Legally sophisticated authoritarians: the Hungarian Lex CEU

Gábor Halmai

31.03.2017 doi: 10.17176/20170401-102552

On 28 March the Hungarian government tabled an amendment to the Act on National Higher Education in Parliament. Even though the draft is formulated in normative terms, the only targeted institution is the Central European University (CEU), founded by George Soros, one of the main enemies of the Viktor Orbán's 'illiberal state'. Michael Ignatieff, former professor of Harvard University's John F. Kennedy School of Government, current president and rector of CEU assessed the draft as a discriminatory political vandalism, violating Hungarian academic freedom. Here I do not want to deal with the clear ideological and political motivations of the action of the current Hungarian Prime Minister, a that time liberal recipient of Soros's financial support during his studies in Oxford three decades ago.

I want rather focus on the behavior of a contemporary authoritarian (or dictator, as Jean-Claude Juncker, the President of the European Commission once greeted him). As William Dobson argues is his book, The Dictator's Learning Curve, "today's dictators and authoritarians are far more sophisticated, savvy, and nimble that they once were". They understand, as Orbán does, that in a globalized world the more brutal forms of intimidation are best replaced with more subtle forms of coercion. Therefore, they work in a more ambiguous spectrum that exists between democracy and authoritarianism, and from a distance, many of them look almost democratic, as the leader of Hungary, a Member State of the EU, does. Their constitutions, as the Fundamental Law of Hungary, often provide for a division of powers among the executive, the legislature, and the judiciary – at least on paper. They are also not particularly fearful of international organizations. Even a threat of foreign or international intervention and criticism can be a useful foil for stirring up nationalist passions and encouraging people to rally around the regime, as for Orbán, who claims to protect Hungary to became a colony of the EU. If necessary, they use the most refined European discourses, for instance about national constitutional identity, as the Orbán government did in order not to take part in any European efforts to solve the refugee and migration crisis. And as opposed to previous dictators of the old good times of totalitarian regimes, who just closed up organizations they did not like, without any scruples, today's authoritarians take advantage of formalistic legal arguments against their enemies. The Russian authorities in the fall of 2016 revoked the educational license of the European University in St. Petersburg following unscheduled checks in the buildings referring to several violations against regulations, such as lack of fitness room and an information stand against alcoholism.

Similarly, the new draft law of the Hungarian government also uses legal tricks to force CEU to cease operation in Budapest. Such a clearly unacceptable requirement would be to open an additional campus in the State of New York. This wasn't a condition in 1995, when CEU, holding a charter from the New York State Education Department, received its license to operate in Hungary from the Ministry of Culture and Education. Like other international universities chartered in the US, CEU does not maintain any academic or other programs in the United States. Moreover, in 2004 Hungary promulgated a special law on the establishment of Közép-európai Egyetem (KEE) as a Hungarian university, which was accredited by the Hungarian Accreditation Committee together with ten graduate and doctoral programs of the CEU as programs of KEE. Ever since the university has a dual legal entity, as KEE and CEU, but it is one university with only one

campus, one academic staff, senate and rector, the latter appointed by the President of Hungary. According to the new law Hungarian universities could only deliver programs of European universities and not of countries from the OECD (including the US), therefore KEE, the Hungarian university could no longer deliver its single set program with CEU, which was allowed under the current law.

The amendment if passed would make it impossible for CEU to continue its research and teaching activities, including its highly ranked comparative constitutional law LLM and SJD programs. This violates scientific freedom in Hungary, which on paper is still part of the Hungarian Fundamental Law. In the absence of an independent constitutional court in Hungary, the only domestic 'remedy' which one can imagine in an authoritarian regime is that the 'wise leader' graciously withdraws from his plan.

ABOUT THE AUTHOR

Gábor Halmai

Gábor Halmai is Professor Emeritus at Eötvös Loránd University and the European University Institute, Florence, and a visiting professor at LUISS Guido Carli in Rome.

SUGGESTED CITATION

Halmai, Gábor: Legally sophisticated authoritarians: the Hungarian Lex CEU, Verfassungsblog, 31.03.2017, doi: 10.17176/20170401-102552.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20170401-102552.