

VARIA

– KÖZLEMÉNY –

LEGAL REGULATION OF THE RELIGIOUS SPHERE
– NOTES ON THE DEVELOPMENT OF CHURCH AND STATE
RELATIONS IN CENTRAL AND EASTERN EUROPE,
MIRRORED BY THE RECENT TWO DECADES*

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On May 23rd 1920, in his encyclical letter *Pacem Dei Munus*, Pope BENEDICT XV (1914–1922) spoke of a united, future society that held in view and realized in an organized form the goal which the Creator assigned to the human community and which for religious people means the keeping of laws written in nature, and the salvation of souls.¹ Benedict XV called the Church a ‘spirit’ permeating the historically-evolved human society on the territory of Europe.² Therefore, in our postmodern age we cannot renounce the transmission and application of the value-creating moral and cultural principles to which Europe, and indeed the entire modern world, owes its existence and substance. This interpretative horizon gives us the essentials to understand the transformation and development of certain aspects of Church and State relations in Central and Eastern Europe in the last two decades.³

The two World Wars changed the political map of the world, which resulted in a more accurate juridical partition of the duties of Church and State and the cessation of official Christian state administration, with some exceptions, such as England⁴,

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¹ G. DI RULLI: *Alcune tappe dell’ unita’ Europea*. In F. P. MIZZI (a cura di): *L’Unione Europea nei documenti pontifici da Benedetto XV a Giovanni Paolo II*. Malta, 1979, xi–xxxiv.

² (...) Itaque, historia teste, cognovimus, veteres Europae gentes immanitate barbaras, ex quo in eandem Ecclesiae spiritus penetraverit, extanuatō sensim ipsarum inter ipsas multiplici maximodque descrimine sublatisque discordis, coivisse tandem in unam eiusdem generis societatem, natamque esse Europam christianam (...). *Acta Apostolicae Sedis* 12 (1920) 216–217.

³ SZ. A. SZUROMI: *The Epoch of Crisis of the Classical Categories*. In E. SZ. VIZI – T. G. KUCSERA (ed.): *Europe in a World in Transformation*. Budapest, 2008, 165–171., especially 171.

⁴ C. GARBETT: *The Church and State in England*. London, 1950, 122–135.

Ireland⁵, and Greece.⁶ The Church however preserved for the most part her participation in public areas of education and social welfare; furthermore state approved and supported pastoral matters such as the armed forces, university, hospital pastoral service, or prison ministry. In individual countries, depending on the internal political situation, the legal foundation of the separation of Church and State took place with different intensity and degree. In Central and Eastern Europe after World War II the socialist-type states operating in the sphere of interest of the Soviet Union opposed, on theoretical bases, all organizations with the characteristic of any religion. This statement is correct even if the socialist state tolerated Church functions in a certain way and under a very strict control.⁷ Therefore, regarding socialist countries, we can no more speak about a separation of Church and State than we can of a functioning, representative democracy.⁸

I. Legal basis

I. National legal sources

The Central and Eastern European countries in the last two decades systematically have intended to establish and clarify the legal guarantees of the separated functions of Church and State from each another, in order to assure the free and public exercise of the freedom of conscience and religion, as well as the bases for the elimination of all forms of intolerance and discrimination on religious grounds. Based on principles from certain models of the separation issue these legal categories fix the limits of competences and endeavor to give a settled legal framework for guaranteeing religious freedom.⁹ Naturally, members of some particular denomination are at the same time also citizens of a particular State; therefore, the civil authority uses several times allusive norms in the legislation.¹⁰ The basic national legal sources on religious affairs are first of all the Constitution of the State and the laws on freedom of conscience and religion, moreover, acts on the settlement of ownership of the real estate of the Churches, on public education, on higher education, on the Budget, etc. These sources are supplemented by international agreements and bilateral contracts with particular denominations.

⁵ E. MC DONAGH: Church and State in The Constitution of Ireland. *The Irish theological quarterly* 28 (1961) 131–144.

⁶ G. PODSKALSKY: Kirche und Staat in Griechenland. *Trierer theologische Zeitschrift* 76 (1967) 298–322.

⁷ F. MARGIOTTA-BROGLIO: La politique concordataire du Vatican vis-à-vis des États totalitaires. *Relation internationales* (1981) 319–342.

⁸ W. LEISNER: Geglaubtes Recht. Säkularisierte religiöse Grundlagen der Demokratie. In J. INSENSEE – W. REES – W. RÜFNER (Hrsg.): *Dem Staate, was des Staates – der Kirche, was der Kirche ist. Festschrift für Joseph Listl zum 70. Geburtstag.* (Staatskirchenrechtliche Abhandlungen 33), Berlin, 1999, 115–128., especially 126–128.

⁹ SZUROMI, SZ. A. – FERENCZY, R.: A katolikus egyházi személyek foglalkoztatásának sajátos helyzete a mai magyar jogban. *Jogtudományi közlöny* 64 (2009) 379–381., especially 381.

¹⁰ E. CAPARROS: La présence du droit canonique dans le droit étatique. *Canon Law Society of America, Proceedings* 57 (1995) 129–146.

2. Concordat—or agreement—as a legal framework

The Apostolic Holy See, as a subject of international law, further maintained her rights to sign bilateral agreements in regard to the operation of the Catholic Church, which as part of international law oblige the signing partners to the execution of what is included in it.¹¹ These agreements between the Holy See and individual states, which record and arrange the most important common questions, are called concordats.¹² The questions involved are the Church's freedom and her rights; the circumstances of appointing bishops; Church and State regulations of parish priests and army chaplains and questions related to their activities and monetary compensation; the Church's immunity; the regulation of Catholic education and pedagogy; and the area of marriage law. In addition to this, there exists the so-called partial agreement, or the form of 'modus vivendi'.¹³ This kind of contract fundamentally differs from agreements between the government of individual states and various religious communities because these are not created between two international legal subjects and therefore need not to be ratified by the given country's parliament. The text of the agreement is a prominent source of the particular ecclesiastical law of the given country and being a part of international law needs the approval of both parties in order to change it. The stability of the agreement is secured by Church too, which is well illustrated by Canon 3 of the current Code of Canon Law.¹⁴ Therefore, to initiate any modification in international bilateral agreements—after circumspect bilateral preparation—a really essential and radical change of the circumstances is necessary.

In the last years, concordats and partial agreements with European, above all with former socialist countries, aimed at the legal and economic stabilization of Catholic Church's position, and at the same time to create opportunities for strengthening ecclesiastical institutions.¹⁵ One aspect of this is the guarantee given for the state recognition of the Catholic Church's legal entities.¹⁶ The most current questions arise with regard to the management of Church and State relationships within the European Union. In any case it is a fact that the internal standards of the European Union make an effort to regulate the relationship between member States and the Churches and religious communities functioning in them, based on the theory of radical separation

¹¹ R. GRAHAM: *Vatican Diplomacy. A Study of Church and State on the international plane*. Princeton, NJ, 1959, 157–183.

¹² P. ERDŐ: *Il Concordato in Europa*. In SZUROMI (ed.): *Concordatory Law*. (Bibliotheca Institutii Postgradualis Iuris Canonici Universitatis Catholicae de Petro Pázmány nominatae I/6), Budapest, 2008, 15–26.

¹³ ERDŐ, P.: *Egyházjog*. (Szent István kézikönyvek 7), Budapest, 2005⁴, 86.

¹⁴ CIC Can. 3 – The canons of the Code neither abrogate nor derogate from the agreements entered into by the Apostolic See with nations or other political societies. These agreements therefore continue in force exactly as at present, notwithstanding contrary prescripts of this Code.

¹⁵ B. SCHANDA: *Concordatory Law in Central and Eastern Europe*. In SZUROMI (ed.) i. m. 202–218., especially 205.

¹⁶ P. ERDŐ: *Der Einfluss des Rechts der EU auf das eigene Recht der katholischen Kirchen*. In SZUROMI (ed.) i. m. 259–276.

—while preserving the particular systems of the States involved—and keeping before one's eyes the prohibition of religious discrimination.

II. Fundamental principles of Church and State relations

The basic principles which arise in the field of Church and State relations are the form and level of the separation or cooperation. In the 20th and 21st century four types of model are current for regulating the relationship of Church and State: 1. State-religion (Greece, England, Scotland, Denmark, Norway, Finland), 2. Radical separation (USA, France), 3. Connected (Germany, Austria), 4. Collaborating (Italy, Spain).¹⁷ In the last two decades the Holy See erected several bilateral agreements with Albania, Bosnia-Herzegovina, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.¹⁸ These agreements could be classified as models of 'collaborating' or 'supporting' separation, to which also the Hungarian system is close.¹⁹ Neutrality is the basic and most important principle of this type of relationship, regarding religious communities as well as other ideologies.²⁰ Nevertheless, the so-called 'neutrality' cannot mean state indifference or negligence. This explains the use of expressions such as 'benevolent separation' or 'coordination model' concerning the above-mentioned countries.²¹ The civil authority therefore must be respectful toward the internal, specifically religious affairs, which are regulated autonomously by the authorized level of the competent church or denomination. Moreover, the State—because the faithful are her own citizens—has to constitute sufficient external legal guarantees to promote the free practice of the registered religions; the conditions of the free pastoral activity in the ecclesiastical institutes on any level of the educational or formational system (i.e. primary and high schools, colleges and universities), including the religious instruction of students, even it is not part of the teaching program of the country in question or its state schools; for the free pastoral service in the medical care system, in the army, air force and navy, as well as prisons and other penitentiaries; free celebration of the particular or local ecclesiastical/religious feasts based on their own traditions and internal norms; the registration and recognition of the ecclesiastical juridical persons; to regulate the legal conditions for a possible state recognition of matrimonial celebrations by the internal norms of the different religious communities and denominations; to

¹⁷ SZ. A. SZUROMI: The Changes of Modern Era Relation of Church and State in Europe. *Folia Canonica* 8 (2005) 65–77.

¹⁸ B. SCHANDA: Neues Konkordatsrecht in Ost-Mitteleuropa. In MÜCKL, S. (Hrsg.): *Das Recht der Staatskirchenverträge. Colloquium aus Anlaß des 75. Geburtstags von Alexander Hollerbach* (Staatskirchenrechtliche Abhandlungen 46), Berlin, 2007, 175–185.

¹⁹ P. ERDŐ: Die gegenwärtige Lage des Staat-Kirche-Verhältnisses in Ungarn – Staatskirchenrechtliche und kanonistische Aspekte. *Essener Gespräche zum Thema Staat und Kirche* 29 (1995) 134–150.; B. SCHANDA.; The permissible scope of legal limitations on the freedom of religion or belief in Hungary. *Emory International Law Review* 19 (2005) 889–911., especially 892., 903–904.

²⁰ B. SCHANDA: Church and State in Hungary. In B. SCHANDA (ed.): *Legislation on Church-State Relations in Hungary*. Budapest, 2002, 13–37., especially 18.

²¹ SCHANDA (2008) i. m. 217–218.

clarify the financing of the recognized and registered denominations and religious entities, particularly concerning the rate of state financial support, its categories, and the funding through income tax; furthermore to define the provisions in criminal law concerning religions.

To illustrate this is the excellent example of the Polish Concordat which was erected on July 28th 1993 and ratified on February 23rd 1998.²² The document expressly indicates in § 4 the state recognition of the Catholic Church and her inner unity as a juridical person. But the same text also emphasizes the inviolability of places designated exclusively for religious services and for public liturgical celebrations or worship, including cemeteries.²³ Similar legal guarantee is provided for the private and public worship of the citizens, the declaration of those holidays which recognize the people's affection to the active internal life of their own Church and cooperation in it (e.g., Easter Monday, Corpus Christi, Assumption, All Saints' Day, etc.).²⁴ The recognition of parental rights for the religious education of their children is also a crucial result of that essential change which has happened in Church and State relations during the last two decades. It clearly shows that the separation between Church and State cannot mean the separation of the individual human being: he or she is an inseparable human person who enriches (civil and ecclesiastical) society through all his or her activities.²⁵ The Polish Concordat demonstrates that the negotiators on both sides have understood this complexity when they expressed the importance of the pastoral service in medical or other forms of rehabilitation, as well as in social reintegration²⁶; moreover when they allow for the participation of children and young people in Holy Mass on Sundays or other ecclesiastical feasts.²⁷

III. Central and Eastern European Concordats and bilateral agreements with the Holy See as legal guarantees for the denominations based on the principle of parity on the international level

As we already indicated, the concordats give guarantees to exercise the Catholic Church's spiritual mission in society and also defend the autonomy from the State on the level of international law.²⁸ This type of eminent guarantee has become beneficial for the other denominations on the principle of parity, particularly after World

²² *Acta Apostolicae Sedis* 90 (1998) 310–329.

²³ Art. 8 (3)–(4): *Acta Apostolicae Sedis* 90 (1998) 315–316.

²⁴ Cf. Art. 9 (1): *Acta Apostolicae Sedis* 90 (1998) 316–317.

²⁵ Cf. BENEDIKT XVI.: *Gott und die Vernunft. Aufruf zum Dialog der Kulturen*. Augsburg, 2007, 74–76., 82–84.

²⁶ Art. 17 (1)–(2): *Acta Apostolicae Sedis* 90 (1998) 324.

²⁷ Art. 13 – Ai bambini ed ai giovani cattolici che prendono parte alle colonie, ai campi della gioventù o ad altre forme di villeggiatura collettiva, viene garantito l'esercizio delle pratiche religiose e, in particolare, la partecipazione alla santa Messa nelle domeniche e nei giorni festivi. *Acta Apostolicae Sedis* 90 (1998) 320.

²⁸ J. T. MARTÍN DE AGAR: La teoría concordataria desde el punto de vista del Derecho canónico actual. In J. M. VÁZQUEZ GARCÍA-PEÑUELA (ed.): *Los Concordatos: pasado y futuro*. (Actas del Simposio Internacional de Derecho Concordatario; Almería, 12–14 de noviembre de 2003), Granada, 2004, 129–146.

War II.²⁹ The Central and Eastern European States—followed in general the *Universal Declaration of Human Rights* and based on similar maxims which have been formed during the preparatory negotiations of the concordat or partial agreements with the Holy See—has settled bilateral contracts with the other significant denominations of their country (e.g., Lutheran Church, Reformed Church, Alliance of Jewish Communities, Orthodox Churches, Baptist Church, etc.). Naturally, these contracts—promulgated in independent laws or government resolutions—do not have the international character of the concordats, however accordingly the principle of parity, the contents of a concordat in force with the State in question is an essential basis of reference and indirect guarantee for the agreements with other denominations.³⁰ If we take a glance at the Hungarian model for Church and State relations, it shows with crystal clarity how legal regulation of the religious sphere, based on historical traditions, and the formation of the new democratic political atmosphere in the late 20th and early 21st century, have developed side by side.³¹ The above-mentioned erected agreements with the so-called “historical churches” serve not only the realization of the true freedom of citizens³², but also the goal of the State—an entity, composed from citizens—which is the common good, and includes the moral and cultural values of the society and its members.

IV. Common Goals – Moral and Cultural Values

The religious communities—particularly the historical churches and denominations—make considerable contribution to the general culture, the development of humanity and to the improving of morality in society. The Hungarian Law on the Freedom of Conscience and Religion, and the Churches (Act IV/1990) points out in its preamble: “Churches, denominations and religious communities in Hungary are entities of prominent importance capable of creating values and communities. In addition to their efforts falling within the sphere of religious life, they also play a significant role in the nation’s life through their cultural, educational, teaching, social and health care activities, and by fostering national identity.” This unique value which originates from the natural religious peculiarity 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. Rabbi Joseph Schweitzer emphasizes that even an economical or basically political organization needs to manifest ethical values if we are to speak about a real respect for human

²⁹ Cf. J. M. VIEJO-XIMÉNEZ: Concordats from Pius XII to Paul VI (1939-1978). In SZUROMI (ed.) i. m. 88–201., especially 89.

³⁰ Cf. V. MEYSZTOWICZ: *La religion dans les constitutions des états modernes*. (Pontificium Institutum Utriusque Iuris), Roma, 1938, 30–32.

³¹ B. SCHANDA: Ungarisches Staatskirchenrecht 15 Jahre nach der Wende. *Zeitschrift für evangelisches Kirchenrecht* 52/3 (September 2007) 560–570., especially 560–562.; P. ERDŐ: Die ungarische Kirche in Europa – Kirche im Wandel. In P. ERDŐ (ed.): *Mission et culture*. Budapest, 2007, 77–91., especially 77–83.

³² *The Constitution of the Republic of Hungary*. Art. 60 (2).

rights and freedoms.³³ Similar clear conviction follows from Joseph Ratzinger's comments³⁴ and from statements of representatives of the Reformed Church, which analyze values in contemporary society, in which the family should have an eminent place.³⁵ Therefore the religious sphere and the faithful activity of the churches have a fundamental impact on the formation of the human values of the concrete society as a community of people.

Freedom of conscience and religion, therefore, should not only be a declaration on the legal level, but a basic principle for the foundation of the daily life of the citizens who can accomplish their state obligations with a loyal spirit, and fulfill their obligations of conscience based on their religious conviction on a high moral level. This was the central issue for the first Catholic-Orthodox Forum, held by the Council of European Bishops' Conferences in Trent, between December 11th and 14th 2008.³⁶ Tadeusz Kondrusiewicz, archbishop of Minsk-Mohilev in Belarus, pointed out: "It is not enough to guarantee material wealth and higher education to our children or to say that we love them and wish that all their desires be fulfilled. There is a great need for moral and ethical education of new generations, a need for good examples, a need to prepare them to take responsibility for the life of society in the future, a need to educate them in order that they may build a civilization of love and life."³⁷ This type of education should not neglect the religious attitude and value of the human person. The development of Church and State relations therefore must promote the moral level of the entire society and every segment of it.

Conclusion

The characteristic of the separation models which appear in the modern age is that the State in general does not see itself competent for controlling the religious convictions of its citizens, in so far as these remain within the framework of the basic human rights' norm of the universally declared freedom of religion and conscience.³⁸ The Apostolic Holy See's concordats are destined for securing the individual realization of these rights and obligations in the countries signing agreements with the Catholic Church.

³³ J. SCHWEITZER: Jewish values in the European Union. In VIZI-KUCSERA (ed) i. m. 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 (ed) i. m. 135–138.

³⁶ Cf. *La famiglia: Un bene per l'umanità – The Family: A Good for Humanity*. (Atti del I Forum Europeo Cattolico-Ortodosso, Trento, Italia, 11–14 dicembre 2008), Bologna, 2009.

³⁷ T. KONDRUSIEWICZ: The family: cultural changes and changes in mindset; identifying the problems. In *La famiglia: Un bene per l'umanità – The Family: A Good for Humanity*. (Atti del I Forum Europeo Cattolico-Ortodosso, Trento, Italia, 11–14 dicembre 2008), Bologna, 2009. 49–54., especially 52.

³⁸ Cf. *The Constitution of the Republic of Hungary*. Arts. 60, 70/A; *Act IV/1990 on the Freedom of Conscience and Religion, and Churches*, § 8 (1) Those following the same religious beliefs may, for the purpose of exercising their religion, set up a religious community, religious denomination or church (...) with self-government. (2) Churches may be established for the purpose of pursuing all religious activities which are not contrary to the Constitution and do not conflict with the law. B. SCHANDA, (ed.): *Legislation on Church-State Relation in Hungary*. Budapest, 2002, 42., 45.