



Zoltán Gálik

THE EVOLUTION OF THE RULE OF LAW IN THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION: CASE C-769/22 (LGBTIQ RIGHTS) AND HUNGARY AS A NORM-SHAPING FACTOR

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SUMMARY

- The protection of the rule of law in the European Union has in recent years increasingly moved to the centre of judicial practice, with the content of Union values being shaped to a growing extent through judicial interpretation.
- In this context, Case C-769/22, *Commission v Hungary*, marks a turning point, as the values enshrined in Article 2 TEU become enforceable as an autonomous legal basis and, in cases of serious breach, may directly ground a finding of infringement.
- A key methodological innovation of the judgment lies in its shift from assessing formal legal compliance to examining the actual operation and social effects of the regulatory framework, with particular attention to stigmatizing and exclusionary consequences.
- The evaluation of rules affecting LGBTIQ persons is carried out within a unified framework of human dignity, equality and fundamental rights, calling into question the compatibility of the national regulatory scheme as a whole with EU law.
- The Hungarian case thus assumes a norm-shaping role, as the conflict propels the judicial enforcement of Union values to a more direct level and constitutes a defining stage in the constitutional development of EU law.

In its judgment delivered on 21 April 2026, the Court of Justice of the European Union (hereinafter: the Court), in Case C-769/22, *Commission v Hungary*, reached conclusions whose significance extends well beyond the fact that the European Commission successfully challenged the restrictions imposed by Hungary's 2021 "child protection" law on LGBTIQ-related content.

The decision can be regarded as a turning point because, sitting in full court, the Court for the first time established an autonomous breach of Article 2 of the Treaty on European Union (TEU) by a Member State, while also finding infringements of internal market rules, the Charter of Fundamental Rights of the European Union (hereinafter: the Charter), and the General Data Protection Regulation (GDPR). The ruling is thus not merely a fundamental rights or internal market case, but a milestone in the self-interpretation of the EU's constitutional order: it demonstrates how Union values become norms enforced through judicial practice.

The most significant normative development in the judgment lies in the Court's refusal to accept or reject the formal objective of the regulation—namely, the protection of minors—as decisive. Instead, it examined the actual operation, underlying assumptions, and social meaning of the measure. The regulation did not



merely restrict access to certain types of content; it established a legal linkage between LGBTIQ identities and the notion of harm to children. In the Court's interpretation, the Hungarian legislation was based on the premise that any depiction of homosexuality or of a gender identity differing from one's sex assigned at birth is inherently detrimental to the best interests of the child. From this premise, the Court's reasoning progresses towards findings of direct discrimination, interference with the essence of fundamental rights, a violation of human dignity, and ultimately an infringement of Article 2 TEU. In short, the Court applied a functional approach, distinguishing between formal compliance and actual operation compatible with EU law (CJEU, 2026).

The decision carries a dual constitutional message. On the one hand, it confirms that the rule of law, together with the minimum standards of equality and human dignity intertwined with it, cannot remain mere political declarations or codified principles; they must also appear in judicial practice as applicable and enforceable conditions. On the other hand, it makes clear that it was precisely Hungarian legislative and governmental measures that compelled EU judicial development onto this path. Paradoxically, Hungary thus became not only the object but also one of the drivers of a process in which the EU's constitutional identity increasingly takes shape through judicial practice (Bonelli and Claes, 2023; Rossi, 2025).

The structure and internal logic of the judgment

The background of the case lies in Hungary's Act LXXIX of 2021, which amended several pieces of legislation as part of a regulatory package addressing offences against minors. At the level of audiovisual content, advertising, educational materials, and certain services, the amendments effectively prohibited or restricted access to content depicting or promoting a divergence from one's sex assigned at birth, gender reassignment, or homosexuality. In July 2022, the Commission initiated infringement proceedings against Hungary before the Court. Following the written phase and the hearing held in November 2024, the Advocate General delivered her Opinion on 5 June 2025, and the judgment was handed down on 21 April 2026 by the full court. It is particularly noteworthy that sixteen Member States and the European Parliament intervened in support of the Commission, underscoring both the political and legal constitutional stakes of the case (European Commission, 2022; CJEU, 2025; CJEU, 2026).

The Court's reasoning did not reach Article 2 TEU in a single leap, but developed step by step through a sequence of interconnected arguments. First, it examined whether the Hungarian measures affected the freedom to provide and receive services, as well as secondary EU law relating to electronic commerce, services, and audiovisual media services. The answer was affirmative: the regulation limited the ability of media service providers and other actors to develop and disseminate content in which these themes play a defining role. The Court did not deny that the protection of the best interests of the child or respect for parental convictions could, in principle, justify restrictions, and it expressly acknowledged the Member States' margin of discretion. The turning point, however, came when it assessed the exercise of that discretion in light of the Charter—particularly Article 21—and concluded that the Hungarian legislation infringed the essence of the prohibition of discrimination, and therefore could not be justified (CJEU, 2026).

In the second stage, the Court placed Charter rights at the centre of its analysis. According to the Court's official summary, the legislation "stigmatizes and marginalizes LGBTIQ persons," as it treats persons whose gender identity does not correspond to their sex assigned at birth—including transgender persons—and non-heterosexual persons as inherently harmful to the physical, mental, or moral development of minors. Particular emphasis was placed on the fact that the title of the law associated these individuals with perpetrators of paedophilia, thereby reinforcing stigma and potentially encouraging hateful behaviour. On this basis, the Court found infringements of the prohibition of discrimination under Article 21 of the Charter, the right to respect for private and family life under Article 7, and the freedoms of expression and



information under Article 11. More forcefully still, the Court held that the restrictions impair the very essence of these rights and therefore cannot be regarded as justified (CJEU, 2026).

The third stage concerns human dignity. The Court found that the contested provisions treat a group of persons as dangerous to society, even though they form an integral part of a pluralist society. The offensive and stigmatizing nature of the legislation creates, perpetuates, or reinforces a condition of “social invisibility.” This is particularly significant, as human dignity appears here not as an abstract value, but as a constitutional description of the social effects of a legal regime: a violation of dignity does not require physical coercion or explicit hate speech; it suffices that the law sustains a degrading hierarchy of status (CJEU, 2026).

Only at this point does the judgment reach its fourth and most far-reaching conclusion: the autonomous infringement of Article 2 TEU. According to the Court’s summary, the Hungarian legislation constitutes a “coordinated series of discriminatory measures” that infringes the rights of transgender and non-heterosexual persons, as well as the values of human dignity, equality, and respect for human rights, in a “manifest and particularly serious” manner. At this stage, the Court moves beyond the violation of individual fundamental rights and addresses the incompatibility of the legislation with the very nature of the Union’s pluralist legal order. This is closely linked to the rejection of Hungary’s reliance on national identity: such a justification cannot legitimize a norm that undermines fundamental Union values (CJEU, 2026).

A fourth, technically distinct element relates to the GDPR. The Court found that Hungarian law failed to define with sufficient precision both the categories of persons entitled to access criminal records data and the substantive conditions governing such access, despite the need for adequate safeguards in the processing of such personal data. Although this aspect may appear secondary at first glance, it reinforces the structural logic of the judgment: the Court demonstrates across multiple layers of EU law that the contested legislative package is not merely poorly drafted, but constitutes a regulatory framework that conflicts with the EU’s constitutional order on several levels (CJEU, 2026).

This layered structure makes it inappropriate to interpret the judgment as if Article 2 TEU had suddenly become a directly applicable judicial standard without mediation. On the contrary, the Court first constructs a network of concrete infringements—relating to services, secondary law, human dignity, and data protection—and only then identifies the overarching constitutional violation that emerges from their combined meaning. It follows that the finding of an autonomous infringement of Article 2 TEU does not detach from specific norms, but appears as their cumulative constitutional interpretation. This approach is theoretically significant: it both enables the judicial enforcement of Union values and limits its extension to arbitrary political disputes disconnected from EU law (Bonelli and Claes, 2023; Rossi, 2025).

Functional assessment and the move beyond formal compliance

The methodological significance of Case C-769/22 lies in the fact that the Court does not stop at formal legal labels, but examines their actual substance. The structure of the Member State’s argument is familiar: the regulation is not anti-LGBTIQ, but child-protection oriented; it is not discriminatory, but neutral; it does not silence expression, but regulates age-appropriate access. The Court did not examine whether the title or declared objective of the law corresponded to a legitimate public interest, but rather the actual operation of the norm: the assumptions on which it rests and the status effects it produces. According to the key logic of the judgment, an approach that treats any such depiction or “promotion” as harmful to the interests of the child necessarily privileges certain identities and orientations over others. The object of review is therefore not the grammatical form of the regulation, but its social operation (CJEU, 2026).



This functional approach can also be described as a distinction between formal compliance and practical operation. Formally, the law serves the “protection of minors”; in practice, however, it renders certain ways of life, identities, and forms of information legally suspect. Formally, the restriction may appear general; in reality, it operates as direct discrimination. Formally, the norm presents itself as a cultural or pedagogical choice; functionally, it becomes an instrument of exclusion from pluralism. The Court also emphasized that the protection of minors from age-inappropriate content could be achieved through less restrictive and non-discriminatory means. This additional line of reasoning further weakened the Hungarian justification (CJEU, 2026; European Commission, 2021).

In Case C-769/22, this approach shifts from the institutional dimension of the judiciary to the field of equality and human dignity. The question here is how the law, in practice, structures the legal position of citizens in relation to one another. From this perspective, Case C-769/22 and the earlier rule-of-law cases share a common structural proposition. For EU law, the formal existence of institutions or norms is not sufficient if their actual operation undermines the Union’s fundamental values. It is therefore possible to argue that rule-of-law criteria must take shape in judicial practice. A textual enumeration—whether in Article 2 TEU, the Charter, or the Conditionality Regulation—is not enough in itself; it is the Court that gives the norm operational force by making it the basis for assessing actual functioning (Scheppele, Kochenov and Grabowska-Moroz, 2020; von Bogdandy and Spieker, 2021; Schroeder, 2023).

At this point, the central claim can be formulated: C-769/22 is not merely an LGBTIQ-rights case, but a new chapter in the judicial enforcement of the rule of law. **The judgment signals that Member States cannot rely on formally legitimate legal characterizations—child protection, family protection, pedagogical autonomy, national identity—if the regulation in fact dismantles the legal equality of a protected group.** The Court not only interprets Union values, but also enforces them: the rule of law and equality are not principles located at the margins of legal norms and invoked politically, but judicial criteria whose application may result in a finding that a Member State’s regulatory framework is incompatible with EU law (Rossi, 2025; Bonelli and Claes, 2023).

The place of the decision in the constitutional development of EU law

To understand Case C-769/22, the decision should not be read in isolation, but as the culmination of a longer trajectory of constitutional development in EU law. The first major step in that development was *Associação Sindical dos Juizes Portugueses*, in which, in 2018, Article 19 TEU appeared not merely as a procedural provision, but as a norm serving the enforcement of the rule-of-law value enshrined in Article 2 TEU. In the same year, in *LM (Minister for Justice and Equality v LM)*, C-216/18 PPU, the Court interpreted the relationship between mutual trust and the rule of law by holding that mutual recognition cannot apply unconditionally where systemic deficiencies affect the independence of Member State judicial systems. In the Polish judicial discipline cases (C-619/18, 2019, and C-791/19, 2021), the *Commission v Poland* judgments turned Article 19 TEU into a directly applicable legal basis in infringement proceedings, while the 2021 judgment in *Repubblika* (C-896/19) articulated the principle of non-regression by holding that Member States may not weaken the level of rule-of-law protection. Finally, the 2022 judgments upholding the Conditionality Regulation, in Cases C-156/21 and C-157/21, made clear that Article 7 TEU is not exclusive, and that the Union may protect the values laid down in Article 2 TEU through other competence-based instruments as well (CJEU, 2018a; CJEU, 2018b; CJEU, 2019; CJEU, 2021a; CJEU, 2021b; CJEU, 2022a; CJEU, 2022b).

The main trajectory of legal development thus leads from the content of Article 2 TEU as mediated through other norms to its application as an autonomous legal basis in Case C-769/22. Earlier case law generally proceeded by giving effect to the values of Article 2 TEU through more specific norms, above all Article 19 TEU or the Charter, thereby making them enforceable through those provisions. C-769/22 does not fully



depart from that method, but it takes an important step towards enabling the Court to use Article 2 TEU not merely as a background norm, but as an autonomous basis for finding an infringement. The decision therefore does not create new law without precedent; rather, it develops the existing legal framework towards more direct enforceability (Rossi, 2025; Bonelli and Claes, 2023).

The same perspective also explains the relationship between Article 7 TEU and infringement proceedings. In the 2022 Conditionality Regulation judgments, the Court made clear that Article 7 TEU and the conditionality mechanism pursue different objectives, concern different subject matters, and produce different consequences. The same idea underlies the C-769/22 judgment: Article 7 is a political-sanctioning mechanism, whereas infringement proceedings serve the judicial finding of a concrete breach of EU law. The finding of an infringement of Article 2 TEU therefore does not amount to circumventing Article 7, but reflects the recognition that the protection of Union values operates through a multi-channel system: political, budgetary, monitoring, and judicial instruments functioning together (CJEU, 2022a; CJEU, 2022b; European Commission, 2022).

Key Rule of Law Judgments of the Court of Justice of the European Union

YEAR	CASE	CORE FINDING	RELEVANCE FOR C-769/22
2018	C-64/16, <i>Associação Sindical dos Juizes Portugueses</i>	Article 19 TEU gives concrete expression to the rule of law enshrined in Article 2 TEU.	Foundational formula for the judicial enforceability of Union values.
2018	C-216/18 PPU, <i>LM</i>	Foundational formula for the judicial enforceability of Union values.	Reinforces the functional approach and the systemic perspective.
2019	C-619/18, <i>Commission v Poland</i>	Judicial independence is protected under Article 19 TEU, including in infringement proceedings.	Establishes Article 19 TEU as a directly applicable legal basis in infringement actions.
2021	C-791/19, <i>Commission v Poland</i>	Disciplinary regimes must not enable political control over the substance of judicial decisions.	Shifts the focus from formal compliance to actual functioning.
2021	C-896/19, <i>Repubblika</i>	Member States may not reduce the level of protection of the rule of law.	Introduces non-regression and supports reading Article 2 TEU as a legal standard.
2022	C-156/21 and C-157/21, <i>Hungary / Poland v Parliament and Council</i>	Article 7 TEU is not exclusive; respect for Article 2 TEU values is a condition for the enjoyment of Treaty rights.	Confirms a multi-instrument model of value protection in the EU.
2026	C-769/22, <i>Commission v Hungary</i>	An autonomous breach of Article 2 TEU may be established in cases of a manifest and particularly serious violation.	Marks the shift from concretized value protection to autonomous enforcement of Union values.

The sequence of judgments illustrates that the C-769/22 ruling does not constitute an isolated “big leap,” but rather represents the culmination of a gradual, stepwise process of constitutionalization, in which Union values first became justiciable in the field of judicial independence, then in the context of budgetary conditionality, and finally in relation to equality and human dignity (Scheppele, Kochenov and Grabowska-Moroz, 2020; Rossi, 2025; Fisicaro, 2022).



Competence, LGBTIQ rights, and the dilemmas of EU constitutional development

The LGBTIQ dimension of the case is not merely incidental, but a defining element of its substantive structure. The Court did not simply find that the contested regulation violated equal treatment; it held that certain persons and ways of life were treated as inherently suspect and dangerous within a pluralist society. The decision approaches the protection of LGBTIQ rights in EU law not through the lens of classical private or family law relationships, but from the perspective of personal identity and human dignity. The central question is not the extent to which EU law “favours” a minority, but whether national legislation may legally devalue a social group and partially exclude its visibility from the public sphere. The Court’s approach aligns with the Commission’s LGBTIQ equality and children’s rights strategies, which emphasize the integrated protection of equality, non-discrimination, and children’s rights. Put differently, the protection of children cannot be translated into a normative language that deprives LGBTIQ persons of their rights (European Commission, 2020; European Commission, 2021; CJEU, 2026).

At this point, the issue of the delimitation of competences comes to the fore. One line of criticism holds that the autonomous judicial enforcement of Article 2 TEU may easily lead to de facto competence expansion, turning the Court into a general constitutional supervisory authority over Member State public law. However, a closer reading of C-769/22 suggests that such expansion is only partial. The judgment does extend the scope of judicial review, but it does so within the framework of established case law. The case was closely linked to the freedom to provide services, to rules on electronic commerce and audiovisual media, to the application of the Charter, and to the GDPR—in other words, it fell within the scope of EU law. Moreover, the Court did not find a breach of Article 2 TEU on the basis of general “poor governance,” but rather in relation to a “coordinated set of discriminatory measures” whose violation was manifest and particularly serious. It follows—this must be formulated as an interpretive conclusion—that the judgment does not open an unlimited pathway to subsuming any contested national public policy under Article 2 TEU, but instead sets a high threshold: a consistent, coherent, serious, and EU-law-embedded violation is required (CJEU, 2026; Bonelli and Claes, 2023).

At the same time, in normative terms, the Court assigns constitutional meaning to Union values. It is not through treaty amendment, but through judicial reasoning that Article 2 TEU is rendered enforceable against Member State majoritarian decision-making. The constitutional development shaped by judicial practice is here not a mere rhetorical formula: through a concrete case, the Court articulates the content of the EU’s constitutional identity and connects it to Charter rights, internal market freedoms, and Union values. In this sense, C-769/22 can be compared to the development surrounding Article 19 TEU: just as *ASJP* and the Polish cases transformed judicial independence into a structural requirement of EU law, C-769/22 establishes a minimum standard of equality and human dignity as a substantive condition of EU membership (von Bogdandy and Spieker, 2021; Schroeder, 2023; Groussot and Valera, 2026).

Particular attention should be paid to the rejection of Hungary’s defence based on national identity. According to the Court, the protection of national identity cannot extend to legitimizing violations of fundamental Union values. This is an explicitly constitutional claim—undeniably strong and potentially controversial—but it follows from the internal logic of the judgment: if the Union is to function as a common legal order, membership must entail a non-relativizable minimum consensus on human dignity, equality, and the rights of minorities. Without such a minimum, Article 2 TEU would remain a merely ceremonial declaration, against which Member States could at any time invoke cultural or sovereignty-based exceptions (CJEU, 2026; Pech, 2022).

From the perspective of other Member States, the decision conveys a dual message. On the one hand, it serves as a warning: the Court will not in the future assess restrictions justified by reference to “child protection,” “public morality,” “constitutional identity,” or “public order” solely on a formal basis if they



effectively undermine the equal legal status of a minority. On the other hand, the judgment also offers a degree of reassurance to those concerned about competence boundaries: the finding of infringement was anchored in a series of concrete EU law connections and in the exceptionally serious nature of the violation. Accordingly, while C-769/22 constitutes a strong precedent, it is unlikely to become a simplified, general-purpose “moral policing” tool; rather, it functions as a constitutional limit applicable in exceptional circumstances (Riedl, 2025; Bonelli and Claes, 2023).

Finally, the paradox of Hungary’s contribution must be emphasized. It is not only that Hungary’s 2021 legislation triggered this particular case. By challenging the Conditionality Regulation, Hungary had already contributed to clarifying that the protection of Union values cannot be confined to the political mechanism of Article 7 TEU. C-769/22 continues this development on a different plane: no longer through budgetary conditionality, but through judicial protection and infringement proceedings. In this way, Hungary—whether intentionally or not—effectively compelled the emergence of a line of case law in which Union values move from codification into the realm of judicial application (CJEU, 2022a; CJEU, 2026; Scheppele, Kochenov and Grabowska-Moroz, 2020).

Conclusion

The ultimate significance of Case C-769/22 lies in the fact that it elevates the protection of the rule of law and Union values to a new level: the Court is no longer satisfied with the mere presence of Article 2 TEU in the Treaties, but transforms it into a judicial standard of review. The judgment demonstrates that the minimum requirements of the rule of law and fundamental rights cannot be reduced to institutional or textual forms. Where a national rule, through its operation, underlying assumptions, and social effects, partially excludes a particular group from the pluralist community and thereby manifestly and seriously violates human dignity, equality, and respect for human rights, EU judicial practice now recognizes not only the infringement of specific Charter rights or market freedoms, but also a breach of the Union’s constitutional value order itself (CJEU, 2026).

From this follows the deepest message of the decision for the development of EU law. Rule-of-law criteria must not only be codified, but must also be present in judicial practice; otherwise, Article 2 TEU would remain a politically invoked but legally hollow formula. The significance of C-769/22 can thus also be captured in the shift it represents: the rule of law in EU law is no longer confined to the institutional independence of courts, but increasingly encompasses the protection of equality, dignity, and the public visibility of individuals within the Union’s legal order. Codification is therefore necessary but not sufficient; real normative force is provided by judicial application (von Bogdandy and Spieker, 2021; Rossi, 2025; Schroeder, 2023).

In this sense, C-769/22 is both a judgment about Hungary and a statement about the state of EU constitutional development. It is directed against Hungary in that it clearly delineates normative limits against the stigmatization of LGBTIQ persons. For the Union, it affirms that the identity of the common legal order can only be maintained if Treaty values remain justiciable and applicable. Hungarian measures have thus not only generated conflict, but have also compelled the Court to transform Union values into effective law. The decision is therefore not a side branch, but one of the emerging cornerstones of the Union’s constitutional self-defence (Bonelli and Claes, 2023; Scheppele, Kochenov and Grabowska-Moroz, 2020; CJEU, 2026).



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