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European Association for Education Law and Policy
Arthur Goemaerelei 52
2018 Antwerp
Belgium
Phone +32 (0)2 306 67 60
Fax +32 (0)2 238 58 45
E-mail elabelgium@telenet.be
http://www.lawandeducation.com

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Safe educational environment in Hungary

Balázs Szabolcs Gerencsér*

I. Background: The Constitutional regulation and interpretation

A. 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 (AD 1000) until the end of the Second World War, when the Constitution of the Soviet dictatorship had taken place.¹ In its Article 59 of the constitution adopted in 1949,² 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 the contemporary meaning. In 1989 the Constitution was amended by the change of political system and the fall of the communist dictatorship and major provisions of the right to education remained the same with the previous text, only clarification of the text has been made.³ 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 a new public education law⁴ and higher education law⁵ was adopted by the Parliament.

In the Hungarian constitutional system “the 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 and libraries, or budgetary support given to theatres.⁶

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* Balázs Szabolcs GERENCSEŘ (1978), holding a PhD degree since 2008, is an associate professor at the Administrative Law Department of the Pázmány Péter Catholic University Faculty of Law. His current fields of research are administrative law, development of management, human rights, minority law and autonomies. E-mail: gerencszer.balazs@jku.ppke.hu

1 We may mention as a historic milestones the Ratio Educaetionis 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) who were the most important professionals helping to approach modern public schooling.

2 Act XX of 1949


4 Act CXC of 2011.

5 Act CCIV of 2011.

As it is stated in the first commentary of the Basic Law on the same place "Article XI of the Basic Law" 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.8 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, i.e. the parents are not obliged to take their children to schools that are religiously and ideologically contrary to their convictions.9 The right to choose a school does not mean that the state shall guarantee tuition waiver in every chosen school.10 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.11 The church’s role in education and the freedom of religion is detailed in prof. Schanda’s previously study written, inter alia, for ELA.12

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 to 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.13 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.14 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 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

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7 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.
9 1042/B/1997 Decision of the Constitutional Court
10 22/1997 Decision of the Constitutional Court § 1.4.
11 Article 70/F of the Constitution
13 18/1994 Decision of the Constitutional Court
14 In detail see Horváth E. (2009), pp 2601-2602
European Charter for Regional or Minority Languages. 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.

B. Security and Safety in the Basic Law

The Basic Law repeatedly deals with the question of safety. On the one hand the National Assembly states that “We believe that the common goal of the Citizens and the State is to achieve a good quality of life, safety, order, justice and liberty.”

The Constitution thus recognizes the right to general safety that is valid for every citizen. It is confirmed by the Section Rights and Freedoms Article IV, which provides that “Every person shall have the right to personal freedom and security.”

Security is a broad requirement, which means the physical, legal and moral-mental security as well. Therefore, the content of this principle is built up from more fundamental rights. It includes Article II (Right to Human Dignity), the aforementioned Article IV (right to freedom and to personal security) and Article XV, the equality clause.

The latter Article states that “Every person shall be equal before the law.” Hungary condemns all forms of discrimination such as “on the basis of race, colour, gender, disability, language, religion, political or other opinion, national or social origin, financial situation, birth, or on any other ground whatsoever.” It is important, however, that certain groups of the society are particularly protected; even the benefit of extra protection is also enshrined in the Constitution, the same place. Separate measures are granted to children, women, the elderly and the persons with disabilities. These measures are obligation to the state as it was mentioned above at educational rights. According to education, these measures are set in specialized acts, see below on the compulsory and higher education.

One of the subjects of the protection are the children. Article XVI of the Basic Law, says that every child shall have the right to receive protection and it declares the highlighted element of care, as their "proper physical, mental and moral development." These are the key elements of safety, which subsequently, appear again in the laws on lower level. Children as students are in the same physical, mental and moral type of protection. This is of course in line with the UN Convention on the Rights of the Child, 1989, New York, to which Convention Hungary is a member state.

However, we shall mention that Article XVI does not regulate rights of the children in general. As the First Commentary says, “children, just like adults, are undoubtedly the subjects of fundamental rights. […] Rights of children can also be understood as reasonable grounds for a kind of preferential treatment or even affirmative actions based upon their age.” Furthermore, it is important to mention that not only the state and the authorities are obliged to protect the children and the pupils, it is also an obligation to the society as well.

According to the practice of the Hungarian Constitutional Court, the fundamental freedoms cannot be limited generally, but only in that regard which is required for the protection of the child or the rights of others, applying the so-called necessity–proportionality test. And even no constitutional grounds can

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15 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
17 See the Hungarian Constitutional Court’s decision 995/B/1990 where it is stated that ‘a child is a human being and is entitled to all the constitutional fundamental rights like anybody else, but in order to enable him to exercise all these rights, all the conditions of his growing up must be secured according to his age. Therefore Article 57 paragraph (1) of the provisional Constitution primarily refers to the fundamental rights of the children, meanwhile it also outlines the fundamental obligations of the State and society.’
18 Decision 30/1992 of the Constitutional Court
be named for a general limitation of a fundamental right of a child.\textsuperscript{19} A special case of the protection of children is stipulated for in Article XVIII para 1, when it prohibits employment of children.

\section*{C. Legal background}

The most important provisions of safety are to be found in the Basic Law, as previously explained. Any further detailed provisions are regulated at a lower level in cardinal and other acts. The constitutional requirement of these laws are to be consistent with the Basic Law and with the international obligations undertaken by Hungary. Explicitly the UN Convention on the Rights of the Child is to be mentioned.

In 2012, parallel with the entry into force of the new Basic Law of Hungary, several cardinal laws have been made. Two of these are regulating the most important areas of education: one is on the national compulsory education the other is on the national higher education. These laws will come into force gradually, during 2012-2013, with respect to the academic years.

Further regulations are included in certain norms of criminal law (Criminal Code) and in human rights and administrative standards (Child Protection Act, Act on the Public Prosecutor, Ombudsman Act, etc.).

The government may be authorized by law to develop the details of these rules (technically in decrees), nevertheless, the presentation of any of these may go beyond the limits of this report.

\section*{II. Elements of safety}

\subsection*{A. Human rights and their enforcement}

Speaking about safety in education, in line with the presentation of the above cited constitutional rules, not only the sectoral rules of education must be applied, but all rights and obligations arising from the Basic Law as well. Safety means not only physical security, but also it relates to the constitutional rules. Therefore, besides laws of education, the rules on human rights, child protection, criminal law should be taken into consideration too.

It is similar in the field of law enforcement. The implementation of the safety means a co-operation between several public bodies of child protection, i.e. teachers, parents, schools, but similarly the police, the Ombudsman, the Public Prosecutor's Office and other professionals, as detailed below. The rights of teachers and students are explored in the next chapter in more detail, here the role of the Ombudsman and the prosecutors are to be mentioned.

Act CXI of 2011 is on the \textit{Commissioner for Fundamental Rights}, who is exercising its functions (protecting fundamental rights) with the authority of the Parliament.\textsuperscript{20} This cardinal law defines the tasks and powers of the commissioner, and states that the Commissioner shall do activity "affecting fundamental rights and/or the expression of consent to be bound by an international treaty" (Article 2 para 2), and any further task of international mechanisms whether the Commissioner was designated. The cardinal law defines such groups of society (i.e. children, future generations, and minorities), who's protection shall be paid a particular attention. This law also provides that the Commissioner for fundamental rights shall register a statistical summary of violations of the fundamental rights as fully as possible and to this register all other agencies dealing with protection of human rights are required to provide data. The Ombudsman reviews and analyzes the situation of fundamental rights in Hungary, evaluate the long-term plans and concepts, and propose legislation or international contract to recognize. He may initiate special actions at the Constitutional Court, contribute in the preparation

\footnotesize
\textsuperscript{19} Balogh, Zs. – Hajas, B. (2012), 92.
\textsuperscript{20} Basic Law Article 30 para 1
of national reports to international agreements, and monitor the enforcement of their content in Hungary.

On the strengths of the ombudsman’s authority the First Commentary is rather clear: “ombudsmen, due to the flexible nature of their proceedings, may concentrate on the relationship between an individual and a public or private body being effectively in a powerful position, leaving out of interest the origin of this power. Ombudsmen are helped by the stabilisation of the substantial content of rights by international documents.”

The criterion of the Ombudsman’s assessment is defined as the infringements “should be in relations with the constitutional rights”. This criterion will constitute the boundary between the process of the Commissioner for Fundamental Rights and the Ombudsman of Educational Affairs, which will be presented in the section Institutional Protection of Rights. The former requires violations of human rights, while latter deals with educational violations. This is confirmed by their organizational status as well: the former is specialized parliamentary monitoring body, the latter is a government official under the control of the minister.

Article 1 Para 2a of this cardinal law presents the most important task of the Ombudsman to this report, that is “in the course of his or her activities the Commissioner for Fundamental Rights shall pay special attention, especially by conducting proceedings ex officio, to the protection of the rights of children.” Child protection extends to the protection of pupils in the practice of the ombudsman, however, not in the assertion of rights in the field of education, but in the general field of human rights. We may recognize this practice in the booklet issued by the Office of the Commissioner for Fundamental Rights in 2011, titled "Children's Rights Project.”

This booklet reports a summary of the Ombudsman's inquiries, inter alia, on private student's legal relationship, the pre-school care of autistic children, and on pre-school free of charge services.

Since 2008, the Ombudsman maintains a website for protection of children's rights, which contains not only information, but also provides an interactive interface for everyone. The usefulness of this initiative is demonstrated by the fact that besides the traditional treatment of complaints, in two years' time the site received about 140 questions from children and parents both. Typical questions were among the problems of behaviour in school (teachers "roaring"), duties of children, smoking, pornography available on the Internet, school policy, school punishment, classification, etc. In many cases, the Ombudsman noted that the phenomenon appearing in school is known, however, the salvations of these are belonging to rather technical, educational, and not fundamental law questions. The Ombudsman believes that “the children shall be taught by us, the adult members of society to live with and not to abuse their rights. There is a responsibility of the parents, the pedagogues, and in general all adults who have contact with children.”

The educational functions cannot be found among the powers of the public prosecutor. This institution, however, is necessary to mention indirectly, as to the competence regarding children is adequate to school-age children too.

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The prosecution service has duties outside the criminal law as well in Hungary. Child protection is a special sector, which affects both penal and not penal areas. The powers of the prosecution service is regulated both the Act CLXIII of 2011 on the prosecution service and other special laws. The new Basic Law of Hungary emphasize that the prosecutor is a contributor to the jurisdiction both in its criminal and non-criminal law (protection of the public interest) tasks. The new law breaks with the previous regime and restrict the former almost unlimited discretionary right of the prosecutor to investigate. This new regulation is now consistent with legal certainty. The public prosecutor in order to restore the rule of law - in the area of child protection too - primarily may initiate litigation before the court and other administrative procedures at administrative authorities on the first and second instant.

With regard to the outstanding importance of children's rights the prosecutor may control the legality of the child protection service's activities. If a violation of law is found the prosecutors may call out for restore legality. If the head of the institution does not agree, may contact his superior institute, and at the same time, may propose to postpone the planned measures until the negotiations are going on.

These tasks of the prosecutor are in line with the international standards, particularly the UN Convention on the Right of the Child Article 40.3.b. The prosecutor has to take all legal measures in minor's cases to avoid criminal court procedure if the legal conditions for that are exists and also he has to initiate proceeding at social services to take measures for child protection. All the measures will be taken by social services, of course. During the investigation and prosecution stage of the procedure the prosecutor has a view of endangered circumstances of the minor (e.g. the crime was committed together with parents), so this rule obliges the prosecutor to initiate measures with the aim of child protection. This kind of action of the prosecutor is well known in Western Europe as well.

B. Safety of children in schools


The legal basis for the protection of children is created by abovementioned provisions of the Basic Law. Thus, the constitution allows the state a very large scale of regulation in this field that is thematically restricted (or guided) by the Convention. These regulations are to determine the structure of the system, the principles of organization, and the regulatory standards for certain minimum activity.

The aim of the Child Protection Act is to lay down the basic rules, to increase equal opportunities for the children, where the State, local governments, and natural and legal persons are provide assistance to the children by taking predefined measures and actions; and to help exercise rights and interests, parental performance of duties; as well as prevention and elimination of the jeopardize of the child; the substitution of the missing parental care, and help the social integration of young adults.

27 The role of the public prosecutor outside the field of criminal law is relevant in more than the half of the European states. A survey was published by a consultative body of the Council of Europe, the Conference of Prosecutors General of Europe (CPGE), see a comparative research by Varga, A. Zs. (2008), Report on the Role of the Public Prosecution service outside the field of criminal justice, Strasbourg, CoE
28 Varga, A. Zs. (2012a) pp. 192-194
29 Article 40.3.(b) of the UN Convention on the Right of the Child says 'whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.'
30 In the Netherlands, for example, contemporary and on-going cases are to be mentioned where only the prosecutor can achieve public order in cases related to minors, such as preventing them from paedophiles.
The Child Protection Act defines the notion of child care, child welfare, children’s rights, the meaning of jeopardize, and the child’s relatives. Child care is realized throughout a unified system, which includes both voluntary and regulatory measures. The welfare of the child is in accordance with the Convention. The definition of jeopardize is a cardinal part of child protection, especially when risk detection and indication of the tasks are implemented by various bodies and individuals, such as nurses, general practitioners, educational institutions, educational counselling, family support services, police, the prosecution service and the courts.

Chapter 2 of the Child Protection Act lays down the scope and actors of the child protection services and the upgraded child welfare administration. The Act identifies other sectoral activities relating to the protection of children. Such functions are performed, for example, by the school.

Within "protection" beyond the abovementioned duties the financial protection shall be created too. One of the means is an extraordinary child protection support, which can be given for families with children in an extraordinary period of life. The law specifies particularly those children who have come into an extraordinary situation because they need help in schooling after foster care.

We may clearly deduce from the text of the Child Protection Act and its case law that nowadays the state pay more attention to school-age children. Among the rights of children in the Act mentions that "the child has the right to grow up in a family environment ensuring his or her physical, mental, emotional and moral development, health and wellbeing." (Article 6 para 1.) In addition, "the child has the right to receive protection against environmental and social impacts jeopardizing his or her development, as well as against a health hazards." (Para 4) "The child has the right to have his or her human dignity respected and to be protected against abuse (physical, sexual or psychological violence), the neglect and the information nuisance. The child shall not be tortured, corporal punishment nor other cruel, inhuman or degrading punishment or treatment." (Para 5) And "the child has the right to access media that increases the development of appropriate knowledge, and the Hungarian language and culture, and to be protected from harmful influences, such as hate speech, violence and pornography." (para 6)

The protection of all these fundamental rights is, on the one hand, a responsibility of the state that is, inter alia, performed by the schools. The Article 11 para 1 of the Child Protection Act says the protection of children’s rights is an obligation for every natural and legal persons who are in connection with the children’s education, care and administration of their affairs. A uniform system is established by the Act identifying which bodies are taking part of the child protection system (Article 17). These are the following thirteen types of bodies: health care providers, the family support centre, the educational institutions, the police, the public prosecution service, the court, the probation service, organizations for victim assistance and compensation, the reception center for refugees, social organizations, churches, foundations, the employment authority.

The Hungarian Institute of Educational Research and Development, which is going to be presented in the last chapter of this report, publishes an analysis year after year on the Hungarian education and within the internal relations of students, their media consumption habits, and also about their aggression. So far, the last analysis was published in 2011 and reports the year 2010 issues.

Analyzing the students’ media consumption habits use of the Internet was found in the first place. Two-thirds of students have a personal profile in a community portal. In general we can say that “the greatest importance have gained by the Internet contact and content sharing systems.” In Hungary the school’s responsibility and obligation to filter the pornographic and extremely violent content of the reachable internet sites on the equipments used on the schools IT network. However, it should

31 http://www.oif.hu/english
33 Török et al. referred to the same place: Ságvári Bence (2009). 'az IT generáció. Technológia a mindennapokban: kommunikáció, játék és alkotás.' Fanta Trendreport
34 Török et al. (2011) ibid
be noted that more and more students use their own Internet access, where the limitation of content cannot be reached by the school, obviously. (The teacher may, for example, limit the use of these cell phones, tablets during the classes.) In such cases, the above-mentioned co-operation between school and parents is emphasized, where the school can indicate the problem to the parents.

The school psychologist is another element of the safe educational environment. In cooperation with the school’s staff, it’s the main tasks are the examination of the process of education; screening and orientation; individual and group sessions aiming at exploring and developing; consultations; and to explain and transfer his or her psychological knowledge. The school psychologist is employed by the school; the responsibilities are included in the school’s Organizational and operational rules; the supervision is obligatory; and he or she is subject to the Professional Code of Ethics for Psychologists.

Years back the major challenges that the students are facing are the harmful habits, especially smoking and alcohol consumption. In the Capital, compared to the country, drug appears too. Consumption of illicit drugs, according to a voluntary and anonymous questionnaire, 8% of students reported to have it used, while nearly 30% of the students had school conflict because of alcohol consumption. The school’s Organizational and operational rules may contain provisions on the consumption of harmful and illicit drugs in schools or in schooltime, and, where appropriate, disciplinary action can be initiated against the student (see below).

C. Tools against aggression

The analysis referred above states that “the social sensitivity on school aggression increased significantly in the last few years.” That means not an increase in aggression, but the growth of the social sensitivity. The forms of this aggression, however, may be verbal or physical violence.

According to a study, verbal violence is shouting, swearing (profanity), humiliation, ostracism, while physical violence is pushing, hitting, kicking. The 18% of the students are affected by this latter, according to the survey. It is also important to mention among the deviances the unjustified absences (truancy) that is a grate problem in the poorer (northeast) region of Hungary.

The educational tools against violence are very limited. Some disciplinary actions used in the schools, such as physical aggression, or assignment from class – are formally and clearly forbidden by the Public Education Act. Article 46 para 2 of the Public Education Act states that “The child and the student may not be subjected to physical and psychological punishment, torture, cruel, inhuman or degrading punishment or treatment.” A research by the Educational Ombudsman’s staff finds that the discipline is softer in secondary grammar schools and they are mostly based on the verbal tools. In secondary vocational schools more teacher write in check books, while in vocational schools more student is assigned from class, call in the parents, and study type discipline tools are much less used. This difference is in line with training profile of the abovementioned type of schools; secondary grammar schools are mainly training their pupils for white-collar worker life, while vocational (secondary) schools mainly for blue-collar worker life.

36 Török et al. (2011) ibid
The disciplinary tools are therefore primarily remaining to the field of pedagogy. These are fully in line with human rights standards, however, in case of significant deviance, their "impracticability and untreatedness are meaning a significant barrier to quality education." 40

Interestingly, the educational researches clearly show that the treatment of aggression is more effective in religiously committed to better schools, however physical punishment is not allowed in these schools too. Surveys show that students reported significantly higher level of the teacher's attention in these schools than in non-denominational schools. Furthermore, in Hungary "in denominational schools there is a unique potential in the integration of different socio-cultural backgrounded students," too. 41

According to the Public Education Act, the punishment for deviant behaviour committed by a student can be resolved in disciplinary proceedings. Article 58 of the Act states that "if the student is at a serious breach of duties by his or her fault, a disciplinary action may be taken through a disciplinary procedure ending in written decision. Starting and caring out of the disciplinary proceeding is obligatory if the student requests it against himself." Otherwise initiating is not obligatory. The disciplinary action may be: reprimand, severe reprimand, withdrawal or reducing defined benefits, transfer to another class or school or student group, disqualification from continuing the school year in the defined school, and exclusion from school.

This latter is most severe disciplinary action. It may be used only in exceptional cases of misconduct or repeated offence. In this situation the parents must look for a new school or college for the student.

It is true for disciplinary proceedings as well as criminal offenses that most of them remain latent, and will not be public.

Specific crime trends concerning schools can be divided into the following groups: (i) the crimes committed by minors, which do not affect the criminal law because the offenders are under the age of 14 and are not criminally liable. In these cases, the role of the child protection agencies appears. (ii) Crimes against property and persons committed by pupils in the schools against each other; and (iii) verbal and physical violence against the teacher.

The latter have been increasingly highlighted in the recent years. 42 A case-study: "Why was she wearing glasses?"

After a serious conflict with a student of the 8 year (age 14), teacher TA needed to go for a long-term medical care. "The problem was that at the break between classes I dared to call on the boy to stop to provoke others, than he addressed me unsophisticated words and attacked me. He broke my nose, my glasses, and I was at home for several weeks afterwards. Not only the physical abuse hurt, but I mentally shattered." The student was not willing to appear at the disciplinary hearing, he was fugitive, even the parents did not know where he was. Finally, when he was told that the teacher was in hospital for several days, because the broken glasses cut up the face, his reaction was only: "Why was she wearing glasses?" 43

The great social echo can clearly be attributed to the intercession of the media, by which such cases have been published. The politics wanted to solve the social indignation and intended to approach the problem form several aspects: first, as a matter of socialization, on the other hand, as a matter of law. This latter aspect raised the questions of criminal law, which pointed out the fact that the teachers had no legal protection commensurate with the responsibilities imposed on them. By the Act LVI of 2010, Article 6 the Parliament amended the penal code and intends to establish an intensified criminal

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41 Török et al. (2011), ibid
42 A national weekly newspaper, for example, opened a separate section for these news: http://hvg.hu/cimke/ tan%C3%A1rver%C3%A9s
protection, so that at crimes committed against teachers and other assisting employees of public education the degree of penalties was increased.

Here, the narrow circle of the protected subjects is meaning only the public education workers, so for example the child protection staff does not belong to the subjects.\textsuperscript{44}

In order to protect schools, students and teachers from theft and reduce crimes against property the government found out several tools. One is observation, placing cameras in schools, which raises serious privacy and data protection issues.\textsuperscript{45} Currently in Hungary placing cameras in schools is possible, but their operation is very limited. In line with the principles of the Data Protection Act, cameras cannot operate in school time, because it violates the purpose limitation. The “simple” observation is forbidden, as it unduly restricts the right to privacy. In fact, after teaching hours it is possible to operate cameras for security reasons, but even then a warning (like a placement of signs) has to be set on this fact and the time of operating. (According to the Hungarian law cameras can only set up in common places. In changing rooms and bathrooms cameras are forbidden, because it violates privacy.) The Data Protection Authority in a consequent on that any data management and should be proportionate and limited to purpose.\textsuperscript{46}

In the spring of 2012 another attempt rose, the so-called “school guards”. The Ministry of Interior had a special vision of security and law enforcement mission to set up a special service. This plan had also gained a great social echo and as a result the government had to rethink this idea and withdraw this proposal from the final draft.\textsuperscript{47}

A new direction is rising in the field of security and conflict management, which is mediation. In doing so, a professional mediator is involved in the solving of the conflict. Nevertheless, this system appears in multiple areas of law (civil law, labour law, agricultural law, etc), but currently there is no established legal and institutional framework for schools, so we may only see this as a tendency or an early practice.

Above, at latency and the social impacts, I have mentioned that the increasing influence of the media can be measured in matters related to education, especially in terms of aggression. This trend is a double edged sword: on the one hand, effective, and it helps to find a solution to decade long unsolved problems. On the other hand, it can be detrimental to the functioning of education if the school has to develop resources for defence against substantiated or unsubstantiated accusations, where, it must be noted, that schools sometimes have even operational difficulties because of the lack of budgetary resources. This topic is researched by the below mentioned Hungarian Institute of Educational Research and Development within a project, which soon will be published.

D. Institutional protection of rights

Next to the above-mentioned general children’s rights protection, we have to mention two specialized institution which has considerable experience in the subject in Hungary.

First is the specialized ombudsman for educational affairs. The Office of the Commissioner for Educational Rights contributes to the promotion of citizens’ rights concerning education of children,

\textsuperscript{44} Lajtár, I. (2011). ‘On several questions about the prosecutor’s work in the field of children and youth protection’ [Az ügyvészseg gyermek- és ifjúságérisel szakértői munkáját érintő egyéb kérdések], in: Ugyészek Lapja nr. 3, p.26. Lajtár gives an example: if somebody attacks a teacher and a child protection professional in the same time, the first crime will be a qualified case, the other is not.

\textsuperscript{45} Data protection is managed by a specialized authority in Hungary, that is the Hungarian National Authority for Data Protection and Freedom of Information. http://www.naih.hu/general-information.html

\textsuperscript{46} The case law of the Authority is in line with the Constitutional Court. See the decision 36/2005 of the Constitutional Court where it stated that cameras may only serve protection of property if it does not violate human dignity and privacy.

\textsuperscript{47} The final Act is CXX of 2012 on special policing responsibilities, and on truancy. The proposal contained the participation of police in defence of schools (Article 28 para 6), but at the final vote it has been withdrawn and it only remained in the title.

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pupils, students, researchers, educators, teachers, parents and their associations. Its status in public administration is special as it is directly and exclusively responsible to the Minister of Education, therefore it works like the Commissioner of Fundamental Rights, though its authority is a narrowed to the field of educational law. Before the Commissioner any child, pupil, parent, educator, student, researcher, teacher or their associations may file a petition in individual cases, if in their judgement their guaranteed rights have been infringed or there is a direct threat of such infringement. The Commissioner investigates all petitions, and if the petition is well founded, the Commissioner will initiate conciliation as sending the petition to the institution or person who had brought or omitted the decision in question for a declaration, and furthermore, he will initiate in writing that the claimant and the institution reach a consensus.48

The second is a different kind of institution that does not work in protection of rights, but development and research topics related to education. As their mission statement says: “The aim of research and development done by the Hungarian Institute of Educational Research and Development is to continuously renew Hungarian public education, assist its adaptation to current professional and social requirements, support the decision-making process in educational matters as well as accumulate and spread knowledge concerning public education and its social environment. Demands of the society are also to be explored and international contacts of Hungarian public education are to be promoted.”49

III. Conclusion

Hungary is an average-sized Central European country. Neither is great nor too small in European context. Its population is about 10 million, the number of primary school pupils in 2011 was 750,000, number of high school people in full-time education was 567,000, and which data matches the European aging trend. In 2011, secondary education, nearly 25% of students educated in vocational schools, 41% in vocational secondary schools and 34% in secondary grammar schools.49 According to these data, the size of the Hungarian education is reasonable, detection of the problems is not impossible. The emerged problems in international comparison are mostly marginal, but within the country seem to be significant.

After 2010, the legal environment of education has changed in many aspects, as a new Act was passed both for public compulsory education and higher education. Even the professional rules can not, however, change the social and economic circumstances in many respects. Education has been damaged in many senses that have affect to the safety operation too. Aggression existing in society and continuously appearing in the media is significantly obstructs the management of aggression in schools.41 Neither can be ignored the economic impacts and the spread of the Internet that almost overtook (and superseded) all "classical" forms of media. Also, it should be noted that 20 years after the political system changing the country hardly had got rid of one of the social heritage of communism: the social exclusion of teachers.

All this should only be handled in an integrated way: by legal, sociological, and economic instruments at the same time. If just the legal instruments are examined, violence in schools (methodized above), as well as to protect the security of schools, several subsystems are involved. The first of these is (i) the professional educational protection provided by the Commissioner for Educational Rights. Second is the (ii) human rights protection of the Ombudsman. The role of (iii) physical protection is important

48 http://www.oektbiztos.hu/mission/index.html. legal background on the specialized ombudsman is the Article 77 of the Public Education Act and the 40/1999. Education Minister decree on the Operating of the Office of the Commissioner on Educational Rights
49 http://www.okt.hu/english
that belongs to the police and the child protection bodies. Finally, (iv) I would mention the psychic protection that is the task of the above presented school psychologist.

The advantage of the complicated Hungarian child protection system is that if a vulnerable situation develops either at the student’s, the teacher’s or the school’s circumstances, surely there is a body that can take action in order to ensure protection.

In Hungary, in the spirit of the New York Convention, cooperation of child protection actors and parents, and definition of the responsibility of all parents and adults has been clearly established on regulatory level, though the need of further development is identified. All these are especially pronounced in maintaining the safe educational environment.

### IV. Bibliography

- Hollósy, Á. (1998), “Thirty thousand murder until grown up” [Harmincezer gyilkosság felnőtt korig], In: Demokrata Hiradó, Budapest, nr3,
- Schanda, B. The place of religion in state-funded educational institutions in Hungary. ELA http://www.lawandeducation.com/


- Varga, A. Zs. (2008), Report on the Role of the Public Prosecution service outside the field of criminal justice, Strasbourg, CoE