

RELATION BETWEEN THE RELIGIOUS FREEDOM AND RIGHT TO EDUCATION ON THE BASIS OF HUMAN DIGNITY

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1. Introduction

The existence of religion is coeval with the mankind. The religious conviction of the different human communities have defined their culture on the day to day basis since the beginning of history. Therefore, this essential characteristic has made a strong influence not only on the daily life, mentality, on the social relations and structures in general, but particularly on the education at home and even on its institutionalized system.¹ Hence, the personal attitude toward the ‘Saint’ is a natural feature of every human being, which feature is rooted in his/her own conscience. It is not accidental therefore, that the religious freedom has become one of the first generation human rights in the 18th century.² The organized form of European public education has started by the Catholic schools which dominated this field until the 16th century, when we could see the transformation of this system in Europe into a Christian education. Naturally, the Virginia Declaration (1776), Constitution of the United States of America (1787), the French Constitutions – based on the results of the French revolution (1789-1799) – (1791, 1792, 1795)³, the German Imperial Constitution (1849), constitutional laws of December 1867 of the Austrian Empire, or the Constitution of Weimar (1919), moreover ecclesiastical decrees of which were adopted by the Fundamental Law of Bonn, show precisely the gradual secularization

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¹ SZUROMI, SZ. A.: *Bevezetés a katolikus hit rendszerébe* (Introduction into the system of the Catholic Faith). Budapest, 2014. 7 13.

² SZUROMI, SZ. A. – FERENCZY, R.: *Kérdések az állami egyházjog köréből* (Question about the ecclesiastical law). [Bibliotheca Instituti Postgradualis Iuris Canonici Universitatis Catholicae de Petro Pázmány nominatae III/17] Budapest, 2014. 5., 45. [SZUROMI (2014a)]

³ J-L. THIREAU: *Introduction historique au droit*. Paris 2001. 270–277.

process of state laws and of the society.⁴ Through this process have been crystalized not only different models of state and church relationship, but also a strong basis for religious freedom as one of the most emblematic expression of the human dignity. This new social and legal situation have needed new concept to protect the citizens' rights for education based on their own religious conviction, without the intervention of the state into religious affairs.⁵ Peter Card. Erdő points out, that even if a state does not follow in institutionalized form one particular religion or religious ideology, it does not mean necessarily that it makes the state automatically atheist.⁶ Nevertheless, the above described brief overview supports well, that within a secularized society every religious educational system has become more vulnerable than before, therefore the ecclesiastical education carries minority characters nowadays, as compared with neutral state- or private schools. Therefore, we cannot neglect to make remarks here regarding the principle and legal basis of the religious communities' right to the teaching of their own faith, in order to educate trough that their children. The *II Catholic – Orthodox Forum* on October 22nd 2010 underlined in its closing Communiqué, that “The participants in the Forum believe that the role as dominating Church or State Church should not result in a legal discrimination for the other Churches and the members of minority religious groups, whose religious freedom should be fully guaranteed, including the right to profess their faith using any means respecting personal freedom.”⁷

2. The religious school

When we are talking about the religious schools in Eastern Europe, within former communist countries, we cannot forget that the suppression of the religious educational system represents in these countries the loss of their religious freedom during the time of the communist dictatorship. Like in Hungary, when on June 16th 1948 the Hungarian Parliament accepted the secularization of the entire educational system by Act 33/1948. István Barankovics (†1974) – who represented the minority opinion – concluded his parliamentary speech: “This prepared new law certainly will get the majority sympathy of the Parliament; however it will never get the volitional and emotional acceptance of the majority of the Hungarian Nation.”⁸ Therefore, it

⁴ SZ. A. SZUROMI: The Changes of Modern Era Relation of Church and State in Europe. *Folia Canonica*, 8, (2005) 65–77.

⁵ A. M. ROUCO VARELA: *El derecho a la educación, ¿de nuevo a debate?* In: A. M. ROUCO VARELA: *Ecclesia et Ius. Escritos de derecho canónico y concordatario*. [Studia Canonica Matritensia I] Madrid, 2014. 389–409.

⁶ ERDŐ, P.: Az Európai Unió és az Egyház (The European Union and the Church). In: ERDŐ, P.: *Egyház, kultúra, társadalom* (Church, Culture and Society). Budapest, 2011. 273–277., especially 273–274.

⁷ II CATHOLIC – ORTHODOX FORUM: *Communiqué*. In: *Church and State relations: from Historical and Theological Perspectives*. (Atti del II Forum Europeo Cattolico – Ortodosso, Rodi, Grecia, 18–22 ottobre 2010) Bologna, 2011. 215–221., especially 217. (n. 3).

⁸ MÉSZÁROS, I.: *Mindszenty és Ortutay. Iskolatörténeti vázlat: 1945–1948* (Mindszenty and Ortutay. An outline of School-history: 1945–1948). Budapest, 1989. 175.

must be underlined that the religious educational system does not only depend on emotions, but a clear element of the really existing liberty, justice, solidarity and peace in the particular country. This testifies the acceptance of the cultural values, the religions, and the natural characteristic of the citizens.⁹

Already Pope Pius XI (1922–1939) dedicated an Encyclical letter *Divini illius magistri* (December 31st 1929) to the right of parents to educate their children in ecclesiastical school, following freely their own faith, which is recognized by the state.¹⁰ The pope explicitly argues in this document, Art. 8: “[...] From this we see the supreme importance of Christian education, not merely for each individual, but for families and for the whole of human society, whose perfection comes from the perfection of the elements that compose it. From these same principles, the excellence, we may well call it the unsurpassed excellence, of the work of Christian education becomes manifest and clear; for after all it aims at securing the Supreme Good, that is, God, for the souls of those who are being educated, and the maximum of well-being possible here below for human society [...]”¹¹ Pius XI points out also, that: “[...] Besides every Christian child or youth has a strict right to instruction in harmony with the teaching of the Church, the pillar and ground of truth. And whoever disturbs the pupil’s Faith in any way, does him grave wrong, inasmuch as he abuses the trust which children place in their teachers, and takes unfair advantage of their inexperience and of their natural craving for unrestrained liberty, at once illusory and false [...]”¹²

Obviously, beside the cited document are those particular social, political, even legal transformations which had happened between the two wars. Nevertheless, the cited papal description – because the argumentation proceeds from the basis of human dignity – is applicable to any denomination. If we take a glance into the Universal Declaration of Human Rights (December 10th 1948) which was composed after the tragedy of the Second World War, we can find the summary of the afore-mentioned concept in general, that the education has to be observant of all characteristics of the human personality (Art. 26,2). The Spanish Constitution (December 27th 1978) – based on the documents of international human rights – in Art. 27 (6) – which was inserted into the Fundamental Law of Spain in 1985¹³, and was specified in 2006¹⁴) expressively declares the principle of the freedom to create educational centers with respect for constitutional principles. The description makes clear that this legal basis is in force for every type of educational categories, mean private-, religious-, or other convictions, as it is explained well by Javier Martínez-Torrón,

⁹ ROUCO VARELA (2014) op. cit. 339–365., especially 340.

¹⁰ PIUS XI: Litt. Enc. *Divini illius magistri* (31 dec. 1929). *AAS* 22 (1930) 49–86.

¹¹ Ibid. 49.

¹² Ibid. 52.

¹³ Ley Orgánica 8/1985 (3 jul. 1985).

¹⁴ Ley Orgánica 2/2006 (3 mai. 2006). Cf. SZUROMI, SZ. A.: Spanyol állami egyházjog – új hangsúlyok (Spanish Ecclesiastical Law – New Emphases). *Iustum Aequum Salutare*, X., 2014/2. 155–171., especially 156–157. [SZUROMI (2014b)]

professor of the Complutense University of Madrid.¹⁵ I would like to add to Prof. Martínez-Torrón's note, that Art. 27 of the Spanish Constitution deals in detailed the freedom of education within the Spanish Kingdom. The state gives guarantee the free moral and religious educational right of the parents regarding their children.¹⁶ It is supplemented with the principles of the concordat between the Holy See and Spain (January 3rd 1979) which contains the introduction into the Catholic faith even for the universities.¹⁷ Recently, the legal regulation of the teaching in public schools – concerning primary schools – (ECI/2211/2007)¹⁸ and also about the high schools (ECI/2200/2007)¹⁹ have been modified by the order ECD/7/2013.²⁰ The new rule – based on the recommendations of the United Nation, of the European Council, and of the European Union – touches upon the respect of the entire human person and the unique value of his/her life, but contains also the respect of human dignity, religious belief – including the right for the studies on the basis of his own faith –, the value of the family and the teaching for that.²¹

3. Catholic education and its regulation by the Catholic Church

The Second Vatican Council (1962–1965) regulated in general by the Declaration *Gravissimum Educationis* the field of the independent – without state influence – Catholic education.²² The first chapter defined the legal basis of this independent educational system: “[...] All men of every race, condition and age, since they enjoy the dignity of a human being, have an inalienable right to an education that is in keeping with their ultimate goal, their ability, their sex, and the culture and tradition of their country, and also in harmony with their fraternal association with other peoples in the fostering of true unity and peace on earth. For a true education aims at the formation of the human person in the pursuit of his ultimate end and of the good of the societies of which, as man, he is a member, and in whose obligations, as an adult, he will share [...]” Antonio María Card. Rouco Varela establishes well

¹⁵ J. MARTÍNEZ-TORRÓN: *Religion and Law in Spain*. New York, NY., 2014. 138.

¹⁶ Art. 27 (3) Los poderes públicos garantizan el derecho que asiste a los padres para que sus hijos reciban la formación religiosa y moral que esté de acuerdo con sus propias convicciones. A. MOLINA – M. E. OLMOS – J. L. CASAS (ed.): *Legislación eclesiástica* (Civitas Biblioteca de Legislación). Madrid, 2007. 55.

¹⁷ *AAS* 72 (1980) 38–39.

¹⁸ ECI/2211/2007 (July 12th 2007).

¹⁹ ECI/2200/2007 (July 12th 2007).

²⁰ ECD/7/2013 (January 9th 2013); Cf. SZUROMI (2014b) op. cit. 157.

²¹ Cf. Orden ECD/7/2013, de 9 de enero, por la que se modifica la Orden ECI/2211/2007, de julio, por la que se establece el currículo y se regula la ordenación de la Educación Primaria, y la Orden ECI/2220/2007, de 12 de julio, por la que se establece el currículo y se regula la ordenación de la Educación Secundaria Obligatoria. A. MOLINA – M. E. OLMOS – J. L. CASAS (ed.): *Legislación eclesiástica* (Civitas Biblioteca de Legislación). Madrid, 2013. §§. 154–155.

²² *Conc. Vaticanum II* (1962–1965), Sessio VII (28 oct. 1965), *Declaratio de educatione christiana: Conciliorum oecumenicorum decreta*, Bologna, ³1973. 959–968, Art. 1: 960.

regarding this introductory chapter that its contents is in harmony with the Universal Declaration of Human Rights (Art. 26,1) and also with the Additional Protocol to the European Convention (May 30th 1952; Art. 2).²³ The cited conciliar document is also an important source of how the parents should fulfill their duties and rights based on their religious conviction within the educational system. In Art. 6 of the *Gravissimum Educationis* we can clearly read: “[...] Parents who have the primary and inalienable right and duty to educate their children must enjoy true liberty in their choice of schools. Consequently, the public power, which has the obligation to protect and defend the rights of citizens, must see to it, in its concern for distributive justice, that public subsidies are paid out in such a way that parents are truly free to choose according to their conscience the schools they want for their children [...]”²⁴

The Catholic Church, in particular Saint John Paul II (1978–2005) and the Congregation for Catholic Education have published several times such documents which intended to enlighten more precisely the importance of the own schools and educational system of a certain denomination, because within the new secularized society the faithfully committed and institutionalized religious education is the most important instrument to keep the religious attitude, beside the public activity and the teaching- and personal example in the family. This situation shows the minority characteristics of the religious groups which could be easily discriminated, if the state forgets the consequence of its own citizens’ right for religious freedom.²⁵ In order to applicate the directives of the Second Vatican Council, the Congregation for Catholic Education composed a guideline about the religious dimension of education on April 7th 1988. The congregational document testifies well the realism of the Holy See regarding the status of the religious schools within the contemporary society. Already in the introduction is noticed: “[...] Not all students in Catholic schools are members of the Catholic Church; not all are Christians. There are, in fact, countries in which the vast majority of the students are not Catholics – a reality which the Council called attention to. The religious freedom and the personal conscience of individual students and their families must be respected, and this freedom is explicitly recognized by the Church. On the other hand, a Catholic school cannot relinquish its own freedom to proclaim the Gospel and to offer a formation based on the values to be found in a Christian education; this is its right and its duty. To proclaim or to offer is not to impose, however; the latter suggests a moral violence which is strictly forbidden, both by the Gospel and by Church law [...]”²⁶ The Holy See was prepared therefore to give proper answer based on the contemporary circumstances to the current problems, conflicts and questions in the field of education. It is quite clear

²³ ROUCO VARELA (2014) op. cit. 342.

²⁴ *Conc. Vaticanum II* (1962–1965), Sessio VII (28 oct. 1965), *Declaratio de educatione christiana: Conciliorum oecumenicorum decreta*, 963.

²⁵ Cf. ERDŐ, P.: A vallási közösségek és jogi kezelésük (Religious Communities and their Legal Status). In: ERDŐ (2011) op. cit. 253–261, especially 261.

²⁶ CONGREGATIO PRO INSTITUTIONE CATHOLICA: Lineamenta. *Dimensione religiosa dell’educazione nella scuola cattolica* (7 apr. 1988), *Introduzione*, art. 6.

from that precise overview which dealt with the coming century, and was edited on December 28th 1997, under the title: *The Catholic school on the threshold of the third millennium. The instruction emphasized that* “[...] The phenomena of multiculturalism and an increasingly multi-ethnic and multi-religious society is at the same time an enrichment and a source of further problems. To this we must add, in countries of long-standing evangelization, a growing marginalization of the Christian faith as a reference point and a source of light for an effective and convincing interpretation of existence [...]”²⁷ Also in the same introduction, the legislator calls attention for that misleading idea, which comes from the domination of the state education. As compared with that, the religious education is in minor position, even those which have wide and large organization. Therefore, those initiatives and theories – ignoring the principle of religious freedom and the free choice of the citizens to educate their children on the basis of their own traditional belief – can destroy many values. The document describes: “[...] in recent years there has been an increased interest and a greater sensitivity on the part of public opinion, international organizations and governments with regard to schooling and education, there has also been a noticeable tendency to reduce education to its purely technical and practical aspects [...] There is a tendency to forget that education always presupposes and involves a definite concept of man and life. To claim neutrality for schools signifies in practice, more times than not, banning all reference to religion from the cultural and educational field, whereas a correct pedagogical approach ought to be open to the more decisive sphere of ultimate objectives, attending not only to “how”, but also to “why” [...]”²⁸ If we compare this stand point with the most recent working document of the same Congregation, which analyzes the entire field of education from the kindergarten to the university, can be seen the most relevant stresses, and every single one derives from the human dignity and from the primary principle of religious freedom. The well detailed text was composed on April 7th 2014 and really considerable in particular concerning the challenge of identity of religious schools and also on the legal challenges. Regarding these the document fixes that the “[...] Contemporary educators have a renewed mission, which has the ambitious aim of offering young people an integral education as well as assistance in discovering their personal freedom, which is a gift from God [...]”²⁹ Concerning the legal problems the document gives a clear reflection on the grievous reality: “[...] Some governments are quite keen on marginalizing Catholic schools through a number of rules and laws that, sometimes, trample over Catholic schools’ pedagogical freedom. In some cases, governments hide their animosity by using lack of resources as an excuse [...]. Under the guise of a questionable “secularism”, there is hostility against an education that

²⁷ CONGREGATIO PRO INSTITUTIONE CATHOLICA: *The Catholic school on the threshold of the third millennium* (28 dec. 1997). *Introduction*, art. 1.

²⁸ *Ibid.* *Introduction*, art. 10.

²⁹ CONGREGATIO PRO INSTITUTIONE CATHOLICA: *Instrumentum laboris. Educare oggi e domani. Una passione che si rinnova* (7 apr. 2014) III, 1, a.

is openly based on religious values and which, therefore, has to be confined to the “private” sphere.”³⁰

4. Conclusion: Denominations improves values of the society through their own educational and other services

The religious communities – particularly the historical churches and denominations – make considerable contribution to the general culture, to the development of humanity and to improving of morality in the society. This unique value which originates from the natural religious feature of the human nature – the relation to God, person, and society – gives proper responsibility for the states and even for the denominations in the common work and cooperation for the moral and cultural value of the human society which naturally has civil and religious aspects. The state cannot neglect the fact that the religious beliefs are part of most of its citizens’ natural characteristics, and from the exercise of which obligations devolve on the state.³¹ This basic concept can be demonstrated well by § 10 (1) Act CCVI/2011 of Hungary which clearly expresses, that the state in order to promote the common goals of the society can cooperate with the Churches. This is eminently true regarding the educational, medical, and social activity of the different denominations.³² Joseph Schweitzer (†2015; former Chief-Rabbi of whole Hungary) emphasized in 2006 that even an economical or basically political organization needs to manifest ethical values if we liked to speak seriously about a real respect of human rights and religious freedom.³³ Similar clear conviction follows from Joseph Ratzinger’s comments (published in 1987)³⁴ and from statements of representatives of the Hungarian Reformed Church, which analyze values in our contemporary society, in which the family should have an eminent place in social and religious context.³⁵ Therefore, the religious sphere and the faithful activity of the churches, denominations, etc. have a fundamental impact on the formation of the human values of the concrete society as a community

³⁰ Ibid. III, 1, 1.

³¹ SZ. A. SZUROMI: Legislazione successiva alla trasformazione dei rapporti tra Chiesa e Stato nell’Europa centro-orientale. *Ius Missionale*, 9, (2015) 213–224., especially 221–224.

³² Cf. SCHANDA, B.: *Állami egyházjog. Vallásszabadság és vallási közösségek a mai magyar jogban* (Ecclesiastical Law. Religious Freedom and Religious Communities in the Hungarian Law). Budapest, 2012. 78–84.; SZUROMI (2014a) op. cit. 36–38., 45–46.

³³ J. SCHWEITZER: *Jewish values in the European Union* in *The Epoch of Crisis of the Classical Categories*. In: E. S. VIZI – T. G. KUCSERA (ed.): *Europe in a World in Transformation* (Conference at the Hungarian Academy of Sciences, 14th–16th December 2006). Budapest, 2008. 129–134., especially 129.

³⁴ J. RATZINGER: *Chiesa, ecumenismo e politica. Nuovi saggi di ecclesiologia*. [Saggi Teologici 1] Cinisello Balsamo, 1987. 202–204.

³⁵ LUKÁTS, A.: A Dunántúli Református Egyházkerület és az EU csatlakozás. In: *Egyházakkal az Európai Unióba* (A 2003. április 28-án Esztergomban tartott konferencia előadásai; Párbeszéd I). 25–30., especially 28.; cf. SZABÓ, I.: Reformation and Transformation. In: VIZI–KUCSERA op. cit. 135–138.

of people, which aspects support the needy of their special protection.³⁶ This idea shows well the essential difference between the “laicism” and the “neutral” concepts, the latter of which is ready for cooperation with denominations in order to fulfill the basic human right for religious freedom of the state own citizens.

³⁶ Cf. B. MUNONO MUYEMBE: Le bien commun et la diaconie: service de l'Église dans la société. Possibles formes de coopération en vue d'un bien-être intégral de la personne humaine. In: II CATHOLIC – ORTHODOX FORUM op. cit. 191–198.