Fundamental Rights Protecting European Society

Has Reverse Solange Become a Reality with Commission v Hungary?

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01.07.2026 doi: 10.59704/ddb2d11eab964109

The central question of the justiciability of Article 2 TEU following *Commission v Hungary* is inevitably linked to the issue of protection of fundamental rights in the EU legal order. In fact, the judgment could extend the review of EU fundamental rights beyond the scope of Article 51(1) of the EU Charter, as the application of the values set out in Article 2 TEU is not limited to the "implementation of Union law".

In *Commission v Hungary*, the CJEU stated that the values set out in Article 2 TEU define the "very identity of the Union as a common legal order of a society in which pluralism prevails" (para. 549, 551). This values-based concept has already been suggested in the case law of the CJEU since Opinion *2/13* (para. 168 et seq.) and has taken concrete form in a more axiological approach to EU law in judgments including *ASJP*, *LM*, or most recently *Commission v Poland*: The fundamental rights of the EU are enshrined in Article 2 TEU and are established as legal principles protecting the legal order of the EU.

Even prior to the decision of 21 April 2026, scholarship had further developed the Court's values-based approach, most prominently through the so-called Reverse Solange doctrine proposed by Armin von Bogdandy and Dimitri Spieker (for a recent articulation, see here). This doctrine constructs a vertical (between the EU and the Member States) and horizontal (between the Member States) values-based *Solange* reservation, aiming to extend and reinforce the protection of fundamental rights in the EU.

In this contribution, I link *Commission v Hungary* to the debate on Reverse Solange. First, I outline the basic logic and mechanism of Reverse Solange. Second, I show how this doctrine has become reality with *Commission v Hungary* and examine whether the Court has even taken Reverse Solange further by establishing a separate breach of Article 2 TEU. Finally, I submit that *Commission v Hungary*, in conjunction with Reverse Solange, can provide effective protection of fundamental rights in the EU, based on judicial dialogue. In this way, fundamental rights, having been established as part of the common set of values that constitute the identity of European society, can protect the foundations and objectives of this society more effectively and in a more participatory and democratic way.

What is Reverse Solange?

The Reverse Solange doctrine is inspired by the German Federal Constitutional Court's *Solange II* (*"as long as"*) doctrine, which concerns the review of national fundamental rights vis-à-vis the public authority of the EU. Reverse Solange inverts this logic by reversing the roles of the actors involved: the European courts – not only the CJEU, but also, and in particular, national courts within the meaning of Article 19(1)(2) TEU – assess whether national fundamental rights protection meets the minimum standards derived from Article 2 TEU.

The *basic logic* of Reverse Solange consists in the premise that the values enshrined in Article 2 TEU set standards which apply to any national measure, as the limits set out in Article 51(1) of the EU Charter do not apply to Article 2 TEU. The doctrine is based, horizontally, on the principle of mutual trust and, vertically, on the principle of sincere cooperation, together establishing a presumption that all public institutions respect the values of the EU.

On that basis, the *mechanism* of Reverse Solange is constructed as follows: Article 2 TEU is given concrete expression by certain provisions, e.g. by Article 19(1)(2) TEU (*ASJP* para. 32) or by the essence of Article 47

of the EU Charter (*LM* para. 48), which broadens the scope of application of these provisions insofar as they give expression to the values in Article 2 TEU – for example, the essence of Article 47 of the EU Charter. The doctrine can therefore be summarised by the following *formula*: Beyond the scope of Article 51(1) of the EU Charter, any Member State remains autonomous in its fundamental rights protection *as long as* the presumption holds that it respects the essence of fundamental rights enshrined in Article 2 TEU.

If this presumption is rebutted, every national court is obliged to interpret and apply national law in accordance with EU values and is required to refer cases to the CJEU where those values are at stake.

Did the CJEU Accept Reverse Solange in Commission v Hungary?

In para. 550 of *Commission v Hungary*, the Court finds that an interpretation of Article 2 TEU must not undermine the limits imposed on the scope of Article 51(1) of the EU Charter. While thereby formally affirming the limited scope of application of the EU Charter, the Court nevertheless acknowledges that a conflict exists because Article 2 TEU is not subject to this limitation and suggests that an extension of the scope of the provisions of the EU may be considered. The CJEU also confirms in para. 522 that mutual trust between the Member States presupposes recognition of the values enshrined in Article 2 TEU (see also Opinion *2/13* para. 168, *Achmea* para. 34, *Wightman* para. 63, as well as the conditionality judgments *Hungary v Parliament and Council* para. 125 and *Poland v Parliament and Council* para. 143). The Court therefore reflects the *basic logic* of Reverse Solange in *Commission v Hungary*.

Concerning the *mechanism* of Reverse Solange, the question arises as to whether the Court has taken the scope of fundamental rights control even further by establishing an autonomous enforceability of Article 2 TEU. The CJEU appears to have opted for an even more far-reaching understanding of Article 2 TEU than Reverse Solange by fundamentally relying on a separate assessment of a "manifest and particularly serious breach" (para. 551) of the values enshrined therein. Even though the EU Charter was applicable, it examined a separate infringement of Article 2 TEU. But does this *separate justiciability* of Article 2 TEU mean that this provision can be invoked *autonomously* and not only in conjunction with other Charta provisions? In para. 545, the Court assesses whether the infringements of the EU Charter may give rise to a breach of Article 2 TEU, which speaks against an autonomous infringement in this particular case. Similarly, AG Ćapeta, in her opinion, distinguished between "self-standing" and "autonomous" breaches, the latter not arising in the present case (para. 33).

However, the question that the CJEU leaves unanswered is how fundamental rights violations and Article 2 TEU breaches are connected (see also here). The Court makes it clear that not every infringement of a fundamental right necessarily constitutes an infringement of Article 2 TEU (para. 547). However, the breach of several fundamental rights which give concrete expression to those values may be an indication for a violation of Article 2 TEU (para. 548). Although it had previously found a breach of human dignity (para. 488 et seq.), the essence of Article 21(1) (para. 141, 422) as well as "particularly serious interferences" with Articles 7 and 11 of the EU Charter (para. 473), the CJEU did not recur expressly to these infringements in the context of the Article 2 TEU violation. This would have been an opportunity to set more precise benchmarks for a values violation (see here). But if we recall that the Court considers the fundamental rights set out in the EU Charter not only to be a concrete expression of Article 2 TEU (for a non-exhaustive list see para. 526), but also to form part of those values (paras. 526 and 549), it would be consequential if a "particularly serious breach" of an EU Charter right insofar that it is part of Article 2 TEU could lead to a "particularly serious breach" of Article 2 TEU. This would be a more far-reaching understanding than Reverse Solange that merely sees the essence of EU Charter rights as being part of Article 2 TEU.

With *Commission v Hungary*, the formula of Reverse Solange has therefore, in essence, become a reality: the principles set out in Article 2 TEU are given concrete expression by certain fundamental rights of the EU Charter, thereby simultaneously extending the

scope of application of those rights beyond the scope of Article 51(1) of the EU Charter. Beyond the limit set by Article 51(1) of the EU Charter, breaches of values – specifically of fundamental rights – may be examined if the presumption that the values set out in Article 2 TEU are being respected is rebutted. This presumption is rebutted if a "manifest and particularly serious breach" of Article 2 TEU has been identified. A violation of human dignity, the essence of rights or a particularly serious interference with one or more EU Charter rights seems to have at least a strong indication for such a breach.

Fundamental Rights Protection in European Society After Commission v Hungary

What does the combination of *Commission v Hungary* and Reverse Solange mean for the fundamental rights protection framework in the EU? What does it mean for European society?

With *Commission v Hungary*, the CJEU has, building on its previous case-law on values, clearly established fundamental rights as part of a common set of values that constitute the identity of European society. Fundamental rights are thus not understood merely as liberal rights of the individual, but as conditions and guarantees of a political community. This understanding, read together with Reverse Solange, can render the protection of fundamental rights – and thus the protection of the values shared by European society – more effective. Based on the cooperation and judicial dialogue between the CJEU and Member States courts, the "red lines" of European society could be made increasingly precise, taking into account the pluralist visions of values in that society.

On a vertical level, the Union now has instruments at its disposal to sanction breaches of EU values in the Member States – specifically, infringements of fundamental rights – not only through Article 7 TEU and the conditionality mechanism, but also through infringement procedures. On a horizontal level, the protection of fundamental rights is also reinforced by the judgment. The CJEU had already held in *LM* (para. 68) that a Member State may refuse a request for cooperation from another Member State in the context of the European Arrest Warrant: By applying the *Aranyosi* test, the national executing judicial authority should assess whether there is a real risk of a breach of the essence of the fundamental right to a fair trial in the issuing Member State (Article 47(2) of the EU Charter). This test could now consequently be applied to all fundamental rights insofar as they concretise the values of Article 2 TEU. Where national courts are faced with manifest and particularly serious breaches of EU values within their own Member State or in another Member State, they should, after *Commission v Hungary*, be obliged to refer those cases to the CJEU by means of a preliminary ruling procedure. Such a possible development in case law following *Commission v Hungary*, based on cooperation between the CJEU and the courts of the Member States, could counter the risk of the EU imposing values top-down.

Furthermore, in the light of AG Ćapeta's reasoning in the *Medel* case regarding the standing of associations in the context of Article 263(4) TFEU (see here), it remains to be seen whether even associations can use actions for annulment to monitor the EU's own compliance with EU values or the EU institution's sufficient protection of those values in the Member States. This could pave the way for a more participatory way of defining the values of European society.

In conclusion, *Commission v Hungary*, in conjunction with Reverse Solange – *as long as* it is applied only in extreme cases and remains within the framework of a decentralised judicial system based on the cooperation and judicial dialogue between the CJEU and Member States courts – could ensure effective protection of fundamental rights without shifting the federal balance between the Union and its Member States.

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SUGGESTED CITATION

Effinger, Sophia: Fundamental Rights Protecting European Society: Has Reverse Solange Become a Reality with Commission v Hungary?, Verfassungsblog, 01.07.2026, doi: 10.59704/ddb2d11eab964109.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260701-190653-0.