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Democracy in the EU: A Value Beyond the Ballot Box

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Thank you Lord Sales, for this kind introduction.

Ladies and Gentlemen, Dear Colleagues,

It is a true honour to be invited to give the 51st Annual Lecture of the Centre of European Law here at King's College in London. I also want to thank the President of the Centre, Sir Francis Jacobs, and my colleague at the Court, Advocate General and Professor Andrea Biondi for being here tonight. I have been invited to talk about the value of democracy within the EU legal order and the timing for discussing this topic could not be more adequate.

It seems to me that democracies fall either because foreign enemies succeed in destroying them or because they become hollow from within. As for external threats to democracy, we do

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not need to look far back in history, or far outside the EU, to see this. The Ukrainian people, who are fighting for freedom, democracy, and justice against Russian aggression, offer a stark reminder. The war in Ukraine can also be seen as a struggle between a young democracy and an authoritarian regime. In fact, Sir Lawrence Freedman, a distinguished colleague of yours here at King's College, has retraced in great detail the evolution of President Putin's fear that former Soviet countries were being drawn towards the democratic appeals of the European Union in his book on *Ukraine and the Art of Strategy*.¹

As for internal threats, we may look at the fall of the Weimar Republic and the *coups d'État* carried out by armed forces in Europe and Latin America. The collapse of the Weimar Republic exemplifies what is now called *democratic backsliding* — a process in which a political party or movement attains power through democratic means only to erode the very institutions that sustain democracy. Democratic backsliding is not a relic of the past, confined to history books; it is a phenomenon we are witnessing today. In their best-selling book *How Democracies Die* — which I strongly recommend you to read — two Harvard professors describe with striking clarity how democratic systems

¹ L. Freedman, *Ukraine and the Art of Strategy*, Oxford University Press 2019.

can be dismantled by those entrusted to defend them.² Unlike *coups d'État* that extinguish democracy overnight, they correctly observe that democratic backsliding unfolds gradually, like a flower slowly deprived of sunlight and water.

Those pushing for democratic backsliding want us to understand democracy simply as the rule of the majority: everyone who is different from the majority of the day may be pushed aside. This is what we might call a democracy that stops at the ballot box. The citizens get to express themselves every five years but vanish in between. This, as I shall explain in detail in this lecture, is not the vision of the value of democracy in Article 2 TEU. Democracy in the EU legal order is a value beyond the ballot box.

By definition, this substantive value of democracy limits what the majority can do with its votes at the ballot box. But it does so in order to keep the wheels of democracy running: Democracy is a process by which the political minority of today may, by way of democratic argument, become the political majority of tomorrow.

The question that arises is *how* we, Europeans can keep democracies strong, vibrant and healthy so that they can endure evolving threats brought about by democratic backsliding. To put

² S. Levitsky and D. Ziblatt, *How Democracies Die* (New York, Crown Publishing, 2018)

it simply, how does the EU protect and promote the substantive value of democracy? In order to answer that question, one must first understand the concept of democracy as it is embedded in the EU legal order, and then ask ‘how to protect and promote it’.

I will illustrate my suggested answers by looking at the case law of the Court of Justice of the European Union.

I. What is democracy in the EU?

Citizens must understand how democracy works within the EU legal order so that they can recognise emerging threats, and defend themselves against these threats.

To begin with, the European Union is founded on the values enshrined in Article 2 TEU. Respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights define the very identity of the EU as ‘a common legal order’.³ Those values stem from the constitutional traditions common to the Member States, and seek to create ‘a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’.

³ Judgments of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, EU:C:2022:97, para. 232, and *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, para. 145.

Like the EU flag which features a circle of 12 stars on a blue background that symbolises unity, harmony and interdependence between the peoples of Europe, those twelve values operate as the moral compass that helps Europeans navigate through uncharted waters. They underpin a certain ideal of what the Member States and their citizens must strive to become: we, Europeans firmly believe that every human being deserves to be treated with equal dignity —whether man or woman, young or old, rich or poor, healthy or sick, friend or foe.

This ideal of equal dignity underpins the value of democracy.

In the EU, democracy is inclusive. Democracy cannot be equated with the tyranny of the majority. Respect for the value of democracy means that minorities cannot be discriminated against, and that the courts must be strong in protecting the rights of the political minority, even if that protection leads to a negative public reaction. The EU therefore guarantees a democratic space of liberty where we can love whom we want, pray to the God of our choosing or not, and live a life without worrying about the colour of our skin.

In the EU, democracy is composite in nature. On the one hand, representative democracy underpins the institutional functioning and design of the EU, by vesting the European

Council, the Council and the European Parliament with democratic legitimacy. The European Council and the Council are legitimised through national governments which are ‘themselves democratically accountable either to their national Parliaments, or to their citizens’, whilst the Members of the European Parliament are directly elected by EU citizens in free and fair elections every five years.⁴

On the other hand, national democracies play an essential role in European integration. EU and national democracies are not in competition with one another but complement each other, reinforcing democracy. In my view, the value of respect for democracy seeks to protect a ‘*demoicracy*’,⁵ an expression that Nicolaïdis has defined as ‘a Union of peoples, understood both as States and as citizens, who govern together but not as one’.⁶ Indeed, ‘the European Union is composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU’.⁷ It is in keeping with the value

⁴ Articles 10 and 14(3) TEU.

⁵ In a European context, that term was first coined by P. van Parijs, ‘Should the European Union become more democratic?’ in A. Føllesdal and P. Koslowski (eds) *Democracy and the European Union* (Berlin & New York, Springer, 1997), 287-301.

⁶ See K. Nicolaïdis, ‘The Idea of European Demoicracy’ in J. Dickson and P. Eleftheriadis (eds), *The Philosophical Foundations of European Union Law* (Oxford, OUP, 2010), 247-274. See also K. Nicolaïdis, ‘The New Constitution as European “Demoi-cracy”?’ (2004) 7 *Critical Review of International Social and Political Philosophy* 76.

⁷ See judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, para. 61.

of democracy that a candidate State for membership may join the EU.⁸ Similarly, it is in light of that value that a Member State may decide to withdraw from the EU, as the Brexit example has shown.⁹

That is why, in full harmony with the character of the EU as a ‘*demoicracy*’, Article 50(1) TEU allows a Member State to withdraw from the Union ‘in accordance with its own constitutional requirements’. The *Wightman* case of the Court of Justice has shown how these domestic constitutional requirements and the EU’s democratic common governance structure coexist seamlessly. The Court was asked by the Scottish Court of Sessions whether the UK Prime Minister’s notification of the UK’s intention to withdraw from the Union could be unilaterally revoked by the UK. The Court’s answer drew explicitly on the value of democracy. It ruled that when a Member State, after the notification to withdraw, decides ‘through its democratic process in accordance with its constitutional requirements’ to remain, then its initial notification cannot force it to withdraw.¹⁰ The emphasis lies on the ‘democratic process’

⁸ Article 49 TEU.

⁹ Judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, para. 65 (holding that ‘given that a State cannot be forced to accede to the European Union against its will, neither can it be forced to withdraw from the European Union against its will’).

¹⁰ *Id.*, para. 66.

which is a ‘part of the very foundations of the European Union legal order’. Therefore, this fundamental value imposes itself not only when a State joins the Union, but also in the process of leaving the Union.¹¹ However, the value of democracy only provides a framework within which the Member States make their own choices as to their democratic processes in accordance with their history and tradition.

Therefore, as you will remember vividly, it was for the UK Supreme Court in *Miller I* to rule on the pretensions of the UK Secretary of State to initiate the process of withdrawing the UK from the EU, based on the Royal prerogative and without parliamentary involvement. After laying out how, over the course of centuries, the Royal prerogative had been limited in favour of Parliamentary sovereignty,¹² the Supreme Court ruled: The fact alone that withdrawal would put an end to EU law as an ‘independent and overriding source of domestic law’ constitutes such an enormous constitutional change that Parliament itself had to decide.¹³

¹¹ *Id.*, paras. 62, 67.

¹² UK Supreme Court, Judgement of 24 January 2017, R (on the application of Miller e.a.) (Respondents) v Secretary of State for Exiting the European Union (Appellant), UKSC/2016/0196, paras. 40 – 45.

¹³ *Id.*, paras. 80 – 81.

The Brexit example thus shows the composite nature of the value of democracy, which makes EU and national democracies interdependent. The healthier national democracies are, the more democratic the EU institutions become. By analogy, the more democratic the UK's withdrawal process was, the more solid is the basis for the ongoing relationship between the UK and the EU. In turn, the more democratic impetus the EU institutions are provided with, the more EU law improves national democracies. By analogy, again, the value of democracy in Article 2 TEU provided a framework for the withdrawal process, mandating, as we have seen, that a notification of withdrawal must be revokable through the domestic democratic process. Just like two symbiotic organisms, there is a common interest in protecting the value of democracy as a whole, since that interdependence favours a mutually reinforcing relationship between EU and national democracies, creating democratic synergies.

In the EU, democracy is woven into what it means to be a citizen of the European Union. The status of EU citizenship, which is 'intended to be the fundamental status of nationals of the Member States', gives access to the democratic life of the EU. As an EU citizen, I have the right to vote and to stand as a candidate in European and local elections.

In a recent judgment, *Commission v Malta*, decided last April, the Court held that, by setting up an investor citizenship scheme which amounted to the commercialisation of the granting of Maltese nationality following a transactional procedure, Malta had failed to fulfil its obligations under the Treaty provisions on EU citizenship and the duty of loyal cooperation.¹⁴ In so doing, the Court of Justice sent a clear message to the Member States: they cannot commercialise the grant of nationality as this is repugnant to the values on which the EU is founded. EU citizenship is not a commodity. From the perspective of democracy, the Court of Justice is telling that the ‘commercialisation’ of EU citizenship would amount to buying one’s way into the EU democratic process, which is fundamentally at odds with the essence of democracy. EU citizenship should be construed in a way that promotes and protects the integrity of the EU’s democratic constituency. As the famous song goes, ‘Money can’t buy me love’—nor should it buy something as profound and principled as EU citizenship.

Inclusivity, a mutually reinforcing relationship between EU and national democracies, as well as EU citizenship help us understand the value of democracy within the EU legal order. However, the picture would be incomplete without examining the

¹⁴ Judgment of 29 April 2025, *Commission v Malta*, C-181/23, EU:C:2025:283.

relationship between democracy and two other values, namely the rule of law and fundamental rights.

This is because one cannot exist without the other two. Together, these values deliver a full, cohesive package. They are interdependent given that fundamental rights are little more than empty promises where there is no democracy and no rule of law; that it is impossible for a democracy to work properly without respect for the rule of law and fundamental rights; and that the rule of law is devoid of substance without democracy and fundamental rights.

Democracy thrives only when both EU institutions and Member States respect the rules of the game. The political process at EU level works properly only if every actor plays by the same rules, whether they win or lose. Those rules imply that neither the EU institutions, nor the Member States are above the law, and that it is for an independent judiciary to interpret those rules. Independent and strong courts are important for democracy, as they guarantee that disputes are not solved by violence or intimidation, but by a judge ready to rule without fear or favour. The observance of those rules amounts to upholding the rule of law within the EU.

Democracy must operate in keeping with the system of 'checks and balances' established by the Treaties. That system is

not an end in itself, but a means of protecting individual liberty, by preserving the vertical and horizontal allocations of powers laid down in the Treaties. As James Madison wrote in the *Federalist Papers* No. 51,¹⁵ the principle of separation of powers and that of conferral (attribution) aim to ensure a ‘double security’ to protect individual liberty. The EU legal order also embraces that approach. Horizontally, the EU institutions must act within the scope of their powers, without upsetting the principle of institutional balance. Vertically, the balance of power between the EU and the Member States as provided for by the Treaties must be safeguarded.

Democracy within the EU legal order requires unwavering respect for fundamental rights. In essence, the rule of the majority must never intrude upon the sphere of self-determination and personal autonomy that belongs to every individual. Certain decisions lie beyond the reach of the political process, safeguarding the very dignity of the person. The right to private and family life constitutes a paradigmatic example, in relation to which the Court has held that restriction on the exercise of that right must be limited to what is ‘strictly necessary’.

¹⁵ See J. Madison, ‘The Federalist No 51’ in A. Hamilton, J. Madison and J. Jay, *The Federalist Papers* (Oxford University Press 2008) 256 (observing that those two principles give rise to a ‘double security’ to the rights of individuals, because ‘[t]he different governments will control each other [i.e. federalism], at the same time that each will be controlled by itself [i.e., separation of powers]’).

II. How to protect and promote democracy in the EU?

Once we have laid bare the meaning of democracy, the question naturally follows: how are we, Europeans to defend it?

Guaranteeing free and fair elections is essential for the proper functioning of democracy. Obstacles to the democratic process must therefore be removed. For example, in *Delvigne*, the Court held that a Member State may exclude persons from the electoral roll in elections to the European Parliament only if such exclusion pursues a legitimate aim and complies with the principle of proportionality. In the case at hand, this condition was met, as French legislation excluded from the right to vote in European Parliament elections only persons who, like the applicant in the main proceedings, had been convicted of a serious crime.¹⁶

Similarly, in *Junqueras Vies*, the Court held that a person elected to the European Parliament acquires the status of Member of that institution at the time of the official declaration of

¹⁶ Judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648.

the results and enjoys, from that time, the immunities attached to that status.¹⁷

And more recently, in *Commission v Poland* and *Commission v Czech Republic*, the Court held that denying EU citizens residing in a Member State of which they are not nationals the right to become a member of a political party infringes EU law. In so doing, the Court of Justice stressed the importance of political parties in the democratic life of the EU. It held – and I quote – that ‘[p]olitical parties, one of whose functions is to field candidates in elections, thus fulfil an essential function in the system of representative democracy, on which the functioning of the European Union is founded’.¹⁸

However, while free and fair elections are essential to upholding the value of democracy, they alone are not sufficient. Democracy must be safeguarded beyond the ballot box by building trust in the democratic process, by engaging citizens and by ensuring long-term stability and justice.

¹⁷ Judgment of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115.

¹⁸ Judgment of 19 November 2024, *Commission v Czech Republic (Ability to stand for election and membership of a political party)*, C-808/21, EU:C:2024:962, para.121, and *Commission v Poland (Ability to stand for election and membership of a political party)*, C-814/21, EU:C:2024:963, para. 119.

A. Building Trust in Democracy

For democracy to flourish—both at the national and EU levels—citizens must be closely involved in the EU decision-making process. By staying well informed about the decisions adopted by the EU legislature and administration, they can actively engage in public debate and express agreement or disagreement with those decisions. Transparency, openness, and accountability go hand in hand, fostering citizens’ trust in their representatives.

This openness conveys an idea of democracy where politicians are not above reproach, but subject to criticism so that bad-policy decisions can be modified and reviewed. As the Court of Justice and the General Court respectively held in *Acces Info Europe* and *de Capitani*, ‘[t]he principles of publicity and transparency are ... inherent to the EU legislative process’.¹⁹

The right of access to EU documents gives concrete expression to the principle of transparency, enables EU citizens to exercise their democratic rights and creates democratic synergies at EU and national levels. By having access to documents held by

¹⁹ Judgment of 22 March 2018, *De Capitani v Parliament* (T-540/15, EU:T:2018:167), para. 81. See, to that effect, judgments of 1 July 2008, *Sweden and Turco v Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, para. 46; of 17 October 2013, *Council v Access Info Europe*, C-280/11 P, EU:C:2013:671, para. 33, and of 15 September 2016, *Herbert Smith Freehills v Council*, T-710/14, EU:T:2016:494, para. 35.

the Council, the electorate of a Member State may monitor the position taken by that Member State's national government within that EU institution. The same holds true in relation to national parliaments, which are able to check whether the executive has complied with the negotiating position laid down for it. The right of access to EU documents, as interpreted by the EU Courts, makes it very difficult for a national government to avoid taking responsibility for unpopular legislative acts adopted at EU level, if it is apparent from the internal documents of the Council that that government never resisted the adoption of those acts. In the same way, it cannot take credit for an EU legislative act where internal documents prove that it consistently opposed the adoption of that act.²⁰

Transparency enables citizens to understand and monitor the democratic process. However, transparency is not enough, given that citizens must also be able to require public officials to assume responsibility for their actions. Whilst a 'glass house' government is essential for democracy, should a public official fracture its integrity, he or she must be held accountable and bear the consequences.

²⁰ See, in this regard, K. Lenaerts, 'The Principle of Democracy in the Case Law of the European Court of Justice' (2013) 62 *International and Comparative Law Quarterly* 271, at 308.

Citizens may hold publicly elected officials accountable either by voting them out of office, by launching a parliamentary investigation or, if need be, by bringing civil or criminal proceedings against them.

Accountability is not only grounded in the value of respect for democracy but also in the value of respect for the rule of law, given that those who exercise public power cannot be above the law. Citizens' trust in the democratic institutions would be called into question if European taxpayers' money was used to fund the interests of corrupt politicians. Put simply, impunity is accountability's worst enemy. From a democratic point of view, this was precisely the context in which the Court of Justice delivered its seminal ruling in *Euro Box Promotion and Others*.

In those joined cases, the Court of Justice held that a series of rulings of the Romanian Constitutional Court had to be set aside, since the application of those rulings had the effect of causing 'a systemic risk of offences [concerning VAT fraud and corruption which were committed by high-level officials] going unpunished'.²¹ That systemic risk of impunity was at odds with Article 325 TFEU, which requires the Member States to ensure that 'cases of serious fraud and corruption affecting the financial

²¹ Judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, para. 198.

interests of the Union are punishable by criminal penalties that are effective and that act as a deterrent'.²² Seen in this light, Article 325 TFEU, which has direct effect, is a powerful tool that gives concrete expression to the values of democracy and respect for the rule of law.

Moreover, freedom of the press and media pluralism are vital for democracy. A free press acts as the 'public watchdog', enabling citizens to monitor those in power, thereby building trust.²³

Freedom of the press and media pluralism give concrete expression to the values of freedom and democracy, since those rights are essential to building public opinion in a society that allows divergent views and tolerates disagreements, echoing 'a society in which pluralism [and] tolerance prevail' as provided in Article 2 TEU.

Because of democratic considerations, restrictions on the freedom of the press and media pluralism are subject to strict scrutiny. As the Court has consistently held, 'the purpose of the press, in a democratic society governed by the rule of law,

²² *Ibid.*, para. 191.

²³ See Opinion of Advocate General Ruiz-Jarabo Colomer in *Damgaard*, C-421/07, EU:C:2008:632, point 81.

justifies [the press] in informing the public, without restrictions other than those that are strictly necessary'.²⁴

In *Real Madrid*,²⁵ the Court of Justice was asked to interpret the Brussels I Regulation in the context of the recognition and enforcement of a Spanish judgment in France.²⁶ That judgment provided that the French newspaper, *Le Monde*, and one of its journalists had to pay damages to a professional football club, Real Madrid, on the ground that they had published an article suggesting that Real Madrid players were doping, which was found to be untrue. The Spanish court ordered *Le Monde* and the journalist to pay, by way of compensation for non-material damage suffered, EUR 300.000 and EUR 30.000 to Real Madrid and AE, a member of its medical team, respectively. The French *Cour de cassation* asked the Court of Justice whether it could rely on the public policy exception set out in the Brussels I Regulation,²⁷ in order to deny the recognition and enforcement of

²⁴ Judgment of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, para. 72, and case law cited.

²⁵ Judgment of 4 October 2024, *Real Madrid Club de Fútbol*, C-633/22, EU:C:2024:843.

²⁶ Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2001] OJ L 12/1 (the 'Brussels I Regulation'), repealed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2012] OJ L 351/1.

²⁷ See Article 34(1) and 45 of the Brussels I Regulation.

the Spanish judgment at issue, since it was liable to impose an unjustified restriction on the freedom of the press.

The Court of Justice held that the recognition and enforcement of the Spanish judgment in France should not give rise to a ‘chilling effect’ that would deter the press from informing the public about matters of public interest or involving political speech. Whilst press articles that undermine the reputation or rights of others may not go unpunished, no sanction must produce such a chilling effect.

Real Madrid is an important contribution to the respect of the value of democracy in the EU legal order, since, in a cross-border context, no European newspaper and no journalist must fear destitution because of an obligation to pay compensation exceeding the material and/or non-material damage actually suffered by the persons concerned by the article at issue.

Moreover, and this brings me to what the famous philosopher Karl Popper called the ‘tolerance paradox’, according to which ‘[u]nlimited tolerance must lead to the disappearance of tolerance’.²⁸ As already mentioned, Article 2 TEU states that the values on which the EU is founded seek to create ‘a society in which tolerance... prevail[s]’. But does that provision mean that the EU must tolerate intolerance? Does the EU have to, for

²⁸ K. Popper, *The Open Society and its Enemies* (London, Routledge, 1945).

example, tolerate views which are rooted in hatred and call for the annihilation of other human beings?

In this regard, Popper said, and I fully agree with him, that ‘[i]f we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them’. Of course, needless to say, the challenge in applying that paradox is to know where tolerance ends and intolerance begins.

Read in the light of that paradox, I find that the judgment of the General Court in *RT France v Council* is well founded.²⁹ In that case, the General Court dismissed an action for annulment, brought by a media outlet that was wholly funded by the Russian State, against a Council Regulation that temporarily prohibited that media outlet from broadcasting content, on the ground that it had engaged in a propaganda campaign, targeting civil society in the EU, justifying and supporting Russia’s military aggression against Ukraine. The General Court reasoned *inter alia* that the Council had limited RT France’s freedom of expression in a way that was in keeping with the Charter, since the challenged Regulation pursued two legitimate aims – namely, the protection of the Union’s public order and security and the application of

²⁹ Judgment of 27 July 2022, *RT France v Council*, T-125/22, EU:T:2022:483.

pressure on the Russian authorities in order to bring an end to the war – whilst also complying with the principle of proportionality.

RT France v Council shows that, in the European legal space, the democratic process must be based on shared norms of mutual respect, and a reasoned debate which revolves around the concept of human dignity. By excluding intolerant voices from the public debate, the EU shows that it is ready to defend the values on which it is founded.

B. Engaging Citizens

In the EU legal order, democracy is not limited to electing public officials, since it must also incorporate members of civil society into decision-making. By incorporating those members, EU legislation becomes more transparent and pluralistic.

Engaging citizens in the democratic process is essential, for there is no greater threat to democracy than the apathy of those unwilling to stand up for what is right. In her famous book entitled '*The Origins of Totalitarianism*',³⁰ Hannah Arendt explained the dangers of citizens feeling alienated. Citizens, who are detached

³⁰ H. Arendt, *The Origins of Totalitarianism* (New York, Harcourt, Brace & Company, 1951).

from the democratic institutions and caught in 'alternative realities' of social media, may easily be led astray by the haunting melody of populist siren songs, which seek to dismantle the system of checks and balances put in place by liberal democracies, and to replace it by authoritarian leadership.

That is why civil society organisations must be protected by law: they help nurture a sense of belonging to a community of shared values and prevent individuals from feeling left behind.

That is why EU law also protects the freedom of association enshrined in Article 12 of the Charter. In *Commission v Hungary (Transparency of associations)*,³¹ for example, the Court of Justice ruled that the Hungarian Transparency Law, which imposed obligations of registration, declaration and publication on certain categories of civil society organisations (or 'CSOs') directly or indirectly receiving support from abroad exceeding a certain threshold, was contrary to Article 12 of the Charter. This was because that law imposed an unjustified restriction on the capacity of associations to receive financial support sent from other Member States or third countries.

From a democratic perspective, two direct implications flow from *Commission v Hungary (Transparency of associations)*.

³¹ Judgment of 18 June 2020, *Commission v Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476.

First, this case sheds light on a new kind of protectionism, one that seeks to prevent the free movement of ideas and civic participation. This type of protectionism is very dangerous for democracy. By preventing funding from abroad, the activities of civil society organisations, notably those that are critical of the government of the home Member State, may be severely reduced. Through lack of funding, dissenting voices fall silent which, in turn, undermines the quality of democratic debate in the home Member State.

Second, it is true that increasing the transparency of the financing of associations is a legitimate objective under EU law. However, that objective may not be relied upon in order to establish a general presumption, according to which funding that comes from abroad is contrary to the interests of the home Member State. Promoting a general mistrust against civil society organisations that receive funding from abroad is at odds with the principle of mutual trust. Public life and public debate in the home Member State must be open to influence, and be influenced by, natural or legal persons established abroad.

Put simply, in the EU legal order, civil societies cannot be victims of ‘civic isolationism’, since, as Hannah Arendt observed, this prepares the soil for democratic backsliding.

C. Long-Term Stability and Justice

Despite what some may claim, the democratic process should not be seen as the enemy of science and expertise. In modern societies where information is crucial, democracy must integrate the perspectives of experts and scientists to ensure that public policies are sound, informed, and rational, serving the common good.

The COVID-19 pandemic has shown how easily societies can fall into the trap of *epistemic trespassing*—when individuals, after a quick internet search or exposure to social media posts, believe themselves capable of solving complex scientific problems. Or, even worse, start believing in conspiracy theories. Democracy must therefore be anchored in the pursuit of truth, enabling citizens to exercise their political rights with full awareness of their choices. That is why, for example, the concept of ‘education’ laid down in the Equal Treatment Directive 2000/43, which seeks to combat discrimination on grounds of race or ethnic origin,³² includes not only the acquisition of knowledge, understanding and skills itself, but also the prior

³² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

access to education. In a democratic system, access to education is ‘an essential aspect of this concept, since there can be no education without the possibility to access it and [...], therefore, the directive’s objective, which is to combat discrimination in education, could not be achieved if discrimination were allowed at the access to education stage.’³³

Experts and scientists should not be portrayed as adversaries of democracy but rather as essential contributors who foster long-term stability and advance progress through study, debate, and research. Needless to say, those views may also serve the common good, if they are provided independently, insulated from the political process. Knowledge institutions come in every imaginable shade, public and private, from independent agencies to media outlets. Out of this breadth of knowledge institutions, I want to focus my remarks on two particular institutions, first data protection supervisory authorities and second universities.

Firstly, with regard to data protection supervisory authorities, the Court held in *Commission v Germany* in 2010 that Germany had failed to fulfil its obligation under EU law by incorrectly transposing the requirement that the authorities

³³ Judgment of 15 November 2018, *Heiko Jonny Maniero v Studienstiftung des deutschen Volkes eV*, C-457/17, EU:C:2018:912, paras. 32, 37.

responsible for monitoring the processing of personal data by non-public bodies perform their functions ‘with complete independence’.³⁴

Germany posited that the notion ‘with complete independence’ did not preclude State (Länder) supervision which, in turn, allowed the government of the respective Land (or an administrative body subject to that government) to influence, directly or indirectly, the decisions of the supervisory authorities or, as the case may be, to cancel and replace those decisions. Such supervision was in keeping with Germany’s understanding of democracy, as the administration must be subject to the instructions of the government which is accountable to its parliament.

However, the Court took a different view, holding that protecting those authorities from any influence was an objective pursued by the EU legislature, so as to insulate them from any political pressure when determining whether the processing of personal data complied with EU law. As to the arguments relating to Germany’s understanding of democracy, the Court dismissed them by holding that independent agencies and democracy go hand-in-hand.

³⁴ Judgment of 9 March 2010, *Commission v Germany*, C-518/07, EU:C:2010:125.

In the key passage of the judgment, the Court held –and I quote—that ‘[the] principle [of democracy] does not preclude the existence of public authorities outside the classic hierarchical administration and more or less independent of the government. The existence and conditions of operation of such authorities are, in the Member States, regulated by the law or even, in certain States, by the Constitution and those authorities are required to comply with the law subject to the review of the competent courts. Such independent administrative authorities... often have regulatory functions or carry out tasks which must be free from political influence, whilst still being required to comply with the law subject to the review of the competent courts. That is precisely the case with regard to the tasks of the supervisory authorities relating to the protection of data.’³⁵ This case law regarding the independence of national regulatory authorities or ‘NRAs’ has substantially diversified over the last fifteen years.³⁶

Secondly, with regard to universities, the caselaw of the Court recognises academic freedom as an essential element of the value of respect for democracy. In order to have a

³⁵ *Ibid.*, para. 42.

³⁶ See, for example, judgments of 13 June 2018, *Commission v Poland*, C-530/16, EU:C:2018:430 ; of 28 May 2020, *Commission v Bulgaria (Railway investigation body)*, C-33/19, not published, EU:C:2020:405; of 11 June 2020, *Prezident Slovenskej republiky*, C-378/19, EU:C:2020:462, and of 11 September 2025, *Cairo Network and Others*, C-764/23 to C-766/23, EU:C:2025:691.

marketplace of ideas which moves democracies forward, universities must feel free to carry out their research autonomously and the classroom should be a safe space where scholars may express themselves without censorship. Academic freedom is specifically recognised as a fundamental right in Article 13 of the Charter, which largely draws on Article 10 ECHR.

In *Commission v Hungary (Higher Education)*, the Court found that the Hungarian law on higher education unduly limited the exercise of academic freedom. That law made teaching activities by foreign universities subject to two requirements: first, a prior international agreement between the university's home country and Hungary, and, second, proof that the university provided education services in its home country. *Commission v Hungary (Higher Education)* is a seminal judgment because it provided the Court with the opportunity to carve out an 'institutional dimension' to academic freedom. Under the broad interpretation of the Court, 'academic freedom' guarantees not only free speech in the academic context, including political speech,³⁷ but also institutional autonomy. Academic freedom

³⁷ Judgment of 6 October 2020, *Commission v Hungary (Higher education)*, C-66/18, EU:C:2020:792, para. 225 (holding that 'academic freedom in research and in teaching should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and to distribute knowledge and truth without restriction, although it should be made clear that that freedom is not restricted to academic or scientific research, but that it also extends to academics' *freedom to express freely their views and opinions*' (emphasis added). See, in this regard, ECtHR, 27 May 2014, *Mustafa Erdoğan and Others v. Turkey*, CE:ECHR:2014:0527JUD000034604, § 40.

incorporates this ‘institutional and organisational dimension’, because, in the explicit words of the Court, ‘a link to an organisational structure [is] an essential prerequisite for teaching and research activities’.³⁸ Moreover, the Court found that the Hungarian law on higher education did not comply with Article 13 of the Charter, given that, just as it did in relation to the restrictions that that law brought about on the relevant provisions of the GATS and the fundamental freedoms, ‘the measures at issue were not justified by any of the objectives of general interest recognised by the Union upon which Hungary relied’.³⁹ The Court thus confirmed that, in the EU legal order, academic institutions, such as universities, are seen as ‘the gatekeepers that protect academics from intrusion via unjustified external pressure’.⁴⁰ Seen in this light, universities are called upon to play a vital role in developing democracy, since they foster critical thinking, promote pluralism and advance research. Most importantly, they contribute to developing the leaders of tomorrow in keeping with liberal values.

³⁸ *Ibid.*, para. 227 (referring to Recommendation 1762 (2006), adopted by the Parliamentary Assembly of the Council of Europe on 30 June 2006 and entitled ‘Academic freedom and university autonomy’).

³⁹ *Ibid.*, para. 240.

⁴⁰ Kriszta Kovács ‘Academic freedom in Europe: Limitations and judicial remedies’ (2024) *Global Constitutionalism* 1, at 16.

III. Concluding remarks

This brings me to my concluding remarks for this lecture. Democracy in the EU legal order is inclusive, composite in nature and woven into what it means to be a citizen of the European Union.

Democracy defines the identity of the EU as a common legal order, which strives to protect and promote values that revolve around human dignity. Democracy is not tantamount to the tyranny of the majority, but is about protecting minorities. Democracy respects fundamental rights, by ensuring that each and every one of us enjoys a sphere of self-determination that allows us to live life as we see fit.

Democracy is nothing but an empty promise without the rule of law, understood as the system of checks and balances that protects individuals from the arbitrary exercise of power. As John Adams famously said, democracy is a ‘government of laws, not men’.

Moreover, within the EU, this system of checks and balances has a transnational dimension that can assist national democracies experiencing democratic backsliding in returning to the path of freedom and justice.

EU law is by its very nature a law of democracy, as it contributes to building trust in the democratic process, protects civil engagement and long-term stability based on the rule of law. As the case law of the Court of Justice shows, the value of democracy pervades the entire body of EU law. This means that EU law may be relied upon to stop authoritarian tendencies.

But most importantly, democracy is a moral choice and a personal commitment. As the famous American Philosopher John Dewey once wrote, it is ‘a way of life controlled by a working faith in the possibilities of human nature’.⁴¹ At the end of the day, it is for each and every one of us to fight for a strong and vibrant democracy. Civil indifference and apathy are the worst enemies of democracy.

Paraphrasing the famous words of Benjamin Franklin, the EU is a ‘democratic union of democracies’, if we, Europeans can keep it.

Thank you very much.

⁴¹ J. Dewey, *Democracy and Education* (New York, Macmillan, 1916).