A Hierarchy of Harms

Individual Dignity beyond Majoritarian Perception

Meret Plucis

11.06.2026 doi: 10.59704/3b0ac1ada54b50fa

The specific result in *Valeurs de l'Union* (C-769/22) is correct. An obviously discriminatory law which de facto equates LGBTI+ persons with pedophilia violates Union law. However, the conceptual framework the Court builds regarding Article 2 TEU to reach that result is troubling. By limiting Article 2 TEU to "manifest and particularly serious" breaches of the values of human dignity, equality, and respect for human rights, including the rights of persons belonging to minorities (see here, para. 551), the Court does not merely constrain the provision's reach but encodes a majoritarian, visibility-based standard of human rights that departs from the focus on individual dignity.

A Threshold of Visibility

A threshold of manifestness – *offenkundig* in the German version – is, structurally, a threshold of visibility. It asks not how severe a violation is, but whether it is overt, easy to notice and evident to everyone (see for the literal interpretation here and here). Thus, manifestness is never a property of the violation in itself but forms a relation between the violation and its observers. This observer, whom the threshold tacitly invokes, has a culturally dominant perception and recognizes as "evident" and "easy to notice" only what the prevailing consensus has already conditioned them to see. What falls outside the consensus is, by the same standard, not manifest. It fails the threshold not because it is less severe, but because it is less obvious to the majoritarian gaze. The values at stake, human dignity, equality, and respect for human rights, including the rights of persons belonging to minorities, are anchored, in their very rationale, in the dignity of the individual. Their rationale is a corrective to collective will, insisting that certain treatment is impermissible regardless of whether a majority finds it acceptable or even notices it at all. The Court's threshold detaches these values from that anchor of individual dignity and ties them instead to the perception of the majority, thereby inverting the very logic of human dignity, equality, and the respect for human rights. This shift in theoretical foundations has practical consequences.

In the present case, the Hungarian legislator was "helpful enough" to announce the discrimination against LGBTI+ persons with legislative fanfare. But discrimination that could breach values such as equality is not always loud and open – whether it is visible or not depends on the perspective taken. Structural discrimination, for example, is by definition normalized in institutional practices and social norms, often lacking conscious intention on the part of those who perpetuate it. Yet the harm imposed on those who are affected is not lesser for being woven into the fabric of "normality". Discrimination also operates at the intersection of several grounds at once, where the manifest and particular serious discrimination – experienced by those who stand at these crossroads, Black women being the original subjects in point – is often invisible to a majoritarian perception (see here).

Moreover, there are cases where discrimination is actively hidden behind the very language of equality and the laws that ought to oppose it (Rosalind Dixon very convincingly analysed how exclusionary agendas are being pushed by the abusive use of feminist language, see here). A threshold that asks whether a violation is manifest reproduces the disadvantages already built into the social baseline.

History's Authority

These considerations do not just concern future cases but are already acute in the present judgment pertain-

ing to the historical justification for Article 2 TEU's enforceability.

In justifying the legally enforceable character of Article 2 TEU, the Court reaches for the authority of history, pointing to both the context of Article 2 TEU within the Treaty of Lisbon, and the supposed will of the Convention on the Future of Europe. While the travaux cited by the Court address Article 2 TEU explicitly only in the context of Article 7 TEU proceedings (see here, page 11), the far more acute question this historicization raises is: if Article 2 TEU has been judicially enforceable since 2009, why did earlier measures escape it? What about the pushbacks of refugees (see, for example, here), near-total abortion bans (see here and here) or other anti-LGBTI+ measures (see here)?

Taken in isolation, one might respond: better late than never. But the threshold forecloses this response. Read together, the historicization and the "manifest and particularly serious" threshold imply something else. Earlier violations were not caught because Article 2 TEU was unavailable, but because these violations did not harm "the identity of the Union as a common legal order of a society in which pluralism prevails" (see here, para. 551) in a manifest and particularly serious manner. Even if unintentionally, the retroactive rationalization of past silences casts a poor light on future cases and confirms the suspicion that Article 2 TEU protection tracks what is already politically legible, not what individual dignity demands.

Collectivist Objections

One might object that this critique misunderstands the nature of values and that values, unlike rights, are not held by individuals but by communities. They describe shared foundations of a society rather than the entitlements of its members. On this view, a majoritarian threshold seems like the logical consequence. If Article 2 TEU protects the conditions of collective coexistence rather than the individual as such, then tying its breach to what the community recognizes as a manifest violation is entirely appropriate.

Two things may be said in response. First, it is already far from clear that values, enforced through a court, are an appropriate instrument for protecting the pluralist society Article 2 TEU invokes in the first place. A pluralist society is one whose terms of coexistence remain open to contestation. It is constituted precisely by the ongoing, unfinished argument over what binds it together. Values operate mostly in the opposite direction. Indeterminate in content yet carrying an absolute claim to validity, they make a poor basis both for demanding integration into them and for opening up a healthy discourse. To invoke values in political discourse rather functions as a shortcut assertion of certain "good", foundational assumptions whose contestation, in itself, is taken to disqualify the contester (for elaboration on values in political debate, see here).

Rightfully, mostly left-wing critics have called out *Leitkultur*-fantasies for demanding allegiance to a diffuse social order that was never democratically negotiated. Recourse to values ultimately operates in a similar way. One neither simply refutes a culture nor a value; one either shares it or is revealed, by one's failure to share it, to stand outside the community it constitutes. In the case of the EU, this raises particular problems, especially given that neither the Court nor the community of Member States actually possesses the means to expel a non-compliant Member State. Unable to exclude, the Court can only declare (and financially sanction), thereby entrenching the supposed absoluteness on which the value recourse runs rather than openly examining it.

Second, even if one accepts that values serve and protect the community as such, their formulation in Article 2 TEU bears on individual rights that do not: human dignity (Article 1 of the EU Charter), other human rights of the EU Charter and equality provisions. Under the Court's framework, manifest and particularly serious violations of these individual rights will also count as breaches of the Union's collective values, while quieter and structural violations of the very same rights, or simply such the collective does not deem manifest and serious enough, will not. The threshold thereby sorts individual rights-violations into two tiers, creating a hierarchy of harms. Such a hierarchy is in itself harmful, announcing with the

authority of the Union's highest court that some violations of human dignity, human rights and equality are worse than others.

Notably, this is the very problem AG Ćapeta's proposal would have avoided. If Article 2 TEU is indeed meant to protect values in their collective dimension, then her value-negation approach is the more coherent threshold (see here, paras. 237-247). Rather than asking whether a breach is manifest and particularly serious, it asks whether a measure is directed against the value itself, whether it seeks to negate the value rather than merely falling short of it. This keeps the inquiry where a collectivist reading would locate it – on the measure's relationship to the shared value, instead of grading individual harms by their visibility.

To Go from Here

None of this is to deny the predicament the EU faces. With the political route of Article 7 TEU effectively blocked, the search for alternative routes is understandable – and the temptation to find them in the judicial enforcement of Article 2 TEU is big. And yet, for all the concerns set out above, the question must be asked whether this is the right path toward an open, integrated Europe in which the dignity of the individual, rather than the perception of the majority, remains the point of departure. I don't have a definitive answer to this question, though it seems preferable if the Court, at least in matters of human dignity, equality, and respect for human rights – including the rights of persons belonging to minorities – confined itself to a more differentiated fundamental rights jurisprudence, attentive also to quieter forms of harm, and one in which the individual, not the majority, stands at the center.

What I can say with certainty is that a jurisprudence that protects values of human dignity, equality and human rights only where their breach is already manifest does not build such a Europe. Therefore, should the enforcement of Article 2 TEU consolidate in future case law, as seems likely, the Court should reconsider its current threshold, prone to majoritarian bias.

ABOUT THE AUTHOR

Meret Plucis

Meret Plucis is a law graduate of Humboldt University Berlin, Université Paris-Panthéon-Assas (Paris II), and the University of Amsterdam, and is currently completing a doctorate as part of the DynamInt research group at Humboldt University Berlin. She is also a research fellow at the Re:Constitution network.Meret Plucis is a law graduate of Humboldt University Berlin, Université Paris-Panthéon-Assas (Paris II), and the University of Amsterdam, and is currently completing a doctorate as part of the DynamInt research group at Humboldt University Berlin. She is also a research fellow at the Re:Constitution network.

SUGGESTED CITATION

Plucis, Meret: A Hierarchy of Harms: Individual Dignity beyond Majoritarian Perception, Verfassungsblog, 11.06.2026, doi: 10.59704/3b0ac1ada54b50fa.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260611-190617-0.