

SPECIAL ISSUE ARTICLE

ACADEMIC FREEDOM: CONCEPTUALISATIONS, CONTESTATIONS AND
CONSTITUTIONAL CHALLENGES

Authoritarian governance of academia in Central and Eastern Europe: Chances of a European counter-culture

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Abstract

This article highlights the challenges of external reactions to authoritarian higher education governance in certain Central and Eastern European countries, especially Hungary and Poland. It interprets the political change in these countries as an authoritarian cultural backlash, which is not just a legal or political problem, but a kind of post-fascist cultural revolution contesting the liberal script. First, the article explains the framework of authoritarian policing in academia based on the more general works of Bob Altemeyer and Zeev Sternhell. Second, it tries to answer the question: What tools could counter these tendencies from the perspective of the European Union? As the article interprets the rise of authoritarianism as a phenomenon rooted in the cultural deficit of the countries concerned, it argues that a programme for a democratic and pluralist cultural counter-revolution should be implemented. However, no nation can be democratized solely by external actors, and the basics of democratic thinking should be developed from the grassroots level. If the crisis in academia is rooted in a value-crisis within the societies concerned, then measures countering this phenomenon should also include promoting Enlightened pluralism at all levels of these societies.

Keywords: academic freedom; authoritarianism; Eastern Europe; Hungary; Poland

In fact, being an ‘intellectual’ or an ‘expert’ needs to become inconvenient, as no one has really figured out what purpose they serve anyway. Do they know or understand more than others? If they are truly democratic, they should be ashamed of having even started to think that.

– Michela Murgia¹

Wile fear is governing us.

– Attila József²

¹ M Murgia, *How to Be a Fascist* (Penguin, New York, 2020) 23.

² Attila József’s ‘My Homeland’, translated by Sándor Kerekes, <<https://hungarianspectrum.org/2015/01/03/attila-jozsefs-my-homeland-translated-by-sandor-kerekes>>.

Introduction

This article wants to look behind the recent authoritarian changes in the higher education in Central and Eastern Europe (CEE), especially in Poland and Hungary. Its intention is to place the changes into a new theoretical perspective through showing the authoritarian drive in recent reforms and to highlight the possible answers to them. It interprets the attacks against academia as a cultural deficit in the countries concerned, and advocates for a more holistic approach to addressing them. This means there is a connection between the general authoritarian culture in these countries and the anti-pluralist tendencies in academia. To affect this culture, simple criticism and financial sanctions by the European Union (EU) are not sufficient. Until today, recent breaches of academic freedom have not been analysed from the perspective of authoritarianism studies in these countries, and EU actions regarding academic freedom have also been analysed less from a non-positivist, socio-legal perspective. This article offers new insights from this perspective. A democratic academia cannot exist without a democratic political culture, and the state of academic freedom shows the general state of democracy in a country.

Consequently, in the next section this article makes a systemic introduction into authoritarian reflexes in academia in CEE, and in the following section it selects the optional answers to them. First, it gives an introduction into the cultural wars around academic freedom in CEE: it explains the techniques behind the contestation of the liberal script and the historical roots of authoritarianism in higher education. It then describes the formal and substantive aspects behind the attacks against academia through using the works of Bob Altemeyer and Zeev Sternhell and attempts to explain what the EU could do in the future to rebuff the attacks on free academia within its territory. This does not mean that defending academic freedom would primarily be the EU's job in these countries: without domestic social action, the EU's means are very limited. However, we should not accept the shortcomings of domestic and EU legislation, which focuses mostly on sanctions and legal measures, and put the development of a pluralist domestic culture out of focus.

This idea complements the fact that, as Tanja Börzel and Janika Spannagel rightly point out, academic freedom has become international, and there is a cultural pressure on countries to respect it.³ To a certain degree, contestations against the liberal script and restrictions of academic freedom all go against this international culture. The authoritarianism in political culture cannot be addressed through simple legal means, and not even through simple political sanctions. This legalism is all too often accepted by lawyers,⁴ including the author of this article, while in fact it does not address the core of the problem, which is an exceptionalist political culture in which certain values, such as pluralism, rationality and democratic decision-making – some of the basic Enlightened values of academia – are disrespected.

Before going into detail, we must mention that there are great differences in the CEE region. For example, the authoritarian changes in Hungary meant the most important laws on the functioning of universities were also changed, thereby drastically affecting

³See Börzel and Spannagel, 'The Globalisation of Academic Freedom' in this special issue.

⁴This does not mean that legal measures should not be introduced. For example, the 'Council of Europe Parliamentary Assembly Resolution on Threats to academic freedom and autonomy of higher education institutions in Europe calls for the adoption of a European Convention on the Protection of Academic Freedom and Institutional Autonomy'. AL Pap, 'Academic Freedom: A Test and a Tool for Illiberalism, Neoliberalism and Liberal Democracy' (2021) 27(2) *Brown Journal of World Affairs* 115.

academic freedom.⁵ Somewhat similar policy changes happened in Poland – albeit on a smaller scale – whereby breaches of academic freedom were also connected to the autocratization of the country. Some CEE countries, such as Romania, only introduced very specific measures limiting academic freedom, while other countries, such as Czechia, did not introduce any such measures. This means we should handle CEE countries as distinct, independent entities with diverging policies in this field. Most of the limitations to academic freedom are in connection with the general attack against the rule of law in Poland and Hungary – this is why there are also rule-of-law procedures against these countries.⁶ This article focuses primarily on these two countries.

The 2018 Sargentini report of the European Parliament, which started the Article 7 procedure against Hungary, mentioned several problems (see Points 33–36):⁷ the expulsion of the Central European University (CEU), the government ban on gender studies and general discrimination against Roma students. In its Sections BP–BT on academic freedom, the latest report of the European Parliament also mentions not adhering to the ECJ judgment in the CEU case,⁸ maintaining a ban of gender studies, stripping the Hungarian Academy of Sciences of its research institutes, placing the University of Theatre and Arts under government control and not adhering to the requirements of the Venice Commission and the UN special rapporteur on the promotion and protection of freedom of opinion and expression.⁹

The Polish actions are less controversial, but still affect important fields of academic freedom: actions were introduced from 2018 onwards to limit academic freedom, some of which prompted widespread protests.¹⁰ Among others, free research into Polish

⁵TD Ziegler, 'Using EU Citizenship to Protect Academic Freedom' in D Thym and D Kostakopoulou (eds), *Research Handbook on European Union Citizenship Law and Policy: Navigating Challenges and Crises*. (Cheltenham: Edward Elgar, 2022) 184; TD Ziegler, 'It's Not Just About CEU: Understanding the Systemic Limitation of Academic Freedom in Hungary', *Verfblog*, 26 March 2019, <https://verfassungsblog.de/its-not-just-about-ceu-understanding-the-systemic-limitation-of-academic-freedom-in-hungary>.

⁶*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*, PE 620.837v02-00 A8-0250/2018, 4 July 2018; *Proposal for a Council Decision on the Determination of a Clear Risk of a Serious Breach by the Republic of Poland of the Rule of Law* (COM [2017] 835 final. European Parliament Resolution of 1 March 2018 on the Commission's decision to activate Article 7(1) TEU as regards the situation in Poland (2018/2541[RSP])). In Hungary, autocratic changes were so elementary that they produced an electoral autocracy of the country: see A Unger, 'A hibrid rezsim fogságában: Rendszertipológia, választások és a demokratizáció esélyei' (2022) 1 *Fundamentum* 23; A Unger, 'A választás mint rendszerkarakterisztikus intézmény' (2018) 22 *Fundamentum* 2–3, 5–16, 12; For Poland, see L Pech, P Wachowiec and D Mazur, 'Poland's Rule of Law Breakdown: A Five-Year Assessment of EU's (In)action' (2021) 13 *Hague Journal on the Rule of Law* 1.

⁷*Ibid.*

⁸Case No C-66/18. Judgment of the Court (Grand Chamber) of 6 October 2020. *European Commission v Hungary* ECLI:EU:C:2020:792.

⁹European 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)). P9_TA(2022)0324.

¹⁰J Grove, 'Student Protests in Poland Delay "Authoritarian" Law', *THE*, 27 June 2018, <<https://www.time.shighereducation.com/news/student-protests-poland-delay-authoritarian-law>>; M Ciupka, 'This is Our Space. Students at Polish Universities Unite in Protest Against New Higher Education Reform', *Political Critique*, 13 June 2018, <<http://politicalcritique.org/cee/poland/2018/polish-reform-higher-education-gowin-protest>>; N Koper and H Mohamadhossen, *Academic Freedom in Poland, Russia and Hungary: A report submitted to Scholars at Risk*, <https://www.mcgill.ca/humanrights/files/humanrights/sar_final_report_13-08-2020.pdf>.

participation in the Holocaust was banned,¹¹ and there seems to be government pressure ‘to drop courses and research that are critical of government policies’.¹²

Quantitative data also shows the fall of academic freedom in these countries.¹³ The biggest loser among CEE countries is Hungary, which fell to the bottom 30 per cent of countries regarding academic freedom worldwide.¹⁴ In the country, curtailing academic freedom also meant losing academic autonomy, especially the financial and institutional autonomy of many institutions.¹⁵

Contestation of the liberal script: From demanding pluralism to the restriction of academic freedom

The remarkable aspect of the changes in both Hungary and Poland is the rhetoric behind the contestation of the liberal script, which is based partly on a mimicry of classic liberal ideas, namely a demand for pluralism in academia. According to government criticism in Hungary, for example, academia became the hotbed of liberal thought, and the state must fight this by restructuring these institutions, thereby defending pluralism and ‘conservative’ opinions. This idea, at least formally, accepts that academia is a ‘production of expert knowledge’, which must be independent, and claims liberal elites have occupied academia and restrict free speech at these institutions. The core of academic freedom (i.e. the value of academic freedom) is seemingly not contested, but in fact the government does just that. This discursive technique was behind the restructuring of the University of Theatre and Film Arts, the expulsion of Central European University, and the attack against the Hungarian Academy of Sciences. The most interesting aspect is that its starting point could be accepted from a liberal perspective, while the tools and results of the changes are devastating. To put it differently, while part of the rhetoric could belong to a liberal contestation of academic freedom *status quo* (demanding more free speech and more pluralism), its effect is deeply authoritarian and illiberal (limiting free speech and diversity).

Diversity and pluralism of opinions in academia are important. Depending on the political views of the person, one could also imagine more diverse communities than those

¹¹H Reichmann, ‘Academic Freedom Threatened in Poland’, <<https://academeblog.org/2016/02/19/academic-freedom-threatened-in-poland>>; M Santora, ‘Poland’s Holocaust Law Weakened after “Storm and Consternation”’, *New York Times*, 27 June 2018, <<https://www.nytimes.com/2018/06/27/world/europe/poland-holocaust-law.html>>.

¹²A Rzhavkina, ‘Academics in Eastern Europe Warn of Risks to Academic Freedom’, *Science|Business*, 7 September 2022, <<https://sciencebusiness.net/widening/news/academics-eastern-europe-warn-risks-academic-freedom#>>.

¹³See, for example, the charts in the Academic Freedom Index; K Kinzelbach, I Saliba, J Spannagel and R Quinn, ‘Free Universities Putting the Academic Freedom Index into Action’, <https://www.gppi.net/media/KinzelbachEtAl_2021_Free_Universities_AFi-2020.pdf>; K Kinzelbach, SI Lindberg, L Pelke, J Spannagel, ‘Academic Freedom Index – 2022 Update’, <<https://opus4.kobv.de/opus4-fau/frontdoor/index/index/docId/18612>>; J Spannagel and K Kinzelbach, ‘The Academic Freedom Index and Its Indicators: Introduction to New Global Time-series V-Dem Data’ (2022) *Quality & Quantity*, <<https://doi.org/10.1007/s11135-022-01544-0>>

¹⁴Spannagel and Kinzelbach (n 13).

¹⁵G Kovats and Z Ronay, ‘Academic Freedom in Hungary’ (2021), <unipub.lib.uni-corvinus.hu/7220/1/KovatsG_GOAF_Academic_Freedom_in_Hungary_20220218_FINAL.pdf> 19>; D Matthews, ‘The State of Higher Education in Hungary’, *THE*, 24 August 2017, <<https://www.timeshighereducation.com/features/the-state-of-higher-education-in-hungary>>.

criticized by the government. One can surely prove that in some of these institutions, conservatives were underrepresented, just as they generally are in academia.¹⁶ However, instead of creating more plural environments, such as more universities of performing arts, and giving more freedom to universities, authoritarian state introduction can result in militantly conformist environments pushing out critical scholars. We must also take into consideration that in CEE countries, unlike in most part of Latin America,¹⁷ institutional academic freedom was historically mostly limited in the sense that these institutions did not have much space to select their organizational structure. Nor did they have freedom to select the programmes they taught, as these questions were mostly centrally governed. The anti-pluralist measures show the great danger of intruding into academic life from the outside: from the point where institutions lose their rights to self-governance, the restrictions of academic freedom reshape the whole system into an authoritarian setting. The institutional limitations and the disrespect of expert opinion prepare the ground for this change. This way, paradoxically, the calls for more pluralism and the contestation against the 'liberal science script' become the first step towards anti-pluralism.

Please note that this phenomenon exists in other areas as well. For example, paradoxically, the calls of Fidesz against neoliberal government policies before 2010 led to the abandoning of the social-state idea in Hungary after 2010. To a certain degree, many new policies even boosted inequality and militant neoliberal, market-fundamentalist actions in the country.¹⁸

The roots of authoritarianism and limitations to academic freedom in CEE

Limitations to academic freedom in the CEE region have a long historical background, even in modern politics. However, in the early to mid-twentieth century, these were not really so unique compared with other parts of Europe. Early limitations of academic freedom in Hungary were not so much different from limitations in Germany, for example.

One could mention many examples here. At the end of the nineteenth century and at the beginning of the twentieth, there were already measures in several countries to limit the number of Jews in higher education long before the Nazi and fascist racial laws: Romania introduced such a rule in 1893 and Hungary in 1920 (Act XXV. of 1920, also called the *numerus clausus* law). Around half of all Polish universities either completely banned the admission of Jews or limited their presence from 1922 onwards.¹⁹ In Hungary, the law set the maximum proportion of Jews at certain important universities at 6 per cent. The *numerus clausus* law also affected women, since many universities also

¹⁶For similar debates in the United States, see K Nicholas, 'A Confession of Liberal Intolerance', *New York Times*, 7 May 2016, <<https://www.nytimes.com/2016/05/08/opinion/sunday/a-confession-of-liberal-intolerance.html>>. For my criticism about Hungarian circumstances, see Tamas Dezso Ziegler, 'Is authoritarian liberalism a threat to academic freedom?' *LSE Higher Education Blog*, April 11, 2024, <https://blogs.lse.ac.uk/highereducation/2024/04/11/is-authoritarian-liberalism-a-threat-to-academic-freedom/>

¹⁷See Bernasconi, 'Latin America: Weak Academic Freedom Within Strong University Autonomy', in this special issue.

¹⁸M Sebők and J Simons, 'How Orbán Won? Neoliberal Disenchantment and the Grand Strategy of Financial Nationalism to Reconstruct Capitalism and Regain Autonomy' (2022) 20(4) *Socio-Economic Review* 1625; A Antal, *Hungary in State of Exception: Authoritarian Neoliberalism from the Austro-Hungarian Monarchy to the COVID-19 Crisis* (Lanham, MD: Rowman & Littlefield, 2022).

¹⁹K Ungváry, *A Horthy-rendszer mérlege* (Pécs-Budapest: Jelenkor Kiadó, OSzK, 2013) 86.

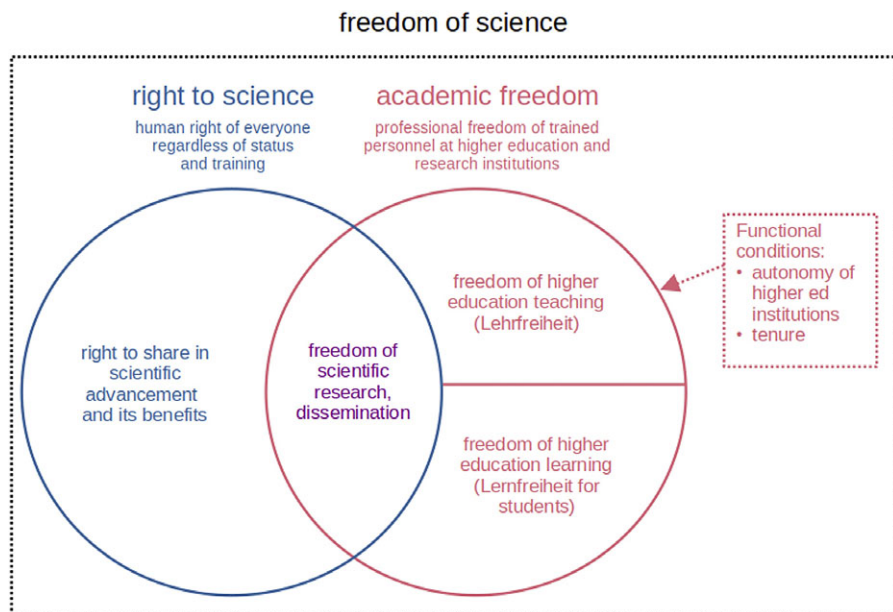


Figure 1.

limited the number of women, while they were enforcing the racial law, even though this wasn't an original requirement.²⁰ We must also stress that ECC countries were not just perpetrators, but also the victims of authoritarian actions against their academic establishments: it is enough to think about the massacre of Lwów professors, when 25 professors and their family members were killed by Nazi occupation forces.

Apart from former authoritarian measures, it is important to examine the social environment today. For example, thorough, quantitative research shows that the dictatorial indoctrination during communist times still has a very strong effect on Polish society.²¹ This is important because recent judgments on academic freedom can be seen as legal measures based on historical reflexes. Although the situation of academic freedom was different from country to country in the region during communist times, and while it was mostly appraised by government officials in public, it was in fact very limited in most countries in CEE. The real problem is not necessarily the codification of laws, or the lack of rules in CEE, but their application – or, to put it more clearly, their authoritarian interpretation. For example, the Decree of 28 October 1947 on the Organization of Science and Higher Education in Poland contained a provision on scientific research, claiming that 'scientific research was free', and 'creative work was under special protection of the state'.²² Article X of the current Hungarian Fundamental Law, for example, says that, 'Hungary shall ensure the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge and ...

²⁰Ibid 86ff.

²¹J Costa-Font, J García-Hombrados and A Nicińska, 'Long-Lasting Effects of Communist Indoctrination in School: Evidence from Poland' *IZA DP* No. 13944, <<https://docs.iza.org/dp13944.pdf>>.

²²M Stachowiak-Kudła, 'The Scope of Academic Freedom Right and the Situation of Scientists in Poland' (2022) 53 *Interchange* 100.

the freedom of teaching.’ It also states that ‘the State shall have no right to decide on questions of scientific truth; only scientists shall have the right to evaluate scientific research’, and that the Hungarian state protects the scientific and artistic freedom of the Hungarian Academy of Sciences. Higher education institutions shall be autonomous in terms of the content and the methods of research and teaching. The Polish Constitution guarantees the freedom of scientific research in its Article 73, as well as the freedom of expression (Article 54) and, just like in Hungary, university autonomy (see Article 70(5)). The Polish constitution also has some special rules in its Article 31, claiming that academic freedom can only be limited by law, or for specific reasons (such as security or public health), and that such limitations may not violate the essence of freedoms and rights.²³ Article 32 of the Romanian constitution contains provisions on the right to education, and notes that the ‘autonomy of universities is guaranteed’.²⁴ The interesting aspect of this is that the Romanian constitution does not guarantee the freedom of scientific research or academic freedom per se, but only the autonomy of universities. However, as explained below, these rules still could be useful enough to protect academic freedom. This means we already have useful provisions in these countries that could be used to defend academic freedom, even if the architecture of the constitutional provisions is different: the Hungarian version is probably the most extensive, and the Romanian version is shorter. In many cases, though, these texts almost become unimportant, despite being regularly interpreted by the constitutional courts, and the political culture surrounding them thus becomes more relevant.²⁵

For example, one can say that the state has the right to re-govern universities, or to change the rectors’ rights, as in Poland. States can also ‘privatize’ universities, limiting university autonomy, which can serve as a kind of ‘punishment’, or be simple corruption, as in Hungary (see below). The Polish Constitutional Court also interpreted academic freedom as something that is closely related to free speech, but not necessarily to a stable job (a tenured position): the protection of stable employment is not part of academic freedom.²⁶ Funding alternative pseudo-academic propaganda-institutions is also possible, and is another part of ‘academic freedom’. As the Introduction to this special issue explains, this is an illiberal script of science: pursuing a political aim by (mis)using the concept of academic freedom. The constitutional control of the state is also eradicated in authoritarian states. This happened in Hungary, where the Constitutional Court adopted some blatantly unconstitutional and nonsensical decisions, also in connection with academic freedom. The first of these were²⁷ related to the Central European University, where they simply did not proceed because the European Commission had also started an infringement procedure and the court wanted to wait for the ECJ’s decision.²⁸ This is a highly cynical practice from a constitutional court, which had a right to decide on its own behalf. Second, in November 2022, the Constitutional Court also approved an attack on

²³Ibid 101.

²⁴CF Stoica and M Safta, ‘University Autonomy and Academic Freedom: Meaning and Legal Basis’ (2013) 2(1) *Perspectives of Law and Public Administration*, *Societatea de Stiinte Juridice si Administrative* (Society of Juridical and Administrative Sciences) 193.

²⁵See Stachowiak-Kudła (n 22) 102.

²⁶See Koper and Mohamadhossen (n 10) 9.

²⁷See cases IV/01810/2017 and II/01036/2017.

²⁸G Halmay, ‘The Hungarian Constitutional Court betrays Academic Freedom and Freedom of Association’, *VerfBlog*, 8 June 2018, <<https://verfassungsblog.de/the-hungarian-constitutional-court-betrays-academic-freedom-and-freedom-of-association>>.

the Hungarian Academy of Sciences, which had been stripped of its research institutes, and only criticized minor points of the government actions.²⁹

A different approach was taken by the Romanian Constitutional Court in its Decision 907/2020, when it defended the existence of gender studies:

The Court concurred with the President and held that the proposed legal amendment violated freedom of conscience as guaranteed by Article 29(2) of the Constitution. The Court explained that freedom of conscience presuppose 'the possibility of individuals to possess and publicly express an outlook about the outside world'. Since education plays an important role in the formation of one's understanding of the world, the Court emphasized that the educational system must be open to new ideas and encourage their free and critical expression. Hence, the Court held that legally imposing a 'distorted knowledge of reality [claiming that 'sex' and 'gender' have the same meaning] as the basis for forming one's outlook about the outside world' is incompatible with freedom of conscience.³⁰

The Romanian Constitutional Court did not need explicit and extended regulations on academic freedom, and still could find provisions to protect it. Together with other relevant provisions in the Constitution (such as equality before the law, the university's right to autonomy, freedom of expression and prohibition of censorship, and some basics of rule of law),³¹ the Romanian rules were appropriate in defending academic freedom. This shows that the authoritarian tendency to 'not take rules seriously', which was also common before, during and after communism, and is also supported by the heritage of these countries, is not set in stone. Constitutional Court judges, but also university leaders, rely on domestic culture, and if authoritarianism becomes overwhelming in a society, they sometimes just swim with the tide. This 'swimming' can be highly dangerous and devastating to democracy, as well as to academic freedom.

What makes the approach to academic freedom in CEE countries so diverse is a very interesting question. Many of these countries have a joint history, yet function differently. Austria, Slovakia, Hungary, Czechia, Croatia, Romania and for a while parts of today's Germany historically belonged to one big entity, the Habsburg Empire. Later, many countries belonged to the Soviet bloc, and authoritarian socialism had a very strong effect on their academic systems. Finally, many of them joined the EU together at the beginning of the 2000s. However, all these countries use different methods to regulate and interpret academic freedom. What we can ascertain is that the legal aspect of this question is the least interesting one: even liberal provisions can be used to limit academic freedom in practice. Unfortunately, we cannot explain the limitation of academic freedom solely with historical preludes, and nor is it a result of 'improper' laws: There is something more important behind these actions, which is the authoritarian nature of political cultures.

²⁹See case II/1214/2019. The full text of the judgment is available at <https://www.alkotmanybirosag.hu/uploads/2022/11/sz_ii_1214_2019.pdf?fbclid=IwAR0YxZQ74U2W2bEokY94p0NC-6Tmlf2W86dU2jfbKbKta_16d4y-dcx8fU> The Hungarian Academy Staff Forum (HASF) called the decision cynical and nonsensical, see <<https://adf2019.com/az-egyeten-helyes-megoldas-az-egyseg-helyreallitasa/?fbclid=IwAR1fS8IPa1p9Ow8viXJq8ZAEQ7zCHZ9TOL85kgzjOO2h1-WSNeh-SGTJlo>>.

³⁰E Brodeală and G Epure, 'Nature versus Nurture: "Sex" and "Gender" Before the Romanian Constitutional Court: A Critical Analysis of Decision 907/2020 on the Unconstitutionality of Banning Gender Perspectives in Education and Research' (2021) 17(4) *European Constitutional Law Review* 739.

³¹Ibid 740ff.

Formal and substantive reasons behind the attacks on higher education

We should separate formal and substantive reasons behind the authoritarian limitation of academic freedom in CEE. Formal reasons include the ‘authoritarian logic’ of organizing society. This logic functions as a kind of authoritarian ‘invisible hand’, restructuring society in a way that differs from its former democratic structure. When trying to identify what motivates this logic, I think the best sources are social-psychologists. My favourite social-psychologist is Bob Altemeyer, who claims that right-wing authoritarianism involves three features: ‘1) a high degree of submission to the established, legitimate authorities in their society; 2) high levels of aggression in the name of their authorities; and 3) a high level of conventionalism’.³² I suggest that these features are not just useful for studying the psychological background of authoritarians, but also regarding the logic of authoritarian policing. In this article, I use these technical features (submission, aggression and conventionalism) to analyse the limitations to academic freedom in CEE, as many policies limiting academic freedom fall into these groups. The limitation of academic freedom means that a kind of conformism is supported, non-conforming institutions and academics are attacked and aggressively silenced. These three points serve as perfect guidance for a deeper analysis.

However, we also need to implement a deeper layer: the substantive reasons behind authoritarian policing in academia. These substantive reasons include the deeper socio-cultural causes and an intellectual tradition behind autocratization. When talking about authoritarianism, I believe one of the most important authors of our age was Zeev Sternhell, who claimed that there is a European anti-Enlightenment tradition, and that this tradition also formed the substantial background of fascism of the early twentieth century, and is still somehow part of European societies and their politics.³³ A part of this tradition clearly goes against liberal values and causes disintegration among European states.³⁴ It goes against rationality, disrespects human rights, attacks checks and balances, and does not understand the need for rule of law. There are contemporary political movements in all European countries that support these ideas, but in certain countries, such as Hungary or Russia, these anti-Enlightenment, post-fascist movements have achieved governmental power, and in Hungary they have eliminated most of the limitations to their power.³⁵ It is no wonder that such forces systematically attack free and independent academia. Rationality, independent scholarship, a kind of basic ‘reservedness’ by scholars and the need for basic human rights, to name only a few of our fundamental principles, are all very dangerous to anti-Enlightenment forces.

³²B Altemeyer, *The Authoritarians*, <<https://theauthoritarians.org/options-for-getting-the-book>>.

³³Z Sternhell, *The Anti-Enlightenment Tradition* (New Haven, CT: Yale University Press, 2010); Z Sternhell, *From Anti-Enlightenment to Fascism and Nazism: Reflections on the Road to Genocide* (2018), <<https://tdziegler.files.wordpress.com/2018/07/sternhell-paper.pdf>>.

³⁴TD Ziegler, ‘The Anti-Enlightenment Tradition as a Common Framework of Fascism and the Contemporary Far-Right’ (2021) 10(1) *Fascism: Journal of Comparative Fascist Studies* 16; TD Ziegler, ‘EU Disintegration as Cultural Insurrection of the Anti-Enlightenment Tradition’ (2020) 28(4) *Journal of Contemporary European Studies* 434; TD Ziegler, ‘Anti-Enlightenment in International Business and Trade Law: A US–EU Comparison’ (2020) 19 *Hofstra Journal of International Business and Law* 162; TD Ziegler, ‘The Anti-Enlightenment Tradition as a Source of Cynicism in the European Union’ (2022) 7(4) *Chinese Political Science Review* 574.

³⁵My understanding of the Enlightenment has become far more nuanced over time. This means I separate the actual Enlightenment, the tradition of the Enlightenment and the utopia of the Enlightenment. In most cases, it is this last phenomenon we think about when talking about Enlightenment values.

The two layers mentioned above, the formal and the substantive reasons behind limitations to academic freedom, can be interpreted as horizontal and vertical reasons behind the limitation of academic freedoms. While the formal layer shows the logic (the dynamics) of changes, the substantive layer shows society's reasons for, and the intellectual heritage behind, policy changes. These two layers will be used simultaneously below to describe the tenets of authoritarian policy changes concerning academia in CEE.

Right-wing authoritarianism and academia: Conventionalism, submission and aggression

Altemeyer's conventionalism–submission–aggression triangle can be used to track the purpose of government policies. Many actions in higher education in the CEE region, especially Poland and Hungary, were aimed at reaching some of these aims: to create an extremely conformist academic environment, to attack scholars and institutions, or to direct aggression against them. Of course, it is also possible that certain legislation combines these elements.

Some authoritarian actions are aimed at either creating a fully conformist academic system or pushing proper academia to the sidelines.³⁶ It is questionable whether we can call such a system academia at all, just as it is questionable whether propaganda that spreads lies should be called 'journalism', whether 'fake news' is 'news' or whether government-organized non-governmental organizations are NGOs at all. In fact, where there is a lack of independent analysis in institutions, one could talk about 'fake academic institutions'. Political science involves a discourse about genuine and fake elections, in line with Article 25 of the International Covenant on Civil and Political Rights.³⁷ To a certain degree, the same problem exists in academia. Under autocratization, institutions maintain a presence, but their content is emptied. This is how authoritarian functioning can be hidden behind a façade of democracy, a phenomenon Andreas Schedler addressed when analysing electoral autocracies and the functioning of their institutions.³⁸

Regarding limitations of academic freedom, we can talk about individual limitations, and limitation of the freedom of higher education institutions and research institutes. As can be seen in the article of Kriszta Kovács,³⁹ the two are not the same. Probably, from a legal perspective, it is easier to enforce academic freedom as an individual right because states have great discretion regarding institutional rights of universities: they can set the framework of financial support and, through this, they can have an influence on education. However, from the perspective of this article, this is less interesting: to gather a broader perspective about authoritarian tendencies, we must analyse both the individual and the institutional aspects. And, while it is a legal problem to set where we draw the line in between legal and illegal actions, even legally allowed limitations of academic freedom can be interpreted as authoritarian actions.

³⁶Regarding this problem, see the Introduction to this special issue by Kriszta Kovács and Janika Spannagel.

³⁷A Rubinstein and Y Roznai, 'The Right to a Genuine Electoral Democracy'(2018) 27(1) *Minnesota Journal of International Law* 143.

³⁸A I Schedler, *The Politics of Uncertainty: Sustaining and Subverting Electoral Authoritarianism* (Oxford: Oxford University Press, 2015).

³⁹See K Kovács, 'Academic Freedom in Europe: Limitations and Judicial Remedies' in this special issue.

There are many examples of building up conventionalism, and while many of these actions initially seem less serious, they can all distort academic freedom. For example, new institutions have recently been created (and old ones ‘renewed’) in both Hungary and Poland to spread the government’s stance on social questions. In Hungary, the National University of Public Service, the Matthias Corvinus Collegium and John von Neumann University are prime examples, while in Poland, the Copernicus Academy and the University of *Ordo Iuris* do the same job. In Hungary, the National University of Public Service started to function without the formal accreditation necessary for other universities, as it stands outside the university system. A couple of years ago, the Matthias Corvinus Collegium, which is not even a university but an institution organizing different educational projects, which wants to attract university students from the otherwise under-financed universities, received more financial support than the whole Hungarian higher education system in one year. Such institutions could be called oligarch-like institutions (e.g. oligarch-like universities), as in most cases they receive extreme levels of funding without the typical performance of their peers in the higher education market. Even the selection of university professors often shows a desire for conformism: the National University of Public Service works under the direct supervision of the Office of the Prime Minister and, in a recent scandal, it also became clear that the university had lost its right to appoint professors independently. This means that professors are elected directly by the director of the Prime Minister’s Office.⁴⁰

Conformism can also be strengthened through ‘restructuring’ the academic system. In Hungary, many of the rectors’ rights were taken away, and new, government-delegated officials – the chancellors – received them. When many of the public universities went through a ‘pseudo-privatisation’ (i.e. moved under the supervision of public funds), special boards were created with government politicians to govern these institutions. The same thing happened when the Hungarian Academy of Science was stripped of its research institutes: in theory, this was a neutral decision, but it could have a devastating effect on academic freedom by introducing fear into the academic system.⁴¹ A very similar ‘restructuring’ can be seen when the government reorganizes scientific research, and changes the rules on the National Science Centre in Poland or the allocation of research funding in the National Research Development and Innovation Office in Hungary.⁴² From a more substantive perspective, conformism is strengthened to challenge the rationality principle of the Enlightenment, as many authoritarian movements and parties simply do not accept the very basis of scientific research as valid unless it proves their point. There is usually a deeply irrational worldview behind such actions, where, for instance, migration can only be harmful, the EU is an oppressive institution and has no right to criticize member states because of rule of law and fundamental rights issues, and the abolition of fundamental rights is just another form of national freedom-fight against international institutions governed by liberal elites and George Soros. In this worldview, Enlightened human rights are to manipulate illiberal interests, and they attack ‘conservative’ (in fact: post-fascist) values. There is also another, deeply problematic issue: the

⁴⁰HVG: Már a Köszolgálati Egyetem sem dönthet arról, hogy ki oktasson náluk, 26 October 2022, <https://hvg.hu/itthon/20221026_NKE_MCC_Orban_kinevezes_oktatok_kutatok>.

⁴¹A Abbott, ‘Hungarian Government Takes Control of Research Institutes Despite Outcry’, *Nature*, 8 July 2019, <<https://www.nature.com/articles/d41586-019-02107-4>>.

⁴²Sz Teczár, ‘Felveszi az OTKA-pénzt a kormányzati tanácsadó, aki a minisztériumnak köszönheti, hogy nyert a pályázata’, *Magyar Narancs*, 1 September 2020, <<https://magyarnarancs.hu/belpol/felveszi-az-otka-penzet-a-kormanyzati-tanacsado-aki-a-minisztériumnak-koszonheti-hogy-nyert-a-palyazata-133078>>.

separation of state and religion, which was one of the greatest achievements of the Enlightenment. When the Polish government increases the presence of religious and theological journals, this also shows that original science is losing its influence.⁴³

Authoritarian submission involves two types of behaviour. The first form of submission is the extreme conformist self-submission of authoritarians under the leader, his⁴⁴ party, government institutions and the political worldview attached to them. As Altemeyer put it, 'some people ... submit to authority even when it is dishonest, corrupt, unfair and evil'.⁴⁵ In higher education, this conformism leads to a censored form of science, in which opportunities to criticize government policies are either missing, or become more and more limited. Self-censorship also becomes common. A second form of submission is required to make everybody accept the 'new norm', and its aim is to push everybody into line.⁴⁶ It attacks everybody who does not support the authoritarian worldview. There are two subgroups of actions aiming the submission of independent academia: actions target either institutions or individuals. Those against institutions include the expulsion of Central European University from Hungary, which was not reversed, not even after the judgment of the CJEU.⁴⁷ The slow financial exhaustion of universities can also be seen as a submission: Even Europe-wide higher gas prices can be used to punish 'non-conforming' public universities, as in Hungary, where public universities receive less support than private universities to pay their bills. A ban on specific programmes, such as gender studies, is also typical. This happened in Romania (temporarily, until the Constitutional Court struck down the provisions) and Hungary at the MA level.⁴⁸ From the perspective of the Enlightenment tradition, this is not surprising: Forces banning gender studies are mostly hiding the fact that they do not accept man and woman as equal, and maintain the special, archaic, separated role of females in their societies. Poland's ban of any scientific discussion about Polish responsibility in attacks against Jews in World War II is another form of attack against academia. This shows that certain opinions can simply be banned, if an authoritarian states does not like them, and it also shows a supremacist, irrational outlook on the international stance of the country. Another tool used to silence critical voices is to create seemingly meritocratic pressure, for example through credit systems in Hungary, and the numerical evaluation criteria of

⁴³See Koper and Mohamadhossen (n 10) 11, 13.

⁴⁴In most of the cases, there is a male leader above his followers.

⁴⁵See (n 32) 15.

⁴⁶We must emphasize that submission is also present at the lower level, among primary and secondary schools. For example, the Polish and the Hungarian school systems both went through a very similar centralization, where alternative modes of education were stripped back, and the system of education was centralized in order to make teachers conform to the demands of decision-makers. P Kononczuk, 'New Bill to Centralise Control Over Polish Schools Sparks Protests Inside and Outside Parliament', *NFP*, 26 October 2022, <<https://notesfrompoland.com/2022/10/26/new-bill-to-centralise-control-over-polish-schools-sparks-protests-inside-and-outside-parliament>>; PJ Bori, 'Cultivating Authoritarianism: Orbán's Political Education Project', *Green European Journal*, 5 July 2022, <<https://www.greeneuropeanjournal.eu/cultivating-authoritarianism-orbans-political-education-project>>.

⁴⁷A Hoxhaj, 'The CJEU in *Commission v Hungary* Higher Education Defends Academic Freedom Through WTO Provisions' (2022) 85 *The Modern Law Review* 773.

⁴⁸MG Barberá, 'Romanian Court Scraps Law Banning Gender Studies', *Balkan Insight*, 16 December 2020, <<https://balkaninsight.com/2020/12/16/romanian-court-scraps-law-banning-gender-studies>>; A Pető, 'Attack on Freedom of Education in Hungary: The Case of Gender Studies', *LSE Engenderings*, 24 September 2018, <<https://blogs.lse.ac.uk/gender/2018/09/24/attack-on-freedom-of-education-in-hungary-the-case-of-gender-studies>>.

scholars in Poland.⁴⁹ While these actions seem rational at first glance, they can be detrimental in an authoritarian environment. There have also been attacks against academics in the press in both Poland and Hungary. One of the biggest scandals occurred when *Figyelő*, a Hungarian newspaper, started to make a list of academics as ‘Soros-agents’ during the refugee crisis. A similar action could be seen when far right groups (such as the supporters of the Identitarian movement) marched into academic institutions in Hungary.

The aim of such attempts is to eliminate Enlightened pluralism in universities. If we accept that scientists are individuals who have their own opinions, then we must also accept that a certain kind of diversity must be present in the well-functioning academic system. Submission is irrational, as a social science governed by politics is unable to maintain its scientific nature. Pluralism is not just important in politics,⁵⁰ but also in science – in fact, it is the essence of the scientific method. A science which is afraid of analysing reality will, in the long term, be less successful, both in its content and in the level of its output. Rational science is not acceptable for the anti-Enlightenment tradition, however, and all those who do not conform must be punished. As mentioned before, there seems to be government pressure ‘to drop courses and research that are critical of government policies’ in Poland.⁵¹ This informal pressure can be very effective in silencing critical scholars. Attacking university professors who allow students to go to protests in Poland instead of going to classes is also one of these issues: what professors allow and do not allow for their students is an academic issue, and politics should not have a say in this.

Aggression in academia has many different layers. We should not forget that anti-pluralist cultural dominance can be a form of oppression: As Murgia ironically puts it, ‘domination is violence in itself’.⁵² While oppression in the CEE region in academia occurs mostly in much lighter forms than physical terror, several actions of authoritarian governments can still be labelled as aggressive. On a scale from harsh to less-harsh measures, the first is open physical aggression. Outside academia, this is common in Hungary – for example, opposition activists and politicians are beaten repeatedly during elections. In academia, however, this rougher form of aggression is rare, and we have not heard about professors who were physically assaulted because of their opinion in CEE. This does not mean that professors could not be attacked – for example, because they speak German with their friends on the tram in Poland⁵³ – but such actions are incidental. Verbal aggression or repressive measures against academics is far more common. In Hungary, government-controlled newspapers write derogatory propaganda articles against academics *en masse*. It is also common to compare critical scholars to fascists and Nazis, as in the case of Jan Grabowski in Poland, who sued for this

⁴⁹See (n 3) 104; D Dakowska, ‘Higher Education in Poland: Budgetary Constraints and International Aspirations’ in J Nixon (ed.), *Higher Education in Austerity Europe* (London: Bloomsbury, 2017) 79; see the articles mentioned in (n 10).

⁵⁰RA Dahl, *Dilemmas of Pluralist Democracy: Autonomy vs. Control* (New Haven, CT: Yale University Press, 1983).

⁵¹See (n 10).

⁵²See (n 1) 60.

⁵³‘University Professor Beaten up on Warsaw Tram for Speaking German’, Poland Radio, 9 September 2016, <archiwum.thenews.pl/1/9/Artykul/270263,University-professor-beaten-up-on-Warsaw-tram-for-speaking-German>.

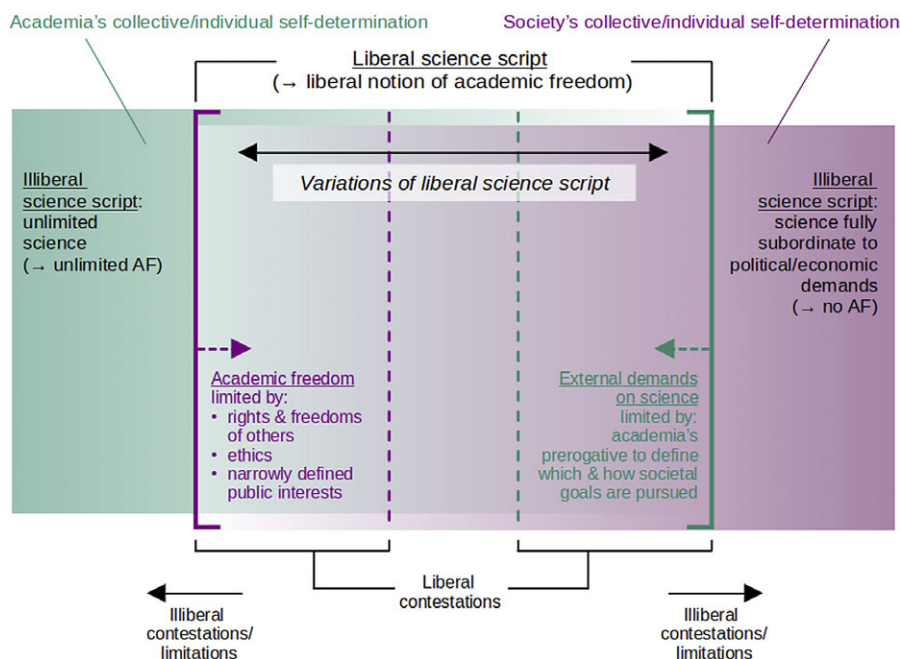


Figure 2.

misrepresentation.⁵⁴ Several scholars in Hungary were expelled because of their opinions.⁵⁵ Another form of oppression is when politicians sue professors because of their opinions. This ‘judicial intimidation’ happens regularly in Poland.⁵⁶ A further method is to attack institutions, restructuring them or taking away their funding. We must emphasize that in a number of cases, actions which seem to give more freedom to universities can also become oppressive: One could call this approach the oppression through ‘reverse freedom’ method. This happened, for example, when the government in Poland introduced two new disciplines, biblical and family studies, and these new fields were aligned with government interests in politics.⁵⁷ In theory, such a move could add new research or teaching areas to existing curriculums, so it could even strengthen university autonomy. Another example of this ‘soft-touch authoritarianism’ is the example of the Polish law preventing the academic censorship of universities. The law in itself sounds beneficial for all – but it could serve as a tool to relativize science and defend the racist and homophobic

⁵⁴O Aderet, ‘“Orgy of Murder”: The Poles Who “Hunted” Jews and Turned Them Over to the Nazis’, *Haaretz*, 11 February 2017, <<https://www.haaretz.com/world-news/2017-02-11/ty-article-magazine/premium/orgy-of-murder-the-roles-who-hunted-jews-and-turned-them-in/0000017f-f97d-d880-a7ff-f7da8a50000>>.

⁵⁵Policy Solutions: Political Discrimination in Hungary’ (2017), <https://www.policysolutions.hu/user/files/elemzes/265/political_discrimination_in_hungary.pdf> 26.

⁵⁶See Koper and Mohamadhossen (n 10) 15–17.

⁵⁷D Tilles, ‘Polish Education Ministry Creates Academic Disciplines of Biblical and Family Studies’, *NFP*, 20 October 2022, <<https://notesfrompoland.com/2022/10/20/polish-education-ministry-creates-academic-disciplines-of-biblical-and-family-studies>>.

remarks of professors.⁵⁸ Many of these actions seemingly strengthen the liberal science script but, as explained before, they are intended to push competitors out of the academic market and limit the autonomy of academic institutions.

The results of the extensive application of techniques to achieve conformism and submission, and using aggression, is that a kind of ‘wile fear’, mentioned in the motto of this article, is created. This is how insecurity becomes the norm in academia, and this insecurity is used and abused by authoritarian governments. The ‘wile fear’ is not always rational, and it cannot be explained in purely legal terms.

European Union responses

It is clear that the EU was unable to give proper answers to the autocratization in Hungary and Poland, and this is not true only regarding the general issues related to the rule of law backlash, but also in connection with academia. Competencies related to academia are extremely fragmented in the EU’s legal system.⁵⁹ Article 6 and 165 TFEU explain that the EU only has power to support, coordinate or supplement the actions of member states in education. Research is handled differently, in Article 4 and 179 TFEU. In this field, the EU only encourages and supports research cooperation. Several other rules also apply, for example, about the recognition and enforcement of diplomas and degrees, or related visa procedures of third-country nationals. It is misleading to view the autocratization of academia as a mere policy problem, however – which it is not, as its roots sweep through various policies and competencies of the EU. Moreover, the general autocratization of related societies lies at its core. This means that the framework of Articles 2, 6 and 7 of the TEU offers a better approach with which to handle this phenomenon, as academic freedom violations are in fact human rights breaches, not just ‘new forms of dubious domestic policy actions’. On the other hand, from a legal perspective, unfortunately Article 2 TEU is often portrayed in the literature as if it was not a law at all.⁶⁰ Furthermore, Article 13 of the Charter of Fundamental Rights expresses that ‘the arts and scientific research shall be free of constraint’ and that ‘academic freedom shall be respected’. Anti-corruption measures, as proposed by the Commission regarding Hungary,⁶¹ will not change the fact that even if prudent budgetary functioning is achieved, this will not develop the general state of rule of law and democracy in Hungary and Poland, and the abovementioned provisions would be a better ground for legal measures. From a political standpoint, as I explain below, EU policies have the capacity to make autocratization in academia even worse than before, and we can also recognize this in the general autocratic framework created in Hungary and Poland. There are several examples.

⁵⁸For the debates around this topic, see (n 10) 14–15.

⁵⁹See (n 3) 186–87 and also K Kovács, ‘Academic Freedom as a Legal Concept in Europe’ in this special issue.

⁶⁰For some of the possibilities the article could contain, such as systemic infringement procedures, see KL Scheppelle, DV Kochenov and B Grabowska-Moroz, ‘EU Values are Law, After All: Enforcing EU Values Through Systemic Infringement Actions by the European Commission and the Member States of the European Union’ (2020) 39(1) *Yearbook of European Law* 3.

⁶¹Commission Proposal for a Council Implementing Decision on Measures for the Protection of the Union Budget Against Breaches of the Principles of the Rule of Law in Hungary COM/2022/485 final; A Hoxhaj, ‘The CJEU Validates in C-156/21 and C-157/21 the Rule of Law Conditionality Regulation Regime to Protect the EU Budget’ (2022) 5(1) *Nordic Journal of European Law* 131.

The first is the extensive EU financing of propaganda institutions. In Hungary, the National University of Public Service received billions of Forints from EU funds, and there were many related scandals due to irregularities. For example, 7 billion Forints (about €18.5 million) of the support had to be paid back to the EU,⁶² and one of the professors received more than 10 million Forints (about €26,500) from EU funding for rewriting one of her published books.⁶³ The same professor also worked in the government as deputy secretary of state. The Commission only administers the prudence of the processes, however, and does not take into consideration that the university involved is not independent at all. According to law, the National University of Public Service is not part of the general higher education system (it was separated from the regular universities). It is directly governed (supervised) by the Prime Minister's Office and, as mentioned before, all professorial hiring must be approved by the director of the Prime Minister's office (HVG, 2022).⁶⁴ In summary, we are talking about extensive EU support to a university that cannot even hire personnel without the guidance of the Prime Minister's Office and that is even formally subordinated to the government. Any funding spent at such institutions gradually worsens the chances of independent academia. The NUPS is not the worst in Hungary or Poland: There are many propaganda institutions, which were created to spread far-right values in these societies, and receive major EU funding. However, one can mention an important case where the EU stopped funding: Hungarian universities that were 'privatized' by the government to gain more control over them were excluded from EU funding, while other, questionable institutions remained in the system.⁶⁵

Second, there is a very similar problem regarding research institutions. For example, an ERC project had to relocate from Hungary to Sweden due to the limitation of academic freedom and the attack against the Hungarian Academy of Sciences (the so-called Evil Tongue Project).⁶⁶ This suggests that the EU's 'support' of research in member states is also not independent of the domestic political environment and the functioning of academic institutions. If academic freedom is limited in these institutions, and if scholars are harmed because of their opinions, then the EU is financing an academic system that silences critical voices. This indirectly and unintentionally supports the silencing of scholars. It is a seriously ambivalent attitude when, on one hand, an organization aims to support free academia and maintains billions of Euros for research and development programmes and, on the other, gives billions of Euros to propaganda institutions and partially free institutions.

⁶²Z Szopkó, 'A közszolgálati egyetemről 7 milliárd forint EU-s pénzt vontak el szabálytalanságok miatt', *Atlatszo*, 16 June 2022, <<https://atlatszo.hu/kozpenz/2022/06/15/a-kozszolgalmati-egyetemtől-7-milliard-forint-eu-s-penz-tontak-el-szabalytalansagok-miatt>>.

⁶³R Baksa, 'Kiegészítette saját könyvét, a közszolgálati egyetem EU-s pénzből 10 milliót fizetett érte', *24. Hu*, 19 October 2017, <<https://24.hu/fn/gazdasag/2017/10/19/kiegeszittette-sajat-konyvet-a-kozszolgalmati-egyetem-eu-s-penzbol-10-milliot-fizetett-erte/#>>.

⁶⁴HVG, 'Már a Közszolgálati Egyetem sem dönthet arról, hogy ki oktasson náluk', *HVG*, 26 October 2022, <https://hvg.hu/itthon/20221026_NKE_MCC_Orban_kinevezes_oktatok_kutatok>.

⁶⁵Z Zubor, 'Hungarian Universities Banned from Erasmus as the Government Fails to Address Corruption Concerns', *Atlatszo*, 3 February 2023, <<https://english.atlatszo.hu/2023/02/03/hungarian-universities-banned-from-erasmus-as-the-government-fails-to-address-corruption-concerns>>; Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on Measures for the Protection of the Union Budget Against Breaches of the Principles of the Rule of Law in Hungary. OJL 325, 20.12.2022, 94–109.

⁶⁶M Sönne, 'Regime Oppression Brings Hungarian Researcher to LiU', Linköping University, 27 May 2019, <<https://liu.se/en/news-item/regimens-kontroll-tvingar-forskare-fran-ungern-flytta-till-liu>>.

Third, as I have already explained elsewhere, the EU does not give much protection to public universities.⁶⁷ One reason for this is the very strong market bias built into EU policies and actions. While on one hand, the case of Central European University sent a signal that states are not allowed to introduce any autocratic measure they desire, connecting academic freedom to the single market and WTO rules also serves as a kind of betrayal of the rest of the academic system, as public institutions do not fall under the protection of EU law. It is clear that the Hungarian government does nothing to adhere to EU rules and the judgment of the ECJ regarding the Central European University: there was no change in its policies after the judgment, further proof of the lack of external constraints.

Fourth, as is well known, most EU research funding is received by wealthier universities in wealthier countries, in a completely disproportionate way.⁶⁸ Apart from excluding most of Eastern Europe from EU research funding in major programmes, this system also does nothing for the colleagues who struggle in an oppressive higher education system.

Fifth, it will be very interesting to see how far autocracy can be exported within the EU. For example, Matthias Corvinus Collegium opened offices outside Hungary, in Brussels.⁶⁹ As Daniel Kelemen put it, 'just as one rotten apple can spoil a barrel, one brutish autocrat can spoil a political union'.⁷⁰ This is true about propaganda-academia as well. If this phenomenon is strengthened, Western European countries may very quickly see the rise of authoritarian institutions on their own soil, competing with domestic institutions.

The EU and a European counter-culture: Sanctions and bottom-up methods

Before going into detail about the recommended activities of the European Union, it must be stressed that there is a strong chance external actors alone cannot change much in the political culture of a country, especially if authoritarian actions are based on a subject culture.⁷¹ In most cases, this culture also has strong roots and a strong presence in public education, which devolves external action. Thus, I do not claim that it is the EU's job to re-democratize Hungary, Poland, or any other country, if the citizens of these countries do not feel democratic values to be important, or do not defend these values. However, this does not mean that we should not think about the EU's role in increasing a demand for democracy and anti-authoritarianism in this region, and nor does it mean that the EU's resources, which are already used for other purposes could not be better allocated. Moreover, we should also take into consideration that times can change: For example, who could know in 1943 that Germany would be a democracy a few years later? And how much desire was there in German society back in 1943 for a change in the system and democracy-building? Therefore, I do not suggest that external actors cannot have an

⁶⁷ CJEU, Case 263/86, *Belgian State v René Humbel and Marie-Thérèse Edel* [1988] ECR 5365.

⁶⁸ Q Schiermeier, 'Horizon 2020 by the Numbers: How €60 billion was Divided Up Among Europe's Scientists' (2020) *Nature*, <<https://www.nature.com/articles/d41586-020-03598-2>>.

⁶⁹ W Preussen, 'Viktor Orbán-Funded Think Tank Vows to Shake Up Brussels' (2022) *Politico*, <<https://www.politico.eu/article/viktor-orban-hungary-funded-think-tank-set-to-launch-in-brussels>>.

⁷⁰ DR Kelemen, 'Europe's Hungary Problem Viktor Orbán Flouts the Union', *Foreign Affairs*, 20 September 2015, <<https://www.foreignaffairs.com/articles/europe/2015-09-20/europes-hungary-problem>>.

⁷¹ GA Almond and S Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton, NJ: Princeton University Press, 1963).

effect, especially, since European countries are strongly interdependent from each other. There is a strong chance, however, that such major changes cannot be made without a major shock to society, and without the active participation of the society. Below are some key points which could serve as guidelines for such future actions.

It is clear that the problem of independent academia is closely connected to the problem of autocratic legalism and its tendency to weaken the safeguards of academic freedom.⁷² There is a growing pressure on the EU to use sanctions against rebellious member states. Generally, the author of this article supports budgetary sanctions because their lack undermines the values of European cooperation and how we think about the rule of law in Europe, and the EU should not be reduced to a single market without certain basic moral principles. However, sanctions related to the Article 7 procedures are mistakenly portrayed in the media as tools with which to solve domestic problems, even though they would not necessarily achieve this. According to this argumentation, we should introduce sanctions against Hungary and Poland, because these actions could force them to behave according to common European norms, and the only problem we have now is that certain member states would not support the Article 7 procedures against these countries.

The mainstream view of sanctions theory would raise doubts about the effectiveness of sanctions without other actions, however, and there is a strong chance that softer measures could be at least as powerful as hard ones. As Mulder put it regarding the interwar period in Europe, ‘amid rising economic nationalism, peacetime sanctions became more difficult to distinguish from the wartime blockade that had inspired them. In these conditions, sanctions did not stop political and economic disintegration but accelerated it.’⁷³ In most cases, autocratic governments can effectively use external sanctions for their own purposes: Sanctions can serve as tools to portray an enemy without any hardship.⁷⁴ In electoral autocracies with extensive government propaganda, such as Hungary, sanctions can even backfire, as misled people can believe that they (i.e. their political community) are being attacked instead of the government. We must also note that the Commission and the Council seem unable to address this problem properly, and they mostly concentrate on budgetary issues in the rule of law conditionally related to Hungary.⁷⁵ Budgetary issues, however, are only a minor part of rule of law issues, and such sanctions will not necessarily lead to more academic freedom, or free speech in the country.⁷⁶

⁷²KL Scheppele, ‘Autocratic Legalism’ (2018) 85 *The University of Chicago Law Review* 545.

⁷³N Mulder, *The Economic Weapon* (New Haven, CT: Yale University Press, 2022) 291.

⁷⁴J Barber, ‘Economic Sanctions as a Policy Instrument’ (1979) 55(3) *International Affairs*, 376.

⁷⁵Commission Proposal for a Council Implementing Decision on Measures for the Protection of the Union Budget Against Breaches of the Principles of the Rule of Law in Hungary COM/2022/485 final; Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. OJ L 433I, 22.12.2020, 1–10. This regulation defines rule of law breaches in its Article 3, which covers the endangering the independence of the judiciary, the failing to prevent, correct or sanction arbitrary or unlawful decisions by public authorities (including the withholding financial and human resources of institutions), limiting the availability and effectiveness of legal remedies, as well as limiting the effective investigation, prosecution or sanctioning of breaches of law. Regarding academic freedom, arbitrary and illegal decisions became relatively common in Hungary and Poland; probably this is the most important point from the perspective of our topic.

⁷⁶M Dóka, ‘Daniel Freund: A 17 magyar vállalat egyike sem érinti a jogállamiságot’, *Átlátszó*, 11 November 2022, <<https://atlatzso.hu/kozugy/2022/11/11/daniel-freund-a-17-magyar-vallalas-egyike-sem-erinti-a-jogallamisago>>.

This leads us to the issue that, apart from sanctioning and non-sanctioning, the EU could develop a toolset and domestic presence to help the societies of member states directly, without the gatekeeping of governments. Jürgen Habermas was right when he claimed that, right now, all EU actions are explained through the narrative of member state governments.⁷⁷ The EU's interpretation and explanation of actions are nearly completely missing at the domestic level in the member states. What the EU does is a kind of technocratic anti-politics – following Rosanvallon, one could call this the 'age of the unpolitical'.⁷⁸ With the rise of post-fascist forces⁷⁹ and rising authoritarianism, however, this silence becomes a strategic mistake, as people are interested in affecting politics. Sometimes this phenomenon is called political consumerism.⁸⁰ The politicization of the EU thus seems to be inevitable.⁸¹ One should also add the fact that 'the main reason for states to pool and delegate decision-making power in international institutions' is that it allows them to adopt policies they would 'never get accepted at home'.⁸² This makes this anti-politics even more confusing, as there are sensitive topics where only one narrative is present. This is due to the strong presence of the nation-state idea – which, even if slightly outdated,⁸³ still serves as a basis for cooperation in Europe, and has a very strong effect on how we interpret the roles of EU institutions. To at least partly address this problem, the EU should build a kind of communication presence in its member states. A part of this has already started, when, for the first time in its history, the Commission issued a leaflet about the obviously false propaganda of the Hungarian government in connection with migration and refugee law issues.⁸⁴ For a bad example, one could mention the inaction of the European Commission during the 2016 referendum in Hungary, when the Commission only expressed its views about the misleading statements of the government after the polls were closed.

It is less known that originally, as explained by Edvard L. Bernays in his groundbreaking book on this topic in 1928, propaganda was not necessarily a positive or negative phenomenon, but something naturally belonging to the functioning of governance.⁸⁵ In fact, he invented the modern framework propaganda in order to help the case of democracy. Bernays accurately described the functioning of societies, politics and business, and especially, US society. As he put it, 'we can see that in its true sense propaganda is a perfectly legitimate form of human activity. Any society, whether it be

⁷⁷J Habermas, *The Crisis of the European Union: A Response* (Cambridge: Polity Press, 2012) 131.

⁷⁸P Rosanvallon, *Counter-Democracy: Politics in an Age of Distrust* (Cambridge: Cambridge University Press, 2008) 253.

⁷⁹See Ziegler (n 34) 16–51.

⁸⁰See Rosanvallon (n 78).

⁸¹P de Wilde and M Zürn, 'Can the Politicization of European Integration be Reversed?' (2012) 50(1) *Journal of Common Market Studies* 137.

⁸²T Börzel, *Why Noncompliance?* (Ithaca, NY: Cornell University Press, 2021) 44.

⁸³C Volk, 'The Problem of Sovereignty in Globalized Times' (2022) 18(3) *Law, Culture and the Humanities* 716.

⁸⁴'European Commission Responds to Hungarian Government campaign' (2019), <https://ec.europa.eu/info/publications/european-commission-responds-hungarian-government-campaign_en>; for background, see I Barna and J Koltai, 'Attitude Changes Towards Immigrants in the Turbulent Years of the "Migrant Crisis" and Anti-immigrant Campaign in Hungary' (2019) 5(1) *Intersections: East European Journal of Society and Politics* 48.

⁸⁵EL Bernays, *Propaganda* (New York: Horace Liveright, 1928).

social, religious or political, which is possessed of certain beliefs, and sets out to make them known, either by the spoken or written words, is practicing propaganda'.⁸⁶ Bernays' views affected the functioning of the modern state, including democratic politics, but also the authoritarianism of Nazism and fascism. If a state or international organization wants to strengthen certain values in a country, it is obvious that it must find the forms it can effectively communicate its positions. These 'forms' make it possible to have some kind of influence over people. Knowing this, the government in Hungary spends billions of Euros on direct propaganda from public money, and governing parties control the majority of the media. What is surprising here is that the government spends more money on propaganda (interpreted in a broad sense), than on education (primary, secondary and higher education) altogether. This can have a devastating effect on public culture, especially in rural areas. If the EU wants to make a change to this authoritarian culture, it will have to answer the question: In what form and with what content can its message about its values be highlighted to the citizens of member states. It's not obvious that it has to have a message, but by remaining silent, the Union effectively undermines its own values.

We should also not forget that the EU already spends a great deal of money in supporting research, and part of this could be interpreted as propaganda in the Bernaysian sense. One form of elitist ineffective EU propaganda is when it supports research projects on populism, xenophobia and the far right, with billions of Euros. However, at least from the perspective of our topic, this is also not as useful as it seems. Most of the beneficiary universities of Horizon 2020 are from wealthier Western European democracies instead of poorer Eastern European countries, and democratic culture will not improve in any country because of the support of elite universities.⁸⁷ The Horizon programme spent €60 billion between 2014 and 2020. However, it is very hard to spread knowledge in this way, when the money we spend on education and research is only spent on elitist institutions instead of large-scale, down-to-earth, bottom-up projects.

This leads us to the most important point: the possible support of democracy education. A grassroots level of anti-authoritarianism should be established through encouraging an understanding of the values of a pluralist culture based on the values of the Enlightenment in member states. While it would not be the EU's job to build such a culture, it could strengthen efforts to reach it in a much more effective way than it does today. To a certain degree, the democratic backlash of certain CEE countries and the contestation of the liberal script could be also interpreted as the result of an elitist, top-to-bottom democracy, where democratic values and citizen participation were not propagated, explained and taught for the members of society. In many parts of Eastern Europe, this reduced the role of voters to elections, without real participation and without the necessary knowledge about institutions and concepts of democracy. Civic education in schools is mostly missing, and the school curriculum is mostly based on nationalistic premises. Elites, including the liberal elites in these countries, did very little to change this. This has an effect on public life as well – for example, compared with Germany, there are far less actions by the public for social causes in Hungary. This is visible even in the streets, which are covered with political stickers and posters advocating for social issues all around the main German cities, while in Hungary this is mostly missing.

⁸⁶Ibid 22.

⁸⁷TD Ziegler, A Unger 'Eurowhiteness in Science: Privilege Escalation and Intentional Sludge' (2023) 38(3) *Sociological Forum*, 830–851.

Moreover, according to a large-scale, quantitative study published by Cambridge University, ‘across the globe, younger generations have become steadily more dissatisfied with democracy – not only in absolute terms, but also relative to older cohorts at comparable stages of life’.⁸⁸ It seems obvious that the EU should try to support democracy education and active citizens in some way. If we understand the attack on free academia as a form of domestic authoritarianism, then financial sources should be better spent on grassroots level anti-authoritarian measures⁸⁹ and lower level education supporting pluralism and Enlightened democracy in schools.

One of the first authors of books on creating ‘democratic schools’ was John Dewey, who recognized the need for education about basic political processes and democracy as early as 1916.⁹⁰ It is no wonder the Fidesz government in Hungary centralized the system of primary and secondary schools, and introduced several measures that it found important for its political agenda. It created a ‘school police’, started to teach religion in public schools and added extra physical education classes and far-right authors to the school curriculums, among other things. These actions are aimed at reshaping the youth of the future, just like the billions of forints spent on government-friendly influencers on social media. Against this, low-level, large-scale programmes could be introduced, and supporting them would fall within the EU’s competency. One example is Professor Jørn Øyrehaugen Sunde’s endeavour in Norway. Sunde, originally a professor at the University of Oslo and a former professor of Bergen University, visited many secondary schools and talked to more than a thousand students about the dangers of authoritarianism.⁹¹ I do not consider his method the only ideal approach to help democratic thinking, and in this article I would not want to give a detailed list of approaches, but rather wish to start a discussion about such actions. A similar action was recently started in Hungary, where a newspaper for children was founded.⁹² We should at least discuss the positive aspects and limitations of such programmes, and the EU’s potential role in supporting them. Such micro-projects should be helped and developed without the interaction of domestic governments. While there are programmes supporting the civil sphere even today, their effectiveness is sometimes questionable. For example, the EU’s Citizens, Equality, Rights and Values (CERV) programme spent €3.4 million on different NGOs in 2022 in Hungary.⁹³ The allocation of funding in this programme does not go through the Hungarian government. This can be useful, as the government refused to accept Norwegian funding in the amount of €204 million, and the civil sphere is in a dire situation in the country. In addition to supporting NGOs, however, another – and possibly even more effective – method could be to create lower-level educational

⁸⁸RS Foa, A Klassen, D Wenger, A Rand and M Slade, *Youth and Satisfaction with Democracy: Reversing the Democratic Disconnect?* (Cambridge: Centre for the Future of Democracy, 2020), <https://www.cam.ac.uk/system/files/youth_and_satisfaction_with_democracy.pdf 1>.

⁸⁹Such as supporting teachers and experts giving knowledge about the basics of democracy and rule of law.

⁹⁰J Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (New York: Macmillan, 1916).

⁹¹JP Myklebust, ‘Professor on a Mission to Stall Illiberal Democracy’, *University World News*, 4 May 2019, <<https://www.universityworldnews.com/post.php?story=20190501083625867>>.

⁹²Kispolgár, ‘News – for Kids’, <<https://gyerekujsg.hu/english>>.

⁹³V Serdült, ‘Az Európai Unió milliárdos pénzesővel cselezi ki a civilelles magyar kormányt’ (2022a) HVG, <https://hvg.hu/itthon/20221123_Brusszel_civilek_tamogatas_Okotars>; V Serdült, ‘A jogállamiság és a demokrácia védelmét erősíthetik a támogatás segítségével, különösen a vidéki, kisebb NGO-k’ (2022b) HVG, <https://hvg.hu/itthon/20221125_Ujabb_magyar_civileket_tamogat_milliardokkal_Brusszel>.

programmes on democracy and the rule of law without the participation and control of authoritarian governments.⁹⁴

This bottom-up method would not mean that other, policy-oriented solutions could not be used. I support the idea of creating a legally binding Magna Charta of Academia.⁹⁵ The work of the European Parliament Forum for Academic Freedom (organized by the Science and Technology Options Assessment panel) could also be important to counter the breaches of academic freedom.⁹⁶ On the other hand, these actions alone do not grasp the most important element of the limitation of academic freedom: authoritarianism and its value-choices and practices in the society.

Conclusions

Enyedi and Todosijević demonstrated in 2008 that there are many voters in Hungary with authoritarian views, who are possibly receptive to a contestation of the liberal script.⁹⁷ They also found that many of Fidesz's voters were surprisingly more authoritarian than other far-right or extremist parties (such as Jobbik) at that time in the country. After more than a decade, it seems clear that there is a political milieu that has its roots in the authoritarian public culture, which itself has strong historical roots.⁹⁸ The attack against academia is a result of this public culture. Poland is in a very similar situation: it is hard not to see the connection between authoritarian actions in academia and other aspects of life, including attacks on the free judiciary, same-sex couples and women's rights.

This is important from a legal perspective because lawyers tend to forget that legal answers to autocratization should not only involve the actual target of policies (in our case: policies on academia), but also a broader environment, where the society in question allows such actions to happen. In this article, the recognition of this connection has led us to a broader problem: that what the EU allows to happen in its member states, how the Union communicates with EU citizens and how it supports free thinking in its societies is also the EU's responsibility. While universities and lower level schools in Hungary are intentionally pushed towards atrophy, EU assets could be used in a much better structure than today to help non-partisan democracy education, and it would also be timely to think about similar projects elsewhere in CEE countries. It will be very hard to build democratic communities from elitism and, while the societies in question should also do much more to democratize their political system, if the EU wants to maintain some of its basic values it could also live up to its potential by using its

⁹⁴The allocation of such grants could be done on an individual level, and they could be given to private individuals or to NGOs. However, the decisions about these grants should be made outside the country concerned to avoid corruption, which is not just high in government-related sectors, but also among NGOs and in the private sector in CEE countries.

⁹⁵T Karran, 'Academic Freedom in Europe: Time for a Magna Charta?' (2009) 22 *Higher Education Policy* 163.

⁹⁶F Zubaşcu, 'In Face of "Mortal Threat" European Parliament Launches a Permanent Forum to Protect Academic Freedom', *Science|Business*, 29 November 2022, <https://sciencebusiness.net/news/face-mortal-threat-european-parliament-launches-permanent-forum-protect-academic-freedom?utm_source=Science%7CBusiness+Newsletters&utm_campaign=5b2b79b925-EMAIL_CAMPAIGN_4_26_2021_17_43_COPY_01&utm_medium=email&utm_term=0_179178d214-5b2b79b925-138651415>.

⁹⁷B Todosijević and Z Enyedi, 'Authoritarianism Without Dominant Ideology: Political Manifestations of Authoritarian Attitudes in Hungary' (2008) 29(5) *Political Psychology* 767.

⁹⁸A Antal, *The Rise of Hungarian Populism* (Bingley: Emerald, 2019) 43.

competencies as set in the Treaty on the Functioning of the EU. Many primary and secondary school teachers were fired in Hungary in the autumn of 2022 because they protested against the government's intention to under-finance public schools and silence criticism of centralization.⁹⁹ These teachers, together with the higher education professionals in Hungary, Poland and other CEE countries, find themselves stuck between the EU's elitist research governance and domestic authoritarianism. Democratic communities can only be built on anti-authoritarianism and Enlightened rationality, however, and those who protest represent these ideals. It would be of elementary importance to bring Enlightened anti-authoritarianism, democratic values and some traditional liberal values, such as the relevance of checks and balances and the rule of law, closer to everyday people, as our future depends on how well we do this.

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⁹⁹B Barnóczy, '8 more Hungarian high school teachers fired for civil disobedience' (30 November 2022) *Telex*, available at <<https://telex.hu/english/2022/11/30/8-more-hungarian-high-school-teachers-fired-for-civil-disobedience>>