

ABSTRACTS

Tamás Dezső Ziegler examines how academic freedom has been systematically limited in Hungary. The article claims that this phenomenon should be countered through the application of certain provisions of EU law. From this perspective, several measures introduced by the Hungarian government must not be applied: many of these measures are illegal, because they violate EU law and/or fundamental rights. This also means that the Hungarian government does not have the right to chase Central European University out of the country, take control over the institutes of the Hungarian Academy of Sciences, or ban certain academic programs because of political motives.

Péter Kállai and Alíz Nagy document the changes in the nationality and electoral legislation in Hungary after 2010, map the resulting inequalities both in the expansion of the citizenry and voting rights to non-territorial nationals and in the establishment of preferential parliamentary representation for domestic nationalities. They assess the possible factors behind the changes and conclude that the only plausible and overarching explanation is securing power for those who hold it currently, and this logic can and often does override other interests like the representation of minorities or national unification.

DOCUMENTS AND COMMENTARY

Flóra Fazekas analyses the case of Repcevirág Szövetkezet on fair trial questions of the preliminary ruling procedure. The European Court of Human Rights (ECtHR) terminated a very long legal procedure in Spring 2019 when it delivered its decision in the case of Repcevirág Szövetkezet v. Hungary. Originally the legal dispute concerned a regular taxation issue but in the second set of proceedings the company brought some new legal claims which might catch the attention of legal scholars. The second set of proceedings raised issues (1) whether ignoring the plaintiff's claim to initiate a preliminary ruling procedure breaches the plaintiff's right to a lawful judge; (2) whether a national judge is obliged to apply EU law of its own motion in an appellate procedure even if the plaintiff did not raise an EU law-based claim before the first instance court; and (3) whether a national court is liable for breach of EU law when it missed to apply EU law of its own motion and to refer for a preliminary ruling. The final decision was delivered by the Hungarian Supreme Court (Kúria) but some aspects were considered by the Hungarian Constitutional Court and the ECtHR. This paper attempts to summarize the legal issues raised in this complex legal process and overview the decisions delivered by the Hungarian courts and the ECtHR.

Márk Balogh's article offers a comprehensive picture of court procedures related to psychiatric patients' institutional treatment, on the relationship between social security and individual freedom, and their impact on procedures and judicial decisions.

Gábor Mészáros analyses the state of emergency declared by the Hungarian Government in order to counter the coronavirus. The author claims that the executive branch ought to have used available ordinary legal measures since they were sufficient. The article also claims that the use of emergency powers are very dangerous because the political decision makers can use these measures in an abusive way. The author also worries about the new law which gave the Government and basically to the prime minister dictatorial powers.

In her essay, Noémi Nagy analyzes the jurisprudence of the Hungarian Constitutional Court concerning the right of minorities to use their language. She concludes that the decisions have so far failed to lay down comprehensive minimum standards in this field. According to the author, addressing this lacuna in the jurisprudence would be necessary in light of Hungary's international obligations.

FORUM

János Mécs argues that traditional legal-doctrinal analysis can serve important purposes even under illiberal rule as scholars can demonstrate that judicial decisions systematically lack a coherent legal basis. The author presents the most recent episode of the battle between the Hungarian Supreme Court (Kúria) and the Constitutional Court in electoral disputes and claims that narrative and doctrinal approaches must be deployed simultaneously to reveal the shortcomings of judicial reasoning. The article provides an important contribution to the recent debate in *Fundamentum* about the role of legal scholarship in the new authoritarianism.

ROUNDTABLE

The participants of this roundtable discuss whether the surprising victory of the opposition in local elections in Budapest and some big cities makes any difference to the fundamental character of the Hungarian political system and whether it challenges the understanding of the Hungarian regime as an electoral autocracy. The participants discuss Questions such as the campaign activity of the ruling parties, the possible strategies of the opposition to run local governments, the problems of the electoral law, and the role of the judiciary under authoritarian rule in enforcing constitutional constraints on governmental power.

AFTER DECISION

In this column summaries of some of the recent decisions of the European Court of Human Rights and the Court of Justice of the European Union are presented.

REVIEW

Endre Orbán examines an actual question - although in a different framework - which is more or less determined the legal debate in the context of freedom versus security. The central issue is the extent to which restrictions on fundamental rights can be accepted in order to maintain security without, at the same time, sacrificing the foundations of the system based on the idea of liberties. In line with this trend, an amendment to the Aviation Safety Act in Germany was finally adopted, according to which a hijacked aircraft can ultimately be destroyed. The author also refers to this above mentioned legal problem in a theatrical reflection. This situation appeared in the drama *Terror* written by Ferdinand von Schirach which premiered at the Deutsches Theater in Berlin in October 2015 and was staged a year later at the Katona József Theater in Budapest. The play invites the viewers to resolve an unsolvable moral dilemma and activates a wide range of our legal and political philosophical knowledge relating to our citizen status.

RIGHTS DEFENDERS

András Léderer analyses the recent final decision of the ECtHR, *Ilias and Ahmed v Hungary*. In most of the merits the applicants won, but the Grand Chamber did not consider their stay in the transit zone as detention. Léderer focuses on the differences between the 2015 transit zones and the situation regarding transit zones since 2017. He points out that the situation has significantly deteriorated.