

1. Background

Since 1000 AD, Hungary's founding is a multi-ethnic state. This is illustrated by the first king, St. Stephen's letter to his son, Prince Emericus (Imre), while he collected the necessary parameters of good governance. According to the admission of aliens and the use of languages the king wrote the following: '(...) Because the monolingual and monocultural country is weak and frail. Therefore I command you, my son, that protect the newcomers benevolently and hold them esteem and keep them stay with you prefer to dwell elsewhere. And if you wanted to destroy what I have built, or litter, which is collected, no doubt a great loss will your country sustain. (...)'²

In the medieval Hungarian state a significant number of minorities lived, who could practice their own language, to express their identity. A region inhabited by the minority could use their mother tongue in all private and public in relation. This is beard out by the fact that at the end of the 1800s more than half of schools did not teach in the majority language, but in minority language.

From the 19th century, according to the European trend, began the rise of the national identity in Hungary as well. In modern times the use of language and minority rights has normally connected, which is still characterized by the Hungarian legal environment, which also means a less significant role for immigrants and refugees, though they use foreign language as well. We must mention that according to the depth of the legal regulation regardless of this difference there are detailed rules applying to both areas.

The first act in the subject was the Law of Nationalities of 28. July 1849, but after losing the war of independence (1949) to the Compromise (1867) there was no minority (in that time's terminology: national) regulation.³ After 1867 a claim rose on the settlement of the minorities' situation and in particular the Hungarian-Croatian relations. As a result of the that era's ongoing legal codification born the Act XLIV on national Equality of 1868.

The birth of the nationality law was almost unique in Europe, however, the representatives of ethnic groups received it rather negatively, and only much later recognized its merits.⁴ The Act contained basically only language rules, such as the use of mother tongue in the Parliament, the publication of the law, at authorities, courts, and land registry system, at the administrative authorities of second instance, in real estate records, church bodies and authorities and the procedures of township official, and, finally, in education. The implementing of the Act, however, faltered and as a result the original broad powers weakened.⁵ In the period between the two world wars the protection of minorities appeared significantly in education that remained in the post-war times in some elements.

During the decades of the Communist dictatorship (1947-1989) minority issues were treated almost only in education and just after the regime change in 1989 was able to pick up again. In 23 October 1989 Hungary became independent and the provisional Constitution was announced that proclaimed democratic content of fundamental rights such as freedom of conscience and religion, freedom of association, freedom of assembly or right to education.

In the two decades since the political system has changed, the most important laws were adopted by Parliament, but the social and economic changes are continuously induced amendments of legislation both in the use of language and the laws administration of education. 2010th year's general election formed a parliamentary majority, which alone was able to take further steps in legal system changing. One result is the new Basic Law of Hungary from 2012, others are the newly adopted the cardinal laws. Among these important new regulations we can find the act on public education, and the act on higher education and

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² King St. Stephens's „Admonitions” [Szent István király intelmei] VI. <http://mek.niif.hu/00400/00446/00446.htm> (09.07.2012)

³ The terminology of „minorities” came into common use only in the 20th century. Traditionally in Hungary the „nationalities” mean national and ethnic minorities. The Compromise of 1867 is also known as the birth of the Austro-Hungarian Monarchy.

⁴ Balogh, S. (ed)(2002), *The Hungarian State and the Nationalities- The sources of the minority question 1848-1993* [A magyar állam és a nemzetiségek. A magyarországi nemzetiségi kérdés történetének jogforrásai 1848-1993.], Napvilág, Budapest, 9. See legal text on 92-95.

⁵ The prime Minister Decree 4800/1923 amended most of the parts of the 1868 Act. The use of language before courts was facilitated only at townships where the 20% of the inhabitants are belonging to one minority (Article 12). In addition, it should be noted that the regulation following 1920 took into account the significant decline of Hungary's territory and population by peace treaties, along with the drastic changes in number of nationalities living in Hungary.

another act on the field of minority rights.

2. Constitutional regulation and interpretation

Right to education in the Basic Law

The right to education was an integral part of the historic Hungarian Constitution, which was in force from the founding of the state (1000) until the end of the Second World War, when the Constitution of the Soviet dictatorship had taken place.⁶ In its Article 59 of the constitution adopted in 1949,⁷ included the right to culture and education, was modified in 1972, when the Bolshevik vocabulary was replaced by modern terms in the Constitution. This amendment was a milestone in the development of education approaching today's meaning. In 1989 the Constitution was amended by the change of political system and major provisions of the right to education remained the same with the previous text, only clarification of the text has been made.⁸ By this, the constitution contained real democratic provisions.

On 1st January 2012 Hungary's new Basic Law came into force. After nearly twenty years of the Hungarian political changes the modernisation of the public law system has made a significant step. Besides the entering into force of the new Basic Law, the most important cardinal laws gained a new shape and modern content. Thus in 2011 the public education law⁹ and higher education law¹⁰ was adopted by the Parliament. In the Hungarian constitutional system '[t]he right to education traditionally referred to schooling, which has different levels and forms that make different demands on the State. Recent elements have also been formed that can typically be evaluated among the state obligations to protect the institutions', such as maintenance of museums, public collections, libraries, state support given to theatres.¹¹

As it is stated in the first commentary of the Basic Law on the same place 'Article XI of the Basic Law¹² practically implements the provisions of former Article 70/F of the Constitution. A novelty regarding the right to education is granting that secondary education shall be free of charge. This was only mentioned earlier in the Act on Public Education, although it was obvious and self-evident as a condition of the fulfilment of compulsory education.'

The right to education *means a right* on the one hand. In a narrower sense it means the right to learn and to teach.¹³ The former is related to the quality and availability of teaching and equality. This is a subjective right of access to education, even free access to compulsory education. It means a right to have the freedom to choose a school as well as the freedom of someone to choose a religiously committed school. The latter access, according to the Constitutional Court, is accompanied by a protective right, ie the parents are not obliged to take their children to schools that are religiously and ideologically contrary to their convictions.¹⁴ The right to choose a school does not mean that the state shall guarantee tuition waiver in every chosen school.¹⁵ The doctrine of freedom of teaching is connected to the rights of teachers and the right to found an educational institution. In Hungary educational institutions may be established by the State, the self-government of a nationality (minority), churches, civic organizations, and corporate or other persons, where the permission of activity is acquired in accordance with the law.¹⁶ The churches' role in education and the freedom of religion is detailed in prof. Schanda's previously study written for ELA.¹⁷

⁶ We may mention as milestones the Ratio Educationis of 1777-es, which was on the public schooling in the Habsburg empire, and, furthermore, the life-work of J. Eötvös (19th century) and K. Klebersberg (20th century) that were the most important steps of approaching modern public schooling.

⁷ Act XX of 1949

⁸ Horváth, E. (2009), 'The right to education' [A művelődéshez való jog], in: Jakab, A (ed), *Commentary on the Hungarian Constitution* [Az alkotmány kommentárja] 2nd edn, Budapest, Századvég, 2595

⁹ Act CXC of 2011.

¹⁰ Act CCIV of 2011.

¹¹ Balogh – Hajas: Rights and Freedoms. Csink-Schanda-Varga (szerk): The Basic law of Hungary - a First Commentary. Clarus, Dublin, 2012. 85.

¹² Article XI of the Basic Law of Hungary

(1) Every Hungarian citizen shall have the right to education.

(2) Hungary shall ensure this right by providing general access to public culture, free and compulsory primary schooling, free and universally available secondary education, and higher education available for every person on the basis of his or her ability, and, furthermore, through the financial support for students in training, as defined by statute.

¹³ Horváth, E. (2009), 2599.

¹⁴ 22/1997 Decision of the Constitutional Court §1.4.

¹⁵ 1042/B/1997. Decision of the Constitutional Court

¹⁶ Act on public education of 2011 Article 2 para (3)

¹⁷ Schanda, B, *The place of religion in state-funded educational institutions in Hungary*. ELA <http://www.lawandeducation.com/>. See more: Schanda B., 'Considerations on the place of religion in constitutional law' in: Csehi Z, Schanda B, Sonnevend P (eds.)

The right to education, on the other hand, *means an obligation* for both the state and the citizen. As to the state, it is an obligation to create institutions and protect this fundamental right, so to guarantee the possibility the access of education. The Constitutional Court stated that this obligation does not mean the State must guarantee education for all levels of education and for all ideology.¹⁸ In addition, it means the right to school establishment and maintenance, the obligation of an objective and balanced education, and the support for schools even if not state-maintained, but by foundation, church, or any other (legal) person.¹⁹ The obligation for citizens is to participate in compulsory education.

According to the Hungarian constitutional system, the 8 years of primary schooling is compulsory and free, the secondary education is free for citizens and universally available but not compulsory. The higher education is accessible to everyone bearing the right of free movement and stay in accordance with EU law and principles, according to his or her abilities.

The Basic Law have regard to the fact that Hungary has major *international obligations* as well. These are especially the International Covenant on Economic, Social and Cultural Rights (Article 13), the International Covenant on Civil and Political Rights (Article 18), UN Convention on the Rights of the Child (Articles 14.1., 28, 29, 31) and the European Convention on Human Rights (Article 9.1.), and European Charter for Regional or Minority Languages.²⁰ These international standards concerned to all segments of the right to education. The practice of the state must be consistent with its international obligations, and controlled by the Constitutional Court on the one hand, and international organizations (UN, CoE) on the other hand.

Right to education and usage of mother tongue of the minorities

The use of language education in the Basic Law specifically affected to the minorities. It appears first in the first chapter of the Basic Law, the National Avowal when it declares that ‘The nationalities living with us form part of the Hungarian political community and are constituent entities of the State’ and ‘to preserve and safeguard (...) the languages and cultures of the nationalities living in Hungary’. By these statements the recognition and protection of minorities are raised among the basic values.²¹

In the Chapter Freedom and Responsibility Article XXIX. contains the most detailed constitutional regulations concerning minorities. Here included, as a novelty, the free expression and safeguarding of identity (paragraph 1). It was excluded, however, the previous sentence ‘part of the people’s power’, which does not mean an essentially dogmatic turn because the new text declares the same by stating ‘constituent entities of the State’.

The article still guarantees the right to use of names, the care of culture and the right to education in mother tongue, as well as the possibility of self-government. The Basic Law keeps the specific status of minorities that goes beyond the general human and civil rights.

The Basic Law also keeps the control of the *Ombudsman*, and the other regulation and protection of the legal institution. The only changing in this respect is the ombudsman system conversion, which is set in Article 30 paragraph 3 of the Basic Law, where the deputies of the Commissioner for Fundamental Rights ‘shall ensure the protection of the interests of future generations and the rights of national minorities residing in Hungary’.

Minority Law in brief

Further details behind the constitution are set in the Act CLXXIX of 2011 on nationalities,²² which is not unprecedented in the content. The first Act was adopted in 1849, the second was the Act XLIV of 1868. After the political system change of 1989 the third Minority Law was adopted as Act LXXVII of 1993 on National and Ethnic Minorities, which declared, as perhaps one of the most important features, the collective rights of national minorities, which still divides the practice of states and international organizations.

(2012) *Viva vox iuris civilis: Tanulmányok Sólyom László tiszteletére 70. születésnapja alkalmából* Budapest, Szent István Társulat, 278-285., Schanda, B., ‘Hungary’ in: Mark, H (ed.) (2011) *Religion and discrimination law in the European Union*. Oxford, Trier, 169-180., Schanda, B., ‘Church Autonomy and Religious Liberty - National Report on Hungary’, in: Robbers, G. (ed.) (2001), *Church Autonomy - A Comparative Survey*, Peter Lang, Frankfurt/M., Berlin, Bern, Bruxelles, New York, Oxford, Wien, 2001. 716.

¹⁸ 18/1994 Decision of the Constitutional Court

¹⁹ In detail see Horváth E. (2009), pp 2601-2602

²⁰ See more: Weller, M (1994), ‘The right to education in international law’ [Az oktatáshoz való jog a nemzetközi jogban], *Acta Humana* 17, pp 6-32

²¹ Horkay Hörcher, F.: ‘The National Avowal’, in: Csink-Schanda-Varga (eds), *The Basic law of Hungary - a First Commentary*. Clarus, Dublin, 2012. 39.

²² See legal text on the homepage of the Venice Commission: www.venice.coe.int

The most important rule of the 1920s was a ministerial decree, which offered the following three options to minority students to elementary schools: in A) types of schools the teaching language is the ethnic language and the Hungarian language is a compulsory to study; in B) types of schools the Hungarian or minority language of the subjects is evenly divided and taught, and in C) and type of schools the education is in Hungarian, but the minority language is compulsory to study.

In 1945, the three-stage system was changed to two stage (A, C). Then in 1960, further amendment came in the minority school system, changing to B and C type.

The new act on nationalities of 2011 is the fourth minority law in Hungary following the above logic. The new law breaks the earlier somewhat didactic list of minority rights, and place language rights are in special highlight. It is no accident that the strong emphasis is displayed: in Hungary the main character of the minorities is primary the language.

The Act sets the use of language in more areas: (i) the language used in the operation of minority self-governments, (ii) the official use of language, ie. before courts and authorities, and (iii) use of language in the Community. The possibility of use of rights is bound to between 10 and 20% of minority population. The new act permits the use of language in education again in A, B and C types, which meet the commitments of the European Charter for Regional or Minority Languages and intend to give the to the broadest possible rights to the minorities.

3. Conclusion

We may conclude the according to the historical experience of Hungary the issue of use of language is primarily refer to indigenous minorities, and only secondly for immigrants and refugees. Hungary is traditionally not the final stop of the refugees, but rather a transit country.²³ The issues of use of language can reflect this situation too, and we may concluded that languages in schools different from Magyar, are mostly languages of minorities.

Detailed regulations can be found in Hungary, which is nourished by the practice: only small number of minority students studying in their own language (mother tongue). Due to the size of the country and the number of ethnic groups, the Hungarian language is general in education. The state's role is, according to the Basic Law and the above cited decisions of the Constitutional Court, to provide a permanent possibility to use and learn the language, but it can not be forced. Beyond this point the legal regulation has no effect.

²³ See: Wetzel, T. (2011), *The question of immigration on Hungary* [A bevándorlás kérdése Magyarországon], Budapest, Publikon, pp. 117-129