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PUBLIC EDUCATION IN THE CASE LAW OF THE HUNGARIAN CONSTITUTIONAL COURT WITH SPECIAL REGARD TO THE QUESTION OF ACCESS TO JUSTICE

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ABSTRACT
The 65th anniversary of the entry into force of the Protocol No. 1 of the European Convention on Human Rights stipulating the right to education, gives an opportunity to analyse the constitutional, human rights based interrelations of public education from several points of view. The current paper focuses on the case law of the Hungarian Constitutional Court in order to discover, how the questions related to public education appear in the constitutional law of a specific country. The paper introduces the constitutional framework of public education, the interpretation principles affecting the case-law of the constitutional court and the core statements relating to the content of public education as well as its institutional, organizational framework. As public education plays a significant role in the society, as it is interrelated to several other human rights and as the decisions can have a considerable impact on the future of the individual, it is highly important to enforce these principles efficiently. Therefore the paper also examines the question of access to justice in constitutional court procedures in the context of public education. The case law based analysis is completed by the reference to the findings of the relevant secondary literature. This way, with reference to a certain national example, the analysis can contribute to the better understanding and more efficient implementation of the most basic elements of the right to education.

KEYWORDS: right to education, Hungarian Constitutional Court, access to justice, educational activity

INTRODUCTION

"*No person shall be denied the right to education*." Article 2 of Protocol No. 1 of the European Convention on Human Rights (hereinafter: ECHR) defines through this formulation the right to education establishing this way a general but common European standard for this right. According to the related case-law of the European Court of Human Rights (hereinafter: ECtHR) "*[t]he right to education covers a right of access to educational institutions existing at a given time (...), transmission of knowledge and intellectual development (...) but also the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which have been completed (...), for example by means of a qualification*". [i]

It is derivable even from this short summary (and from the quoted case law analysis of the ECtHR) that a.) the right to education is strongly related to other human rights, like the prohi-

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bition of discrimination, academic freedom, to the right of parents to choose their children's education and to the protection of children as foreseen in other international conventions and national constitutions; [ii] b.) it requires by its very nature a regulation by the State; and c.) the level of education ensured may vary according to the needs and resources of the given State. The 65th anniversary of the entry into force of the Protocol No. 1 of the ECHR gives an opportunity to analyse the constitutional, human rights based interrelations of public education from several points of view.

Background and methodology

The current paper focuses on the case law of the Hungarian Constitutional Court (hereinafter: HCC) in order to discover, how the questions related to public education appear in the constitutional law of a specific country. The relevant legal literature on the right to education [iii] focuses mainly on questions connected to higher education, especially to its relation to academic freedom [iv] or on the introduction and evaluation of the regulations related to public education [v] combining the legal aspects with the social and financial reality. [vi]

Therefore, a comprehensive and systematic analysis of the constitutional court case law can give useful insights into the implementation and enforcement of rights related to public education and can contribute to the elaboration of the constitutional framework of public education; in this specific case in the context of the Hungarian legal system. A special focus is laid on the question, how the stakeholders in the field of public education can enforce their rights effectively. The case-based method is, "*suitable for a comprehensive, holistic, and in-depth investigation of a complex issue (phenomena, event, situation, organization, program individual or group) in context, where the boundary between the context and issue is unclear and contains many variables*". [vii] The combination of cross-case and within-case analysis [viii] makes it possible to get an overall picture on the approach of the HCC regarding public education. The case law based analysis is completed by the reference to the findings of the relevant secondary literature. This way the findings of the current research can contribute to the better understanding and more efficient implementation of the most basic elements of the right to education.

Constitutional framework

The starting point of the analysis shall be constitutional framework. The right to state financed education is one of the most „popular" human rights declared in the majority of national constitutions around the world [ix]; it is declared in the Hungarian Fundamental Law [x] as well. According to Article XI Paragraph (1), every Hungarian citizen shall have the right to (formal and non-formal) education. Paragraph (2) of the same article stipulates that Hungary shall ensure this right by extending and generalising community culture, by providing free and compulsory primary education, free and generally accessible secondary education, and higher education accessible to everyone according to his or her abilities, and by providing financial support as provided for by an Act to those receiving education.

These provisions do not contain substantial change in comparison to the wording of the former Constitution. "*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 providing 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.*" [xi] Therefore, the case-law elaborated by the HCC under the former Constitution can be relied on even after the entry into force of the Fundamental Law. [xii] The interpretation of the provisions on the right to education is, however, completed by certain other principles. Firstly, the provisions of the Fundamental Law shall be interpreted in

accordance with their purposes, the National Avowal contained therein and the achievements of the historic constitution. [Article R) Paragraph (3) of the Fundamental Law]. An example of considering the achievements of the historic constitution is offered by Decision 3024/2015. (II. 9.) AB, Point [20]. In this decision the HCC recalled – after the analysis of the educational systems from the Ratio Educationis (1777) through the reforms of Eötvös József, Trefort Ágoston and Klebelsberg Kunó till the period of socialism and change of regime – that in Hungary the State has always played a significant and active role in the school system. This conclusion has been a point of reference in deciding on the intensified involvement of the State in the publishing of school books.

Secondly, certain international obligations shall be taken into consideration as well. Article Q) Paragraph (2) of the Fundamental Law stipulates namely that "*[i]n order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law.*" Besides the general international human rights conventions, like the ECHR [xiii] the main point of reference is the Convention on the Rights of the Child (hereinafter: Convention). [xiv] The HCC interprets this convention with special regard to its international law nature and its explanation by the UN {Decision 3046/2013. (II. 28.) AB, Point [44]}. It concluded that the majority of the provisions of the Convention are rather soft-law nature; therefore no specific requirements can be derived from them in connection to certain branches of law. Nevertheless, certain principles of the Convention shall be observed in all policies that have effect on the rights of the child. According to Article 3 of the Convention "*[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."* This requirement "*should be built into national plans and policies for children and into the workings of parliaments and government, nationally and locally, including, in particular, in relation to budgeting and allocation of resources at all levels*". [xv] Therefore, the best interest of the child is a principle examined by the HCC as well when deciding on the constitutionality of norms or individual judgements {Decision 3142/2013. (VII. 16.) AB, Point [31]}.

Thirdly, the internal correlations between the single provisions of the Fundamental Law shall be analysed. It is primarily Article XVI Paragraph (1) of the Fundamental Law, which has direct connection to the right to education. According to this provision "*every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development*". According to the case-law of the HCC the protection and care is the obligation of the family, the State and the society – in this sequence {Decision 3047/2013. (II. 28.) AB, Point [55]}. The obligation of the State is to ensure the interests of the child in the legal norms, to support their development through state actions, to keep negative effects from them away and to provide the basic conditions to achieve these aims {Decision 3142/2013. (VII. 16.) AB, Points [26]-[27]; Decision 32/2010. (III. 25.) AB}.

In the following the decisions of the HCC on public education will be analysed in three categories: decisions as regards the content of public education, rights and obligations of the people concerned, especially pupils and their parents (substantial questions), decisions concerning the institutional-organizational framework of public education and questions related to the efficient enforcement of these principles through the procedures of the HCC (access to justice).

Substantial questions

The right to (formal and non-formal) education is composed of several elements: a.) the extension and generalisation of community culture; b.) the right to participation in education (right to learning); c.) the right to teaching. The first element of this list can be seen as a state

goal, from which long-term tasks of the State stem, but which cannot be a point of reference when deciding on the constitutionality of a given norm or decision, [xvi] while the third one is rather interrelated to academic freedom. That is why in the following the focus is on the right to education in narrow sense, the right to participate in education. According to the above mentioned wording of Article XI of the Fundamental Law, public education encompasses the free and compulsory primary education as well as the right to free and generally accessible secondary education (hereinafter jointly referred to as public education).

In this context the "free" nature of public education means the free access to public education, more precisely the exemption from tuition fees [Decision 1251/E/2010. AB]. The HCC stated that the constitutional obligation of the State to provide financial support as provided for by an Act to those receiving education does not entitle the participants of the education system to a concrete form of support [Decision 79/1995. (XII. 21.) AB; Decision 1251/E/2010. AB]. Therefore, in a given case, the HCC concluded that there is no obligation on the part of the State to ensure free access to school books for all social groups. It is the duty of the State to create a balance between the claims of the individuals based on human rights and the available financial resources. If it would fail to do so, it would adversely affect the enforcement of other rights creating thereby an unconstitutional situation.[xvii]

The participation in the compulsory primary education is the point where the connection between the right to education and the obligation of the parents to ensure proper care for their children becomes evident. The violation of the right to education can be confirmed in this context, if a certain regulation of the State hinders the pupil from the participation in this form of education [Decision 214/B/2003. AB]. It is also apparent that the HCC considers that the decisions concerning the exact content of the educational activity fall into the competence of the legislator with the proper involvement of qualified specialists.

In its Decision 3046/2013. (II. 28.) AB the HCC came to the conclusion that the school readiness assessment is primarily a specialized, professional question, which, therefore, shall be examined by experts. The State shall, however, regulate this procedure in a manner that it establishes a balance between the right of the parent to decide on the basic questions of education and the need for generalized standards concerning the capabilities, abilities and aptitude of the child to start school. The same approach can be perceived in a decision, where the HCC had to rule on the disciplinary proceedings in public education [Decision 444/B/2002. AB]. According to its reasoning, the fact that the teaching staff decides on the disciplinary sanctions of the pupil does not result in a violation of the rights of the child or to a failure to comply with the obligations of the State as regards public education.

The margin of appreciation of the legislator as regards the methods of public education and content of the curriculum is, however, not unlimited. In this regard an interesting evolution can be perceived in the case law of the HCC. In a decision from 2001 (so delivered before the entry into force of the Fundamental Law) the HCC argued that it belongs to the margin of appreciation of the State to determine how many compulsory lessons shall be prescribed at the single grades in order that the schools fulfilled their educative tasks [Decision 526/B/1999. AB]. In another decision it concluded that the State may legitimately give financial support to children with specific needs, who cannot pursue their studies by everyday school attendance due to their mental or physical status (while withholding such support from children who are private pupils because of other reasons). Nevertheless, in the given case the HCC did not further elaborate on the obligation of the State in supporting children with learning, behavioural and adaptive difficulties [Decision 214/B/2003. AB].

In a recent decision, however, the HCC came to the conclusion that when defining the framework of public education, the State shall give due consideration to the specificities of vulnerable groups and elaborate specific measures that serve their development and social inclusion.

This was a case where the above mentioned interpretative role of the National Avowal played a considerable role. In its reasoning, namely, the HCC recalled that according to the preamble of the Fundamental Law "*We trust in a jointly-shaped future and the commitment of younger generations. We believe that our children and grandchildren will make Hungary great again with their talent, persistence and moral strength*", "*We bear responsibility for our descendants*" and "*We hold that we have a general duty to help the vulnerable and the poor*" {Decision 9/2019. (III. 22.) AB, Point [80]}. On the basis of these statements the HCC came to the conclusion that the system of public education shall actively contribute to the elimination of learning difficulties so that the affected pupils, children can become active members of future generations. Therefore, the public education system shall contain rules that pay due attention to the special needs of pupils with learning, behavioural and adaptive difficulties and ensure personalised support for their development and catching up. The HCC, however, in line with its former case-law also concluded that the determination of the concrete measures of achieving these aims (e.g. forms of benefits) falls into the legislator's margin of appreciation {Decision 9/2019. (III. 22.) AB, Point [82]}.

Institutional approach

The other main group of decisions in the case law of the HCC is mainly connected to the institutional-organizational framework of public education. In this regard the decisions show in a direction that the HCC considers the educational activity as a homogeneous activity. The HCC set down as a theoretical foundation that public institutions – irrespective of their operator – realise their activities along identical principles, within the framework of identical educational tasks, training and education of the same quality and identical employment conditions [Decision 242/B/1999. AB].

This approach also means that it would be contrary to the principle of equal treatment, if the employees of certain educational institutions would be placed into more detrimental situation based on the way of maintenance of the given institution. Therefore, the same legal status, employment rules shall apply for pedagogues in all branches of public education {e.g. Decision 10/2015. (V. 4.) AB, Point [41] on extra holidays, Decision 242/B/1999. AB as well as Decision 44/1996. (X. 22.) AB on work time and payment for extra work}.

The uniform standards of educational activities appear in the Decision 1333/B/1996. AB as it states that it is not contrary to the principle of equal treatment that the pedagogues shall take part in regular advanced trainings being a precondition of the exercise of educational activity. Nevertheless, also in this case applies that the professional standards and the rules of procedure in classification systems – like the possibility of achieving higher evaluation, promotion – cannot be defined in a discriminatory manner [Decision 35/2017. (XII. 20.) AB].

The legislator's margin of appreciation as far as the standards, preconditions of educational activity are concerned, appeared in the Decision 34/2010. (III. 31.) AB, as the HCC concluded that the procedural requirements, professional qualifications and requirements necessary for the appointment of heads of institutions can be defined by the legislator in acts requiring simple majority. [xviii]

This conclusion leads to the other major question concerning the organization of public education: the position of non-state-operated institutions. From the above-mentioned general principle of unified standards in public education and the responsibility of the State in providing compulsory and accessible education follows that it shall contribute to the maintenance of the institutions. If the task is carried out by non-state actors, the contribution shall be equal to the financing of state-operated institutions [Decision 1208/B/2006].

In a recent decision concerning the state take-over of public education institutions operated by local self-governments, the HCC confirmed that the planning of the institutional framework

of public education is to a significant extent a professional, public-policy decision; therefore, the legislator may legitimately come to the decision that state-operated institutions carry out the task of public education in a more efficient and professional manner. The HCC declared *expressis verbis* that the evaluation of the legislator's assessment in this regard does not fall into the competence of HCC. The estimation of the pros and cons when deciding on structural changes in public education falls into the legislator's competence. The HCC carries out only the constitutional review of a particular regulatory model {3180/2018. (VI. 8.) AB, Points [24]-[25]}.

As far as the institutional framework of public education is concerned, the attention shall be drawn shortly also to the system of denominational schools as their operation is connected to the right of the parent to choose the upbringing to be given to their children. In this field the attitude of the HCC is a logical consequence of the conclusions on the substantial questions of education as well as organization and financing: the State shall ensure the legal possibility of establishing denominational schools; however, it is not obliged to establish them. Furthermore, it shall make the attendance of state schools for everyone possible without unnecessary burdens [Decision 4/1993. (II.12.) AB]. As the right to education can be exercised both in state schools and accredited denominational schools, the State shall contribute to the financing of these institutions equally. According to the settled case law of the HCC the State shall provide such an amount of funding which is proportionate to the state tasks carried out by the non-state actors [Decision 15/2004. (V. 14.) AB; similarly: Decision 99/2008. (VII. 3.) AB].

This way the HCC confirmed that the primary obligation of providing education falls into the duty of the State, which can carry out this duty either on its own (by establishing and maintaining state schools) or by providing equal financial support to non-state operated institutions.[xix]

Access to justice

The last question to be examined is that of access to constitutional court proceedings in matters related to public education. This is a field, where it is highly important to provide diverse ways of enforcement of rights: firstly, because of the social significance and interest in the public education system as general; secondly, because it is – as explained above – interrelated to several other human rights; thirdly: because the decisions can have a considerable impact on the future of the individual. [xx] Several procedures of the HCC offer a complex protection for the rights and principles explained above: the ex-post norm control procedure {e.g. Decision 9/2019. (III. 22.) AB}, [xxi] the preliminary norm control procedure {e.g. Decision 34/2010. (III. 31.) AB}, the judicial initiative for norm control in concrete cases {e.g. Decision 3191/2014. (VII. 15.) AB} can be useful tools for initiating the constitutional review of legal acts. According to Section 37 Paragraph (1) of the Act CLI of 2011 of the Constitutional Court (hereinafter: CC Act), [xxii] the HCC shall examine the conformity of local government decrees with the Fundamental Law as well (the determination of conformity with other legal provisions falls into the competence of the Supreme Court/Kúria). As far as the protection of individual rights in concrete cases is concerned, the constitutional complaint is the most relevant tool and this is the point where the question of access to justice arises.

In the well-known Airey vs. Ireland case [xxiii] the ECtHR stated that the obligation to secure an effective right of access to the courts falls into the category of duty on the part of the State. Generally, this obligation is understood on the light of effective judicial remedy, meaning the right to institute proceedings before ordinary courts, to obtain a determination of the dispute by a court and the requirement of the decision being able to remedy wrongs or asserting claims. At the same time a broad margin of appreciation is offered for the State regarding the determination of the most appropriate means of regulating access to justice. A special field of

access to justice might be the question of access to constitutional court procedures, particularly by means of constitutional complaints. It might seem that, due to their special character aiming at the protection of subjective individual rights while ensuring and developing the objective constitutional order, [xxiv] they fall outside the scope of court procedures in strict sense. However, the ECtHR stated in several judgements that the basic safeguards of fair trial [xxv] – as foreseen in Article 6 of the ECHR – and certain requirements derived thereof [xxvi] might be equally applicable to procedures in front of constitutional courts.

The CC Act describes three possible types of constitutional complaints, which are designed to give an overall protection for the legal entities affected. One, the so-called direct constitutional complaint makes it possible to initiate proceedings for the determination of the constitutionality of a given norm directly by the person or organisation affected if „*a) due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights were violated directly, without a judicial decision, and b) there is no procedure for legal remedy designed to repair the violation of rights, or the petitioner has already exhausted the possibilities for remedy*". The „real", that is, the German type of constitutional complaint makes it possible to initiate the procedures at HCC if a judicial decision made regarding the merits of the case or other decision terminating the judicial proceedings – so not the legal regulation applied – violates the complainant's rights laid down in the Fundamental Law. The so-called "old- type" constitutional complaint makes possible to turn to the HCC if the violation of fundamental rights can be led back to the application of a legal provision contrary to the Fundamental Law.

The fact that these procedures can only be initiated by the persons affected is a clear evidence of the change of approach in comparison to the former *actio popularis* at ex-post norm control procedures. Furthermore, it demonstrates the direct linkage to the individual's legal situation and therefore the need for legal aid.

The access to justice in case of constitutional complaints is on the one hand not hindered by the costs of the procedure: According to Section 54 Paragraph (1) of the CC Act the proceedings of the HCC are free of charge. Legal representation is not obligatory either. However, the legal provision referred above also declares that the petitioner shall bear his or her own costs incurred in the course of the constitutional court proceedings. This means – *a contrario* – that any other forms of legal aid, like an assigned attorney are not available in these procedures. One could argue that there is no urgent need for granting legal aid in the proceeding before HCC due to the free of charge nature of the procedure. Nevertheless, taking the complexity of constitutional court proceedings into account, the lack of legal knowledge can cause a substantial disadvantage: the requirements, the HCC makes in case of constitutional complaints are very complex, and are partially not directly derivable from the wording of the CC Act. [xxvii]

So there is a realistic chance that a party not supported by a lawyer cannot present his case in a comprehensive, clearly understandable manner including proper legal arguments as well {e.g. Order 3163/2016. (VII. 22.) AB; Order 3162/2016. (VII. 22.) AB}. A special problem stemming from the interpretation of the conditions of accepting a case is related to the role of unions. "*[I]n the case of certain sector specific, code type laws (for example, laws and regulations concerning public education) it has been an ordinary occurrence that advocacy groups and trade unions submitted constitutional complaints with regard to such laws or regulations which did not affect their rights personally, only the rights of certain employees or the rights of practitioners of a given profession. In this case, however, the Constitutional Court held that only individual, specifically involved persons can submit the complaint, the union for example is not entitled to do so, as it is not directly involved.*" [xxviii] The recent case law of the HCC has confirmed several times in cases related to public education that the

unions of pedagogues are not entitled to initiate constitutional complaint procedures on behalf of their members {e.g. Order 3123/2015. (VII. 9.) AB; Order 3033/2014. (III. 3.) AB}, which has as a consequence that they cannot offer assistance in the constitutional complaint procedures.

Therefore, the possibility of providing legal aid for the laymen in constitutional court proceedings should be considered in the procedures of the HCC as well – similarly to the case law elaborated by the German Bundesverfassungsgericht. The legal aid would support the preparation of an admissible claim and that is why the complainant would have a more realistic chance of obtaining a decision on the merits of the case related to the protection of his fundamental rights.

CONCLUSIONS

The analysis of the case law of the HCC regarding public education shows that the legislator's margin of appreciation is interpreted basically broadly by the HCC.

The examined decisions show that the HCC takes international obligations, the achievements of the historic constitution and the internal linkages in the Fundamental Law into account.

Its approach demonstrates that in public education a pluralistic point of view is needed from the part of the State: it shall ensure an equal access to public education while taking into account the specific needs of the individual including the right of the parent to decide on the education of the child. These conclusions are, at the same time, in line with the general interpretation of the rights of the child as well. According to the relevant literature, namely, the three basic principles in this regard are: participation, protection and provision. [xxix]

As far as the enforcement of the requirements stemming from the constitutional background of public education is concerned, the question of accessible legal aid in constitutional court procedures should be analysed. By means of professional support in the preparation of complaints, submissions as well as legal consultation the complainants could estimate the chance whether their case will be decided on the merits and it would support the elaboration of well-founded and admissible complaints. This support would be especially important in matters related to public education, as these affect large social groups with significantly different financial background and legal knowledge.

This summary on the case law of the HCC can be a first step in understanding the role of the constitutional legal approach in public education. A comprehensive study of the national examples can contribute in the future to the better understanding and more efficient implementation of the most basic elements of the right to education.

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[xi]VARGA, András Zs. – PATYI, András – SCHANDA, Balázs: *op. cit.*, p. 104.

[xii] According to Point 5 of the Closing and Miscellaneous Provisions of the Fundamental Law "*[t]he decisions of the Constitutional Court made prior to the entry into force of the Fundamental Law are repealed. This provision shall be without prejudice to the legal effects produced by those decisions.*" However, – as the Constitutional Court ruled in its Decision 13/2013. (VI. 17.) AB, Point [32] –"*the Constitutional Court may use the arguments, legal principles and constitutional correlations developed and formulated in its former decisions in the context of any constitutional issues to be as-*

sessed in future cases if, based on the content agreement of the given provision of the Fundamental Law with that of the Constitution and contextual agreement regarding the whole of the Fundamental Law – with regard to the interpretative rules of the Fundamental Law and in the light of the specific case –, there is no obstacle to the applicability of the findings and there is a need for the integration thereof into the reasoning of its decision to be adopted."

[xiii] Further international human rights instruments on the right to education: Article 14 of the Charter of Fundamental Rights of the European Union; Articles 13-14 of the International Covenant on Economic, Social and Cultural Rights; Article 26 of the Universal Declaration of Human Rights.

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[xviii] The HCC, however, also mentioned that the decision-making power of the local self-governments – as far as the institutions maintained by them are concerned – shall be respected and can be changed only if the respective rules of two-thirds majority are amended [34/2010. (III. 31.) AB; similarly: Decision 792/B/1998. AB].

[xix] The current paper does not aim to examine the system of denominational schools in details as it is corollary to several other questions of constitutional law nature, primarily the freedom of religion and equal treatment. It is only examined to the extent as it is needed to introduce the focal points of constitutional case law as regards the right of education. For further literature concerning the legal aspects of denominational schools in Hungary see e.g. SCHANDA, Balázs: A gondolat, a lelkiismeret és a vallás szabadsága [The freedom of thought, conscience and religion]. In: JAKAB, András – FEKETE, Balázs (eds.): *Internetes Jogtudományi Enciklopédia [Online Encyclopaedia of Legal Science]*. 2018. Available at: http://ijoten.hu/szocikk/a-gondolat-a-lelkiismeret-es-a-vallas-szabadsaga. RIXER, Ádám: Az állam és a vallási közösségek kapcsolata a mai Magyarországon. [The relationship of the State and religious communities in today's Hungary]. *Államtudományi műhelytanulmányok.* 2017/1.; ANTALÓCZY, Péter: A vallási közösségek jogállására vonatkozó európai és magyar szabályozás összehasonlító elemzése [A comparative analysis of the European and Hungarian regulation concerning religious communities]. *Jog-állam-politika*. 2013/3.

pp. 19-44 ; NAGY, Péter Tibor: Egyházi iskolaindítás és az állam az első parlamenti ciklus idején. [The re-establishment of the denominational school system and the State in the first parliamentary period 1990–94.] *Magyar Pedagógia*. 1995/3–4. pp. 293–313.

[xx] On the complex protection of the right to education at international level:

BEITER, Klaus Dieter: *The Protection of the Right to Education by International Law.* Leiden – Boston: Martinus Nijhoff Publishers, 2006.

[xxi] Before the entry into force of the Fundamental Law and the CC Act, this procedure was available to everyone without the need to show legal interests (so-called *actio popularis*). As, however, according to the new rules, such proceedings can only be initiated by the Government, one-fourth of all Members of Parliament, the President of the Supreme Court (Kúria), the Prosecutor General and the Commissioner for Fundamental Rights, the role of the latter has become far more important in evaluating legal norms on the basis of his ex-officio proceedings or individual complaints. [The Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: CFR Act) prescribes in Section 1 Paragraph (2) that the Commissioner shall pay special attention, especially by conducting proceedings *ex officio*, to the protection of the rights of children, the interests of future generations, the rights of nationalities living in Hungary and the rights of the most vulnerable social groups.]

If as a result of his inquiries the Commissioner comes to the conclusion that the infringement of fundamental rights is in connection with the unconstitutionality of a legal norm, he or she shall require the ex-post review from the Constitutional Court. This solution is aimed to reduce the number of unfounded norm-control procedures; the preliminary procedure of the Commissioner for Fundamental Rights is a guarantee for the fact that in the given case there is a serious constitutional problem to be answered by the HCC.

In this case the indirect access to justice cannot hindered by the costs or other non-legal pressures as the proceedings of the Commissioner are free of charge and the identity of the person who has filed the petition may only be revealed by if the inquiry could not be conducted otherwise.

The text of the CFR Act in English available at: https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011

[xxii] The text of the CC Act in English available at: https://hunconcourt.hu/act-on-the-cc/

[xxiii] ECtHR, *Airey vs. Ireland*, Judgement of 9 October 1979. (Application no. 6289/73), Series A, no. 32.

[xxiv] KLEINE-COSACK, Michael: *Verfassungsbeschwerden und Menschenrechtsbeschwerde: Tipps und Taktik*. Heidelberg: C.F. Müller, 2007. p. 29.

[xxv] ECtHR, *Ruiz-Mateos vs. Spain*, judgement of 23 June 1993 (Application no. 12952/87). Series A no. 262. §§ 59-60.; *Kübler vs. Germany*, judgement of 13 January 2011 (Application no. 32715/06). §§ 47-48.

[xxvi] ECtHR, *Milatová and Others vs. the Czech Republic*, judgement of 21 June 2005 (Application no. 61811/00). §§ 58-61; *Gaspari vs. Slovenia*, judgement of 21 July 2009 (Application no. 21055/03). §§ 50-53.

[xxvii] According to Section 29 of the CC Act, the Constitutional Court shall admit constitutional complaints if a conflict with the Fundamental Law significantly affects the judicial decision, or the case raises constitutional law issues of fundamental importance. The lack of sufficiently coherent constitutional law reasoning leads to the inadmissibility of the complaint {Decision 3080/2019. (IV. 17.) AB, Point [27]}. The HCC does

not carry out a substantial examination if the complaint only aims at the supervision of the evidentiary procedure {Decision 3080/2019. (IV. 17.) AB, Point [30]; Order 3061/2016. (III. 22.) AB, Points [31]-[33]}, of the interpretation of questions affecting a special field of expertise or of the mere application of the law to the concrete case {Order 3038/2019. (II. 20.) AB, Point [17]}. The condition that the complainant shall be affected by the norm or legal decision is only fulfilled, if a direct, actual and personal involvement can be confirmed {Decision 3/2019. (III. 7.), Point [32]}. The complainant is personally affected, if the violation concerns his own fundamental rights. The direct connection between the investigated norm or decision and the violation of fundamental rights is also a basic precondition. The complainant is actually affected, if the violation of fundamental rights exists at the time of submission of the complaint {Order 3134/2017. (VI. 8.) AB, Point [17]}. These criteria are evaluated by the HCC on a case-by-case basis.

[xxviii] GÁRDOS-OROSZ, Fruzsina: The Hungarian Constitutional Court in Transition – from Actio Popularis to Constitutional Complaint. *Acta Juridica Hungarica*. 2012/4, p. 313.

[xxix] HAMMARBERG, Thomas: The UN Convention on the Rights of the Child – and How to Make It Work. *Human Rights Quarterly,* 1990/12, p. 97. cited by: LUX, Ágnes: A gyermekek jogai [The rights of the child]. In: JAKAB, András – FEKETE, Balázs (eds.): *Internetes Jogtudományi Enciklopédia [Online Encyclopaedia of Legal Science]*. 2018. Available at: http://ijoten.hu/szocikk/a-gyermekek-jogai.