The Hungarian Transition's Meaning for European Constitutionalism

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19.06.2026 doi: 10.59704/3c8d3512e4d59b10

The Hungarian transition is not only a Hungarian event. It is a European constitutional moment. The contributions to this symposium have shown, from different angles, how demanding the repair of constitutional democracy after a hybrid regime will be: a new government must restore constitutional supremacy, reconsider cardinal laws, guarantee judicial and prosecutorial independence, reopen markets, reestablish media pluralism, and counter corruption. Overall, it must strive for democratic accountability without turning into revenge. But there is more. Taken together, these contributions show that the Hungarian transition can play a crucial role in the development of European constitutionalism itself.

This transition comes at a decisive moment. Only a few weeks ago, in its plenary judgment of 21 April 2026 in *Commission v Hungary,* the Court of Justice qualified Hungary's anti-LGBTIQ* law as a manifest and particularly serious breach of the values in Article 2 TEU. The Court held that the law was contrary to "the very identity of the Union as a common legal order of a society in which pluralism prevails" (para 551). This was not merely another infringement case. The Court confirmed that Article 2 TEU is not ceremonial language but a legally binding provision capable of setting enforceable red lines. And it did so by linking the Union's legal order to a society: European society.

The Hungarian transition is the first major political and constitutional process after that judgment in which the practical meaning of this idea can be tested. What does it mean to restore constitutional democracy as a member of European society? What role can European constitutional law play when a society seeks to free itself from the legacy of a hybrid regime? And, vice-versa, does the Hungarian transition transform European constitutionalism itself?

Belonging to European Society

The first lesson of this symposium is that the Hungarian transition concerns *belonging*. This may sound surprising. The immediate problems seem institutional: the presidency, the Constitutional Court, the Kúria, the Prosecutor General, the media regulator, the competition authority, or the system of cardinal laws. Yet each of these institutional questions ultimately concerns the conditions under which persons, groups, and institutions belong to a democratic and pluralist society.

Belonging to European society does not mean that Hungarians must become "more European" in a cultural sense. Nor does it imply that European society replaces the Hungarian one. The Court itself speaks of Hungarian and European society side by side (para 554). To belong to European society rather means to participate in a common legal and institutional space in which human dignity, freedom, democracy, equality, the rule of law, and human rights – the values of Article 2 TEU – set the basic terms of public life.

The judgment of 21 April 2026 makes this visible in the most direct way. The Hungarian law at issue did not merely regulate education, media, or child protection. It constructed a part of society as a threat. The Court understood this. It saw that the law's constitutional harm lay not only in specific interferences with rights or freedoms but in the symbolic and institutional exclusion of LGBTIQ* persons from equal membership in Hungarian and European society.

The Court's reliance on Article 2 TEU therefore marks more than a doctrinal innovation. It gives legal expression to a basic idea: European society is a *society in which pluralism prevails*. This means that no person or group may be rendered invisible by law, but also

that no government may monopolize public power and that no ruling party may convert markets, media, courts, or public resources into instruments of partisan domination.

Rebuilding Belonging

The symposium applies this insight to the Hungarian transition. A hybrid regime does not only capture the state. It shapes society. By deciding who has access to public resources, who may speak, who may compete, who may be investigated, who is protected, who is stigmatized, and who is silenced, it reorganizes social membership. It creates insiders and outsiders. It does so through constitutional law, ordinary legislation, administrative practice, public procurement, media regulation, criminal prosecution, tax policy, or market design.

This is why the contributions by Maciej Bernatt and Kati Cseres on *markets* are so important. They show that restoring constitutional democracy cannot be reduced to institutional issues. Fidesz did not only capture state institutions such as the presidency, courts, or regulators; it reshaped the economy. Monopolization, selective enforcement, and the creation of politically connected economic actors were part of the constitutional structure of the regime. Markets became a medium of exclusion and dependence. Their reconstruction is therefore not a technical task for competition lawyers alone. It is part of restoring the social conditions of democratic citizenship.

The same applies to the *media*, as discussed by Anna Wojcik and Bernát Török. A society in which pluralism prevails requires more than the absence of censorship. It requires institutional conditions under which different voices can reach the public, citizens can form opinions, and political alternatives can become visible. For this reason, institutional guarantees of pluralism are central for the operation of the media authority and the organization of public media.

Very similar observations can be made with regard to *academia*. Renata Uitz has shown how the prior government has created an epistemic infrastructure of illiberal democracy, which excludes many academic voices. Knowledge institutions, such as universities, research, libraries, museums, or think tanks, are not only a check on power but also central for the formation of opinions. The restoration of academic freedom, especially of university autonomy, must therefore be a top priority.

The exclusionary force of the prior regime is felt especially in the field of *civil society*. Measures taken by the previous government had a chilling effect on large parts of society – women, LGBTIQ* persons, or local communities – excluding their voice and visibility in public life. This deprived them of a crucial aspect of their democratic membership. Marta Pardavi, Edit Zgut-Przybylska, and Barbara Grabowska-Moroz and Katarzyna Łakomiec discussed different routes towards restoring their democratic membership, among others, through more substantive equality and more inclusive or decentralized political decision-making processes.

The Polish lessons point in a similar direction. Adam Bodnar reminds us that democratic restoration requires not only legal reforms but also regaining citizens' trust. Voters expect accountability for corruption, abuse of power, and state capture. Yet accountability must not become victor's justice, as Marcin Barański argues. The temptation to use inherited powers for new partisan purposes is real. It may be even stronger after an overwhelming electoral victory. Victory, therefore, demands constitutional self-restraint.

Institutional reforms, too, should be geared towards rebuilding belonging, as Beáta Bakó's contribution on cardinal laws shows. The Hungarian two-thirds majority has long been presented as a guarantee of constitutional seriousness and compromise. Yet under conditions of a distorted electoral system, it became an instrument of domination. The supposed magic of the two-thirds majority concealed the absence of genuine pluralism. The lesson is sobering: supermajority rules do not necessarily create compromise. They may entrench hegemony. If Hungary is to return to a functioning constitutional democracy, it must not only undo Fidesz's substantive choices. It must also rethink the institutional grammar through which majorities are produced, stabilized, and constrained – especially its electoral law.

In this spirit, Pál Sonnevend's contribution insists on the distinction between constitutional repair and constitution-making. A democratic landslide may create an opportunity, even a mandate, for deep change. But it does not by itself justify a unilateral constitutional refoundation. That would risk repeating the 'original sin' of the 2011 Fundamental Law: the transformation of a parliamentary majority into a constituent monopoly. The transition must, therefore, repair what blocks constitutional democracy while opening an inclusive process for deeper renewal.

In sum, these contributions show what belonging to European society requires. It requires effective rights, but also open markets. It requires independent courts, but also pluralistic media. It requires accountability, but also restraint. It requires democratic majorities, but also institutional limits. It requires a state that belongs to its citizens, not to a party. And it requires a European legal order that does not stand above society, but helps articulate the basic terms of pluralist democratic life.

The Constitutional Role of EU Law: Orienting, Constraining, Facilitating

The second lesson concerns the role of EU constitutional law. The Hungarian transition shows that EU law is not merely an external standard applied to national constitutional orders. Nor is it only a disciplinary mechanism that punishes backsliding states. Its role is more complex. In the transition from hybrid regime to constitutional democracy, EU law can orient, constrain, and facilitate.

It orients, first, by providing direction for repair. The goal is not simply to reverse Orbánism. Nor is it to replace one partisan constitutional project with another. The goal is to repair a constitutional democracy capable of belonging fully to the Union's common legal order. Article 2 TEU provides the vocabulary for that repair: human dignity, freedom, democracy, equality, the rule of law, human rights, pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men. These values are abstract, contested, and often difficult to operationalize. But they are not empty. They identify the constitutional horizon of the transition.

This orienting function matters especially because hybrid regimes distort the meaning of legality. They often govern through law, invoke constitutional language, and use formal legality to entrench substantive domination. A transition from such a regime must therefore avoid the illusion that the mere repeal of bad laws suffices. It must rebuild the institutional and social conditions under which law can again perform its constitutional function. Article 2 TEU helps identify those conditions.

However, EU law also constrains. The enthusiasm for a transition can be dangerous. A new democratic majority may be tempted to treat electoral victory as a license to do whatever is politically necessary. It may wish to remove captured officials immediately, restructure courts overnight, disregard inconvenient procedures, or use criminal law as a means of political cleansing. Some of these measures may respond to obstruction by leftovers of the old regime. Yet constitutional democracy cannot be restored by methods that destroy the very standards it seeks to revive.

European law therefore sets limits for the transition. Judicial independence, fair trial, legality in criminal matters, protection of property, proportionality, and non-discrimination remain applicable. As László Detre demonstrates, this applies especially to repairing the courts. Innovative solutions, including court-packing, might be necessary and legitimate, as David Kosař and Marcin Szwed argue. Still, any premature removals from office would raise concerns under Articles 2 and 19 TEU. The ECHR is important here too, as András Jakab and Michal Bobek stress. Vetting, lustration, confiscation, dismissal, and institutional restructuring may all be necessary in some form. But they must be legal, proportionate, individually justified where required, and subject to review.

Limits apply even to the constituent power. A two-thirds majority may allow constitutional amendment under Hungarian law. But the exercise of constituent power in an EU Member State is not an event beyond the confines of European constitutionalism. A national constitutional majority may repair, but it may not

place itself beyond the common legal order of European society.

This constraining function is not anti-democratic. On the contrary, it protects the democratic legitimacy of the Hungarian transition against its possible deformation. The electorate did not vote for a new monopoly of power. It voted to *end* one. European constitutional limits help ensure that democratic restoration does not become democratic self-harm.

Finally, EU law also facilitates. This is perhaps the least appreciated, but no less important, role. European constitutional law does not only say "no". It can enable democratic actors to rebuild a society in which pluralism prevails. The contributions to this symposium identify many such instruments. EU competition law and state aid law can help address politically distorted markets and the unlawful allocation of economic advantage. The European Media Freedom Act, the Digital Services Act, the Audiovisual Media Services Directive, and European regulatory networks can assist in reconstructing media and regulatory pluralism. Joining the European Public Prosecutor's Office can strengthen the fight against corruption and reassure European institutions that EU funds will be protected. Conditionality mechanisms and Recovery and Resilience Facility milestones can support judicial and anti-corruption reforms. Article 19 TEU and the case law on judicial independence provide standards for reforming the Kúria and the ordinary judiciary. And Article 2 TEU now sets red lines against measures that attack the Union's constitutional identity as a legal order of pluralist society.

EU law is of special importance where domestic institutions remain captured, where veto players obstruct compliance with European obligations, or where the old regime's legal architecture continues to block democratic self-correction. Kim Lane Scheppele's provocative idea of EU law as an interim constitution captures this possibility in its strongest form. One need not accept every implication of that formulation to see the underlying point. In a captured constitutional order, European law may provide a lawful path through domestic obstruction. It may allow reformers to act not outside legality, but through a broader legality: the rule of law writ large, including the obligations of EU and ECHR membership.

Still, this facilitating function must be handled carefully. EU law is not a magic wand. On the one hand, a European umbrella may not become a cover for arbitrary removals, institutional revenge, or constitutional overreach. The balance is delicate: EU law must be strong enough to prevent the old regime from weaponizing legality against democracy, but restrained enough to prevent the new majority from weaponizing democracy against legality. On the other hand, EU law cannot substitute for Hungarian democratic politics. Nor should it be used as a technocratic shortcut for contested political choices. The legitimacy of the transition must remain rooted in Hungarian society, institutions, and public debate.

The Hungarian Role for European Constitutionalism: From Challenge to Renewal

The Hungarian transition will be difficult. It will produce conflicts, disappointments, and legal uncertainty. Some reforms will fail. The task is therefore to accompany the transition critically. European constitutionalism now faces one of its most demanding opportunities: to help a Member State return from hybrid rule without abandoning legality, pluralism, or democratic self-government. If Hungary succeeds, it will not merely come back to Europe but become a driver for the development of European constitutionalism.

For more than a decade, Hungary stood at the center of European constitutionalism because it challenged it. It forced scholars, courts, institutions, and political actors to confront questions many had preferred to avoid: Are Article 2 TEU values legally binding? Can the Union defend democracy within its Member States? What happens when a government uses constitutional law to dismantle constitutionalism? How should European law respond when formal legality becomes the language of autocratic capture?

The Hungarian transition shifts this configuration. Hungary may now stand at the center of European constitutionalism for another reason: not because it *challenges* it, but because it may *contribute* to its deeper entrenchment. If the transition succeeds, it will

not simply restore a national constitutional democracy. It will show that hybrid regimes can be defeated in elections, that constitutional repair can be democratic and lawful, that accountability can be pursued without revenge, that markets and media are part of constitutional reconstruction, and that EU law can assist without dominating.

This would be a major development for the Union as a whole. European constitutionalism has often been written from the West and tested in the East. That geography is no longer adequate. The dynamic center of European constitutionalism has moved eastward because the most severe challenges emerged there. It may now remain there for a more hopeful reason: because this is where European constitutionalism is being endorsed, tested, and renewed.

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SUGGESTED CITATION

von Bogdandy, Armin; Spieker, Luke Dimitrios: The Hungarian Transition's Meaning for European Constitutionalism, Verfassungsblog, 19.06.2026, doi: 10.59704/3c8d3512e4d59b10.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260619-190507-0.