

# European Democracy at Stake in Battle of the EP versus Orbán

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Shortly after the entry into force of the Lisbon Treaty in 2009, the European Parliament expressed its concern about the rule of law in Hungary. 14 years later, the EP still, and yet again, discusses PM Orbán's lack of respect for the values of the Union. The forthcoming debate on 10 April will be the Parliament's last chance to prevent the scheduled takeover of the Council-Presidency by Hungary. This blogpost examines why the EP should take aim at the state of the rule of law in the Member States in the first place. The MEPs should make clear that the provisions concerning the rotating Council-Presidency must be interpreted in the light of the values of Article 2 TEU. Finally, the European Parliament and the European Council must prevent a self-proclaimed illiberal leader from assuming the Presidency of the Council and thus protect the democratic nature of the European Union.

## The illiberal autocrat's perspective

In the wake of the fall of the Wall in 1989, Hungary and other [Visegrad](#) countries started to prepare themselves for accession to the EU. A total of 10 new Member States joined the club in May 2004. Three years later, Hungary voluntarily signed and ratified the Treaty of Lisbon. After his return to power in 2010, PM Orbán sought to strengthen his position by taking measures to erode the democratic system in his country. The EP expressed concern in a [resolution](#) of 2011 and continued to monitor the steadily deteriorating situation. Orbán rejected Parliament's involvement with the human rights situation in his country as unwarranted interference in the internal affairs of a sovereign state. Having witnessed the negative consequences of Brexit, he developed the strategy to stay in the Union and to change its character from within. Aligning with various partners, notably the PiS-party from Poland, he tried to convince the European Council to return to the concept of an association of states and to [abolish](#) the European Parliament. After the Russian invasion of Ukraine, Orbán further alienated himself from the EU by upgrading his relations with Putin to the [point of treason](#). Despite Orbán's intention to dismantle European democracy and his betrayal of the Union, the European Council is allowing him to assume the Presidency of the Council of the EU starting in July 2024.

## The democratic vision

The views of the European Parliament on the nature of the EU are diametrically opposed to the revisionist ideology propagated by Budapest. The EP can underpin its convictions with a strong legal argumentation based on the Treaties. It starts with the observation that the foundational Maastricht Treaty established EU citizenship and constructed the polity as a union of states and citizens. In the [Edinburgh](#)

[Declaration](#) of December 1992, the European Council clarified the new concept by explaining that it did not replace national citizenship but was additional to the national status. Today, this principle is enshrined in Article 9 TEU.

Many observers from various disciplines have noticed that European integration is a gradual process and that the present polity has not been created with a “Big Bang”. Consequently, the concept of EU citizenship has received its relevance step by step. The Charter of Fundamental Rights of the EU, proclaimed at the Summit of Nice in 2000, may be regarded as the Magna Carta of the newly created citizens. The Charter was integrated into the 2007 Lisbon Treaty and has the same value as the TEU and the TFEU.

In its case law, the EU Court of Justice has clarified the notions of EU citizenship and of EU democracy. In the wake of the conclusion of the Lisbon Treaty, the Court established that EU citizenship is the primary status of the nationals of the Member States and lifted the so-called cross-border requirement (Case C-184/99, [Grzelczyk](#)). Consequently, EU law “precludes national measures, which have the effect of depriving citizens of the Union from the genuine enjoyment of the substance of the rights conferred by virtue of their status of citizens of the Union.” (Case C-34/09, [Ruiz Zambrano](#)). With equal clarity the Court found in December 2019 that the EU in its present form not only has an autonomous legal order but also an autonomous democracy (Case C-502/19, [Junqueras Vies](#)).

Despite these verdicts, Orbán continued his crusade for the EU’s return to an association of states. Together with his Polish ally Morawiecki, he appealed to the EU Court of Justice against the decision of the Council and the Parliament to introduce a rule of law-mechanism in the Resilience and Recovery Facility (RRF), created in 2021 to combat the consequences of the Covid-pandemic. In their complaints, both Poland and Hungary invoked the Westphalian system of International Relations by arguing that the creation of a mechanism to oversee the way in which the RRF-funds were spent by the receiving countries, amounted to an unwarranted interference in the internal affairs of a sovereign state (Cases C-156/21 and C-401/19, [Hungary and Poland v Parliament and Council](#)).

The ECJ refuted this revisionist line of thought in the most unambiguous way. The Court went to great lengths to establish not only that the EU *has* abandoned the Westphalian system but also demonstrated *how* it has done so. Summarising 70 years of EU integration, it observed that the Member States have first agreed on their common values and have subsequently applied these values to their organisation. As the Member States have voluntarily assented to each other and to the Union to respect these values, while simultaneously obliging their Union to do so too, the latter must also be able to protect them in case of serious risks of violation.

## **Towards a democratic Union of democratic States**

Putting the abstract analysis of the Court in historical context, it may be recalled that the European Council described the Communities in 1973 as a [Union of democratic States](#). From then on, the leaders of the Member States insisted that

their Union should also acquire democratic legitimacy on its own. Apparently, they [presumed](#) that, if a number of democratic states yielded sovereignty in ever wider fields with the aim to attain common goals, their organisation should be democratic too. In a period of three decades, the Member States overcame the notorious democratic deficit of the polity by transforming it from a union of democratic states to “a union of democratic states which also constitutes a democracy of its own”, a Democratic (European) Union. They started by changing the original assembly into a directly elected Parliament (1976), continued with qualified decision-making (1986), made a leap forward by founding the European Union, thereby establishing EU citizenship (1992), applied their common values to their Union (1997) and proclaimed the Charter of Fundamental Rights of the EU (2000). Finally, the Treaty of Lisbon, which came to replace the Constitution for Europe in 2007, constructed the EU as a European democracy. In its present form, the EU may be described from the internal perspective of the citizens as a democratic union of democratic states, while it can be identified in terms of global governance as a democratic supranational organisation (DSO). From this viewpoint, the [distinctive quality of the EU](#) is that it applies the constitutional principles of democracy and the rule of law in an international organisation.

## Defending European democracy

Accordingly, the battle between the European Parliament and the opponents of European democracy, led by Orbán, is not merely a dispute on an accidental issue but concerns a fundamental conflict about the nature of the EU. The essence of this conflict was spontaneously formulated by Angela Merkel after her farewell meeting of the Council in October 2021. At a press conference after the most acrimonious gathering in the Council’s history, the departing Chancellor asked in despair what we are: “[an ever closer union or a Staatenverbund?](#)”

A return to an association of states would mean to deconstruct the present European democracy. It would imply the abolition of all attainments the EU has achieved since the [1973 Declaration on European Identity](#) and it would open the door for unchecked national erosion of the rule of law. If the illiberal proposals were to be implemented, the EU would have to abolish the European Parliament, revoke the Charter, cancel EU citizenship, rescind the values of the Union and, finally, dissolve itself.

In the face of these immediate threats, the European Parliament is not only entitled but also obliged to defend itself, the citizens of the EU and, indeed, the Union as such. As the voice of the citizens of the Union, the EP should champion the functioning of the EU as the European democracy. It has to examine the legal and political consequences of its evolution to a democratic union of democratic states. Under the present circumstances, Parliament should start by stating the obvious, namely, that a democratic union of democratic states cannot be run by a self-proclaimed “illiberal” who, in addition to his revisionist views, also constitutes a danger to the territorial integrity of the EU in times of war. At the forthcoming debate about Hungary in the EP on 10 April, MEPs should make clear that the provisions concerning the rotating Council-Presidency must be interpreted in light of the values of Article 2 TEU. While the concept of the rotating presidency goes back to the

times of the early Communities, it is no longer applied in an association of states. Instead, the respective values must be interpreted in light of the EU's evolution to a democratic union of democratic states. In fact, the members of the European Council and those of the Council of the EU should also realise they are institutions of a democratic supranational organisation and not of an outdated association of states. If the members of the European Council had been aware of the EU's transformation into a democratic polity on the global stage, they would have gone further than merely pressuring the Hungarian PM to cease his opposition to financial support for Ukraine. In addition, they would have informed him that, as a self-proclaimed illiberal autocrat facing disciplinary proceedings in connection with breaches of the Union's values, he cannot assume the Council-Presidency. As they have failed to do so until now, the European Parliament must renew its call on the Council not to allow illiberal leaders of EU Member States to undermine the democratic character of the Union.<sup>1)</sup>

#### References

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