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OVER-CENTRALISATION IN HUNGARIAN HIGHER EDUCATION: REASONS AND CONSEQUENCES

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ABSTRACT

While delivering an example for the problem of over-centralisation, the present paper is a case study. First, it puts the problem of over-centralisation of Hungarian higher education into the context of the operation of an illiberal state and creates a link with each other of the theoretical questions of autonomy, university and academic freedom. In this section, the paper is substantiated by references made to scholarly literature.

Then, the major part of the paper concerns the current governance of the institutions of higher education in Hungary. In this respect, it relies on the effective law on higher education and relating legal regulations. A starting point for the analysis of the current Hungarian law on higher education is the criticism of the official thesis – even enshrined in the constitution –, according to which academic and non-academic competences can be separated from each other administratively.

A particular emphasis is placed in the paper on the distinction between sectoral powers of public control and the maintenance by the state of institutions. The various barriers of academic freedom and institutional autonomy are also highlighted. They are: internal democracy deficit, discretionary allocation of academic contingencies, centralisation of training programmes, and arbitrary decisions of the government on granting privileges to certain institutions of higher education. Financial barriers to institutional autonomy are also discussed.

KEY TERMS: institutional autonomy – academic freedom – governance of the institutions of higher education – academic competences – non-academic competences – sectoral powers of public control – maintenance by the state of institutions – allocation of academic contingencies – centralisation of training programmes

Centralisation or decentralisation is, in itself, concepts without value judgment: it is possible to centralise the tasks of a community in a variety of historical cases well or poorly. The situation is different with over-centralisation, which can be attributed to excess power, to the breakdown of the checks and balances, and to a lack of freedom and democratisation. For an attentive observer, over-centralisation cannot be explained simply by personal ambitions or by the performance of certain politicians. One must look for structural causes instead. The main reason for over-centralisation – whether of economic or political nature – is that there are no institutional guarantees that would allow halting the concentration of power. This is a lesson János Kornai drew already in the 1950s, analysing a particular industry in the early phase of a centrally planned economy.¹

Over-centralisation can be traced back to modernisation problems, experienced in the region of Central and Eastern Europe several times in the recent three centuries. In Hungary, recurrence of the autocratic forms of political power to our life can be discovered since 2010. This movement can be likened to a U-curve.²

The current state of affairs in the field of Hungarian higher education can be put in the context of the operation of an illiberal state where over-centralisation prevails. In the present paper, the major reasons and consequences of alleged over-centralisation will be illustrated through the example of the governance of Hungarian higher education. The major components of the governance of current Hungarian higher education can be enumerated as follows:

- bureaucratic classification of institutions into administrative types;
- central administration of training programmes;
- central legal regulation on the entry of students into an institution of higher education;
- direct state control of the quality of academic performance;
- centralised financial affairs of higher education; and
- overarching state control over the institutions of higher education.

This is the criteria, alongside which it will be possible in the paper to show how Hungary has developed a system of all-encompassing centralisation of higher education since the autumn of 2012, the time the new law on higher education entered into force.³

1. Academic life under the constant pressure of direct and partial economic needs and particular political interests

Over-centralisation has prevailed in an illiberal state in Hungary because, due to a shortfall of political freedoms, the functional relations between the state and society, or politics and civil society, that simultaneously exclude and assume each other have not developed sufficiently. Under such circumstances, there has not been an equilibrium between the taxing state and a competitive economy. Remarkably, the various spheres and institutions of social life (schools, hospitals, municipal governments, etc.) have not been emancipated enough against the pressure of ideologies and politics. Therefore, the daily life of society cannot be really infiltrated by professional, civic and democratic deliberations.

¹ "Review by David Granick, 'János Kornai, Overcentralization in economic administration: A critical analysis based on experience in Hungarian light industry, Oxford University Press, London, 1959; transl. by John Knapp'", *Soviet Studies*, Vol. 11, No. 4, April 1960, at 421.

² János Kornai, "Hungary's U-turn", *Capitalism and Society*, Vol. 10, Issue 2, Article 1, March 2015, p. 14.

³ See Act CCIV of 2011 on national higher education, as amended.

In an illiberal state, the holders of power systematically undermine the autonomy of institutions that enjoy full recognition in a plain parliamentary democracy. Under the rule of an illiberal state, a nation and its country can easily become a victim of constitutional abuse.⁴ Actions made against political liberalism stem from the experience that, over the past decades, individual rights have all over the world turned against citizenship rights. This phenomenon can also be described in a way that democracy has been subverted and somewhat swallowed up by liberalism that makes democracy meaningless.⁵

Currently, there is in Hungary a centralised system of maintaining public schools, teachers are forced to enter the National Chamber of Pedagogues, a national curriculum is introduced that is uniformly applicable to all schools and their teachers, schools do not enjoy organisational and financial autonomy. Higher education was at the 2012-13 round expected by the prime minister to be self-financing. This is a sign that reveals the current government approach to higher education, even if public funds continue to come to meet the basic needs of academic activity. The principles of the "Magna Charta Universitatum" promulgated at Bologna in 1988 – such as freedom, independence, unity, and humanism – are currently in the Hungarian system of higher education mainly ignored.

Dealing with Hungarian higher education means that there are mainly state-run institutions that can be taken into account, and non-state (ecclesiastic, foundation-based, foreign-owned, etc.) institutions are in a dwarf minority (the total number of higher education institutions is less than one hundred in the whole country). Since autumn 2012, public universities have been subject to the direct control of the government. In the spring of 2017, the Hungarian government has taken strong measures against non-state institutions as well to ensure public control over their academic activity. Of course, the delegation of a chancellor by the government cannot be used as a means of state control in respect of non-state institutions. Other methods of enforcing state control have been applied, however. Examples for these are: the cross-border exchange of academic programmes and academic staff has been subject to ad hoc licensing of public administration.

In the current academic life, it is a real danger all over in the world that theoretically based, comprehensive knowledge will be overshadowed by separate pieces of partial knowledge in the instance that modules of education and scientific research become interchangeable with each other in terms of accounting units. The result of such a restrictive policy is one-dimensional and narrow-track training. Market opportunism debilitates critical and universal academic knowledge. If the question is raised whether disciplined students are needed who should be provided with the pre-fabricated knowledge that is subordinated to instrumental rationality or a rope should be given to students and, in this manner, they seek their own way to solve problems, the answer is unfortunately likely that the former, rather than the latter scenario can be realised.⁶

The Hungarian higher education suffers from the particular fact that academic activity is simultaneously subjected to direct and partial economic interests and academic autonomy falls as a prey to political power, the ambition of which is to oust ideologically non-loyal cadres from the neighbourhoods of Hungarian universities and to create a mass of its own

⁴ David Landau, "Abusive Constitutionalism", *University of California Davis Law Review*, Vol. 47, Fall 2013, p. 189.

⁵ Alain de Benoist, "The Current Crisis of Democracy", *Telos*, Vol. 156, Fall 2011, p. 4.

⁶ Noam Chomsky, "Thinking like corporations is harming American universities", *Alternet*, October 8, 2014; <https://www.alternet.org/education/chomsky-thinking-corporations-harming-american-universities>, pp. 6-7.

system-believers. In current Hungary, the logic of Martin Heidegger prevails as explicated in 1933.

According to it, knowledge is fragile and exposed to fate. It is therefore not self-esteem, but it must be subordinated to hierarchically organised power. University autonomy should then be a blank, meaningless expression.

Knowledge should be a means of reality-transforming power. One must still assume the risk of inadequate knowledge. In the circumstances of such general uncertainty, solutions cannot be found in reflection, but in goal-setting, to which leaders (Führers) are needed. So, academics should be ready to serve the leadership inside and outside the university. Therefore, the real university does not need academic freedom, which is a matter of neglect and mere negativism, and which is nothing more than the whims of intentions and inclinations, and alienation from actions.⁷

2. Autonomy and its limits – theoretical considerations

2.1. Institutional autonomy

2.1.1. Autonomy and autopoiesis

The basic patterns in a living organism are structure, function and mental response. The clockwork is autonomous to the extent that it is isolated from its environment and uses energy for its operation independently, but the operation of a clock does not require a closed information system to be created through self-referral and interaction. The clockwork proceeds under the law of entropy in the process of its existence from order to chaos, and from dynamic imbalance to equilibrium until it ceases to exist.

A living organism constitutes an open system that is in the state of continuous energy and metabolism. The values taken by the variables of the living system fluctuate continuously within certain limits by bringing about homeostasis. This ensures that the constituents of the system are aligned with each other so that the system can be sufficiently stable.⁸

Social subsystems can be interpreted in a historical process of individual self-empowerment. It can be done from a sociological perspective of functionalism where instead of the relationship between the object and the subject, the functional aspect of the system and its environment (self-reproduction and observation) can be raised.⁹ Upon functional differentiation, an aspect of social practice becomes prominent, in which the integrity of emerging systems can ensure the organisation, and even self-governance, of groups on a micro scale in a course of self-reproduction and readjustment. As a result of such development, "sui generis" management systems are created.¹⁰

Autonomy is a sociological phenomenon that is different from that of autopoiesis. The latter cannot be described simply by cause and effect relations. It is necessary instead to

⁷ Martin Heidegger, *Die Selbstbehauptung der deutschen Universität; Rektoratsrede vom 27. Mai 1933*, Verlag Herder GmbH, Freiburg im Breisgau, 1934; pp. 5-22.

⁸ Fritjof Capra, *The turning point*, Bantam, New York, 1984, pp. 157-158.

⁹ Niklas Luhmann, "The unity of the legal system", Gunther Teubner (ed.), *Autopoietic law: A new approach to law and society*, Walter de Gruyter, Berlin, New York, 1988, p. 13.

¹⁰ Charles Ackermann, Talcott Parsons, "The concept of 'social system' as a theoretical device", Donald McQuarrie (ed.), *Readings in contemporary sociological theory: from modernity to post-modernity*, Prentice Hall, Englewood Cliffs, N.J., 1995, p. 24.

refer to functional differentiation. Upon functional differentiation, an aspect of social practice appears, in which the integrity of systems can assure the organisation of small groups in the process of self-reproduction and observation. The social space becomes reality through internal justification and explanation, that is, virtually. The theorisation taking place on a small group level makes socialisation possible.

Autonomy is, in general, independence or freedom from outside control. More precisely, autonomy is a matter of degree, ranging from autarchy to total dependence. Autopoiesis is rather self-dependence. Autonomy is non-correspondence to other social factors. Autopoiesis is, in contrast, reflexivity and circularity. Autonomy is at the crossroads of the pursuit of interests. Autopoiesis is rather self-observation. Autonomy derives from institutional and occupational specialisation while autopoiesis is the product of the functional differentiation of a social subsystem.¹¹

Some layers of social reality are converted into juridic ones and, this way, social conflicts can be handled. The ready-made juridical reality reverses to the non-judicial reality. So, the boundaries between law and non-law are dissolved (this is called as reflexive legal regulation). Reflexive legal regulation can be applied where the correction of self-regulating mechanisms can take place without material intervention.¹²

2.1.2. The emerging idea of the institution of the university

The many centuries-long fulfilment of individuality in Western societies has led not only to autonomy, but also to functional differentiation, which is manifested in subsystems, that is, in institutions that cannot be interpreted physically in space and time, but functionally. There are adaptive, objective, integrative and latent subsystems that appear in the economy (resources and product release), in politics (articulation of the community's will, e.g., through legislation), in the institutions of social integration (value creation and normation, citizenship, loyalty and solidarity) and in small communities (family and school, spirituality, trust structures).¹³

Social subsystems work effectively and efficiently when the interaction between the subsystems is completed. On a level of lower social development – for example, in the stagnating Central and Eastern European societies – social spheres do not interact with one another, they do not become functional subsystems, but one or another power structure subconsciously submerges non-instrumental social structures. Then, the expression of communities will be weaker, and the mechanisms of outer social control will be tougher.

The institution of the university is the historical product of the medieval Western Europe where the name "studium generale" was first used, and it was indicated that it is an institution that anyone can visit. As it can be seen, students are at the very centre of thinking about the university. The term "universitas", however, refers to the universality of the faculty. So, the question is not about the universality of scientific fields in either of these cases, although the unity of education and science – an idea that is capable of justifying the institution of the university – is later a key to establishing the institution of the university.

¹¹ David Nelken, "Changing paradigms in the sociology of law", Günther Teubner (ed.), *Autopoietic law: A new approach to law and society*, W. de Gruyter, Berlin, New York, 1988, pp. 196-197.

¹² Günther Teubner, "Substantive and reflexive elements in modern law", *Law and Society*, Vol. 17, No. 2 (1983), p. 239.

¹³ Talcott Parsons, Gerald M. Platt, *The American university*; with the collaboration of Neil J. Smelser, Harvard UP, Cambridge, MA, 1973, pp. 375-376.

Historically, the predecessor of university autonomy was the freedom of students to be able to freely travel to a selected university to study there, and this freedom was only later extended to the freedom of the chancellor of the university to have jurisdiction over scholars and students. The current Hungarian system totally lacks the idea that the student's decision should be in the centre of university life, which is maybe the biggest problem of the current Hungarian governance of higher education.

The extreme opposite of university autonomy is total nationalisation, the model of which is the legislature made after the French Revolution in France. Its basis is developed through the abolition of middle ages-related privileges and the introduction of the unity of reason. No account was taken, however, of the fact that, by means of reason alone, it is only possible to achieve unity in the abstract sense or just in the practice of tyranny.

The leading idea of enlightenment is that the creatures provided with reason should look for consensus in their lives. In current Hungary, the chancellor, appointed by the government, is responsible for the reasonable management. Her position, being the head of the state-run university, can be compared to that of the "Grand Maître", effective in the Napoleonic times in France.

2.1.3. Formation and deformation of university autonomy

It does not seem to be sufficient just to refer to reason. Rather, it should be put in social context. Then, reason will be used to organise cooperation. Academic freedom cannot be exercised either individually. It is the fruit of cooperation between scholars. The fulfilment of the demands and conditions attached to academic freedom can be interpreted in the actions of academic collectives.

In these circumstances, the institutional autonomy cannot simply be interpreted as a lack of direct control. It is better to describe university autonomy as a matter of functional differentiation. Then, academic and non-academic matters cannot be separated from each other mechanically. The academic freedom and the operation of autonomous institutions of higher education are only effective where academic contents are developed in line with organisational and financial decisions.

In developed societies, the free elbowroom of the institutions of higher education can be restricted by economic needs and the thresholds of autopoiesis can be determined by the public administration. The logic of functional differentiation should be left intact, however, at a certain level with institutions. Control could ideally be exercised by indirect methods. Short-cut control may cause more harm than benefits to the social stakeholders of institutions.

The humanist idea of the university that has been renovated by Schleiermacher, Schelling, Humboldt and Jaspers has been distorted until the 20th century, until the time the university has become a body of mandarins. The university has thus been deformed into the intellectually elitist, apolitical, conformist self-conception of an internally autonomous institution that remained far removed from practice while intensively conducting research.¹⁴ The academic learning process is no longer based on the unity of academic research and

¹⁴ Jürgen Habermas, "The idea of university – Learning processes", transl. by John R. Blazek *New German Critique*, No. 41, Special issue on the critiques of the enlightenment (Spring – Summer, 1987), p. 13.

education of 18th and 19th centuries, but it is justified through discourse in the community of researchers, thanks to communicative rationality extended to the academic sector.¹⁵

Is the dialogue between the academia and the bodies of non-academic control broken by the intrusion of non-academic power (financial restrictions and administrative interference), the exercise of academic freedom will also inevitably be restricted, or even suspended. The unity creates an ideal position for functional separation, although the recognition of the independence of mandarin bodies does not necessarily arise from the idea of unity. In addition to formal complexes, project groups may also grow while changing, emerging and decaying in their composition. Of course, the functional separation organised by communicative rationality is hampered by the intervention that comes from external spheres, and this fatigue may make it impossible to create a dynamic equilibrium between the system and its environment.

2.1.4. Academic freedom and autonomy

Academic freedom is linked to a profession rather than a plain job, and one can argue that it is only functional if the academic activity is carried on in the public interest and people in the academic sphere can do their job well. Therefore, there should normally not be privileges for academic freedom in terms of work conditions, in the matters of remuneration or in the affairs of university administration.¹⁶ This functional relationship cannot be converted into small coins. If the academic and non-academic tasks were by administrative means separated from each other, as is now the case in Hungary, the bureaucracy will nullify functionality and academic freedom becomes insubstantial.

An inadequate institutional management system is a barrier to the exercise of academic freedom. In the United States, the schemes of shared governance have been developed with regard to academic freedom over the past decades (between elected academic bodies and professional institution management) at a number of universities. A key to university autonomy is in the United States to fully guarantee all the conditions for the exercise of academic freedoms, that is, the freedom to choose who to teach, what to teach, how to teach and whom to teach.¹⁷ Since, under the American case law, an institution (a body) itself can also exercise academic freedom, which may be applied to professors, it is unclear who is the subject of academic freedom. More precisely, the American approach is broad and, in addition to individual scholars, the institution can also be the subject of academic freedom. In such a context, the possibility of conflicts between the institution and its professors must not be left out of consideration, however.¹⁸

The distinction between substantive and procedural autonomy ("what of academe" and "how of academe" matters) corresponds to the Hungarian model, according to which distinction should be made between the core and non-core academic activities. This distinction can be complemented by the American concept of shared governance between elected and professional management, which presupposes a functional, and certainly not a

¹⁵ Ibid. p. 21.

¹⁶ Stanley Fish, *Versions of academic freedom*, University of Chicago Press, Chicago, IL, 2014, pp. 2-6.

¹⁷ University autonomy is determined by the US case law with reference to academic freedoms as follows: "the four essential freedoms of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Sweezy v New Hampshire*, 354 U.S. 234, 250, 77 S.Ct.1203, 1L.Ed.2d 1311, 1957.

¹⁸ Robert Berdahl, *Thoughts about academic freedom, autonomy and accountability*, Workshop proceedings, Sabancı University, Istanbul, 30 November 2010, 8 p.; p. 4.

linear and mechanical, relationship. Academic freedom is universal, institutional autonomy, however, depends on place and time, though its core must be the same everywhere (staff autonomy, freedom of choice for the training programme, and economic freedom with the budget).¹⁹

2.2. Governance of the institutions of higher education under the pressure of capitalism

The accompanying phenomenon of centralisation is the intrusion of the logic of micro-management into the order of governance of the institutions of higher education. In advanced countries, significant centralisation took place in the governance of universities in the past decade, just at the time when the recognition in the management literature was ironically widespread that the centralisation of organisations had more disadvantages than advantages, in particular in the field of knowledge production.²⁰ The question can then be raised: is there a university more in today's capitalism than a consultation centre?²¹ The consequence of centralisation is cronyism, that is, the erosion of regular relationships and their replacement by overriding informal relations. A further consequence of centralisation is the pursuit of rent-seeking, that is, the spread of divergent interests and lobby-driven regulation.²²

The world of universities is in the middle of the process of transformation and currently, we do not necessarily see in the institution of universities the unconditional embodiment of rationalism and, together, progress and evolution that can be individualised.²³ The notion of a researcher and, in general, of academic vocation has widened, and has been watered down, in comparison to Max Weber's perceptions.²⁴ The high degree of centralisation as a management technique, which can reduce costs and increase efficiency, diverts the institutions of higher education into mass products of education and research. Chancellors tend to think that, in the management of knowledge-based institutions, due to the uncertainties that arise, further centralisation is a means of solving problems, although in a variety of different and variable-value environments – such as in the universe of universities – only the integration of local knowledge can be hoped to be a means of effective problem-solving.²⁵

The managerial approach somewhat privatised both the public and non-state universities. This is because the economic environment and government control forced the universities to sell their knowledge as particular products. They are under the pressure of seeking to increase their output (credits and publications). Alternatively, universities might turn into a public institution in the sense that they would be able to bring about knowledge that is produced as knowledge commons. By training and disseminating scientific

¹⁹ Ibid. p. 7.

²⁰ Ben R. Martin, "What's happening to our universities?"; *Prometheus*, Vol. 34, No. 1, 2016, p. 8.

²¹ »In general, the idea is that universities must justify their existence by acting as ancillaries to entrepreneurship. As one government report chillingly put it, they should operate as »consultancy organisations.« « Terry Eagleton, »The slow death of the university«, *Chronicle of Higher Education*, 6 April 2015, 9 p.; pp. 7-8.

²² Ibid. p. 10.

²³ Georg Krücken, »Denkanstöße; Die Universität – ein rationaler Mythos?«, *Beiträge zur Hochschulforschung*, 35. Jahrgang, Nr. 4/2013, p. 86.

²⁴ Georg Krücken, Albrecht Blümel, Katharina Kloke, »The managerial turn in higher education? On the interplay of organizational and occupational change in German academia«, *Minerva*, Vol. 51, 2013, p. 437; Max Weber, »Wissenschaft als Beruf«, *Max Weber Schriften, 1894 – 1922*; Ausgewählt und herausgegeben von Dirk Kaesler, Kröner, Stuttgart, 2002, p. 482.

²⁵ Ben Martin, op.cit. p. 11.

knowledge, and by developing critical skills, universities could make citizens fit for better operating democratic state and manage social processes.²⁶

In the West, penetrating centralisation takes place in a market-oriented macro environment even in the case of state-owned universities. In Hungary, there is a shortage of market access in the economy and strong pressure is coming from political expectations exercised on universities. It is a question of how the market economy and ideological constraint-driven centralisation differ from one another. The policy of centralisation brings out the same characteristics on the surface, but the centralisation driven by forces outside the economy can be more prominent because it lacks the background of market-based demand constraints and value-pluralism. The goal of saving and considerations of cost-efficiency are also a motif of Hungarian centralisation, but the impression is widespread that more important factors of the centralised scene are political control of the academic intelligentsia and the controllability of training by non-economic means.

3. The effective governance of the institutions of higher education in Hungary

3.1. Individual rights, institutional autonomy suppressed by government representatives and the artificial separation of academic and non-academic competences

In a narrow sense of public law, the autonomy of the institutions of higher education cannot be interpreted as the right of an institution of higher education in opposition to the state. Universities should not constitute an area, to which the state could not enter since autonomy is only a means of expanding academic freedom, and academic freedom is not right that would be held by an institution, but rather by individuals or groups of individuals, performing a given piece of work. From the point of view of organisation and science sociology, the existence of an autonomous institution is still the prerequisite for the effective and efficient institutional governance.

Autonomy provides a framework, in which an autonomous institution is able to deliver the best performance while working groups make their dealings with external management representatives, and even fight with their own internal people. This is true, even if autonomy is not directly under constitutional protection, as opposed to academic freedom. Individual rights cannot be meaningful unless they are supplemented by collective rights. From this angle, autonomy can be seen as a constitutional value that is to be highly protected. In this respect, the ultraliberal perception must be overcome that rights could only be interpreted as individual rights and that they could only be grasped in so far as they are aimed at demands expressed in financial terms.

The essence of autonomy is that the academic freedom of individuals is transferred to working communities. Academic activity is carried on in a process, in which the values of freedom and collectivism are combined with each other. From this point of view, the administrative separation of narrow-minded academic and non-academic (i.e., organisational and financial) matters from each other is unacceptable. If decisions concerning the creation and distribution of academic contents can be directly vetoed due to strict financial considerations, one can fear that there will be in practice no autonomy longer either in academic or in non-academic matters.

²⁶ Willem Halffman, Hans Radder, "The academic manifesto: From an occupied to a public university", *Minerva*, Vol. 53, (Springer, 3 April 2015), pp. 175 – 176.

Currently, Hungarian state-run institutions of higher education suffer from an adverse practice that is mainly attributed to the general authority of chancellors. This is eventually not compatible with statutory regulations, according to which the chancellor, nominated by the government, does not have the power of representing the institution in general terms, but strictly within the matters as specified by law. The reduced power of the chancellor as provided for by law has been still superseded by the sociological reality. This is because, in practice, university citizens are quick in showing their loyalty to the superior authorities, including their chancellor.

The state-owned Hungarian institutions of higher education are not only subject to chancellors nominated by the government, but also to the so-called consistories that are dominantly influenced by the government. The latter is a body that has the power of veto in connection with the institutional development plans, including the institutional R+D+I strategy. This way, the autonomy of institutions is confined to designing development projects of academic nature, strictly speaking. Under these circumstances, the autonomy of universities has been taken away in Hungary in a manner that is unparalleled in Europe.

Due to the appointment of chancellors and the establishment of consistories at state-run institutions of higher education, the Hungarian government interferes with institutional autonomy not only by means of sectoral control but also directly, through the maintenance of institutions. The ideal function of sectoral governance is to ensure the conditions of the order of rule of law and act in a neutral way, irrespective of the fact by whom the affected institutions are owned and maintained. In this context, the academic activity that passes in the examination of independent academic quality control should be equally financed by the state. In addition, in respect of state-run institutions, the government as the maintainer of institutions is responsible for the proper provision of funds and infrastructure.

The Hungarian institutions of higher education enjoy by law freedom in specifying the contents and methods of education and scientific research. This independence is sharply restricted, however, by several factors, not to mention about the appointment of chancellors and the establishment of consistories. Namely, the decisions of the institutions of higher education on how academic contents can be developed can be restricted by the legal classification of institutions into a type of institutions, by the control of training programmes, by the centralisation of the student admission and, finally, by centrally determined financing conditions.

The institutions of higher education have been to date put in the conditions of a global and digital environment where the linear and hierarchical management is all the less able to meet the functions arising from an environment where academic and non-academic competences are artificially separated from each other. At internationally successful universities, the linkage of academic and non-academic (organisational and economic) decision-making competencies is completed not primarily at the top of the institution, but at the level of particular projects and bidding teams, i.e., much lower. It is only possible to be successful in the academia if individual working groups have a significant margin of elbowroom. They could thus rely on their own budget and be authorised to conclude professional cooperation agreements, research and exploitation contracts and the like.

3.2. Details of the governance of state-run institutions in Hungary

3.2.1. Designing the relationship between state governing bodies and state-run institutions of higher education

The problem of the governance of higher education can be located in the triangle whose peaks are the consumer – or rather the student – as a market participant, the academic service provider and the coordinating state. In this situation, the key question is of how the relationship between state governing bodies and individual institutions of higher education develops. On the one hand, it is necessary to communicate social expectations – the strategy of higher education development, training capacities and labour market needs, institutional structure, economic resources, sectoral policy information – and, on the other hand, it is required to ensure the possibility of meeting the interests of managed institutions, even if the maintainer is the state.

One can draw lessons from a variety of historical models that appeared, e.g., in the history of the centrally planned economy in the field of the management of state-owned enterprises. It was unavoidable to introduce decentralised forms of the management of state-owned enterprises. They were as follows: (i) introduction of intermediary administrative bodies, (ii) simulating by new institutions the operation of a market economy under the unchanged dominance of state ownership, and (iii) introduction of self-governance.

It can be of particular interest to refer to intermediary organisations in the context of the governance of state run-institutions of higher education as well. In the field of higher education, buffer organisations can play the role of intermediary bodies. They are able to distribute public expectations, e.g., concerning the academic quality assurance or the safeguarding of the interests of various working groups (lecturers, administrative staff, students, senior scholars, higher managers, etc.).

Furthermore, the simulation of market-conform operation can also be of relevance to the state-run institutions of higher education. The idea of accountability and transparency in the budget of academic departments and institutions clearly arise from the market pressure. With regard to the needs of a market economy, it is possible to establish internal conditions of the competition of academic institutions. Finally, the idea of self-governance can be implemented not only in respect of state-owned enterprises but also in that of the state-owned institutions of higher education. An obvious means of it is to grant institutional autonomy.

In terms of an institutional management system of the state-run institutions of higher education that is based on market-simulation, normative funding is needed. Input-based finances can be applied where training and research norms are taken into account. Centralised financing addresses the institutions instead of customers (i.e., students). Negotiated funding can appear in the form of performance contracts or maintenance agreements.

3.2.2. Sectoral powers of public control and the maintenance by the state of institutions

The Hungarian public authorities competent in higher education – in particular, the Education Office – exercise sectoral powers over all types of the institutions of higher education that operate in Hungary. In addition, the state as the maintainer of institutions exercises power over the state-run institutions of higher education. It is problematic that, in the current practice, the maintainer's powers intermingle with sectoral powers. The former overwhelm the latter quite frequently. In the following, tables are drafted that show the

current structure, compared according to a number of criteria, with a structure that would be ideal.

Management of state-owned institutions of higher education	CURRENT STRUCTURE	DEMOCRATIC ADJUSTMENT AND RULE OF LAW CORRECTION
State budgetary organ	Yes	Yes
Scope of sectoral regulation power	Authorisation of the maintenance organisation: supervision of institutions (organisational and operational rules, institutional development plan, budget, legality of institutional operation); National Education Office, State Audit Office, Government Audit Office: registration, licensing of operation, performance-evaluation	Order of public administration with a right to challenge resolutions before the court: supervision of institutions (organisational and operational rules, institutional development plan, budget, legality of institutional operation), registration, licensing of operation, performance-evaluation
Power of the maintenance organisation	Determination of the annual budget, concentration of staff matters, foundation and operation in non-core matters of academic activity (matters of legal status and management) in non-legal procedures that are directly determined by the ministry	The same, but made in coordination with affected institutions and with economic and social stakeholders; decisions of the government responsible for the parliament; inclusion of intermediaries (e.g., independent public agencies) with a view to preventing the government from direct intervention
Student decision	Operation in matters of core academic activity: veto power of the minister in matters of founding and launching academic specialisations, ministerial decisions on the student number of admission with or without reimbursement	Scope of power delegated to institutions; transparency in decisions of students as the genuine customers on the evaluation of the institution with subsequent state correction

Management of state-owned institutions of higher education	CURRENT STRUCTURE	DEMOCRATIC ADJUSTMENT AND RULE OF LAW CORRECTION
Chancellor nominated by the government	Legal representation of the government in cases determined by law	Withdrawal of the power of representation
Consistory mainly influenced by the government	Power of veto in strategic matters of R+D+I (part of the plan of institutional development) and in budgetary matters	Institutional coordination with social stakeholders instead of governmental veto power

Academic quality insurance	Hungarian Accreditation Committee influenced by the government	Sovereign quality insurance; close connection with ENQA
Institutional independence	In matters in matters of core academic activity (curriculum, management of education, doctoral schools, research, study matters of students and lecturers)	Yes
In-house order of institutions	Legally related relationship between the institution and its students, between the institution as an employer and its lecturer	The same + relationship between the institution and its university citizens (rights of challenging the decisions of university state managers, procedures of complaint and mediation, fora of direct democracy)

Under the effective Hungarian law, the maintainer of state-run institutions has (i) supervision, (ii) budgetary, (iii) organisational, and (iv) personnel-related powers. It is problematic that the maintainer is authorised to do supervision what would ideally be the function of the sectoral power of public administration. In the latter capacity, a mentioned, the government is responsible for the lawfulness-related supervision of all institutions of higher education, irrespective of the fact by whom these institutions are owned. The sectoral power exercised by the state over the institutions of higher education is currently anaemic and restricted by the tasks to be performed by the maintainer.

The task of the legal supervision of operation (more closely, supervision of organisational and operational rules, plan of institutional development, and the effective operation of individual institutions) ought to be fulfilled across all types of the Hungarian institutions of higher education within the state's sectoral competence. Both public and private institutions are uniformly subject to the same legal requirements, and it should be reviewed by the public authorities of how the institutions under supervision comply with regulations. Expediency-related supervision could be preserved for the maintainer of state-run institutions.

Ideally, sectoral powers should not be exercised by the maintainer of state-run institutions, but by independent government agencies. For this purpose, the existing Education Office can be mentioned in particular. It is also included in the sectoral jobs that the Education Office carries out registration and licensing tasks.

Notably, under the effective Hungarian law, the maintainer publishes the founding document, specifies the budget of individual institutions, checks the rules of organisation and operation, and the development plan of institutions, verifies both the lawfulness and expediency of the operation of institutions and initiates the rector's appointment and dismissal if necessary. The budgetary issues, the major organisational (foundation, mergers, etc.) and staff issues of state-run institutions should not belong to the scope of public administration, but to that of politics and social consultation. Namely, it is a matter of democratically organised politics how much the state intends to spend on higher education, and it is also of direct political nature whether certain institutions of higher education will be terminated, founded or merged.

It is thus the decision of the government responsible for the parliament what the size of current higher education is, and how the state responsibility for the operation of state-run

institutions is exercised. The issues of human resources management may also constitute the subject of policy debates, in particular at the highest level of university management. In this respect, they may also belong to the portfolio of the state as the maintainer of state-run institutions.

Particular consideration should be given to the possibility of including in the relationship between the maintainer and the affected institution democratically functioning bodies and organs that truly represent social and economic interest groups. In respect of the internal administration of institutions, the relationship between the institution and its students and employees, respectively, can be highlighted (see, e.g., the status of public employees, tenured and non-tenured lecturers and scholars, administrative staff, etc.).

The higher managers of institutions are entitled by law to challenge if appropriate resolutions of the authorities of public administration (e.g., of the Office of Education) in court, although it is not clear from the effective Hungarian law whether it is possible to act in front of the state as a sectoral power or as a maintainer. In the latter case, one can assume that legal relationships between the authorities and their clients are not developed. This case of under-regulation also entails the lack of client's rights. In the light of the principle of the rule of law, the regulation of the relationship between the maintainer and the affected institution ought to be based on the constitutional principle of subsidiarity and self-governance. This relationship should not necessarily be covered by the law of public administration. It should be part, however, of consultation with the affected institutions and their people.

Disgruntled by the Hungarian government's Policy Strategy Action Plan of 2017, published under the title "Fokozatváltás" (Upgrading in higher education),²⁷ one can be informed that a hierarchical governmental approach is to be implemented in the sense of disaggregating the tertiary sphere by type of institutions, student skills, and depending on the fact of what academic specialisations what labour market needs address, and which way. This concept directly exposes higher education to economic needs while the Hungarian economy itself has been laden in the recent decade with oligarchic structures, suffering from a lack of market access and from economic decisions that are seriously distorted due to state-driven over-distribution and abrupt sectoral state interventions. The over-differentiation enforced by the centralised political power dampens functional relationships and self-correction, exposing entire sectors to state-subsidised resources, and cutting them away from international competitors. This is true both for the current Hungarian economy and the sphere of higher education.

3.2.3. Barriers to academic freedom and institutional autonomy: internal democracy deficit, central allocation of academic contingencies, centralisation of training programmes, discretionary grant of privileges

In the effective Hungarian law, citizens of the institutions of higher education do not have the possibility to challenge decisions of a single institutional manager or a governing body of the institution before a court in non-labour matters. This is because there is no legal forum for that either inside or outside the institution. It would yet be in the public interest to be aware of the conflicts manifested and settled within an institution of higher education. It would be necessary to broaden the public space available within the institution, to grant

²⁷ Government resolution No. 1359/2017. (12.VI.) entitled „Fokozatváltás a felsőoktatásban középtávú szakpolitikai stratégia 2016” 2016–2020 évekre vonatkozó cselekvési tervéről.

university citizens the right of complaint and the possibility of mediation. The in-house deficit of democracy should be lessened in general.

Without institutional autonomy, students cannot be in a position of being put in place, although they should eventually be the customer of the services of higher education. The student's decision and value judgment ought to be openly expressed in the assessment of each institution, and there should be clear conditions for that. The discretionary allocation of academic contingencies – that is, the annual central distribution of student positions with or without a public scholarship as to individual institutions and particular academic specialisations – makes a serious obstacle to the student's choice. Correction to be made by the state that is responsible for the allocation of capacities of state-run institutions should not be precluded to reflect the value judgment of the social environment, provided, however, that the performance of the given institution is obvious. The results of such evaluation should be made available to the public as well.

Although, with regard to the exercise of academic freedom, the institutions of higher education enjoy independence against the state by law, and the rector may challenge the maintainer's actions in court, the question can still be raised as to whether the autonomy granted to issues relating to the subject of education and scientific research can be filled with real contents with regard to the functional relationship of the core academic activity with organisational and management issues, to which the institutions of higher education are also bound. Institutional independence as interpreted in the context of academic freedom is contradicted by the effective Hungarian law in so far as the state-run institutions of higher education have limited freedom in determining their training programme. In particular, the application filed by an institution with the national body of accreditation of initiating new academic specialisations is subject to the preliminary approval of the government. This is a serious limitation of both academic freedom and institutional autonomy.

The above-mentioned limitation of the initiation of academic specialisations can be explained first of all by the consideration of savings. The government may not intend in this instance to finance the extension of the choice of specialisations. Furthermore, the government may, in general, find it not appropriate to extend the choice of specialisations by arguing that there is no interest in the labour market in certain specialisations. It would still be more reasonable to leave it for the individual institutions to decide, and take steps at their own risks.

Independently of the maintainer, the various institutions of higher education receive state subsidies in exchange for carrying on their academic activity, the amount of which is determined by the amount of the public scholarship specified for a particular subject, taking into account the number of eligible students. The state funding of the core activity is accordingly normative. The number of eligible students specified for the given period is determined by the ministry, however, from time to time, which is another serious restriction of autonomy. In contrast to educational standards, there is currently no basis for normative finances of doing scientific research.

The state-run institutions may show that a new specialisation under application would be purely financed by students or by businesses. The government may still have special preferences. In general, there are institutions of higher education in Hungary with various privileges. This means that certain institutions are liberated from normal academic and financial requirements. Privileges may be granted for various reasons. For example, the

institutions of higher education owned by churches may enjoy relief from a series of academic or non-academic requirements. The best example of the special treatment granted by the government is still the National University of Public Services ("Nemzeti Közzolgálati Egyetem" or "NKE"). Its position is delicate because the government gives preferences to a number of the academic specialisations exclusively hosted by NKE, even though there is no quality interest in them.

3.2.4. Financial barriers to academic freedom and institutional autonomy

The state-owned institutions of higher education enjoy their own assets and dispose of their assets according to the rules laid down for the management of state budget organs. The property acquired by the institution is owned by the state, but a property management contract is to be concluded in favour of the institution for an indefinite term. This is a scheme similar to that applicable to state-owned enterprises operating in a centrally planned economy. It was effective at that time to rely on the concept, according to which, the enterprise had the right to use the state-owned assets entrusted to it and to benefit from them, although they were entitled to dispose of them only within strict limitations. In the current Hungarian system of higher education, the institutions of higher education can also acquire real estate and intellectual property, and it is allowed for them even to dispose of immovable property, provided yet that a series of legal conditions will be met.

Under the tabu of the state ownership of the means of production, in a centrally planned economy, it was despite decentralisation not possible to achieve that state-owned enterprises would have been interested in maintaining the assets entrusted to them as items of capital. The reason for this was chiefly that it was not possible that investors would have evaluated enterprises in capital markets. Similarly, the state-owned institutions of higher education are only interested in the management of the assets entrusted to them upon their current operation. They are still subject to the budget that is determined for them from time to time by the maintainer.

It would only be possible to make state-run institutions of higher education interested in the management of capital if they were provided with endowment capital. That would constitute the financial independence of institutions in the long run. The current government is certainly not willing to go so far. This is perhaps because of the fears of the mismanagement of the endowment property and, in particular, the current government does not have any intention to spend for educational purposes so much. It would still be wise to acknowledge that not much success can be expected if the state-run institutions of higher education are subject to the state's direct control.

The triangular relations between the student as a customer, the institution as a service provider and the coordinating state should be balanced. Currently, both the customer-side and the service provider's aspect are subdued by the state's will. This is not only problematic because the current government does not excel in financing higher education in a generous way, looking into the country's future. It would simply be of social benefit if the institutions with their own capital were not be exposed to arbitrary decisions arising from politics.

The fact that the internationally expected government subsidy of 1.5% of GDP (not to mention about the effective Hungarian rate of 1%) is insufficient to ensure the competitiveness of the institutions of higher education suggests that it is necessary for the whole sphere of Hungarian higher education to involve private capital. To that end, it is

required to form accountable organisations and establish transparent economic operation. Capital inflows are viable if investors are provided with rights adequate to their investment.

In the present system, the investor is only guaranteed by the state bureaucracy. Although it is even currently allowed for the state-owned institutions of higher education to carry on entrepreneurial activity, investors ought to dispense with the possibility of enforcing their rights effectively, and the current rules are not coordinated with the requirement of institutional autonomy either. The task-supply agreements published in the government's higher educational development programme of 2016 under the title „Fokozatváltás“ might be a success.²⁸ It is likely, however, that, in the over-centralised Hungarian public administration practice, they would serve as a means of undermining the normativeness of funding.

4.. Summary and conclusions

4.1. Over-centralisation in society

Over-centralisation is a consequence of the so-called illiberal state that currently operates in Hungary. Due to the steady political influence on the economy in an illiberal state, the soft budget constraint is typical. Because of the non-economic restriction of market access, economic success is not a function of real economic performance, but that of managing political relations. To justify the political and ideological control of society, anti-capitalist demagoguery spreads over, which is even exacerbated by nationalism. The latter shows that the subject of a constitutional arrangement is not a citizen who would be the holder of rights and would be able to exercise her liberty, but a politically organised group called a nation.

Nationalism is complemented by social exclusion. The latter is due to the fact that, according to the current Hungarian constitution, social care is not guaranteed for citizens. Social provisions depend on whether the individual carries out work that is recognised by a politically organised community. Budget policy is characterised by a serious depreciation of distributive justice, which is the consequence of the abolition of progressive income taxation and the introduction of special industries levies.

A significant increase in social inequality can be explained by the need to ensure the import of foreign capital, which is still hampered by the unpredictable regulatory environment. The democratic and rule-of-law operation is being abolished by the elimination of the checks and balances. There is a lack of continuity in legal practice as political and ideological influence persists in suspending the law in force. The state has almost the absolute power to defend and enforce material justice against citizens. The lack of a future-oriented horizon is manifested by the consistent devaluation of human infrastructure (education, health, social policy) and by its subordination to direct short-term economic interests. Municipalities have lost their economic importance and have been deprived of their basic tasks, such as maintaining schools and hospitals.

As over-centralising power is beyond a certain point hampered by the tolerance of society, and social inequalities cannot be sustained for an unforeseeable time, the fatigue and loosening of an over-centralised system are expected. It can still be followed by re-centralisation as long as new resources become available to governmental power. The

²⁸ Government resolution No. 1785/2016. (16.XII.) entitled „Fokozatváltás a felsőoktatásban középtávú szakpolitikai stratégia 2016”.

unfortunate consequence of over-centralisation is the intensification of social and political conflicts. In the absence of institutional safeguards for political democracy, the operation of public bodies becomes irrational. As a result of general social uncertainty, exclusion and hate speech is proliferated, and violence escalates even in the political and ideological life.

4.2. Governance of the institutions of higher education

Over-centralisation of the current system of Hungarian higher education appears in particular in the following instances:

- administrative separation from each other of academic and non-academic competences;
- lack of constitutional recognition of institutional autonomy, although being supported by academic freedom, partially recognised as a constitutional value;
- block of the decisions of chosen academic bodies by the government through chancellors and consistories;
- central determination of the training programme and the number of students eligible for state subsidies;
- preliminary discretion of the government on the initiation of the institutions of higher education to initiate academic specialisations;
- intermingled exercise by the state of sectoral powers and of maintaining state-owned institutions of higher education; and
- unpredictable regulation and arbitrary financing.

The thesis of institutional governance is in the current Hungarian system of higher education that the institutional activity required for the exercise of academic freedom, on the one hand, and the issues of organisational transformation and economic operation, on the other one, are administratively separated from each other. However, since in reality there is a functional relationship between academic and non-academic matters (upon performing core activities and the so-called non-core activities), administrative separation does not work in practice. As a result, academic contents inevitably atrophy.

The institutional autonomy of higher education does not simply mean institutional independence from the state, but it also suggests the possibility of organising the sphere of higher education as a functional subsystem according to its inner logic, and thus optimising its performance for society. Since the requirements of meeting the immediate needs of the economy or of direct political intervention constitute a serious obstacle to self-organisation, the institutions of higher education cannot be expected to be aligned with their external environment. The desire that the institutions of higher education meet the potential, real or perceived needs of the current labour market is voluntarism, which is harmful to society. Systems-intrusive interventions, coming from the economy or politics, are detrimental to institutional performance and deteriorate the chances of high-quality academic activity.

Democracy is fragile because an open society is constantly exposed to differences of opinion. The educated citizen is able to deal with emerging conflicts, and the basis of her education is participation in, and development of, culture. The university is a storage of knowledge that has a fundamental role in developing cultural life. The institutions of higher education also play a significant role in age socialisation, and they grant not only professional skills, but they also serve as a means of training intellectuals.

Since it may be necessary to counteract defective or controversial social decisions, it is desirable that the knowledge gained at the institutions of higher education be critical.

Academic citizens are able to fulfil their vocation as a result of completing their academic work, provided that they are not disseminating knowledge distributed from the top and from outside. The chances of obtaining critical knowledge are significantly restricted by hierarchical control and by lack of autonomous academic decisions.

4.3. Overarching centralisation of higher education

Because of the concentration of political power as experienced currently in Hungary, one cannot be surprised that the centralisation of higher education is all the more pervasive. In Hungary, the state-run universities are in the majority, and they are also dominant as to their professional weight and quality. In such circumstances, it is a key question what higher education policy is pursued by the state as a sectoral regulatory power and as the maintainer of the state-run institutions of higher education. As the government's interest in developing the human infrastructure falls short, the state minimises the resources allocated to higher education, and even what is provided is debilitated because it is not provided in a normative and transparent order. Consequently, the state's institutional management and, in general, the state regulation become unpredictable.

The autonomy of the institutions of higher education is guaranteed by law. Academic freedom is, however, fundamentally flawed due to the fact that the training programme and the number of students eligible for state subsidies are determined by the ministry according to academic specialisations. The student's decision has no direct impact on the assessment of institutions.

Hungarian institutions of higher education have been deprived of autonomy what is unique in Europe, and the chancellor appointed by the government can routinely block the decision of the chosen academic bodies. Although the chancellor is entitled to represent the university only in particular matters as defined by law – in contrast to the rector who is provided by the law with general power of representation –, the powers of the chancellor and the rector are in practice intermingled with each other, and the chancellor spontaneously extends her influence to all university decisions, including both academic and non-academic contents.

The lack of institutional autonomy has an unfavourable effect on academic freedom. The latter is presupposed by the exercise of individual rights, the former by that of collective ones. In the absence of autonomy, working communities cannot be formed to provide the optimum performance for society.

The operation of the various academic departments should be characterised by autonomy, responsibility and accountability in the same way as in the case of the whole institution. The rule of law-based guarantee of democratic, lawful, community-based and professional operation of institutions of higher education would be that employees of the institutions of higher education (university citizens) might object to the decisions of university leadership, and ultimately turn even to court, challenging the legality of decisions. This is not possible for the time being, however. It should be changed immediately.