

Religious Freedom in the System of Fundamental Rights

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In my study entitled Religious Freedom in the System of Fundamental Rights, I presented the history and content of the fundamental right of religious freedom. I presented the elements of freedom of conscience and freedom of religion as a fundamental right for all. I looked at the provisions in force at national and international level. I examined the legal rules on the neutrality of the State.

Keywords: *freedom of religion, religious community, established church, registered church, registered church or religious association*

The content of the fundamental right to freedom of religion

The right to freedom of thought, conscience and religion is a first-generation fundamental right, one of the basic freedoms. The right to religious freedom has existed since the Reformation. The age of Reformation contributed to the recognition and guarantee of freedom of conscience and religion through the birth of the idea of religious tolerance.

Freedom of conscience and religion means the autonomy of thought, the freedom to form one's world view, to profess it, to reject it, to practise it, to abstain from it. It can be exercised both individually and collectively, and freedom of religious practice is not bound to any form of organisation. In terms of its dogmatic classification, it can only rarely be assessed as a competing fundamental right.¹

¹ According to Cservák Csaba's classification, fundamental rights can be considered competing fundamental rights where the exercise of a fundamental right by one person reduces the effectiveness of the exercise of the same fundamental right by another. In the case of freedom of religion, this is only the case for forcibly converting churches/religions. See Cservák Csaba: The impact of digitalisation on the exercise and enforcement of fundamental rights, In (ed.) Árpád Olivér Homicskó: *The impact of digitalisation in specific areas of law*, KRE-ÁJK, 2020. Budapest, p. 55.

The position of Szilvia Köbel expresses the content of this fundamental right in the most essential way, according to her view, religion and religious belief are an inseparable part of the human personality, since it expresses the whole existential existence, i.e. the physical, mental and spiritual unity of man, and this is the deepest link between religious freedom and human dignity. In his view, constitutional law understands the right to human dignity as the most general right of the person, the fundamental constituent elements of which are freedom of self-determination, the right to privacy, freedom of action and, finally, the right to the free development of the person. These rights are closely linked to human personality and dignity, which are also the basis for non-discrimination. Religious freedom therefore includes freedom to express religious beliefs, whether individual or collective, in the private or public sphere, in religious practices and rituals, and is complemented by the freedom to change one's beliefs.²

The elements of religious freedom are freedom of belief, freedom of worship, including the so-called negative religious freedom, i.e. the right not to manifest one's belief, freedom of assembly and association (collective and public worship, teaching).³

According to Article 18 of the International Covenant on Civil and Political Rights⁴, everyone has the right to freedom of thought, conscience and religion. This right shall include freedom to choose or adopt a religion or belief and freedom, either individually or in community with others and in public or private, to manifest, practise and teach his religion or belief in religious acts and observances. No one shall be subjected to any constraint which would impair his freedom to have or to adopt his own religion or belief. Freedom of expression of religion or belief shall be subject only to such limitations as are prescribed by law and are necessary to protect public security, public order, public health, morals or the fundamental rights and freedoms of others.

According to Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Associations and Religious Communities, freedom of conscience and religion is a fundamental right for everyone and cannot be tied to any legal form. The right to freedom

² Szilvia Köbel: *The Foundations of State and Denominational Church Law* Patrocínium Kiadó Budapest, 2019. 2nd revised edition.

³ Zsolt Szabó: *Dance Guide for the Constitutional Law Final Examination* 6th revised edition, Patrocínium Kiadó 2018.

⁴ Decree-Law No 8 of 1976 on the proclamation of the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly at its twenty-first session on 16 December 1966.

of conscience and religion includes the freedom to choose or change one's religion or other belief and the freedom to manifest, refrain from manifesting, practise or teach one's religion or other belief, whether individually or in community with others, in public or in private, through religious acts, observances or other means. No one shall suffer any advantage or disadvantage by reason of the choice, acceptance, expression or profession of a conscientious or religious belief or by reason of the modification or practice thereof.

Legal provisions relating to the fundamental right to freedom of religion

Article VII of the Constitution contains provisions on the fundamental right to freedom of thought, conscience and religion. Article VII(1) states that everyone has the right to freedom of thought, conscience and religion, i.e. that this fundamental right is equally enjoyed by all persons.

This provision of the Fundamental Law also defines the essential content of the fundamental right. The right to freedom of thought, conscience and religion includes the freedom to choose or change one's religion or belief and the freedom to manifest, practise or teach one's religion or belief, whether individually or in community with others, in public or in private, by religious acts, observances or other means. The freedom to choose or change one's religion or belief is therefore guaranteed to all people. This provision of the Fundamental Law also includes the freedom to manifest or refrain from manifesting one's religion or belief, either individually or in association with others, collectively, publicly or expressly in private, by religious acts or observances or otherwise.

The Fundamental Law also regulates the basic issues of the relationship between the state and the church. It declares that people of the same faith may form religious communities for the purpose of practising their religion, and emphasises their autonomy. The establishment of religious communities may take the organisational form laid down in a cardinal law. The Fundamental Law stipulates that religious communities and the State shall function separately, but also provides that the State and religious communities may cooperate to achieve the objectives of the community.⁵ The cooperation must be

⁵ Fundamental Law Article VII (2) People who share the same beliefs may establish a religious community for the purpose of practising their religion in an organisational form determined by a cardinal law.

(3) The state and religious communities operate separately. Religious communities are autonomous.

(4) The state and religious communities can work together to achieve community goals. The National Assembly decides on cooperation on the basis of a request from the reli-

initiated and requested by the religious community, which Parliament is entitled to decide on. Religious communities participating in cooperation may operate as established churches and, as such, are granted special additional rights by the state.

In accordance with the provisions of the Fundamental Law, a cardinal law defines the common rules for religious communities, the framework and conditions for cooperation, the established churches and the detailed rules applicable to them.

Act CCVI of 2011⁶ lays down detailed rules on the legal status of religious communities. The legal personality of religious communities was redefined by Act CXXXII of 2018. The law defines religious communities, considers religious communities as communities of natural persons, which, regardless of their organisational form, legal personality or denomination, are established for the practice of religion and primarily carry out religious activities. As regards their organisational form, religious communities may operate without legal personality or with legal personality.⁷

Under the current rules, a religious community with legal personality is a religious association, a registered church, a registered church and a professed church.

The established church, the registered church, the registered church and the religious association are autonomous organisations of natural persons professing the same beliefs and having self-government.⁸

The law also defines the concept of religious activity, by religious activity we mean the activity of a religious community related to a worldview that is supernatural, has a system of beliefs, its doctrines apply to the whole of reality and embraces the whole of human personality with specific standards of conduct.

A religious association may be formed for the purpose of practising their religion, for the purpose of religious activity, by natural persons who share the same beliefs. The manner in which membership and the exercise of membership rights shall be established, as well as the scope, duties and powers of the

gious community. Religious communities participating in cooperation shall operate as established churches. The State shall grant specific rights to established churches with regard to their participation in tasks aimed at achieving community objectives.

(5) A cardinal law lays down common rules for religious communities, the conditions for cooperation, the established churches and the detailed rules governing them.

6 Act CCVI of 2011 on the Right to Freedom of Conscience and Religion, and on the Legal Status of Churches, Religious Associations and Religious Communities.

7 Act CCVI of 2011, § 6 A religious community is any community of natural persons, regardless of its organisational form, legal personality or name, which is established for the practice of religion and which primarily carries out religious activities.

8 Act CCVI of 2011, § 7 (2).

persons having legal relations with the religious association who are entitled to take and control internal decisions concerning the operation of the association, and to manage and represent it, may be determined by derogation from the rules applicable to the association. The State may conclude agreements with religious associations for a limited period of up to five years for the performance of certain public activities or for the promotion of religious activities.

A religious association shall be registered as a registered church on the basis of a request to this effect, if it has received on average at least 1,000 individual donations of the portion of personal income tax paid to it, as determined by a special law, during the 3 years preceding the submission of the application for registration, and has been operating as a religious association for at least 5 years or has 100 years of independent international operation in an organised form.

A religious association shall also be registered as a registered church, upon application, if it has at least 1,000 registered members residing or domiciled in Hungary, has been operating as a religious association for at least 5 years, and it declares that it does not, after submitting its application, receive any support for its religious or public activities from subsystems of the public budget, from programmes financed from European Union funds or under an international agreement, by means of a tender or outside the tender system, on the basis of an individual decision. The State may conclude an agreement with a registered church for a maximum period of ten years for the performance of a public service activity or for the support of religious activities.

A religious association must be registered as a registered church if, upon application, it has received, on average over the 5 years preceding the submission of the application for registration, at least 4,000 individual contributions of the portion of personal income tax paid to it, as determined by a special law, and has been operating as a religious association for at least 20 years or has 100 years of independent international operation in an organised form.

Upon application, a registered church shall be registered as a registered church if it has received an average of 4,000 individual donations of the portion of its personal income tax paid, as determined by a special law, over the 5 years preceding the submission of the application for registration, and has been operating as a registered church for at least 15 years or has 100 years of independent international operation in an organised form.

The state may conclude an agreement with a registered church for a fixed term of up to 15 years to provide a public service or to support religious activity.

A registered church is a registered church with which the State has concluded a comprehensive agreement on cooperation for community purposes. When concluding or amending a comprehensive agreement, the Minister responsible for coordinating relations with churches acts on behalf of the State.

Religious neutrality of the State

Article VII of the Fundamental Law provides that religious communities and the state shall function separately. This provision explicitly provides and guarantees the ideological neutrality of the State. The old constitution declared⁹ that the church was separate from the state. In Szilvia Köbel's view, the different wording is the legislator's way of expressing that the situation was not created by the will of the state or a third party, but rather reflects a stable situation created by the mutual will of both parties.¹⁰

According to the AB Decision 4/1993 (II.12.)¹¹, it follows from the principle of separation that the State may not be institutionally connected with the churches or with any church; that the State does not identify itself with the doctrine of any church; and that the State may not interfere in the internal affairs of the churches, and in particular may not take a position on matters of faith truth. It follows that the State must treat the churches as equals.¹² Since the state cannot take a position on the very substantive issues that make religion a religion, it can only create abstract framework rules on religion and church, applicable to all religions or churches, which make them fit into the neutral legal order, and must rely on the self-interpretation of religions and churches on substantive issues. Through a neutral and general legal framework, the separation of church and state ensures the fullest possible freedom of religion.

It is important to point out that the neutrality of the state in relation to the right to religious freedom does not mean inaction. The State has a duty to provide a space for the expression, teaching and practice of religious belief, for the functioning of churches, and likewise for the rejection of religion and silence on religious belief, in which different beliefs can freely form and develop, and thereby allow the free development of individual convictions. On the one hand, the state must ensure this free communication process; this obligation also derives from the right to freedom of thought and expression.

⁹ Article 60 (3) of the Constitution.

¹⁰ Szilvia Köbel: *The Foundations of State and Denominational Church Law* Patrocinium Kiadó Budapest, 2019. 2nd revised edition.

¹¹ The AB decision 27/2014 (23.VII.) adopted these ideas, but instead of the principle of separation, it now uses the principle of separate functioning and autonomy of religious communities.

¹² The Greek practice is very interesting. There, although religious freedom prevails in the Orthodox Church, which is almost a state church, conversion in the interests of certain churches is punished by imprisonment, even in extreme cases. See Edina Lajos: *On the European perception of religious freedom and Christianity, with special reference to the Greek specificities*, KRE-DIt, 2022/2., pp. 1–9.

According to Szilvia Köbel, it is often the obligation that pushes the state to play an active role, the main aim of which is to promote free choice between pluralistic values.¹³

On the other hand, it must also ensure that other fundamental rights are protected against religious freedom where appropriate. Finally, positive regulation of the right to religious freedom itself may also be necessary. The state must create a regulated compromise where state regulation creates a situation in which freedom of religion and freedom from religion are mutually restrictive. Such a 'space' is, for example, the education of the worldview in the context of compulsory schooling.¹⁴

In relation to the neutrality of the state, Act CCVI of 2011 declares¹⁵ that the state may not operate or establish a body for the management or supervision of religious communities.

It stipulates that the enforcement of a decision taken on the basis of the religious community's credo, internal law, statutes, rules of organisation and operation or other corresponding rules shall not be subject to state coercion or review by a state authority.

It further provides that a decision of a religious community based on an internal rule may not be modified or overruled by a public authority, and that a public authority has no jurisdiction to rule on disputes arising from internal legal relations not regulated by law.

According to the AB decision 4/1993 (II.12.), the church is not the same for a given religion and for state law. The neutral state cannot follow the church concepts of different religions. However, the State may take into account all the ways in which religious communities and churches in general differ, in terms of their history and their role in society, from social organisations, associations and interest groups which may be established under the Fundamental Law (Article VIII).

The Constitutional Court in its Decision 27/2014 (23.VII.) AB emphasises the provisions of Decision 8/1993 (27.II.) AB, according to which the state may not be institutionally associated not only with religious communities, but with any religion or religious group, may not identify itself with the teachings of any religion, and may not take a position on the question of religious truths. No constitutional interference with the autonomy of religious communities, irrespective of their specific religious nature, is possible.

13 Szilvia Köbel: *The Foundations of State and Denominational Church Law* Patrocinium Kiadó Budapest, 2019. 2nd revised edition.

14 4/1993 (II.12.) AB decision.

15 Act CCVI of 2011, § 8.

According to the AB Decision 4/1993 (II.12.) the state must be neutral in religious matters. Therefore, public schools must also be neutral. It is through these schools, which are open to all, that the State realises the right to education and ensures the condition of compulsory education. Neutrality requires that the curriculum, organisation and supervision of its schools be designed by the State in such a way that religious and philosophical information and knowledge are transmitted to pupils in an „objective, critical and pluralist manner”. The state school must not provide education which could be considered as disregarding the convictions of parents (and the child).

Pursuant to Article 19/C of Act CCVI of 2011, the income of religious associations and religious legal persons for religious purposes and their use may not be controlled by a public body. The State Audit Office of Hungary (SAO) is responsible for the control of the use of the non-religious subsidies in accordance with the law.

According to the Constitutional Court, the criteria governing a religiously neutral state are the following: the state may not be institutionally linked to religious communities or to any religious community, the state may not identify itself with the teachings of any religious community, the state may not interfere in the internal affairs of religious communities, the state may not take a position on religious truths, the state must treat religious communities as equals.¹⁶

From the point of view of the religious neutrality of the state, the interpretation of the idea laid down in Article R(4) of the Seventh Amendment to the Fundamental Law¹⁷, according to which the protection of Hungary's constitutional identity and Christian culture is the duty of all organs of the state, may be questioned.

16 Stefánia Bódi- Gábor Sweizer: *Fundamental Rights - The Constitutional Protection of Human Rights in Hungary*, Ludovika University Publishing House, Budapest 2021, 202. o.

17 Cf. Edina Lajos: *Legal Interpretation and Morality*, KRE-DIt, 2022/2., pp. 1–9.