# EUNITED IN DIVERSITY IV:

## BUILDING DEMOCRATIC SYNERGIES IN A COMMON LEGAL ORDER

(Concept Paper)

The purpose of the next edition of the EUnited in Diversity Conference is to explore the value of democracy in the common constitutional legal order, comprising both the European Union and its Member States. The value of democracy is an essential component of the constitutional design and functioning of the EU as well as its Member States.[1] Democracy is part of the European identity and is vital for safeguarding the '*European way of life*': just like respect for the rule of law and fundamental rights, compliance with democratic principles defines EU constitutionalism, which is to be understood as a set of values and structures which give rise to mutual trust between the Member States and to the interlocking of legal orders.

However, these are not easy times for democracy. With authoritarian tendencies on the rise both outside and within Europe, the Court of Justice of the European Union (the 'Court of Justice') and national constitutional courts ('NCCs') must combine their efforts in upholding that value — a value which is, and must continue to be, shared and cherished by all Europeans and by future generations in particular.

To that end, the conference will serve as a forum for the exchange of ideas and experiences, enabling participants to identify the key components of that value as grounded in the constitutional traditions common to the Member States. As in previous editions, the conference will be divided into four panels.

- **Panel 1: the Value of Democracy: Finding a Common Ground and Facing Current and Future Challenges**

The conference will begin by identifying the main elements of democracy in the constitutional traditions common to the Member States.[2] This will enable discussants and participants to build a common constitutional language which revolves around a shared understanding of democracy.[3] Access to the political process and free and fair elections are undoubtedly a *conditio sine qua non* for upholding the value of democracy, but there is much more: accountability, transparency, the fight against corruption, a free press and media pluralism,

[1] Article 2 TEU.

[2] See, in this regard, Report of the European Law Institute, 'Freedom of Expression as a Common Constitutional Tradition in Europe' (2022).

[3] See, in this regard, K. Lenaerts, 'Democracy as an EU Value' (2025) 1 *Trier Lecture on the Future of Europe* 1.

academic freedom, independent agencies, and the protection of minorities. Do these aspects also form part of that value?

For example, regarding the freedom of expression, the Court of Justice has held that '[it] is one of the basic conditions for progress in a democratic society and for each individual's self-fulfilment; it protects not only "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society"'.[4] That said, a functioning democratic society requires that citizens share a common informational reality, whether it is online or offline. Yet in an age where coordinated misinformation campaigns can distort electoral processes, a pressing question emerges: how should courts — and NCCs in particular — safeguard the integrity of elections without unduly restricting freedom of expression and access to information?[5]

The question that arises is: do Member States share a common approach to defending democracy? Is there a shared understanding of 'militant' or 'resilient' democracy[6] — and what sorts of requirements does EU law impose on national laws which seek to protect the democratic process?[7]

Put simply, the first panel will look at what the value of respect for democracy actually is and how it is – or should be – promoted and defended.

- **Panel 2: the Court of Justice and NCCs as the ultimate guardians of the democracy**

Constitutional courts are the guardians of democracy, the rule of law and fundamental rights within their own national legal orders. Their importance in keeping democracy vibrant and healthy cannot be overstated. This fact is known not only by those who care about democracy, but also by those who wish to undermine it. Experience shows, both outside and within the EU, that the roadmap for destroying democracy starts by capturing the constitutional court.[8]

---

[4] Judgment of 21 April 2026, *Commission v Hungary (Values of the European Union)*, C-769/22, EU:C:2026:326, para. 460.

[5] See, in this regard, Constitutional Court of Romania, Decision No 32 of 6 December 2024 on the Annulment of the Electoral Process for the Election of the President of Romania. See, also, the report drawn by the Venice Commission which sought to answer the following question: 'Under which conditions and under which legal standards can a constitutional court invalidate elections, drawing from the recent Romanian case?'. See Venice Commission, 'Urgent Report on the cancellation of election results by Constitutional Courts', 1218/2024, of 18 March 2025.

[6] See, for example, J.W. Müller, 'Militant Democracy' in M. Rosenfeld and A. Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford, OUP, 2012) 1253.

[7] See, in this regard, Case C-829/24 *Commission v Hungary (Protection against foreign political interference)* (pending).

[8] See, for example, R. Dixon and D. Landau, *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy* (Oxford University Press, 2021).

In two important recent judgments, the Court of Justice held that EU law requires NCCs to be independent.[9] Otherwise, ordinary courts will not be bound by their decisions.[10] EU law thus protects the independence of NCCs: an important development in the common legal space, since strong and independent courts in general – and strong and independent NCCs in particular – are vital for upholding the value of democracy.

The purpose of this panel is therefore to examine the ways in which EU law protects NCCs against authoritarian tendencies which target, sooner rather than later, the guardians of the rule of law within the Member States. Legislative reform which undermines the independence of NCCs has no room in EU law. In that regard, by virtue of the twin principles of primacy and direct effect, a NCC may rely on EU law in order to set aside a legislative reform — and even a constitutional amendment — which undermines its own independence or that of ordinary courts.

Does this development in the case-law of the Court of Justice improve the way in which NCCs perceive EU law, allowing room for a more cooperative and open relationship revolving around protecting common values? Do NCCs see EU law as a safeguard against democratic backsliding?

- **Panel 3: Immigration, Integration and Naturalisation**

'Who is a national of a Member State' is a question which strikes at the heart of democracy at both EU and national levels. This is because acquiring the nationality of a Member State gives one access to the political process — local, national and European — while also conferring the status of EU citizen.

Naturalisation policies are therefore a key factor in determining the requirements for that access. In that regard, the Court has held that Member States may adopt integration measures — such as language tests and civic courses — for third-country nationals who wish to reside in their territory and, eventually, acquire nationality.[11] In adopting such measures, Member States implement a naturalisation policy which aims to establish and preserve the special relationship of solidarity and good faith between a Member State and its nationals.

---

[9] Judgments of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, and of 18 December 2025, *Commission v Poland (Ultra vires review of the Court's case-law – Primacy of EU law)*, C-448/23, EU:C:2025:975.

[10] Judgments of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, para. 44 (holding that 'Article 2 TEU [and] the second subparagraph of Article 19(1) TEU … do not preclude national rules or a national practice under which the decisions of the constitutional court are binding on the ordinary courts, provided that national law guarantees the independence of that constitutional court from, in particular, the legislature and the executive, as is required by those provisions. However, if national law does not guarantee such independence, those provisions of EU law preclude such national rules or such a national practice, since such a constitutional court is not in a position to ensure the effective judicial protection required by the second subparagraph of Article 19(1) TEU').

[11] See, e.g., judgments of 7 November 2018, *K*, C-484/17, EU:C:2018:878, and of 4 February 2025, *Keren*, C-158/23, EU:C:2025:52.

However, in a seminal judgment on Malta's investor citizenship scheme, the Court of Justice held that EU law opposes a naturalisation policy which treats nationality as a commodity, on the ground that such a policy disregards that special relationship of solidarity and good faith.[12]

The purpose of this panel is twofold. On the one hand, discussants are invited to examine the extent to which Member States may exercise their margin of discretion when adopting integration measures, and whether EU law imposes conditions on the exercise of that discretion. On the other hand, the panel will aim to conduct a comparative legal analysis to determine whether the requirement of a special relationship of solidarity and good faith between a Member State and its nationals is grounded in national law,[13] or whether it is required by EU law alone.

- **Panel 4: the Protection of Minorities**

Democracy cannot be reduced to the tyranny of the majority. Each and every citizen counts, and there are limits to what the political majority of the moment can do. Under EU law, the principle of non-discrimination on grounds of race, origin, sexual orientation, religion and disability has long served to protect minority groups. Free movers, too, constitute a minority, in that their interests find little political representation at national level.

This is why responsibility for the protection of minorities rests with the judiciary, which must be independent enough to rule without fear or favour. This is illustrated by the situation of rainbow families who cross internal borders and who, by definition, belong simultaneously to two minorities: that of free movers and that of the LGBTQ+ community.

In *Commission v Hungary (Values of the European Union)*, the Court of Justice examined, for the first time, the conditions under which a Member State may commit a violation of one or more of the values enshrined in Article 2 TEU. It held that 'only manifest and particularly serious breaches of one or more values common to the Member States may give rise to [a violation of Article 2 TEU]'.[14]

The Hungarian law at issue, which introduced a coordinated series of discriminatory measures against non-cisgender or non-heterosexual persons, met that threshold. This was because that law resulted 'in the stigmatisation and marginalisation of non-cisgender or non-heterosexual persons, solely on the ground of their gender identity or sexual orientation, with those consequences being intensified by the fact that that law also makes an association between the fact of not being cisgender or not being heterosexual, on the one hand, and being convicted of paedophilia, on the other, suggesting that non-cisgender or non-heterosexual persons

[12] Judgment of 29 April 2025, *Commission v Malta (Citizenship by investment)*, C-181/23, EU:C:2025:283.

[13] See, in this regard, Italian Constitutional Court, judgment of 31 July 2025, No. 142/2025, ECLI:IT:COST:2025:142. In paragraph 11.3 of that judgment, the Italian Constitutional Court expressly referred to judgment of 29 April 2025, *Commission v Malta (Citizenship by investment)*, C-181/23, EU:C:2025:283.

[14] Judgment of 21 April 2026, *Commission v Hungary (Values of the European Union)*, C-769/22, EU:C:2026:326, para. 551.

constitute a fundamental threat to Hungarian and European society; an association capable of encouraging the development of hateful conduct towards those persons'.[15] That stigmatisation, marginalisation and association brought about by that law made those persons socially invisible, ran counter to the values of human dignity, equality, and respect for human rights – including the rights of persons belonging to minorities, as referred to in Article 2 TEU – and was incompatible with the identity of the EU as a common legal order.

Thus, the Hungarian law not only violated the principle of non-discrimination, enshrined in Article 21 of the Charter, but also the values of respect for human dignity, equality, and respect for human rights, including the rights of persons belonging to minorities, as referred to in Article 2 TEU. This judgment thus shows that EU law protects minorities as part of its founding values.

Accordingly, one of the questions which this panel might examine is whether such minorities are protected beyond the bounds of the principle of non-discrimination. How are minority rights protected? Is it a matter of upholding fundamental rights, or of protecting minorities as such? What about political minorities who call into question the systems of values established in the constitution (anti-system parties)?

[15] *Ibid*., para. 554.