RELIGION AND CONSTITUTION. SOME HUNGARIAN PERSPECTIVES

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Abstract: Freedom of religion shall be a universally recognized human right. States have developed highly different models with regard to their relations to religious communities. Some kind of neutrality of the state has to be preserved in order to provide due respect to all faiths. Derived from a religious heritage and beyond religious beliefs the cultural identity of peoples gains a rising significance. The historically determined identity of nations is expressed various ways including the public endorsement of the legacy shaped by religious communities. Beyond the national level and within their boundaries local communities express identities in various ways. The Basic Law of Hungary (2011) is characterized by an open commitment to the religious roots of the national culture but maintains the respect for religious freedom and consequently also remains in the framework of religious neutrality.

Key words: religious freedom, church and state, religious neutrality, cultural identity, Basic Law of Hungary

1 INTRODUCTION

Emperor Augustus has placed a Milliarium Aureum at the Forum Romanum. All roads lead to Rome – milestones were calculated from this place.

The milestones of national roads in Hungary are calculated from a Zero kilometer stone in central Budapest, from the square at the Buda side of the first permanent bridge of the city, the Chain Bridge. The Hungarian Automobile Association has inaugurated a Madonna statue (Patrona Hungariae – Our Lady of Hungary) to mark the place in 1932. The area was severely damaged in the war early 1945 and the statute has been replaced after the communist takeover by a schematic one depicting a worker with a wheel. The craftsman rendered his place to a 0 kilometer stone by Miklós Boros in 1975. The present statute is simple and elegant: a three meter tall 0 carved from white limestone, as neutral as a 0 can be. Subsequent changes within a few decades tell us a story. Whereas previous statues with a strong ideological message did not survive changes, the neutral statute has been in the place for more time than its predecessors together. Communist statues of Budapest were removed from the public square to a statute park but of course the Zero has not been offensive to anyone – it is a well-designed landmark generally accepted by the public.

Is this the model of the coexistence of identities? Should we neutralize the public space in order to avoid offensiveness? Is this the path to mutual respect or rather to emptiness that leads us to loose understanding for religious expression? Is there a difference between religious expression and the cultural identity rooted in religion?

2 RELIGIOUS FREEDOM AS A CONSTITUTIONAL MINIMUM

Many constitutions have only one reference to religion as such, and this is the acknowledgement of religious freedom as a fundamental right. Constitutional formula may be slightly different, providing for additional elements to human rights, like the previous Hungarian Constitution[1] as well as the new Basic Law explicitly refer to the negative aspect of religious freedom, the right not to manifest ones religion.[2] Constitutions show more differences when it comes to the status of religious communities: provisions vary from non-establishment clauses[3] to the constitutional endorsement of a religion or a state church.[4] None of these solutions shall curtail the free exercise of any religion, established or non-established.

Beyond constitutional arrangements of church-state relations, expressions of cultural identity may carry the heritage of religious convictions. Whereas certain aspects of affiliations are rather issues of policies (like customs of a given country or local community), other aspects do have legal relevance (like official symbols).

3 NEUTRALITY EMPHASIZED

The Constitution did not provide for neutrality with regard to religion in an explicit way. The doctrine on neutrality was elaborated by the Hungarian Constitutional Court,[5] in a similar way than in Germany, where it was the Federal Constitutional Court that stated the neutrality of the state.[6] Neutrality seemed to become the most important principle governing the State in its relationship with 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

1 Article 60.

2 Article VI.

3 e.g.: GG Art 140 iVm Art 137 (1) WRV „Es besteht keine Staatskirche" (There shall be no established church.)

4 Malta: "The religion of Malta is the Roman Catholic Apostolic Religion.") Section 2, Greece ("The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and syn- odal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928.") Article 3, Denmark "The Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State." (Art. 4)

5 Decision 4/1993. (II. 12.) AB Commentary and text in English: SÓLYOM, L., BRUNNER, G. (eds.), Constitutional Jurisdiction in a New Democracy. The Hungarian Constitutional Court, The University of Michigan Press 2000, pp. 246 – 266.

6 BVerfGE 19, 206 (216), Campenhausen, Axel Frhr.v., Der heutige Verfassungsstaat und die Religion. LISTL, J.,ON, DIETRICH (eds.), Handbuch des Staatskirchenrechts der Bundesrepublik Deutschlands, 2nd edition, Duncker & Humblot, Berlin, p. 47, p. 77.

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.[7] The State should not enter into institutional entanglement 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.[8]

Neutrality has not become a generally accepted constitutional principle, in fact it often seems to be a misunderstood doctrine. Critics did not regard neutrality as an instrument to ensure the peaceful coexistence of various beliefs, but instead regarded it to be an obstacle to the promotion of values. A proper interpretation of neutrality does not jeopardize the expression of cultural identity or the promotion of the values of a constitutional democracy respecting human rights.[9]

4 BETWEEN RELIGIOUS NEUTRALITY AND CULTURAL IDENTITY

Countries in transition after the fall of communism generally adopted new written constitutions that recognized religious freedom, often explicitly underlining the correlative right not to profess a religion. Constitutions also came to reflect the fundamental characteristics of church-state relations. In short, all constitutions in the region contain provisions on freedom of religion and church-state relations. Special recognition afforded to one traditional, national religious community only appears in the constitution of Poland and Bulgaria. In case of Poland the reference is rather of a technical nature (the Polish Constitution follows the Italian model by making a reference to the concordat with the Holy See and the system of agreement-based laws regulating the relation of the state with other religious communities.), whereas in case of Bulgaria it is of a symbolic nature ("Eastern Orthodox Christianity shall be considered the traditional religion in the Republic of Bulgaria."). Separation of church and state is explicitly stated by the constitutions of Bulgaria, Croatia and Hungary. The Slovak Constitution recognizes that religious communities administer themselves independently from the state, whereas the Czech Charter of Fundamental Rights states that churches and religious societies administer their own affairs.

Constitutional norms and practices – from preambles to the symbolic communication of state organs – have an important role in expressing the identity of the political community. Besides ethnicity, religious identities shape national traditions to a high degree, but for various reasons they appear in formal legal documents often only in a hidden way (closely linked to historical traditions, e. g. coat of arms).[10] Symbols and customs may be felt as evident for majorities. Minorities (often

7 Sólyom, László: Alkotmányosság Magyarországon. Elvek és értékek. Sólyom, László: Az alkotmánybíráskodás kezdetei Magyarországon. Osiris, Budapest, 2001, 141, 145 – 146. Sólyom, László: Az állam és az egyház elválasztása az Alkotmánybíróság alapjogi koncepciójában. Forrai, Tamás (ed.): Az állam és az egyház elválasztása. Faludi Ferenc Akadémia – Távlatok, 1995, 104.

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

9 Paczolay, Péter: Az állam semlegességének mítosza. Politikatudományi Szemle 1993/3, 129. Uitz, Renáta: Aiming for State Neutrality in Matters of Religion: The Hungarian Record. University of Detroit Mercy Law Review. Vol. 83 (2006). 761 – 787.

10 Data collected in the framework of the REVACERN project (Religion and Values: Central and Eastern Europe Research Network) www.revacern.eu Special thanks to Zabój Horák, Blaž Ivanc, Dénes Kiss, Jana Martinkova, Michal Rynkowski and Sinisa Zrinscak for the information provided.

new minorities) may challenge them by pointing to the religious content of cultural phenomena. The Lautsi-case shows the difficulties of finding a consensus based on solid arguments.[11]

4.1 National symbols

In Hungary – as in many other countries – national symbols are declared by the constitution. The national anthem is a 19th century hymn expressly referring to God. It is often sung in churches. Despite of being a national prayer, in public the anthem is regarded as religion-neutral. The national anthem of Slovenia is the seventh strophe of the poem "Zdravljica", written by the poet France Prešeren. This particular strophe in Slovenian does not explicitly refer to God. However, God is mentioned several times in other parts of the poem. Also the second strophe of the Czech national anthem (which is not usually sung) there is reference to God. The last (eleventh) strophe of the national anthem of Romania (usually not sung) claims priests to lead with crucifixes, because "our army is Christian".

Coats of arms are determined by heraldic traditions. Except of Czechoslovakia and Poland communist regimes have adopted radically new coats of arms, whereas in the above mentioned countries, as well as in Austria the coats of arms have been adopted to new political circumstances. After the collapse of communism historic coats of arms have been restored. The Slovak coat of arms and the national flag contain a double cross – originally the symbol of royal power, not that of Christianity. The same double cross is part of the coat of arms of Hungary, where the coat of arms also depicts the royal crown headed by a cross, portraying saints. The coat of arms of Romania used since 1992 is based upon the coat of arms used from 1922 to 1947. On this the aquila (eagle) is holding an Orthodox cross (but the motto of the former royal family Hohenzollern-Sigmaringen "Nihil sine Deo" was abandoned).

4.2 Currency

National currency may serve as an everyday expression of a national-cultural canon. The practice of Central-European countries shows that the religious content of cultural heritage is no ground to exclude parts of the heritage from coins and banknotes – although Slovakia having introduced the Euro in January 2009, refrained from picturing a cross (as it used to be on the 10 SK coin) or a Madonna (as it used to be on the 1 SK coin) on Slovak Euro coins. There were also proposals to have a Madonna or a cross on the new Euro coins. For Slovenia the € 2 coin shows the poet France Prešeren and the inscription "Shivé naj vsi naródi" (God's blessing on all nations) – a line taken from his poem "Zdravljica", which is also used in the country's national anthem. The € 1 coin shows a portrait of Primož Trubar (1508–1586), a Protestant reformer and the consolidator of the Slovenian literary language. Primož Trubar is one of the most important pillars of Slovenia's cultural and national identity. His portrait certainly cannot be regarded as a religious symbol, but it refers to the religious heritage, which influenced national identity and culture. On Czech coins and banknotes there are symbols of important national personalities (some of them are saints) or historic monuments connected to religion. On the 10 Crown coin there is a picture of the Catholic St. Peter's Cathedral of Brno, on the 20 Crown coin there is a picture of the Saint Wenceslas statue, on the 50

[11] Case of Lautsi and others v. Italy, Judgment of 18 March 2011. Koltay, András: Europe and the Sign of the Crucifix: On the Fundamental Questions of the Lautsi and Others v. Italy Case. In Jeroen Temperman (ed.)The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom. Brill 2012., 355 – 382.

Crown banknote there is a picture of St. Agnes of Prague, on the 200 Crown banknote there is a picture of the bishop of the Unitas Fratrum Jan Amos Komenský. On the 1 Leu banknote in Romania there is a picture of the cathedral of Curtea de Argeş. Also in Hungary the 10.000 Forint banknote shows the portrait of Saint Steven.

4.3 National day

Besides respecting certain religious holidays, such as Christmas, Ascension or All Saints, the national days of several countries have a religious origin and/or a religious content, thus religious and public elements are hardly separable. 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 on that day. Representatives of state organs attend the solemn mass and the procession honoring of Saint Steven, and also at local festivities religious ministers – often Protestant pastors too – play an important role in the celebrations. In a remarkable way the holydays of the highly secular Czech state all have a religious background. The Day of the Slavonic Missionaries St. Cyril and Methodius on the 5th of July is a national holiday. St. Cyril, the monk and his brother St. Methodius, the archbishop, came in 863 from the Byzantine Empire to Great Moravia, the old Slavonic State spread on the present territory of Czech Republic and elsewhere in the region. Also the Day of Burning at the Stake of Master Jan Hus on the 6th of July is a national holiday. Jan Hus, a Catholic priest and the rector of the Charles University in Prague, was burnt at a stake on the 6th of July 1415 during the Council of Constance because of his theological views on the reformation of the Church. It directly affected the Hussite movement in the 15th century. Czech religious traditions, before all of the churches of reformation, have been influenced by it until the very day. The Day of Czech Statehood on the 28th of September is also a national holiday. This is the day of the martyr's death of the Czech Prince St. Wenceslas in 929.

4.4 Local communities

Beyond constitutional and national settlements local issues may not be overlooked. In all countries in the region a large part of local communities show respect to historic traditions originating from Christian faith. Local holydays have often been the festivities of the patron saint of the town or village, and also local coats of arms often show inspiration of religious symbolism – even in cases where symbols are newly designed and are not determined by historic traditions. In Slovenia certain local communities have a church (e.g. Bled, Bohinj) or a picture of a Christian saint (Sveta Ana, Sveti Jurij ob Ščavnici, Šenčur, Šentjur or a cross (Ptuj) as a part of their flag or coats of arms. Also in Croatia many local communities celebrate their days on days of certain saints. The same goes for Poland as well. This includes the figures of saints (or heads, e.g. the head of St. John Baptist) on the coats of arms. Some communes have religious references in their names themselves, e.g. the commune of Święta Katarzyna (Saint Catherine), close to Wrocław. In Hungary several counties (e.g. Csongrád, Esztergom, Fejér, Tolna) have portraits of patron saints on their coats of arms, and this is also true of a number of cities (e.g. Győr, Veszprém, Vác). Certain newly designed coats of arms use the picture of a local church. In the Czech Republic symbols of a religious origin are often used, but more as a folk tradition and local pride than as confession of some faith. On coats of arms and flags of lo-

cal communities there are often crosses in different heraldic forms, drawings of a certain Christian saint or group of saints (usually traditional patron-saints of the town or community) or a chalice, symbol that the town and community has some historical connection with the Hussite reformation movement (regardless of today's confessional adherence of local inhabitants). The symbol of the cross is connected to the foundation of Czech statehood, which was connected to the acceptance of Christianity. In a few rare cases there are symbols on coats of arms of certain historical relations to Islam, firstly as a memory of participation of inhabitants in battles in the ancient wars with Islamic powers (e.g. it can be a silhouette of a minaret).

4.5 Public places and institutions

Streets, squares and public institutions may get names of a religious character (such as the name of a saint), which usually goes back to historical names. In Croatia certain public institutions got names of a religious character. In many cases that was the restoration of older names after the fall of communism. It is hard to evaluate the ratio of such names, but they do not raise significant concern. In Hungary not only historic names of streets and public institutions (such as hospitals) were generally restored after the fall of communism, but local municipalities in certain cases gave names of saints to new institutions, too. A number of streets carry names of saints, the Holy Spirit or the Holy Trinity. These were restored after 1989 but usually no new 'religious' names are given. In 2007, the 800th anniversary of the birth of Saint Elizabeth the president of the Bishops Conference has called upon local communities to commemorate the popular saint by naming public places after her. Traditional names of many streets and squares in the Czech Republic show the originally religious character (e.g. Wenceslas Square in Prague). In many cases it is connected to the name of the church building or synagogue in such a street. Some hospitals and lot of pharmacies have traditional names of saints of religious orders.

Public institutions, such as schools, hospitals, institutions of social care etc. are special places where the coexistence of different convictions can be challenging. The neutrality of the state presupposes on the one hand the official neutrality of its institutions, on the other hand it has to provide ample room for the free expression and exercise of religion both individually and in community with others. In Slovenia in public schools religious symbols do not appear, but in public hospitals they do appear, since these institutions have to operate also special facilities for religious needs. The same is true of prisons. In Hungary and Slovakia at public institutions no religious symbols appear. Inmates, however, can post religious symbols at their own stake (like a cross above their bed). In Polish schools crucifixes have been placed. This practice has not been challenged so far. In Croatia particular symbols (cross) can be found in certain schools and hospitals, reflecting mostly the attitudes of their employees, or heads of these institutions, but this practice is not very common. Certainly there are crosses at Catholic theological faculties, which are parts of public universities, e.g. in the Czech Republic.

4.6 Public authorities

Religious symbols usually do not appear at public authorities, however in both meeting rooms of the Polish Parliament – and in many city council halls there is a crucifix. Challenging this practice was dismissed in 1999 by the Chief Administrative Court in Łódź.

5 RELIGION AND THE NEW BASIC LAW OF HUNGARY

The Basic Law begins and ends with mentioning God, but this is done in a particular way. The very first words of the preamble is a quote without quotation marks[12] of the national anthem ("God bless the Hungarians"), a poem from 1823 that was 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 Basic Law there is a solemn declaration reminding of 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 shows 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.") A reference to non-religious, secular or agnostic heritage is missing;[13] the omission makes the text less inclusive than the preamble of the Polish Constitution of 1997.

As for the text of the Basic Law the provisions relating to religion do not bring novelties. The wording of the freedom of religion remains unchanged. The wording of the separation of church and state is slightly changed laying more emphasis on church autonomy and the cooperation of church and state.[14]

The Seventh Amendment of the Basic Law passed in 2018 has inserted a subsection to the text providing that "Protecting the constitutional identity and the Christian culture of Hungary shall be an obligation of all state organs." Christianity in this formula appears as a cultural and not as a religious term. The provision seems to provide for the defense of the existing culture of the country rather than as an endorsement of Christianity by the constitution.

The religious neutrality of the state is a consequence of its commitment to non-discrimination on the basis of religion. The references to Christian heritage in the preamble do not bring changes in this respect nor does the constitutional commitment to the Christian culture of the country. The expression of the cultural identity of the nation may become more intense but this has to be reconciled with the religious neutrality of the state and the respect of religious freedom.

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12 As János Zlinszky points out: the person obliged by the very first commandment of the Constitution cannot be subjected to orders prescribed by law: Zlinszky, János: Észrevételek az új Alkotmány „húsvéti" szövegéhez. Az új Alaptörvényről – elfogadás előtt. Tanulmánykötet az Országgyűlés Alkotmányügyi, igazságügyi és ügyrendi bizottsága által 2011. április 8-án azonos címmel megrendezett tudományos konferencián elhangzott előadások alapján. Budapest 2011, 26, 27.

13 Jakab, András: Az új Alaptörvény keletkezése és gyakorlati következményei. HVG ORAC. Budapest 2011, 181.

14 Instead of "In the Republic of Hungary the church shall operate in separation from the state." the new text says: "The State and Churches shall be separate. Churches shall be autonomous. The State shall cooperate with the Churches for community goals."

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