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*I would like to express my deepest love and appreciation to my wife, Debbie, who has devoted so much time to the Yearbook over the years, cite checking all of the cases and making sure that entries in the tables of cases were properly referenced.*

— Charlie Russo

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Brief Historical Background

Hungary, with a population of almost ten million and size of 93,000 sq. kilometers (36,000 sq. miles), is a mid-sized Middle European country. Hungary is located in the Carpathian Basin, east of the Alps and west of the Ural Mountains; its main river is the Danube, which connects ten countries from Germany to Romania. Hungary is south of the northern Hanseatic trading countries, but north of the Adriatic Mediterranean culture. Its language, Hungarian, or magya, is far from the neighboring countries' mainly Slavic tongues with roots in the East. The main religions in Hungary are forms of western Christianity. Hungary’s geographical position has had a major impact on its history, because it was typically a place where West and East met.

The right to education has long been an integral part of the historic Hungarian Constitution in force from the founding of the state in AD 1000 until the end of the Second World War, at which time the Constitution of the Soviet dictatorship took control.\(^1\) Education, in and after the Middle Ages, typically was provided by the Roman Catholic Church. Later, Queen Maria Theresa (1740-1780) introduced public education (Ratio Educationis, 1777). As such, the state has continuously and increasingly taken over the task of education by World War II.

\(^1\) This so-called 'Historic Constitution' was often compared with the British Constitution both in their legal tools and their historical milestones. A pair of individuals stand out in the past two centuries, János Eötvös (19th century) and Kúnó Klebersberg (20th century), the most important professionals and politicians helping to develop modern public schooling in the pre-communist modern era.
In 1948, the communist dictatorship nationalized all church schools and all services were to be provided only by the state. Until 1989, and the collapse of the dictatorship, no church school could exist, nor could religious education occur. The atheist state explicitly discriminated against the Church and its members. This is why the fall of the dictatorship brought a significant change in this area.

It is also worth mentioning that since being founded, Hungary has been a multi-ethnic state. In the medieval Hungarian state, significant numbers of minorities were able to speak their own languages and to express their identities. Further, regions inhabited by minorities could use their mother tongues in private and public. In fact, at the end of the 1800s, more than half of schools did not teach in the majority, namely Hungarian, language. Presently, thirteen minorities groups are acknowledged legally in Hungary and have educational rights discussed below.

Article 59 of the communist constitution, adopted in 1949, which includes 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 the contemporary meaning. In 1989, the Constitution was amended due to the change of political system. However, major provisions of the right to education remained the same as in the previous version, because the new one only clarified the text.\(^3\)

### Constitutional Provisions on the Right to Education

According to Article XI of the new Hungarian Basic Law of 2011, “Every Hungarian citizen shall have the right to education.” Paragraph (2) reads: “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.”

“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 fulfillment of compulsory education.”\(^4\) On the one hand, the right to education means just what it says. In a narrower sense, it means the right to

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\(^2\) Act XX of 1949. This new Constitution created a great fracture in Hungary’s constitutional development, turning it in another direction mainly determined by Soviet interests.

\(^3\) Horváth, E. (2009), ‘The right to education’ [A művelődéshez való jog], in: Jakab, A (ed), Commentary on the Hungarian Constitution [Az alkotmány kommentárja] 2nd ed, Budapest, Századvég, p. 2595. From this amendment the Constitution defined itself as “provisional” until Hungary’s new constitution comes into force. This latter became the new Basic Law of April 2011.

learn and to teach. 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.

On the other hand, in relation to the state’s obligations about the right to education it also stipulates that “the right to study, however, does not mean that the state should guarantee to access all schools at all levels and within all ideologies for everyone. States' obligations relating to the operation of the educational institution network in this context means that the state shall not discriminate against anyone as a maintainer of public institutions.”

The Constitutional Court emphasizes the subjective and the institutional side of the right to education: “the State has a constitutional obligation while the parents and students have a fundamental right to free education” Public education is, therefore, a responsibility of the state—which shall be provided not only by the state.

“Outsourcing” of public services is possible within appropriate legal guarantees and specific agreements. Under these conditions, non-state-run schools are eligible for state aid and, to an extent, public services are assumed. The limit of this obligation was determined by the Constitutional Court when it held that “state is obliged only to establish and maintain non-ideologically-committed schools. We cannot determine that the state should provide free education for everyone to any school of their choice.” Summing up the Constitutional Court’s view, the right to education cannot be enforced without state guarantees, and the state is entitled to involve external actors, including churches, with the obligation to support them if these contribute to human public services.

Main Provisions of Cardinal Acts on Public and Higher Education

Public Education

Both public and higher education were affected by numerous reforms after the 1989 political change. The first modern democratic regulation was the Act LXXIX of 1993 on Public Education. This was replaced by the Act CXC of 2011 on the National Public Education (NPE), which entered into force in 2012.
Numerous amendments affected the normative background, meaning that the educational system has been undergoing constant transformation since 1989.

With regard to Section 1, the purpose of the NPE is to create a public education system which contributes to the harmonic mental, physical, and intellectual development of children and young people through the conscious development of their skills, abilities, knowledge, proficiencies, emotional and volitional characteristics, and cultural education corresponding to their age characteristics. In this way, public education is designed to educate responsible citizens who are virtuous and capable of independent life, as well as achieving their objectives, while harmonizing private interests with the interests of the public. The prioritized objective of education is thus to prevent the widening of the social gap and promote talent through the tools of schooling.

Public educational institutions may be established and operated by the State, nationality self-governments, and/or churches registered in Hungary, as well as other organizations or persons, on the condition that they have obtained the right to conduct such activities as laid down by statutory provisions. The main basic tasks in public education are pre-school education, primary school education, halls of residence education, grammar and vocational secondary school education, adult education, primary art education, and developmental education.

According to NPE Section 3, public education shall focus on children/students, while teachers and parents must work together to form an integrated unit. The protection of the rights of children in Hungary is carried out in a complex system of institutions. The rights of pupils are protected by the ombudsman; the rights of children are represented by the so-called “children's rights advocate” established by the child protection law, as well as a special “alarm-bell network.” The safety of students is a duty of the police, while their psychological well-being is taken care of by school psychologists. Ultimately, compulsory education is controlled by the County Government Offices.

**Higher Education**

Act CCIV of 2011 on National Higher Education (NHE) entered into force in 2012. The aim of this Act is to guarantee the operation of the higher education system in accordance with the frameworks defined under Section 3 of Article X of the Basic Law, the constitutional provision guaranteeing freedom of higher education. In Hungary, the educational core activity of higher educa-

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11 This provision means that any legal person who intend to establish a public school shall have state authorisation. A special central body, the Authority of Education (OktatásiHivatal), is entitled to act under the supervision of the Minister of Education.

12 Section 4. of NPE

13 For details, see Decree No. 40/1999 ME of the Minister of Education on the Tasks and Operation of the Office of the Commissioner for Educational Rights. [www.oktbiztos.hu](http://www.oktbiztos.hu)

14 The first act after the democratic changing was the Act LXXX of 1993 on the Higher Education. Later, after Hungary joined the EU in 2004 a new law was adopted (Act CXXXIX of 2005).
tion extends to higher educational vocational training, bachelor’s programs, masters’ programs, doctoral programs, and specialist postgraduate programs.

Pursuant to Section 4 of the Act, higher education institutions may be established, either independently or jointly with other parties, by the state, national minority government, churches or ecclesiastical legal persons, business organizations, and foundations registered in Hungary. Unlike establishing public education schools, higher education organizations may be founded or operated if recognized by the Parliament (Országgyűlés).\(^\text{15}\)

Among the various control mechanisms, quality assurance in higher education must be highlighted. The Act established an independent body, the Hungarian Accreditation Committee, a national expert body promoting the supervision, assurance, and evaluation of the quality of higher education, scientific research, and the scientific quality of artistic creation with special regard to doctoral schools.\(^\text{16}\) Under Section 71B, this Committee, on the request of the above-mentioned Authorities of Education, may provide reports on the functioning, the supervision of higher education institutions, or establishing new educational activities or programs.

Ongoing debate occurs in Hungary on the proper funding of higher education. The state spends a great amount of money on even private educational institutions, on the basis of the public services they provide. The introduction of mandatory economic top managers in public universities thus is aimed at ensuring the rational financial management of each institution. However, mergers and divisions constantly affect institutions, thereby bringing uncertainty into higher education.

**Examples of Achievements in Preserving Values: Freedom of Religion and Rights of Minorities**

As noted, Hungary is a multi-ethnic state where nearly 6% of the population belongs to some nationality. According to the constitutional and international provisions prescribed and monitored by the Council of Europe, these minorities, or nationalities, have the right to establish their own educational

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\(^{15}\) At present, twenty-two state universities and two state colleges are recognized, along with seven non-state universities and twenty-seven non-state colleges. Besides these are seven \((5+2)\) universities for applied science.

\(^{16}\) According to Section 71 (1), The Hungarian Accreditation Committee shall be comprised of twenty members. The minister shall delegate nine members, the Hungarian Academy of Sciences two members, the Hungarian Academy of Arts one member, the Hungarian Rectors’ Conference three members, religious legal entities maintaining higher education institutions two members, the Hungarian Commercial Chamber one member, the Association of Student Self-Governments one member, and the Association of Hungarian Ph.D. and DLA Students one member. With the exception of the member delegated by the Association (…) of Students, all members shall hold scientific qualification. (…) (2) From the members of the Committee, the minister and the president of the Hungarian Academy of Sciences proposes the president of the Hungarian Accreditation Committee. The President shall be appointed by the Prime Minister.
institutions. Each of these minorities has a so-called self-government which looks after its cultural autonomy within the state. In minority-founded schools, the language of instruction may be, partly or fully, the nationality’s mother tongue. The implementation of these rights is monitored and enforced not just by the ministerial duties of the Authority of Education, but also by the special deputy of the Ombudsman.\footnote{Article 30 of the Basic Law of Hungary sets that The Commissioner for Fundamental Rights shall himself or herself investigate—or have investigated by others—any wrong related to fundamental rights that have come to his or her knowledge, and shall initiate general or specific measures for their remedy. (…) The Commissioner’s deputies shall be responsible to protect the rights of future generations and nationalities and ethnic groups living in Hungary.}

Churches may establish and operate schools under the provisions of the related Act. In cases of individual contracts between the state and churches or denominations, the founders are entitled to receive public funding or additional support if their schools participate in the duties of compulsory admission.

In Hungary, separation of state and church does not exclude the possibility that the state can cooperate with churches. This is particularly relevant in human services, where the church has long and significant experience and infrastructure. Within this cooperation, the interests of both parties are important: The church is to serve by ministry, while the state would like to know the outsourced public functions are well controlled.

**Conclusion**

To sum up this short introduction to Hungarian education law, forced and constant change presents a serious challenge for Hungary’s entire education system. These changes are induced by both internal and external factors, such as the European Union's educational policy. Perhaps the two most difficult tasks of all are the preservation of values within modernization, and the further development of rational management. Despite all the achieved results, there is room for improvement in terms of education law in Hungary.