

THE JUSTICIABILITY OF THE PRIOR RIGHT TO EDUCATION

Summary of an International Conference held at the PPCU, 2016

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1. The aims of the conference

The series of conferences, which has been organized annually by *European Association for Education Rights and Policy* (ELA) in various research locations around the world for decades, are more than valuable. The purpose of these conferences and all the related scientific efforts is to try to find answers to all the emerging and sometimes alarming questions of educational law, mainly on a comparative legal basis. This work is particularly effective if, besides science, it gives input to legislation and jurisdiction too. In 2016 the ELA held its Annual Conference at the Pázmány Péter Catholic University Faculty of Law and Political Sciences.

On 20-22 October 2016 the ELA in cooperation with the *Ereky Public Law Research Center* at the Pázmány Péter Catholic University, Budapest, organized an international conference on the Justiciability of the Prior Right to Education. The conference was devoted to launch a dialogue where representatives of science, jurisdiction and civil society can exchange their experience in this field. The subtitle of the conference explained its focus: *“The Role of Civil Society for the Awareness, Advocacy and Accountability of the Right to Education”*. The conference examined primarily the role of civil society in the protection of education rights especially for the most defenseless people and groups such as minorities and special linguistic or religious communities.

2. Organizing in co-operation

The ELA, founded in 1993, is an independent and worldwide NGO, with its head office in Antwerp. According to the motto of ELA, education has the potential to unlock the door to equality and participation, it constitutes the basis necessary for empowerment of each individual, and for the promotion of all human rights. Education law means constructing, block by block, the foundation that will support educational

rights in all nations and for all peoples and individuals. The importance of the law not with standing, its members are aware of the relative value of each legal principle, whether it is founded on a convention or on some other legal source. ELA aims to encourage progress in educational rights by promoting the right to education as a right, by elaborating education law as a discipline and by actively supporting every serious effort made toward the gradual and progressive codification of educational rights and educational legislation. See more at: <http://www.lawandeducation.com>.

The co-organizer of this conference is the *Ereky Public Law Research Center* that was founded in 2011 within the PPCU Faculty of Law and Political Sciences, Budapest. Its founder's aim was to develop an independent think tank, which is actively involved in the current trends and development of public administration and policy. The research center conducts joint and individual research projects, in search for answers to the pressing questions. This way the research group can participate in central and local (governmental) development projects, where knowledge management, scientific basis or international comparison is essential. Research topics are related to human rights, the exercise of state power, central and local public administration, and the control mechanisms of public administration. The team is led by Andras Zs. Varga, professor of law, Head of Department at PPCU and judge of the Constitutional Court of Hungary. The director of the Research Center is Balázs Gerencsér associate professor, while its members are professors, senior researchers and doctoral students, and sometimes even graduate students. See more at: <http://ereky.jak.ppke.hu>.

The importance of the topic was acknowledged by the supporters as well. It was the organizers' honor that the conference was financed by multiple sources who considered this issue important. Such was the PPCU K.A.P.; the Institute for Minority Rights Protection (KJI, Budapest); State Secretary of the Prime Minister's Office (Hungary); the Rákóczi Alliance (Hungary) and the Research Institute for Hungarian Communities Abroad (NPKI, Budapest).

3. Sessions of the conference

The conference had seven sessions, splitting by the main cornerstones of the topic. By this method it had an opening keynote session, which was followed by sessions dealing with issues of constitutional law and jurisdiction. These two sessions was devoted to general issues of justiciability of educational rights, as well as the courts' and ombudsman's experience. The second day focused more on the experiences of the civil society in a comparative approach. The comparison had a special attention on the Central and Eastern European region as well as on the enforcement of international and domestic obligations. Lecturers came from thirteen different countries from Russia to the United States.

In the first, opening session keynotes were presented by prof. Jan de Groof, president of ELA, who highlighted the need of judicial case law that can be referred to later on. Prof. Szabolcs Szuromi rector of PPCU in his keynote emphasized the close relation of educational and religious rights on the basis of human dignity. He proved that denominations improves values of the society through their own educational and

other services. Lajos Aáry-Tamás, ombudsman of Educational Rights of Hungary, underlined the importance of forums that are able to solve problems related to educational rights. He presented the best practices that his office gained in the past decades, which is quite unique in Europe. All the keynotes highlighted the need for justiciability of these rights, and the importance of both hard and soft law in domestic and international law.

The second session was about the concerns of constitutional law. Prof. András Zs. Varga, who is also a member of the Venice Commission, exposed the human dignity as the ultimate basis for educational rights. Professor Schanda, Head of Department of Constitutional Law at PPCU, mentioned that not only the state but primarily the family has to educate. The crisis of traditional families has a strong effect on the state's educational role. He highlighted that the way out of the problems is to go back to the family and the children. Renáta Uitz, Chair of the Comparative Constitutional Law Program, Head of Department of Legal Studies at Central European University, dealt with the meaning of justiciability from a comparative legal point of view. Pablo Meix Cereceda, professor of Administrative Law at the University of Castilla-La Mancha, highlighted the importance of EU law in educational rights. The debate was about whether the forum was more important than the rights to be exercised. The second session finished with Krisztina Rozsnyai, associate professor at ELTE Faculty of Law, who talked about the present system of remedies and the administrative jurisdiction as a special legal procedure.

In the third session Elisabeth Sándor-Szalay, the ombudsman for minority rights, underlined that there is a real significant case law at the ombudsman offices all around Europe. She detailed the Hungarian case of minority affairs. Maria Smirnova, researcher of Manchester International Law Centre at The University of Manchester, presented the 2012 Russian law of education. Lilla Berkes, researcher assistant at PPCU, presented a true story from a Canadian school about the freedom of religion versus rights and freedom of other public order. Dragos Efrim, young Romanian scholar at University of Craiova, talked about the Romanian new legislation in connection with the religious education in public schools.

The next day, Friday, prof. Charles Glenn, Boston University, opened the fourth session. He presented his paper on the strengthening of the civil society, mainly from a US perspective. Following, Ingo Richter, Professor at Irmgard Coninx Stiftung and University of Tübingen, dealt with the German case of thousands of immigrants and their relation to education. He expressed that if the state is not able to solve a problem, than the civil society has to. He thinks that the language pre-training of immigrant people is a kind of segregation and civil organizations should keep an eye on these segregated classes and promote the transfer of the children into the regular classes. He underlined the importance of the ELA-type umbrella organizations to raise civil society. Roberto Toniatti, Professor of Constitutional Law at Trento University, talked about a multicultural citizenship that is in close relation with a political and social notion of citizenship. This is the main character of minority rights in Europe. He believes that a "hidden hand" can be a rule making in civil sphere

just like in the economics.¹ Prof. Charles Russo from Dayton University analyzed the perspectives from the US according to the Justiciability of the Prior Right to Education. He presented a broad overview on the case law on educational rights in a historical perspective with a special attention to equality. He concluded that the that litigation will continue as the US continues to seek to provide equal educational opportunities for all Americans.

In the next session a great amount of good practices of single cases were presented. Here we have heard about a Jesuit educational initiative presented by P. Tamás Forrai SJ. He conferred their roma education and refugee integrated education programs, which are successfully led in the previous years. Later, individual cases of minority civil associations were presented from Hungary, Slovakia, Croatia and Romania. Lecturers came from this Central European region representing civil actors in the field of education. At last, Balázs Gerencsér talked about the most recent findings of the Council of Europe of educational systems in Central and Eastern Europe.

The fifth session was on the rethinking of the A4 scheme (adequacy, accountability, awareness and advocacy). Prof. de Groof's said the most important keywords on this topic were respect, protect, promote, fulfill and facilitate. All these are concentrating to implement the right to education. Merilin Kiviorg, professor at the Estonian University of Tartu, underlined the importance of building the environment of acceptance instead of breaking the rules of living together. She said that "freedom had a price". Gábor Kardos, member of Committee of Experts of the European Charter for Regional and Minority Languages, and professor of international law at ELTE, Budapest, presented in-depth the CoE's language charter and its finding and tendencies in implementing educational rights.

4. Summaries

The sixth was the closing of the plenary sessions. Prof de Groof, summarizing the conference, said there were good practices in the world regarding educational rights, which were called "best interest of the child". In his opinion we need a sustainable development in the quality of education. In this regard the United Nations have documents and valuable knowledge. The role of ELA is to promote the best ways of implementation of this fundamental right. Educational rights are very close to educational policy, which are in connection with political systems. In his summary he highlighted there was a valuable role of the extra-judicial systems (like the ombudsman) that were need to be developed. Finally he talked about the importance of interculturality. The Brugge document of the early ELA years can be renewed. Politics and research are both needed for future development of these rights.

Balázs Gerencsér in his summary highlighted the importance of focusing on the human being and its dignity. The human rights cannot be treated only as legal elements or mosaics of normative rules. If just some of the elements of dignity is

¹ The „religionclause.blogspot.com” blog was mentioned in the debate as a source of cases.

focused on, we lose the real content: the humanity. He urged to keep always close to the real unchangeable values. As an outcome of this Conference organizers agreed on a continuous collection of best practices in Europe that can be a basis for future researches and policy making.

At the end of the Conference, as a separate event, the Global Education Law Forum (GELF) as an independent initiative was officially launched by its founders (Peter Van der Hijden, Marco Matthijsen) on the 22th October 2016. GELF will be a nonprofit consortium that will address the issue of a broader and a more equal access to education both from a practical and a scholarly perspective. GELF will aim thus to add an education rights' perspective to the implementation of the newly adopted UN Sustainable Development Goal 4: 'Ensure inclusive and quality education for all and promote lifelong learning' and the UNESCO Education 2030 Framework for Action.