

Petra Lea Láncos[1]: Academic freedom in the jurisprudence of the Hungarian Constitutional Court

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Abstract

The change of political regime in Hungary has also brought about a democratic commitment to the constitutional guarantee of human rights and fundamental freedoms. Among other freedoms, academic freedom was redefined in positive constitutional law, and the stage for judicial interpretation was set. The Hungarian Constitutional Court has been in operation and delivering rulings for almost two decades now,[2] also shaping the contents and guarantees of the fundamental right inherent in academic freedom. In the Court's case law, academic freedom has been reflected upon chiefly in two aspects: first, from the viewpoint of the freedom of scientific research and the access to historic archives, bearing a great potential for the post-communist society in facing its burdensome history and dealing with past grievances and, second, as the guarantee of the autonomy of institutions of higher education, gaining relevance in the last few years in the light of the reformed Act on Higher Education. However, academic freedom has remained a neglected field of study[3] of constitutional law scholars, and a detailed elaboration of this fundamental freedom has yet to be undertaken.[4] The present article offers a brief insight into the jurisprudence of the Hungarian Constitutional Court related to the concept and scope of academic freedom. As an illustration, the recent case law related to the autonomy of institutions of higher education is introduced, with an attempt to sketch the judicially set guarantees and limits of this fundamental freedom.

1. The guarantees of academic freedom in positive constitutional law

The original version of the Hungarian Constitution[5] regulated academic freedom under Chapter VII (Fundamental Rights and Obligations of Citizens) in Article 53: "The People's Republic of Hungary supports scientific activities that serve the cause of the working class, and artistic work that depicts the life and struggle of the people, the reality, as well as the victory of the people, and promotes by all available means the development of an intelligentsia loyal to the people." [6] The contemporary scholarly literature usually comments on the position of academic freedom in the socialist constitutional order[7] as follows: though the Constitution merely determines the obligations of the state with respect to science and the arts, "this reasonably also entails rights of the citizen. On the one hand, no citizen may be denied the freedom to engage in scientific activity and artistic creation.... On the other hand, the scholars and artists of socialist science and arts have a claim for financial and other support of our state." [8] The subsequent amendment of the Constitution[9] brought about an explicit guarantee of the right to academic freedom: "The People's Republic of Hungary guarantees the freedom of scientific and artistic creation" (Article 60). This generous guarantee of academic freedom is qualified by Article 30 paragraph 1 subparagraph f) of the Constitution declaring that the Council of Ministers "defines the direction of scientific and cultural development."

The shift to democracy has not left the legal basis of academic freedom unchanged.[10] Currently enshrined in Article 70/G of the Constitution[11] (Chapter XII, Fundamental Rights and Duties) academic freedom is guaranteed as follows:

(1) The Republic of Hungary shall respect and support the freedom of scientific and artistic expression, the freedom to learn and to teach.

(2) Only scientists are entitled to decide in questions of scientific truth and to determine the scientific value of research.

In the Constitution fundamental rights are governed by the general clause on human rights and fundamental freedoms; therefore all applications of articles of the chapter on fundamental rights and duties must be read together with Article 8 which not only determines their supreme position in the Hungarian constitutional order but also defines the constitutional limits of their restriction:

(1) The Republic of Hungary recognizes inviolable and inalienable fundamental human rights. The respect and protection of these rights is the primary obligation of the State.

(2) In the Republic of Hungary regulations pertaining to fundamental rights and duties are determined by law; such law, however, may not restrict the basic meaning and contents of fundamental rights.

2. Academic freedom in the Hungarian constitutional order

The current wording of the article on academic freedom in the Constitution as well as the respective jurisprudence of the Constitutional Court both reflect the constitutional commitment of the democratic system to guarantee and protect academic freedom in conformity with the principle of the rule of law. In its fundamental ruling on the access to historical archives (34/1994. (VI. 24) ABH) the Hungarian Constitutional Court laid down the essential cornerstones of the constitutional guarantee of academic freedom by defining its autonomous concepts, the personal as well as the material scope of academic freedom. All further rulings of the Court on academic freedom may be seen as a further elaboration of the mentioned decision, as indeed the Court itself reiterates the concepts and arguments of the archive ruling.

According to the Constitutional Court the special position of academic freedom in the Hungarian constitutional order is justified by the fact that “every time, when the State subjected academic freedom to political, ideological, religious or other restrictions, this led to the paralyzation of social development.”^[12] In this sense, academic freedom guarantees not only autonomy and space for the personal development of the individual^[13] but also the progress of the society. It yields independence and innovation for the good of the whole society, and therefore it constitutes a fundamental constitutional value^[14] which the state is bound to protect.

2.2. Rationae materiae — the concept of science and the scientific neutrality of the state

Article 70/G paragraph 1 guarantees the freedom of “academic life”. The protected sphere of life is the area of social reality where scientific activity takes place. Therefore, to determine the material scope of academic freedom, the Constitutional Court had to define the autonomous concept of science. It did so from a functional perspective: “the fundamental goal of all sciences is to discover the truth, to acquire knowledge and to advance science itself.”^[15] In this sense, science proves to be the result of intellectual efforts to disclose and explore a thematically unlimited area of research with the aim of yielding knowledge and producing scientific truths to advance scientific progress. Science therefore not only covers scientific truths, but also its critique as well as scientific methods and procedures. This wide concept of science also accommodates the mandate of scientific neutrality of the state laid down in Article 70/G paragraph 2.

The mandate of scientific neutrality of the state rounds up the constitutional guarantee of academic freedom, foreclosing state intervention in preference of or to the detriment of any specific scientific result. By restricting the decision about scientific truths and the qualification of activities as scientific research to the personal scope of scientists, the

Constitution excludes the favouring or imposition of scientific results: “the state must remain neutral with respect to scientific truths.”[16] The mandate of neutrality guarantees the independence of scientific research and scientific conviction by prohibiting the state from qualifying scientific results as to their nature and their value regarding the advancement of science itself and from determining scientific methods and concepts of science.[17]

However, unimpeded academic freedom cannot sufficiently be guaranteed by the non-intervention of the state. Thus, the state also bears the responsibility to protect the freedom of sciences itself: “The state must provide adequate legal solutions in order to guarantee professional scientific activity free from external influences.”[18] It must also afford financial assistance,[19] but with a considerable margin of appreciation[20] as to the precise framing thereof, taking also into consideration the entire constitutional order and the resources available. As the Constitutional Court pointed out, “from an institutional perspective, academic freedom is chiefly secured by the establishment and maintenance of universities and colleges by the state.”[21]

2.3. Rationae Personae — persons entitled to academic freedom

On a first glance, academic freedom appears to be a fundamental freedom of general personal scope: “potentially everyone is entitled to the rights related to academic freedom.”[22] However, the *rationae materiae* of the fundamental freedom reveals that “those entitled to academic freedom are effectively only scientists themselves.”[23] Accordingly, scientific activity is the precondition to the entitlement to this fundamental freedom. At the same time “only scientists are entitled to decide ... upon the question of the scientific quality”[24] of any activity, thus preventing the state from dictating the personal scope of the freedom. The Court further elaborates that “the rights arising from academic freedom expressly pertain to the persons substantiating the autonomy of institutions of higher education,”[25] that is professors, researchers and students as well as their institutionalized communities, such as universities and research centres.

The addressees of the obligation to guarantee and to protect academic freedom are the state and its authorities, as well as all institutions and persons exercising public authority. This obligation can even be derived from Article 8 indent 1 of the Constitution, stating that “[t]he Republic of Hungary recognizes inviolable and inalienable fundamental human rights. The respect and protection of these rights is the primary obligation of the State.”

2.4. The two faces of academic freedom — freedom of scientific research and the autonomy of institutions of higher education

In compliance with the Constitution, the Hungarian Republic is to respect the freedom of academic life by abstaining from hindering or restricting activities carried out in the sphere protected by the fundamental right to academic freedom. Those entitled to academic freedom are to enjoy unimpeded freedom to pursue academic activities, such as “the freedom of scientific research, the publication and diffusion of scientific truths and results”[26] as well as academic lecturing. The freedom of scientific research implies the protection of all phases of scientific activity from “the posing of the hypothesis, the principles applied, to the evaluation and dispersion of the knowledge thus acquired by adequate means of publication.”[27] In this way, “academic freedom is also a manifestation of the constitutional right to free speech.”[28] Thus, the freedom of scientific research stands for one of the main areas guaranteed by academic freedom, as an overarching term comprising the freedom to pursue all elements of scientific work.

Academic freedom however, cannot be sufficiently secured by guaranteeing the freedom of scientific research for individuals. The forums where scientific activities are carried out must also be protected to ensure that independent, professional scientific efforts remain devoid of external pressure and influence. The state is therefore to guarantee the autonomy of

institutions of higher education by ceding certain issues into the competence of the self-governing organs of universities and colleges.[29] Indeed, as the Constitutional Court points out, “the autonomy of science itself is secured by the rights of self-government that the state guarantees to institutions of higher education.”[30]

3. Autonomy of institutions of higher education

In the course of the years 2005 and 2006 the Act on Higher Education[31] was to be reformed by the Parliament. Based on his right enshrined in Article 26 paragraph 4 of the Constitution,[32] Ferenc Mádl, the President of the Republic of Hungary, submitted the Act on the reformation of higher education adopted by the Parliament on 23 May 2005 to the Constitutional Court for review of its constitutionality (‘preventive constitutional review’). He proposed that several provisions of the new act be annulled for reasons of their inconformity with the constitutional guarantee of the autonomy of institutions of higher education as well as the principle of the rule of law. Among other objections, the President claimed that the imposition and the competences of the so-called governing councils infringed the rights of self-government arising from the autonomy of institutions of higher education.

3.1. Ruling 514/A/2005 on the Governing Councils

Before embarking upon the review of the constitutionality of the specific Articles contested by the President, the Constitutional Court first summed up the general aspects of the autonomy of institutions of higher education.

According to the Constitutional Court, paragraph 1 read together with paragraph 2 of Article 70/G on academic freedom guarantees a special protection of the “autonomy of science and in connection therewith, the protection of the decision-making rights of scientists.”[33] The institutional protection of academic freedom is to be realized through the rights of self-government. The rights of self-government are afforded to those bearing the autonomy of the institution, i.e. professors, researchers and students. The autonomy afforded to institutions of higher education covers the independence of education, research and internal organisation of the institution as well as the independent management of its finances. As these issues lie at the core of autonomy, they must fall under the exclusive decision-making competence of the organs of self-government of the colleges and universities. Drawing a comparison between the autonomy of institutions of higher education and local self-governments, the Constitutional Court contended that, in both cases, the origin of autonomy concerns the constitutional guarantee for the organs of self-government to determine their rules of operation as well as their organisational structure.

For reasons of reviewing the lawfulness of the management of institutions of higher education, the organs of self-government may include external professionals or representatives of the competent minister; however, the autonomy of the institutions must be safeguarded and may not be subordinated to the unlimited discretion of public authorities. Rational principles of state support and out-put oriented criteria may be determined by the legislature; these must however take into consideration the specific needs and nature of scientific activity.

Having clarified the guarantees of the autonomy of institutions of higher education, the Constitutional Court then turned to the revision of the contested provisions of the new Act on Higher Education.[34] According to Article 23 paragraph 1 of the new Act, institutions of higher education maintained by the state must create so-called governing councils, which are to be the ‘strategic decision-making and controlling body’ of the institution (Article 20 paragraph 1). Although the majority of the members of the governing council are to be nominated by the institution’s organs of self-government and only the minority by the Minister of Education, the Act also specifies that these members – with the exception of the

Chair – may not be employees of the institution. At the same time, the Act does not require the members of the governing council to hold qualifications in line with the scientific orientation of the institution. Finally, the members of the governing council are appointed and discharged by the Minister of Education, and indeed their honorarium is supplied by the Ministry itself.

According to the Constitutional Court, the introduction of the governing council completely modifies the organisational structure of the institutions of higher education. The rules on the composition of the governing council and the qualifications of its members make this organ into an alien body in the structure of the institution. In consequence, it may not be entrusted with the rights accorded to the bodies of self-government, without hollowing out the autonomy of the institution. Nevertheless, the new Act refers essential decisions falling under the autonomy of the institution to the competence of the governing council. For example, according to Article 25 paragraph 1, the governing council adopts the so-called Research-Development and Innovation Strategy, which lays down the proposed research programs, scientific conferences, guidelines for the improvement of international scientific cooperation of the institution, the publication and utilization of scientific works as well as the sponsoring of research activities.[35] The senate, the main self-government body of the institution, determines research and educational tasks based on the strategic decisions of the governing council.[36] Therefore, the Research-Development and Innovation Strategy, a decision adopted by an alien body potentially lacking relevant qualifications, becomes the fundamental document to define the scientific activities of the institution. According to Article 25 paragraph 2 subparagraph fg),[37] the governing council may decide to transform or dissolve any non-economic activity or organ of the institution. This authorization subordinates the scientific activities and organisational structure to the discretion of the governing council, without clearly defining the concept of non-economic activities or organs.

The governing council is an alien body in the structure of the educational institution and bears competences protected by institutional autonomy. As such, its composition and competences violate the autonomy of institutions of higher education as guaranteed by Article 70/G of the Constitution. They curtail the rights of self-government and render the autonomy of the institution meaningless, hollowing out its substance. They are, therefore, unconstitutional.

Following this ruling, the Hungarian Parliament amended the Act on Higher Education. However, the new president, László Sólyom, also submitted the reformed Act adopted on 24 July 2006 to the Constitutional Court for review. He contended that the newly enacted so-called economic councils are entrusted with competences that infringe the autonomy of institutions of higher education.

3.2. Ruling No. 702/A/2006 on Economic Councils

According to the new Act, the Chair of the governing council has the right to initiate the senate's decision-making process. However, in certain cases listed in Article 25 indent 1 of the reformed Act, the Chair's right of initiative is conditioned on the approval of the so-called economic councils, which are to be created in all state institutions of higher education.

The Constitutional Court pointed out that, although the state must fulfil its constitutional obligations related to the guarantee of the right to culture and education[38] and has ample legislative discretion as to the means of doing so, it must however at the same time respect the autonomy of institutions of higher education flowing from the right to academic freedom. This autonomy relates not only to the independence of scientific, educational and research activities but also to organisational and economic independence. All decisions related to these issues must lie in the competence of the organs of self-government of the respective institution. However, an economic council cannot be deemed an organ of self-government in

this sense, as some of its members are delegated by the Minister of Education. With the exclusive right of approval of certain of the Chair's proposals, this alien body could, based on merely economic considerations, determine or prevent items on the agenda and thereby also the decisions of the senate. This may lead to the restriction or even the elimination of the independence of the institution of higher education. For this reason the Constitutional Court declared the provisions on economic councils' right of approval unconstitutional and annulled the relevant provisions.

4. Evaluation

As the Court in its rulings had for years applied the notion of the autonomy of institutions of higher education without clarifying its basic concept, contents and limits, these rulings were long awaited and have great significance for the study and practice of Hungarian constitutional law. The decisions take a very generous approach as regards the guarantees and limits of institutional autonomy and afford a high protection of the latter. They not only negate state control of the centres of scientific activity but also exclude smuggling governing councils "through the back door" in the form of economic councils. Critics of the rulings contend that this view of institutional autonomy is exaggerated. As László Kiss in his dissenting opinion points out, "Indeed, it seems to me, that ... merely touching upon universities or colleges is rendered unconstitutional. The reason for this is in my opinion that the Constitutional Court in its rulings wanted to afford practically absolute independence to these institutions." He contends that the revision of the competences of the governing and economic councils calls for a more differentiated approach, allowing for certain issues to be guided by economic efficiency. This argument may be rebutted by asserting that it is reasonable that the Constitutional Court sees economic issues as intrinsically linked with organisational aspects and scientific and research activities, which could be impinged upon by merely economic considerations. Kiss also points out that the autonomy is afforded to the institutions of higher education, and not the senate or the –Chair; therefore it is not suitable to revise the internal allocation of competences of the institution to this end. However, the Constitutional Court rightly points out that the autonomy is borne and realized by the self-government bodies of the institution. As neither the governing council nor the economic council can be seen as a self-government body, but rather as external bodies of the institution, they should not be entitled to rights of autonomy.

Láncos Petra Lea[1]: A tudományos élet szabadsága a Magyar Köztársaság Alkotmánybíróságának gyakorlatában

A tudományos élet területének fontosságát jelzi, hogy már alaptörvényünk eredeti, 1949-es szövegváltozata is szabályozta azt – igaz, sokkal inkább a tudományos élet állami irányításának, mint a szabad tudományos tevékenységhez való jog garanciájának benyomását keltve. Ma az alapjog jelentőségét elsősorban két szempontból, így a tudományos kutatáshoz való jog mint a tudomány szabadság aktív oldaláról, valamint a felsőoktatási intézmények autonómiája mint a tudomány szabadság garanciájának passzív oldaláról ragadhatjuk meg. A kutatás szabadságának központi szerepét az Alkotmánybíróság nem csupán a múlt feltárásában, így a társadalom történetének tudományos feldolgozásában, de innovációs értéke folytán a jövő építésében, a társadalom szellemi és gazdasági fejlődésének előmozdításában látja. Ugyanakkor az is nyilvánvaló, hogy a tudományos kutatás, képzés és együttműködés szabadsága, alkotmányellenes korlátozásoktól való mentessége nem garantálható a tudomány szabadság másik pillére, a felsőoktatási intézmények és egyéb tudományos központok autonómiájának alkotmányos garanciája híján. A tudományos élet szabadságához fűződő alapjog mind szövegmódosulásait, mind tartalmát tekintve nagy utat tett meg a

szocializmus időszakát jellemző ideológiai célhoz kötöttségtől a jogállami átmenetet követő, tudományos kérdéseket érintő állami semlegességéig. Ezt az utat kívánja röviden dokumentálni, valamint a felsőoktatási intézmények autonómiáját érintő két legutóbbi alkotmánybírószági határozat példáján szemléltetni a jelen írás.

[1] A Pázmány Péter Katolikus Egyetem Jog- és Államtudományi Karának doktorjelöltje; Európa-jogi és Nemzetközi Jogi Tanszék

[1] Doctoral candidate at the Pázmány Péter Catholic University, Faculty of Law.

[2] The Hungarian Constitutional Court began its work on 1 January 1990 in compliance with Act No. XXXII of 1989 on the Constitutional Court. A “predecessor” of the Constitutional Court was the so-called Constitutional Law Council established by Act No. I of 1984. Notwithstanding its duty to monitor the legislative process with regard to constitutionality it was not a constitutional court, for it had no power to overrule the acts of legislative organs, and the Hungarian Parliament remained the last resort for deciding upon the constitutionality of legislative acts. See Majoros, Ferenc, *Der ungarische Verfassungsrechtliche Rat und das polnische Verfassungstribunal im Vergleich*, Bundesinstitut für ostwissenschaftliche und internationale Studien, Köln (1987), p. 2. See also Sólyom, László: *Az Alkotmány őrei*, presentation delivered on 23 May 2005; Kukorelli, István (Ed.): *Alkotmánytan I.*, Osiris Kiadó, Budapest (2003), p. 387; Takács, Imre: *Az emberi Jogok garanciái*, in: Katonáné Soltész, Márta (Ed.), *Emberi jogok hazánkban*, ELTE Jogi Továbbképző Intézet, p. 66.

[3] From the perspective of legal history, Pál Horváth has elaborated upon academic freedom in numerous articles and monographs, see, e.g., Horváth, Pál: *A tudományos szabadság ősforrásai*, in: *Magyar tudomány* (2002), Vol. 2, pp. 157-164; *A tudomány szabadság történelmi szerepváltásai*, Mundus Kiadó, Budapest (1997); *A tudomány felszabadításának ügye. Széchenyi István születésének 200 éves évfordulójára*, *Jogtudományi Közlöny*, 1991/1-2, pp. 23-27; *A tudomány szabadságának történelmi szerepváltásai és az 1848.19. tc.*, *Jogtudományi Közlöny*, 1999/12, pp. 509-516; *A tudomány szabadság fejlődéstörténetéhez (Az 1848 XIX. tc. történelmi szerepe). Forradalom vagy reform?*, Szent István Kiadó, Budapest (1999), pp. 49-58; *Historische Rolle der Wissenschaftsfreiheit*, *ELTE Annales, Sectio iuridica*, tom. 36. (1997), pp. 139-141; *Tudomány szabadság és az 1848. XIX. tc.*, *Debreceni Szemle*, 1998/3, pp. 456-462.

[4] Attempts to systemise the guarantees of academic freedom can be found in Balogh, Zsolt: *Az Alkotmány magyarázata*, KJK-Kerszöv Kiadó, Budapest (2003) pp. 697-699; Sári, János: *Alapjogok – Alkotmánytan II.*, 2d Edition, Osiris Kiadó, Budapest (2003), pp. 236-242; Petrik, Ferenc: *Alkotmány a gyakorlatban – Kommentár a gyakorlat számára*, hvg orac, Budapest (2004), p. 554.

[5] Act No. XX. of 1949, still in force today, but significantly amended to such a degree that it hardly resembles its original version.

[6] Emphasis added.

[7] For evidence of the socialist ethos of science, see Szabó, Imre, *A marxista jogszemlélet előkérdéseire*, *Jogtudományi Közlöny* (1948) No. 23, p. 4 (“[W]e build upon the experiences of the soviet scholars and learn from their work; in our struggle we rely on them and heed

their support; yet our mission to establish the socialist science we must but accomplish alone...”); Lőrincz, Lajos: A művelődéshez való jog, in: Halász, József/Kovács, István/Szabó, Imre (Eds.), *Az állampolgárok alapjogai és kötelességei*, Akadémia Kiadó, Budapest (1965), p. 319 (“The position of Marxism-Leninism with regard to the social relevance of science and arts is well-known.... The outcomes of scientific effort and artistic creation assist the working millions to understand the events in life, to duly qualify these events and to actively participate in the revolutionary transformation of society.”).

[8] Lőrincz (1965), pp. 319-320 (emphases added).

[9] Act No. I of 1972 on the Amendment of the Constitution.

[10] For an impression of the scholarly discourse on constitutional transformation and academic freedom, see Kilényi, Géza (Ed.), *Emberi és Állampolgári Jogok, Építésgazdasági és Szervezési Intézet* (1989); see particularly Tölgyessy, Péter, *Az alapjogok valóban jogállami szabályozásáról*, p. 42; Kovács, Ervin, *Az emberi jogok a “Magyarország alkotmányának szabályozási elvei” c. tervezetben*, p. 47; see also Szamel, Lajos, *A véleménynyilvánítás szabadsága*, in: Katonáné Soltész, Márta (1988), p. 182.

[11] As amended by Act No. XXXI of 1989 on the Amendment of the Constitution.

[12] 34/1994 (VI. 24.) AB határozat, ABH 1994, 177, 182.

[13] Halmai, Gábor/Tóth, Gábor Attila, *Emberi Jogok*, Osiris Kiadó, Budapest (2003), p. 272.

[14] Cf. Article 8 paragraph 1 of the Constitution.

[15] 34/1994 (VI. 24.) AB határozat, ABH 1994, 177, 182.

[16] *Ibid.*

[17] Mádl, Ferenc, I-2/2122/2005. Application (dated 31 May 2005) addressed to the Constitutional Court for the preventive constitutional review (in compliance with Article 26 indent 4 of the Constitution on the right of the President to submit legislative acts to the Constitutional Court for review of constitutionality before promulgation) of the Act on Institutions of Higher Education adopted on 23 May 2005, p. 10.

[18] 41/2005 (X. 27.) AB határozat, ABH 2005, 459, 473.

[19] Based on Act No. CXXXIV of 2004 on Research, Development and Innovation, the state also subsidizes output-oriented, project-tied scientific research. Impartiality and an unbiased procedure for the selection of eligible projects are secured by an open procurement system, the supervision of the utilization of funds as well as an independent evaluation system. The overall aim of state sponsorship in the ambit of scientific research is to promote projects that contribute to the competitiveness of the Hungarian economy and its enterprises.

[20] Halmai/Tóth, *Emberi Jogok*, Osiris Kiadó, Budapest (2003), p. 104.

[21] Mádl (2005), p. 3. “Without the adequate financial means due to institutions of higher education, independent scientific research and education would be unthinkable in many areas of science”, p. 4. According to the Constitutional Court, “the state subsidy of institutions of higher education is a guarantee of independent scientific, educational and research activities.” 41/2005 (X. 27.) AB határozat, ABH 2005, 459, 475.

[22] 34/1994 (VI. 24.) AB határozat, ABH 1994, 177, 182.

[23] *Ibid.*

[24] *Ibid.*

[25] 39/2006 (IX. 27.) AB határozat, not yet published in the ABH.

[26] 34/1994 (VI. 24.) AB határozat, ABH 1994, 177, 182.

[27] *Ibid.*

[28] 34/1994 (VI. 24.) AB határozat, ABH 1994, 177, 183.

[29] See Articles 47, 64-67 of Act No. LXXX of 1993 on Higher Education.

[30] 41/2005 (X. 27.) AB határozat, ABH 2005, 459, 474.

[31] Act No. LXXX of 1993 on Higher Education.

[32] Article 26 paragraph 4 of the Constitution reads: “Should the President of the Republic have reservations about the constitutionality of any provision of a law, he may refer such law to the Constitutional Court for review within the period of time specified in paragraph 1 prior to ratification.”

[33] 41/2005 (X. 27.) AB határozat, ABH 2005, 459, 470.

[34] Act No. XXXVIII of 2003 on Amending the Act on Higher Education.

[35] Article 25 of the new Act reads:

(1) The Governing Council adopts the strategic, employment and business plan (in the following referred to as Institutional Development Plan). The Institutional Development Plan determines the projects related to development, the utilization and preservation of assets transferred to the institution of higher education by sponsors, as well as the expected income and expenses. The Research, Development and Innovation strategy forms part of the Institutional Development Plan....

(2) In compliance with the law the Governing Council

...

fg) decides on the transformation or termination of non-economic activities and related structures or bodies.

....

(3) The Governing Council determines the organisational structure of the institution of higher education.... The senate determines the institution’s code of operation on the basis of the decision of the Governing Council....

[36] Article 27 of the new Act reads: “(1) The senate determines the educational and research tasks and supervises their implementation based on the provisions of the founding document and the strategic decisions of the Governing Council....

[37] See supra note 35.

[38] Article 70/F of the Constitution reads:

(1) The Republic of Hungary ensures its citizens the right to culture.

(2) The Republic of Hungary ensures this right through the expansion of culture and by making arrangements for general access to it....