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*The Two-Pillar Squeeze: Media Pluralism and Anti-Gender Politics in Illiberal Rights Governance in Hungary*

DOI: [https://doi.org/10.34625/issn.2183-2705\(39.2\)2026.ic-10](https://doi.org/10.34625/issn.2183-2705(39.2)2026.ic-10)

## Secção

# Investigação Científica / Scientific Research\*

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\* Os artigos presentes nesta secção foram sujeitos a processo de revisão segundo o método *blind peer review* / The articles in this section have undergone a blind peer review process.



# The Two-Pillar Squeeze: Media Pluralism and Anti-Gender Politics in Illiberal Rights Governance in Hungary

## A Pressão dos Dois Pilares: Pluralismo Mediático e Política Anti-Gênero na Governança “Iliberal” de Direitos na Hungria

João FERREIRA DIAS<sup>1</sup>

**ABSTRACT:** This article develops a mechanism-based account of illiberal rights governance through what I call the “two-pillar squeeze.” In contemporary culture-war contexts, fundamental rights are pressured not only through explicit legal restrictions, but also through changes in the institutional conditions that make rights effective. The first pillar targets the legal primacy of freedom of expression and the right to seek, receive, and impart information, weakening access to public information, media independence, and the practical capacity of journalism and civil society to operate as watchdogs. The second pillar weaponizes anti-gender politics—often framed as “child protection” or public morality—to justify regulatory and administrative measures that narrow autonomy, privacy, equality, and non-discrimination while expanding discretionary power. Using Hungary as a critical case, the article shows how these pillars can reinforce each other: a degraded informational environment blunts scrutiny and accountability, enabling moralized regulation, which in turn legitimates broader interventions in the public sphere. Methodologically, it combines reflexive political science with legal analysis, tracing these dynamics in constitutional amendments, statutes, administrative practices, litigation, and European enforcement and compliance pressures.

**KEYWORDS:** illiberalism; culture wars; freedom of expression; right to information; media governance; anti-gender politics; Hungary

**RESUMO:** Este artigo desenvolve uma análise sistemática do modo como a governação iliberal afeta direitos fundamentais através daquilo a que chamo “compressão de dois pilares” (*two-pillar squeeze*). No contexto contemporâneo das guerras culturais, os direitos são pressionados não só por restrições legais explícitas, mas também por alterações nas condições institucionais que tornam os direitos efetivos. O primeiro pilar incide na primazia jurídico-constitucional da liberdade de expressão e do direito de procurar, receber e transmitir informação, enfraquecendo o acesso à informação pública, a independência dos media e a capacidade prática do jornalismo e da sociedade civil atuarem como *watchdogs*. O segundo pilar instrumentaliza políticas anti-gênero — frequentemente enquadradas como “proteção de menores” e/ou moralidade pública — para justificar medidas regulatórias e administrativas que estreitam a autonomia, a vida privada, a igualdade e a não discriminação, ao mesmo tempo que expandem a discricionariedade do poder público. Utilizando a Hungria como caso crítico, o artigo mostra como estes pilares se podem reforçar mutuamente: um ambiente informacional degradado reduz escrutínio e responsabilização, facilitando a regulação moralizada, que por sua vez legitima intervenções mais amplas no espaço público. Metodologicamente, combina ciência política reflexiva com análise jurídica, seguindo estas dinâmicas em alterações constitucionais, estatutos, práticas administrativas, litigância e pressões europeias de *enforcement* e *compliance*.

**PALAVRAS-CHAVE:** Iliberalismo; guerras culturais; liberdade de expressão; direito à informação; regulação dos media; políticas anti-gênero; Hungria.

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## 1. Introduction

### 1.1. Concepts

This article starts from the premise that contemporary political–cultural conflict – often referred to as culture wars<sup>2</sup> – produces effects that exceed the rhetorical sphere and become juridically materialized. *Ad summam*, culture wars are understood here as the intensification of normative and identity-based disputes around issues such as family, gender, sexuality, education, immigration, historical memory, and national belonging—disputes that tend to reconfigure partisan cleavages and polarize the public sphere<sup>3</sup>.

For a legal–institutional approach, the analytical relevance of this phenomenon lies not in the specific moral content of the competing positions, but in the way these disputes are mobilized as a language of legitimacy for regulatory and administrative interventions, through the political leveraging of illiberal solutions.

The notion of illiberalism is used here in a political–institutional sense, following a range of authors<sup>4</sup>, as the outcome of a separation between democracy and liberalism<sup>5</sup>. Accordingly, illiberalism (in this case, predominantly right-wing) refers neither to a mere conservative orientation nor to a synonym of classical authoritarianism, but to a pattern of governance that preserves minimal electoral procedures while weakening constitutional checks and balances, the separation of powers, institutional autonomy, and the pluralism that sustains a liberal democracy. The article therefore focuses on the shift from a cultural plane (moral conflict) to a governance plane (institutional reconfiguration), that is, the moment when identity-based disputes begin to shape the architecture of rights implementation and oversight.

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<sup>2</sup> HUNTER, James Davison. *Culture wars: The struggle to control the family, art, education, law, and politics in America*. Avalon Publishing, 1992. NOLAN, James L. (ed.). *The American culture wars: Current contests and future prospects*. University of Virginia Press, 1996. HUNTER, James Davison; WOLFE, Alan. *Is there a culture war?: A dialogue on values and American public life*. Bloomsbury Publishing USA, 2007. HARTMAN, Andrew. *A war for the soul of America: A history of the culture wars*. University of Chicago Press, 2022. FERREIRA DIAS, João. *Guerras Culturais: os ódios que nos incendeiam e como vencê-los*. Guerra & Paz, 2025.

<sup>3</sup> CAROTHERS, Thomas; O'DONOHUE, Andrew (ed.). *Democracies divided: The global challenge of political polarization*. Bloomsbury Publishing USA, 2019. SINGER, Daniel J., et al. Rational social and political polarization. *Philosophical Studies*, 2019, 176.9: 2243-2267. KLEIN, Ezra. *Why we're polarized*. Simon and Schuster, 2020. FILARDO-LLAMAS, Laura; MORALES-LÓPEZ, Esperanza; FLOYD, Alan (ed.). *Discursive approaches to sociopolitical polarization and conflict*. Routledge, 2021.

<sup>4</sup> ZAKARIA, Fareed. The rise of illiberal democracy. *Foreign Aff.*, 1997, 76: 22. LARUELLE, Marlene. Illiberalism: A conceptual introduction. *East European Politics*, 2022, 38.2: 303-327.

<sup>5</sup> MOUNK, Yascha. *The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It*. Cambridge, MA: Harvard University Press, 2018.

Within this framework, I propose the “two-pillar squeeze” model as a concise way of describing a recurring mechanism of rights compression in illiberal contexts. The mechanism operates through two interdependent pillars:

- (i) *The expressive–informational pillar.* Rather than reducing the problem to media pluralism as a sociological indicator, the article centers on the legal primacy of freedom of expression and the right to information, understood as the right to seek, receive, and impart information and ideas, enshrined in the Universal Declaration of Human Rights and further specified in international and regional treaties. The hypothesis is that the erosion of this pillar does not occur only through direct censorship, but also through changes in the institutional conditions that enable the effective exercise of the right: access to public information, editorial independence, regulatory autonomy, protection of journalists and sources, and the capacity of civil society to act as a watchdog.
- (ii) *The anti-gender/moralizing pillar.* This refers to the instrumentalization of anti-gender politics as a technology of governance. The article examines how certain normative agendas – often presented under the framing of “child protection,” “public order,” or “morality” – can produce concrete legal effects: administrative and regulatory restrictions, an expansion of discretion, and a practical reconfiguration of rights linked to autonomy, private life, equality, and non-discrimination.

The core of the model lies in the interaction between these pillars: the weakening of expressive and informational primacy reduces scrutiny and accountability, making moralized regulation politically more feasible; conversely, the intensification of moral conflicts legitimates broader interventions in the public sphere and contributes to normalizing measures that compress fundamental freedoms. Thus, the key question is not only whether particular rights are restricted, but how the institutional ecosystem that makes them enforceable is altered.

## **1.2. Objectives**

The article pursues three main objectives. First, it offers a systematic, mechanism-based (rather than merely descriptive) explanation of how culture wars can fuel illiberal dynamics that affect the effectiveness of fundamental rights. Instead of cataloguing episodes, it seeks to identify the sequence linking moral framings, political decisions, and their juridical–administrative materialization.

Second, it shows that pressure on rights is not limited to “substantive” restrictions

(prohibitions, sanctions) but also includes a frequently underestimated dimension: the reconfiguration of implementation. Rights may remain formally recognized and yet become progressively less operative due to changes in procedures, the allocation of competences, oversight arrangements, and the practical conditions of exercise.

Third, it develops a controlled analytic reading that distinguishes between (a) patterns of illiberal rights governance and (b) mere cultural polarization within a liberal democracy. Rather than treating “culture war” as a descriptive label, the article uses Hungary as a critical case, where the articulation between moral-majoritarian legitimation and institutional redesign is particularly clear, allowing the mechanism to be traced with high resolution in legal texts and enforcement dynamics. While the argument is formulated in portable terms, it does not claim cross-national generalization within the limits of this article; instead, it specifies a mechanism that can be tested in future work across variation cases and distinct constitutional settings.

The intended contribution is therefore twofold: (i) conceptual, by providing a portable mechanism (“two-pillar squeeze”) for analysing illiberal rights governance; and (ii) legal–institutional, by showing how illiberal governance becomes observable in constitutional amendments, statutory architecture, administrative practice, litigation, and regimes of European enforcement and compliance.

### **1.3. Methodology**

Methodologically, the article combines reflexive political science on illiberalism with legal–institutional analysis. It relies on qualitative process-tracing within the Hungarian case to reconstruct sequences linking (i) culture-war framings and moral-majoritarian legitimation, (ii) legislative and regulatory choices, (iii) administrative practices, and (iv) litigation and European-level oversight/compliance pressures. The analysis is grounded in constitutional and statutory texts, institutional design changes, and enforcement-related materials, focusing on how rights remain formally recognizable while their practical conditions of implementation are re-engineered.

## **2. Hungary: From Populism to Illiberal Governance (and the “Two-Pillar Squeeze”)**

Hungary constitutes a critical case for analysing the normative procedures and sociopolitical configurations involved in the post-communist transition first towards a

plural and liberal democracy and later towards an illiberal reversal, rooted in nativism<sup>6</sup>. The political base of this shift materialises in what Inglehart and Norris<sup>7</sup> define as a cultural backlash, linking authoritarian populism with the defence of traditional values and moral order.

Hungary thus provides an exemplary illustration of how culture wars, nativism, and illiberalism as a technique of governance intersect. The Orbán government has articulated Hungarian identity around the notions of the “traditional family,” Christian values, biocultural identity, a moral majority, and the rejection of multiculturalism, while simultaneously dismantling the legal and institutional pillars of liberal democracy, namely, checks and balances and the rule of law. This project is framed by the central slogan of the radical right, *la volonté générale*, according to which democracy expresses the voice of the moral and demographic majority against what are perceived as external constraints: constitutional mechanisms and international *jus cogens* norms protecting minorities and individual autonomy. In this political imaginary, the legitimacy of majoritarian morality is set in opposition to the cultural hegemony<sup>8</sup> of liberal universalism, which the far right reframes as the triumph of “cultural Marxism”<sup>9</sup>.

Despite its political breadth, the central concern of this article is not to reconstruct an exhaustive chronology. Rather, it seeks to identify how (i) a majoritarian legitimacy built in populist and civilizational language translates into (ii) juridico-institutional transformations that compress fundamental rights, not only through explicit prohibitions but through the reconfiguration of the institutional conditions under which rights are implemented, supervised, and effectively exercised.

### **2.1. Political–institutional map: 2010 as a constitutional moment, and the construction of a Christian “moral majority”**

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<sup>6</sup> HIGHAM, John. *Strangers in the Land: Patterns of American Nativism, 1860–1925*. New Brunswick: Rutgers University Press, 2002. ISBN 978-0-8135-3147-1. BETZ, Hans-Georg. *Nativism and the Success of Populist Mobilization*. *Revista Internacional Pensamiento Político*, 2017, vol. 12, p. 169–188. GUIA, Aitana. *The Concept of Nativism and Anti-Immigrant Sentiments in Europe*. 2016. GOLDSTEIN, Ariel. *Populismo y nativismo en las derechas radicales de Polonia: entre el pasado y el presente*. *Analecta Política*, 2021, vol. 11, n. 21, p. 179–200.

<sup>7</sup> INGLEHART, Ronald F.; NORRIS, Pippa. *Trump, Brexit, and the rise of populism: Economic have-nots and cultural backlash*. 2016; NORRIS, Pippa; INGLEHART, Ronald. *Cultural backlash: Trump, Brexit, and authoritarian populism*. Cambridge University Press, 2019.

<sup>8</sup> GRAMSCI, Antonio. *Selections from the Prison Notebooks*. Edited and translated by Quentin Hoare and Geoffrey Nowell Smith. New York: International Publishers, 1971. ISBN 978-0-7178-0397-2.

<sup>9</sup> JAMIN, Jérôme. *Cultural marxism and the radical right*. In: *The post-war Anglo-American far right: A special relationship of hate*. London: Palgrave Macmillan UK, 2014. p. 84-103.

Hungary is widely treated as a “most likely” and therefore analytically revealing case of post-communist democratization: if liberal democracy could not consolidate there, its prospects elsewhere in the region were structurally weaker<sup>10</sup>. This makes the post-2010 trajectory especially useful for tracing how a strong electoral mandate can be converted into a durable institutional architecture that displaces liberal constitutionalism without an overt rupture in electoral procedures.

The hinge is the 2010 parliamentary landslide for Fidesz–KDNP, which produced the constitutional capacity to redesign the legal order unilaterally. Krekó and Enyedi<sup>11</sup> describe the core move in direct terms: Fidesz used its legislative dominance to change the constitution and to replace key office-holders across politically salient institutions, thereby transforming the operation of checks and balances while maintaining an electoral façade<sup>12</sup>. The objective was not simply policy change but regime-building: the creation of an institutional environment in which contestation becomes structurally more costly and oversight progressively less effective.

This institutional refoundation was also publicly staged as the beginning of a new political “system.” In June 2010, the National Assembly adopted the Declaration of National Cooperation, presenting the post-election period as a foundational break and explicitly naming the “System of National Cooperation” (NER) as its organizing concept, which was subsequently mandated for display in public administrative buildings.<sup>13</sup> Even if one treats this as political symbolism, its legal-administrative circulation signals an intention to normalize the idea that the governing majority is not merely “in office” but is refounding the polity and its institutional hierarchies.

The refoundation becomes legally concrete with the Fundamental Law (2011), whose text connects constitutional identity to Christian civilization and national continuity. The preambular “National Avowal” explicitly invokes Saint Stephen as the founder who placed Hungary within “Christian Europe,” while Article R(3) instructs that constitutional provisions be interpreted in light of their purposes, the National Avowal,

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<sup>10</sup> MOUNK, Yascha. *The People vs. Democracy*.

<sup>11</sup> KREKÓ, Péter; ENYEDI, Zsolt. “Explaining Eastern Europe: Orbán’s Laboratory of Illiberalism.” *Journal of Democracy*, 2018, vol. 29, no. 3, pp. 39–51.

<sup>12</sup> HALMAI, Gábor. “Illiberalism in East-Central Europe.” In: SAJÓ, András; UITZ, Renáta; HOLMES, Stephen (eds.). *Routledge Handbook of Illiberalism*. New York; Abingdon: Routledge, 2022, p. 813–821.

<sup>13</sup> HUNGARY. *Declaration of National Cooperation* (16 June 2010). Budapest: National Assembly of Hungary, 2010.)

and the “achievements of our historical constitution.”<sup>14</sup> These clauses matter because they give constitutional traction to civilizational and moral narratives as a legitimate vocabulary for regulatory choices. In parallel, the constitutional text anchors a moral-majoritarian conception of family and gender through explicit formulae, defining marriage as the union of one man and one woman and stating that “the mother shall be a woman; the father shall be a man.” (art. L.) Over time, amendments further reinforced a child-protection frame that ties education and identity to constitutional identity and Christian culture, with direct implications for later statutory restrictions framed as protecting minors.<sup>15</sup>

Orbán’s own programmatic framing clarifies the justificatory grammar of this transformation. In his 2014 Tusnádfürdő/Bálványos speech – often treated as a doctrinal marker – Orbán explicitly links electoral victory and constitutional supermajority to a new model of statehood, signalling a willingness to decouple democracy from liberal constitutional restraint. Kim’s reconstruction is useful here because it treats “illiberal democracy” not as a slogan but as a political-institutional strategy: electoral legitimacy is mobilized to normalize the erosion of liberal-constitutional guarantees and to cast counter-majoritarian constraints as illegitimate obstacles to the “real” people.<sup>16</sup> This ideological consolidation is also documented as a coherent illiberal project in which “Christian democracy” and “Christian freedom” operate as positive labels for an illiberal state model, explicitly positioned against liberal universalism, multiculturalism, and supranational constraints.<sup>17</sup>

This political–institutional map is the necessary entry point for the legal analysis that follows. Hungary’s relevance to “human rights under pressure” lies not in isolated restrictions alone, but in how post-2010 constitutional identity framing and institutional redesign create the conditions for a recurring pattern in rights governance. The next sections examine, first, how the expressive–informational dimension of rights protection is weakened through legal and regulatory architecture, and then how moralized regulation – especially around gender and sexuality under a child-protection

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<sup>14</sup> HUNGARY. *The Fundamental Law of Hungary*. Budapest: National Assembly of Hungary, 25 April 2011.)

<sup>15</sup> HUNGARY. *Ninth Amendment to the Fundamental Law of Hungary*. Budapest: National Assembly of Hungary, adopted 15 December 2020, in force 23 December 2020.

<sup>16</sup> KIM, Seongcheol. “‘Illiberal Democracy’ after Post-Democracy: Revisiting the Case of Hungary.” *The Political Quarterly*, 2023, vol. 94, no. 3, pp. 437–444.

<sup>17</sup> SUURONEN, Ville. “Antiliberalism and Counter-Enlightenment for the 21st Century: Viktor Orbán’s Illiberal Political Ideology.” *Government and Opposition*, 2025

frame – travels from constitutional language into statutory and administrative measures, with mutually reinforcing effects on implementation and oversight.

## **2.2. The primacy of freedom of expression and the right to information: how the “informational environment” is functionally re-engineered in Hungary**

In the architecture of international human-rights law, freedom of expression is not merely a “media sector” concern: it is a constitutive guarantee of democratic legality, because it protects the circulation of information and ideas, the formation of opinion, and the possibility of holding power accountable. This primacy is visible in the classic formulation of the right to “seek, receive and impart” information (UNITED NATIONS. *Universal Declaration of Human Rights*. Paris: UN General Assembly, 1948, art. 19), and it is legally operationalised in binding instruments such as the European Convention on Human Rights (COUNCIL OF EUROPE. *Convention for the Protection of Human Rights and Fundamental Freedoms*. Rome: Council of Europe, 1950, art. 10) and the EU Charter (EUROPEAN UNION. *Charter of Fundamental Rights of the European Union*. 2012/C 326/02, art. 11). The key analytical move, for the purposes of the “two-pillar squeeze”, is to treat this as a *right-implementation ecosystem*: a right can remain formally proclaimed while its practical enforceability is weakened by institutional redesign, asymmetric resources, and regulatory intimidation.

Hungary after 2010 is illustrative precisely because the relevant shift is not best described as the abolition of press freedom, but as the consolidation of a governance model in which the state progressively acquires leverage over the conditions under which journalists, editors, regulators, and civil-society “watchdogs” can operate. The turning point is the 2010–2011 media package, centred on the *Press Act* and the *Media Act*, and the creation of a reconfigured supervisory structure. Two statutes are central: Act CIV of 2010 on Freedom of the Press and the Fundamental Rules on Media Content, and Act CLXXXV of 2010 on Media Services and Mass Media. In parallel, the post-2010 institutional design strengthens the role of the National Media and Infocommunications Authority and its Media Council, embedding long mandates and broad supervisory competences that—while not automatically illiberal *per se*—become structurally prone to partisan capture in a context of durable supermajoritarian rule.

The fact that these were recognised early as rule-of-law and fundamental-rights issues (not “domestic culture-war noise”) matters for a rights-governance argument. The OSCE Representative on Freedom of the Media issued a detailed critique

stressing risks to editorial independence and pluralism, and the chilling effect of vague obligations paired with sanctioning powers<sup>18</sup>. The Council of Europe Commissioner for Human Rights similarly flagged encroachments on media freedom and threats to independence and pluralism.<sup>19</sup> Later, the Venice Commission's 2015 Opinion synthesised persistent concerns across the Media Act, the Press Act, and the advertisement-tax framework, again treating the problem as one of structural guarantees (independence, proportionality, foreseeability, safeguards), not as a debate about which moral agenda should win elections<sup>20</sup>.

Once this legal-regulatory skeleton is in place, the mechanism relevant to the “two-pillar squeeze” is the conversion of formal regulatory competences into *systemic informational asymmetry*. On the one hand, it becomes easier to discipline or marginalise critical outlets through a mix of compliance pressure, administrative vulnerability, and market distortion. On the other hand, a pro-government communications sphere is sustained through resources that are not “ordinary market” resources, notably state advertising and state-connected ownership structures. Krekó and Enyedi's description of a “government-organized media” captures this dynamic with unusual clarity: the point is not that independent journalism ceases to exist, but that the informational environment becomes increasingly dominated by aligned actors operating with preferential access to funding and distribution channels, while critical actors face cumulative disadvantages.<sup>21</sup>

This is where the *implementation* of the right—who can speak, who can reach audiences, who can access public information, and who can survive economically—becomes the real battlefield.

The same logic is treated, in more general terms, in the specialised handbook literature on illiberalism: the contemporary move is less about crude censorship and more about institutionalised steering of the communicative sphere—ownership concentration, regulatory leverage, reputational intimidation, and the production of post-truth conditions that undermine deliberation while preserving a façade of

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<sup>18</sup> OSCE. *Analysis of the Hungarian Media Legislation*. Vienna: OSCE Representative on Freedom of the Media, 28 Feb. 2011

<sup>19</sup> COUNCIL OF EUROPE. Commissioner for Human Rights. *Opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media*. CommDH(2011)10, 25 Feb. 2011

<sup>20</sup> EUROPEAN COMMISSION. *2025 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*. Brussels: European Commission, 8 Jul. 2025

<sup>21</sup> KREKÓ, Péter; ENYEDI, Zsolt. “Orbán's Laboratory of Illiberalism.”

contestation.<sup>22</sup>

The Hungarian case is particularly apt for your framing because the informational pillar is not merely “restricted”; it is *re-purposed* into a tool of governance that reduces scrutiny, fragments the opposition’s capacity to coordinate, and normalises a civilisational register in which external criticism (EU, NGOs, foreign media) can be narrated as hostility to national sovereignty.

Crucially, this pillar is not confined to the press narrowly defined. The right to information also implicates access to public documents, data, and the ability of civil society to gather and disseminate matters of public interest. Here, Strasbourg jurisprudence is directly relevant: the Grand Chamber held in *Magyar Helsinki Bizottság v. Hungary* that Article 10 may entail a right of access to information held by public authorities where access is instrumental for the exercise of freedom of expression by social watchdogs<sup>23</sup>. HUDOC Complementing that doctrinal axis, OSCE legal analysis on later amendments to Hungary’s access-to-information framework underscores how procedural and administrative adjustments can erode the operability of transparency norms even without openly repudiating them.<sup>24</sup> OSCE For the “two-pillar squeeze, this matters because weakening access to information degrades the feedback loops through which violations are detected, litigated, and politically priced.

If one wants a clean bridge from this informational pillar to the broader illiberal project, it is worth stressing that the pillar’s function is enabling: once scrutiny is reduced and the watchdog ecosystem is partially neutralised, regulatory interventions framed in majoritarian moral terms become cheaper to enact and harder to contest. That is why, in your mechanism-based account, the informational environment is not a background variable but a first-order condition of rights governance. This is also consistent with the more recent EU-level diagnostics: the Commission continues to treat media pluralism and the conditions for free public debate as a core rule-of-law axis in Hungary.<sup>25</sup>

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<sup>22</sup> CULLOTY, Eileen; SUITER, Jane. “Media Control and Post-truth Communication.” In: SAJÓ, András; UITZ, Renáta; HOLMES, Stephen (eds.). *Routledge Handbook of Illiberalism*. Abingdon: Routledge, 2022, pp. 365–383.

<sup>23</sup> EUROPEAN COURT OF HUMAN RIGHTS. *Magyar Helsinki Bizottság v. Hungary*[GC], no. 18030/11, Judgment, 8 Nov. 2016

<sup>24</sup> OSCE. *Analysis of Amendments to Hungary’s Law on Right to Informational Self-Determination and Freedom of Information*. Vienna: OSCE Representative on Freedom of the Media, 2016

<sup>25</sup> EUROPEAN COMMISSION. *2025 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*. Brussels: European Commission, 8 Jul. 2025

### 2.3. The moralising/anti-gender pillar: “child protection” as a technology of rights governance (Hungary)

If the first pillar compresses the *conditions of public scrutiny*, the second pillar works by re-describing contested questions of sexuality and gender as matters of *public morality* and *minor protection*, thereby widening the state’s regulatory margin while narrowing the practical reach of autonomy, privacy, equality, and expression. In the Hungarian trajectory, this is not a “values debate” floating above the legal order: it is a government strategy that becomes legible in constitutional text, statutory architecture, administrative practice, and EU-level enforcement.

A first constitutive step is the constitutional embedding of a normative anthropology under the banner of constitutional identity and Christian culture. The Ninth Amendment package—read together with the post-2011 constitutional settlement—tightens the constitutional semantics of family and education, and introduces an explicit link between child-rearing, “constitutional identity,” and “Christian culture,” with direct implications for the scope of pluralism within public education and child protection systems. The Venice Commission’s assessment of the Ninth Amendment is especially useful here because it treats the amendment not as an isolated statement of values, but as a *rights-relevant* intervention whose effects depend on subsequent statutory concretisation and institutional control.<sup>26</sup> Against that constitutional backdrop, “child protection” is not merely invoked as a legitimate aim; it becomes an ordering principle through which state discretion expands.

The more operational—because justiciable—translation of this pillar occurs with Act LXXIX of 2021 (“stricter action against paedophile offenders... and amending certain laws for the protection of children”), whose controversial “LGBTI content” provisions were introduced late in the legislative process and then dispersed across multiple legal instruments: child protection, education, media regulation, advertising, and information society services. The legal technique is important: rather than a single, transparent prohibition, the statute creates a distributed set of constraints that regulate *access*, *availability*, *classification*, and *permissible circulation* of content said to “portray or promote” homosexuality or gender identities “not corresponding to sex assigned at birth.” That dispersal makes the squeeze structurally resilient, because the

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<sup>26</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). Hungary: Opinion on the Ninth Amendment to the Fundamental Law of Hungary. CDL-AD(2021)028. Strasbourg: Council of Europe, 2021.

measure is reproduced across sectoral regulators and compliance systems.<sup>27</sup>

This is precisely where the “two-pillar squeeze” becomes observable as a mechanism: anti-gender regulation is not just a constraint on individual conduct; it is an instrument for reshaping the institutional environment in which rights are exercised. In child protection, the introduction of Section 3/A—“the State shall protect the right of children to a self-identity corresponding to their sex at birth”—functions as a normative gatekeeper clause. In practice, it helps rationalise administrative restrictions and educational filters, not by openly criminalising identities, but by redefining what counts as legitimate content for minors and what counts as improper influence. The Venice Commission’s dedicated opinion on Act LXXIX is again load-bearing because it explicitly links these provisions to privacy, non-discrimination, and the state’s positive obligations, rather than treating them as morally neutral choices within a margin of appreciation.<sup>28</sup>

At this stage, the moralising pillar also reveals its distinctive jurisprudential profile: it tends to operate through *administrative and regulatory levers* that generate chilling effects without always producing a single “headline” prohibition. Content-rating systems, restrictions on educational programming, limits on who may provide external education sessions, and constraints on advertising and media dissemination all become points where discretion can be exercised. The consequence is not only a narrowing of access for minors, but a broader redefinition of what institutions—schools, media outlets, publishers, civil society—can safely do without triggering sanctions or reputational targeting. This is consistent with comparative accounts of how illiberal regimes use gender as a governance tool: not only to police intimacy, but to discipline institutions and stabilise majoritarian legitimacy.<sup>29</sup>

What makes the Hungarian case particularly apt for your dossier’s “Human Rights under Pressure” theme is that the pressure is simultaneously *substantive* and *ecological*. Substantively, the measures implicate autonomy, privacy, equality, and non-discrimination—especially where gender identity

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<sup>27</sup> HUNGARY. Act LXXIX of 2021 adopting stricter measures against persons convicted of paedophilia and amending certain laws for the protection of children. [Unofficial English translation]. Budapest: Hungarian Helsinki Committee, 2021.

<sup>28</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). Hungary: Opinion on the compatibility with international human rights standards of Act LXXIX of 2021 amending certain acts for the protection of children. CDL-AD(2021)050. Strasbourg: Council of Europe, 2021.

<sup>29</sup> PETÓ, Andrea. Gender and illiberalism. In: SAJÓ, András; UITZ, Renáta; HOLMES, Stephen (eds.). *Routledge Handbook of Illiberalism*. London: Routledge, 2021, pp. 313–325.

is treated as a deviation from an imposed child “self-identity” norm. Ecologically, the measures alter the enforcement conditions of rights: the ability of journalists, educators, and civil society to contest or even describe contested topics is reduced by uncertainty, administrative oversight, and the reputational costs attached to being labelled as endangering children. In this sense, the “anti-gender” pillar is inseparable from the informational one: moralised regulation becomes politically easier when scrutiny is structurally weakened; and the intensification of moral conflict, in turn, legitimises broader interventions in the public sphere. The interaction is not rhetorical—it is institutional.

EU enforcement makes this interaction unusually visible because the Commission’s infringement strategy treats the 2021 amendments as a multi-sector restriction implicating both internal market rules and fundamental rights. In Case C-769/22, the Commission challenges the “Rules” introduced by Act LXXIX across child protection, electronic commerce, advertising, media law, and public education, and—crucially—adds a values-based plea under Article 2 TEU. Advocate General Ćapeta’s Opinion is directly aligned with your mechanism-based framing: it reconstructs how the Hungarian measures restrict services, violate Charter rights (including freedom of expression, private life, non-discrimination, and human dignity), and why a *self-standing* Article 2 TEU finding can be doctrinally meaningful as a “red-line” diagnosis of coordinated rights governance rather than a mere bundle of technical breaches.<sup>30</sup>

The point for the article, then, is not to litigate the morality of positions in dispute, but to show how “child protection” operates as a justificatory language that enables regulatory expansion and institutional disciplining in a context where majoritarian legitimacy has been narratively tied to Christianity, traditional family, and civilisational defence. That is why the anti-gender pillar is analytically closer to *rights governance* than to culture-war “messaging”: it is a method for producing enforceable constraints and for reallocating interpretive authority (from pluralistic institutions to executive-aligned regulators). The wider literature on illiberalism and gender captures this well by treating gender not as a side issue but as a focal point for the illiberal re-

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<sup>30</sup> COURT OF JUSTICE OF THE EUROPEAN UNION. Opinion of Advocate General Ćapeta delivered on 5 June 2025, Case C-769/22, European Commission v Hungary. EUR-Lex [online]. CELEX:62022CC0769, 2025.

engineering of constitutional democracy.<sup>31</sup>

Finally, note how this pillar's legal logic is compatible with the broader ideological framing you already signalled (civilisationalism, "moral majority," anti-liberal counternarratives): it is not a "single policy" but a *repeatable template*, a way of converting cultural conflict into durable institutional asymmetries.<sup>32</sup>

## Conclusion

This article has used Hungary as a critical case to show how "human rights under pressure" can emerge not only through direct, headline-grabbing restrictions, but through a patterned re-engineering of the institutional conditions under which rights are implemented and contested. The Hungarian trajectory is best understood as a post-2010 constitutional and political refoundation in which majoritarian legitimacy was converted into a durable governance architecture, anchored in constitutional identity language and a Christian "moral majority" narrative that reframes liberal constraints as obstacles to national self-determination.

Within that setting, the "two-pillar squeeze" is observable as a practical mechanism of illiberal rights governance. The first pillar concerns the primacy of freedom of expression and the right to information as a structural condition for democratic legality, and how media and information regimes can be altered so that formal guarantees remain, but watchdog capacity and accountability are weakened. The Hungarian media framework adopted after 2010 has long been treated by European standard-setters as raising systemic risks to pluralism and Independence. The legal significance of this pillar lies in its enabling function: once information flows, scrutiny, and access to public-interest reporting are structurally weakened, other rights become harder to defend in practice even when they are formally retained.

The second pillar concerns the translation of moral-majoritarian politics into enforceable constraints through a "child protection" frame and anti-gender regulatory techniques. In Hungary, constitutional amendments and statutory reforms have embedded a normative template that ties education and child protection to constitutional identity and Christian culture, and that restricts the availability to minors

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<sup>31</sup> MANCINI, Susanna; PALAZZO, Nausica. The body of the nation: illiberalism and gender. In: SAJÓ, András; UITZ, Renáta; HOLMES, Stephen (eds.). *Routledge Handbook of Illiberalism*. London: Routledge, 2021, pp. 403–422.

<sup>32</sup> SUURONEN, Ville. Antiliberalism and Counter-Enlightenment for the 21st Century.

of content that “portrays” or “promotes” homosexuality or gender identities not corresponding to sex assigned at birth.

Taken together, these findings support a core claim that is juridically relevant to the special issue’s theme: rights may remain formally recognizable in constitutional and statutory text while becoming progressively less effective due to shifts in the institutional ecosystem—regulatory architecture, discretionary enforcement, information asymmetries, and the weakening of credible oversight. In Hungary, the interaction between the informational pillar and moralized regulation helps explain why pressure on rights is best analysed as a governance pattern rather than as a series of isolated legal disputes.

The Hungarian case does not exhaust the phenomenon. Rather, it supplies a mechanism that can be tested comparatively—within Europe and beyond—by asking whether similar configurations of institutional redesign and moralized regulation produce comparable effects on the implementation and contestability of fundamental rights. Future work can therefore extend this approach to variation cases where the same moral-majoritarian impulses encounter different institutional frictions and multi-level constraints.

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Data de submissão do artigo: 31/12/2025

Data de aprovação do artigo: 23/04/2026

Edição e propriedade:

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