

Religion and the Secular State in Hungary

I. INTRODUCTION

Hungary is a secular state where the Constitution provides for the neutrality of the state on matters of religion and ideology. Religious freedom enjoys the protection of the Constitution. This freedom is safeguarded by a complex set of legal norms.

II. SOCIAL CONTEXT

Data concerning religious affiliation is considered sensitive, and no state agency may register religious affiliation in any form. The 2001 census¹ contained an optional and anonymous question regarding religion, which 90 percent of the population elected to answer. Fifteen percent of the population declared they had no denominational affiliation; 55 percent of the population declared themselves Catholic (3 percent Greek Catholic), 16 percent Calvinist, and 3 percent Lutheran. Traditionally, Jewish and Orthodox religions also play an important role, and other religious communities (evangelical, Eastern, etc.) gained place.

The census found the following data:

Catholic	5,558,961	54.5%
- Roman Catholic	5,289,521	51.9%
- Greek Catholic	268,935	2.6%
Reformed (Calvinist)	1,622,796	15.9%
Lutheran	303,864	3.0%
Jewish	12,871	0.1%
Other	112,121	1.1%
- Orthodox	15,298	0.2%
- Baptist	17,705	0.2%
- Adventist	5,840	0.1%
- Other Christians	24,340	0.2%
No denomination	1,483,369	14.5%
No answer	1,034,767	10.1%
No data	69,566	0.7%
Total population	10,198,315	100%

The proportion of those having a religious affiliation grows with the age groups, with some differences between denominations. Women confessed a religious identity to a higher degree than men. Presumably Jews and adherents of some “new religious movements,” as well as Muslims (about 3,000), are over-represented among those declining to answer (some estimations put the Jewish population ten times higher than the census results).

Altogether, the population stated affiliations to 260 different religious communities and beliefs. It is noteworthy that the census question was open, with no pretyped, possible

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1. See <http://ghdx.healthdata.org/record/hungary-census-2001-ipums>.

answers listed. The affiliation with mainstream Christian denominations is stronger in rural areas than in towns. The proportion of people having no denomination or not responding to the question was the highest in Budapest, whereas the percentage decreases with the size of the municipality.

Calvinists constitute the majority in Eastern Hungary. Greek-Catholics are concentrated in the northeastern part of the country, whereas the western part of Hungary has a Catholic majority, with some traditionally Protestant (Lutheran or Calvinist) settlements. Most Jews surviving the holocaust live in Budapest. While the Calvinist Church is strongly identified with the Hungarian nation, the Lutheran Church in Hungary was traditionally composed of ethnic Hungarians, Germans, and Slovaks. Catholics in the region have a heterogeneous ethnic background. While denomination is and remains a significant factor or personal identity for a large majority of the population, religiosity is not especially high in Hungary. About 13 to 18 percent of the population claims to follow the doctrine of a church; 50 to 55 percent claim to be religious “in their own way”; 20 to 30 percent are not religious and only 3 to 5 percent are declared atheists.² Religiosity is higher with elderly rural population and younger urban academics than with middle-aged skilled workers. Cities that underwent a rapid urbanization during the communist period are more secular than other cities, including the capital, Budapest. Society underwent a rapid secularization in the 1960s and 1970s. Since then, religiosity has become slightly stronger or has been stagnant.

The results of the 2011 census were published by the Central Statistical Office in March 2013. This last census was the first one when citizen had the possibility to fill in the form on the internet (what took only a few minutes in fact). The population of Hungary has decreased by 260,000 people in ten years to 9.9 million inhabitants. The data on religion are difficult to compare with earlier surveys. Whereas in 2001 the question was simply “religion”, in 2011 the questionnaire asked to what community one feels belonging to. Obviously there are many who have a sense of a denominational identity but do not feel a belonging. Notwithstanding methodological aspects that make comparisons difficult there are remarkable changes with regard to data on religious affiliation.

Whereas in 2001 only 1.1 million inhabitants refused to answer the question on religious affiliation, ten years later 2.7 million did not provide an answer. The number of those declaring not to have a religious affiliation has risen from 1.48 million to 1.80 million as 20% of younger generations do not belong to any denomination. Consequently the number of those who declared to belong to a religious community has dropped. Denominational proportions, however, did not change significantly. Whereas ten years ago 5.55 million declared to be Catholic, this time only 3.87 million declared to belong to the Catholic Church. The number of Calvinists has dropped from 1.62 million to 1.15 million. Ten years ago 304 thousand declared to be Lutherans, now only 214 thousand. Other traditional communities, like Jews and Orthodox have also lost (declared) adherents. 167 thousand belong to other religious communities (96 thousand ten years ago) as some minor communities have changed their policy with regard to the census. Whereas ten years ago they recommended to their adherents not to answer the question on religion, now they urged them to confess their religion. With younger generations (under 40) non-adherence rises but the proportion of declared atheists does not rise. Elder generations (over 60) show a higher adherence to religion (almost ten times more declared a belonging than no adherence). Under the age of 40 only two times more stated a belonging than no affiliation, subsequent years, however, do not show secularization on a rise. Among other religious communities the most significant are Jehovah Witnesses with 31 thousand declared adherents (elderly and less educated overrepresented), 18 thousand belong to Faith Church (an evangelical congregation with a relatively young membership), over 9 thousand Buddhists (dominantly urban adherents with higher education), 18 thousand Baptists, 6 thousand Adventists, 9 thousand Pentecostals, 2.4 thousand Methodists, 6.8 thousand Unitarians (traditional small Christian communities

2. Miklós Tomka, “Egy új Társadalmi Szereplő,” *Társadalmi Szemle* 8-9 (1998).

are ageing). The number of Muslims has risen to 5,579 (2,907 in 2001). 2.3 thousand Muslims declared to be Arab, 2.2 thousand stated different other ethnicities. As a multiple ethnic affiliation is possible, 4 thousand Muslims also claimed to be ethnic Hungarians.

III. THEORETICAL AND SCHOLARLY CONTEXT

The doctrine on neutrality elaborated by the Hungarian Constitutional Court may be seen as the most important principle governing the State in its relationship with the religious communities as well as with other ideologies. According to this doctrine, the State should remain neutral in matters concerning ideology: there should be no official ideology, be it religious or secular. Neutrality means that the State should not identify with any ideology (or religion); consequently it must not be institutionally attached to churches or to any one single church, nor to any organization based on an ideology. This shows that the doctrine underlying the principle of separation (as explicitly stated in the Constitution) is the neutrality of the State. It is to be noted that neutrality must be distinguished from indifference, which is not what the Constitution implies – as follows from the concept of neutrality elaborated by the Constitutional Court. Neither is neutrality “laicism”: the State may have an active role in providing an institutional legal framework as well as funds for the churches to ensure the free exercise of religion in practice. The State should not enter into institutional involvement with any organization that is based on an ideology, either religious or secular. The freedom of religion and the freedom from religion are equally protected. All public institutions, including schools, universities, hospitals, etc., are bound by the principle of neutrality.³ There are no religious symbols at public institutions.

IV. CONSTITUTIONAL CONTEXT

A. Outline of the Political History of the Country with regard to the Relations between State and Religion

Hungary is a country that emerged to statehood by adopting western Christianity in the first millennium. The foundations of the Catholic Church were laid by St. Stephen (997-1038), the first king of Hungary, who founded ten dioceses. The claim of the “patronate,” the royal (state) care of spiritual issues, remained firm throughout the twentieth century. Although Hungarian history is determined by adherence to western Christianity, Orthodox minorities have been present in Hungary throughout the country’s history. The Reformation reached the country when the central state power was weak and the country was in permanent war with the Ottoman Empire. The Reformation was highly successful in the sixteenth century as the majority of the population turned first to the Lutheran and shortly thereafter to the Calvinist Reformation. The Reformed (Calvinist-Presbyterian) Church became the birthplace of national culture in respect to Bible translation, schools, and so on. The Counter-Reformation, encouraged/bolstered by the royal court (from 1526 the Habsburg dynasty gave the kings of Hungary), also achieved success, but the country has preserved a high level of denominational pluralism. A generally tolerant approach to religious issues is deeply rooted in Hungarian society. The coexistence of Catholics and Protestants (mainly Calvinists who often regard themselves as the “Church of the nation”) has not always been free of conflict, but has proven to be a fruitful tension, enriching both national and local culture. After the Turkish wars at the end of the seventeenth century, ethnic Hungarians became a minority in the Kingdom of Hungary. While the Serbs in the south remained Orthodox, large numbers of Romanians in Transylvania and Ruthenians in the Carpathians joined the Catholic Church, favored by the Habsburgs. During the course of the seventeenth century, the Protestant nobility achieved considerable freedom in Hungary. However, due to the re-

3. Decision 4/1993. (II. 12.) AB

Catholizing efforts of the Habsburg kings, this freedom was gradually curtailed. The state influence in the affairs of the Catholic Church was also strong, especially in the enlightened absolutist Josephinist (Joseph II 1780-1790) era, when, for example, contemplative religious orders were dissolved. The Reformed and Lutheran religions regained their freedom at the end of the eighteenth century.⁴ At that time, although the free exercise of these religions was permitted, their status remained far from equal to that of the Catholic Church. Even though revolutionary legislation in 1848 declared the equality of all accepted religions,⁵ the emancipation of Jews did not occur until 1867.⁶ By the end of the nineteenth century, the Jewish population had risen to over 5 percent. The liberal era of the late nineteenth century enhanced the rapid assimilation of the Hungarian Jewry. This era produced legislation proclaiming religious freedom for all, but restricting the right of public worship to the acknowledged communities (either incorporated or recognized).⁷ After the trauma of the post-World War I secession of Hungary, national conservative forces dominated the political and the cultural landscape, cutting back some of the liberal legislation of the late 1800s. Hungary became a small country surrounded by her former lands – and large ethnic Hungarian minorities. The country became involved in World War II as a German ally but still came under German occupation on the 19th of March 1944. In the following months, three-quarters of the Hungarian Jewry – who had suffered massive discrimination, but had enjoyed relative security until then – were deported by Hungarian authorities mainly to the Auschwitz death camp and killed there.

Even after 1895, when the free exercise of religion was officially recognized, differences in the treatment of various religions still remained. A two-tier system was applied with distinctions between “incorporated” and “recognized” religions, allowing representatives from “incorporated” denominations to hold seats in the “Upper House” of the Parliament. The Catholic, Reformed, Lutheran, Orthodox, and Unitarian churches as well as the Jewish Communities were considered “incorporated” religions. In 1947, “incorporated” churches lost their privileges, when all religions were granted equal status, which basically amounted to the status previously enjoyed by “recognized” churches.

After the communist takeover in 1948, religious freedom remained a dead letter of the Constitution. Education was nationalized (1948), religious education fought back (from 1949), theological faculties detached from state universities (1950), religious orders were banned (1950), property of religious communities was mostly confiscated, numerous religious leaders were arrested and sentenced, including the Primate of the Catholic Church in Hungary, Cardinal Mindszenty, who was arrested on December 26, 1948 and, after being tortured, was sentenced to life imprisonment in February 1949. After the arrest of a considerable part of the Hungarian episcopate, the remaining Bishops’ Conference signed an agreement with the government in 1950 regulating the fate of members of banned religious orders and consenting to the operation of eight Catholic secondary schools managed by four orders. Other denominations had already signed similar agreements in 1948, basically acknowledging the emerging power. In the Catholic Church the number of vacant or impeded bishopric sees was growing as the government claimed the right to control the nomination of bishops, and even lower ministries. In other denominations often collaborationist churchmen came into office. In the Catholic Church, the state sponsored movement for peace brought a rupture in the clergy. The Churches were generally put under strict state control that was exercised by the State Office of Church Affairs.

4. Leopoldi II, Decree, art. 26 (1790).

5. On the Issue of Religion, Act XX (1848). Accepted religions were Latin, Greek, and Armenian Catholic, Reformed, Lutheran, Unitarian, Serbian, and Romanian Orthodox.

6. On the Equality of Israelites in Regard to Civic and Political Rights, Act XVII (1867). József Schweitzer and Gábor Schweitzer, “A Magyarországi Zsidók és az Izraelita Felekezet Jogállásának Alakulása [The Development of the Legal Status of Jews in Hungary and that of the Jewish Denomination],” in *Felekezeti Egyházjog Magyarországon [Denominational Ecclesiastical Law in Hungary]*, ed. Lajos Rácz (Budapest: Unió Lap- és Könyvkiadó, 1994), 229.

7. Act XLIII/1895.

Although from the 1960s the state pressure began to relax to some extent, the general rules and practices of the regime did not change until the late 1980s. In 1964, the Holy See and Hungary signed a document on the procedure followed at the appointment of bishops, on the oath of clergy on the constitution, and on the operation of the postgraduate training institution of the Hungarian clergy, the Pontifical Ecclesiastical Institute in Rome. On a much longer list of sensitive issues no agreement was reached, but the competence of the Holy See was acknowledged, which was a unique development in the Soviet Block. From that period, representatives of the regime and the Holy See met twice a year, once in Budapest, once in the Vatican, but the diplomatic relations could not be re-established. In the late eighties, the control over religions became looser, a number of new denominations were acknowledged, and traditional denominations, including members of the Catholic episcopate, began to claim more freedom. The collapse of the communist system (1989/1990) brought a gradual new beginning for religious freedom and church-state relations.

B. Current Constitutional Provisions and Principles Governing the Relations between State and Religion – The Model of State-Religion Relations

The Fundamental Law (the Constitution of 2011) begins and ends with mentioning God, but this is done in a peculiar way. The very first words of the preamble is a quote of the national anthem (“God bless the Hungarians”), a poem from 1823 that has been the anthem even during the communist time. Certainly the anthem is also sung sometimes at the end of church services, and in this context it bears a religious content. At soccer games or other public events probably many Hungarians singing it (or listening to it) do not have religious feelings. This way the national anthem is the manifestation of patriotism, with a text that is deeply rooted in the national culture. At the very end of the Law there is a solemn declaration reminding to the wording of the preamble of the Basic Law of Germany, referring to the awareness of the members of parliament passing the Fundamental Law to their Responsibility before God and man. The preamble (“national avowal”) contains an acknowledgement of the role of Christianity in upholding the nation. This is on the one hand the acknowledgement of a historical fact, on the other hand it is not the religious content of Christianity that is endorsed, but its role in forming the nation – the declaration is descriptive, not prescriptive. The preamble also provides for respect to the various religious traditions of the country. (“We recognize the role of Christianity in preserving nationhood. We value the various religious traditions of our country.”)

The Constitution provides for religious freedom with wording similar to that of the Universal Declaration of Human Rights. In addition to that document, however, the Constitution expressly recognizes the right not to express conviction. Convictions can also be expressed in any way not contrary to the law. The Constitution also states that church and state function separately.⁸ The Constitution provides for non-discrimination on the basis of religion⁹ and recognizes the rights of parents to determine the education of their children.¹⁰

Neutrality and a (friendly) separation are characteristic principles of the model of State-religion relations.

No religious community is explicitly mentioned by the Constitution. The Constitution provides for the separation of Church and State, whereas the doctrine of state neutrality in religious issues was elaborated by the Constitutional Court. Statutory law on religious freedom provides for equal rights of religious communities and for the cooperation of state and religious communities.

8. Constitution Art. VII

9. Constitution Art. XV

10. Constitution Art. XVI

V. LEGAL CONTEXT

The *Act on Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities* (2011) provides for details of both individual and collective aspects of the freedom of religion and for an institutionally strict, but benevolent separation.¹¹ Details are regulated by separate *legislation* on the restitution of confiscated church property (1991),¹² the funding of religious communities (1997),¹³ laws on public education (2011)¹⁴ and on higher education (2011).¹⁵

According to the Law on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities religious communities can organize either as recognized churches or as religious associations ('organization engaged in religious activity').¹ Religious communities can be established primarily for religious purposes that are not contrary to the Constitution or other laws and do not violate the rights and freedom of other communities.

Whereas the previous law (1990) provided for an equal status of all religious communities upon a formal registration the present law adopts a two-tier system. The system applied from 1990 to 2011 was based upon registration instead of recognition. With the new system religious communities can function either as recognized churches or as religious associations. Their autonomy is equally safeguarded, but most privileges as subsidies are reserved the recognized churches.

Since 1990 there is no government agency responsible for the administration of religions – the government maintains only a liaison secretariat to communicate with religious communities. Agreements reached with the Holy See (diplomatic relations – 1990, army chaplaincy – 1994, funding – 1997 – revised in 2013) and some other religious communities (Reformed Church, Lutheran Church, Alliance of Jewish Communities, Baptist Church, Serb Orthodox Church) significantly contributed to ensuring stability in church-state relations generally.

VI. THE STATE AND RELIGIOUS AUTONOMY

All church offices are to be filled by the exclusive decision of the church concerned. No state body (including the courts) is entitled to rule over the canonical aspects of church offices. The government is not involved in any kind of nomination and the candidates or appointees are not communicated to the government. No oath of any kind is required by the state from any person taking a church office and there are no citizenship requirements. A unique exemption is the military ordinariate. According to the Government Decree on the Army Chaplaincy the appointment of the army bishops, the rabbi and the pastors to the army is pursued according to agreements reached with the religious communities concerned.¹⁶ The agreement of the Holy See and the Republic of Hungary signed on the tenth of January 1994 requires the Holy See to communicate the candidate designated to become the field bishop (*ordinarius militaris*) and the Government has the right to raise "general objections of political nature."¹⁷ Certainly these "objections" are not legally binding, so in the legal sense it is not a kind of veto. As the Constitutional Court stated, the Chaplaincy did not lead to an unconstitutional entanglement as it did not become an institutional part of the military, but works alongside it.¹⁸

Church entities do not have to match national borders: e.g. a diocese having its seat in Hungary could have canonical jurisdiction abroad, and church jurisdictions administered

11. Act CCVI/2011

12. Act XXXII/1991

13. Act CXXXIV/1997

14. Act CXC/2011

15. Act CCIV/2011

16. Government decree No. 61/1994. (IV. 20) Korm. § 8 (4)

17. International treaty No. 1994/19 from the minister of defence.

18. Decision No. 970/B/1994 AB, ABH 1995, 739.

from abroad can freely work in Hungary.

There are no legal restrictions on the autonomy of religious communities with regard to self-government and social action. There are no legal or political instruments designed to control the religious life or choices of citizens. The generally tolerant traditions of the country ensure the peaceful coexistence and respect between religious communities. Besides occasional events (festivities, conferences) the state does not apply specific provisions to facilitate peaceful coexistence and respect between religious.

VII. RELIGION AND THE AUTONOMY OF THE STATE

Prior to World War II dignitaries of mainstream (incorporated) denominations had seats in the upper house of the legislature. No religion could have any power to control other religious communities under the State law (e.g., intervening in the process to recognize legal personality for religious communities or to grant permission to open places of worship). Today, no religious community plays any role in the secular governance of the country and no religious community has representation in legislative or executive bodies.

VIII. LEGAL REGULATION OF RELIGION AS A SOCIAL PHENOMENON

Religion requires/benefits from specific regulation in many respects. Religious entities may be registered as such (not as associations, foundations or else). Ensuring religious freedom may require the accommodation of specific claims, such as conscientious objection, ritual slaughter, etc. In comparison with other social phenomena, this specific regulation is more cooperative with religion.

The State may have no record of the religious affiliation of individuals. Religious affiliation has no legal consequences under State law. Accommodation of religious claims is based on the conscientious conviction of the individual, without regard to his membership in a particular community.

IX. STATE FINANCIAL SUPPORT FOR RELIGION

The Constitutional Court rejected a petition claiming that public funds for religious communities were violating the separation clause of the Constitution.¹⁹ To the contrary, supporting activities of religious communities is mandated by state's responsibility to enable religious freedom. The Constitutional Court stated in the context of the restitution of church property confiscated during the communist regime that the operability of churches was a condition for religious freedom; consequently the state had a responsibility to ensure that churches regain their ability to carry out their mission.

Detailed legislation prescribes titles and calculation of state subsidies to religious communities.²⁰

Churches are exempt of various taxes and fees. For example, religious entities do not have to pay local taxes²¹ and fees²² when purchasing or inheriting real estate or become parties of civil or administrative procedures.

If a recognized church provides public services on demand of the citizens, it is entitled to the same subsidy the state provides for public institutions. Church-run museums, archives, and libraries may receive public funding if they fulfill certain criteria.²³ Renovation of church architectural heritage can be subsidized. None of these subsidies is considered funding of cult or core religious activities. Social and health care

19. Decision 381/B/2004.

20. Act CXXIV/1997.

21. Act C/1990 (on local taxes) § 3 (2).

22. Act XCIII/1990 (on fees) § 5 (1) e).

23. Act CXXIV/1997 § 7 (1).

are important fields of the public activity of churches, but the most significant is the presence of churches in education.²⁴ Church-run universities providing courses in secular subjects take part in the same competitive system of allocation of state-funded student places at state universities. Church-run schools undertake duties that would otherwise be completed by the State or the local government. Church-run schools receiving equal funding provide tuition-free education.²⁵

Although the principle of equal funding is firmly established and reaffirmed by decisions of the Constitutional Court,²⁶ as well as by agreements between various denominations, the calculation of the subsidy repeatedly leads to conflicts between center-to-left governments and churches. The state contributes to some church activities to a limited extent, like the reconstruction projects of architectural heritage, based on individual decisions of parliament and government. Local authorities may contribute to reconstruction projects, may undertake expenses like the illumination of the church building, and often provide the building plot for new church buildings free of charge.

Clergy, except chaplains serving the army and in penitentiaries, do not directly receive public funds. Since 1998, a major method of public funding is a tax assignment system, where income taxpayers get the right to assign one percent of their tax to a religious community of their choice or to alternative public funds. Funds raised in the tax assignment system are freely administered by the respective churches, without any public control. From 2012, however taxpayers can only assign the 1% of their income tax to a recognized church but not to a religious association (these can be funded as associations).

X. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

Church autonomy can be seen as the most important difference between entities registered as churches and other registered legal entities,²⁷ like associations, political parties or trade unions. Autonomy in this stricter legal sense means that the internal actions of organizations registered as “churches” are not subject to any kind of state interference. This means that whereas a resolution of an association can be brought before court (and courts have the power of striking it down if these internal actions are unlawful or violate the charter of the association), a resolution of an internal church entity, like a bishop or a synod, cannot be challenged before state courts. Churches are also not bound by the principle of democratic internal structure, while associations have to be democratic.

The “internal law” of the churches is regarded to be law by the state, though lacking the enforcement of state authorities. State law makes a number of references to the internal laws of the churches, even reciting them. That is, the legal character of the “internal law” (like that of the canon law) is acknowledged by the State in certain cases. The most important case of the application of the internal church law by state authorities is the acknowledgment of legal entities by the state. According to the law, if the “charter” of the church provides so, the organizational units of the church with an independent organ of representation (like institutions, parishes) are legal entities.²⁸ This means that the internal law of the religious communities determines whether legal persons acknowledged by the state come into existence or not – no further state registration of these persons is required (in the case of the Catholic Church the Code of Canon Law and the Code of Canons of the Eastern Churches determine which church entities have legal personality in the Hungarian legal system). If there is any doubt, the representatives of the given church

24. In the 2007/2008 school year, 3.3 percent of kindergarten-age children attended church-run institutions; at the elementary school level, this percentage was 5.5 percent (with beginners, this ratio was 6.3 percent, which shows that the share of church-run institutions is growing); in full time secondary schools, 17 percent; and at the university level, 5.9 percent. *Statistical Yearbook of Education 2007/2008*, available at http://www.okm.gov.hu/letolt/statisztika/okt_evkonyv_2007_2008_080804.pdf (31 July 31 2009).

25. Act LXXIX/1993 (on public education) § 4 (6) and § 81(4).

26. Decision 22/1997 (IV. 25). AB; Decision 99/2008 (VII. 3) AB.

27. Decision 8/1993 (II. 27) AB.

28. Act CCVI/2011 § 8(2).

can refer to their charter, and judges may need to study church codes to find out about the status of church entities in state law.

The state law makes several references to the internal law (canon law) of the churches. In some cases this is done out of practical considerations, as the legislator would not be able to set up a neutral frame that would fit all communities. In other cases, the principle of separation (the respect of church autonomy) sets a limit on how deep the state law can go. Consequently, the acknowledgment of the potential of the churches to make internal laws is an important sign of the acknowledgment of their autonomy. Enforcement, however, is not provided to internal church law.

The Constitutional Court, while dismissing the application, stated that the separation of church and state cannot be interpreted in a way that it leaves those entering into a legal relation with a church without a remedy. The remedies, however, can only consider the aspects regulated by state law. Aspects regulated by internal church law (canon law, or the statute of the religious community) cannot be subject of disputes at public remedies.²⁹

The Constitutional Court arrived at this statement at the end of a remarkable dispute between a professor of theology in the service of the Reformed Church and his Church as well as his University. The professor, a pastor of the Reformed Church, was forced into retirement by the Faculty of Theology. He later challenged this decision by initiating an internal church procedure. After losing his case within the Church, he sued the Church and the University in a labor court, seeking restoration of his employment as well as compensation.

Courts in various instances remained uncertain whether they had jurisdiction over a dispute between a church and its pastor, as section 15 (2) of the Act IV/1990 on the Freedom of Conscience and Religion and the Churches states as a consequence of the constitutional separation between church and state that “No state pressure may be applied in the interest of enforcing the internal laws and regulations of a church.” (The same provision is stated by Act CCVI/2011.) The applicant considered this unavailability of the courts as a lack of remedy in his case, which he considered to be a labor law case between an employer and a dismissed employee. After having exhausted his options in the lower courts, he filed a constitutional complaint with the Constitutional Court.

Since 1895, Hungary has an obligatory civil marriage regime.³⁰ Since 1962, however, the separation of church and state is relevant in this regard: the civil wedding does not have to precede the church wedding, so one can enter a religious marriage without any consequences under the state law (in state law such couples may qualify as non-marital cohabitants). Prior to this development, clergy assisting at weddings where the spouses had not gone through the civil marriage procedure committed a criminal offense, except in the case of danger to life. Due to the strict separation of church and state, canonical or other religious marriage is not a subject of state law in Hungary. The right to enter a religious marriage is undoubtedly part of the right to exercise religion, not family law.

XI. RELIGIOUS EDUCATION OF THE YOUTH

Churches have the right to provide *religious education* in public schools and kindergartens at the request of children/students and their parents.³¹ Non-public schools are not obliged to provide religious education, but they may do so. Neutral public schools should not endorse any religion or ideology, but must provide objective information about religions and philosophical convictions. Teachers at public schools should teach on a neutral basis; they have the right to express their opinion or belief, but they should not indoctrinate their students. Schools should provide fundamental information on ethics.³²

29. Decision 32/2003. (VI. 4.) AB

30. Act XXXI/1894 (on marriage law)

31. Act CCVI/2011. §2, §21.

32. Act CXC/2011. §3(3).

An important element of the recent changes in the education system was the introduction of ethics into the curriculum. Kids participating in religious education at schools do not take part in the ethics classes, in other words religious education became a compulsory elective subject instead of an optional subject.³³ Religious education at public schools can only be offered by recognized churches, by religious associations not.³⁴

Religious instruction in public schools is delivered by ecclesiastical entities, not by the school. The instruction is not a part of the school curriculum, the teacher of religion is not a member of the school staff, and grades are not given in school reports—only participation is registered. Churches decide freely on the content of the religion classes as well as on their supervision. Teachers of religion are in church employment; however, the State provides funding for the churches to pay the teachers. The school has only to provide an appropriate time for religious classes as well as teaching facilities. Churches are free to expound their beliefs during the religious classes: they do not have to restrict themselves to providing neutral education, merely giving information about religion, as do the public schools otherwise. Religious education is not part of the public school's task; it is a form of introduction into the life and doctrines of a given religious community at the request of students and parents.

XII. RELIGIOUS SYMBOLS IN PUBLIC PLACES

Teachers at public schools should teach on a neutral basis; they have the right to express their opinion or belief, but they should not indoctrinate their students. Headscarves have not yet become an issue in Hungary, but at present there is no dress code that would rule them out. A similar approach would apply to other public employees.

There are no religious symbols at public institutions. Eventually individuals could post religious symbols at public institutions, for example placing a cross over a bed in a social care institution, like a public senior house.

At symbolic events both on the national and on the local level mainstream churches and public authorities may interact in many different ways. Church dignitaries and representatives of public power are mutually expected to attend both public and religious events. The national day of Hungary is Saint Steven's day. Saint Steven (997-1038) was the first, state-founding king of Hungary. Church, state, civil and family celebrations are interlinked in a special way this day. Representatives of state agencies appear in the solemn mass and the procession honoring Saint Steven.

Religious ministers, often Protestant pastors, also play an important role in local festivities and celebrations. Local holidays have often been festivities of the patron saint of the town or village, and local coats of arms often show the influence of religious symbolism, even in cases where symbols are newly designed, not determined by historic traditions.

After the fall of communism, not only were historic names of streets and public institutions, such as hospitals, generally restored, but local municipalities often gave new institutions religiously inspired names for cultural reasons. A large number of pharmacies carry the names of saints.

XIII. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

Free speech enjoys a privileged position in the hierarchy of fundamental rights. The dignity of the person, however, may require the limitation of this right. Blasphemy, when causing public scandal, was a criminal offense under the first criminal code (1878).³⁵ That provision was abolished in the early years of the Communist regime. At present there is

33. Act XCX/2011. § 35.

34. Act CCVI/2011. §21.

35. Act V/1878. § 190.

no crime of blasphemy (though certain methods of protecting national symbols may be analogous to blasphemy.)³⁶ Neither God nor religion enjoys the protection of the criminal law. Criminal law protects the freedom of religion, personal convictions, and religious communities. Freedom of expression is limited by the penalization of hate speech: whoever incites the public to hatred against the Hungarian nation, any national, ethnic, racial group or certain groups of the population is guilty of a crime, punishable by up to three years imprisonment.³⁷ Incitement to hatred against a religious community (or a non-religious, anti-religious community) would fall under this provision. The religious sentiments of the population, or certain groups of the population, however, enjoy no protection by criminal law. Since 1992, a mere defamation no longer qualifies as a criminal offense, as the Constitutional Court has found that this would be a disproportionate limitation of the freedom of expression.³⁸ Since then, Parliament has proposed/enacted several amendments penalizing hate speech, but the Constitutional Court has rejected the amendments, continuing its liberal approach to free speech.

36. Act C/2012. § 334.

37. Act C/2012. §332.

38. Decision 30/1992. (V. 26.) AB