

The re-nationalization of the Székely Mikó High School of Sepsiszentgyörgy

On 26 November 2014 a final ruling was adopted in Romania in the restitution case of the Székely Mikó High School of Sepsiszentgyörgy (Sfântu Gheorghe) which had caused international consternation and concern. This ruling – despite some minor corrections – rejects the appeal of the Reformed Church and the defendants, and confirms the judgment of the first instance, declares the members of the restitution committee guilty and re-nationalizes the building of the school. The decision of the court calls into question the emergence of the basic democratic values and the rule of law in Romania.

The Székely Mikó High School (in Hungarian: Székely Mikó Kollégium) located in Sepsiszentgyörgy (Sfântu Gheorghe) is an integral part of the educational system of Transylvania's Reformed Church. Similarly to other reformed church high schools like the Bolyai High School in Marosvásárhely (Târgu Mureş), the Bethlen Gábor High School in Nagyenyed (Aiud), the Backamadarasi Kis Gergely High School in Székelyudvarhely (Odorheiu Secuiesc), or other Reformed church schools of Transylvania in Kolozsvár (Cluj Napoca), Zilah (Zalău) and Szatmár (Satu Mare), the Székely Mikó High School has always been an integral part of the Reformed Church's educational system.

Nationalization in Romania took part in several waves between 1945 and 1960: by Decree 176 in 1948 the state confiscated health care and social institutions, lands, private wealth, private manufacturing, cultural institutions and, last but not least, educational institutions. The institutions, first of all, schools of the Hungarian historical churches were also among the victims of this nationalization. Decree 176 declared that the high school of the Reformed church ("bis. reformate" in Romanian, which means "belonging to the Reformed Church") located at Iskola street 1 would also be nationalized. Other famous educational institutions – regardless of denomination – were nationalized in the same way.

Although the restitution of lands started earlier, the process of real restitution procedure began only at the end of the 1990s. The restitution of church properties was

regulated by several laws. The first laws concerned only a certain number of properties which were named in the specified annexes of the law, while later (after 2000) general restitution and compensation laws were adopted. The annex of one of the first laws (government decree 83/1999) contained the restitution of the Székely Mikó High School. For the execution of this law a three-member committee was established to examine the legal situation of the concerned properties and conclude a protocol on the restitution.

In the case of the Székely Mikó High School the committee conclusively established the fact of the restitution and in May 2002 it concluded the protocol. The restitution of the college was challenged in court by private individuals, and – after losing the civil lawsuit – they initiated a criminal proceeding against the members of the committee in 2007. This lawsuit became famous as the “Mikó case” which was concluded on 26 November 2014 when the building of the college was re-nationalized and the members of the restitution committee were sentenced to 3 years suspended imprisonment.

Below we present the facts which prove that the original owner of the property was the church and in several cases the court had disregarded the evidence favorable to the defendants.

The building of the Székely Mikó High School was nationalized, i.e. confiscated from the Reformed church by Decree 176/1948. The Reformed Church’s canon law of that period (ecclesiastical constitution) states the following about the legal situation of its own properties: “church goods are the properties of the church, thus, ecclesiastes, clergymen and schools are the only owners and users of church goods, they belong to the universal church since they are not the possessions of individual personalities or ecclesiastical bodies, but instruments of the universal church designated to be used in the concerned ecclesiaste or school, therefore, they fall under its provision.” In contemporary Hungarian language it means the following: schools exist not by themselves and for themselves, but they are parts of the properties of the universal church.

The historic and legal status of the Reformed Church High School of Marosvásárhely (today Bolyai Lyceum) is not different from that of the Székely Mikó High School. It was and still is a part of the same church school system. The restitution of the Marosvásárhely college was also questioned (the lawsuit was launched by the mayor of the town) but in this case the court found that the building of the Bolyai High School is the property of the Reformed Church. The final ruling in the Bolyai case was adopted on

the basis of these arguments and evidence which were disregarded by the court in the lawsuit of the Székely Mikó High School.

Operation permit 81 which was adopted on the basis of section 11 of the 1925 Act on Private Education and published in the official gazette 174 on 8 August 1928, clearly states that the sustainer and owner of the Székely Mikó High School is the Transylvanian Church District.

With reference to regulation 2681 of the Romanian National Bank issued on 18 November 1947 (one year before the nationalization), the director of the Szekler Mikó High School wrote the following in his response number 299-1947/48: "Our school is not an independent legal person but the property of the Transylvanian Reformed Church District" (the original correspondence can be found in the state archives of Kovászna county).

At the beginning of the lawsuit, the defendants of the Mikó case asked the court of Buzau (Buzău) which was responsible for the first instance proceedings, to establish – before examining criminal liability – that the building of the college is the property of the Reformed Church. The court granted this preliminary ruling and declared that the owner of the property is the Reformed Church. The Report of the Székely Mikó High School's Boys' Gymnasium and Girls' Gymnasium in the 1937-1938 academic year (approved by the inspectorate of the Bucegi Province, number 23462/1939) clearly states that: "...the high school as an institution is closely related to the freedom of religion, and as an "instrument" for the preservation of the Reformed Church, and on the basis of the laws in force belongs solely to the body of the Transylvanian Reformed Church District and is under the supervision of church authorities.

Without a doubt the committee which decided on the restitution of the property had authority in the case, since seven months before the restitution the Brassó (Braşov) High Court had declared in its final judgment number 258 issued on 21 September 2001 that the three-member committee defined in emergency government decree 83/1999 was the body competent to act in the case of the restitution of the Szekler Mikó High School's building.

The facts presented above are only parts of the evidence annexed to the court records. But these facts alone are enough to draw the conclusions: the members of the committee were not mistaken either in the proceedings, or in the question of the ownership of the college, therefore, their civic or criminal liability cannot be upheld.

There is a further aspect which cannot be ignored. Tamás Marosán's criminal accountability was statute-barred on 14 May 2014. The court, of course, is not bound to calculate the limitation period. There have been examples of convictions adopted in cases which have been statute-barred because no one has required the establishment of the limitation period, but the lawyers taking part in the lawsuit of the Szekler Mikó High School specifically required the establishment of the limitation period in Tamás Marosán's case. In spite of the fact that the limitation period lapsed for almost half a year, Tamás Marosán was also sentenced. This decision is unlawful because if the limitation period is over and the establishment of this fact is specifically required during the lawsuit, the judge shall not refuse to establish the existence of a criminal law principle.

Beyond the illegitimacy and injustice of the Mikó case, the lawsuit also has moral consequences. It prompts the Reformed Church of Romania to re-evaluate its relations with the state. From a historical point of view, it is unprecedented that the state stigmatizes a church by declaring – through a court decision – that the church has broken its own Decalogue. Through this decision the state declares that the church has stolen someone's property, and has demanded and received a property unlawfully.

A further consequence of this court decision is that it sets a precedent which might stop the restitution procedure of church properties, and a more serious consequence is that the lawsuit may lead to other instances of re-nationalization of already restituted church properties. Thereby, no lawfully restituted property and no one who has taken part in its restitution is safe.

The court decision adopted in the Mikó case questions the emergence of the rule of law in Romania, all the more so since Romania has repeatedly declared before international organizations that it would restate church properties confiscated by the communist regime to their original owners.¹

¹ For further analysis on the issue see: Romania Re-Confiscates Hungarian Minority School, Persecutes Ethnic Hungarian Official on Fabricated Charges. HHRF Alert, December 4, 2014. http://hhrf.org/hhrf/en/HHRF_Alert_Szekely_Miko_12-4-2014.pdf