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Fight for university autonomy: what is the message of the resistance of SZFE citizens?

A constitutional analysis of the fight for autonomy of the University for Theatre and Film Arts Budapest (SZFE)

Introduction

University autonomy has been one of the basic European values since the 13th century, which used to enjoy constitutional protection under the former constitution in the rule of law, and still does so under the current Fundamental Law, too. *“Higher education institutions shall be autonomous in terms of the content and the methods of research and teaching; their organization shall be regulated by an Act.”* [Article X(3) of the Fundamental Law] The Constitutional Court previously held that university autonomy is the safeguard for the institutional framework of the right to higher education and the guarantee of the neutrality of the state in respect of scientific matters. *“[T]he establishment of autonomous higher education institutions with self-government is a fundamental guarantee for the freedom of scientific, teaching and research activities.”* [Decision 41/2005 (X. 27.) of the Constitutional Court]

The government has been clearly restricting academic and scientific autonomy since the amendment of the Act on Higher Education in 2014 and 2015 – by means of introducing the institutions of the chancellor and of the consistorium –, and has, in recent years, switched to an even higher engine speed than before. The termination of gender studies at Eötvös Loránd University, Faculty of Social Sciences by ministerial decree, chasing away Central European University (CEU), the relocation of the scientific research network of the Hungarian Academy of Sciences, the transformation, up until today, of more than half of dozen of universities – including Corvinus University of Budapest, Moholy-Nagy University of Art and Design – and now the University for Theatre and Film Arts, Budapest (‘SZFE’) into “private universities”



all prove that the government is carrying out an irreparable destruction within the domain of science, and at universities, the most important sites of free thinking.

The present study provides an analysis of the newest chapters of a series of government attacks on university autonomy, with special attention to the issue of the government invasion, disguised as privatization, of the University for Theatre and Film Arts, concerning which, in addition to the assessment of the most relevant legal aspects, it aims to identify the most important conditions and factors – both within and without the university community – of the unprecedented resistance that has formed against the power’s intervention. That effort – although the resistance of SZFE citizens concerns several domains of law (such as constitutional law, civil law, labor law, administrative law, criminal law, legal sociology, just to mention the most relevant ones), and this study cannot provide a comprehensive legal analysis covering all those domains in detail – will, hopefully, be able to contribute to future fights for autonomy by providing some useful and practical points of reference.

From chancellor to the transformation to “private university”: a new tool for the restriction of university autonomy

The first time the government picked at university autonomy in a relatively more spectacular way was the amendment of Act CCIV of 2011 on National Higher Education (‘Nftv.’ or ‘Act on Higher Education’) in 2014 and 2015 (Act XXXVI of 2014 and Act CXXXI of 2015). Those amendments introduced the institutions of the chancellor and of the consistorium, which are in the position to exercise [unconstitutional governmental influence](#) restricting the freedom of research and teaching through their economic management powers. The introduction of the institutions of the chancellor and of the consistorium resulted in an important restriction of the organizational autonomy of higher education, and all university citizens in Hungary have had to bear with that ever since, continuously waiting for what the actual intentions of those in power would be. Although the government, and practically, the prime minister, may directly decide on the future of certain institutions by means of university chancellors, the ones in power must have become lately less convinced about the full “efficiency” of that possibility.

Recently, the government has started to apply a new tool for the restriction of university autonomy under the slogan of “[change of model](#)”. The transformation into “private university” means in practice that the government hands over certain universities to foundations in a way that the institutions continue to depend financially on the state, as the foundations maintaining the universities do not receive any asset on which their autonomy could be based. While powers related to the role of the maintainer are transferred to the board of trustees consisting of members nominated by the minister to the management of state asset managing foundations, the universities concerned remain state-financed, the only change being that funding is not



ensured based on the pre-established annual state budget, but in the form of long-term framework contracts. The so-created “private universities” continue to receive the most significant proportion of the money necessary for their operation from the state, but legally speaking they are no longer state universities, so, for example, teachers and researchers working there, are no longer public employees, but “ordinary” employees, who become, therefore, much more vulnerable.

As of 1 August, 2020 altogether six state universities – the University of Miskolc, Moholy-Nagy University of Art and Design, the University of Sopron, Neumann János University, Széchenyi University, and the University of Veterinary Medicine Budapest – were transferred to state asset managing foundations for maintenance. Earlier, in May 2019 Corvinus University of Budapest was also transformed into a “private university”, whose “operational model” was different from that of the universities undergoing the “change of model” in 2020 in that the maintaining foundation – for an increase of government influence – was [provided with resources amounting to billions](#).

To sum up, the practice of “privatization” is just a false appearance, since its actors are selected by the state, the resources are provided by the state, the powers of the board of trustees are made “hereditary”, while public funds and public control lose their characteristics of public funds and public legal character, respectively. Under the Act on Higher Education, the maintainer of a university which used to be a state university and is now qualified as a private university – as opposed to maintainers of state universities –, gains influence to the detriment of university autonomy, beyond the verge of authoritarianism, and all that within a framework where the “private” label is used for referring to the will of the state and to funds that are public to the last cent. The maintainer in this case, as opposed to every other private universities of the world, is not the representative of the business sector, but of a political group keeping the state under occupation, acting without any independent will.

The re-organization of SZFE as private university is unconstitutional

On 3 July 2020, the governing majority adopted Act LXXII of 2020 on the Foundation for the University for Theater and Film Arts and on the endowment to the University for Theater and Film Arts and the Foundation for the University for Theater and Film Arts, and one is bound to conclude that it is an occupation inscribed into law, drawing on public funds, and hidden behind the appearance of privatization. It is an important difference that while in the case of former transformations into “private universities”, the government propaganda referred to the [enhancing of efficiency](#), in case of the University for Theater and Film Arts, it is the elimination of the critical – but denigrated as “liberal” – spirit which appears as the openly declared, unhidden aim: *“I will never be able to explain to György Karsai, what nation, homeland, and*



*Christianity are.” (Attila Vidnyánszky) Previously, the government-micromanaged media had launched several waves of attack against [the institution and its professors](#), and István Hollik, the communications director of the governing party said in the Parliament on 4 June: “*This institute has not been touched for 30 years. It keeps working in an unaltered form, and I think that this way, in this situation, it cannot contribute sufficiently to the reinforcement and the passing-on of national identity.*”*

Act CXCVI of 2011 on National Assets and Act CVI of 2007 on State-Owned Assets serve as legal bases for the transformation. The new act establishes the Foundation for the University for Theater and Film Arts. The responsibilities of the Foundation include the exercise of the rights of the founder and of the maintainer of the University for Theater and Film Arts. The president and the members of the board of trustees shall be designated by the minister. However, the act does not empower the Foundation to withdraw almost all powers of the university’s management organs. Disputes, conflicts between the maintainer and the senate, or the rector, respectively are not unknown in the university world, but these disputes which concern demands for resources and, for example, courses, or educational programs, remain within the remit of university autonomy as long as the university’s elected bodies and officials control education and research. In the case of the University for Theater and Film Arts, however, the right to take decisions has been withdrawn from those bodies and officials. In the present model of “private higher education institution”, university autonomy could have continued to exist only if the majority of members to the five-member board of trustees had been delegated by the university community. That majority, however, is held by the government, while the board of trustees adopt its decisions by simple majority, therefore, in practice it makes no difference whether the representation of the university within the board is non-existent or, as the case may be, forms the minority.

On 27 August, 2020, the Foundation for Theater and Film Arts sent the [Deed of Foundation](#) and the [Internal Rules](#) dated 24 August, 2020 to the management of the university. It is a basic fact that the board of trustees taking up their responsibilities on 1 September had not existed before 1 September, and accordingly, had not been authorized to issue or adopt any document whatsoever before that date. The Deed of Foundation and the Internal Rules adopted by the not yet existing Foundation empowers the foundation to adopt all the important decisions: the senate cannot express any opinion about the appointment of the rector, heads of institutions are appointed by the rector who was previously appointed by the foundation, with the consent of the foundation, and heads of classes are also appointed by the rector with the consent of the foundation, but without consulting the senate. Those powers – contrary to what László György, the secretary of state for the Ministry for Innovation and Technology alleged at the [hearing before the European Parliament concerning the issue of SZFE](#) on 27 October 2020 – neglect equally the general principles of constitutionality and Articles X(1) and X(3) of the



Fundamental Law, but also transgress the special mandate, which is already incompatible with the constitutionality requirement, conferred by the Act on Higher Education [Section 94(6) of the Nftv.].

The university is entitled to bring a court action against the decisions of the maintainer, and the rule on the delegation of power before an ordinary court in the first case, and before the Constitutional Court, in the latter. In 2005, the Constitutional Court made it clear in an imperative way [see Decision 41/2005 (X.27.) of the Constitutional Court] that it is a precondition of university autonomy to have a functioning representative organ elected by the community of professors, researchers and students – i.e. by the holders of institutional autonomy –, which exercises the rights resulting from self-government that guarantee autonomy in decisions on education and research, re-organizational, operational, and economic matters. Nevertheless, the invalid basic documents adopted at the end of August fully withdraw the rights of self-government of the representative organ elected by the university community, i.e. the senate by delegating those rights primarily to the maintainer. The board of trustees representing the maintainer was established without any input from university professors or students, its composition reflects exclusively the will of the government. In the end, none of the members proposed by the senate of SZFE were elected to the board of trustees of the foundation, and accordingly, the board cannot be considered an elected organ of the university, and, as consequence, that body cannot exercise the powers guaranteeing autonomy. The situation would not any be different if a minority of board members were delegated by the university. As the Constitutional Court declared in its Decision 41/2005 (X.27.): “*Such a governing body alienated [from] the higher education institution may not be empowered to exercise the rights of self-government enjoyed by the holders of institutional autonomy and protected by the autonomy of the higher education institution, as that would mean the takeover of autonomy from the institution.*”

And whether it counts that in case of “private” universities the re-arrangement of powers mentioned above is authorized by the Act on Higher Education itself? It is clear from the above that the legal provisions allowing for a withdrawal of powers from the senate, including that of the right to elect the rector are contrary to the Fundamental Law, just as they are contrary to the provision of the Nftv. according to which: “*The rights of the higher education institution laid down in the Fundamental Law shall be vested in the senate.*” [Section 12(2) of the Nftv.]

Under Section 75 of the Nftv., the maintainer shall exercise control without prejudice to the higher education institution’s autonomy in matters such as the academic subject and content of education and research. Accordingly, the re-organization of the University for Theater and Film Arts into a “private university” is, above all, contrary to the Fundamental Law (the constitution),

and, at some places it is also contrary to the provisions of positive law tailored to this reorganization.

“Colonel Chancellor” at the head of SZFE, who switches off the internet and abolishes the republic of education

As already pointed out above, the institution of the chancellor was introduced in higher education in 2014, which amounted to a [significant restriction of autonomy](#), as compared to the earlier legal situation, though not a full abolition thereof. Chancellors shall be responsible for ensuring the operation of the institution: they shall be in charge of the economic, financial, accounting, labor, IT and asset management activities.

Under the regulations of the applicable law, the chancellor has no business to do with the professors, the researchers or the students, he or she has no powers at all in that respect. However, he or she is the employer of all the other employees of the university. The institutions had no say of any kind concerning the selection of chancellors, which was criticized by several [experts and stakeholders](#). Chancellors are appointed by the prime minister, and they must report to the Minister for Human Resources as employer. The personal management consists of two positions: the university is represented by the rector, and the chancellor is in charge of guaranteeing the operation. At some institutions, ([University for Theatre and Film Arts](#), [Liszt Ferenc Academy of Music](#)) there have been conflicts concerning the appointments, but most of the universities tolerated the arrival of chancellors without a word. The activities of chancellors, too, are concerned by the [consistoriums](#), which were established later on, and which consist of three members delegated by the minister, complemented by the rector, who, similarly, is a representative of the government, and the chancellor, who cannot function as any counterweight either. A number of decisions to be adopted by the chancellor on economic issues and matters of development are subject to the consent of the consistorium.

Based on the above description, it should be clear what the chancellor’s responsibilities are at universities. The chancellor shall not, in conformity with the law, fail to do his or her tasks, and what he or she should not be doing in any case, is obstructing the operation of the university. Namely, that would be in violation of the Act on Higher Education. Perhaps it is unnecessary to emphasize that the opposite would be non-sensical: civic stance is inconceivable in case of the representatives of state will. That is important to highlight because Chancellor Gábor Szarka appointed as head of SZFE as of 1 October 2020 [said](#) on 15 October the following: *“If they can block my way, then I, as head, can also choose to close down a few sites that I think appropriate.”*

It is worth mentioning here the moral concerns of the representatives of university autonomy regarding the person of the chancellor. The board of trustees terminated the employment of the



chancellor who had been appointed in conformity with the law, who acknowledged the termination of the duties, and a new chancellor was appointed by the board. However, most of the students, professors and other employees of the university consider the board of trustees, and consequently, the chancellor appointed by that board of trustees illegitimate. On the other hand, the carrying out of duties by the chancellor are necessary to the everyday operation of the university, because if the chancellor fails to carry out his tasks, the institute becomes practically unable to function. The obligation of the chancellor to perform his duties does not follow from the fact that the university community considers his appointment legitimate but from the fact that he accepted the appointment, and thereby acknowledges that he is subject to and bound by all the obligations of the chancellor as provided by law.

Gábor Szarka, who is a newcomer in this position at the University for Theatre and Film Arts, and who is considered as an illegitimate chancellor by university citizens, is not only not fully aware of his duties, but the environment, too, is unknown to him. Namely, whenever the chancellor – who is, *as a civilian*, a colonel of infantry (and from now on, of theatre) – gives orders, he does so in the style of the officers of the former socialist people’s army (or just any foul-mouthed *uncivil* sergeant): his recurring phrase in his orders addressed to his *subordinates* is "*I expect.*" Anyone who is not totally ignorant knows that such a tone is unheard of in an academic environment.

In all the universities in the world today internet connection is an essential service, one of the institution’s utility services. Today, without internet access, there is not even school education, let alone university education. The chancellor [by cutting-off internet connection on 13 October](#) violated his legal obligations as maintainer. Moreover, in a world of an overwhelming number of mobile communications devices on the market, that action is perhaps best characterized as not only illegal but also as falling into the category of a very clumsy way of annoying people.

The academic year started on 14 September at the university, and university citizens, in reaction to the insecure situation in which they were forced externally, decided to establish a "[republic of education](#)" with traditional educational units, internal and open-access courses, and, furthermore, with creative activists’ campaigns in reaction to the social situation and the current situation of the university. The new leadership issued a [communication](#) on 13 October, according to which they considered the “republic of education” terminated, that they distanced themselves from it, and would not ensure its infrastructural and financial conditions.

The termination of the “republic of education” seems to be a legal decision, although it is not. It can be, on the other hand, compared to a prohibition of the sonnet or the summersault, for that matter, by the chancellor and the vice-rector. That is surely the most comical element in the communication issued by those persons whom the community of the university declared to be illegitimate as heads of institution. The students’ [response was](#): “*The republic of education*



cannot be prohibited, nobody, apart from us, should be in charge of ensuring its conditions. This is an idea under the auspices of which all university citizens are equal. There are no leaders, there is no representation.” Gábor Németh, famous professor of the university [commented](#): *“The republic of education has no representatives, therefore, it is, at best, a very peculiar gesture to call them responsible. There is an author of the idea, though. If you are looking for a scapegoat, you have found it, it’s me.”* Thereafter, the students presented themselves following each other [one-by-one](#) to assume that role, in response to the attempts to divide their community.

Bringing forward the fall break with immediate effect

The executive responsible for maintaining the university does not fulfil its obligations but commits a breach of those when he or she tries to clear the building of students and teachers with a weak pretext. On 16 October, the chancellor and the vice-rector [attempted](#) to remove all university citizens from the campus within a few hours on the ground that disinfection and maintenance works are necessary. The occupiers of the university said no to that.

The real aim of the measure was uncovered by the [words](#) uttered by the chancellor himself: *„These few days are also important because everyone can calm down a bit, including the students, the employees, the professors and the management.”* The chancellor acknowledged that he did not expose the complete truth by means of his provisions: *“The primary aim of bringing forward the fall break was to start leave days earlier.”*

Accordingly, not maintenance, not the epidemic, nor disinsectization were the real reason. The chancellor, doubting that the students are capable of anything like that, started to [expand](#) on the relevant military subject in a professional manner: *“I am aware that the manned guarding of such a facility is a serious challenge that requires organization.”* In other words, by the time the surprised students would have returned, even a policing security and surveillance service – provided by the chancellor in a professionally appropriate manner and reinforced by the required manning – could have been organized during the break brought forward. Similarly, it could have happened that, due to the commencement of technical maintenance works, pried-out electric cables, removed toilet bowls and taps would have welcomed university citizens at the end of the fall break. By the way, as it is general in [authoritarian](#) regimes, he looks down on university students who stand up for their freedom, and [treats them as children](#).

The intention must have been to terminate – irrespective of the law and the applicable acts – the resistance which had become more and more unpleasant for those in power. They failed. If they thought that they could prevent the demonstration of 23 October, they happened to be



wrong. The result was the opposite, as a crowd gathered in Vas Street¹ [in the hour of the planned evacuation](#), and on 23 October, a crowd of [tens of thousands of people](#) marched on the streets to express their sympathy with SZFE, and, most probably, their general protest against those in power.

The suspension of teaching activities

On 6 November, 2020 the board of trustees [suspended](#) teaching activities at the University for Theatre and Film Arts until 1 February, 2021, ordering at the same time that as of 9 November, 2020 the facilities should remain closed “for the purposes of teaching activities or residence in students’ dormitories”. They justified that decision by saying that the management of the university had not been able to access university facilities for more than a month due to the blockade of the students, and because of that “*their ability to make responsible decisions is limited and they are unable to control the actual procedures of teaching and the normal operation of the facilities.*” Thereafter, on 7 November, Neptun,* which enables, among other things, the organization of courses, [was made inaccessible for students](#). The suspension of teaching is clearly a violation of the law, the maintainer shall be in charge of guaranteeing the functioning and the operation of the university and ensuring the necessary conditions thereof [Section 2(2) of the Nftv.]. In addition to the provisions of the Act on National Higher Education, that obligation is also laid down in Act LXXII of 2020 on the establishment of the Foundation for the University for Theater and Film Arts, and the [Deed of Foundation](#) of the university as amended in light of that Act. It also follows from that, that it is the duty of the maintainer to guarantee for university citizens the effectiveness of their freedom to teach and to study.

The violence of the political power was not deterrent for university citizens, teaching continued on 9 November, and from that date, all teachers have taken care of the registration of courses, acting on their own responsibility. On 9 November, the self-government of university citizens [brought an action](#) before the court challenging the suspension of teaching activities, and the statement of claim (still) had (back then) suspensory effect, according to which the measures of the maintainer cannot be implemented until the decision by the court. In order that the court reaches a well-founded decision, university citizens requested the [Educational Authority](#) to recognize the teaching activity taking place at the university, but on 13 November, the Authority [rejected](#) their request for access to the decision on which the maintainer based its

¹ Thereafter, the chancellor, who, we must repeat again, is not in charge of matters of the students and the teachers, started [threatening](#) once again: “*Anyone who is present in the facilities of SZFE during the fall break without a special authorization from the chancellor, shall be responsible for that action, and shall face all possible consequences.*”

* Translator’s note: Neptun is an online education interface in Hungary.



decision on the suspension of teaching activities, as well as their request to file a documentation of several hundreds of pages certifying the teaching activities actually taking place at the university on the grounds that the Authority does not recognize SZFE citizens as party to the procedure. There is no doubt that the position of the Authority is wrong. Under Section 10(1) of Act CL of 2016 on the Code of General Administrative Procedure, a party means any natural or legal person or any organization whose rights or lawful interests are directly affected by the case, with respect to whom a public register holds data or who (which) is subjected to administrative audit. Section 13(3) of the Act provides that the same person may not represent parties with opposing interests. Accordingly, the management aiming at the obstruction of teaching activities, and concerned as illegitimate by university citizens, may certainly not represent in case the university community intending to continue teaching activities. Consequently, SZFE citizens [brought an action](#) against the Educational Authority, too.

In addition, the students submitted a public interest disclosure to the Educational Authority on the grounds that teaching is a public benefit task of the university, and the university must perform that task for the interest of society – accordingly, an initiative for the suspension of teaching activities contradicts the primary aim of the functions of the institution. Among other things, that argument is included in the [conclusions](#) of the investigations of Lajos Aáry-Tamás, Commissioner for educational rights, published on 27 November, which confirm that the suspension of teaching activities violates the constitutional rights of the students. In the meantime, with respect to the [restrictions](#) related to the [state of danger](#) introduced on 4 November, SZFE switched to digital learning on 11 November and university citizens [announced](#) that “resistance will take place outside the buildings, for a while.”

Invalidation of the semester

[Government Decree No. 522/2020 \(XI.25.\)](#) was published on the night of 25 November which provides that “for public health or public safety reasons or in case of a natural disaster or an unavertable situation directly jeopardizing the order of the academic year and the enforcement of student rights (...), the maintainer (...) shall be entitled to establish (...) that the requirements for lawful performance of study obligations are not met, cannot be ensured, or cannot be monitored by the maintainer.” The wording is so transparent that it is practically unnecessary to draw the attention to the fact that the real aim and purpose of the Government Decree is to render the currently ongoing teaching activities at the University of Theatre and Film Arts impossible, and to intimidate and openly blackmail university citizens acting against autocracy. Real political intentions are revealed both by the content and the timing of the Decree. And indeed, the board of trustees did not hesitate: almost immediately, on the night of 27 November they issued a [communication](#) according to which the board, acting on behalf of the maintainer



of the University for Theatre and Film Arts (SZFE), invalidates the fall semester with respect to the still existing extraordinary situation.

The Government Decree is not only an abuse of the delegation of powers with respect to the state of danger, but is in violation of basic constitutional principles, and is clearly in breach of the Fundamental Law. Under the Fundamental Law, in a state of danger, the Government may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures [Article 53(2) of the Fundamental Law]. The forms of restriction of fundamental rights allowed during the period of the state of danger is regulated by the cardinal Act on Disaster Management, which provides that such a restriction shall be allowed only for the purposes of guaranteeing that life, health, person, property and rights of the citizens are protected, and to guarantee the stability of the national economy [Section 51(1) of the Act on Disaster Management], and should be allowed only to the extent necessary and proportionate to the objective pursued, i.e. for the purpose of preventing, controlling and eliminating the human epidemic, and preventing and averting its harmful effects [Section 51(2) of the Act on Disaster Management]. Based on the above, the freedom to teach and to study, also enshrined in the Fundamental Law, and other fundamental rights may be restricted, even in a state of danger, only in relation to the epidemic situation, to the extent necessary and proportionate to the elimination of the epidemic.

An Act (including a decree equivalent to it in a state of danger) is *general will* according to the classic definition (Rousseau), so it cannot be used in any case as a means of lowly revenge. In order to conceal that purpose, the Government Decree is addressed to the totality of higher education. However, the fact that this is not general will, but a new phase of the military campaign lead against the republic of education is supported not only by the decision of the board of trustees, but also because the scope of the Decree does not include other subjects of public education, although in the case of high schools, for example, the situation is clearly similar, or the epidemic situation is even more threatening in other forms of education. The unconstitutionality of the Government Decree can be established even solely on that basis.

The Government Decree, with respect to all university students – in violation of the freedom to teach and to study – makes the accomplishment of the semester subject to the arbitrary decision of the illegitimate maintainer who eradicated the self-government of the university and withdrew all powers of the elected bodies in an unconstitutional manner. That also supports the unconstitutionality of the Decree.

As we have pointed out above, special legal order may not be an excuse for doing no matter what. Following that universities switched to compulsory distance learning, it cannot be demonstrated that the elimination of the state of danger may be attained through the suspension



of the semester. Protective measures in the epidemic situation and not recognizing the accomplishment of the semester are not related to each other in any way. The unconstitutionality of the Government Decree is further supported by that fact.

The constitutional requirement of legislative clarity is clearly violated by the Decree, which single fact alone renders it unconstitutional. The wording of the Government Decree according to which *“for public health or public safety reasons or in case of a natural disaster or an unavertable situation directly jeopardizing the order of the academic year and the enforcement of student rights (...), the maintainer (...) shall be entitled to establish (...) that the requirements for lawful performance of study obligations are not met, cannot be ensured, or cannot be monitored by the maintainer”* is a baloney, a mumbo-jumbo, in breach of legislative clarity and lacking any normativity according to which a semester could be declared invalid in any (!) institute of higher education.

As a corollary to the previous conclusion: clearly, the intention is to strike one single institution by the Government Decree. If the invalidation of the semester is applied only to one or to some institutions of higher education, but not all of them, that is a manifest breach of the constitutional requirement of equal treatment. Even that alone may serve as grounds to establish that the Decree is contrary to the Fundamental Law.

The prohibition of retroactive effect is an indispensable constitutional safeguard against all authoritarianism even during a period of special legal order. Only a few weeks have been left from the term-time at universities, that is, the arbitrariness of those in power allows the invalidation of the term right at the end of the semester, by which it contravenes the prohibition of retroactivity which previously had to be strictly accounted for before the Constitutional Court. It means that a situation has occurred in which students are informed just as the end of semester is approaching that their hard work during several months has been in vain. The rule could have been adopted without any problem before the start of the fall semester in order to evade retroactivity. In the present case, however, that amounts to legislation with retroactive effect, which also renders the Government Decree unconstitutional.

Under the Decree, the administrative action brought against the decision of the maintainer shall have no suspensory effect, that is, the will of the maintainer may be enforced immediately. The Act on Higher Education provides, as a general rule, that an action brought before a court by a student against the decision of an institution of higher education shall have suspensory effect. The Decree derogates from that safeguard rule without any substantial reason, thereby causing a serious impairment of rights, because a possible later court decision which is otherwise in favor of the students certainly cannot compensate for the damages caused (a loss of a whole



university semester) subsequently. By doing so, it restricts the right to a legal remedy in violation of the Fundamental Law.

There is no connection to be found between the epidemic and the cancellation of the semester performed by the students, with special attention to the fact that the conditions of online education are provided in case of SZFE students, and education activities are maintained in an effective and controllable manner even though the chancellor illegally blocks certain places of education from the students and professors, and creates obstacles to the registration of teaching activities by denying access to the Neptun system. Since the board of trustees decided not to recognize the semester for students of SZFE, in the future court procedure initiated by the students against that decision, the judge should notice that the case concerns a legislative act which violates the Fundamental Law in several aspects, and at the same time, the judge should request the Constitutional Court to establish the unconstitutionality of the Decree. In addition, if a decision based on the Decree is challenged in an administrative court procedure, the students may also request interim relief, which may result in the declaration of suspensory effect. Although it is clear that university citizens may have only little confidence in a favorable decision by the Constitutional Court which is subject to [close government control](#), but the exhaustion of domestic legal remedies opens the way to the European Court of Human Rights in Strasbourg where their chances are good to win the case.

University citizens, very correctly, make use of the possibilities available under the applicable law against the intervention of the power – as explained above, several court and administrative procedures are currently pending in parallel in the case of SZFE. At the same time, with respect to the current state of the Hungarian legal system, an already decade-long practice of subjugating the legislation to actual political interests, the resistance of university students and professors should be allowed to contradict certain written and formal legal provisions for the purposes of drawing the attention to the related moral and, not infrequently, constitutional malpractices. In that respect, the constitutional relevance of civil disobedience as explained in detail below, may shed light on how it could be used successfully by SZFE citizens – as a creative tool beyond the formal framework of the legal system – to reach their goals.

Civil disobedience

Civil disobedience transgresses the framework of the legal system, but it is not an extralegal phenomenon². Civil disobedience always poses risks. Protesters submit themselves to the punishment which may be imposed due to their knowingly unlawful conduct. The propulsion

² This section is based on the open letter by László Majtényi and Bernadette Somody on behalf of Eötvös Károly Institute addressed to Viktor Orbán and László Trócsányi dated 21 June 2017.



engine of this form of protest is regularly an important moral concern that often receives, and perhaps gains social support.

Civil disobedience occurs in front of the public, as those who use this means intend to protest by influencing public opinion with their actions and by being exposed to public opinion. As the subject of their protest is a governmental policy, regulation or decision, civil disobedience is always taking a position concerning a public issue and, in that sense, it is part of the public debate on public affairs.

Translated to the language of law, civil disobedience is a conduct formally in breach of written legislative provisions, and at the same time, it is a way of speaking-up – sometimes in a non-verbal way –, an expression of opinion about public affairs, that is, it is symbolic speech, too. The expression of opinion about public affairs and democratic debate enjoy special constitutional protection. It is widely known that the relevant case-law of the Hungarian Constitutional Court, which has been followed throughout several decades, also grants a high-level constitutional protection for opinions on public affairs. Law cannot ignore that fact when competent authorities assess civil disobedience as a conduct in breach of law and decide on its legal consequences. Namely, possible sanctions necessarily entail a restriction of the freedom of expression.

Any restriction, therefore, must meet the constitutional criteria applicable to the restriction of fundamental rights by the state, which requires that fundamental rights, including the freedom of expression, for example, are only restricted for a constitutionally legitimate purpose to the extent absolutely necessary and proportionate to the objective pursued. Depending on the specific circumstances of a given case, this may have the result that a formally unlawful conduct that expressed civil disobedience will be more leniently or not at all punishable compared to other conducts that are unlawful but not motivated by civic stance.

The moral complaint expressed by civil disobedience in a state operating under the rule of law, very often amounts to constitutional criticism at the same time: a regulation which is incompatible with the most basic moral rights of people necessarily entails a violation of fundamental constitutional rights. An action of civil disobedience may be the first step on the way to the enforcement of fundamental constitutional rights within the framework of a legal procedure.

The successful boycott of the act adopted against civil society organizations can be mentioned as an example. The boycotting civil society organizations rejected the act that violated fundamental constitutional rights, and, of course, also the governmental policy directed against civil society which was expressed in the act. They proved to be successful, it was not possible to enforce the act. On 18 June, 2020 the Grand Chamber of the European Court of Justice upheld



the action brought by the European Commission against Hungary for failure to fulfill its obligations in that case (C-78/18).

If, in the upcoming lawsuit, the judge cannot apply the law in conformity with fundamental rights, or in other words, if the act is unconstitutional, then – as already outlined above – he or she must refer the case to the Constitutional Court for constitutional review. For example, the legislative provisions adopted not long before the “privatization” of the university and inserted in the Act on Higher Education empowering the board of trustees to eradicate autonomy are surely unconstitutional. If the proceeding judge does not do so, the university, too, may refer the case to the Constitutional Court by submitting a constitutional complaint after the conclusion of the court procedure. What is more, there are cases where the university may introduce the complaint even before the ordinary court procedure. The Constitutional Court shall declare an act in violation of fundamental rights null and void. Finally, if Hungarian fora do not give effect to fundamental rights – as we have also mentioned that case above – the way is open to the European Court of Human Rights in Strasbourg. Accordingly, the legal system has several institutionalized procedures in place for the enforcement of rights, with the help of which effect may be given to fundamental rights.

If civil disobedience is based on such a moral claim, which is recognized as a fundamental right, chances are good that it can be enforced in the legal system of a constitutional state, or in the international system of institutions for the protection of fundamental rights, respectively.

In the present political and legal situation, students and employees of SZFE, i.e. university citizens, practically have no other means left to resort to, than their rights of radical resistance to protect their autonomy. That toolkit includes legal strike. If it is not possible to exercise the right of strike due to regulations which have become more restrictive over time, then strike, too, should be interpreted as civil disobedience. Each form of resistance of SZFE citizens examined below are to be interpreted also in the light of the theoretical and practical characteristics of civil disobedience, which have just been presented in detail.

Closing, breaking locks, and cutting-off the internet

Teaching activity was continuous at the University for Theatre and Film Arts at the time of the occupation of the university. Ódry Stage was, on one hand, one of the places where university education took place during the occupation of the university, and on the other hand, it is a democratic agora. During former university occupations in Hungary – obviously not independent from the fact that back then the authoritarian characteristics of the Orbán regime were less visible –, nobody has ever dared to [exclude](#) university students and teachers from classrooms with similar functions, up until now.



The [changing of the door lock](#) of the University's theatre hall which had always been open since time immemorial (Ódry Stage), executed thereafter on 15 October as an „undercover operation”, is unlawful. In case university professors or students open it up with the help of experts, the board of trustees and the chancellor cannot criticize that, and in case they force the lock open and thereby cause material damage, only the compensation for damages caused to the door could ever be the subject of any future dispute before the court. A correctly proceeding judge, most probably, would not even establish that liability for damages. Authorities must assess the actions by protesters in the authoritarian system of a prime minister who, back in 2007, very proudly stated with a spanner in his hand while dismantling a mobile barrier that he is committing [civil disobedience](#).

It is an obligation and a right of professors appointed to the university to teach, and the chancellor is obliged to continuously ensure the necessary infrastructure thereof, and students too have the right to study and to use university areas intended for that purpose. Anyone, therefore, who opens the unlawfully locked door of Ódry Stage, no matter by what means, opens the way for freedom of education and opinion. Accordingly, the door of Ódry Stage was [opened](#) after a while and from that time on students guarded the open door.

Strike

On 9 September, 2020 the employees of SZFE [established a strike committee](#) of which they informed the maintainer on 15 September, 2020. Among the strikers' demands of the employees there are several items that are fundamental from the perspective of the effectiveness of university autonomy: the access of professors to the electronic education, examination and administrative interface (Neptun system) should be restored; the powers of the university's senate as on 1 August, 2020 should be restored, and the integrity of its powers should be guaranteed; the power of the senate to determine issues related to and methods applied in education and artistic creative work should be guaranteed; the senate itself should have the power to lay down its internal rules of organization and functioning; the senate itself should have the power to elect heads of institutions and classes, and, respectively, its powers related to the appointment of the rector should be restored; with respect to budgetary resources, the maintainer should provide at least the framework available in the financial year 2020; and the demands include that the senate should have the powers to establish independently the planned annual budget of the university and to submit it to the maintainer.

In 2016 Eötvös Károly Institute in its [position](#) published about the one-hour long strike of professors pointed out that the right to strike, intended to enforce employees' interests, may be widely restricted, and, exceptionally, even withdrawn by the state. By contrast, the freedom of expression as a fundamental constitutional right may be restricted only by observing the necessity and proportionality criteria applicable to the restriction of fundamental rights. There



are convincing arguments proving that the strike of SZFE's teachers amounts to exercising the fundamental constitutional right to freedom of expression: the employees on strike express their opinion through their conduct regarding the restriction of university autonomy also enshrined in the Fundamental Law. That assessment is further supported by the strikers' demands listed above.

The lawfulness of the conduct of teachers on strike is confirmed by the fact that while during the 2016 teachers' strike, the participating teachers, for one hour, actually did not perform their duty to work (and because of that, a possible reason for restricting the freedom of opinion in their case was the respect of the rights of children participating in public education), the teachers of SZFE have continued to teach their classes since the beginning of the strike, in a well-documented manner, teaching activity has been unaltered (an evidence for that is a [600-page long file](#) in which all necessary documents and evidence are included concerning how teaching has been carried out since September). Presently, that work continues to be carried out in the form of distance learning.

The board of trustees turned to court challenging the lawfulness of the strike. Although the court of first instance in the case, the Budapest-Capital Regional Court found³ the employees' strike unlawful, the court of second instance, the Budapest-Capital Regional Court of Appeal by its order⁴ rejected the maintainer's request concerning the unlawfulness of the token strike, and instructed the court of first instance to conduct new proceedings and adopt a new decision concerning the strike started on 1 October, 2020. In the retrial the court of first instance considered the decision of second instance as determinative in the matter of assessing the lawfulness of the strike. The court confirmed that under Hungarian law a demand of strikers shall be valid if it is aimed at maintaining or improving the workers' economic and social circumstances [Section 1(1) of Act VII of 1989 on Strikes] – also in light of that, demands for academic independence and the freedom of artistic and scientific work are lawful, since those values are closely related to workers' economic, social and labor interests, and determine the working conditions of university employees in a decisive manner. According to the reasoning of the court „since the exercise of the right to strike may be directed against not only a decision of the employer concerning the wages or social benefits of employees, or against the failure of the employer to act, but against all measures or initiatives the consequences of which may affect the employees' economic, social or labor interests, and those may include the case of not granting them the right to participate in the decision-making procedures concerning those matters, as opposed to previous practice.”⁵

³ Order No. 22. Mpkf.75.143/2020/16 of the Budapest-Capital Regional Court

⁴ Order No. 2.Mpkf.35.124/2020/5 of the Budapest-Capital Regional Court of Appeal

⁵ Order No. 2.Mpkf.35.134/2020/4 of the Budapest-Capital Regional Court of Appeal



The registration of strikers

The International Labour Organization set out the basic requirements on the protection of workers' personal data as early as 1996.⁶

Those include:

- Personal data should be collected lawfully and fairly.
- The processing of data should be reduced to include only the kind and amount of personal data that is strictly necessary for the employment.
- Workers' personal data should be used only for reasons directly relevant to the employment of the workers, and for the purposes for which they were originally collected.
- Workers may not waive their privacy rights.

Under Section 7(1) of the Labor Code: *“Wrongful exercise of rights is prohibited. For the purposes of this Act ‘wrongful exercise of rights’ means, in particular, any act that is intended for or leads to the injury of the legitimate interests of others, restrictions on the enforcement of their interests, harassment, or the suppression of their opinion.”*⁷

Accordingly, Chancellor Gábor Szarka [requested](#) unlawfully the list of strikers, who, very correctly, asked in return what legitimate purpose the Chancellor could name on the basis of which he wishes to process their personal data. The problem is that under the rules on purpose limited data process and the principle of data minimization, everyone has the right to process only the type and amount of data which is absolutely necessary for carrying out his or her legitimate duties. Since strikers are not entitled to wages, the personal data of strikers must indeed be included in the payroll records. But only there, and only until the purpose has been attained. The Chancellor should have understood that although he is responsible for payroll administration, he is not entitled to have access to such data. In case, however, he unlawfully gained access to such data, he can expect serious sanctions.

The [communication](#) of the Chancellor and the Rector dated 13 October demanding a statement of allegiance – *“In the coming days, all employees, teachers and students of the university will be contacted by mail, requesting them to make a statement about the current situation and their intention to cooperate with the management of SZFE by indicating their names.”* – is similarly in violation of privacy rights, and therefore, is unlawful.

⁶ ILO, Protection of Workers' Personal Data, 1997, Geneva

⁷ Under the applicable rules of labor law the objective pursued and the restriction of fundamental rights for that purpose must be proportionate. Under the purpose limitation test, personal data of strikers may be processed only for the purposes of payroll administration. See: Decision No. 20/1990 (X. 4.) of the Constitutional Court, Decision No. 879/B/1992. of the Constitutional Court, <https://naih.hu/files/ABI-ajanlas-381-H-2006-18.pdf>



The secret of sustainable resistance: what is the message sent by the fight of SZFE citizens?

In November, due to the intensification of the epidemic situation and the restrictions introduced in the state of danger, the occupation of the university ended after 71 days, but resistance has continued, and the prospects of winning the fight for autonomy are still favorable. What are the possible reasons that after all those measures against autonomy which have been easily implemented by the government in recent years, it is SZFE where university citizens have been able to demonstrate real democratic resistance and to bring the famous “courage of convictions” to life? In order to explore the factors of the successful resistance against the interference of power, Eötvös Károly Institute conducted focus-group interviews in the fall among some of the students participating in the resistance.

One of the most important factors that all the students who participated in the conversations talked about was the direct experience of democracy during their university education. As part of that experience, university students identified certain institutional and organizational characteristics, for example, that the senate’s meetings used to be open meetings, or that in case of the election of the rector, a genuine possibility was granted for university students to participate in the rectorial debate, and to access the submitted job applications. It was highlighted that elections of students’ representatives were organized last September with a high rate of participation by university students. University students could participate in many open senate meetings, and for the ones interviewed, it was a memorable event, for example, when the community of university citizens held a discussion on how the university should demonstrate its support for CEU. In the course of these events, students could observe their teachers actively expressing their opinion. In the university’s decision-making processes, students indeed felt that their voices matter. An important democratic experience of students was when, at the birth of the chancellor-system, the candidate imposed by the political power [failed](#) in front of the senate and the university citizens. During the conversation, university students described all these experiences also by using the term „experience of self-determination.”

As university students told, there was a constant dialogue at their university about the relationship of art and public life. The university ensures genuine and effective freedom with respect to creative processes, and any topic may be freely approached by the student. In the course of their education, SZFE students face political questions, public issues, and within this socialization process they constantly keep reacting to events taking place in society, and they address the different aspects of artistic life reacting to events taking place in the public domain. This has the effect, as one of the students put it, that “*politics and public issues thus become existential issues*” for them.



A further important factor identified by the students interviewed was the low number of students at the university, that is, that SZFE is a very small university with about 500 students, which equals to the number of students of one single faculty or perhaps one single grade at other universities. In a small community, the voices of disagreement are “louder”, and this is further facilitated by the fact that chances are higher that students know each other and listen to each other’s opinion, and thus the organization of resistance is a lot easier. The university is an institution that offers a real community for the students of SZFE where cooperation between different majors is also quite common, and in recent years students have experienced such joint team works too. Also, it is a characteristic trait of education at the University for Theatre that students spend much more time with each other as compared to their peers studying at other universities and standing up for each other involves stakes that have a personal and affective nature, and that may act as catalyst for community actions.

Students participating in the focus-group interview highlighted that the Students’ Organization of SZFE was involved in the conflict at a very early stage, as opposed to other higher education institutions which were similarly forced to undergo a “change of model”, where the student representatives’ bodies rather kept silent and accepted the new framework. The participation of the highest level of student representatives was identified as a particularly important factor by the students, as these bodies, making use of the available legal means, may act as obstacles to the enforcement of the political will coming from above.

Furthermore, the students feel that the resistance of SZFE teachers (such as numerous hard-hitting statements in support of autonomy, administrative court procedures, strike) is a strong safety net for their own civil disobedience. The exemplary role of the clear and bold stances of university teachers is invaluable as regards the conduct of students. The participants of the focus group added, however, that sometimes it was a major challenge to integrate the totality of university citizens into a functioning direct democracy, a characteristic of the resistance. The community must simultaneously manage – both on the students’ and on the teachers’ side – the participation of „strong personalities” in the decision-making process and, at the same time, reach decisions on such major issues which alone means an unprecedented, difficult trial for all university citizens. Students are of the view that those who represent a democratic *modus operandi* in education (instead of the more hierarchical relationship of “master and disciple”), are more at ease in a structure of direct democracy.

The students participating in the focus group interview identified time as a further important factor for the success of the resistance, that is, the attack against the university did not take them by surprise. The allegations of abuses in theatres as interpreted and “reframed” by government friendly media, already alluded to the fact that they are trying to make the University for Theatre and Film Arts illegitimate, and to denigrate it. Students added that they used to believe for a long time that they would not need to take direct risks and that the “change of model” would



be handled at a managerial level, but it became clear for them at quite an early stage that it would not be possible just to sit back and watch without sacrifices as the those in power put an end to the independence of their university.

Students highlighted that in order to have any chance to attain any goals they really needed that “the outside world active itself”. In the beginning, the aim of students was “only” to defend themselves from an attack led against their own university community, but public attention, which has been gained in the meantime, however, has been used by SZFE citizens already very consciously. They are fully aware of their responsibility with respect to the fact that the case goes far beyond them, and that their community is the first one that reacts with a genuine and spectacular resistance to an interference of governmental power against autonomy. University students were also reached by voices questioning their right of participation in processes and their right to say in what system, with what kind of teachers and in what educational program they wish to study. That mentality, according to the students participating in the interview, characterizes primarily the students of the lower years. That phenomenon is not surprising, as most young people in elementary or high schools, in the lower tiers of Hungarian public education, typically do not have that experience of democracy as referred to above.

It has been an important aspect for SZFE citizens right from the beginning that SZFE protests should be different from earlier ones (they mentioned the reduced tone, the slogans taken over from the past, and the reactive trait of CEU demonstrations as an example). Their creatively structured movements are characterized by an easily decipherable communication of special symbolics and artistic performances. As they say, the aim of their demonstrations is that participants return home filled with a “special added experience”. Already before the first demonstration, they had realized and kept in mind that the strength of this community lies partly in its flexibility. Among other things, that also contributed to the use of the red and white ribbon or the yellow mask, for example, which have since become the symbols of support for SZFE throughout the whole country. All these are symbols that appeared spontaneously during protests, and which were first recognized then reproduced and made publicly known by the demonstrating students.

Several forward-looking lessons can be drawn from the fight for autonomy by SZFE citizens, the success of their resistance being based on the intelligent and creative use of legal and non-legal means, personal sacrifices and acting in unity as a real community, which enjoys support from the part of society that is committed to democracy. The teachers are sustaining a strike which is based on demands reclaiming their university autonomy and which enjoys the constitutional protection of freedom of expression, while in the meantime they ensure the holding and administration of classes on their own initiative by joining forces with students



along the idea of a republic of education. Their action, – which gained wide media coverage, and which provoked the reaction of the maintainer, whom they consider illegitimate – led to a legal procedure that they won in a final and binding manner. In the meantime, the occupation of the university by students – which was spectacular, brilliantly represented by the different means of communication, and well-organized, and which can be considered as civil disobedience recognized by Hungarian law and having the potential to give access to legal procedures – also prompted a response from those in power, who, after some self-ridiculing, clumsy measures, decided first to suspend and then to invalidate the university semester. University citizens are not scared, teaching activities are maintained, and legal steps have been taken concerning the suspension, they have initiated a court procedure, too, and they have addressed the Commissioner for educational rights who also confirmed that the measures of the maintainer are clearly unlawful and unconstitutional. In case they bring an action against the decision of the board of trustees invalidating the university semester, based on an unconstitutional Government Decree, their case may finally be referred to the European Court of Human Rights in Strasbourg. The case of SZFE has become very inconvenient for the government, and although there are currently [attempts](#) to fully abolish the still remaining part of judicial autonomy (very similarly to the seizure of SZFE, by means of managerial appointments of political cadres who are profoundly loyal to the government), the fight for the freedom of a profession, a university and a community by the remaining legal and non-legal means is not in vain, though. SZFE students gained the necessary intellectual and spiritual force primarily from experiencing direct democracy or self-determination during education, from the open and socially sensitive mindset passed-on by their teachers, from a practice of cooperation and of taking responsibilities acquired at the university, from the model of the teachers' resistance, and from the support of society, which results in a flexible, creative attitude adopted with respect to experiences gained from former protests.

The fate of SZFE is not decided yet, but the citizens of the university have already proven that in case a community can, indeed, act as a real community in order to speak up for democratic values that guarantee their autonomous and independent operation, they can actually force the holders of autocratic power – who have, by now, become incapable of demonstrating anything but brute force and foolish violence – to withdraw. What is more, the exemplary fight of SZFE citizens, in fact, teaches all of us that our democratic principles, constitutional rights enshrined in legal documents can only actually mean genuine freedom if we are ready to make sacrifices in case they are threatened.