

Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 7 and 24 of Directive 2004/38/EC <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	4 July 2012.
Deciding body (in original language)	Alkotmánybíróság.
Deciding body (in English)	Constitutional Court.
Case number (also European Case Law Identifier (ECLI) where applicable)	32/2012. (VII.4.) AB.
Parties	The petitioner in this case was the Commissioner for Fundamental Rights (<i>Alapvető Jogok Biztosa</i>). As a Constitutional review process, there was no defendant involved.
Web link to the decision (if available)	http://public.mkab.hu/dev/dontesek.nsf/0/780CA328B83B304BC1257ADA00524DBC?OpenDocument

Legal basis in national law of the rights under dispute	Article XI(2) of the Fundamental Law of Hungary. ¹ <i>“Hungary shall implement the right to formal and non-formal education through the dissemination of, and by providing general access to, community culture, by providing free and compulsory primary schooling, free and universally accessible secondary education, and higher education made available to all on the basis of their ability, as well as by providing financial support as laid down in an act of Parliament to those receiving education.”</i>
Key facts of the case (max. 500 chars)	Governmental Decree no. 2/2012. on the rules of study contracts made with students studying on a full or partial stipend ² imposed a refund obligation on all students irrespective of their nationality. All of those in receipt of full or partial financial support (stipend) from the Hungarian Government, thus without an obligation to pay (full) tuition, are required to refund the stipend in cases where, after graduation, they do not remain in Hungary to work for a period of time equal to the duration of their state supported study.
Main reasoning / argumentation (max. 500 chars)	The Commissioner for Fundamental Rights initiated a Constitutional review process to challenge the Decree, claiming that it violated Article XI(2) of the Fundamental Law of Hungary and Article 15 of the Charter of Fundamental Rights. The Commissioner claimed that the Decree restricted the free movement of citizens in the EU, their freedom to choose an occupation and their right to engage in work, by imposing a mandatory period during which new graduates were obligated to find a job in Hungary.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The petitioner argued that while Hungarian and other EU citizens might have enjoyed the benefits of Government support for the full or partial duration of their studies in a Hungarian higher education institution, the Decree restricted the fundamental rights and basic freedoms of EU citizens by imposing a pay-back obligation – practically a sanction – in cases where they left Hungary after graduation to work in another EU Member State (most commonly their home country). The Government may have the right to impose conditions on the beneficiaries for the duration of their supported studies but these obligations cannot restrict the free movement of citizens, nor can they operate as sanctions on those returning to their home countries.
Results (e.g. sanctions) and key	The Constitutional Court found that the Decree violated the Fundamental Law of Hungary and other international obligations of the country (e.g. Charter of Fundamental Rights of the European Union) by restricting the free movement granted to all EU citizens, the

¹ Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XI(2), available at: https://net.iogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100425.ATV.

² Hungary, Governmental Decree no. 2/2012. on the rules of the student contracts made with students studying on a full or partial stipend (2/2012. (I. 20.) Korm. rendelet a magyar állami ösztöndíjas és magyar állami részösztöndíjas hallgatókkal kötendő hallgatói szerződésről), 20 January 2012, Articles 18-21, available at: <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12006.pdf>.

consequences or implications of the case (max. 500 chars)	<p>freedom to choose an occupation and the right to engage in work. While the restrictions intended to target Hungarian citizens, the Constitutional Court found that they applied similarly to all EU citizens, thereby forcing them to stay in Hungary rather than return to their home countries or seek work in other EU Member States.</p> <p>Later, on 25 March 2013, Article 7 of the Fourth Amendment of the Fundamental Law³ established a constitutional basis for the restriction of students' right to move. It supplemented Article XI of the Fundamental Law (on the right to education) with the following (3) paragraph: "An Act may provide that financial support of higher education studies shall be subject to participation for a definite period in employment and/or to engaging in a definite period of entrepreneurial activity, as regulated by Hungarian law."</p>
Key quotations in original language and translated into English, with reference details (max. 500 chars)	<p>Paragraph III.2. of the decision:</p> <p><i>"Az az egyetemi hallgató, aki felsőfokú tanulmányai befejezését követően nem Magyarországon, hanem például egy másik uniós tagállamban vállal munkát, a foglalkozás szabad megválasztásához való jogát gyakorolja."</i></p> <p><i>"A university student who, after graduation, engages in work not in Hungary but, for example, in another EU Member State, exercises his/her basic freedom to choose an occupation."</i></p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>Yes.</p> <p>Article 15 of the Charter of Fundamental Rights of the European Union.</p>

³ Hungary, Fourth Amendment of the Fundamental Law of Hungary (*Magyarország Alaptörvényének negyedik módosítása*), 25 March 2013, Article 7, available at: <https://mkogy.jogtar.hu/?page=show&docid=a1300325.ATV>.