



The Open Society and Its Enemies: An attack against CEU, academic freedom and the rule of law

Petra Bárd

Abstract

On 4 April 2017, the Hungarian Parliament adopted amendments to the country's Act CCIV of 2011 on National Higher Education, in an attempt to force the Central European University (CEU) out of the country. The attack on CEU, based in Budapest and accredited by the Middle States Commission on Higher Education, fits into a broader picture of violated academic freedoms and an even broader one of a state in constitutional capture, in which fundamental rights in general are in jeopardy. This paper explores the controversial law, explains its biased nature targeting CEU only, provides possible reasons why the government wishes to shut down Hungary's most prestigious university, describes how political support for the crusade against CEU was generated by the government, draws lessons to be learned and suggests desirable European responses. The paper argues that the EU's approach of 'keeping problem children in the family' has proved to be dysfunctional in recent years. The argument that EU action to sanction a member state – e.g. by triggering Article 7 TEU – might have the opposite effect or be exploited by those wishing to arouse anti-EU sentiments is not convincing either. Brussels has already been blamed for a plethora of ills, and stepping out of the EU will be on Hungary's agenda in any event once the country ceases to be a net beneficiary. The government is already paving the way for this move by fostering pro-secession sentiments. The paper argues that backsliding by a member state in the rule of law is a European matter and that European institutions must react accordingly by employing diplomatic and legal sanctions against any country undermining the EU's foundational values. Instead of watching an autocratic regime reinforce itself with EU money, they should make use of all available instruments, including the power of the purse – which is seemingly the only convincing tool available for disciplining an illiberal government of a net beneficiary country.

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The Open Society and Its Enemies

An attack against CEU, academic freedom and the rule of law

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Petra Bárd

Introduction

On 4 April 2017, the Hungarian Parliament adopted a law (technically an amendment to Act CCIV of 2011 on National Higher Education, see [Bill T/14686](#)) in an attempt to force the Budapest-based Central European University (CEU), the highest-ranked Hungarian university, out of the country. The attack on CEU fits into a broader picture of putting academic freedom in jeopardy, and a broader one of a state in constitutional capture, where fundamental rights in general are under threat and where state institutions have a limited or no capability of effectively remedying infringements of democratic rights.

This paper explores **what** the law amending to the act on higher education entails, explains its biased nature, i.e. the ways it is targeting CEU and CEU only; provides possible reasons as to **why** the government wishes to shut down Hungary's most prestigious university; explains **how** political support for the crusade against CEU was generated by the government; and explores what the **future** might hold in terms of lessons to be learned and desirable European responses.

1. WHAT? The facts of the case against the Central European University

1.1 Amended rules for foreign-accredited universities and their consequences for CEU

So what have been the legal tools employed by the Hungarian government? The Central European University (CEU) was founded by philanthropist and investor George Soros in 1991. It consists of two legal entities: CEU – accredited in the US by the Middle States Commission on Higher Education – and Közép-Európai Egyetem (meaning Central European University in Hungarian) – a private university accredited in Hungary. Both schools are located in Budapest. Upon graduation, all students are awarded a CEU diploma, and some of them also receive a Hungarian one, if two conditions are met: i) their programme is accredited in Hungary and ii) they comply with extra academic requirements –. The Hungarian degree is automatically recognised by all EU member states, and the US degree is also easily nostrified, i.e. to receive formal recognition, by all democratic states of the world.

The new law introduces a number of elements that make the operation of CEU in Hungary difficult, if not impossible in the future.

The first requirement is that a foreign university will be able to function in Hungary, effective September 2017, only if its operation is backed up by an intergovernmental agreement between Hungary and the respective country in which the program is accredited. Universities accredited in the EU/EEA are exempted. In case of federal countries, such as the US, a preliminary agreement needs to be concluded with the federal government to be followed by a treaty with a state. A second requirement is that foreign universities need to be physically

present and offer programmes in the country in which they are accredited. Third, in a reversal of the previous practice, employment contracts must henceforth be concluded with all visiting professors at foreign universities, who had previously been exempted from such a requirement as most of them reside in Hungary for brief periods only.

Let us consider what the new rules mean for CEU. The third requirement can be complied with fairly easily: it will be a huge administrative burden with the many foreign professors, but concluding employment contracts is certainly manageable. The second requirement, i.e. to establish a Hungarian university in the US goes against the principal motivation behind the founding of CEU, which was to bring American educational methodology and scientific knowledge from leading universities to Central and Eastern Europe. It would also be extremely costly and time-consuming to establish educational facilities in the US and would make little sense in an already crowded educational landscape.

But it is the first requirement that is the most objectionable. The law makes the operation of an American university dependent on a factor outside the reach of the university itself. The decision whether it could continue its operations in Hungary and under what conditions will be at the political discretion of the two country's leaders, Donald Trump and Viktor Orbán. Allegedly, the Hungarian government has already started negotiations with the US, but CEU leadership has not yet been informed. It is worrying that a decision is being made over the heads of CEU representatives, as if the university was a kind of 'good', subject to an international trade agreement.

Making the fate of CEU dependent on the exclusive political discretion of two governments – one being openly hostile to CEU – is a clear violation of academic freedom. What is worse, the first requirement is impossible to comply with in the US context, where education is a state power, and therefore President Trump, even with the best of intentions, could not make a decision on the issue, or would be acting *ultra vires* (outside his authority) if he did so.

Politicians in favour of the law argued that it was neutral, contending that the Education Authority found irregularities in 27 out of the 28 foreign universities operating in Hungary, and this finding necessitated a change in the legislation. This logic is difficult to follow, since the law adopted has no causal relation to the administrative irregularities found. If a law is not complied with, the law should be enforced and not modified. Also, in the case of CEU the minor technical problems had already been corrected when the bill was tabled. Most universities are exempted from the rules, being accredited in EU countries. In any case, all the other foreign universities scrutinised by the Education Authority were little known with few of them offering comprehensive programmes, just a few courses. It is clear that the law is targeting CEU and CEU only.

Whereas the biased nature of the law was at first denied, soon the impossibility that a US-accredited university could fulfil the conditions was [acknowledged](#) by the Minister of Human Capacities who proposed the bill. The fact that the law targets CEU in a discriminatory manner was also [admitted](#) by the State Secretary for Education. That the intention of the ruling party is

to force CEU out of the country is thinly veiled, as tellingly reflected in the moniker ‘Lex CEU’ used by the media.

1.2 The broader context of lawmaking in Hungary

The saga of Lex CEU fits into a broader picture of lawmaking in the country. Instead of being based on the rule of law – in disregard of concepts such as legal certainty, foreseeability of laws, protection of acquired rights, prohibition of retroactive laws or human rights, for example – more often than not laws are passed with the exclusive aim of realising short-term political or financial profits. Instead of general norms, laws are tailored to advance individual persons’ or groups’ interests. We review a few cases below for purposes of illustration.

Pál Schmitt, who served as President of Hungary from 2010 to 2012, had been extremely loyal to the government – not vetoing a single bill in Parliament – but his appointment was controversial in many respects. His CV, for example, suggests that he might have [collaborated](#) with the communist regime. So as to be on the safe side, [Act CX of 2011](#) on the status and remuneration of the President was amended so that even if his office terminated prematurely for whatever reason, he received allowances for the rest of his life, was entitled to accommodation financed by the state and received other benefits. Ultimately, however, it was another part of his life that led to his resignation: it came to light that Schmitt [plagiarised](#) his PhD dissertation, which led to the withdrawal of his doctoral title, and after a lengthy controversy he was forced to resign. Nevertheless, the modified law on the remuneration of the President remained in effect.

Another example is the data protection issue of the so-called [social consultation](#) initiated by the government. A letter including a list of questions on social issues was sent to all citizens having voting rights. The return form seemed to be anonymous at first sight, but there was a bar code on it, which enabled the reconstruction of the ties between the sheet and the respondent’s name, domicile and other personal data. After the data protection ombudsman stated the obvious, i.e. that the way the social consultation was conducted amounted to a [violation of privacy](#), the Parliament passed a law – [Act LX of 2012](#) modifying Act LXVI of 1992 on keeping records on the personal data and address of citizens – to exempt such national consultations from the general data protection requirements. As a side-effect, the data protection ombudsman’s office was also prematurely terminated, which by the way was found to be in breach of EU law in a [judgment](#) by the Court of Justice of the European Union. .

When Mr. Andy Vajna, film producer and Government Commissioner in charge of the Hungarian film industry, needed child actors for one of his movies, the Ministry of Human Capacity instructed the administration to find a legal solution. The modification to the child protection law to [relax the rules](#) on employing minors is said to now be finalised.

Four years ago on a sunny spring day, the Prime Minister and the Mayor of the capital were driving through the streets of Budapest, when Mr Orbán noticed a small, pretty palace built towards the end of the 19th century, which used to house the Ballet Institute. “It is in Portugese hands” – the Mayor informed the Prime Minister. “I want it back” – responded the PM. “But

isn't there some law that prevents this for 20 years?" – asked the Mayor. "Why don't we make a new law? The city can propose it and I would make it a law." – [was the response](#). This conversation, which proves the Prime Minister's total disregard for the rule of law, legal certainty and property rights, was filmed and the [video clip](#) became public. In a dictatorship, there would be retaliation against those who disclose such materials. In a democracy, the politicians involved would need to resign. In Hungary, which is somewhere in-between, the story had no consequences whatsoever for any of the parties involved.

Even the constitution was abused to serve short-term political interests. Whenever the Constitutional Court declared certain laws unconstitutional – such as the Parliament's discretionary powers to grant religious organisations the official status of a church, or the quasi criminalisation of homelessness – the invalidated provisions were entrenched into Hungary's constitution, the Fundamental Law, in order to place them beyond the reach of the Constitutional Court for the future. Basis on the constitutional authorisation, the problematic laws were readopted, often including more rights infringements than before they had been quashed by the Constitutional Court. The Prime Minister's quote "[our lawyers will fix it](#)" became a *bon mot* describing the government's misinterpretation of *the rule of law as rule by law, law by rule*.

Lex CEU fits into this disturbing trend of case-by-case lawmaking influenced by political bias. It also fits into another trend I label *the selection of worst practices*. A certain tension can be traced in national pride ignoring foreign standards and at the same time justifying national solutions by way of international examples. Foreign laws are studied in a search for the most rights restrictive legal solutions and those providing the least or no checks on the majority rule will be borrowed by the Hungarian lawmaker. Should the model norm stem from a democratic jurisdiction, the foreign example will be expressly referenced, as a justification for its insertion into the Hungarian legal system.

These norms, procedures and institutions are often taken out of context. International examples were referenced when the minimum age of criminal culpability was lowered, or when the powers of the Constitutional Court were cut back. Whereas some jurisdictions indeed have a very low age of criminal liability, the conviction of a minor might have very different consequences in one state compared to another. Similarly, whereas there exist democratic countries without a constitutional court, other checks are incorporated into their legal systems. But these contexts are disregarded.

If the model norm stems from a jurisdiction that is at odds with democracy, the practice is appropriated without making reference to its origin. The model for Lex CEU originates from Russia, where the European University at St. Petersburg is experiencing a similar pattern harassment. The latter institution is currently fighting an arbitration court's [decision](#) to have its license revoked.

1.3 The legislative procedure

It all happened very fast. Lex CEU was pushed through in one week. Media close to the governing party raised the question whether CEU could remain in Budapest in December, but pushing the university out of the country did not seem to be a real option. On March 28th, however, the draft law was disclosed by the media.

International and domestic reactions were immediate and very supportive of CEU. As graphically depicted in the map above, some 40,000 individuals signed a [petition](#) to save CEU from all over the world.

Close to 100,000 individuals – from Noam Chomsky to John Malkovich – and distinguished think tanks and academic entities – from CEPS to the Max Planck Society, from Harvard to Oxford, from Princeton to the Polish Academy of Sciences – showed their [solidarity](#) and objected to the bill in one form or another. Academics asked the government in the strongest possible terms to withdraw the draft law. Thousands petitioned the Parliament, or called upon their EP representatives to speak up against the closure of CEU. Hungarian intellectuals (individually and in groups), the world's leading universities, an ex-President of Hungary, the Hungarian Academy of Sciences all joined the critiques of the government's moves against CEU.

Signatories of the petition supporting CEU



Source: [Google maps](#)

On April 2nd, a demonstration took place in Budapest with 10,000 participants, and people in foreign countries also exercised their right to protest, typically in front of Hungarian assemblies. [Michael Ignatieff](#), President and Rector of CEU declared: "In a week, CEU has become the symbol of academic freedom in the world." But all this seems to have had no effect on those in power.

On April 3rd, Parliament agreed to adopt Lex CEU in an extraordinary, accelerated and simplified procedure, and modifications of the bill were tabled with even more punitive provisions and stricter deadlines for CEU. The law was adopted the next day, against the strong criticism of the democratic opposition parties and amidst demonstrations around CEU. The Prime Minister made it clear before the voting that he expects all Fidesz and Christian Democratic coalition party MPs to vote in favour of the bill. It is important to emphasise this point, since some conservative public figures including Fidesz politicians voiced their concerns about the attacks on academic freedom. The law was adopted with 123 votes for and 38 against. Complying with the instructions of the Prime Minister, all MPs from governing parties voted in favour of the law, whereas all opposition party members present voted against it.

CEU [contested](#) the constitutionality of the law and asked the President not to sign it. Indeed, President János Áder could have made use of a presidential veto or could have sent the law to the Constitutional Court for *ex-ante* review. Academic freedom as guaranteed in Article X of the Fundamental Law was hampered by subjecting the operation of a university to political discretion, and to an impossible condition. Furthermore, it has been unnecessarily and disproportionately limited by requiring a US-accredited and Hungary-based university to open a US campus. The discriminatory nature of the law targeting CEU only is a violation of the principle of non-discrimination as provided for in Article XV, and the extremely short preparation period for complying with the law is a violation of foreseeability and legal certainty. Violations of procedural rules during the law-making procedure have also been challenged.

On April 9th, demonstrations took place in both Berlin and Budapest pushing the President not to sign the law. Some 80,000 people marched in the Hungarian capital from the Buda side of the Danube to the Pest side, making it the largest demonstration since the current Fidesz government entered power in 2010. Upon reaching CEU's campus, the crowd stopped and burst out in applause. The march ended in front of the Parliament, where the demonstration's anti-government and pro-EU message came to the forefront.

Despite these actions, the President's legal team was not concerned and a few hours before the deadline on April 10th he signed the bill adopted by Parliament into law. A spontaneous demonstration took place the same night before the President's residence.

CEU has to comply with the law by 5 September 2017, whose requirements are close to impossible to fulfil for the reasons detailed above. If CEU ceased to exist, Közép-Európai Egyetem, the Hungarian-accredited entity, could continue its operation, but it is easy to see that students find an American degree more valuable than a Hungarian one, and this may have an enormous effect on potential future applicants, who might opt to attend Western universities instead. What is more, two-thirds of CEU's programmes are not accredited in Hungary (only 3 out of 13 doctoral programmes are accredited, and 8 out of 20 MA programmes, not counting the specialisations.) The Legal Studies Department would, for example, entirely cease to exist since Hungarian accreditation is impossible for law programmes. It is not that CEU does not meet the quality requirements, but rather because of the specific nature of the discipline: a legal studies programme can only be accredited in

Hungary if the law school offers undergraduate degrees, whereas CEU is a post-graduate university only. But even if an exception was made, it does not make much sense to teach national substantive and procedural laws in a university with an international student body. All in all, depriving the university of the possibility to offer a US degree is highly likely to have fatal consequences for CEU.

2. WHY? Possible state objectives behind Lex CEU

Today close to 450 professors from some 50 countries teach 1,800 students from 120 countries at CEU. It is considered to be one of the most prestigious universities in Central and Eastern Europe for 25 years now. It has a high academic reputation, ranking 39th among the best young universities (below 50 years of age) worldwide and 16th among BRICS and emerging economies' university rankings, according to [Times Higher Education](#). It is very influential in the region and beyond, attracts consumers and tourists, pays high taxes and employs hundreds of Hungarian citizens. So why would any politician wish to drive it out of the country?

2.1 Eliminating dissent

The first and most obvious supposition is that the Fidesz government wishes to eliminate all forms of dissent. In a country based on the rule of law, built-in correction mechanisms compensate for the deficiencies of a majoritarian government: the doctrines of separation of powers, checks and balances, constitutional scrutiny, judicial oversight, media pluralism and a robust civil society all make sure that those in power do not abuse power. These institutions and procedures are all tools of militant democracy, operating along the paranoid logic of constitutional law inserting precautionary measures into democratic systems to protect them against a future potential government acquiring and retaining powers at all costs, i.e. by superseding constitutional government by emotional government.¹

Domestic tools of militant democracy have failed, however, and all elements of a constitutional rule of law have been jeopardised in Hungary.

The Hungarian Fundamental Law of 2011 and the constitutionally relevant cardinal laws were used as tools in dismantling checks on the government, which in Hungary is a majoritarian unicameral Parliament. Act XXXVI of 2013 on elections introduced a one-step system instead of a two-step election procedure and changed the rules of compensation so that it benefits the winner. Constitutional changes extending citizenship to Hungarians living in neighbouring countries in combination with the gerrymandered districts add up to an election system benefiting those in power. Even the thinnest understanding of the rule of law requiring only that regular free and democratic elections are held, is hampered, after the introduction of a new election law. As [Transparency International](#) noted, elections in Hungary are free, but not fair.

¹ See Petra Bárd, Sergio Carrera, Elspeth Guild and Dimitry Kochenov, "[An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights](#)", CEPS Paper in Liberty and Security in Europe, CEPS, Brussels, April 2016.

The independence of the ordinary judiciary has been compromised in numerous ways. By introducing new age limits for retirement with immediate effect, 27% of Supreme Court judges and more than 50% of appeals court presidents were [removed](#), and the positions were filled by lawyers loyal to the government. The then-President of the Supreme Court was 59 years old at the material time when he was removed from office via a different means. He was elected for six years in the summer of 2009, but in the meantime in December 2011 a cardinal law, Act CLXI of 2011 on the structure and operation of the judiciary, was passed. According to a new rule, only persons with five years' experience in the national judiciary can qualify as President of the Supreme Court, a requirement not met by the then President who was therefore removed with immediate effect after the entry into force of the law. The 16 years he spent as the Hungarian judge on the European Court of Human Rights did not qualify him under the new law to serve his mandate. This controversy resulted in a court ruling that Hungary was in [violation](#) of the European Convention on Human Rights (ECHR).

At the same time, the system of judicial self-government was replaced by a novel institution called the National Judicial Office (NJO). Its President, elected by two-thirds majority of Parliament, has comprehensive powers to employ, promote and sanction judges and to relocate cases. The [Venice Commission](#), the [EU](#) and the [US State Department](#) have all voiced concerns over the NJO, especially its President's powers.

Since 2010, the power and independence of the Hungarian Constitutional Court (HCC) have been diminished. The Fundamental Law extended the number of judges on the HCC from 11 to 15 and changed their mandate from 9 years to 12 years. (Article 24 Section (8)) The majority of the justices are nominees of the current government and their mandates are overarching several future parliamentary elections. The HCC was deprived of its power to review *actio popularis* petitions, i.e. requests that anyone could file irrespective of whether they or anyone else had a related case or controversy. According to the Fundamental Law, individuals may file constitutional complaints only if they are concretely injured by the application of a seemingly unconstitutional law and have at the same time exhausted all remedies in ordinary courts (Article 24 Section (2) Points c-d)), or if the judge of an ordinary court refers a constitutional issue in an ongoing case to the HCC (Article 24 Section (2) Point b) FL). The Fourth Amendment deprived the HCC the right to declare a constitutional amendment unconstitutional on substantive grounds (Article 24 Section (5)) and overruling a previous HCC decision, it also repealed all previous HCC decisions (Point 5 of the Closing Provisions).

The ombudsman system with one general and several specialised parliamentary representatives for various human rights ceased to exist, but the portfolios continued to be assigned to deputy ombudsmen. The only specialised ombudsman whose position ceased to exist entirely was the one responsible for data protection. His office was shifted directly into the government in the form of the Hungarian National Authority for Data Protection and Freedom of Information. The premature abolition of the office before the expiry of the data

protection ombudsman's mandate with special regard to the independence of the institution was subject to review by the CJEU, and Hungary was found to be in violation of EU law.

In an attempt to create a body of civil servants and government officials loyal to the government, Act CLXXIV of 2010 amended Act XXIII of 1992 on the legal status of public officials, enabling employers to terminate the employment relationship of public servants, with only two months' notice, without a just cause. In its decision 29/2011. (IV. 7.), the HCC invalidated the law and according to the reintroduced provisions, employers are obliged to give a realistic and lawful reason for dismissal, but still, according to Act CXCIX of 2011 on public service officials, loss of trust and unworthiness – rather vague terms that can easily be abused – can be cited as causes for dismissal.

Unorthodox Hungarian fiscal policies included nationalising private pension funds, introducing special taxes on the banking, telecoms, energy and retailing sectors, and extending the powers of the President of the Hungarian Central Bank under the guidance of the Minister of Economy, who later moved into this position himself. The Hungarian Central Bank's [independence](#) is being closely monitored and is frequently the subject of criticism in the international arena.

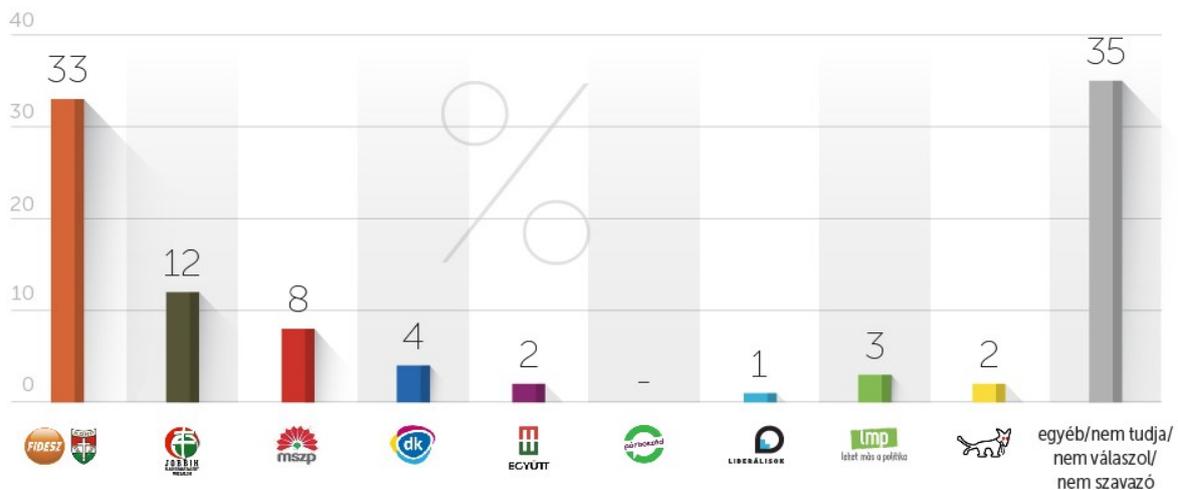
Curtailment of [media](#) diversity as a powerful means of formulating and disseminating dissenting views is among the best-documented steps in diminishing external criticism against government policies. In the past year, a quasi-war has been conducted against civil society – mainly human rights – organisations, subjecting them to extraordinary tax procedures. Although the authorities did not find any irregularities, just before Christmas in 2016, hostility against NGOs reached its peak when the Prime Minister predicted that NGOs, especially those funded by George Soros and his foundations, will be "[swept out](#)" of the country in the coming year.

In a country with no institutions and hardly any individuals able to express criticism of the government, academic researchers and lecturers at CEU are among the few who are still able to voice dissent. Not only are they intellectually capable of doing so, but they also are not dependent on government money, unlike their colleagues at state research centres and universities.

2.2 Attracting far-right voters

The second supposition why a politician would launch these attacks against CEU is that they might succeed in attracting far-right wing Jobbik voters, for which the anti-Semitic overtones of attacking Mr Soros and Soros-funded entities provides an ideal tool. Government politicians may also wish to test the reaction of undecided voters (right column in the figure below), who will play a major role in the upcoming 2018 elections.

Voter preferences in Hungary in February 2017



Source: <http://kozvelemenykutatok.hu/>

2.3 Ideological differences

A third possible explanation traces the events back to the government's ideological roots. CEU and its founder Mr Soros represent everything the government is fighting against or is suspicious of, such as the rule of law, fundamental rights, multiculturalism, tolerance, accountable government, transparency, justice, equality, liberal democracy and open society. Students are encouraged to engage in independent critical thinking, to stand by their ideals and change the world. As Mr Soros says in his autobiography *Soros on Soros*: Karl Popper, author of *The Open Society and its Enemies* influenced him with his writings and his thinking in the fight for democracy. It is in this spirit that Mr Soros established the Open Society Foundations – also present in Budapest, with an annual budget of around €800 million – funding projects defending among others the rights of vulnerable communities, assisting the democratic development of the countries of Eastern Europe and the former Soviet Union and advancing the rights of Roma communities in Europe. It is in this spirit that CEU was founded, and this is the spirit disliked by the Hungarian government.

Not that the governing party follows a clear ideological line. Fidesz was originally a party contributing to the regime change and a great supporter of the idea of liberal democracy. The Prime Minister and many other Fidesz politicians received Soros scholarships, which enabled them to study abroad. While originally adhering to the liberal tradition, Fidesz slowly turned into a conservative party – but that does not explain its abandoning the path of the rule of law. The way the party operates becomes clearer if one realises that the shift to conservatism was not the result of a thoroughly discussed change in the ideals of party members. Rather, it was triggered solely by an opening in the political arena, which the party opportunistically moved quickly to fill. Other moves by the ruling party have also been pragmatic, targeted and informed by a desire to acquire and retain political and financial power at all costs. But this desire fits ill with the concept of checks and balances, rule of law and democracy, obliging the government

to turn towards illiberalism and like-minded powers. This explains why Fidesz's strong anti-Russian sentiments vanished and why Mr Putin turned into one of Hungary's main allies.

2.4 Ties to the US

In a fourth attempt to explain the attack on CEU, some contend that the government wishes to force the US to engage in a dialogue with Hungary. When President Trump came to power, Prime Minister Orbán [interpreted](#) this as “an authorisation from the highest secular place that we are free to put ourselves at the head of the line [so that] national interest will be at the forefront”. Expectations were high: Mr Orbán also hoped to find an ally for his illiberal policies in the new US administration. But President Trump could not care less about Hungary. Satisfying its *Machtwahn* – some Hungarians speculate – the Fidesz government may now see a chance in opening up negotiations with the US under the pretext of discussing the presence of CEU in Hungary.

A related, but more convincing explanation suggests that Fidesz would like to test President Trump's approach towards Mr Soros. So far the plan seems to be ill suited, as the US interpreted the case as an issue involving academic freedom. The Chargé d'Affaires of the US Embassy in Budapest has issued a [statement](#) in support of CEU, the Acting Spokesperson at the US Department of State [voiced](#) US concerns and US Senator Ben Cardin, Ranking Member of the Senate Foreign Relations Committee, also [spoke out](#) in support of CEU. Instead of responding to these reactions in a meaningful manner, the government decided to recall the Hungarian ambassador in Washington, since – in the eyes of the government – she failed to satisfactorily explain the legitimacy, neutrality and indiscriminate nature of Lex CEU to the State Department – a tall order to fulfil indeed.

3. HOW? How was support for Lex CEU generated?

3.1 Alternative facts aka lies

Support for the law was created by relying on ‘alternative facts’, to use a fashionable euphemism, and by suggesting that CEU and its spirit undermine Hungary's national interests, and possibly also national security.

The government contended that the university was in breach of the law, whereas only administrative mistakes were found by the Educational Authority, but even those were already being corrected. The Prime Minister accused CEU of fraudulent conduct, of “[cheating](#)” for not complying with the law that the Parliament was about to adopt (cf. the prohibition of retroactive laws). Fidesz's parliamentary faction leader labelled CEU a [phantom university](#), “with two secretaries sitting under a CEU sign somewhere in New York”. This indeed is difficult to interpret. CEU does not have an office in New York and never claimed it had one.

As it is well known, CEU is a Budapest-based university accredited in the US. There is nothing peculiar about it. Just like the American University in Cairo, the American University of Paris, the American University in Bulgaria, the American University of Bosnia Herzegovina, the American University of Central Asia, the American University in the Emirates, etc. do not have

campuses in the US, CEU does not have one either. The fact that CEU does not have a US base does not jeopardise its academic excellence in any way. On the contrary, it is well documented that the university is by far the most prestigious institute of higher education in the country.

Other strategies can be deduced from the terminology used. The government knows well that words matter. State-captured media sources consequently refer to CEU as an “elitist university”, which plays on people’s envy and jealousy by suggesting that only a small segment of society has a chance to be enrolled. The allegation that CEU is isolated from Hungarian academic life could not be further from the truth. Anyone with even a little familiarity with the Hungarian situation will know that CEU is well integrated into the country’s system of higher education.

The university has played a major role in establishing ties between the Hungarian academic community and the rest of the world. It has the richest library in Hungary, which is accessible to anyone, not just the CEU community. Furthermore, the university organises several public lectures, seminars and conferences each week, which anyone can attend and benefit from listening to leading scholars from across the globe. Grants and scholarships offered to Central Eastern European students make it possible for anyone – meeting academic standards and speaking sufficient English – to enroll.

Another allegation is that CEU presents comparative disadvantages for other Hungarian universities by offering two degrees. But the truth is that the university went through very demanding accreditation procedures, and the students who earn double degrees have to perform extra tasks. The floor is open: any university is free to have its programme accredited in another country, if it can meet the requirements. From the inflowing letters of solidarity it is clear that Hungarian intellectuals did not fall for this technique of “divide and conquer”.

The suggestion that a lesser share of state funds is available to Hungarian universities due to CEU’s presence is also a lie. CEU is not a beneficiary of any Hungarian state funds. On the contrary, CEU annually pays millions of euros in taxes and employs more than 1,200 individuals, including hundreds of Hungarians. Neither is it true that the university’s financial status was not transparent. Unlike many state-funded Hungarian higher educational facilities, CEU makes all its finances [public](#).

3.2 Lies continued: CEU as a threat to national identity and national security

An alternative denomination for CEU is “Soros University” suggesting that Mr Soros influences the curriculum. This again is a false statement: the founder made it clear from the very beginning that he does not wish to influence the operation of CEU in any way. The faculty is responsible to the Board of Trustees consisting of distinguished scholars from UC Berkeley, Columbia, Harvard, Oxford and UC Stanford, inter alia.

Fidesz-member MPs went one step further claiming that CEU was a politically-biased [military academy, whose](#) aim is among others to undermine government policies. It is alleged that the political bias of pushing through a liberal agenda is proven by the existence of CEU’s Gender Studies Department. The charge of course is nonsensical: CEU is an independent academic

organisation, having undergone the most stringent accreditation procedures in two countries, and with a faculty of highly respected and renown professors from all over the world.

Anti-Soros sentiments are disguised in the form of national identity, which currently includes anti-Western, anti-European and anti-Brussels sentiments. Lex CEU fits into a broader agenda of fighting against anyone still capable of voicing dissent. In the domestic setting – beyond CEU – there still are some civil society organisations that can formulate government criticism, not least because they receive Soros funds. A law will be adopted against them in the coming days. According to the bill, any association or foundation receiving foreign support above the amount of €23,200 will have to notify the courts. EU money is exempted, but only if it is distributed by the Hungarian state through a budgetary institution. The organisation receiving foreign money will be labelled as a “organization supported from abroad”, which must be indicated on the entity’s website, press releases, publications, etc. Organisations shall retain that status for five years following the termination of foreign financial support.

The bill is problematic in many aspects: it mimics Russia’s worst practices, which have been [condemned](#) by international organisations as violations of freedom of association and free speech. It sends the message that NGOs are somehow non-transparent or are in the service of foreign government interests. The law may lead to the shutting down of several NGOs that do not wish to be so-labelled, or whose funders do not wish to continue to support them. Since Hungary is not known for having a culture of philanthropy, this will mean that only NGOs dependent on state money will survive, and the opinions of all the others will be dismissed as serving foreign interests.

The government’s tactic of labelling Mr Soros, the CEU faculty and NGO representatives – virtually anyone still capable of formulating dissent in Hungary – as foreign agents was recently taken to a whole new level: these individuals and entities are said to pose a national security threat to the country. This is getting very close to demonising dissenters as terrorists and indeed the government claims that NGOs receiving foreign support – i.e. the most professional ones – are helping asylum seekers, and among them terrorists, enter the country. The explanations of both the draft law on civil society organisations and Lex CEU refer to the protection of national security among the objectives of the norms. This by the way is a smart move from a legal point of view, and can serve (i.e. be abused) as the basis for lobbying for exemptions from European standards.

4. WHAT WILL HAPPEN NEXT?

4.1 Possible future scenarios

At the time of writing, demonstrations continue to be staged in Budapest and elsewhere in Europe. ELTE Law School in Budapest has cancelled classes and has organised a conference on academic freedom and Lex CEU. Regardless of the subjects they are teaching, professors are devoting time to discussing the concepts of democracy and the rule of law with their students. Some are even refusing to lecture until Lex CEU is withdrawn. The democratic opposition plans to initiate a referendum against the law (and against a third renewal of the Prime Minister’s

position, thereby preventing both current PM Viktor Orbán and former Socialist PM Ferenc Gyurcsány from holding this office after the next elections).

Protesters in front of CEU after the controversial law was adopted



Source: Edit Kalman Photography.

CEU leadership have made it clear that they intend to fight for the continued operation of the university in Budapest and seek all available legal remedies – request the President not to sign the law, initiate constitutional review, and if need be, will turn to ordinary courts, the Constitutional Court, EU institutions and the European Court of Human Rights. They have expressed a strong commitment to Hungary and to remaining in Budapest.

But if the international agreement requested by Lex CEU does not come into being, and it is impossible for CEU to continue its operations in the Hungarian capital, it will most likely move. Any Central and Eastern European state would welcome the university – [Vilnius](#), [Ślupsk](#) and [Vienna](#) have already invited CEU to their towns. The loss would therefore fall far more heavily on Budapest and on Hungarian academic life than on CEU. Not only are CEU faculty members not foreign agents or threats to national security, but it is a vital national interest for the university to stay, prosper and enhance the reputation of the Hungarian capital and its academic life.

4.2 Lessons learned

There are two lessons to be drawn from the unhappy experience of Lex CEU. Even though the law is a clear attack on academic freedom, excellence and knowledge in general, its implications are much broader. At the same time, it also goes way beyond a *Kulturkampf* of defending or destroying liberal values. Ultimately, the attack against CEU is an attack on the rule of law.

The case of Lex CEU is not solely an issue of national academic freedom. Dismantling the rule of law and committing mass violations of fundamental rights have overarching consequences for the EU as well. Beyond harming the nationals of a member state, Union citizens residing in that state will also be detrimentally affected by national government policies. Moreover, all EU citizens will to some extent suffer due to the given state's participation in the EU's decision-making mechanisms, or at the very least the legitimacy of the Union's decision-making process will be jeopardised.

Thus, a state's departure from the rule-of-law standards and the European consensus will ultimately hamper the exercise of rights of individuals EU-wide. A weak response to illiberal practices may also encourage other member state governments to follow suit, and subject other countries' citizens to an abuse of their rights. In other words, violations of the rule of law may, if there are no consequences, become contagious.

Autocratic techniques spread rapidly: Hungarians copied a Russian policy employed vis-à-vis the European University at St. Petersburg and just a few days after Lex CEU had been proposed, former Romanian Prime Minister Victor Ponta expressed his enthusiasm for the Hungarian law. Mr Ponta, now an MP in the Romanian Chamber of Deputies, intends to propose a similar law, in order to restrict the activities of foreign universities in his country. This is a hardly hidden attack on two Hungarian state-funded universities: the Sapientia Hungarian University of Transylvania and the Partium Christian University.

So, who is violating national interests after all? Ironically, Fidesz's moves against CEU may indirectly pave the way allowing the harassment of the Hungarian minority in Romania, in contradiction of the government's insistence that the protection of national minorities outside the borders of Hungary ranks high on its agenda.

If properly constructed, the case of CEU is not about liberal values either, but rather about *liberal democracy*. An important aspect of the storyline is that several Hungarian conservative intellectuals recognised this and stood up for CEU. Academic freedom, freedom of expression, human rights and the rule of law in general are not some kind of a liberal agenda, these are European values, irrespective of one's political party preferences.

4.3 The responsibility of European institutions

It is high time for the EU to acknowledge its vital importance and act accordingly, and for the European institutions to employ diplomatic and legal sanctions against those undermining EU foundations. As German President Frank-Walter [Steinmeier](#) said to the European Parliament: "...if we want to be a lighthouse in the world for the rule of law and for human rights, then we

cannot ignore when these foundations are shaken... Europe, then, must not be silent, when civil society, even academia – as now at Central European University in Budapest – are deprived of the air to breathe.”

The statement by Carlos [Moedas](#), European Commissioner for Research, Science and Innovation concerning lex CEU – backed up by First Vice-President Frans Timmermans – is also promising, but far more than a “full and thorough analysis of this law” is called for under the present circumstances. Previous diplomatic statements, threats to use Article 7 TEU or the Tavares report have all remained without serious consequence. The controversy about CEU also shows how little influence mere words exert on the government. Its sole [reaction](#) was to claim that everyone showing support for the university and criticising the government – from the most distinguished scholars in the world, including 20 Nobel prize laureates, to the European People’s Party, Fidesz’s own party family in the European Parliament – were “gravely misled (sic) by the propaganda and private agenda of the American billionaire Soros”.

The logic that it is better to have the black sheep inside the flock rather than outside has informed EU policy for too long. The past seven years have proved this approach to be dysfunctional. The reasoning that the EU sanctioning a member state – by making use of Article 7 TEU, for example – may have the opposite effect and be exploited by stirring up anti-EU sentiment is not convincing either. Brussels has already been used as a convenient scapegoat in too many instances, and stepping outside the EU will in any event be on the agenda once Hungary ceases to be a net beneficiary. In the meantime, an autocratic regime is being built with EU money.

It is inconceivable why the EU refrains from firmly standing up for its own values, and in one way or another making use of the power of the purse – the only convincing tool available to it for disciplining an illiberal government of a net beneficiary country. Commissioner Günther [Oettinger](#) presented a response in the form of a conspiracy theory, suggesting that it is not in the interest of EU member states to employ financial sanctions against rule-of-law violators. He contended that it is ultimately Germany that benefits from EU money pouring into Central European member states, and therefore it was rather ambiguous which country was a net beneficiary and which one was a contributor to the EU budget. Should Hungary – or Poland for that matter – be sanctioned, it would hit German companies at the end of the day. Fidesz leaders also followed this same line of reasoning (i.e. that financial benefits to Hungary are lower than what the numbers actually show) paving the way for secession.

In a country where domestic checks have failed, the only control mechanism left is the resort to international law, including international courts protecting the rule of law. Accordingly, both EU and Council of Europe tools to enforce the rule of law and fundamental rights play a pivotal role. It therefore will come as no surprise that the Hungarian government is attacking both entities. Simultaneously with submitting the draft for Lex CEU and the bill attacking civil society organisations, in the zeal of the upcoming elections the government initiated a national consultation “[to stop Brussels](#)” from intruding into Hungarian national affairs.

At about this same time, the European Court of Human Rights declared Hungary's refugee policy – or, more precisely, its incarceration of asylum seekers in so-called transit zones – to be contrary to the European Convention on Human Rights. Forces close to the government and politicians, including the [Prime Minister](#), reacted rather hysterically in interpreting the judgment as an attempt by the ECtHR to prevent Hungary from efficiently protecting its borders and citizens. They advised the government to appeal the judgment and if appeal was not successful (which is highly likely), not to enforce the judgment; to take measures to derogate from Hungary's obligations under the Convention; and should all the above prove to be unsuccessful, they suggested that – in an unprecedented move – Hungary should step out of the Convention.

This is more political rhetoric than a viable option, but it is not without precedent. In 2015, the Prime Minister fantasised about reintroducing the [death penalty](#), which would also inevitably lead to Hungary opting out of the Convention. Even though such ideas are certainly nonsense and are probably not even taken seriously by those who express them, they are a worrying trend. Whereas a majority of Hungarians are still pro-European, questioning foundational European values and interpreting human rights mechanisms by the established European courts as an attack on national sovereignty, may easily shift public sentiment towards secession.

This is a disturbing suggestion, which automatically calls into question Hungary's European Union membership as well, since ratification of the Convention and Council of Europe membership are prerequisites of EU accession. Seceding from these European organisations would also mean leaving Hungarian citizens and legal persons without an external rule of law and fundamental rights supervisory mechanism. These external mechanisms are currently the only robust and efficient ones remaining in the country, where domestic channels of rights protection are already captured by an illiberal state.



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