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## Centralizations and Autonomies: The Delimitation of Education by the Hungarian Government

### Abstract

Hungary is on the road towards an illiberal state. On this journey, the Hungarian government, with the Parliament at its service, is reinterpreting the concept of fundamental rights. Under the slogan of effectiveness, new regulations are being adopted which secure more power, influence, rights, and tools for the state. This paper aims to present this trend from the perspective of education. I will present the most important new legal institutions, the chancellery, and consistory, as well as the constitutional right of the government to regulate by decree the operational and financial matters of HEIs, the central direction of schools, and the ministerial approval of pedagogical programs.

Keywords: autonomy of higher education institutes, freedom of teaching, scientific freedom, self-governance, direct government control, illiberal state

### Introduction

In spring of this year, a general election will be held in Hungary. After the previous three elections, the regulation of public and higher education was significantly modified. The oldest modifications were also related to autonomy, but the last two modifications, as well as the two new education acts (Act CCIV of 2011 on National Higher Education and Act CXC of 2011 on National Public Education), reduced the autonomy and self-governance of state educational organizations in Hungary. Most EU member states' constitutions declare the autonomy of HEIs but do not provide as much of a constitutional framework for the operation of public education institutions. However, there are no regulations within the European Union that disregard the principle of subsidiarity or exclude local governments from dealing with the operation and maintenance of public schools.

The aforementioned Acts introduced brand new legal institutions. The first institution consists of the state universities' chancellors, who are chosen, appointed and ordered by the government exclusively, and the consistories, which have five members (the rector, the chancellor, and three members elected behind closed doors). The second institution is the Klebelsberg Centre, an organisation which deals with the maintenance of public schools. These are both tools of the government that can influence the daily operation of both higher and public education institutions alike.

### Autonomy theories in education

When talking about autonomy in education, it is important to separate public and higher education. While there is far more autonomy in higher education, it is also noticeably present in teachers in public schools. Consequently, we should talk

about the freedom of teaching and not only about academic freedom (DeMitchell & Connelly, 2007) because the autonomy of HEIs also includes the freedom of research, management, and operation, as well as the freedom of the individual and groups on which the entire organisation's autonomy is built.

This different aspect of autonomy has been discussed for a long time. Apart from the connection to freedom of thought and religious schools, freedom of teaching means that it is possible to talk without arbitrary restrictions in the classroom. The teacher has the freedom to choose the theme, tools, literature, and so on. Of course, it means that the teacher must follow the syllabus, but there is significant room for maneuver. It also means that the teacher is not allowed to take unfair advantage of his/her situation to the detriment of the learners (Good, 1938). The role of headteachers is therefore significant because they can supervise the teachers in their work. For this reason, governments wish to monitor public schools closely. Therefore, they try to minimize the possibilities of teachers' independence to select the themes and tools of teaching. Governments also strive to control the (daily) operation of schools directly with the instructions of headteacher or the appointment the teachers instead of the headteacher. If the headteacher and the teachers are dependent upon the government, they should adapt to the government's policy or at least not make themselves conspicuous.

As DeMitchell and Connelly emphasised in relation to the freedom of students and learners, academic freedom has crystallized meaning (DeMitchell & Connelly, 2007), it is also true related to the autonomy of universities. The very fact that HEIs developed from the medieval *Universitas* means that they inherently have the right to decide on their own matters, i.e., academic affairs, research, organisation and operations (Isensee & Kirchhof, 2009). The tasks of the state are to secure the freedom of HEIs and its conditions. There is understanding in science that autonomy implies responsibility (Barakonyi, 2012), which means the state can monitor compliance with regulations, but it does not have the right to intervene in operations. The autonomy of universities is a fundamental principle; there are no HEIs with absolute freedom and without external control, and the concept and extent of autonomy depend on the era in question and social conditions (De Groof, Švec & Neave, 1998).

### **Constitutional framework of autonomy in education**

While the autonomy of universities is a typical element of the constitutions of EU member states (20 of the 28 constitutions include in some form or other provisions about the autonomy or academic freedom), provisions relating to freedom of teaching can be found in less than half of these constitutions. It is interesting that western or old democracies do not consider it important to regulate this issue, whereas the post-socialist countries do. If the constitutions mention education, they secure the right to education, perhaps with exemption from school fees. The Fundamental Law of Hungary appears to set a good example because it stipulates the freedom of teaching besides the freedom of scientific research, artistic creation, and learning (Article X Section 1). While these three rights are guaranteed almost without limits, freedom of teaching is within the framework laid down in an Act. The real problem doesn't appear in the regulations of the Fundamental Law. Namely, the details are in the Act on National Public Education, which delimits the

aforementioned rights. This Act guarantees the freedom of teachers to select curricula, school books, and methods. However, the curriculum is limited by the pedagogical program, which is eventually determined by the Minister. Furthermore, teachers can only choose school books which have been permitted by the Minister. Another way to limit teachers' freedom is that it is the President of the Klebelsberg Center, who works directly below the Minister, that sets up and terminates their employment.

Although details of the delimitation of HEIs' autonomy are also in the Act on National Higher Education, it appears explicitly in the Fundamental Law. All of EU member states' constitutions declare universities are autonomous, but only the Fundamental Law of Hungary prescribes partial freedom. The Portuguese Constitution specifically mentions the financial and organizational autonomy of HEIs. On the other hand, the Hungarian law declares that "higher education institutions shall be autonomous regarding the content and the methods of research and teaching", and the universities' organizational freedom depends on an Act which shall regulate their organization. It is customary to give a constitutional authorization to determine the details in the Act if the fundamental rights are guaranteed. In this instance, the universities do not have safeguards against a potential delimitation of organizational autonomy. As we will see, the governing majority embraced the opportunity to violate their freedom. In terms of financial freedom, the Fundamental Law secures still more widest possibilities for the government: it "shall, within the framework of an Act, lay down the rules governing the management of public institutes of higher education and shall supervise their management". It is unusual to secure the regulation of a concrete task by decree in a constitution. At the request of the Hungarian Minister of Foreign Affairs, three legal experts wrote an opinion on the fourth amendment of the Hungarian constitution. They emphasized, on the one hand, that the constitution meets the requirements of European constitutionality, on the other hand, "the outcome of the final test of compliance of the EU domestic law to the European norms will depend, as always, on the legislatives acts adopted, and in particular on their implementation" (Delpérée, Delvolvé & Smith, 2013, p. 44). If we investigate the outcome, we can accept the concerns and not the optimism of the experts.

### **Delimitation of autonomy in higher education**

The ancestor of the modern HEIs was the medieval university. The university is, therefore, one of the oldest existing social institutions, and it is continuously developing and evolving (Wittrock, 1993). This past and present social role mean that the fundamental principles of the organization and operation of universities are also relevant today. The possibility of self-governance of the common appeared already in the beginnings. The modern history of higher education management proves that the requirements of top management were different, but all types have a similar element: the top management always worked within the university. The role of vice-chancellor in British universities evolved from that of an earlier academic leader (De Groof, Švec & Neave, 1998; Farrington & Palfreyman, 2012). In the role of the presidents of US universities, management skills are more important, and this ensures long-term professionalism (Kaplin & Lee, 2013). These types have a common feature: the professors and students of the universities take part in the

decision-making processes, and the leaders of the universities are responsible for their work.

The modification of the Hungarian Higher Education Act broke with that tradition and established the legal institute of the chancellor. Hungarian state universities now have two leaders: the rector and the chancellor. The Act tries to define their powers, making the rector responsible for academic affairs and the chancellor liable for the operation of academic affairs. However, these two leaders are on the same level of the hierarchy. The rector does not have the right to order the chancellor, and officially he or she does not have the tools, the power or the possibility to influence the chancellor's work. Neither the university senate nor the rector has the right to make suggestions or express an opinion related the chancellor's character. Although the chancellors are employees of the universities, their superior is the Minister, who can give orders to them directly, that means that the government is able to intervene in the daily operation of state HEIs. This in turn leads to the blurring of the dividing lines between two separate organizations, namely the university and the government.

The other new legal institution is the consistory. This body is not similar to any earlier known body of HEIs. Many universities have a board which takes decisions on the most important matters, but the consistory does not have such a power. The senate has the right to decide on certain matters (e.g., budget, reporting, strategy); the consistory has a veto. Without its agreement, the decisions of the senate cannot enter into force. However, this veto power does not mean that the consistory is a simple supervisory board. It is not obliged to investigate the operation and management of HEIs and draw up a report for the government. The consistory has five members, the rector, the chancellor, and three other people, who are chosen by the Minister. Although the senate can suggest members, the Minister is free to choose and appoint them behind closed doors. The legal status of the consistory members is not clear; they are not government officials, neither they have a contract of agency. Therefore, they have neither responsibility nor liability for their decisions and work. All the same, the consistory has a major influence on the life of a university.

### **Governance centralization in public education**

The freedom of teaching, or as Reyes calls it 'academic freedom' (Reyes, 1995), is a fundamental element of public schools, and in general of a democracy. When teachers interpret knowledge, they have freedom of expression, which secures the possibility and success of educational goals. However, they have to follow the prescriptions of the curriculum at the same time. Between these two points, the freedom of teaching offers essential proof (Ibid.). The Hungarian Act on Public Education declares the right of the teachers to choose the knowledge, the curriculum and the methods of education based on the pedagogical programme. Moreover, the teacher has the right to select, among other things, the school books pursuant to the local curriculum. Teachers appear to have a significant degree of freedom because the teaching staff establishes and adopts the pedagogical program, which includes the local curriculum. On the other hand, the local curriculum is not an independent document, but an amplification of one of the framework curricula published by the Minister. The following rule illustrates well the relationship between these two

curricula: the local curriculum must specify the chosen framework curriculum. The freedom related to the selection of school books is similar: the teacher can choose them, but from a limited number of books. A book is only a school book if the Minister has declared it to be. One Hungarian study demonstrates that the pedagogical program is rather than a local execution of the framework curriculum as an independent plan with great value. This study also emphasizes that the freedom of teaching in this aspect reaches 25% even so in the most centralized countries (Gönczöl, 2015).

The other guarantee that can secure the freedom of teaching is the principle of subsidiarity in the course of the exercise of employers' rights. Subsidiarity means here that the employer should have to exercise certain employers' rights because they better know the employees and the local circumstances. In the case of a school, this employer is the headteacher. When the government funded the Klebelsberg Institution Maintenance Centre (KLIK), its President was the one and only person who exercised employer's rights above all the teachers of public schools. Later, the government reorganized it and established several educational districts. However, the headteachers did not reacquire the right to appoint and dismiss teachers; they have the right to make proposals. The leaders of the educational district must agree with this proposal, or they must submit it to the President of the Klebelsberg Centre, who has the right to decide. It means that the government simultaneously has the power to appoint and dismiss. This creates an uncomfortable atmosphere within schools, as the teachers may be aware of the likely consequences of too broad an interpretation of the freedom of teaching.

## Conclusion

Freedom of education is a fundamental right which is necessary for a democratic state. People have recognised over the centuries that only autonomous and responsible citizens can take decisions and as a conscious being take a stand on the affairs of the state. Education can only be free if the actors and the institutes of education also have freedom. This requirement has been realised in Western democracies, where it is so obvious that the constitutions do not even mention it. However, the countries which suffered under Nazi and communist totalitarian rule experienced an era when professors and teachers had to be afraid of the consequences of their words. Therefore, the constitutions of these states stipulate several aspects of freedom of education: freedom of teaching, academic freedom, and universities' autonomy. Although there are differences between how detailed they are, a common attribute is that the principle is laid down in the constitutions. The Hungarian constitution is the only one that does not set out these fundamental rights but delimits them.

This delimitation is indirect in the case of public education because the freedom of teaching is guaranteed within the framework laid down in an Act. This Act contains the aforementioned rules of delimitation in relation to freedom of teaching. In the case of higher education, on the other hand, the delimitation is direct. The Fundamental Law of Hungary declares the right of the government to supervise and regulate the management of state HEIs. The government was able to establish the legal institutions of chancellery and consistory in this way.

The supporters of these new legal institutions account the regulations for the managing and the financial effectiveness. The question is where to draw the line between freedom and autonomy. If the financial affairs are sufficient grounds to delimit the autonomy, what will be next? If education or research is not effective, it is possible to limit freedom further? Where will this tendency lead? Maybe the elimination of freedom or autonomy? Playing with the delimitation of these fundamental rights is very dangerous.

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