 70) 12.

⁷⁸ *Grant* (n 76), para 47; Papadopoulou (n 70) 12.

⁷⁹ Robert Wintemute 'Recognising New Kinds of Direct Sex Discrimination: Transsexualism, Sexual Orientation and Dress Codes' (1997) 60(3) *The Modern Law Review* 334, 346 – 347.

⁸⁰ Beger (n 26) 256 & 264.

⁸¹ Wintemute (n 79) 335; *Ibid* 255 & 260.

⁸² Beger (n 26) 256 – 257.

which means that the very categories of “identity” are themselves shaped and constrained by dominant norms.⁸³

For Beger, this normative construction explains why the Court extended protection to transgender persons in *P v S*: a transgender identity, despite signalling a gender difference, still fits within the underlying sex binary.⁸⁴ The equality achieved, as Beger argues, is therefore system-intrinsic: it operates within, rather than challenging, the binary gender framework that was itself designed to exclude them.⁸⁵ Queer theorists, such as Lisa Duggan, developed the term “homonormativity” to describe this tendency of viewing homosexuality as a form of identity and relationship that should closely mirror and even reinforce heteronormativity.⁸⁶

The Court follows the same internal logic in *Grant* according to Beger. However, the Court ruled that Lisa Grant’s lesbian identity cannot enter the definition of sex discrimination as it would disrupt the culturally dominant belief that two natural, coherent sexes produce heterosexual desire.⁸⁷

Beger does not seek to deny the importance of legal battles and victories, but rather highlights the wider debate generated by LGBTQ+ rights-claiming. While some consider legal reform a pathway to genuine substantive equality, others perceive it as merely operating within, and even reinforcing, a heteronormative framework. Within this debate, Beger’s reading of *Grant* and *P v S* points to a middle ground in this “dilemma of rights politics”: rights-claiming both enables progress and reinforces the very structures it seeks to challenge.⁸⁸ The two apparent contradictory positions are thus interconnected and mutually illuminating.⁸⁹

2.1.2. Towards a non-discrimination competence: the Employment Equality

Directive 2000/78 and its limits

Soon after *Grant*, a decisive legislative shift occurred to expand the protection area of non-discrimination: the Treaty of Amsterdam (adopted in 1997, came into effect 1999) equipped the

⁸³ *Ibid* 257; Tryfonidou, ‘Chapter 29’ (n 72) 533.

⁸⁴ Beger (n 26) 257.

⁸⁵ *Ibid* 262.

⁸⁶ Lisa Duggan, ‘The New Homonormativity: The Sexual Politics of Neoliberalism’ in Russ Castronovo & Dana D. Nelson, *Materializing Democracy. Toward a Revitalized Cultural Politics* (Duke University Press 2002) 175, 179; Maine (n 16) 43.

⁸⁷ Beger (n 26) 263.

⁸⁸ *Ibid* 250.

⁸⁹ *Ibid* 266.

Union with competences to combat discrimination on various grounds, including sexual orientation.⁹⁰ These new competences quickly translated into legislative action, most notably through the adoption of the Employment Equality Directive 2000/78, prohibiting discrimination on a number of grounds, again including sexual orientation.⁹¹

In *Maruko* (2008), later confirmed by *Römer* (2011), the Court of Justice held that, under this exact Employment Equality Directive, an unmarried same-sex couple must be regarded as comparable to a married couple from the perspective of family life when it comes to pension-related benefits.⁹²

Even though Directive 2000/78 and its related case law adequately complement the earlier mentioned prohibition of sex discrimination in employment, its scope of protection for SOGIESC -grounds remains limited to *employment* and *sexual orientation*.⁹³ The limited scope to the area of employment reflects the historical embedding of equality at the time within the internal market logic for workers, with protection primarily linked to economic participation.⁹⁴

Moreover, the Treaty of Amsterdam and Directive 2000/78 did not escape Beger's queer critical lens. The author argues that adopting a "shopping list" of discrimination grounds will not achieve the justice and equality the LGBTQ+ community aims for. Such a list does not carry the capacity to deconstruct the dominant heterosexual framework that produces the discrimination suffered by homosexual persons in the first place. Beger reiterates that this does not render the legislation and jurisprudential developments meaningless but rather underscores the need for a heightened awareness and constructive use of the inevitably produced dilemma of rights politics.⁹⁵

⁹⁰ Article 13 of Consolidated Version of the Treaty establishing the European Community [1997] OJ C 340/173 ('Amsterdam Treaty').

⁹¹ Article 1 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16; Rainbow families in the EU study (n 70) 34; Papadopoulou (n 70) 16.

⁹² Case C-267/06 *Tadao Maruko v Versorgungsanstalt der deutschen Bühnen* EU:C:2008:179, para 73; Case C-147/08 *Jürgen Römer v Freie und Hansestadt Hamburg* EU:C:2011:286, paras 45 & 52; Edouard Dubout, 'L'Europe est-elle queer ? Valeurs de l'Union et homosexualité' (2023) 8(3) European Papers 1189, 1192.

⁹³ Directive 2000/78/EC (n 91) Recital 12.

⁹⁴ Beger (n 26) 252.

⁹⁵ *Ibid* 264.

2.1.3. Constitutionalisation of equality: the Charter of Fundamental Rights as a new entry point

A decade after Amsterdam, the Treaty of Lisbon (adopted in 2007, came into effect 2009) “constitutionalised” the principle of equality within EU law, as it conferred the same legal value on the Charter of Fundamental Rights (hereinafter ‘CFREU’) as the primary EU Treaties.⁹⁶ Two important provisions in this Charter shaped the subsequent case-law evolution of the CJEU: first, the material application of the non-discrimination principle moved beyond the labour sector with Article 21 CFREU prohibiting discrimination, including based on sexual orientation.⁹⁷ Second, Article 51 CFREU sets out the scope of application of the Charter, including the non-discrimination principle, by limiting its applicability to situations in which Member States implement EU law.⁹⁸

Additionally, EU primary law provisions further reinforce the constitutional nature of the principle of equality. Article 2 TEU contains *inter alia* the value of equality and respect for human rights, including the rights of persons belonging to minorities, in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.⁹⁹ Article 6 TEU recognises the Charter as having the same legal value as the Treaties.¹⁰⁰

Despite the enhanced constitutional status of fundamental rights in the Charter after Lisbon, their *activation* remains structurally dependent on the implementation of EU law under Article 51(1) CFREU, which is frequently triggered through the internal market dynamics such as cross-border movement. This shows how EU internal market policy and the protection of EU fundamental values are still strongly intertwined.¹⁰¹

⁹⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C 306/01 (‘Lisbon Treaty’); Policy Department for Citizens' Rights and Constitutional Affairs, ‘The interpretation of Article 51 of the EU Charter of Fundamental Rights: the dilemma of stricter or broader application of the Charter to national measures (‘Interpretation of Article 51 CFREU study’)’ PE 556.930 (2016) 6.

⁹⁷ Article 21 Charter of the Fundamental Rights of the European Union [2012] OJ C326/391 (‘CFREU’).

⁹⁸ Article 51 CFREU (n 97).

⁹⁹ Article 2 TEU (n 10); Papadopoulou (n 70) 3.

¹⁰⁰ Papadopoulou (n 70) 3.

¹⁰¹ Mark Dawson & Elise Muir, ‘Hungary and the *indirect* protection of EU fundamental Rights and the rule of law.’ (2013) 14(10) German Law Journal 1959, 1960.

At the same time, the Treaty of Lisbon reconfigured the *role* of fundamental rights. Before Lisbon, fundamental rights played a more accessory role as they were used to control how Member States may justify restrictions on the free movement.¹⁰² By contrast, under Article 51(1) CFREU, once a situation falls within the scope of EU law, fundamental rights apply as an autonomous standard of review rather than serving a merely accessory controlling role.¹⁰³

This development suggests, at least in theory, a shift towards a more explicit and autonomous reliance on fundamental rights. In practice, however, the Court initially adopted a more cautious approach, as illustrated by the *Coman* judgment (2018).

In *Coman*, the Grand Chamber acknowledged that homosexual couples have the right to have their marriage, when legally concluded in another Member State, recognised in their own Member State for the purposes of residence rights under Directive 2004/38.¹⁰⁴ The case illustrates how the Court anchored LGBTQ+ protection in the free movement logic: it was precisely the lack of opportunity to lead a cross-border family life that constituted an obstacle to the freedom of movement.¹⁰⁵ Dubout explains that this landmark case allows homosexual individuals to circumvent restrictive national legal frameworks through transnational mobility and access higher levels of protection available elsewhere in the Union.¹⁰⁶

Even though the outcome was lauded, the Court's reasoning nevertheless has been subject to criticism. Rijpma states that the Court took an *overly cautious* road towards that outcome, by barely making reference to fundamental rights and thus missing an opportunity to reinforce its argumentation through the Charter.¹⁰⁷ Similarly, Stoppioni characterises *Coman* as primarily relying on an economic framework rather than embracing a fundamental rights analysis.¹⁰⁸ Even post-Lisbon, the Court continues to rely on a market-based entry logic, which constrains the transformative potential of constitutionalised fundamental rights. This tendency is also

¹⁰² Interpretation of Article 51 CFREU study (n 96) 12.

¹⁰³ *Ibid.*

¹⁰⁴ Case C-673/16 *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* ECLI:EU:C:2018:385, para 51; Jorrit J. Rijpma, 'You Gotta Let Love Move, ECJ 5 June 2018, Case C-673/16, *Coman*, Hamilton, Accept v. Inspectoratul' (2019) 15(2) *European Constitutional Law Review* 324, 324; Dubout (n 92) 1192.

¹⁰⁵ Edoardo Stoppioni, 'Une analyse critique de l'arrêt *Coman*: déconstruction de la consécration de l'obligation de reconnaissance du droit de séjour du conjoint homosexuel' (2019) 4(1) *European Papers* 377, 383 – 384; Tryfonidou, 'Chapter 29' (n 72) 539.

¹⁰⁶ Dubout (n 92) 1192.

¹⁰⁷ Rijpma (n 104) 336 – 337.

¹⁰⁸ Stoppioni (n 105) 384.

visible in later cases such as *Pancharevo* and *Mirin*, where the Court again grounded its reasoning in the removal of obstacles to free movement, without explicitly invoking the prohibition of discrimination.¹⁰⁹

Stoppioni further pinpointed a pertinent Queer Legal Critical observation of the *Coman* case. He argues that the protection afforded in this case is limited to the “normal homosexual”, which can fit in the dominant social structure (marriage, family organisation, free movement). Those who do not adhere to that structure, fall outside the protection. This can be linked to Cannoot’s et al. historical explanation that the LGB-activism was rooted in a “sameness” logic with heterosexual persons and couples.¹¹⁰

For Stoppioni, the *Coman* case influences this heteronormative architecture of the legal system but does not challenge it.¹¹¹ This critique closely mirrors Beger’s earlier observation on *P v S* and *Grant*. Kapur captures this shared concern by arguing that, while such cases deserve to be praised as necessary first steps against discrimination, they should simultaneously invite critical reflection on alternative, more transformative approaches to equality.¹¹²

A turn to a more explicit fundamental rights reasoning by the Court happened in November 2025 in the *Trojan* case.¹¹³ It ruled that a Member State’s refusal to recognise a marriage between two same-sex nationals, lawfully concluded in another Member State, is contrary to the rights to respect for family life (Article 7 CFREU) and the prohibition of discrimination based on sexual orientation (Article 21(1) CFREU).¹¹⁴ Lamprinoudis submits that the explicit mention of this latter article introduces a new, potentially even transformative, approach to equality in EU law. For the first time in a case with mobile EU citizens of the LGBTQ+

¹⁰⁹ Case C-490/20 *V.M.A. v Stolichna Obshtina, rayon ‘Pancharevo’* EU:C:2021:1008; Case C-4/23 *M.-A.A. v Direcția de Evidență a Persoanelor Cluj and Others* (‘*Mirin*’) EU:C:2024:845; Konstantinos Lamprinoudis, ‘The Trojan Horse of Free Movement Law’ Unfolding Non-Discrimination on Grounds of Sexual Orientation in “Trojan” (*VerfBlog* 1 December 2025) DOI:[10.59704/400ef82167e89a18](https://doi.org/10.59704/400ef82167e89a18) accessed 23 April 2026.

¹¹⁰ Cannoot et al (n 19) 40.

¹¹¹ Stoppioni (n 105) 387 – 388.

¹¹² Ratna Kapur, ‘The (im)possibility of queering international human rights law’, in Dianne Otto (ed.), *Queering International Law – Possibilities, Alliances, Complicities, Risks* (Routledge 2018) 131, 139; Stoppioni (n 105) 387 – 388.

¹¹³ Case C-713/23 *Jakub Cupriak-Trojan and Mateusz Trojan v Wojewoda Mazowiecki* (‘*Mazowiecki*’). EU:C:2025:917.

¹¹⁴ *Mazowiecki* (n 113) para 77.

community, the Court did not solely rely on the free movement provisions but also explicitly on the Charter's right to non-discrimination.¹¹⁵

In the case *Shipov* (2026), the Court declared that the refusal of changing gender-related data in civil-status records for a Union citizen would hinder the exercise of free movement.¹¹⁶ Even though this case marks another step in the gradual constitutionalisation of sexual and gender identity within EU law, the Court again relied on the “minimal intrusion” free movement logic as used in the *Coman* case.¹¹⁷

The evolution outlined above is not merely historical background but provides the analytical lens through which *Commission v. Hungary* must be understood. From *P v S* to *Coman* and beyond, the case law reveals a more consistent pattern: the Court extends protection to LGBTQ+ persons, not primarily through an explicit fundamental rights reasoning, but by anchoring such protection in the internal market logic. This logic reappears in *Commission v. Hungary*, albeit in a different guise: through free movement of *services and goods* instead of free movement of *persons*.

At the same time, more recent case law, such as *Trojan* and *Shipov*, raise the question of whether the Court is gradually shifting towards a more explicit engagement with fundamental rights. Against this background, *Commission v Hungary* may be seen as marking a further and more significant development. The case not only builds on earlier internal market reasoning and the Charter but also takes a more innovative turn through its reliance on the Union's foundational values, as enshrined in Article 2 TEU (see Chapter 3).

2.2. Recent developments in and due to Hungary

The previous section has demonstrated the growing role of EU legislation and jurisprudence in strengthening the protection of LGBTQ+ rights at the EU level. In contrast with this EU evolution, anti-LGBTQ+ political and legal developments took place in Hungary, which will

¹¹⁵ Lamprinoudis (n 109).

¹¹⁶ Case C-43/24, *K. M. H. v Obshtina Stara Zagora* ('Shipov') EU:C:2026:183, para 65; Uladzislau Belavusau, 'Sexual citizenship via Free Movement. Gender Identity and EU Citizenship after Shipov Case (C-43/24, 2026)' (*VerfBlog* 13 March 2026) DOI:[10.59704/eabe2b4bd88b910e](https://doi.org/10.59704/eabe2b4bd88b910e) accessed 23 April 2026.

¹¹⁷ Belavusau (n 116).

be discussed in the following sections.¹¹⁸ The analysis traces key shifts that led the Commission to ultimately react with an infringement action against the anti-LGBTQ+ law of 2021, which illustrates the paradoxical dynamic between EU-level protection and the Hungarian national pushback.

2.2.1. Hungary's anti-LGBTQ+ (legislative) turn: constitutional backsliding and the politicisation of LGBTQ+ rights in Hungary

Hungary underwent a profound political transition during the 1990s, emerging as a fully-fledged liberal democracy governed by the rule of law, with guaranteed fundamental rights and checks and balances.¹¹⁹

However, an episode of constitutional backsliding began when the Fidesz-KNDP coalition came into power with a two-third majority in 2010 and got re-elected in 2014.¹²⁰ Orbán's intention was, as Halmai explains, to eliminate any kind of checks and balances, institutional guarantees, fundamental rights and independence of both the Constitutional Court and the ordinary judiciary.¹²¹

A decade of legislative reforms discriminating LGBTQ+ persons began with the Fundamental Law of Hungary as its new Constitution in 2011.¹²² One of the following amendments in 2014 elevated anti-LGBTQ+ provisions to this constitutional level, by banning same-sex marriage.¹²³

Over the years, Hungarian authorities continued to adopt restrictive policies, entrenching discrimination based on sexual orientation and gender identity in law and practice and depriving these sexual minorities from their civil rights.¹²⁴ Simultaneously, the government's anti-

¹¹⁸ Alex Gomez Bedmar, *A Queer Critique of EU LGBT+ Rights Promotion in the rise of the Anti-Gender Movement: Internal Contradictions and External Challenges* (Masterthesis, Global Campus of Human Rights 2025) 24.

¹¹⁹ Gábor Halmai, 'Rule of Law Backsliding and Memory Politics in Hungary' (2023) 19(4) European Constitutional Law Review 602, 603.

¹²⁰ Amnesty International, 'From freedom to censorship: the consequences of the Hungarian Propaganda Law' (27 February 2024) EUR27/7754/2024 <<https://www.amnesty.org/en/documents/eur27/7754/2024/en/>> 13; Anikó Félix, 'Hungary' in Eszter Kovács and Maari Põim (eds), *Gender as Symbolic Glue* (Foundation for European Progressive Studies 2015) 63.

¹²¹ Halmai (n 119) 613.

¹²² Reka Tamássy, Anna Vancsó & Ákos Bocskor, 'Media discourses about Hungarian anti-LGBTQIA+ legislation in the summer of 2021' (2025) 72(4) Social Compass 665, 666.

¹²³ Article L(1) Fundamental Law of Hungary (Ministry of Justice, 2024); Félix (n 120) 72; *Ibid* 667.

¹²⁴ Amnesty International (n 120) 13; Judit Takács, Katherine Fobear & Szilvia Schmitsek, 'Resisting Genderphobia in Hungary' (2022) 10(4) Politics and Governance 38, 41.

LGBTQ+ discourse intensified, with prominent government officials describing homosexuality as “unnatural, repulsive and aberrant”.¹²⁵

Tamássy et al. describe this anti-LGBTQ+ legislation and the associated genderphobic political discourse as the local manifestation of a transnational anti-gender movement.¹²⁶ Genderphobia should thereby be understood, according to Takács et al., as “the aversion to address and critically interrogate gendered differences and gender as a social construct”.¹²⁷

To legitimise these anti-LGBTQ+ measures, the Hungarian government deliberately created an environment of fear and discrimination. It did so by stating that the traditional gender norms and the cisheteronormative family were being endangered due to falling birth rates and rising immigration.¹²⁸ In reaction, Orbán’s government actively started to connect its national policies to the protection and reproduction of the heteronormative family, labelled by Félix as “family mainstreaming”.¹²⁹ A further layer of this discourse concerned the protection of children’s cisgender and heterosexual identity, elevated to the constitutional level with an amendment in 2020.¹³⁰

In 2019, László Kövér, a Fidesz member in the Hungarian Parliament, compared same-sex couples’ demand to be allowed to adopt children with paedophilia.¹³¹ It is here that the conflation of paedophilia and the rhetoric of child protection would become the cover to further censor LGBTQ+ content.¹³²

Takács et al. point out that, even though the politicisation of the cisheteronormative family in Hungary is not unique, its policy effects are remarkable and do not remain merely symbolic.¹³³

¹²⁵ Nandini Gupta, ‘State-Sponsored Homophobia: In Relation with the New Hungary Laws, 2021’ (2021) 4(4) *International Journal of Law Management & Humanities* 405, 406; Tamássy et al. (n 122) 666.

¹²⁶ Gupta (n 125) 411; Tamássy et al. (n 122) 668.

¹²⁷ Takács et al. (n 124) 39.

¹²⁸ Félix (n 120) 64; *Ibid* 40 & 42; Háttér Society, ‘The Anti-LGBTQI Law of Hungary in Action: A Combination of State- and Self-Enforcement’ (November 2024) <<https://en.hatter.hu/publications/childprotectionlaw-report-2024>> 1.

¹²⁹ Félix (n 120) 64; Takács et al. (n 124) 41.

¹³⁰ Article XVI(1) Fundamental Law of Hungary (Ministry of Justice, 2024) 12; Háttér Society (n 128) 3.

¹³¹ Gupta (n 125) 408; Dull Szabolcs, ‘Kövér: A normális homoszexuális nem tartja magát egyenrangúnak [A normal homosexual does not consider himself equal]’ (*Index* 15 May 2019) <https://index.hu/belfold/2019/05/15/kover_laszlo_forum_normalis_homoszexualisok_pedofilia> accessed 17 April 2026.

¹³² Takács et al. (n 124) 42.

¹³³ *Ibid* 40.

2.2.2. The law leading up to the Commission's action: anti-LGBTQ+ Law / Act 79

The developments outlined above illustrate the trajectory of a decade-long regression in the protection of sexual minorities in Hungary.¹³⁴ The process finally led up to the adoption of Amending Law LXXIX of 2021 (hereinafter: 'anti-LGBTQ+ law' or 'Act 79') and Government Decree No 473/2021. The amendments in Act 79 were based on the above-mentioned rhetoric of child protection against paedophilia.¹³⁵ In practice, however, the law introduced a series of measures directly targeting the LGBTQ+ community.¹³⁶

The provisions of the anti-LGBTQ+ law included amendments to the Acts on Child Protection, Family Protection, Advertisement, Media and National Public Education.¹³⁷ The wording of these amendments is largely identical. They all prohibit to make available to minors pornography and content that depicts sexuality for its own purposes or that promotes or portrays deviation from the self-identity corresponding to sex at birth, gender reassignment or homosexuality.¹³⁸

Only the amendment to the National Public Education Act slightly differs as it only excludes the promotion and not the depiction of LGBTQ+ content.¹³⁹ In addition, this amendment only allows state-recognised persons or organisations to conduct sessions on sexual education.¹⁴⁰

Government Decree no. 473/2021 (VIII 6) implemented this amending legislation by even prohibiting bookstores to place LGBTQ+ books in a shopping window and by prescribing to only sell them in special packaging separate from other products.¹⁴¹

Háttér Society, the oldest and largest LGBTQ+ organisation in Hungary, underlines the far-reaching self-censoring effect of these restrictions among teachers and educators and all others

¹³⁴ Amnesty International (n 120) 13 – 14.

¹³⁵ Opinion of AG Ćapeta (n 58) point 20; Amnesty International (n 120) 19.

¹³⁶ Matteo Bonelli & Monica Claes, 'Crossing the Rubicon? The Commission's use of Article 2 TEU in the infringement action on LGBTQ+ rights in Hungary' (2023) 30(1) Maastricht Journal of European and Comparative Law 3, 4.

¹³⁷ Háttér Society (n 128) 5.

¹³⁸ Section 1(2), Section 3, Section 9(4a), Section 10(3) Act LXXIX of 2021 (n 8); Amnesty International (n 120) 19.

¹³⁹ Section 11(1) Act LXXIX of 2021 (n 8); Takács et al. (n 124) 43.

¹⁴⁰ Takács et al. (n 124) 43.

¹⁴¹ Háttér Society (n 128) 5.

who fall within the scope of these amendments.¹⁴² Furthermore, these amendments limit the right to seek and receive diverse information for minors as an integral part of the freedom of expression, in turn also increasing their vulnerability to health risks.¹⁴³ At the same time, the incorporation of these restrictions in a law against paedophilia pathologises sexual and gender minorities as predators, while denying LGBTQ+ children and young adults recognition, protection and support.¹⁴⁴

2.2.3. (Re)Actions of the EU institutions and the Commission's invocation of Article 2 TEU

Hungary's anti-LGBTQ+ law caused widespread reactions, not only from citizens and civil society, but also among EU institutions.¹⁴⁵ It intensified the earlier mentioned paradox between EU's efforts to enhance LGBTQ+ rights and Hungary's anti-LGBTQ+ discourse and policies.¹⁴⁶

The European Parliament's rapporteur on Hungary, Gwendoline Delbos-Corfield, criticised Act 79 as harmful to all children in Hungary, as it instrumentalises child protection to target LGBTQ+ persons.¹⁴⁷ Shortly after, the European Parliament adopted a resolution condemning the anti-LGBTQ+ law in strongest possible terms. It further stressed that this law is not an isolated example but rather constitutes part of a deliberate and systematic erosion of fundamental rights in Hungary.¹⁴⁸

In July 2021, the European Commission initiated infringement proceedings against Hungary with a letter of formal notice.¹⁴⁹ An infringement action, that rests on a solid legal basis with Article 258 of the Treaty on the Functioning of the EU (hereinafter 'TFEU'), is a well-established EU instrument that allows the European Commission to take legal action against a

¹⁴² Háttér Society (n 128) 28.

¹⁴³ Amnesty International (n 120) 19; Tamássy et al (n 122) 667.

¹⁴⁴ Takács et al (n 124) 45.

¹⁴⁵ Gupta (n 125) 413.

¹⁴⁶ Tamássy et al (n 122) 667.

¹⁴⁷ 'Hungary: Government must scrap law targeting LGBTIQ community' (*The Greens/EFA in the European Parliament*, 15 June 2021) < <https://www.greens-efa.eu/en/article/press/hungary-government-must-scrap-law-targeting-lgbtiq-community> > accessed 17 April 2026; Gupta (n 125) 413.

¹⁴⁸ Resolution LGBTIQ breaches in Hungary (n 11) C99/222.

¹⁴⁹ European Commission, 'Commission refers Hungary to the Court of Justice of the EU over violation of LGBTIQ rights' (Press Release 15 July 2022).

Member State that has failed to fulfil its obligations under EU law.¹⁵⁰ Since the first moments of the Hungarian constitutional backsliding process, the Commission reacted with multiple infringement actions. The first infringement actions were rather indirect, by addressing narrow issues of the implementation of EU primary and secondary law but without mentioning broader fundamental rights matters.¹⁵¹

The European Commission, supported by 16 EU Member States,¹⁵² claims in its infringement action that the Hungarian Law stigmatises and marginalises LGBTQ+ individuals and that it infringes EU law on three levels:¹⁵³

- (1) *Primary and secondary legislation* relating to services in the internal market (the Audiovisual Media Services Directive, Directive on Electronic Commerce, GDPR and the Services Directive)¹⁵⁴,
- (2) Several rights guaranteed by the *Charter of Fundamental Rights of the European Union* (Articles 1, 7, 11 and 21 of the Charter)¹⁵⁵ and
- (3) *Article 2 TEU*, containing *inter alia* the “founding values” of democracy, human rights and rule of law of the EU.¹⁵⁶

¹⁵⁰ Article 258 Consolidated version of the Treaty on the Functioning of the European Union (‘TFEU’) [2016] OJ C202/160; Matteo Bonelli, ‘Infringement Actions 2.0: How to Protect EU Values before the Court of Justice’ (2022) 18 European Constitutional Law Review 30, 31.

¹⁵¹ Dawson & Muir (n 101) 1960; Bonelli (n 150) 31; See example of a narrow infringement action: Case C-288/12 *Commission v Hungary* EU:C:2014:237.

¹⁵² The 16 Member states are: the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Hellenic Republic, the Kingdom of Spain, the Republic of Estonia, the French Republic, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Republic of Finland, the Kingdom of Sweden (Opinion of AG Ćapeta (n 58) point 15).

¹⁵³ ‘Judgment: C-769/22 Commission v Hungary’ (*Court of Justice of the European Union*, 21 April 2026) 08:02:00 – 08:02:18 <https://curia.europa.eu/site/jcms/p1_1000082657/en/judgment-c-769/22-commission-v-hungary> accessed 26 April 2026.

¹⁵⁴ European Commission, ‘Action brought on 19 December 2022 — European Commission v Hungary’ [2022] OJ C54/16.

¹⁵⁵ Articles 1, 7, 11 and 21 CFREU (n 97).

¹⁵⁶ ‘Judgment: C-769/22 Commission v Hungary’ (n 153).

This infringement action is particularly significant, as it marks the first time that the European Commission has directly invoked Article 2 TEU.¹⁵⁷

In her opinion of 5 June 2025, Advocate-General Ćapeta largely agreed with the Commission's pleas, devoting a large part of her analysis to Article 2 TEU. At the heart of her reasoning lies the argument that the Hungarian legislation negates the equality of LGBTQ+ persons, and that this negation is the root cause of all the relevant infringements identified.¹⁵⁸

To substantiate this, Ćapeta derived a clear “red line” from the values of equality, human dignity and respect for human rights enshrined in Article 2 TEU, being the disrespect and marginalisation of a group in a society.¹⁵⁹ While Ćapeta acknowledges the social sensitivity of LGBTQ+ issues in Hungary, she firmly maintains that the right to equal respect for LGBTQ+ persons is not open for contestation.¹⁶⁰ In this way, she underlines how well-rooted the prohibition of discrimination on the ground of sex or sexual orientation is in the EU constitutional framework.¹⁶¹

2.3. Interim conclusion

This chapter has traced the evolution of LGBTQ+ rights in the EU legal and jurisprudential framework on fundamental rights and LGBTQ+ protection alongside the political and legislative developments in Hungary. It provides the answer to the first sub-research question: How did the legal developments of LGBTQ+ rights within the EU and the political developments in Hungary converge in the infringement action leading to *Commission v Hungary*?

When taking the insights of both subsections together, the paradoxical tension becomes clear. The European Union increasingly started to explicitly engage with fundamental rights and even constitutionalised them in the Charter, which lead to a central role for LGBTQ+ equality in EU primary law. At the same time, the case law of the Court of Justice gradually moved towards more LGBTQ+ protection, whether or not through an explicit fundamental rights reasoning. It

¹⁵⁷ Sharon Okunrobo, ‘Case C-769/22: A Further Step in the Protection of the Fundamental Rights within the European Union?’ (*European Law Blog*, 17 May 2023) <<https://doi.org/10.21428/9885764c.7983c760>> accessed 2 May 2026; Bonelli & Claes (n 136) 3.

¹⁵⁸ Opinion of AG Ćapeta (n 58) point 260 – 261.

¹⁵⁹ *Ibid* point 262.

¹⁶⁰ *Ibid* point 262.

¹⁶¹ *Ibid* point 263.

first developed a line of argument based on the free movement logic to bring LGBTQ+ cases within the scope of EU law and to make in turn the Charter applicable. More recently, the Court began adopting a more explicit fundamental rights reasoning. This clearly shows how the EU's commitment to LGBTQ+ protection has come to play a central role in the Union's mission.

For this reason, Hungary's deliberate and systematic erosion of fundamental rights through anti-LGBTQ+ policies, laws and discourse stood in sharper contrast than ever to the EU's legislation and values. It is precisely this paradoxical tension that answers the sub-research question and led the Commission to bring the above-mentioned infringement action against Hungary. Not just any infringement proceedings, but one of an unprecedented scale.

Chapter 3. The judgment *Commission v Hungary* C-769/22

On 21 April 2026, the Court delivered its long-awaited decision in the infringement case *Commission v Hungary*. For the first time in EU legal history, the Court had to grapple with the question whether Article 2 TEU as a whole is judicially enforceable.¹⁶² The Court answered affirmatively to that question. It did so sitting exceptionally in full court and in a judgment spanning no less than 621 paragraphs, two elements that, in themselves, signal the new and unparalleled nature of this landmark ruling.¹⁶³

The judgment addressed all six pleas advanced by the Commission.¹⁶⁴ Proceeding from the more familiar terrain of internal market law towards its most far-reaching conclusion, the Court examined the pleas in the following order:

- (1) Infringements of Articles 2, 3(1), 6a(1) and 9(1)(c)(ii) of the Audiovisual Media Services Directive (AVMS Directive).¹⁶⁵
- (2) Infringement of Article 3(2) of the Electronic Commerce Directive¹⁶⁶
- (3) Articles 16 and 19 of the Services Directive¹⁶⁷ and Article 56 TFEU (freedom of services).¹⁶⁸
- (5) Infringements of the Charter of Fundamental Rights of the EU provisions, more specifically: human dignity (Article 1), respect for private and family life (Article 7), freedom of expression and information (Article 11) and the principle of non-discrimination (Article 21).¹⁶⁹

¹⁶² Alessandro Marcia, 'EU Values v. Hungary's Queer Censorship Law' (Substack 4 May 2026) <<https://alessandromarcia.substack.com/p/eu-values-v-hungarys-queer-censorship>> accessed 25 May 2026.

¹⁶³ Lucia Serena Rossi, "'Concretised', 'flanked', or 'standalone'? Some Reflections on the Application of Article 2 TEU' (2025) 10(1) European Papers 1, 2; Armin von Bogdandy & Luke Dimitrios Spieker, 'The Red Lines of European Society. Article 2 TEU after *Commission v Hungary*' (*VerfBlog* 30 April 2026) DOI: [10.17176/20260430-173344-0](https://doi.org/10.17176/20260430-173344-0) accessed 17 May 2026.

¹⁶⁴ *Commission v Hungary* (n 9) para 83.

¹⁶⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services ('Audiovisual Media Services Directive') [2010] OJ L 95/1; *Commission v Hungary* (n 9) paras 85 – 236.

¹⁶⁶ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L178/1; *Commission v Hungary* (n 9) paras 237 – 311.

¹⁶⁷ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ('Services Directive') [2006] L376/36.

¹⁶⁸ Article 56 TFEU (n 150); *Commission v Hungary* (n 9) paras 312 – 416.

¹⁶⁹ *Commission v Hungary* (n 9) paras 417 – 493.

- (6) Infringement of Article 2 TEU, containing the Union's core values.¹⁷⁰
- (4) Infringements of Article 10 of the GDPR and Article 8(2) of the Charter, containing the protection of personal data.¹⁷¹ This fourth plea falls outside the scope of the analysis below. Although the General Data Protection Regulation (GDPR) requirements at issue are both relevant and necessary, they do not contribute substantially to the present analysis, which focuses primarily on the interpretation and enforcement of Article 2 TEU.

This chapter follows that same chronology. It outlines the essential elements of each plea, drawing primarily on the Court's reasoning, the Opinion of Advocate General Ćapeta and referring where relevant to the submissions of the Commission and Hungary. Particular attention is devoted to the novelty of Plea 6, which concerns the judicial enforceability of Article 2 TEU as an autonomous ground of infringement.

The analysis will take these elements together in order to formulate an answer to the second sub-research question: How did the Court address the Commission's pleas concerning secondary EU law, the Charter and Article 2 TEU, and what are strengths and weaknesses of the recognition of Article 2 TEU as a separate ground of infringement?

The analysis is informed by the lens of Queer Legal Theory. As this lens embodies the inherent reflex of critical thinking, the chapter does not confine itself to doctrinal exposition. Both the achievements and the limitations of the Court's reasoning are examined, in light of the first scholarly reactions to this recent judgment.

3.1. Neither free nor equal: Hungary's restrictions on the flow of LGBTQ+ services in the internal market

The first three pleas of the Commission formally concern different secondary EU legal instruments: the Audiovisual Media Services Directive (hereinafter: 'AVMS Directive'), the Electronic Commerce Directive and Services Directive respectively. Yet, they revolve around the same underlying logic: Hungary's systematic prohibition on the *promotion* or *portrayal* of homosexuality, gender reassignment or deviation from the sex assigned at birth (hereinafter: 'LGBTQ+ content') from the single market, cannot be justified.¹⁷² Across all three pleas, the

¹⁷⁰ *Commission v Hungary* (n 9) paras 494 – 564.

¹⁷¹ *Ibid* para 565 – 619.

¹⁷² *Ibid* paras 135 – 162, 203, 233, 307, 414 – 415.

Court's reasoning is remarkably consistent: Hungary's justification grounds, including the protection of minors and parental rights in education, are rejected not only for lack of proportionality but above all because of the inherently discriminatory character of the measure itself.¹⁷³

The concrete implications of Act 79 can be better grasped with some examples. Television programmes which contain the promotion or portrayal of non-cisheteronormative identities, as well as similar commercial advertising, cannot be broadcast between 5:00 and 22:00.¹⁷⁴ Cross-border audiovisual programmes from other Member States with such content on the Hungarian market are even subject to a form of "second control" by Hungary.¹⁷⁵ In schools, sexual education or training services offered by external actors are similarly restricted to promote LGBTQ+ identities.¹⁷⁶

A considerable part of the judgment (paras 84 – 416) is dedicated to the examination of these infringements of EU secondary law. This extensive discussion is not necessarily due to the presence of unprecedented legal questions, but rather to the technical density of the rules at issue. Rossi therefore describes this part as a "classical" infringement action, while nevertheless acknowledging its broader significance.¹⁷⁷ Bonelli goes even further, arguing that the reliance on a wide range of primary and secondary EU law norms primarily serve an instrumental purpose: to show that the national measures fall *within the scope of EU law* and that therefore the Charter applies.¹⁷⁸ The centre of the analysis instead lies with the breach of EU's core values, thus the discussion of this section is intentionally kept concise.

On the first plea, concerning the AVMS Directive,¹⁷⁹ the Court rejects Hungary's reliance on the best interests of the child principle, parental rights, the precautionary principle and minimum harmonisation of the Directive.¹⁸⁰ In addition, the Court finds that Hungary has introduced an unlawful second control on cross-border audiovisual programmes with LGBTQ+

¹⁷³ *Commission v Hungary* (n 9) paras 129 – 134, 305, 413.

¹⁷⁴ *Ibid* paras 87 – 90 & 207.

¹⁷⁵ *Ibid* para 192.

¹⁷⁶ Article 56 TFEU Article 16 & 19 Services Directive (n 167); *Ibid* paras 377, 394, 400.

¹⁷⁷ Rossi (n 163), 3.

¹⁷⁸ Bonelli (n 150) 56.

¹⁷⁹ Article 6a(1), Article 2 & Article 3(1) and Article 9(1)(c)(ii) of Directive 2010/13 (AVMS Directive).

¹⁸⁰ *Commission v Hungary* (n 9) paras 109, 120 – 121 & 156.

content originating from other Member States. This is in breach with both the country-of-origin principle and the free flow of services within the internal market.¹⁸¹

The second plea concerned the Hungarian restriction on online information society services to promote or portray LGBTQ+ content to minors online, including through web shops, media platforms and online advertising in light of the Electronic Commerce Directive.¹⁸² The Court views this restriction as an internal market disruption, particularly for cross-border service providers: it renders such cross-border services less attractive to potential clientele on the Hungarian market.¹⁸³

The third plea dealt with the Services Directive and Article 56 TFEU (the free movement of services principle), confirming the market-disrupting pattern identified in the earlier pleas. The Court finds that the same prohibition unlawfully restricted the free movement of several cross-border services, including child protection and childcare activities, (online and offline) advertising services and educational or training services provided by external actors to schools.¹⁸⁴ A small remark should be noted that the prohibition on the latter activities by the Hungarian Law on Public Education only concerns the promotion and not the portrayal of LGBTQ+ identities.¹⁸⁵

Across all three pleas, the Court consistently concludes that Hungary's restrictions could not be justified by the protection of minors or other public interest objectives, because the measures are inherently discriminatory based on the grounds of sex and sexual orientation. They stigmatise LGBTQ+ persons and undermine the very essence of the principle of non-discrimination protected by Article 21 of the Charter.¹⁸⁶

This finding is therefore not merely technical in nature but instead also firmly rooted in the Charter's fundamental commitment to equality and non-discrimination.

¹⁸¹ *Commission v Hungary* (n 9) paras 180 & 191 – 192.

¹⁸² Section 1(2) Act LXXIX of 2021 (n 8); Recital 21 and Article 3(2) e-Commerce Directive; *Commission v Hungary* (n 9) paras 237, 247, 277 & 280.

¹⁸³ *Commission v Hungary* (n 9) paras 281 & 286.

¹⁸⁴ Section 1(2) & Section 3 Act LXXIX of 2021 (n 8); Articles 16 and 19 Services Directive (n 167); *Ibid* paras 312, 316, 337, 352, 353, 382 & 393; Opinion of AG Ćapeta (n 58) point 337.

¹⁸⁵ Paragraph 9(12) of the Law CXC on National Public Education (Hungarian Official Gazette 2011); Opinion of AG Ćapeta (n 58) point 338.

¹⁸⁶ *Commission v Hungary* (n 9) paras 233, 306 & 414.

3.2. The Charter of Fundamental Rights

3.2.1. Charter-based infringement actions: a consolidated pathway

The fifth plea of the Commission entails a separate infringement claim of several Charter rights. The Commission put forward that the Hungarian restrictions for minors to access LGBTQ+ media content or commercial communications are in breach with human dignity (Article 1 CFREU), respect for private and family life (Article 7), freedom of expression and information (Article 11) and the principle of non-discrimination (Article 21).¹⁸⁷

The Commission's reliance on the Charter of Fundamental Rights in infringement actions is not new. The Charter pathway has been paved already with multiple of the Commission's earlier actions against Hungary, such as the Usufruct, NGO's and CEU-case.¹⁸⁸ These cases clarified that the Commission may rely on Charter rights whenever a national measure falls *within the scope of EU law* in the meaning of Article 51(1) CFREU.¹⁸⁹

The Court concludes, as explained above, that the Commission's pleas on secondary law are well-founded because Hungary did not justify the derogations of the relevant provisions. This resulted in an unjustified restriction of the free movement of services, which clearly places the matter *within the scope of EU law*.¹⁹⁰ The Court repeats that such measures within the scope must comply to the Charter.¹⁹¹

3.2.2. Article 21 of the Charter as the judgment's backbone

As already mentioned across the first three pleas, Article 21 CFREU fulfils an essential role. The Court's stance is clear: a national law cannot undermine the essence of the fundamental right to non-discrimination enshrined in the Charter.¹⁹² Therefore, the Court declares repeatedly that Hungary's prohibition for the promotion or portrayal of LGBTQ+ content across various domains directly discriminates based on sex or sexual orientation.¹⁹³ The centrality of non-discrimination across all three pleas is, in that sense, more than a technical observation: it

¹⁸⁷ *Commission v Hungary* (n 9) para 418.

¹⁸⁸ Case C-235/17, *Commission v Hungary* ('Usufruct') EU:C:2019:432; Case C-78/18, *Commission v Hungary* ('NGO's') EU:C:2020:476; Case C-66/18, *Commission v Hungary* ('CEU') EU:C:2020:792; Bonelli (n 150), 40.

¹⁸⁹ Bonelli (n 150) 40.

¹⁹⁰ Dawson & Muir (n 101) 1961; Bonelli (n 150) 40.

¹⁹¹ *Commission v Hungary* (n 9) para 421.

¹⁹² *Ibid* paras 233, 306 & 414.

¹⁹³ *Ibid* paras 135 – 162, 196, 203, 230, 306, 414 & 415.

foreshadowed the Court's subsequent finding of a separate and autonomous breach of the essence of Article 21(1) of the Charter.¹⁹⁴

3.2.3. Identity, visibility and expression: Articles 7 (right to private life) and 11 (freedom of expression) of the Charter in light of Act 79

The Court's assessment of a violation of both the right to private life and the freedom of expression addresses the intimate aspects of seeking one's own identity and expression. The Court's view aligns with the Commission's arguments and Advocate General Ćapeta's opinion that 'private life' and 'freedom of expression' are broad notions.

Private life encompasses the physical, sexual and psychological integrity as well as the right for minors to personal development and self-determination.¹⁹⁵ Hungary thereby has a positive obligation to guarantee the effective respect for the right to sexual orientation and gender identity in both the personal and social sphere.¹⁹⁶

Freedom of expression entails not only the right to *receive* information for LGBTQ+ persons and even every citizen, but also the right of media services, advertising and educational providers to *disseminate* information.¹⁹⁷ The Court stresses that the freedom of expression, as a cornerstone of a democratic society, has been infringed upon in a multifaceted way.¹⁹⁸

When it comes to the consequences of the Hungarian Act 79, the Commission and AG Ćapeta have stressed the potential stigmatising effects of the Hungarian restrictions. Not only by removing any form of representation for LGBTQ+ persons, but also by conflating the risks of paedophiles with those of LGBTQ+ persons.¹⁹⁹ Ćapeta highlighted the broad negative effects of these Hungarian laws on the self-esteem, representation and feelings of identity and belonging of both minors and adults.²⁰⁰ The Court affirms the offensive and stigmatising effects of these restrictions and finds that, taken together, their discriminatory nature and their harmful

¹⁹⁴ *Commission v Hungary* (n 9) para 422.

¹⁹⁵ *Commission v Hungary* (n 9) paras 426 & 438; Opinion of AG Ćapeta (n 58) para 96.

¹⁹⁶ *Commission v Hungary* (n 9) paras 436 – 438.

¹⁹⁷ *Ibid* paras 449 – 451.

¹⁹⁸ *Ibid* para 460.

¹⁹⁹ *Ibid* para 429.

²⁰⁰ Opinion of AG Ćapeta (n 58) point 99.

effects on the identity, self-esteem and sense of belonging of LGBTQ+ persons amount to a particularly serious limitation of Article 7 and 11 of the Charter.²⁰¹

Following that conclusion, the Court assesses whether these restrictions on the right to private life and freedom of expression were necessary and proportionate in relation to Hungary's general objectives, such as the best interests of the child and the right of parents to education.²⁰² The Court recalls however that justifications cannot be directly discriminatory based on sex or sexual orientation and resumes its arguments under plea 1 to conclude that the restrictions on both rights are not justified.²⁰³

The Court's expansive understanding of private life and freedom of expression invites further reflection through the lens of Queer Legal Theory. Valdes has argued that QLT must transcend the formal and cramped conceptions of privacy that have historically been weaponised to silence, shame and marginalise sexual minorities as disfavoured identities.²⁰⁴ By construing private life in a manner that actively encourages visibility and free, non-discriminatory self-development and self-expression, the Court implicitly rejects that reductive, historical understanding. Rather than pushing sexual identities in a mere private sphere, the notion of private life in *Commission v Hungary* extends to what Valdes describes as the capacity to function on equal terms within social, economic and political spheres, irrespective of sexual orientation or gender identity.²⁰⁵

3.2.4. Human dignity beyond abstraction: recognising stigmatisation and exclusion (Article 1 Charter)

Central to the Court's reasoning is the notion of human dignity as a twofold concept: it is both an inviolable right in itself but also the foundation upon which all other fundamental rights rest.²⁰⁶ That foundational role led AG Pitruzzella to describe human dignity as the *Grundnorm*

²⁰¹ *Commission v Hungary* (n 9) paras 443 – 448, 471.

²⁰² *Ibid* paras 472.

²⁰³ *Ibid* paras 472 – 473.

²⁰⁴ Valdes (n 21) 370 – 371.

²⁰⁵ *Commission v Hungary* (n 9) para 440; Valdes (n 21) 370.

²⁰⁶ *Ibid* para 486.

(basic norm) of post-World War Two European constitutionalism, providing the guiding normative framework to interpret other primary norms and principles.²⁰⁷

Consequently, no restriction on a Charter right may undermine a person's dignity.²⁰⁸ The Court stresses once again the stigmatising and marginalising effect of Act 79, which conflates a ban on LGBTQ+ content with a ban on paedophilia.²⁰⁹ Together with the effect of "social invisibility" for the LGBTQ+ community, the Court concludes that Hungary has violated Article 1 of the Charter.²¹⁰

The significance of this reasoning lies in the Court's refusal to treat human dignity as a purely abstract concept. Instead, the Court repeatedly mentions the concrete social effects of stereotyping and stigmatisation.²¹¹ From a queer critical perspective, this explicit recognition by the Court deserves to be lauded. It namely reflects one of the eight strategies identified by Valdes within Queer Legal Theory: combatting stereotypes which devalue sexual minorities with the ultimate goal to realise sexual and gender dignity and freedom for every individual.²¹²

By exposing the cisheteronormative assumptions and preferences underlying Hungary's legislation, the Court deconstructs the stereotypes invoked to legitimise Act 79.²¹³ This also aligns with the Commission's rejection of Hungary's claim that the mere mention, representation or public discussion of LGBTQ+ content could harm children's development or vulnerable adults. Hungary failed to provide scientific evidence or convincing arguments to support that claim.²¹⁴ On the contrary, open public debate may, in the Commission's own words, contribute to social cohesion.²¹⁵ As Maine argues, dismantling such assumptions is an essential step toward equality and equity.²¹⁶

²⁰⁷ Case C-715/20 *KL v X sp z o.o.* EU:C:2023:281, Opinion of AG Pitruzzella, point 76; Opinion of AG Ćapeta (n 58) point 271.

²⁰⁸ *Commission v Hungary* (n 9) para 486.

²⁰⁹ *Ibid* paras 487 – 488.

²¹⁰ *Ibid* para 489.

²¹¹ *Commission v Hungary* (n 9) paras 487 – 488; See also *Ibid* paras 136, 443 – 447.

²¹² Valdes (n 19) 365.

²¹³ *Commission v Hungary* (n 9) para 136.

²¹⁴ *Ibid* paras 99 – 100.

²¹⁵ *Ibid*.

²¹⁶ Maine (n 16) 52.

3.2.5. From recognition to transformation? The added value and structural limits of Charter-based actions

Grounding the infringement action in the Charter allowed the Court to capture clearly the particular significance of the fundamental rights dimension underlying the technical infringements in plea 1, 2 and 3.²¹⁷ Unlike infringement actions confined to secondary law, Charter-based claims prevent a Member State from resorting to narrow and low effort compliance that leaves the substance of the issue intact.²¹⁸ Therefore, as Bonelli and Claes argue, this explicit Charter-based plea, in line with similar infringement precedents, is an important step towards solidifying the Charter pathway into a legally robust action.²¹⁹

However, the explicit mention of fundamental rights does not guarantee a transformative effect. Earlier Charter-based infringement actions have, in Bonelli's assessment, proven to be well-equipped to diagnose violations, but largely ineffective in bringing about any significant change.²²⁰

This limitation points to a deeper concern. If legal recognition does not translate into substantive changes in the lived reality of LGBTQ+ persons, the question arises for Bonelli whether infringement proceedings can do more than treat the symptoms of a structural problem.²²¹ Queer Legal Theory sharpens this critique: the risk is not merely one of ineffectiveness, but also of assimilation.²²²

The Court should thus be cautious not to absorb LGBTQ+ identities into an existing top-down normative non-discrimination framework without interrogating the cisheteronormative assumptions upon which that framework rests.²²³ Mere formal recognition of equality risks what QLT identifies as assimilation: the inclusion of marginalised identities into dominant legal structures on the condition that they conform to existing norms, leaving those norms themselves unchallenged.

²¹⁷ Case C-66/18, *Commission v Hungary* EU:C:2020:172, Opinion Advocate General Kokott point 180; Bonelli (n 150) 42.

²¹⁸ Bonelli (n 150) 42; Bonelli & Claes (n 136) 11.

²¹⁹ Bonelli & Claes (n 136) 11.

²²⁰ Bonelli (n 150) 44.

²²¹ *Ibid* 52.

²²² Bedmar (n 118) 20.

²²³ *Ibid*.

In this light, the Court's explicit engagement with stereotyping and stigmatisation in *Commission v Hungary* is a meaningful step in exposing Hungary's discriminatory framework foundations. Yet, Bonelli's concern equally serves as a reminder that a legal victory is not an end in itself.²²⁴ QLT invites precisely this kind of sustained critical reflection: not only whether the law recognises, but whether that recognition also disrupts or transforms the dominant framework. And if not, to reflect on what further steps a QLT implementation of a judgment demands.

3.3. Article 2 TEU as a separate ground

Even though the *Commission v Hungary* infringement action is firmly grounded in the Charter, its most novel dimension is ultimately values-based. For the first time in the Court's history, Article 2 TEU was treated as autonomously legally enforceable and was confronted with an alleged breach of that provision in its entirety, rather than of any individual value it contains.²²⁵

3.3.1. Values as legally enforceable: the road towards Article 2 TEU as a self-standing but flanked ground

It has already become clear that the European Union complements its economic objectives with a system of core values recognised and respected among the Member States of the "Union as a common legal order."²²⁶ The development of this value system throughout the years, under Article 2 TEU, is divided by Lorans into three phases. The first phase is characterised by the incorporation of values into primary law, initially as *principles* in the Treaty of Amsterdam, which became *values* under Article 2 TEU with the entry into force of the Treaty of Lisbon.²²⁷

Since Lisbon, Article 2 TEU stipulates: "*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*"²²⁸

²²⁴ Kapur (n 112) 139.

²²⁵ Rossi (n 163) 17.

²²⁶ Yann Lorans, 'La reconnaissance des normes de concrétisation des valeurs de l'union par la CJUE: vers une gouvernance des valeurs?' (2025) 61(2) *Cahiers de droit européen* 55, 57.

²²⁷ *Ibid* 57.

²²⁸ Article 2 TEU (n 10).

This Article entails the “set of common, interconnected, values on which the Union is founded” and represents the very DNA of the European integration project according to Rossi.²²⁹ It thereby carries foundational importance as it establishes the constitutional foundation of mutual trust between Member States and it indicates a clear and wide model of representative and participative democracies.²³⁰

During this first phase, uncertainty arose on the role and scope of these values.²³¹ More specifically, the question was whether these values carried normative force or if they were solely intended to express a certain ideal.²³²

In a second phase, these values were *mobilised* for the first time before the Court of Justice in the *Associação Sindical dos Juizes Portugueses* (hereinafter ‘*ASJP*’) judgment.²³³ This case partially answered the question on Article 2’s normative nature: the Court stated that rule of law, as an Article 2 TEU value, was given concrete expression through the primary law provision of Article 19 TEU on the independence of the judiciary.²³⁴

Lorans argues that, by linking Article 2 TEU to other primary EU law provisions, the Court has opened, but did not yet close, a third phase: the concretisation of Article 2 values.²³⁵ The term ‘concretisation’ carries different doctrinal meanings, but a workable definition for the present purposes is one offered by Jeanneney, who describes concretisation as “the normative act of applying an abstract and general norm to relatively more concrete and specific cases.”²³⁶

After the *ASJP* case, several Article 2 values have been invoked multiple times before the CJEU, but always in combination with other provisions that give concrete expression to these values.²³⁷ The Court repeats a similar logic in *Commission v Hungary* by declaring that some of the Charter provisions, such as the principle of human dignity (Article 1 Charter) and respect for equality between women and men (Article 20 Charter), give concrete expression to the

²²⁹ Opinion 2/13, EU:C:2014:2454, para 168; Rossi (n 163) 9 & 12.

²³⁰ Bonelli (n 150) 45; Rossi (n 163) 11.

²³¹ Lorans (n 226) 57.

²³² *Ibid* 57.

²³³ Case C-64/16 *Associação Sindical dos Juizes Portugueses v Tribunal de Contas* EU:C:2018:117 paras 30 & 32; *Ibid* 57.

²³⁴ *Associação Sindical dos Juizes Portugueses* (n 233) para 32.

²³⁵ Lorans (n 226) 57 – 58.

²³⁶ Julien Jeanneney, *Les lacunes constitutionnelles* (Dalloz; Collection Nouvelle bibliothèque de thèses volume 154 2016), 430.

²³⁷ Lorans (n 226) 58.

scope of the values enshrined in Article 2 TEU, which in turn require States to respect these binding obligations.²³⁸ However, the Court also clarifies that these more specific legally binding obligations cannot call into question the autonomous legally binding nature of Article 2 TEU itself.²³⁹ A point that will be extensively discussed below.

This third concretisation phase has given rise to considerable doctrinal debate, in which the role of Article 2 TEU and its limits have been discussed from divergent theoretical standpoints. Dubout, for instance, identifies a legal-philosophical paradox inherent in this third step. For him, Article 2 can only become enforceable at the very moment it is concretised. Without concretisation, its values fulfil no meaningful autonomous function. Yet, once they are specified through a more concrete norm, these values equally lose their independent utility, as that concrete norm becomes the operative legal basis. Here, Dubout argues that the inextricable link between the value and its concretising norm ultimately “devalues” the value itself.²⁴⁰

Lorans directs his criticism primarily at the Court’s methodology.²⁴¹ In his view, the Court fails to explain how it identifies which primary law provisions give concrete expression to which Article 2 TEU values. This makes it difficult to assess whether any given provision genuinely concretises a specific value or merely relates to it incidentally.²⁴² This methodological opacity has practical consequences because any attempt to systematise the Court’s approach quickly reveals internal inconsistencies in how the content of values is construed. In turn, broader disagreements arise among scholars and institutions as to what those values should entail.²⁴³

Bonelli, for his part, emphasises that Article 2 TEU has predominantly served as an interpretative device to support other legal claims but has not been at the centre of an infringement action itself.²⁴⁴ Rossi, by contrast, argues that Article 2 TEU has moved beyond a merely interpretative role: Article 2 TEU often appears in case law of the CJEU in connection

²³⁸ *Commission v Hungary* (n 9) paras 525 – 526.

²³⁹ *Ibid* para 527.

²⁴⁰ Edouard Dubout, ‘Peut-on défendre les valeurs de l’Union européenne par le droit?’ (2024) 80 *Revue des Droits et Libertés Fondamentaux* 1, 9.

²⁴¹ Lorans (n 226) 70 – 71.

²⁴² *Ibid* 63.

²⁴³ *Ibid* 63.

²⁴⁴ Bonelli (n 150) 46 – 48.

with, or flanked by, the Charter of Fundamental Rights but without mentioning the term concretisation.²⁴⁵

The question of concretisation thus crystallises into two distinct issues on which *Commission v Hungary* can bring clarity. The first is whether Article 2 TEU constitutes a self-standing and legally binding provision in its own right.²⁴⁶ The second is, even if Article 2 TEU is an autonomous legal provision, whether a breach of that provision can be established without first determining the substantive content of the values it enshrines. Both questions touch upon concretisation, yet they cover different legal matters.

3.3.2. The reasoning of the Court: formulation, context and history of origin

3.3.2.1. *Is Article 2 TEU legally enforceable in an autonomous way?*

The Court dedicates several paragraphs in the judgment to explain why Article 2 TEU carries autonomous legal enforceability in itself, without having to be invoked together with other EU primary norms that would concretise the substantive content of the values in question.²⁴⁷ It mainly relies on three arguments to do so.

The first rests on the formulation of Article 2 TEU itself. The provision sets out a compact but carefully delineated list of common founding values of the Union, which Member States must respect, maintain and promote as binding legal commitments.²⁴⁸

The second argument draws on the broader treaty context.²⁴⁹ Within the Treaty of the European Union, the preamble already references human rights, freedom, democracy, equality and the rule of law, thereby largely overlapping with those enumerated in Article 2 TEU. For the Court, the deliberate choice to enshrine these values a second time in the operative body of the Treaty, as a standalone provision, strongly suggests that the drafters intended it to produce binding effects.²⁵⁰ This reading is further reinforced by Article 49 TEU, which outlines that respect for Article 2 TEU is a pre-condition to become a Member State of the Union. It equally requires Member States to continue respecting Article 2 in post-accession times as they have freely and

²⁴⁵ Rossi (n 163) 15.

²⁴⁶ *Ibid* 20.

²⁴⁷ Lorans (n 226) 59.

²⁴⁸ *Commission v Hungary* (n 9) paras 529 – 530.

²⁴⁹ *Ibid* para 531.

²⁵⁰ *Ibid* para 532.

voluntarily subscribed to those values as a condition of membership.²⁵¹ As Rossi clarifies, Article 49 TEU and Article 2 TEU entail a non-regression principle, prohibiting Member States from adopting legislation that would bring about “a serious, persistent and systemic reduction” in the protection of Article 2 TEU values.²⁵²

The third and final argument relates to the preparatory works of Article 2 TEU, which the Court finds consistent with its textual and contextual analysis.²⁵³ Particularly significant is the shift in terminology introduced by the Treaty of Lisbon, which replaced *principles* with *values*. This deliberate change traces back to the draft version of a Constitutional Treaty of the EU Convention, whose drafters expressly stated that fundamental European values “must have a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom which are subject to sanction”.²⁵⁴

Based on these three converging arguments, the Court concludes that Article 2 TEU itself is legally enforceable in an autonomous way.

3.3.3. Has Article 2 TEU been breached by Hungary?

Having established the autonomous binding nature of Article 2 TEU, the Court turned to the question whether Hungary has actually breached it. Concretely, the Court was asked to assess whether the cumulative effect of Hungary’s violations of numerous secondary law provisions, together with Articles 1, 7, 11 and 21 of the Charter, amounts to a violation of Article 2 TEU itself.²⁵⁵

In doing so, the Court first clarifies the applicable threshold: only *manifest and particularly serious breaches* of one or more values shared by the Member States go against the very identity of the Union and give rise to a finding of non-compliance with Article 2 TEU.²⁵⁶ The judgment thus confirms that not every breach of a provision reflecting the values enshrined in Article 2 TEU reaches the threshold required for the finding of a breach of Article 2 TEU itself.²⁵⁷

²⁵¹ *Commission v Hungary* (n 9) para 533.

²⁵² Case C-896/19 *Repubblica v Il-Prim Ministru*, EU:C:2021:311, paras 63–64; Rossi (n 163) 5 – 6.

²⁵³ *Commission v Hungary* (n 9) para 535.

²⁵⁴ *Ibid*; Secretariat of the European Convention, Draft of Articles 1 to 16 of the Constitutional Treaty, Annex II to CONV 528/03 (Brussels, 6 February 2003) 11.

²⁵⁵ *Commission v Hungary* (n 9) paras 544 – 545.

²⁵⁶ *Ibid* para 551.

²⁵⁷ *Ibid* para 547.

It is worth noting that Advocate General Čapeta developed a specific threshold of her own. An approach that the Court neither explicitly adopted nor rejected. At the heart of her analysis lies a qualitative, rather than quantitative, conception of an Article 2 TEU breach. In her view, the decisive criterion is not the number or severity of fundamental rights violations, but rather whether those violations are rooted in a *negation of values*.²⁵⁸ Following this logic, individual, even blatant, numerous and generalised, breaches do not necessarily cross the threshold. Especially when such breaches arise from constitutional dialogue producing well-balanced outcomes at national and EU level, they do not negate the values of Article 2 TEU themselves.²⁵⁹ These breaches may, however, serve as significant indicators that the underlying cause is precisely such a negation of values.²⁶⁰

Turning to the application of the Court's standard, the Court agrees with AG Čapeta on the characterisation and impact of Hungary's Act 79. Both observe that Act 79 clearly rests on the assumption that LGBTQ+ content is inherently harmful to the physical, mental and moral development of minors.²⁶¹ This is the underlying premise of the coordinated series of discriminatory measures laid down in Act 79. The Court further finds that the contested legislation, which conflates LGBTQ+ persons and paedophiles, translates into deeply stigmatising and marginalising effects for LGBTQ+ persons and leads to their social invisibility.²⁶²

This finding resonates directly with the red lines identified by Čapeta: disrespect and marginalisation of individuals on the basis of their sexual orientation or gender identity undermine the core values of equality, human dignity and respect for human rights, as enshrined in Article 2 of the TEU.²⁶³ The Court therefore concludes that Act 79 constitutes a *manifest and particularly serious breach* of both the rights of non-cisgender and non-heterosexual persons and of those values enshrined in Article 2 TEU.²⁶⁴ The Court holds that Act 79 runs contrary to

²⁵⁸ Opinion of AG Čapeta (n 58), points 237 & 265.

²⁵⁹ *Ibid* point 248.

²⁶⁰ *Ibid* point 247.

²⁶¹ *Commission v Hungary* (n 9) para 553; *Ibid* point 258.

²⁶² *Ibid* paras 554 – 555.

²⁶³ Opinion of AG Čapeta (n 58) point 262.

²⁶⁴ *Commission v Hungary* (n 9) para 556.

the very identity of the Union, echoing Čapeta's opinion that negating the values of Article 2 affects not only the Member State internally but also the functioning of the Union as a whole.²⁶⁵

3.3.4. Article 2 TEU as autonomous, but how exactly?

The *Commission v Hungary* case raised two distinct questions on Article 2 TEU. First, whether Article 2 TEU constitutes a self-standing and legally binding provision.²⁶⁶ The Court has answered this question unequivocally by confirming that Article 2 TEU does not require the support of other EU primary law provisions in order to produce binding legal effects.

However, the Court also engaged with a second and more complex implicit question: even if Article 2 TEU is an autonomous legal provision, can a breach of that provision be established without first giving concrete expression to the values it enshrines? This question invites a more substantive reflection on how the enforcement of Article 2 TEU interacts with (without being dependent on) other provisions of EU law and the ongoing process of concretising the values contained therein.

The Court addresses this issue only in an implicit way. Instead of concretising individual values contained in Article 2 TEU, it relies on the *cumulation* of Hungary's violations of both the Charter and secondary law, the discriminatory nature of Act 79 and its stigmatising and marginalising effects to identify a *manifest and particularly serious* breach of Article 2 TEU.²⁶⁷ The judgment therefore suggests that the establishment of a breach of Article 2 TEU does not formally depend on the application of other provisions. Nevertheless, other breaches of EU law continue to play an important evidentiary and interpretative role, serving as indicators that a Member States' conduct has reached the level of a violation of the Union's foundational values.²⁶⁸

The Court's approach is therefore notable not only for what it says, but also for what it leaves unsaid. By refraining from extensively defining the individual values at issue, such as equality, human dignity and respect for human rights, the Court avoids fixing their meaning in a definitive manner. This restraint is not necessarily problematic but rather reflects a broader

²⁶⁵ *Commission v Hungary* (n 9) para 556; Opinion of AG Čapeta (n 58) point 242.

²⁶⁶ Rossi (n 163) 20.

²⁶⁷ *Commission v Hungary* (n 9) paras 554 – 555.

²⁶⁸ Opinion of AG Čapeta (n 58) point 247.

understanding in the doctrine that views those values as inherently dynamic and contestable concepts.

Dubout contends for example that the meaning of values is not static but shifts over time and cautions that any judicial interpretation of Article 2 TEU must remain attentive to evolving social realities and growing polarisation.²⁶⁹ AG Ćapeta appears to engage with a similar opinion by explicitly taking into account contemporary developments in the world and the socially sensitive nature of LGBTQ+ issues.²⁷⁰

This understanding also resonates with Queer Legal Theory, which conceives law as a site of contestation that can be dynamic, fluid and resistant to rigid categorisation.²⁷¹ From this perspective, the openness of Article 2 TEU is not a weakness but a strength, as it enables contextual, reflexive and evolving interpretations of the Union's foundational values.

Von Bogdandy and Spieker likewise argue that the undetermined and contested specific meaning of each value does not diminish their relevance but rather highlights it.²⁷² For Article 2 TEU to maintain its societal function, its values must remain open to diverse forms of concretisation and contestation. An overly rigid judicial definition would risk narrowing the space for debate, disagreement and constructive conflict.²⁷³

Yet, the Court's value-based reasoning is not without critics. The absence of a more explicit concretisation of the values at issue raises concerns regarding legal certainty. Nosrati and Tomaselli argue that the Court's approach creates a degree of ambiguity: while the red lines drawn by Article 2 TEU are presented as absolute, they remain inherently flexible and context dependent.²⁷⁴ Bonelli similarly observes that the values enshrined in Article 2 TEU remain formulated at a high level of abstraction, making it difficult for Member States to determine *ex ante* the precise contours of their obligations.²⁷⁵

²⁶⁹ Dubout, 'Peut-on défendre les valeurs de l'Union européenne par le droit?' (n 240) 15 – 16.

²⁷⁰ Opinion of AG Ćapeta (n 58) points 263 & 272.

²⁷¹ Maine (n 16) 41.

²⁷² Von Bogdandy & Spieker (n 163).

²⁷³ *Ibid.*

²⁷⁴ Nadin Nosrati & Davide Tomaselli, 'Whose Values? Rethinking the Use of Values in EU Law Through the CJEU's "Feminist" Asylum Cases' (*Verfblog* 16 June 2025) DOI: [10.59704/13a335ddac0c6dce](https://doi.org/10.59704/13a335ddac0c6dce) accessed 6 June 2026.

²⁷⁵ Bonelli (n 150) 51.

3.3.5. Heavy artillery, light methodological reasoning

These concerns on legal certainty could, in principle, be addressed through a clear and transparent methodological framework. Yet it is precisely such a framework that the Court, according to Kaiser, fails to provide.²⁷⁶

Although the Court identified a threshold of a *manifest and particularly serious* breach of Article 2 TEU, it provided only limited guidance on how that threshold should be applied, leaving key concepts such as “particularly serious” largely undefined. For Kaiser, this is a missed opportunity which results in a judgment that relies on “a doctrinal framework of considerable ambition, but insufficient precision”.²⁷⁷ Given the constitutional significance of recognising Article 2 TEU as an autonomous ground of infringement, she argues that the Court should have developed a more robust, foreseeable and transparent methodological framework rather than merely a general turn towards values.²⁷⁸ This criticism is not isolated but reflects a broader and recurring concern in the legal scholarship regarding the Court’s failure to articulate a systematic methodology to identify the substantive content of values.²⁷⁹

Other scholars view this indeterminacy as an advantage rather than a flaw. Von Bogdandy and Spieker argue that the combination of the relatively thin red lines drawn by the Court and a high threshold of a *manifest and particularly serious breaches with a stigmatising effect* strikes an appropriate balance. In their view, Article 2 TEU is capable of setting meaningful limits while leaving sufficient room for constitutional diversity and national identity among Member States.²⁸⁰ The Court’s limited elaboration of the values at stake may therefore not signal uncertainty, but rather judicial restraint.

Kaiser offers two other possible explanations for that restraint. First, the discriminatory nature of Hungary’s measures at issue may have been so evident that the Court saw little need to elaborate further on the content of the relevant values.²⁸¹ Second, a more pragmatic-institutional possibility is also plausible: given that the judgment was delivered by the Full Court, the concise

²⁷⁶ Lena Kaiser, ‘Heavy Artillery, Light Reasoning’ (*VerfBlog* 29 April 2026) DOI: [10.17176/20260429-173409-0](https://doi.org/10.17176/20260429-173409-0) accessed 22 May 2026.

²⁷⁷ *Ibid.*

²⁷⁸ Kaiser (n 276).

²⁷⁹ Lorans (n 226), 63.

²⁸⁰ Von Bogdandy & Spieker (n 163).

²⁸¹ Kaiser (n 276).

reasoning may reflect the need to reach consensus among a large number of judges, thereby narrowing the scope for more extensive elaboration in its reasoning.²⁸² Both explanations might be partly convincing, but do not justify the lack of methodological consistency.

3.3.6. Beyond Charter-based infringement actions: the added value of the separate invocation of Article 2 TEU

The finding of a separate infringement of Article 2 TEU has added value that goes beyond the protection offered by individual Charter rights or other provisions of EU law. At a symbolic and constitutional level, Article 2 TEU makes explicit that what is at stake is not merely a collection of technical infringements, but a challenge to the foundational values on which the Union is built.²⁸³

Following *Commission v Hungary*, however, Article 2 TEU is no longer confined to the symbolic function to define what is beyond disagreement within the European legal order.²⁸⁴ Von Bogdandy and Spieker argue that it has become an operational legal standard capable of addressing concrete threats to the European society.²⁸⁵ In this regard, Ácapeta puts forward that an infringement of Article 2 TEU performs a diagnostic function: it identifies the underlying structural causes of democratic and constitutional backsliding and recognises the denial of the Union's foundational values as a distinct legal wrong.²⁸⁶

This is precisely what distinguishes Article 2 TEU from Charter-based infringement actions. While the latter address individual breaches of EU law, Article 2 TEU allows the Court to identify the broader value-based dimension underlying those violations.²⁸⁷ It therefore fulfils the requirement, emphasised by the European Parliament, that the invocation of EU values should serve a purpose that goes beyond the protection already offered by the Charter.²⁸⁸

²⁸² Kaiser (n 276).

²⁸³ Bonelli & Claes (n 136) 10.

²⁸⁴ Von Bogdandy & Spieker (n 163).

²⁸⁵ *Ibid.*

²⁸⁶ Opinion of AG Ácapeta (n 58) point 230; Georgios Athanasiou, 'Rethinking Article 2 TEU AG Ácapeta's Opinion in the Context of Recent CJEU Case Law', (*Verfblog 20 June 2025*) DOI: [10.59704/1c52113141069436](https://doi.org/10.59704/1c52113141069436) accessed 12 May 2026.

²⁸⁷ Von Bogdandy & Spieker (n 163).

²⁸⁸ Walter Bruno, 'Three Questions to rule (on) them All: the full Court Hearing in the Case *Commission v. Hungary* on the Justiciability of EU Values against Member States (C-769/22)' (*EU Law Live* 25 November 2024) <<https://eulawlive.com/op-ed-three-questions-to-rule-on-them-all-the-full-court-hearing-in-the-case-commission-v-hungary-on-the-justiciability-of-eu-values-against-member-states-c-769-22/>> accessed 16 May 2026.

Advocate General Ćapeta describes this additional dimension as the elusive “something more” that characterises a breach of Article 2 TEU.²⁸⁹

The separate invocation of Article 2 TEU also carries institutional significance. It responds to the often-heard criticism that the Commission is too keen on compromising with backsliding governments, by focusing only on technical infringements of EU law.²⁹⁰ By formally recognising a violation of Article 2 TEU, the Court openly acknowledges that certain conduct threatens the foundations of the Union itself.

Finally, von Bogdandy and Spieker reject the view that conflict over European values necessarily reveals weakness in the Union. On the contrary, they argue that many of the most significant challenges within the EU, from the rule of law crisis and migration disputes to the Russian war of aggression, ultimately revolve around the values enshrined in Article 2 TEU. The articulation and resolution of such conflicts may therefore contribute to, rather than undermine, the development of a shared European political and constitutional community.²⁹¹ This standpoint will be further discussed in Chapter 4.

3.3.7. Beyond the Courtroom: the structural limits of an infringement action alone to protect Article 2 TEU values

Beyond the added value of Article 2 TEU demonstrated by *Commission v Hungary*, broader questions remain about the practical consequences of an Article 2 TEU claim and its relationship to infringement proceedings under Article 258 TFEU.

Bonelli seems rather sceptical. In his view, infringement actions are better suited to a narrow, bottom-up role of targeting concrete national measures that undermine EU values in order to slow down a backsliding process, rather than addressing its root causes.²⁹² A broad values-based infringement action alone cannot, he contends, deliver the structural change that constitutional backsliding demands.²⁹³ To be effective, Article 258 TFEU actions must be embedded within a multidimensional toolkit, combining monitoring, reporting, budget conditionality and political pressure (under Article 7 TEU), with an Article 2 TEU finding serving as an indicator feeding

²⁸⁹ Opinion of AG Ćapeta (n 58) point 274.

²⁹⁰ Bonelli & Claes (n 136) 10.

²⁹¹ Von Bogdandy & Spieker (n 163).

²⁹² Bonelli (n 150) 52.

²⁹³ *Ibid* 49.

into those parallel mechanisms.²⁹⁴ Equally important is the post-judgment phase: the Commission bears a continuing responsibility to monitor compliance and, where necessary, initiate proceedings for financial sanctions in case of non-compliance under Article 260 TFEU.²⁹⁵

This structural concern carries a direct human dimension. If Hungary's violations are so fundamental as to breach Article 2 TEU itself, LGBTQ+ persons remain exposed beyond the specific legislative domains contested in the proceedings, also after a withdrawal of that legislation.²⁹⁶ This resonates with the QLT critique that legal recognition is a necessary but insufficient condition for genuine equality.²⁹⁷

Huszka and Kubal illustrate this point concretely: among the five strategies they identify for LGBTQ+ communities in resisting illiberal governments, mobilising European courts is only one.²⁹⁸ A legal victory before the Court of Justice is therefore neither automatic nor self-executing. It depends on the sustained efforts of transnational and domestic actors who activate legal mechanisms through litigation, complaints and advocacy.²⁹⁹

The role of Forbidden Colours, a non-profit organisation for LGBTQ+ equality, in this case exemplifies that dynamic. In partnership with Reclaim and Háttér society, the organisation coordinated a crucial EU-wide petition campaign calling on Member States to condemn Act 79, ultimately persuading a sufficient number of hesitant governments to sign the petition and to support the Commission's decision to launch infringement proceedings.³⁰⁰ As Rémy Bonny, executive Director of Forbidden Colours, stated: "This case did not happen by accident. We built the pressure, we mobilised governments and we forced European institutions to act."³⁰¹ This is a reminder that *Commission v Hungary* did not emerge in a vacuum. Forbidden Colours,

²⁹⁴ Bonelli (n 150) 52; Von Bogdandy & Spieker (n 163).

²⁹⁵ Bonelli (n 150) 57.

²⁹⁶ Bruno (n 288).

²⁹⁷ Kapur (n 112) 139.

²⁹⁸ Beáta Huszka & Agnieszka Kubal, 'Resisting illiberal politics: mobilising European courts in defence of the rights of sexual minorities in Hungary and Romania' (2025) *Democratization* 1, 2.

²⁹⁹ *Ibid.*

³⁰⁰ Rémy Bonny, Esther Martínez, Vincent Reillon and Eszter Polgári. 'The Most Supported Human Rights Case in the History of the European Union: New Hope for LGBTQ+ in Hungary?' (*Heinrich Böll Stiftung* 27 July 2023) <<https://cz.boell.org/en/2023/07/27/most-supported-human-rights-case-history-european-union>> accessed 7 June 2026.

³⁰¹ 'EU Court Rules on Hungary's Anti-LGBTIQ+ Law: A Landmark Victory' (*Forbidden Colours*) ('A landmark victory') <<https://www.forbidden-colours.com/2026/04/21/pr-cjeu-hungary/>> accessed 7 June 2026.

from their part, will continue working with partners across Europe to ensure full implementation of the judgment.³⁰²

Ultimately, where Hungary's conduct negates the core values of the Union, an infringement action alone cannot fully capture the political dimension of the constitutional backsliding. Bonelli suggests that political, legislative and administrative change are required at national level to move forward, which cannot be achieved by a European court alone.³⁰³ In that respect, the electoral victory of Prime Minister Péter Magyar on 12 April 2026 is a remarkable and potentially significant development. Forbidden Colours describes the historical judgment as the first pro-EU opportunity for Magyar to move Hungary toward a genuine Article 2 compliant direction.³⁰⁴

3.3.8. Forward-looking concerns: legitimacy, instrumentalisation and the future of Article 2 TEU

The *Commission v Hungary* case is not, as described well by von Bogdandy and Spieker, an endpoint but it does mark a crucial leap. One that raises as many doubts, concerns and questions towards the future as it resolves.³⁰⁵

Bonelli wonders for example if there are there any other tools in the value-protection toolbox left to use, if Article 2 TEU fails to serve its purpose.³⁰⁶ Bonelli and Claes deepen this concern by questioning whether *Commission v Hungary* was the right test case for such a constitutionally significant step. Its politically sensitive nature made it a high-risk, potentially low-gain case, as the very controversy surrounding the case may place the Court's authority and legitimacy under strain, precisely at the moment it sought to assert them.³⁰⁷

Nosrati and Tomaselli put forward that value-based reasoning risks opening the door for values to be ideologically instrumentalised.³⁰⁸ In their opinion, values must be legally defined and procedurally constrained with legal precision, critical awareness and democratic reflection as indispensable safeguards.³⁰⁹ This concern has a forward-looking dimension that Lorans

³⁰² Forbidden Colours, A Landmark Victory (n 301).

³⁰³ Bonelli (n 150) 50.

³⁰⁴ Forbidden Colours, A Landmark Victory (n 301).

³⁰⁵ Von Bogdandy & Spieker (n 163).

³⁰⁶ Bonelli (n 150) 48 – 49.

³⁰⁷ Bonelli & Claes (n 136) 4 & 10.

³⁰⁸ Nosrati & Tomaselli (n 274).

³⁰⁹ *Ibid.*

articulates strongly: if the substantive meaning of Article 2 TEU values is determined unilaterally by judges without sufficient methodological constraints, what then happens if the composition of the Court changes or an exceptional political event reshapes the Court's landscape? The risk is ultimately that a provision designed to protect the Union's foundational values, becomes a flexible instrument available for any purpose, including for purposes its drafters never envisioned.³¹⁰

3.4. Interim conclusion

The diverse range of elements discussed in this chapter together allow to formulate an answer to the sub-research question: How did the Court address the Commission's pleas concerning secondary EU law, the Charter and Article 2 TEU, and what strengths and weaknesses does the recognition of Article 2 TEU as a separate ground of infringement raise?

The answer is layered by the structure of the Commission's pleas themselves, each built upon the one before it. On the first three pleas, the Court's reasoning on the AVMS Directive, the Electronic Commerce Directive and the Services Directive consistently relied on the same conclusion. Hungary's restrictions on minors' access to LGBTQ+ content could not be justified because of their inherently discriminatory nature on the grounds of sex and sexual orientation. These secondary law breaches were therefore not only technical but also intertwined with the Charter's commitment to equality and non-discrimination. They further served the instrumental function of bringing Hungary's conduct within the scope of EU law, which also triggered that Charter's applicability.

Building on that finding, the Court held that the same restrictions also breached the Charter rights to human dignity, private and family life, freedom of expression and information and non-discrimination. Several elements of this reasoning align with QLT strategies: especially the explicit naming of harmful stereotyping and the marginalising effect of Act 79, as well as a broader *queer* understanding of 'privacy' as encompassing personal development and self-expression under the Charter. Even though the Charter-based dimension does not guarantee automatic transformative change, it nonetheless carries significance by forcing Hungary to address the substance of its discriminatory legislation instead of solely having to comply with narrowly formulated technical requirements. The secondary law pleas and the Charter-based

³¹⁰ Lorans (n 226) 83 – 84.

plea thus reinforced one another and together they provide a clear answer to the first part of the sub-research question.

The second part of that question, on the strengths and weaknesses of Article 2 TEU as a separate ground, is answered by the combination of a historically novel outcome and a relatively limited methodology. On the basis of the provision's wording, its treaty context and preparatory history, the Court established that Article 2 TEU is a self-standing and legally binding provision. By applying the applicability threshold of a *manifest and particularly serious breach*, it concluded that the coordinated, stigmatising and marginalising character of Act 79 runs contrary to the very identity of the Union, and thus also to Article 2 TEU. This is of symbolic and institutional significance: it signals unequivocally that the Commission and the Court do not tolerate the negation of the Union's foundational values.

The strengths and weaknesses of this recognition are, however, two sides of the same coin. The Court's failure to elaborate on the applicability threshold or the substantive meaning of the values has been criticised as methodologically too light for a constitutionally significant outcome, generating legal uncertainty among Member States. Yet by not concretising the values of Article 2 TEU the Court engages with a queer legal sensibility to resist categorisation and leave room for contestation and re-interpretation. In other words, the price for that openness, contextual and reflexive interpretation of Article 2 TEU values is legal uncertainty and a risk of instrumentalisation.

Taken together, the Court addressed the Commission's pleas in a doctrinally coherent, but methodologically under-elaborated manner. What this chapter cannot fully answer is how these findings relate to the broader political context of European identity and values contestation. This is why Chapter 4 turns to situate *Commission v Hungary* within the wider political dynamics in which it was decided.

Chapter 4. The paradox of values enforcement: constitutional identity, political contestation and the remainders of EU LGBTQ+ Equality

While Chapter 3 demonstrated that *Commission v Hungary* constitutes a landmark judgment for the judicial enforcement of Article 2 TEU and the protection of LGBTQ+ equality, it also made clear that the ruling does not operate in a political vacuum. This raises the sub-research question for this chapter: what does *Commission v Hungary* reveal about the paradoxical effects of embedding LGBTQ+ equality in the identity of European society, both in terms of the political contestation it provokes and the representational limits it leaves unaddressed?

This chapter addresses that question through the examination of LGBTQ+ equality, European identity, constitutional identity and the paradoxical dynamics of values enforcement.

4.1. LGBTQ+ rights as a constitutive element in European identity

When discussing the role of LGBTQ+ rights in European society, there is one observation that both proponents and opponents of LGBTQ+ rights within the EU seem to agree on: LGBTQ+ rights have acquired a central role in the EU's set of core values.³¹¹ Whether this central role comes from a genuine constitutional commitment or rather from a strategic choice for identity construction is a question this chapter deals with. One that, when attempting to answer it, can offer a more comprehensive understanding of *Commission v Hungary*. This section starts by exploring that question through Eigenmann's contribution but diversifies the analysis with other views and insights along the way.

4.1.1. Historical trajectory: marginal inclusion to tipping point

Understanding how the centrality of LGBTQ+ rights emerged in EU discourse, requires a brief historical reconstruction. The discussion of legal developments of LGBTQ+ rights in Chapter 2 already revealed the initial economic nature of the EU as a project up until the 1990s, lacking any competences on, or mention of, social policy and human rights, let alone LGBTQ+ rights.³¹²

The end of the Cold War marked a significant turning point. The prospect of eastward enlargement of the EU led, as Eigenmann explains, to an introspective pressure for the EU to articulate a more coherent set of European values around which a larger and more diverse Union

³¹¹ Eigenmann (n 2) 95 – 96.

³¹² See text to n 70.

could unite.³¹³ This resulted in a union with the core values of human rights, equality and human dignity.³¹⁴ The legislative developments that followed, including the Treaty of Amsterdam and non-discrimination legislation discussed in Chapter 2, institutionalised a (initially marginal) role for sexual orientation within that framework.³¹⁵

Ayoub and Paternotte remark here that this institutionalisation of ‘sexual orientation’ was not the mere product of a pre-existing political consensus among Member States. Instead, it mainly resulted from the sustained pressure and strategic framing of LGBTQ+ demands in the language of European integration, two popular strategies also employed within QLT.³¹⁶ In other words, the authors acknowledge that the LGBTQ+ community was a driving force behind the legislative developments set out in Chapter 2. An observation that is largely absent in Eigenmann’s analysis.

After these first achievements on LGBTQ+ rights, the 2010s brought what Eigenmann characterises as a tipping point, describing a shift in the EU from norm emergence towards norm acceptance of LGBTQ+ equality.³¹⁷ Not only did EU institutional actors increasingly initiate symbolic LGBTQ+ actions through campaigns, speeches and support, but policy documents also started to be dedicated exclusively to SOGI-grounds. They became a standalone issue on the EU agenda and EU high officials and institutions as a whole started to demonstrate solidarity for LGBTQ+ rights as “core values” of the European Union.³¹⁸

4.1.2. Crises and contestedness as drivers of visibility?

By relying on this historical trajectory, Eigenmann puts forward her analytically most interesting, and simultaneously most contested, observation. She argues that the increased visibility of LGBTQ+ rights within EU policies, actions and statements does not only follow from genuine norm acceptance, but rather from its growing contestedness emerging from the

³¹³ Eigenmann (n 2) 99.

³¹⁴ *Ibid.*

³¹⁵ *Ibid.*; Lucrecia Rubio Grundell, ‘Queer Theory, sex work and the European Union: on the constitutive exclusion of sex work from the European Union’s lesbian, gay, bisexual, transgender and intersexual policies (2024) 8(1) European Journal of Politics and Gender 129, 130; See text to n 90 – 91.

³¹⁶ Phillip M. Ayoub & David Paternotte, ‘LGBT Activism and the Making of Europe. A Rainbow Europe?’ (2014) *Gender and Politics* 1, 13; Huszka & Kubal (n 298) 15.

³¹⁷ Eigenmann (n 2) 103.

³¹⁸ *Ibid* 101 – 103.

political context.³¹⁹ In *Commission v Hungary*, this is a context of right-wing nationalism, where Euroscepticism and homophobic discourses became increasingly intertwined.³²⁰ In response to this internal EU crisis, the EU has employed what Eigenmann describes as an introspective strategy. In this view, expressing LGBTQ+ rights as belonging to the core values of the Union is not only the result of the popularity of the LGBTQ+ rights norm itself, but also serves to make the EU a more coherent project.³²¹

Eigenmann points out pertinent observations and concerns and adequately takes into account the rising anti-LGBTQ+ political context, but her analysis also entails some limits. She frames LGBTQ+ rights as a mere strategical and conscious move by the EU in identity construction, which risks overshadowing the EU's genuine LGBTQ+ commitment. Ayoub and Paternotte sharply remark that positive SOGI-developments, even when resulting from strategic efforts, can produce and consolidate norms and genuinely shift political expectations.³²² The further sections will put forward other insights from different angles.

4.1.3. A singular collective in which pluralism prevails

The judgment *Commission v Hungary* does not only carry legal significance, as set out in Chapter 3. Read in light of Eigenmann's identity construction process, the judgment can also be interpreted as affirming a specific vision of the European society. This section therefore applies insights from political and constitutional theory to examine how LGBTQ+ equality functions as a marker of "Europeanness" in that judgment.³²³

The Court's own jurisprudence confirms such a reading. Already in the *twin conditionality judgments* (2022), it recognised for the first time that the values contained in Article 2 TEU define the very *identity* of the EU.³²⁴ The Court substantiated that these Article 2 TEU values

³¹⁹ Eigenmann (n 2) 110 – 111.

³²⁰ *Ibid* 97.

³²¹ *Ibid* 111.

³²² Ayoub & Paternotte (n 316) 12 – 13.

³²³ *Commission v Hungary* (n 9) para 556; Eigenmann (n 2) 110; Breiding (n 15) 1461.

³²⁴ Case C-156/21 *Hungary v Parliament and Council* EU:C:2022:97, para 127; Case C-157/21 *Poland v Parliament and Council* EU:C:2022:98, para 145; Koen Lenaerts & José A Gutiérrez-Fons, 'High Hopes: Autonomy and the Identity of the EU' (2023) 8(3) *European Paper* 1495, 1498.

have been identified bottom-up as shared by the Member States.³²⁵ Lenaerts and Gutiérrez-Fons interpret this as the Court intending to create a sense of belonging to a community of values.³²⁶

What is novel in *Commission v Hungary*, then, is not the link between Article 2 TEU and the Union's identity as such, but the explicit invocation of *a society (in which pluralism prevails)* underpinning that identity.³²⁷ Von Bogdandy and Spieker interpret this finding by the Court as recognising the EU as a "singular collective" and find this a convincing novelty considering the maturity of a 70 year during EU integration process of considerable depth and breadth.³²⁸ For Dubout identifying a breach of Article 2 TEU also normatively reinforces LGBTQ+ protection as a "non-negotiable" constitutional core of the "European society to be defended".³²⁹

These contributions show that the judgment is not only a landmark ruling in recognising the judicial enforceability of Article 2 TEU and in identifying a breach thereof. Beyond that, the judgment puts forward the existence of a European identity. These judgment's novelties strengthen constitutional clarity on LGBTQ+ rights as belonging to the core of the European project. However, it carries along a possible counter-effect: if LGBTQ+ equality is presented as an integral part of European identity, its rejection also constitutes the rejection of European identity itself. This framing thereby risks deepening the divide it seeks to overcome.³³⁰

4.2. The autoimmune paradox of values enforcement

The following sections will elaborate on this counter-effect. First, the framework of Global Queer Agonism (hereinafter 'GQA'), a sub stream of Queer Legal Theory, will be explained and applied to that paradoxical dynamic. The theory sheds light on Hungary's use of constitutional identity as a shield against European values and how this defence strategy is rejected by the Court of Justice. The chapter concludes with a GQA-specific concept 'queer remainders' to critically reveal how an EU LGBTQ+ friendly collective identity is itself incomplete and leaves certain persons and experiences unrecognised. These insights help

³²⁵ Lenaerts & Gutiérrez-Fons (n 324) 1498.

³²⁶ *Ibid* 1498 – 1499.

³²⁷ *Commission v Hungary* (n 9) para 551; Von Bogdandy & Spieker (n 163).

³²⁸ *Commission v Hungary* (n 9) para 556; Von Bogdandy & Spieker (n 163).

³²⁹ Dubout (n 92) 1193.

³³⁰ Breiding (n 15) 1460 – 1461.

recommend EU institutional actors to continue engaging with insider perspectives in order to strive towards genuine LGBTQ+ equality.

4.2.1. The analytical framework of Global Queer Agonism

When reading *Commission v Hungary* in light of its political context of heightened dissensus over the liberal democratic system, an analysis that explains the promotion and enforcement of values in light of their own contestation can bring along new insights.³³¹ Global Queer Agonism, developed by Breiding, offers a normative and empirical framework that facilitates such an analysis and combines insights and methods from two different theoretical strands.³³²

The first is agonistic political theory, which embraces a fundamental scepticism towards unity, consensus and normalisation. It views respectful disagreement and contestation, including over the Union's fundamental values, as an inherent feature of democracy that can strengthen and deepen relations of equality.³³³ Following this logic, the EU's core values should be viewed as essentially contested instead of fixed.³³⁴ Mouffe cautions, however, that the we/them divide (*in casu* LGBTQ+ friendly 'we' and an anti-LGBTQ+ 'them') can shift towards a friend/enemy divide when 'them' start negating the 'we' identity.³³⁵ The main consequence is that those perceived as the enemy resist this position, not by rejecting this we/them distinction but instead by reproducing, instrumentalising and weaponising it for their own gain.³³⁶

The second stream is the, by now often-applied, queer theory, which shares the agonism's critique of essentialisation and normalisation, but approaches it differently. Agonism views dissensus as a prerequisite to lead to meaningful socio-political change and to renew commitment towards deeper equality.³³⁷ Queer theory on the other hand contends that essentialisation ignores and undermines the lived realities of being queer and instead reinforces the dominant cisheteronormative framework.³³⁸ Precisely because agonism and queer theory

³³¹ Breiding (n 15) 1460.

³³² *Ibid* 1460 & 1464.

³³³ *Ibid* 1463 – 1464; Mary F. Scudder & Stephen K White, *The Two Faces of Democracy: Decentering Agonism and Deliberation* (Oxford University Press 2023), 74.

³³⁴ See also text to n 271.

³³⁵ Chantal Mouffe, *The Return of the Political* (Verso 1993), 2 – 3.

³³⁶ *Ibid*; Breiding (n 15) 1465.

³³⁷ Paulina Tambakaki, 'Agonism Reloaded: Potentia, Renewal and Radical Democracy' (2017) 15(4) *Political Studies Review* 577, 583.

³³⁸ Maine (n 16) 49; Cannoot et al. (n 19) 39.

are not identical, their combination in Global Queer Agonism produces distinctive analytical insights.

Another important distinction can be drawn between Breiding's framework and the analysis offered by Eigenmann in the previous section.³³⁹ Eigenmann mainly focuses on pro-LGBTQ+ efforts as being a deliberate and conscious political strategy by the EU, employed as an opportunity to create more internal coherence.³⁴⁰ Breiding, by contrast, is less concerned with intentionality and more with structural paradoxical dynamics of pro-LGBTQ+ initiatives. The increased visibility of LGBTQ+ equality namely creates a counterreaction, whereby the rejection of LGBTQ+ rights is instrumentalised and appropriated as a logical strategy to increase an anti-European sentiment.³⁴¹

4.2.2. The paradox applied: how *Commission v Hungary* co-constitutes dissensus

The central claim of Global Queer Agonism is what Breiding describes as the “paradox of sexual integration”, which means that the EU's promotion and enforcement of LGBTQ+ equality partially shapes and makes possible the anti-LGBTQ+ resentment it otherwise seeks to combat.³⁴² This happens as follows: the EU presents LGBTQ+ equality as a consensus, shared among all true Europeans. This consensus is used to legitimise LGBTQ+ inclusion in the Union's core values.³⁴³ In *Commission v Hungary*, the Commission gave concrete expression to this logic by arguing that the stigmatisation of LGBTQ+ persons is incompatible with the values that are “an integral part of the very identity of the Union as a common legal order”.³⁴⁴

However, this mechanism generates resistance among those who do not accept that consensus and as a counterreaction start contesting the EU's interpretations of “the meaning of Europe”

³³⁹ See section 4.1.2.

³⁴⁰ Eigenmann (n 2) 97.

³⁴¹ Philip M. Ayoub & Kristina Stoeckl, ‘The Double-Helix Entanglements of Transnational Advocacy: Moral Conservative Resistance to LGBTI Rights’ (2023) 50(2) *Review of International Studies* 289, 299; Breiding (n 15) 1461.

³⁴² Breiding (n 15) 1467.

³⁴³ *Ibid* 1463 – 1465 & 1469.

³⁴⁴ *Commission v Hungary* (n 9) paras 496 & 499.

and “the EU’s fundamental values”.³⁴⁵ The portrayal of a consensus that LGBTQ+ friendliness is a marker for Europeanness thus creates auto-immune disagreement and contestation.³⁴⁶

Applied to the context of *Commission v Hungary*, this dynamic becomes visible through Mos’ analysis.³⁴⁷ First, Orbán’s government put forward that it is fully compliant with the fundamental rights and invokes the protection of minors and the rights for parents to educate their children conform their convictions, to counter the Commission’s pleas.³⁴⁸ It additionally claims that Hungary’s Act 79 relies on the principle of subsidiarity and national identity.³⁴⁹

Second, where Hungary recognises that it derogated from the EU’s interpretation on its core values, it strategically legitimised an alternative interpretation.³⁵⁰ It did so by presenting itself as the true guardian of EU values, tasked with the protection of the European project from what Brussels allegedly imposed.³⁵¹ Rather than rejecting EU values as such, it strategically exploited the ambiguity of these open and contestable values to advance an alternative interpretation grounded in traditional, Christian norms.³⁵² In *Commission v Hungary*, this alternative interpretation is reflected in Hungary’s argument of the Member State’s margin of assessment regarding the level of protection of fundamental interests of society.³⁵³ As Mos puts forward, this nuances Orbán’s Euroscepticism, as he positions himself not as anti-European, but as the defender of a different, allegedly more authentic, understanding of European values.³⁵⁴

4.2.3. Legitimation strategies and constitutional identity

Hungary’s alternative interpretation of EU values in *Commission v Hungary* was translated into a legal argument of protecting its national identity under Article 4(2) TEU.³⁵⁵ While that provision is intended to protect and respect the constitutional diversity of Member States,

³⁴⁵ Breiding (n 15) 1464.

³⁴⁶ *Ibid* 1464 & 1467.

³⁴⁷ Martijn Mos, ‘Ambiguity and interpretive politics in the crisis of European values: evidence from Hungary’, (2020) 36(2) East European Politics 267 – 287.

³⁴⁸ *Commission v Hungary* (n 9) paras 115, 119 – 121, 215, 301 & 516.

³⁴⁹ *Ibid* paras 111 & 516; Mos (n 347) 276 – 277; See section 4.2.3. for discussion of national identity argument.

³⁵⁰ Mos (n 347) 279; Breiding (n 15) 1461.

³⁵¹ Mos (n 347) 279.

³⁵² Mos (n 347), 273 – 279; Breiding (n 15) 1465.

³⁵³ *Commission v Hungary* (n 9), paras 119 & 516; Mos (n 347) 268.

³⁵⁴ Daniel R Kelemen & Laurent Pech, ‘The Uses and Abuses of Constitutional Pluralism: Undermining the Rule of Law in Name of Constitutional Identity in Hungary and Poland’ (2019) 21 Cambridge Yearbook of European Legal Studies 59, 65; Mos (n 347) 280.

³⁵⁵ *Commission v Hungary* (n 9) para 516.

Kelemen and Pech argue that it is a provision prone to abuse.³⁵⁶ In *Commission v Hungary*, Hungary relied on its constitutional identity to argue that its rejection of LGBTQ+ equality did not constitute a breach of EU law but rather protected that identity.³⁵⁷

The Court rejected this argument coherently.³⁵⁸ Consistent with its earlier case law, it reaffirmed that Member States retain discretion in defining their constitutional identity, but only within the limits imposed by a minimum common understanding of the founding values of the Union.³⁵⁹ Article 4(2) TEU cannot be interpreted in a manner that undermines Article 2 TEU. Otherwise, the latter provision would be hollowed out.³⁶⁰ As Halmai argues, Hungary's promotion of constitutional identity in *Commission v Hungary* ignores that constitutional discipline required by the European Union as a common legal order.³⁶¹

Commission v Hungary therefore illustrates the Court's central role in defining the boundaries of national identity claims and preventing the abuse of this argument.³⁶² Nevertheless, the Court's reasoning has been criticised for failing to engage more explicitly with the balancing exercise required under Article 4(2) TEU according to Athanasiou.³⁶³ He argues that a proportionality test between the national measure and Hungary's identity would have strengthened the judgment's legitimacy, even though the outcome would likely have remained unchanged.³⁶⁴

More broadly, the political effects of the judgment remain uncertain. While it constitutes a significant legal victory that confirms the constitutional importance of LGBTQ+ equality under Article 2 TEU, it may simultaneously provide Hungary with a more powerful tool, namely the narrative that a particular and contested vision of European identity is imposed on unwilling

³⁵⁶ Article 4(2) TEU; Kelemen & Pech (n 354), 61 – 62; Lenaerts & Gutiérrez-Fons (n 324), 1505.

³⁵⁷ Kelemen & Pech (n 354), 64.

³⁵⁸ *Commission v Hungary* (n 9) para 562; Kaiser (n 276).

³⁵⁹ Case C-156/21 *Hungary v Parliament and Council* EU:C:2022:97, paras 233 – 234; Case C-448/23, *Commission v Poland* EU:C:2025:975, para 180; Von Bogdandy & Spieker (n 163).

³⁶⁰ Kaiser (n 276).

³⁶¹ Gábor Halmai, 'Abuse of Constitutional Identity. The Hungarian Constitutional Court on Interpretation of Article E) (2) of the Fundamental Law' (2018) 43(1) *Review of Central and East European Law* 23, 41

³⁶² Kelemen & Pech (n 354) 73.

³⁶³ Georgios Athanasiou, 'When values eclipse identity: *Commission v Hungary* (Values of the Union) and the Unfinished Balancing of Articles 2 and 4(2) TEU' (*European Law Blog* May 2026)

<<https://www.europeanlawblog.eu/pub/mfszyfya/release/2>> ('when values eclipse identity') accessed 9 June 2026.

³⁶⁴ Athanasiou, 'when values eclipse identity' (n 363).

Member States.³⁶⁵ The ruling thus confirms Kapur's warning that legal victories should not be viewed as an end in themselves.³⁶⁶ Although the judgment resolves a legal dispute, it may also intensify the political contestation surrounding the values it seeks to protect.

4.2.4. Queer Reminders: the limits of the EU's protection for the queer community

The previous sections examined how LGBTQ+ rights enforcement can paradoxically fuel anti-LGBTQ+ resistance, and how this counter effect manifested itself in Hungary's legal arguments. This section introduces a further GQA concept, namely 'remainders', to pose a different question: who is adequately represented and protected by the EU's LGBTQ+ policies and legislation? Doing so brings certain shortcomings to light, on the basis of which subtle recommendations for EU institutional actors are formulated.

4.2.4.1. The concept of (queer) remainders

Remainders are, in Honig's and Connolly's interpretation, the inevitable consequence of consolidating any social identity or any settled understanding of justice.³⁶⁷ Applied to LGBTQ+ politics, remainders refer to those experiences and identities falling in between the dominant understanding of the LGBTQ+ consensus.³⁶⁸ Breiding employs this concept, what he calls 'queer remainders', to examine to what extent the EU's own understanding of the content of LGBTQ+ equality is itself partial and incomplete and represents other interpretations of what it could mean and entail for it to be *queer*.³⁶⁹

Two mechanisms typically conceal these remainders. The first is the presentation of EU legislation and policies as fully inclusive towards all possible sexual and gender minorities, while some groups are, or have historically been, left out.³⁷⁰ Debusscher and Maes illustrate this mechanism empirically. The Commission's 'Union of Equality' agenda, which covers a wide range of equality policy documents and strategies, explicitly claims to represent intersectional experiences of gender alongside other personal characteristics and identities, such

³⁶⁵ Breiding (n 15) 1470 – 1471; Athanasiou (n 363).

³⁶⁶ Kapur (n 112) 139.

³⁶⁷ William E Connolly, (1995) *The Ethos of Pluralization*. (Minneapolis: University of Minnesota Press 1995), 89; Bonnie Honig, 'Political theory and its futures' (2021) 4 *Raisons Politiques* 89, 89.

³⁶⁸ Breiding (n 15) 1465.

³⁶⁹ *Ibid* 1466 & 1472 – 1474.

³⁷⁰ *Ibid* 1472.

as LGBTQ+ grounds, race, ethnic origin and disability.³⁷¹ Although this would be lauded from QLT perspective, the Commission compartmentalised this agenda into separate strategies, siloing intersectionally marginalised groups and thereby failing to adequately recognise and represent their experiences.³⁷²

The second concealing mechanism is extending meaningful protection primarily to the “good queers”: those being respectable, productive, monogamous and integrated.³⁷³ This closely tracks Duggan’s concept of homonormativity, explained by Stryker as a politics of alliance and affinity in which gender-normative members of the LGBTQ+ community are securely privileged.³⁷⁴ It echoes Stoppioni’s insights on the Coman judgment from Chapter 2, which similarly revealed how the Court of Justice has tended to privilege those LGBTQ+ individuals who conform to societal norms and expectations.³⁷⁵

Rubio Grundell offers a concrete illustration of this second mechanism. She identifies sex workers as a queer remainder of the EU’s LGBTQ+ framework. Sex work can be understood as queer in the sense of being subversive to dominant norms surrounding gender and sexuality.³⁷⁶ Yet sex work, perceived as public, practised, commercial and fundamentally unfree, does not fit the new sexual respectability that the EU LGBTQ+ policy constructs for itself, and is excluded from it precisely on that basis.³⁷⁷

Identifying those often-disguised remainders does not aim to deny the genuine longing of sexual and gender minorities for legal, political and social inclusion, nor does it want to discredit pro-LGBTQ+ actors who invoke “European values” to advance real improvements.³⁷⁸ The point is rather that articulating any collective identity inevitably produces exclusions, and an LGBTQ+

³⁷¹ European Commission ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Union of Equality: Gender Equality Strategy 2020 – 2025.’ (Brussels, 5 March 2020) Doc 2020/152, 2; Petra Debusscher & Eva Luna Maes, ‘The European Union-Intersectionality Framework: Unpacking Intersectionality in the ‘Union of Equality’ Agenda’ (2025) 23(1) *Political Studies Review* 276, 287.

³⁷² Equinox, ‘Towards Gender Justice: Rethinking EU Gender Equality Policy from an Intersectional Perspective.’ (Brussels May 2021), 12; Debusscher & Maes (n 371) 287.

³⁷³ Breiding (n 15) 1472.

³⁷⁴ Duggan (n 86) 179; Susan Stryker, ‘Transgender History, Homonormativity and Disciplinarity’ (2008) 100 *Radical History Review* 145, 147.

³⁷⁵ See text to n 110.

³⁷⁶ Nicolas Smith, Mary Laing & Katy Pilcher, ‘Being, thinking and doing ‘queer’ in debates about commercial sex’, in Nicolas Smith, Mary Laing and Katy Pilcher (eds) *Queer Sex Work* (Routledge 2015) 1, 2.

³⁷⁷ Rubio Grundell (n 315) 130 – 132.

³⁷⁸ Breiding (n 15) 1473 – 1474.

friendly identity is no exception to that rule.³⁷⁹ Queerness, as Edelman argues, remains a permanent site of contest: each expansion of recognition and protection to a wider range of sexual and gender minorities simply shifts the figural burden of *queerness* onto those not yet included.³⁸⁰

Next, the insights produced by this concept of remainders can be used for normative reflection and the reinforcement of legitimacy of the EU's LGBTQ+ policies and equality.³⁸¹ Especially in the follow-up phase of *Commission v Hungary*, remainders support the call to identify whose demands and experiences are not (yet) being recognised in the current EU LGBTQ+ policy.³⁸²

In order to operationalise a more diverse and reflexive form of LGBTQ+ equality, some insights can be borrowed from the critical EU-intersectional framework developed by Debusscher and Maes.³⁸³ This is a welcome move from a QLT perspective which invites to interrogate whose experiences are not yet adequately captured in *Commission v Hungary* and the EU legislation and policies the judgment relies on. The framework offers some overlapping and interlocking intersectional elements, *inter alia* 'relationality' and 'diverse knowledges', which are well suited to offer guidance towards a more comprehensive implementation of *Commission v Hungary*.

Relationality necessitates EU actors to complement a focus on the marginalised and oppressed targeted by Act 79 with an equal effort to expose and challenge the existing privileges of those that do fit the heterosexual matrix.³⁸⁴ This relationality means that the EU must encourage the privileged sexual and gender majority to feel responsible in the process of contributing to more LGBTQ+ equality.³⁸⁵

The element diverse knowledges invites to go beyond identifying relationality by following up with the inclusion of (civil society) voices and diverse knowledges of those typically unheard and most impacted by Hungary's Act 79.³⁸⁶ *Commission v Hungary* is a crucial and historical

³⁷⁹ Breiding (n 15) 1471.

³⁸⁰ Lee Edelman, *No Future: Queer Theory and the Death Drive*, (Duke University Press 2004), 27.

³⁸¹ Breiding (n 15) 1461 – 1462, 1463 & 1466.

³⁸² Breiding (n 15) 1473 – 1474.

³⁸³ Debusscher & Maes (n 371) 281 – 282.

³⁸⁴ *Commission v Hungary* (n 9) paras 487 – 488; Butler (n 27) 208 (note 6); Debusscher & Maes (n 371), 284.

³⁸⁵ Debusscher & Maes (n 371) 284.

³⁸⁶ *Ibid* 285.

step, and simultaneously an opportunity to include as many diverse perspectives from the very wide range of sexual and gender minorities as possible.³⁸⁷

These insights derived from the concept queer remainders can thus encourage EU institutional actors to treat *Commission v Hungary* not simply as a legal victory, but as a call to engage critically and reflectively with the broader political context, in pursuit of the most inclusive and representative LGBTQ+ policy as possible. This also implies accepting that responsibility for implementing the judgment does not rest with Hungary alone, but that EU institutional actors can themselves initiate further, connected (queering) efforts to drive effective LGBTQ+ change.³⁸⁸

4.3. Interim conclusion

This chapter examined *Commission v Hungary* beyond its immediate legal significance and situated the judgment within the broader political and constitutional dynamics surrounding LGBTQ+ equality in the European Union. This helped to answer the sub-research question: What does *Commission v Hungary* reveal about the paradoxical effects of embedding LGBTQ+ equality in the identity of European society, both in terms of the political contestation it provokes and the representational limits it leaves unaddressed?

Through the lens of Global Queer Agonism, the chapter revealed how the judgment illustrates the paradox of sexual integration: the Court firmly confirmed that LGBTQ+ equality forms part of the constitutional identity of the Union and simultaneously reinforces this European identity. Yet this confirmation also fuels the narrative that a contested vision of European identity is imposed on unwilling Member States, which becomes an obstacle to the equality the EU pursues. This anti-LGBTQ+ resentment is expressed in *Commission v Hungary* through Hungary's national identity defence. These insights speak directly to the part of the main research question of whether the ruling advances LGBTQ+ equality: it does, but simultaneously intensifies the political contestation surrounding the very values and identity it enforces.

The chapter's attention to queer remainders added a final and critical layer to that answer. Any articulation of a collective identity, including the EU's own identity as a LGBTQ+ rights-protecting community, inevitably produces exclusions. *Commission v Hungary* thus advances

³⁸⁷ Debusscher & Maes (n 371) 286 & 290.

³⁸⁸ Article 260(1) TFEU.

LGBTQ+ equality for those it sees but leaves unfinished the work of seeing those it does not yet reach.

In strictly legal terms, the implementation of the judgment primarily requires the Commission, under Article 260 TFEU, to monitor whether Hungary complies with its obligations and, where necessary, to ask the Court to proceed with financial penalties.³⁸⁹ Recent political developments under Magyar may offer cautious grounds for compliance-optimism if his government contributes to weakening the resistance narrative that has been characteristic of the Orbán era.

At the same time, the insights developed throughout this chapter suggest that broader implementation should go beyond legal enforcement alone. The judgment also creates an opportunity for EU institutional actors to engage critically with the broader political dynamics surrounding LGBTQ+ equality and to address the representational gaps the chapter identified. The framework of Global Queer Agonism highlights the importance of reflexivity, awareness on dissent and attention to under-represented queer experiences.

Overall, *Commission v Hungary* should be understood not only as a legal victory, but also as the starting point of a broader process through which the EU can continue to strengthen the legitimacy, inclusiveness and effectiveness of its commitment to LGBTQ+ equality.

³⁸⁹ Article 260(2) TFEU.

Conclusion

This thesis examined *Commission v Hungary* C-769/22 through the central research question: *To what extent does the ruling advance, or fail to advance, LGBTQ+ equality in the EU and what does the Court's chosen legal pathway reveal about the deeper constitutional tensions within the EU?* Answering this question required situating the case along three lines of inquiry, each addressed in a separate chapter and each contributing a distinct layer to the overall question.

Taken together, these three chapters allow for a substantiated answer to the central research question. The ruling builds upon earlier LGBTQ+ protective jurisprudence and advances LGBTQ+ equality in real and significant ways. It namely renders Article 2 TEU judicially enforceable for the first time, names the discriminatory and stigmatising character of Hungary's legislation and recognises the strong fundamental rights dimension of this case. The identification of a breach of Article 2 TEU by Hungary is of symbolic, operational and institutional significance and it establishes that LGBTQ+ rights are not a peripheral concern but sit at the core of the Union's identity. In doing so, it sets clear legal boundaries for certain constitutional tensions between the Union and Hungarian identity, confirming that Hungary does not have *carte blanche* when it comes to protecting its own national identity. The Court's message is, as current president of the Court of Justice Koen Lenaerts described, that "enough is enough".³⁹⁰ At the same time, the judgment struggles to advance LGBTQ+ equality in a fuller, structural sense. The methodological-doctrinal and political-constitutional tensions are two sides of the same underlying issue: an LGBTQ+ protective ruling that provokes an anti-LGBTQ+ counterreaction needs methodological clarity and sustained political action to carry all the more transformative potential.

The significance of this research is twofold. *Commission v Hungary* is a very recent landmark judgment, and this thesis offers one of the earlier academic analyses on both the judgment's juridical-technical innovations and its political-theoretical implications. Queer Legal Theory, not yet widely applied in EU constitutional academic work, further proved to be a productive analytical tool, exposing assumptions that a doctrinal analysis alone would leave invisible: from

³⁹⁰ Koen Lenaerts, 'Landmark decisions of the Court of Justice: new perspectives following the 'Values of the Union' judgment', (Europa Lecture, Europa Institute, Leiden Law School 19 June 2026) 1, 24.

the cisheteronormative logic underlying earlier case law to the inevitable exclusions into the Union's own identity claims.

The analysis also comes with a few limitations. It namely focused on the period preceding the judgment, the ruling itself and early scholarly contributions in the months immediately following it. Inevitably, an early analysis cannot yet answer long-term questions such as: how will Hungary respond? How will the Court develop and sharpen its Article 2 reasoning? Does the ruling require political follow-up? Next to this timing-related limitation, this thesis did not directly engage with the lived experiences of LGBTQ+ persons affected by Act 79 or by the judgment itself. Exploring how the case is received and which needs remain unmet using interview methods would be a valuable avenue for further research.

Commission v Hungary has been described as a high-risk, low-gain case, capturing its legal significance, political sensitivity and the real uncertainty over whether this infringement action will translate into lasting change. For this change to happen, eyes should not only be on Hungary, which bears full responsibility for complying with the judgment, but also on EU institutional actors. These actors can surround the ruling with political tools and sustained pressure and attention to make it a higher-gain case than its critics expect. Advancing LGBTQ+ equality is not a finished project, but the true continued commitment to all types of queer demands and to genuine LGBTQ+ protection is necessary for equal dignity to be, as Lenaerts expresses it, “something *quintessentially* European”.³⁹¹

³⁹¹ Lenaerts (n 390) 24.

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