



MAX PLANCK INSTITUTE
FOR COMPARATIVE PUBLIC LAW
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Fundamental Rights in the Higher Education Within the EU:
Why the Market is a Bad Reference Point
MPIL Agora
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Constitutional and political changes between 2010 and 2018 resulted into a nationalistic pal-ingensis, a re-birth of the legal system of Hungary. In the process, all of the crucial laws were repealed, and an electoral autocracy was born out of the ruins of the former democracy in the country. As this new system is based on strong anti-enlightenment sentiments, it attacks pluralism, and tries to extort a uniform world view by dividing the society into friends and enemies. As a consequence, freedom of opinion and the academia are under a permanent attack. Poland also started to move towards this path, and it also adopted major changes on its higher education system in 2018.

As its competency is limited on this field, we only find a handful of EU actions regarding fundamental rights in higher education. In all of them, certain rights in higher education are connected to areas where the EU has competency to act, like the single European market. On the other hand, the enforcement of fundamental rights only appears as a secondary aspect of the cases, or it is missing completely. This method is not new, as it resembles the general development of EU law between 1957 and 1992.

The lecture tries to summarize the most important cases, and explain why it would be important to develop a European Magna Charta of Academia, thereby defining some of the basic rights of those participating in this sector. It also tries to prove that the EU`s refusal to use a fundamental rights based approach led to discriminative situations, when certain cases triggered EU actions, while others, which also limit academic freedom, did not.



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