**Submission on Hungary**

made to

**Ms. Farida Shaheed, United Nations Special Rapporteur on the right to education**

for her upcoming report to the Human Rights Council to be presented in June 2024.

**Disclaimer**: This submission has been prepared in response to a request made by Scholars at Risk. It is based on verifiable academic and media sources, as well as NGO and international organisation reports. The submission does not provide a comprehensive assessment of the state of academic freedom on Hungary, nor does it contain responses to all questions identified by the Special Rapporteur.

|  |  |
| --- | --- |
| **Name of the country/entity submitting information** | **Hungary/Andras L. Pap, Professor of Law** |

**General framework**

***How is academic freedom defined and protected in the constitution or laws of your country, and what are possible limitations or restrictions? Please provide the original citation and source, as well as a summary of relevant judicial practice, if any.***

1. The text of the constitution is provided in the Annex. In terms of analysis, Kováts and Rónay point out that the 2011 Fundamental Law ensures the freedom of teaching, however, it also emphasizes that it can be realized only within the frameworks laid down in an Act, thus the freedom to teach can be restricted by law without violating the constitution – which “(does not) mention explicitly the right to disseminate knowledge or the right to participate in shaping the academic community. …Although the autonomy of higher education institutions was not declared in the previous Constitution, the Constitutional Court derived it from the freedom of teaching and research in several of its judgments.[[1]](#footnote-1) … **the new Fundamental Law purposefully restricts institutional autonomy to decisions on the “content and the methods of research and teaching”.** This phrasing also confuses the concept of institutional autonomy and academic freedom. **The text states that the holder of the freedom to teach and research is not the academic but the higher education institution, so institutions can legitimately limit the freedom of individual academics ever further.** … In the case of research, the situation is even more confusing, as the Fundamental Law declares the inviolable right to carry out scientific research, but this is restricted only to evaluating the results of scientific research. At the same time, the Fundamental Law designates the institution as the holder of this freedom in terms of decisions on the methods and content of research.” [[2]](#footnote-2)
2. Kováts and Rónay also point out that “The Act of 2011 on National Higher Education … does not use the words “autonomy” and “freedom” at all. … The Act confirms the right of academics to carry out teaching following their convictions and values, without forcing or encouraging students to accept them, to determine the content of the course within the framework of the study program, and to choose the teaching methods they find appropriate. … The Act of 2014 on scientific … research, development and innovation, which applies to public research institutes … does not even mention freedom of” research.”[[3]](#footnote-3)
3. As a 2023 report initiated by the European Parliament on the de facto state of play of academic freedom in the Member States of the European Union and commissioned by the European Parliamentary Research Service highlights: “**Current legislation does not contain language referencing academic freedom, instead referring to the individual freedoms of teaching, research, artistic creation, and learning.** … **With regard to institutional autonomy, there are virtually no protections of or references to it as a fundamental principle in the higher education legislation**. …The legal foundation for the higher education system over the last 30 years can be argued to have been undergoing a “permanent reform process” that has led to instability and regular “changes of the latest changes.”[[4]](#footnote-4) The current Act on National Higher Education is the third higher education law since 1993, and has itself gone through 15 amendment cycles implementing around 650 individual amendments as of 2017. It is also of relevance to note that **the former Act on Higher Education of 2005 included multiple references to and elaborations on the freedoms of teaching, learning, research, knowledge dissemination, and shaping the academic community. By comparison, the legal protections have developed from explicit protection and promotion of academic freedom to a much less comprehensive description of the nature and purpose of these freedoms.”** [[5]](#footnote-5)
4. Kováts and Rónay conclude that “**The partial erosion of legislative guarantees means that the respect or violation of academic freedom depends on the whim of decision-makers at policy and institutional levels.”**[[6]](#footnote-6)

***Are academic staff, teachers, students all entitled to academic freedom? Does this differ by level of education? Please explain.***

1. A structured overeview of how academic freedom is gauged in the three dimensions of teaching, research, and publishing is provided in the Annex. Most of the analysis concerns higher education, the author had not identified comprehensive reports on secondary and primary education.

***What do you consider to be (a) the main challenges to academic freedom?***

1. The Annex provides a structured overview.

**(a)** As the aforementioned 2023 European Parliamentary Research Service report highlights: “Overall, in one EU Member State, Hungary, structural de facto violations of academic freedom are taking place. … **de facto academic freedom situation in … Hungary − can be interpreted as … rapidly deteriorating. According to the AFi,[[7]](#footnote-7) Hungary is the only EU Member State where structural infringements of academic freedom are taking place.[[8]](#footnote-8) … The AFI score for Hungary has deteriorated since 2011, and the 2021 score is by far the lowest score of all EU Member States.**

…While instances of direct government interference in higher education in general and academic freedom in particular are relatively rare, they are happening at an increasing rate. In addition, the political atmosphere serves in general to discourage academics from teaching, research, or expressing opinions about topics or perspectives that run counter to the government narrative. While teaching and research are legally protected (although to a lesser degree than previously), there are reasons to believe that self-censorship and the avoidance of certain topics is commonplace among academics. …

(Also,) there are clear indications that it has become more difficult in Hungary to retrieve data for research from government-controlled sectors, such as the healthcare or prison systems. … As argued by Kováts and Rónay (2021), data on the state of play of the freedom to teach and learn, and the freedom of research are largely unavailable, and insights into the practices of academic freedom must be extrapolated from the legal, political, and institutional realities… …Hungary is generally regarded as the main violator of academic freedom in an EU context.”[[9]](#footnote-9)

**(b) gaps in the legal framework for protecting academic freedom**

1. The author agrees with Kováts and Rónay arguing that “**academic freedom is more dependent on the decisions (whim) of actors who are not accountable to the academic community, whose decisions are not transparent to the academic community or lack the necessary guarantees. Therefore, the problem at the systemic level is not the systematic restriction of academic freedom but the inability of the current legal environment to prevent its restriction. [If t]he decision-makers (the state) … do not violate academic freedom it is only because of … political considerations. …the state can infringe academic freedom in the existing legal environment if it wants to, without any consequences.”**[[10]](#footnote-10)

**Autonomy of educational institutions**

***Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail.***

1. The aforementioned 2023 European Parliamentary Research Service report cites the 2022 Freedom House Report:[[11]](#footnote-11) **“The Fidesz-led government has maintained its efforts to bring schools and universities under close supervision. Legislation adopted in 2014 allows government-appointed chancellors to make financial decisions at public universities. The government has increasingly threatened the academic autonomy of well-established institutions, pulling support, interfering in their affairs, and landing pro-government supporters in leading positions…. The Fidesz government also targeted the Hungarian Academy of Sciences (MTA), stripping the 200- year-old academy of its network of research institutions in 2019 and handing it over to a new governing body.”**
2. According to the European Parliamentary Research Service Report, “the EUA autonomy scorecard scores suggest that institutional autonomy in Hungary is at a low level, …the second lowest score for financial autonomy, and has medium low scores for organisational, staffing and academic autonomy. In the study by Beiter et al,[[12]](#footnote-12) Hungary is ranked last of all EU Member States, suggesting a very low state of the legal protection of institutional autonomy in the country.”[[13]](#footnote-13)
3. Kováts and Rónay analyzed self-governance of the academic community on two levels. On the sectoral level, they focused on two buffer organizations, the Hungarian Accreditation Committee and the Hungarian Rectors’ Conference,[[14]](#footnote-14) and concluded, “that their role and importance has gradually weakened since the 2000s, while the state has increased its control powers. **From the 2010s onwards, the role of sectoral consultation declined significantly, and buffer organizations have either been marginalized or reduced to a consultative role where their position can be overruled if necessary.”** At the institutional level, they looked at the autonomy and self-governance of public higher education institutions and the network of public research institutes that formerly operated the Hungarian Academy of Sciences, before it was transferred to a government-controlled organization, and concluded that the role of academic communities in decision making has been significantly reduced. **“The financial and strategic decisions have been taken over by new bodies (boards of trustees, governing boards) or agents (e.g. chancellors); and the government has a decisive influence on their composition or selection. The accountability of and control over the new, government-mandated governing bodies are weak – in particular, to and by the academic community they are mandated to govern. …Therefore, the problem at the systemic level is not the systematic restriction of academic freedom but the inability of the current legal environment and governance model to prevent its infringement.”[[15]](#footnote-15)** As they point out, technically, **institutional autonomy was reduced by an amendment to the Fundamental Law in 2013, which created a legal basis for the government to determine and supervise the management of higher educational institutions. In 2014, the position of chancellor was introduced, a senior manager appointed by the prime minister, on a par with the rector. In 2015, a new supervisory body called consistory was also created to oversee the institutions’ operations, with veto power over the budget, institutional strategy and R&D strategy.**[[16]](#footnote-16)
4. “We are also witnessing a significant **reduction in financial autonomy**. On the one hand, public support has decreased: from 2010 onwards, **the government withdrew significant resources from the sector, resulting in a decline in public support for higher education by almost 50% in real terms from 2008 to 2013**; thus, the government expenditure on higher education as a percentage of GDP fell from 1% to 0.6%. … **Public funding allocation mechanisms have also changed. Instead of formula funding and performance contracts, the weight of direct institutional funding and earmarked grants increased considerably from 2012 onwards. This has allowed the government to directly reward and punish institutions more severely than before through financial subsidies or deductions. Overall, the transparency of the funding system has deteriorated.”** [[17]](#footnote-17)
5. Furthermore, “since 2005, institutions have not had the right to select undergraduate students because of the centralized, national admissions system. In addition, … the government changed the mechanism for allocating state-funded study places to institutions (and study programs). Instead of an allocation algorithm based on student preferences, the government directly determines the number of places (and thus the associated institutional funding).”[[18]](#footnote-18)
6. “Another critical factor is that institutions are not allowed to establish study programs on their own. **In a situation that is quite unique in the European Union, the government regulates the range of programs that can be offered in higher education by ministerial decree. This legal constraint not only makes the education system extremely inflexible, but also increases the dependence of higher education institutions on the government. The Minister can approve or cancel programs unilaterally, and can also shape the outcome requirements (expected learning outcomes) without involving the academic community…. (in) 2015, 21 bachelor programs were eliminated amid protests from institutions, including popular programs such as andragogy, social studies and cultural anthropology. … In 2018, despite significant protests, the Gender Studies master-level program was abolished for political reasons. … The government can … prevent the launch of a program even if it does not require public funding.”**[[19]](#footnote-19)
7. Most of the analysis concerns higher education, the author had not identified comprehensive reports on secondary and primary education.

***Are there restrictions on police or military personnel entering educationalinstitutions? If so, please share the rules.***

1. The author has not identified relevant reports or sources on this subject matter.

***Please provide examples of institutional guidelines/codes of conduct developed to ensure respect for academic freedom, including from external public or private actors.***

1. The author has not identified relevant reports or sources on this subject matter.

**Funding**

***How is funding, including for research, regulated? Is the process transparent, and are there any guarantees put in place to ensure respect for academic freedom?***

1. The aforementioned 2023 European Parliamentary Research Service report cites the 2022 Freedom House Report: “In February 2021, the parliament voted to restructure institutions of higher education, allegedly to increase their competitiveness. Control of 11 public universities, along with billions of euros-worth of public assets, was transferred to quasi-public, government-controlled foundations”[[20]](#footnote-20) As Kováts and Rónay explain, “Public higher education institutions are … undergoing a governance reform known as the “model change” aimed at privatizing the institutions by transferring their control from the state to “public interest trusts.”[[21]](#footnote-21) The European Parliamentary Research Service report documents how, “the privatisation of the institutions changed the status of academics from that of public servants to employees of a private corporation. (… This) also made it easier to terminate contracts … (This) may be interpreted as a deterioration of academic labour conditions, and an increase of dependence by individual academics on the institutions. **Overall, the model change transfers key decision-making powers from the government to the trusts while relegating the academic senate to a consultative position. Key institutional decision making responsibilities have been granted to lifetime-serving board members that have no accountability to the academic senate.”**[[22]](#footnote-22) As Kováts, Derényi, Keczer and Rónay document**, “Between 2019 and 2022, 21 Hungarian public institutions, 75% of the public higher education institutions were placed under the control of these so-called public interest foundations (trust funds) instead of the state, and the share of students studying in public institutions fell from 86% to 21%.**”[[23]](#footnote-23)
2. In 2021, the Constitutional Court held[[24]](#footnote-24) that it is sufficient to limit the senate’s competence to be consultative in the process of “model-changing.”
3. **It also needs to be added that the Hungarian Scientific Research Fund (HCRF), previously overseen by the academic community under the supervision of the Hungarian Academy of Sciences (HAS), has been brought under the direct control of the government.**[[25]](#footnote-25) In 2020, the Ministry for Innovation and Technology unilaterally altered the list of funded grants from the National Scientific Research Committee, the main—and virtually only—source of fundamental research funding.[[26]](#footnote-26)

***Which rules and regulations protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education? Please explain how conflicts of interest that may arise are addressed.***

1. The author had not identified relevant comprehensive reports or sources on this subject matter.
2. It needs to be added that the most recent, highly publicized infringement on academic freedom falls within the purview of this issue. Here, Zoltán Ádám, an associate professor at Corvinus University Budapest, refused to examine a student who failed to meet essential formal requirements. The family of the student wields considerable influence through its stake in the Hungarian energy giant MOL, and the company’s president also heads the foundation that has overseen Corvinus University since 2019. After lodging a complaint when irregular arrangements still enabled the student to pass the exam, Ádám was fired.[[27]](#footnote-27)

**Surveillance**

***Please explain whether and the extent to which academic staff and students, at all levels of education, are subject to surveillance by public authorities, for example through on-site cameras or online scrutiny. Has this led to undue restrictions to academic freedom and freedom of expression in educational institutions?***

1. The author has not identified relevant reports or sources on this subject matter.

**Freedom of expression in teaching and access to books**

***Do teachers and professors, at all levels of education, enjoy freedom of expression in their own teaching? Are there any limitations imposed, such as remaining “neutral” or forwarding a particular perspective, e.g. on religious and political matters?***

***Please explain the extent to which teachers and professors at different education levels can chose school manuals and other books/resources for teaching, and the reasons for any restriction in this regard.***

1. The Orbán-regime adopted a mandatory, ideologically biased framework-curriculum, which only allows a 20% flexibility in terms of content. The measures abolished the textbook market and schools no longer have the opportunity to implement pedagogical strategies adjusted to their students’ abilities.[[28]](#footnote-28)
2. Starting as early as 2011, the government took over schools previously run by local governments. Elementary schools merged into one single state administrative unit where all teachers were obliged to enter the new National Teachers' Chamber. Along with taking control of appointing school directors, the government abolished the status of home-schooled private students to prevent the escape of dissatisﬁed families.[[29]](#footnote-29) Simultaneously, the government centralized the public education curriculum, allowing very limited flexibility in terms of course content and teaching materials, which is generally held to be ideologically driven and often controversial.[[30]](#footnote-30)

***Have any specific books/materials been banned, including from school libraries, and alternatively is some material mandatory? If so, why?***

1. The author has not identified relevant reports or sources on this subject matter.

**APPENDIX I.**

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**APPENDIX II. THE FUNDAMENTAL LAW (CONSTITUTION) OF HUNGARY**

Article X

(1) Hungary shall protect the freedom of scientific research and artistic expression, as well as the freedom of learning and – within the framework defined by law – teaching so as to attain the highest level of knowledge possible.

(2) The State shall not be entitled to decide on questions of scientific fact. Only scientists shall be entitled to evaluate scientific research.

(3) Hungary shall protect the freedom of scientific research and artistic expression of the Magyar Tudományos Akadémia (Hungarian Academy of Sciences), and the Magyar Művészeti Akadémia (Hungarian Academy of Arts). As regards the contents and methods of research and teaching, institutions of higher education shall have sovereignty, whereas their organizational structure shall be governed by an act of Parliament. Within the framework of the relevant legislation, the Government shall determine the financial structure of the State’s higher educational institutions and the Government shall monitor their financial management.

**APPENDIX III. EUP RESOLUTIONS EXCERPTS**

**European Parliament resolution of 15 September 2022 on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (**[**2018/0902R(NLE)**](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/0902R(NLE))**)**

***Academic freedom***

BP. whereas in its judgment of 6 October 2020 in Case C-66/18, Commission v Hungary (‘Enseignement supérieur’), the CJEU ruled that by adopting the measures provided for in Article 76(1)(a) and (b) of Law No CCIV of 2011 on national higher education, as amended, Hungary failed to fulfil its obligations under Articles 13, 14(3) and 16 of the Charter, Article 49 TFEU and Article 16 of Directive 2006/123/EC on services in the internal market**[(16)](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0324_EN.html" \l "def_1_16)**, as well as the agreement establishing the World Trade Organization; whereas the Central European University had to leave Budapest;

BQ. whereas in October 2018 the Hungarian Government decided to drop gender studies from a list of master’s degree programmes eligible for accreditation and public funding;

BR. whereas on 2 July 2019 the Hungarian Parliament adopted amendments to a number of laws on the institutional system and funding of research, development and innovation, thereby stripping the Academy of Sciences of its autonomy; whereas on 31 August 2020 the management of the University of Theatre and Film Arts (SZFE) resigned in protest over the imposition of a government-appointed board; whereas the Ministry of Technology and Innovation appointed five members to the new board of trustees, rejecting members proposed by the university’s senate; whereas two thirds of the 33 public interest asset management foundations performing public duties that were created by the end of 2021 will manage higher education institutions previously run by the state;

BS. whereas in its opinion of 2 July 2021 on the constitutional amendments adopted by the Hungarian Parliament in December 2020, the Venice Commission highlighted the need to reconsider Article 7 of the Ninth Amendment relating to Article 38 of the Constitution and introducing in the Fundamental Law the public interest asset management foundations performing public duties; whereas the Venice Commission suggested that these foundations should be regulated by statutory law instead, with all the relevant duties of transparency and accountability for the management of their funds (public and private) set out clearly, as well as appropriate safeguards of independence for the composition and functioning of the board of trustees; whereas the Venice Commission also mentioned that these laws should take into account the significant role of universities as places of free thought and argumentation, providing for all due measures to guarantee the proper safeguarding of academic independence and institutional autonomy;

BT. whereas in a statement following her visit to Hungary from 15 to 22 November 2021, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression urged the Hungarian authorities to effectively protect academic freedom and respect the rights of professors and students, given the risks linked to the privatisation of public universities for the autonomy of scholars;

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Situation in Hungary and frozen EU funds

PE756.771

European Parliament resolution of 18 January 2024 on the situation in Hungary and frozen EU funds (2024/2512(RSP))

J. whereas on 22 December 2022, the Commission adopted a Partnership Agreement with Hungary; whereas the Commission also approved several operational programmes, while referring to several horizontal and thematic enabling conditions; whereas the Commission concluded that Hungary was not fulfilling the horizontal enabling condition on the Charter with regard to judicial independence and the provisions of several laws posing serious risks to LGBTIQ+ rights, academic freedom and the right to asylum; whereas Hungary concluded in its self-assessment on the lack of fulfilment of several thematic enabling conditions and the Commission took note of this; whereas both the horizontal and thematic enabling conditions must be respected throughout the whole programming period for expenditure to be reimbursed from the EU budget;

7. Underlines that the Hungarian authorities must guarantee equal opportunities to access EU funding for individuals, companies, civil society, NGOs and local and regional authorities, and must ensure independent judicial oversight, as well as impartial and effective complaints mechanisms; condemns the reported systemic discriminatory practices against academia, journalists, political parties and civil society, as well as companies in certain sectors; regrets the politically motivated business practices that give an unfair advantage to competitors, non-transparent and manipulated public procurement procedures, takeover bids by the government and entities with ties to the Prime Minister, and the use of EU funds to enrich political allies of the government in contradiction to EU competition and public procurement rules; stresses that the rule of law is key for a functioning single market in the EU;

**APPENDIX IV. INFRINGEMENTS OF ACADEMIC FREEDOM AS REPORTED BY ACADEMIC SOURCES**

**(Based on a draft of the following manuscript: Pap, A. L. (2023b), “Academic Freedom in a Hybrid Illiberal Regime: Risks, Threats and Resources for Resilience”, Journal of Legal Education 72(1-2))**

…

Hungary’s democratic U-turn had been widely discussed in legal and political science literature.[[31]](#footnote-31) The regime has mostly been described as representative of a relative new form of authoritarianism coined [“hybrid,”](https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade) or [“elective autocracy,”](https://www.v-dem.net/media/filer_public/de/39/de39af54-0bc5-4421-89ae-fb20dcc53dba/democracy_report.pdf) because it incorporates both somewhat competitive elections and “abusive constitutionalism,” the use of traditional constitutional instruments against constitutionalism. “Hegemonic preservation,” “authoritarian enclaves” and “bionic appointments” are other terms used to describe the regime.[[32]](#footnote-32) Renáta Uitz explains how “hybrid regimes rely on a trifecta of plebiscitary mobilization, [ruling by cheating](https://www.cambridge.org/core/books/ruling-by-cheating/25F75BCA4BD6E2585ACEB4F94E2669AE)… and [abusive constitutional borrowing](https://oxford.universitypressscholarship.com/view/10.1093/oso/9780192893765.001.0001/oso-9780192893765)” from the global constitutional canon for the “purposes of illiberal constitutional normalization.”[[33]](#footnote-33) Illiberal constitutional learning [strategically draws on the ideas, language, and design of constitutions but actually](https://www.taylorfrancis.com/chapters/edit/10.4324/9780367260569-34/constitutional-practices-times-liberty-ren%C3%A1ta-uitz) hijacks the [vocabulary and imagination of constitutional democracy](https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2230.12104).[[34]](#footnote-34) Hybrid illiberal regimes work via a metaconstitutional fabric of practices building up what Scheppele identifies as the Frankenstate[[35]](#footnote-35) (stitching together perfectly normal rules from the laws of various EU members into a monstrous new whole), abusing constitutionalism and the rule of law.[[36]](#footnote-36) The very nature of hybrid autocracies is that while they dismantle institutional rule of law protections, blatant, direct infringement of fundamental rights and individual freedoms is not necessarily part of the practice. Even constitutional capture is instituted in an intricate way, incorporating long juridical debates with national and international institutions.

The second stage of building illiberalism aims at regime solidification and targeting economic and cultural life. In this case, coopting academia serves as a method for illiberal indoctrination by shrinking dissent and obstructing the proliferation and evolution of new reservoirs of critical minds. In the case of Hungary, while the regime is in the center of manifold and multilayered criticisms because of its disregard for rule of law requirements,[[37]](#footnote-37) most of these practices are apparently acceptable in the European Union and the Council of Europe, or at least have not triggered radical political or legal reaction. Temporarily blocking access to certain EU funds is as far sanctions go.[[38]](#footnote-38) Admittedly, threats to academics and academic freedom in Hungary are mild compared with China, Turkey, or Brazil:[[39]](#footnote-39) We have not witnessed physical atrocities, incarceration, deportation, the withdrawal of travel documents or even large-scale firing or harsh and direct intimidation.

Using academic and mainstream media sources (and excluding hearsay), the next section documents how academic freedom has been impeded over the past twelve years of Viktor Orbán’s self-proclaimed illiberal democracy. Academic freedom is gauged in three dimensions: teaching, research, and publishing.

Regarding research, reported limitations on academic freedom are fourfold. First, as explained above, an entire web of autonomous research institutions was transferred to a government-controlled entity. Second, the government took over national science and culture funds. In 2020, the Ministry for Innovation and Technology unilaterally altered the list of funded grants from the National Scientific Research Committee, the main—and virtually only—source of fundamental research funding.[[40]](#footnote-40) Third, funds have been removed to an alternative network of government-dependent and government-friendly research institutes, think tanks, and government-organized NGOs.[[41]](#footnote-41) Lastly, after the adoption of a new privacy law, government agencies can refuse to provide data to NGOs and can levy excessive charges for public data requests.[[42]](#footnote-42) This cessation of cooperation with the civil sector and human rights defenders curtails academic freedom by blocking access to critical sources of data and research.[[43]](#footnote-43)

Additionally, academic freedom is truncated with respect to the dissemination and publishing of research findings in at least four ways. First, academic freedom is restricted by censorship of academic publications. European University Institute Professor Gábor Halmai describes one of the few documented cases in which the editorial board of a journal of the University of Debrecen Law School accepted a paper for publication, but the dean of the law school intervened to block publication for expressly political reasons.[[44]](#footnote-44)

Second, academic events involving blacklisted human rights NGOs or dissident academics are often banned, even if these events are co-sponsored or run by international organizations, such as the Council of Europe or the European Union.[[45]](#footnote-45) Conversely, media outlets have reported that the rector of Miskolc University, a major public university, required students to attend a public lecture given by Minister of Defense István Simicskó, canceled classes, and had faculty escort students to the lecture hall.[[46]](#footnote-46) In a similar case, in another major public university in Győr, a professor counted attendance at the mayor’s talk as five percent of students’ midterm test grade.[[47]](#footnote-47) Third, pro-government media outlets have repeatedly launched smear campaigns to intimidate the government’s academic critics.A government-friendly website even called upon students to report professors who are critical toward the government.

While there have been no incidents like the Polish Sadurski trial[[48]](#footnote-48) in Hungary, groups of intellectuals have nonetheless become targets of repeated attacks and smear campaigns by the media empire sustained by the government. For example, Figyelő, a pro-government magazine, published the names of hundreds of intellectuals, including academics and even university students, dubbed “agents of George Soros” and made derogatory statements about their research performance. One academic actually won [a court case](https://www.helsinki.hu/jogerosen-marasztaltak-el-a-figyelot-a-megragalmazott-kutato-ugyeben/) against such labeling.[[49]](#footnote-49) In this context, several conference programs about sensitive questions, like gender equality or migration, were canceled.[[50]](#footnote-50)

Institutions exhibiting solidarity with protestors or victims are likely to face retaliation. For example, institutions of advanced studies have lost government funding for protesting the banishment of CEU.[[51]](#footnote-51) In another instance, a right-wing think tank fired a researcher for liking a Facebook post that opposed government plans of hosting the Olympic Games in Budapest.[[52]](#footnote-52) Censorship is blatant at times: Following a political takeover, an issue of Századvég—a now government-friendly social science journal—was withdrawn from print.[[53]](#footnote-53)

Intrusion on freedom of teaching takes an even more diverse morphology. In 2011—the Orbán government’s first year in power—a legislative act on higher education was adopted,[[54]](#footnote-54) instituting the position of financial director (chancellor), who, along with presidents (rectors) of all public universities, would be appointed by the government.[[55]](#footnote-55) The Higher Education Act of 2011 placed “the intellectual and spiritual renewal of the nation”[[56]](#footnote-56) at its core and did not even include the word autonomy, which is normally a staple of legislation on education.[[57]](#footnote-57) Certain programs, such as the social studies B.A. and some international relations and media studies programs, have been cut and divested from state-funded institutions.[[58]](#footnote-58) In addition, claiming that it is incompatible with its view of society, the government simply withdrew the accreditation of the gender studies M.A. program in 2018.[[59]](#footnote-59) This means that no higher education institution—not even private universities—can issue a degree in the ﬁeld of gender studies. The enhanced state control of educational curricula also extends to secondary education: The federal government took over schools previously run by local government and instituted sweeping reforms regarding school administration appointments and the teaching curriculum.[[60]](#footnote-60)

As mentioned above, the government forced CEU into exile. CEU originally ran under a double accreditation system between the United States and Hungary. In 2017, the Hungarian Parliament hastily adopted an amendment to the Act of National Higher Education, forcing CEU to cease its operation in Budapest. The law required that CEU open an additional campus in the state of New York and that the Hungarian government sign an agreement with the United States federal government. This seemed impossible given that the United States federal government has no jurisdiction on state matters regarding higher educational issues. With great effort, and in collaboration with Bard College, CEU opened a campus in New York, and the governor of New York was ready to sign an agreement with the Hungarian government, which then failed to respond. CEU has about 17,000 alumni, faculty from more than forty countries, and students from more than 100 countries. “The university’s estimated contribution to Hungarian economy was 24 million euros annually, which now goes to Austria” after the institution moved to Vienna in 2019.[[61]](#footnote-61)

The biggest blow to freedom of teaching has been the sweeping semi-privatization of almost the entire higher educational sector to politically controlled (nominally public) foundations.[[62]](#footnote-62) Within a few years, the ratio of students studying in traditional state-owned institutions dropped from eighty-seven percent to twenty-two percent, and more than twenty universities were remodeled, leaving only six in state ownership.[[63]](#footnote-63) The restructured institutions, which continue to receive state funding, were initially governed by boards of trustees filled by members of Parliament, Cabinet members (such as the foreign and justice ministers), oligarchs, government-appointed academics, and business moguls.[[64]](#footnote-64)

The privatization process developed as follows: In 2019 a new type of legal entity, an asset management foundation was created by law, that can be used for family, as well as educational, cultural, sports or health-related activities, and also, for ‘maintaining’ a university. The Ninth Amendment to the constitution, the 2011 Fundamental Law, set forth the organizational framework of such foundations performing public tasks, where the state may set such entities by separate laws for each, which can be adopted and changed by a two-thirds majority in Parliament.[[65]](#footnote-65)

Foundations can accept contributions from the corporate sector and perform business activities. Within the new funding framework, the government signed six-year financing contracts with each of the individual foundation-run universities, alongside a 15- to 25-year strategic framework agreement. The restructured universities may, as per the decision of their board of trustees, keep surplus, borrow money, and own real estate. They also enjoy freedom concerning the distribution of tuition fees, and boards of trustees decide on salaries for foundation university staff. Having left the civil servant status, there are no nation-wide agreements, and each university draws its own regulations. Dismissal, as well as promotion of the staff, have become internal matters, on which foundation universities may decide.[[66]](#footnote-66) Another attraction for voting to join the new privatized scheme, is that here, besides potentially higher salaries, academics at privatized universities can also draw their pension from the age of 65 while keeping their position, a major lever to influence those sitting in university senates.[[67]](#footnote-67)

As Kováts et al point out, due to the promise of financial benefits and more freedom for management, in general, university managements and senates supported the transformation and only in a few cases, was there resistance or a political turmoil.[[68]](#footnote-68)

In addition to the funding scheme, each foundation receives ∼1 million EUR annually to finance its own operations. “In the starting year, institutional budgets doubled and, in a few cases, even quadrupled compared to the previous years. The remuneration of university employees increased significantly”.[[69]](#footnote-69)

At the core of the new governance model is the newly established board of trustees. The up to five members are appointed by the government for an indefinite period (there is no set term of office). The board is in charge of approving the budget, the annual report, the institution’s rules of organization and operation, including recruitment, student affairs and the institution’s asset management plan.[[70]](#footnote-70) Unsurprisingly, the boards were filled by members of Parliament, Cabinet members (such as the foreign-, finance-, and justice-, and regional development ministers) and business moguls.[[71]](#footnote-71) “*Of the 106 seats on the boards of the 21 foundations (as of January 2022), 31 were occupied by active politicians (ministers, state secretaries, members of parliament, mayors, appointed government officials, political counsellors) and 4 ex-politicians of the governing party, but many other seats were distributed to business people and intellectuals openly sympathetic to the governing party. .. Boards had no international members*.”[[72]](#footnote-72)

Some institutions received extremely generous support. For example, the University of Tokaj, where at the time the president of the board was Orbán’s former cabinet minister, received an almost 2 billion euro funding, for 38 full time, 215 part time students and 43 faculty members, the amount exceeding the annual budget of Eötvös University, country’s largest institution with 35,000 students.[[73]](#footnote-73)

Also, the newly privatized institutions regularly entered business deals with government-allied entrepreneurs. Real estate developments, for example are often mostly by crony companies.[[74]](#footnote-74) The University of Győr, where the foreign minister was a board member, bought his friend’s, a star football-player’s companies, that were managed by the local MP and his wife.[[75]](#footnote-75)

In sum, within a few years, the ratio of students studying in traditional state-owned institutions dropped from 87 to 22 percent, and more than twenty universities were remodeled, leaving only six in state ownership (Tóth 2021), which (with the exception of Ludovika) may also choose to adopt the new model by the decision of their senate.

Whether on the long run the transition is beneficial for the stakeholders is unclear. For one, on 15 December 2022, as the first application of the so-called [Rule of Law Conditionality Regulation](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2020.433.01.0001.01.ENG&toc=OJ:L:2020:433I:TOC), the Council of the European Union decided to suspend 55% of budgetary commitments under Cohesion Policy programs to Hungary and prohibited the European Commission from entering into legal commitments with public interest funds or entities that they maintain. The decision was motivated by concerns regarding the rule of law and Hungary’s failure to implement remedial measures to address the identified shortcomings.[[76]](#footnote-76)

The Commission stated that the new governance model of higher education institutions affecting 21 out of the former 26 public universities in Hungary seriously threatens the right to academic freedom enshrined in Article 13 of the Charter of Fundamental Rights as the public interest asset management foundations are exposed to the direct or indirect influence of the executive branch, because the boards of trustees are staffed mainly with pro-government officials.[[77]](#footnote-77) In reaction, seven cabinet ministers resigned, but no one questions the remaining members’ loyalty towards the government. The Commission also froze access to Erasmus+ and Horizon Europe funds for 34 institutions, including the 21 Hungarian universities.[[78]](#footnote-78) Hungary has so far received just over 60 million euros under Horizon Europe alone to fund 199 projects,[[79]](#footnote-79) and freezing Erasmus+ projects affects 182,000 students.[[80]](#footnote-80)

Furthermore, the academic labor market is distorted by funding diversion to government-preferred institutions like Ludovika University. The Hungarian National Bank also founded Pallasz Athéné University (later renamed János Neumann University), which similarly receives extensive state support.[[81]](#footnote-81) Mathias Corvinus Collegium, a college of advanced studies to train the upcoming new elite for the Orbán regime, received a stunning subsidy of 500 billion Hungarian forints (approximately 1.3 billion euros) from the government,[[82]](#footnote-82) an amount exceeding the annual budget of the entire higher educational sector (376 billion in 2021)[[83]](#footnote-83). The institution offers five monthly 10,000-euro stipends for up to a year for visitors like Benjamin Harris-Quinney, commentator of the Daily Express.[[84]](#footnote-84) Similzarly, Fox News host Tucker Carlson and Dennis Prager, a conservative U.S. radio talk show host, received 30,000 U.S. dollars for a roughly thirty-minute speech at a youth festival and a thirty-minute podcast appearance.[[85]](#footnote-85) This amount is greater than four years of Hungary’s [minimum annual salary](https://www.rsm.hu/en/blog/2021/01/minimum-wage-and-guaranteed-wage-minimum-in-hungary-2021), which is roughly 6000 euros. A full professor’s annual net salary is about 14,000 euros.

In sum, infringement of academic freedom has many faces: censorship, defunding or banning academic programs, harassment, intimidation, tax raids, termination of employment, and the closing of institutions. Censorship permeates the full public education curriculum, university programs (like gender studies), course materials, publications, and conferences. Infringement of academic freedom even chills academic peer review, as individuals are afraid to express critical views of government-friendly articles because of a lack of trust in anonymity. Furthermore, in an illiberal setting, it is prudent for university management to recruit only conformists, which further stifles diverse academic expressions.

1. See for example Decision 39/2006. (IX. 27.) [↑](#footnote-ref-1)
2. Kováts, G., & Rónay, Z. (2021). Academic Freedom in Hungary. Yehuda Elkana Center for Teaching, Learning, and Higher Education Research, p.13-14. [↑](#footnote-ref-2)
3. Id. [↑](#footnote-ref-3)
4. Kováts & Rónay, 2021, p. 11, 14-15; see also Maassen, P., Martinsen, D., Elken, M., Jungblut, J., & Lackner, E. (2023). State of Play of Academic Freedom in the EU Member States. Overview of de facto trends and developments. Study prepared for the Panel for the Future of Science and Technology (STOA) at the European Parliament, Brussels. 94-9, 2006, pp. 19-20 [↑](#footnote-ref-4)
5. Maassen et. al. Id.. [↑](#footnote-ref-5)
6. Kováts, G., & Rónay, Z. (2021). p 5. [↑](#footnote-ref-6)
7. Kinzelbach, K., Saliba, I., Spannagel, J. and Quinn, R. (2021). Free Universities: Putting the Academic Freedom Index Into Action. Berlin: Global Public Policy Institute (GPPi) [↑](#footnote-ref-7)
8. European Parliamentary Research Service report Executive Summary paras 12-13. [↑](#footnote-ref-8)
9. Id. 3.15.2.-3.15.4. [↑](#footnote-ref-9)
10. Kováts and Rónay 2021, p.39 [↑](#footnote-ref-10)
11. https://freedomhouse.org/country/hungary/freedom-world/2022 [↑](#footnote-ref-11)
12. Beiter, K.D., Karran, T. and Appiagyei-Atua, K (2016). Academic Freedom and Its Protection in the Law of European States Measuring an International Human Right. European Journal of Comparative Law and Governance, 3, 254-345. [↑](#footnote-ref-12)
13. p. 101 para 143. [↑](#footnote-ref-13)
14. Kováts and Rónay (2021). p 16-17 and 18.: The Hungarian Accreditation Committee (HAC) has overall responsibility for higher education quality development and accreditation. When it was set up, it was still a self-governing body. From the 2000s onwards, it became more and more of a consultative body, i.e., it became possible for the Ministry to approve or reject study programs or institutional licenses irrespective of HAC decisions. Regulations concerning the composition of the HAC’s main decision-making body, the board, was changed, and nine of the 20 members are now appointed by a government minister, who also nominates the president. [↑](#footnote-ref-14)
15. Kováts, G., & Rónay, Z. (2021). p. 5. For more see Rónay, Zoltán. "Academic Freedom and Strong State Control: Two Samples to Illustrate the Consequences." *Bulgarian Comparative Education Society* (2019). [↑](#footnote-ref-15)
16. Kováts, G., & Rónay, Z. (2021). p. 19-20 [↑](#footnote-ref-16)
17. Kováts, G., & Rónay, Z. (2021). p. 20-22 [↑](#footnote-ref-17)
18. Id. [↑](#footnote-ref-18)
19. Id. [↑](#footnote-ref-19)
20. https://freedomhouse.org/country/hungary/freedom-world/2022 [↑](#footnote-ref-20)
21. Kováts & Rónay, 2021, p. 23. [↑](#footnote-ref-21)
22. p. 96. [↑](#footnote-ref-22)
23. p. 368. [↑](#footnote-ref-23)
24. Constitutional Court decision 21/2021. (VI. 22.) [↑](#footnote-ref-24)
25. Kováts and Rónay 2021, p.26, [↑](#footnote-ref-25)
26. Ábrahám Vass*, Science Academy President ‘Shocked’ After Ministry Unilaterally Modifies Basic Research Scholarship Results,* Hungary Today (Sept. 8, 2020), <https://hungarytoday.hu/mta-science-academy-shock-ministry-palkovics-freund-basic-research/>. [↑](#footnote-ref-26)
27. See <https://theloop.ecpr.eu/the-chilling-dismissal-of-zoltan-adam/>, <https://ias.ceu.edu/article/2023-11-07/statement-support-zoltan-adam> [↑](#footnote-ref-27)
28. *Bajomi,* 36. [↑](#footnote-ref-28)
29. *Bajomi,* 32-33, 36. [↑](#footnote-ref-29)
30. Halmai, Gábor. “Memory Politics in Hungary: Political Justice without Rule of Law.” VerfBlog, 10 2018. <https://verfassungsblog.de/memory-politics-in-hungary-political-justice-without-rule-of-law/>. [↑](#footnote-ref-30)
31. *See* *e.g*., Beáta Bakó, *Hungary’s Latest Experiences with Article 2 TEU: The Need for ‘Informed’ EU Sanctions*, *in* Defending Checks and Balances in EU Member States (Armin von Bogdandy et al. eds., 2021); Nóra Chronowski & Márton Varju, *Two Eras of Hungarian Constitutionalism: From the Rule of Law to Rule by Law*, 8 Hague J. Rule L. 271 (2016); Tímea Drinóczi & Agnieszka Bień-Kacała, Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law (2021); Zsolt Enyedi, *Democratic Backsliding and Academic Freedom in Hungary*, 16 Perspectives on Politics 1067 (2018); János Kis, *Introduction*: *From the 1989 Constitution to the 2011 Fundamental Law*, *in* Constitution for a Disunited Nation: On Hungary’s 2011 Fundamental Law 1–22 (Gábor Attila Tóth ed., 2012); Populist Challenges To Constitutional Interpretation In Europe And Beyond (Fruzsina Gárdos-Orosz & Zoltán Szente eds., 2021); Laurent Pech & Kim Lane Scheppele, *Illiberalism Within: Rule Of Law Backsliding in the EU*, 19 Cambridge Y.B. of Eur. Legal Stud. 3 (2017); András Sajó, Ruling by Cheating: Governance in Illiberal Democracy (2021); Kim Lane Scheppele, *The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work*, 26 Governance 559 (2013). [↑](#footnote-ref-31)
32. In the Hungarian context, see, for example, Andrew Arato, *The Hungarian Paradox*, *in* PostSovereign Constitution Making: Learning and Legitimacy (2016); Bruce Gilley, *Democratic Enclaves in Authoritarian Regimes,* 17 Democratization 389 (2010); Ran Hirschl, *Hegemonic Preservation in Action? Assessing the Political Origins of the EU Constitution, in* Altneuland: The EU Constitution in a Contextual Perspective, Jean Monnet Working Paper No. 5/04 (2004); Daniel R. Kelemen, *Europe’s Other Democratic Deficit: National Authoritarianism in Europe’s Democratic Union,*52 Gov’t and Opposition 211 (2017). [↑](#footnote-ref-32)
33. Renáta Uitz, On Constitutional Transition out of Hybrid Regimes, VerfBlog (Dec. 15, 2021), [https://verfassung  
    sblog.de/on-constitutional-transition-out-of-hybrid-regimes/](https://verfassungsblog.de/on-constitutional-transition-out-of-hybrid-regimes/). [↑](#footnote-ref-33)
34. *See, e.g.*, Sajó,  David Landau & Rosalind Dixon, *Abusive Judicial Review: Courts Against Democracy*, [53 UC Davis L. Rev. 1313 (2020)](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3366602). [↑](#footnote-ref-34)
35. [Kim Lane Scheppele](https://www.thenation.com/authors/kim-lane-scheppele/), *Hungary and the End of Politics. How Victor Orbán Launched a Constitutional Coup and Created a One-Party State,* The Nation (May 6, 2014) [↑](#footnote-ref-35)
36. Sajó,  Landau & Dixon. [↑](#footnote-ref-36)
37. Comm. on C.L., Just. and Home Aff., Report on a proposal calling on the council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the union is founded, Eur. Parl. Doc. (COM A8-0250/2018) (Apr. 7, 2018), https://www.europarl.europa.eu/doceo/document/A-8-2018-0250\_EN.html. [↑](#footnote-ref-37)
38. *See generally* Christophe Hillion, *Compromising (on) the General Conditionality Mechanism and the Rule of Law*, 58 Common Mkt. L. Rev. 267 (2021); Kati Cseres & Michael Borgers,*Competition and Conditionality: The Missing Piece of the Puzzle in the Case of Hungary?*,VerfBlog (June 2, 2022), <https://verfassungsblog.de/competition-and-conditionality/>. [↑](#footnote-ref-38)
39. Antonio Pele & Bethania Assy, *Academic Freedom(s) in the Drift Towards Authoritarianism (3/4): Brazil*, Hypotheses: Academic Blogs (2019), ds.hypotheses.org/6354. [↑](#footnote-ref-39)
40. Ábrahám Vass*, Science Academy President ‘Shocked’ After Ministry Unilaterally Modifies Basic Research Scholarship Results,* Hungary Today (Sept. 8, 2020), <https://hungarytoday.hu/mta-science-academy-shock-ministry-palkovics-freund-basic-research/>. [↑](#footnote-ref-40)
41. See generally, Bajomi, I. et al. (2020), Hungary turns its back on Europe: Dismantling culture, education, science and the media in Hungary 2010–2019, Budapest: Humán Platform. [↑](#footnote-ref-41)
42. *Hungarian NGOs Call FOI Changes as Unconstitutional*, Freedom Info (July 3, 2013), http://www.freedom  
    info.org/2013/07/hungarian-ngos-call-foi-changes-as-unconstitutional Also see, Hungarian Civil Liberties Union: POSITION ON THE AMENDMENT OF THE FREEDOM OF INFORMATION ACT IN HUNGARY IN AUTUMN 2022, <https://hclu.hu/en/position-freedom-of-information-act-hungary-2022> (last visited June 24, 2023) [↑](#footnote-ref-42)
43. Case C-78/18, Comm’n v. Hungary, ECLI:EU:2020:476 (June 18, 2020); Andrea Pető, *Writing, Telling and Doing the Truth at Risk*, Blog Interdisziplinäre Geschlechterforschung (Feb. 7, 2023), [www.gender-blog.de/beitrag/truth-at-risk/](https://www.gender-blog.de/beitrag/truth-at-risk/). [↑](#footnote-ref-43)
44. Gábor Halmai, *The End of Academic Freedom in Hungary,* Hypothesis: Academic Blogs (Nov. 11, 2019), <https://ds.hypotheses.org/6368>. [↑](#footnote-ref-44)
45. *Solidarity Statement of the MTA-ELTE Lendület Spectra Research Group,* MTA-ELTE Lendület Spectra Research Group (Nov. 4, 2019), spectra.elte.hu/en/content/solidarity-statement-of-the-mta-elte-lendulet-spectra-research-group.t.11549; *Szolidaritás a Nemzeti Közszolgálati Egyetem elbocsátott professzorával* [*Solidarity with the Dismissed Professor at the National University of Public Service*] Gyűlölet Elleni Munkacsoport(Nov. 14, 2019), gyuloletellen.hu/aktualitasok/szolidaritas-nemzeti-kozszolgalati-egyetem-elbocsatott-professzoraval. [↑](#footnote-ref-45)
46. *Kötelező meghallgatniuk Simicskót a Miskolci Egyetem diákjainak* [*Students at the University of Miskolc Must Listen to Simicsko*], Index (Nov. 24, 2017), index.hu/belfold/2017/11/24/miskolci\_egyetem\_simicsko\_istvan/. [↑](#footnote-ref-46)
47. Csaba Sarkadi-Illyés, *Itt tartunk: beleszámít az egyetemi zh-ba, ha a diákok elmennek a fideszes polgármester előadására* [*Here We Are: It Counts Toward the University Midterm Grade if the Students Go to the Lecture of the Mayor of Fidesz*], Alfahír (Apr. 16, 2019), alfahir.hu/2019/04/16/borkai\_zsolt\_fidesz\_oktatas\_  
    jobbik\_varga\_roland\_egyetem. [↑](#footnote-ref-47)
48. Gráinne de Búrca et al., *Stand with Wojciech Sadurski: His Freedom of Expression is (Y)ours*, VerfBlog (Nov. 18, 2019), verfassungsblog.de/stand-with-wojciech-sadurski-his-freedom-of-expression-is-you  
    rs/. [↑](#footnote-ref-48)
49. Zsolt Körtvélyesi, *Fear and (Self-)Censorship in Academia*, VerfBlog(Sept. 16, 2020), verfassungs  
    blog.de/fear-and-self-censorship-in-academia/. [↑](#footnote-ref-49)
50. Tamas Dezso Ziegler, *Academic Freedom in the European Union: Why the Single European Market is a Bad Reference Point*, No. 2019-03 Max Planck Inst. Comp. Pub. L. & Int’l L. MPIL Research Paper Series 12, 12, 15 (2019). Generally, also see Bajomi et al., 22-23; [↑](#footnote-ref-50)
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