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## Academic Freedom and Strong State Control: Two Samples to Illustrate the Consequences

### Abstract

In the latest BCES Conference Book (*Education in Modern Society*, BCES Conference Books, 2018) a study was published which presented Hungarian legislation on the field of education. It is clear that the legal framework serves the interests of the government. The Fundamental Law of Hungary does not guarantee the fundamental right to education but makes possible its delimitation. It secures a large playground for the majority of government and securing direct influence. One year ago, the aforementioned study asked the following question: where are these trends leading to? At that point, it seemed likely that the Hungarian government would use his power to intervene in state higher education. In the 2018 general election, the ruling party obtained an extreme majority in the parliament. It is in such a stable position that it can restrict not only the autonomy of state universities but also influences academia in general. In the spring of 2017, the world's media reacted to what is termed "Lex CEU". Although this law affected several foreign universities, it undoubtedly targeted the Central European University by creating legal requirements, which would make it impossible for this university to remain in Hungary. The other important academic issue targeted by the government, namely the abolition of Gender Studies programmes, affects one of the most respected Hungarian state universities (Eötvös Loránd University) in addition to CEU. This study presents these two cases, aims to understand the facts and legal background, and offers an analysis of the processes.

Keywords: autonomy, higher education programs, CEU, Gender Studies

### Introduction

Most EU Member States' constitutions contain rules relating to academic freedom and the autonomy of HEIs. These constitutions belong to states with only a short history of democracy. This phenomenon is explainable with the bigger claim to secure the fundamental rights (see Rónay, 2018). The only constitution, which mentions these fundamental rights is the Hungarian one, not as a means of guaranteeing them but of allowing the government the possibility to delimit them. According to the literature, it has come from the hypothesis of the incompetency of academic management (Fried, 2006; Hrubos, 2015). The states as maintainer need tools which allow them to force state higher education institutions to operate more effectively. This explains the emergence of new legal institutes for the management of state universities, such as the chancellor and the consistory (Rónay, 2019). Although the Fundamental Law of Hungary makes possible the autonomy of state HEIs to be restricted, it is the basic rules that do so in general. This means that only the state universities are affected by these trends, and non-state HEIs enjoy more freedom. The difference is most noticeable when it comes to self-regulation and the management. While the Fundamental Law declares that all HEIs have the right to

regulate their organization and operations, they must do this within the framework laid down in an Act. In the case of state HEIs, the regulations are stricter; the government has the right to regulate their operational and financial matters by decree.

When these rules are discussed, another element is rarely mentioned. This is the rule, which states that the content of each higher education programme is determined by ministerial decree. It means that the government has the right to regulate which programmes are available in Hungary, which programmes the HEIs may offer and the details of these programmes. It is important to stress that this rule has been in place for a long time; it was also in the previous Act (adopted in 2005). Nevertheless, this rule previously appeared more technical than essential; previous governments never used this possibility to determine academic matters without the agreement of HEIs and the Accreditation Committee. When the government stated that it was necessary to streamline the programme structure, this made discussions possible, although the Ministry indicated which programmes it deemed unnecessary or in need of review, and secured short deadline for the HEIs to prepare for the changes.

The first case in which the government used the aforementioned possibility was that of Gender Studies. This was not a new issue, as several representatives of the government and the governing party had already voiced their disagreement with these programmes (see YCDA's proclamation). The main (and clearly incorrect) argument was that Gender Studies theory is against the traditional family model (see the announcement of State Secretary Rétvári). Finally, the government abolished Gender Studies programmes without any discussions, ignoring the opinion of the universities, the academic community, and HEIs. Gender Studies was banned at both state and private universities. Therefore it was also abolished at the Central European University. The Fundamental Law of Hungary, however, states that the State shall have no right to decide on matters of scientific truth; only scientists shall have the right to evaluate scientific research. This decision stems from the rules of the Higher Education Act. The Act is therefore contrary to the fundamental right.

In the case of Lex CEU, the situation is more difficult. The government majority made changes, which were the subject of much criticism. Although many stressed problems with the content of the law, the circumstances in which the law was passed were more serious and clearly violated due process and the rule of law (Rónay, 2017; Bárd, 2018). The fundamental rights were infringed not only by the content of Lex CEU but also the legislative process. The Central European University tried to fulfil the requirements, but the last one was that the government must sign an agreement connecting to the operation of the university. The government refused to sign one, thereby preventing the CEU from fulfilling its obligations. In this instance, it was not the rules but the process that violated legal norms.

### **The abolition of Gender Studies**

It is apparent that the requirement of academic freedom and the freedom of science are not separable (Vrieling, Lemmens & Parmentier, 2011). Higher Education Institutions teach the findings of the research they carry out. As the Fundamental Law of Hungary declares that only scientists have the right to take

sides to scientific questions, the government does not have the same right. Hence, the government is not allowed to regulate the content of each programme.

If we look at the various national models, it is clear that various national regulations allow the government to control the quality of education. They may differ in terms of details. However, the common solution is a three-pole process. Firstly there is the HEI, which is responsible for organising and providing the programme. This includes designing each lesson, course, etc. Secondly, there is a special agent, which can be a quality assurance body or a committee of accreditation. These bodies are independent of the HEIs and the government. In the literature, these organisations are called intermediary bodies (Neave, 1991; De Groof, Švec & Neave, 1998; Goedegebuure et al., 1994). Their defining role is to monitor the quality of content. The state then provides the framework and has overall control. The role of the government appears in several states when the intermediary body sends a report, which needs the intervention of the government (Russo, 2013).

The Hungarian model is similar to the aforementioned examples. When it comes to bachelor programmes, however, HEIs do not have the right to create programmes on their own. This is understandable because this is a means of ensuring equivalency and interoperability across HEIs. HEIs can, however, design master and doctoral programmes independently. In all cases, the Hungarian Accreditation Committee has to investigate the content of the programmes and check whether all requirements have been met. Nevertheless, in Hungary, this opinion does not need to be taken into account. The registration office does not have to ask for the opinion only of this committee; it is allowed to turn to other international quality assurance bodies.

It is not compulsory, however, for the minister to request these opinions. The minister has the right to decide to permit or not the introduction of a programme. This means that the government has more influence than in the other aforementioned countries. This solution allows decisions to be made on the future of a programme without consulting the affected institutions and bodies. The fact that the government has the possibility to abolish a programme does not mean, that the government must do it, especially without any discussion.

Moreover, although the proceeding of the government followed the law, it was unethical at the same time. Although the Accreditation Committee two years earlier supported Gender Studies and the ministerial decree contained this programme, the government changed its mind. The most disquieting and appalling element of this process is that the amending decree did not contain any official arguments. According to some unofficial explanations, there was no evidence of the programmes' effectiveness on the labour market. There are two problems with this explanation. Firstly, the government did not conduct a study to verify this. Therefore there is no evidence of this statement. Secondly, even if this statement were true, it cannot justify banning the programmes in private institutions. The state can decide not to provide funding for such programmes, but it is not within its remit to prevent a private institution from running such courses if there are students who are willing to pay. The other argument was that these programmes are in opposition to the government's family policy. This means that it was, in part at least, a clear political decision.

## The ‘Lex CEU’

When the government introduced the bill amending the national Higher Education Act, it was undoubtedly the new rules targeted at one body, i.e. the Central European University. The modified Act was consequently coined “Lex CEU”. The fact that a legal norm targets only one person in itself breaches the requirements of the rule of law (Crăciun & Mihut, 2017). Aside from these serious problems, the circumstances under which the modified Act was accepted resulted in further violations of the rule of law. Firstly, fewer than ten days passed between introduction and promulgation (Bárd, 2018). Secondly, there was no debate. Although the Legislation Act states that public debate is compulsory, this rule can be circumvented if the parliament allows it. For instance, if it is necessary for the interest of national security or other similar reasons. It is not difficult to see that in the case of Lex CEU this was not the case and that the special process served simply to avoid debate with no basis in law (Rónay, 2017).

The aim of the Lex CEU was to ensure the quality of HEIs which qualify as foreign bodies but which do not operate educational institutions abroad. Although if these HEIs teach on programs are mostly accredited in Hungary, in the case of this part of their operation the quality insurance is realized, the institutes itself are not controlled by the Accreditation Committee, and they have the right to teach own programmes too. To obtain final permission from the authority, the foreign HEI must present the agreement signed by the two governments including the Hungarian. Since the promulgation of Lex CEU, the government has signed four agreements. Therefore four foreign HEIs fulfilled the requirements and were allowed to continue operating in Hungary. Of course, CEU has also proofed its education activity in New York State in collaboration with the Bard College (see CEU Announcement, 2017). Representatives of the Hungarian government had several meetings with the third party, but in the end, the government refused to sign the agreement without giving any official explanation.

In this case, the picture is clearer. Specialist legal knowledge is not required to see that it was not the CEU that did not fulfil the requirements of the Act. The government violated the Act which it introduced. Under the rule of law, it is an elementary obligation for everyone to follow the law. This also means if one party is not able to comply, it should notify the other party as soon as possible.

## Conclusion

It is clear that the government is responsible for providing public services, including higher education. On the one hand, the government, as a maintainer has a role in financing state institutions. To fulfil this requirement, the government has the right to supervise the efficiency of HEIs. On the other hand, the government is responsible for the quality of higher education. If the level of quality is low at HEIs, the diplomas become worthless, and former students’ positions on the labour market become weaker. Therefore, it is obvious that rules are needed and that the government needs to be able to regulate and control the processes. However, when this is not the responsibility of the government anymore, it becomes slippery.

As outlined above, the Hungarian regulations give increased power to the government. Although the Fundamental Law of Hungary allows for the delimitation

of some fundamental rights, including therefore the fundamental rights related to education, it would be not definitely necessary to fill this space. As illustrated, both the parliament and the government did not only fill the space but many time stepped over the line.

The Higher Education Act, which allows the government to create rules, which violate academic freedom and the freedom of science clearly violates the Fundamental Law of Hungary. Moreover, in relation to the abolition of Gender Studies programmes, the government did not give any clear explanations. No assessment of these programmes was carried out. The last evaluation did not find any problems. It is clear that it was the content of these programmes which bothered the government. Some stated that Gender Studies programmes are not scientific. The government accepted this opinion and gave a statement in scientific matters. This is an obvious breach of the Fundamental Law of Hungary,

The situation with regard to CEU is more serious. Namely, here the government and the government majority in parliament not only created an Act which violates its own rules but violated the rules of the latter. When the government simply does not sign the necessary agreement, it proves that it is not even attempting to abide by the law.

One year ago, people were wondering whether after the restriction of the management and financial operations of state HEIs education and research would also be restricted, thereby leading to the elimination of freedom or autonomy. One year later the government, without hesitation, stepped forward, abolished a programme and prevented another university from operating. The government did that in both cases without justification and for clear political interests. Many of us can remember similar phenomena or recognize similar processes in other countries. Many are therefore concerned that this is taking Hungary on a path towards the darkest of destinations.

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