

Church Autonomy and Religious Liberty

- National Report on Hungary -

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1. The following paper intends to give an overview of how Church autonomy is regarded in Hungary. The Hungarian case can be of interest for many reasons: Hungary has had a long tradition of religious tolerance and a relatively colorful denominational landscape. Transsylvania was the first state in Europe to enact religious freedom for the four denominations of the "three nations" of the Principality in 1568. Furthermore, the institutional framework of the freedom of religion, the relationship between State and Church is determined by history to a lower degree in the counties that have established a new constitutional order recently enabling them to find new solutions. Among the countries in Europe that used to be called "new democracies" in the early 90s, Hungary has probably the most established constitutional jurisdiction that has promoted the dogmatic clarity and level of sophistication of the Hungarian legal system¹.

2. As to the issues

2.1. The fundamental understanding of church autonomy

According to section 60 of the Constitution of the Republic of Hungary

(1) *In the Republic of Hungary everyone has the right to the freedom of thought, conscience and religion.*

(2) *This right includes free choice or acceptance of religion or other conviction and the liberty to publicly or privately express or decline to express, exercise and teach such religions*

¹ For a short summary in English on the cases concerning religious freedom before the Constitutional Court of Hungary see: SCHANDA, B., *Constitutional Litigation Concerning Religious Freedom in Hungary*, in *Interights Bulletin* 11 (1997) 125.

and convictions by the way of religious actions, rites or in any other way, either individually or in a group.

(3) In the Republic of Hungary the Church functions in separation from the State.

(4) The ratification of the law on the freedom of conscience and of religion requires the votes of two thirds of the MPs present.

The Act on the Freedom of Conscience and Religion, and the Churches declares in section 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 (hereinafter together referred to as „church”) with a self-government.*

2.2. Autonomy ("self-government") is positively acknowledged by the law.

Neutrality can be seen as the most important principle governing the state in regard to the religious communities as well as to other ideologies. The state shall have no ideology, however *"from the right to freedom of religion, follows the State's duty to ensure the possibility of free formation of personal convictions"*². Neutrality means on the one hand that the state shall not identify itself with any ideology (or religion), and consequently on the other hand that it must not be institutionally attached to churches or to one single church. This shows that the underlying doctrine behind the principle of separation (explicitly stated in the Constitution) is the neutrality of the state. It is to be noted that neutrality has to be distinguished from indifference which is not meant by the Constitution - as follows from the concept of neutrality elaborated by the Constitutional Court³. Neutrality is not "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. Separation (especially institutional separation), however, is stricter than in the "coordination-model" functioning in Germany.

The meaning of separation can be defined on the one hand by the respect of the autonomy of the churches (*"the State must not interfere with the internal workings of any church"*⁴), and on

² Decision No. 4/1993. (II. 12.) AB

³ *ibid.*

⁴ *ibid.*

the other hand with the principle stated in the law on religious freedom: "*No state pressure may be applied in the interest of enforcing the internal laws and rules of a church.*"⁵

It is interesting to note that the "internal law" of the churches is regarded to be law by the state, although lacking the enforcement of state authorities. The state law makes a number of references to the internal laws of the churches, even recipicing them. That is, the legal character of the "internal law" (like that of the canon law) is acknowledged.

The most important case of the application of internal church law by state authorities is the acknowledgment of legal entities by the state. According to the law if the "charter" of the church provides so, the organizational units of the church with an independent organ of representation (like institutions, parishes) are legal entities⁶. This means that the internal law of the religious communities determines whether legal persons acknowledged by the state come into existence or not - no further state registration of these persons is required. In the case of doubt, the representatives of the church can refer to their charter, and judges may need to study church codes to find out about the status of church entities in state law.

Taxation laws and the law on social security uses the term "ecclesiastical person", as persons subject to some special regulations in these fields. This definition is determined by internal law, that is, the internal law of the churches determines who the persons will be falling under a different scheme provided by the secular state law. The same happens in the case of the law on the national defense that grants privileges to clergymen working in their profession⁷. It lies in the competence of the churches to determine whom they regard as clergy. Procedural laws accept the professional codes of ethics concerning secrets (in regard of lawyers, doctors as well as clergy)⁸.

The law dealing with a compensation of those unjustly deprived of their life and liberty out of political reasons uses the term "ecclesiastical person under the ban of marriage"⁹. The compensation after such persons cannot be granted to the widow or the descendant as foreseen

⁵ Act No. IV of the year 1990, § 15 (2); Note on abbreviations: Acts of Parliament are referred to as "Act No. Z. of the year X". Acts are numbered with Roman numbers, starting every year with I. Government decrees and the decisions of the Constitutional Court have numbers (starting with 1 every year) and the day of official promulgation is shown. Acts and decrees have sections (referred to as: §), subsections (referred to with numbers: (1)) and may have points (referred to with letters: a)).

⁶ *ibid.*, § 13 (2)

⁷ Act No. XC. of the year 1993 on the national defense, § 103. (1); § 122. (3); § 134. (1) g).

⁸ Act No. I. of the year 1973 on the criminal procedure § 66. (1) c); Act No. III. of the year 1952 on the civil procedure § 170. (1) c); Act No. IV. of the year 1957 on the general rules of administrative procedure § 29. (3) b)

⁹ Act No. XXXII. of the year 1992 on the compensation of those illegally deprived from life and liberty of

in the "regular" cases. Instead, the diocese of the person concerned receives the compensation. The constitutionality of this provision was challenged under the separation clause of the Constitution. The Constitutional Court refused the petition in its "seventh compensation decision". As the Court stated *"in the case of ecclesiastical persons under the ban of marriage the persons usually given in the case of those who died having a wife and children are missing. The legislator made the diocese - with applying a legal fiction - a quasi relative. This is the reason of the compensation and not that the legislator wanted to grant compensation to the church legal entity. The basis of equal treatment in this case is that the law entitles an entity to be compensated also for the death of ecclesiastical persons killed unjustly, who did not have a wife and descendants due to their ecclesiastical vow."* The law does not violate the constitutional declaration of the separation of church and state *"as the state takes into account the independence of churches with taking their specialties into consideration where necessary and guarantees their freedom"*¹⁰.

The institutions of theological higher education as well as the degrees issued by them are acknowledged (as well as funded) without any control of the content of their educational activities. At the accreditation of such institutions the content of the subjects is not subject of the control, but has to be determined by the laws of the church concerned.¹¹

This shows that the state law makes several references to the internal law (canon law) of the churches. In some cases this is made out of practical considerations, as the legislator wouldn't be able to set up a neutral frame that would fit all communities. In other cases the principle of separation (the respect of church autonomy) sets a limit on how deep the state law can go. Consequently the acknowledgment of the potential for making laws (internal laws) of the churches is an important sign of the acknowledgment of their autonomy.

The church autonomy can be seen as the most important difference between entities registered as churches and other legal persons registered¹², like associations, political parties or trade unions. Autonomy in this stricter legal sense means that the internal actions of organizations registered as "churches" are not subjected to any kind of state interference. This means that whereas a resolution of an association can be brought before court (and courts have the power of striking it down if these internal actions are unlawful or violating the charter of the

political reasons, § 2. (4).

¹⁰ Decision No. 1/1995. (II. 8.) AB, ABH 1995, 31, 56.

¹¹ Act No. LXXX. of the year 1993 on the higher education § 114. (1)

¹² Decision No. 8/1993. (II. 27.) AB.

association), a resolution of a bishop or a synod cannot be challenged before state courts. Churches are also not bound by the principle of democratic internal structure, while associations have to be democratic. If a church violates the law, the public prosecutor has the right to sue the church. The court has to call upon the church to restore the lawfulness of its operation. If the church does not comply, it will be deleted from the register. This means the loss of the status of being a "church" but there is no ban on the activities. The unlawful actions themselves cannot be challenged, but they may lead to the deletion of the church from the register¹³.

No consistent alternative approach is known to the author. Alternative ideas did not come up in an elaborated way. Some ecclesiastical scholars favor a standing in public law for the (historic or mainstream) churches (see below), while a government official recently suggested suspending the separation clause of the Constitution for the year of the Millennium (2000 being also the Millennium of Hungarian statehood), his idea was, however, not given serious consideration.

2.3. Main fields of interest

2.3.1. Religious teachings

Obviously the state has no right to take a stance in matters of religious truths.

Parents have the right to choose the kind of education their children should receive¹⁴. Consistently churches have the right to offer optional religious instruction in the public schools¹⁵.

In the course of the optional religious instruction given by the churches in the public schools teachings are determined by the churches themselves. The curricula are set by the church, the instructors are appointed by the church. The teacher of religion classes is not a member of the school staff, and no official school report is given on the participation or on the marks of the religion classes. The public school has to provide the technical facilities only (like the classroom itself). As the Constitutional Court stated in a decision, the schools have no right to require a certain level of qualification for the teacher of religion classes as they are not

¹³ Act No. IV. of the year 1990. 20. § (2)

¹⁴ Constitution § 67. (2), Act No. IV. of the year 1990. § 5.

¹⁵ Act No. IV. of the year 1990. § 17. (2); Act No. LXXIX. of the year 1993. § 4.

teachers in the sense of the law and they are not employed by the school but by the church¹⁶. Consequently churches enjoy absolute freedom in appointing the instructors. As religious instruction is solely the competence of churches, they can decide whether they only use this channel to inform on religion or they use it as a mean of introduction into the life of the church.

The higher institutions of theological studies are run by the churches, but to be acknowledged as institutions of higher education (entitled to give acknowledged degrees and entitled for state financial support) they need state accreditation. For this purpose the content of theological subjects is not to be overviewed.

2.3.2. Traditional church offices

All church offices are to be filled by the exclusive decision of the church concerned. No state body (including the courts) is entitled to rule over the canonical aspects of church offices. The government is not involved in any kind of nomination and the candidates or appointees are not communicated to the government.

An interesting and unique exemption is the military ordinariate. According to the Government Decree on the Army Chaplaincy the appointment of the army bishops, the rabbi and the pastors to the army is pursued according to the agreements concluded with the religious communities concerned¹⁷. The accord of the Holy See and the Republic of Hungary signed on the 10th of January 1994 requires the Holy See to communicate the candidate designated to become the *ordinarius militaris* and the Government has the right to raise "general objections of political nature"¹⁸. Certainly these "objections" are not legally binding so in the legal sense it is not a kind of a veto. As the Constitutional Court stated, the Chaplaincy did not lead to an unconstitutional entanglement as it did not become an institutional part of the military but works next to it¹⁹.

No oath of any kind is required by the state from any person taking any church office.

2.3.3. Own jurisdiction

¹⁶ Decision No. 22/1997. (IV. 25.) AB

¹⁷ Government decree No. 61/1994. (IV. 20.) Korm. § 8. (4)

¹⁸ International treaty No. 1994/19. from the minister of defense.

¹⁹ Decision No. 970/B/1994. AB, ABH 1995, 739.

Under the principle of separation, the churches administer the issues they regard to be within in their competence independently. As a consequence of the same principle the internal jurisdiction (like in the issues of marriage) have no significance of any kind on the state whatsoever.

2.3.4. Definition of "own" activities or matters of the Church

The churches are free to determine what they regard to be matters of their "own". In other words, they enjoy the competence-competence. On the individual level it is to be noted that the Constitution provides for the manifestation of religion without a list of possible actions that would be permissible for expressing the belief, but states that this manifestation may happen in worship and by "other means", too. There is absolutely no circumscription of actions that would be regarded as manifestation of a belief, as all actions may fall under this provision.

Due to the separation, it does not matter how wide the claim of a church is, as long as the activities done by the church are not illegal. As separation means that "*no state pressure can be applied in the interest of enforcing the internal laws of a church*" (Art 15), the scope of the "internal laws" is irrelevant.

According to the decree on the army chaplaincy the commanders of the Army have no right to decide on activities concerning religious life. They only have the right to make decisions on the activities of the members of the chaplaincy in order to ensure the compliance of their activities and the order of service. "Religious" and "other" activities of army chaplains are differentiated by that²⁰.

2.3.5. Labor law

As mentioned above, labor law uses the term "ecclesiastical persons" that have a special "ecclesiastical working relationship" with their respective church.

²⁰ Government Decree 61/1994. (IV. 20.) Korm. § 5. (1)

Discrimination on the basis of religion is prohibited by the Labor Code²¹. There is no court practice established yet how far can ecclesiastical employers go in requiring belief, membership or loyalty in the selection of their employees.

Concerning Sunday laws an interesting case has been brought before the Constitutional Court by representatives of the religious Jewry in Hungary who challenged the provisions of the Labor Code²² arguing that the free exercise of their religion is not assured by the legislation to an equal extent with that of Christian religion, as the labor code determines only Christian holidays as days of rest (the 25th and the 26th of December, Easter Monday and Pentecost Monday). Furthermore, Saturdays can be designated as days of work by the Minister of Labor in order to provide "long weekends" (for example if a public holiday is on Thursday or on Tuesday the day between the holiday and the weekend is given free and a Saturday from a previous week or next week becomes a working day instead). Sundays are not to become working days. The Constitutional Court stated that the constitutional obligations of the state prohibit the privileged treatment of one religion (for example by declaring all of its holidays as days of rest). On the other hand, the state has to ensure the free exercise of all religions. Historically, religious motives did determine the state decision in picking the holidays, however the present holidays are the ones the vast majority of the society (not only practicing Christians) celebrate. Christmas and Easter for example are closely connected to family and folkloric traditions. No Jewish holiday gained such a popular acceptance. The protection of Sunday used to have a religious background, however it has lost it by now. Sunday as a uniform day of rest is almost universal. The uniformity of this day of rest has a secular purpose.²³ The solution the Constitutional Court has reached in the case is similar to what the Supreme Court of the United States of America reached in the *McGowan v. Maryland* case: "*There is no dispute that the original laws which dealt with Sunday labor were motivated by religious forces.*" However "*[t]he present purpose and effect (...) is to provide a uniform day of rest for all citizens; the fact that this day is Sunday; a day of particular significance for dominant Christian sects, does not bar the State from achieving its secular goals.*"²⁴ Several European jurisdictions, however, continue to regard "the protection of Sunday" as institution that serves the free exercise of religion²⁵.

²¹ Act No. XXII of the year 1992. § 5.

²² Act No. XXII of the year 1992 § 125.

²³ Decision No. 10/1993. (II. 27.) AB, ABH 1993, 105.

²⁴ 366 U. S. 420 (1961).

²⁵ In the fact that a number of concordats and church-state agreements (e.g.: Germany) as well as laws on the free

2.3.6. Schools

Parents having the constitutional right to decide on the education of their children²⁶ also have the right to set up non-neutral schools²⁷. As these take over public duties because of a decision based on a fundamental right, these institutions are entitled to the same public support as public schools. Schools can be run by any person under Hungarian law, including certainly legal entities, inter alia churches. Churches run the second most schools after municipalities. All schools in Hungary are bound by the national core curriculum²⁸. This, however, opens the possibility for each school to establish its own pedagogical program. A large variety of schoolbooks is being published, that is, there is no compulsory school textbook. Church-run schools are not bound by the principle of ideological neutrality. This means that such schools can identify themselves with a religion. Religious symbols are allowed on the building as well as in the classrooms. Religious instruction can be part of the curriculum and marks in religion are shown in the school report. Even "Abitur" can be made in religion. The schools are allowed to select not only their staff but also their pupils according to religious principles. It is to be noted that the state budget is granting equal funding for church schools: formally the school is maintained by the church, but the state provides the necessary funds. This is guaranteed by the law²⁹ and was reaffirmed as a principle deducted from the Constitution guaranteeing religious freedom, parental rights and non-discrimination³⁰.

2.3.7. Charitable activities: hospitals, homes, kindergartens etc.

Churches as well as other legal entities can run all kinds of charitable institutions. The issues mentioned about the neutrality of the schools are also valid in respect of these institutions.

2.4. The limits of church autonomy

exercise of religion enumerate the religious holidays and ensure the protection of Sundays in the context of religious rights (e.g.: Poland).

²⁶ Constitution § 67. (2)

²⁷ Decision No. 4/1993. (II. 12.) AB; Act No. LXXIX of the year 1993. § 4.

²⁸ Government decree No. 130/1995. (X. 26.) Korm. on the promulgation of the national core curriculum.

²⁹ Act No. IV. of the year 1990. § 19 (1)

³⁰ Decision No. 22/1997. (IV. 25.) AB

According to the law on religious freedom and the churches "... *the exercise of this right shall not exempt anyone from satisfying their obligations as citizens, unless an Act provides otherwise.*"(section 4) "*Churches may be founded for the purpose of pursuing all religious activities which are not contrary to the constitution and do not conflict the law.*"(section 8 (2)) No religious activity whatsoever can violate the constitutional legal order. What "religious" activities mean is not circumscribed as the law did not dare to give a definition on religion.

According to the permanent practice of the Constitutional Court fundamental rights can be limited only if this is inevitable to ensure an other fundamental right or constitutional interest. The limitation has to be proportionate to the goal that is intended to be achieved³¹. According to section 8 (2) of the Constitution the law "*must not impose any limitations on the essential contents of fundamental rights*" (Wesensgehaltsgarantie). The exercise of certain rights can be limited if a state of emergency is proclaimed, but the exercise of the freedom of religion, including the manifestation of religious beliefs is not to be restricted even under such extreme conditions. The protection of the public safety, public order, health or morals are not sufficient reasons to limit the exercise of manifesting religious beliefs or restricting other beliefs.

Limitations to the free manifestation of religion are easier to imagine as limitations to the church autonomy. Some topics suggested under this title are hardly raised to be issues in the Hungarian law, while others are discussed at other points of this paper.

2.5. Institutional range

2.5.1. Which institutions are regarded as being "church"?

The Constitution in Article 60 makes a reference to "the church" as operating separately from the state. The language of the Constitution was slightly changed in 1989: in the four decades of communist rule the wording was: "... *the peoples' republic separates the church form the state.*" From the language it is unclear if the reference was made to the Catholic Church having been regarded as the state church or that with "the church" all churches were meant. The language of the provision remained puzzling in this respect, but the interpretation is clear in covering all religious communities.

³¹ SÓLYOM, L., *Zur Geleit zu den Entscheidungen des Verfassungsgerichts der Republik Ungarn*, in *Verfassungsgerichtsbarkeit in Ungarn. Analysen und Entscheidungssammlung 1990-1993*, Baden-Baden 1995, 68.

According to the law "on the Freedom of Conscience and Religion, and the Churches" "*Those following the same religious beliefs may, for the purpose of exercising their religion, set up a religious community, religious denomination or church (hereinafter together referred to as „church“)* with a self-government. (...) Churches may be founded for the pursuance of all religious activities which are not contrary to the Constitution and do not violate the law." The registration of churches is done by the county courts (similarly to associations, political parties of foundations). The requirements are highly formal: the church has to be founded by 100 private individuals, has to have a charter (containing at least the name, the seat, the organizational structure and the names of the organizational units of the church that are legal entities) and elected organizations of administration and representation. The founders have to submit a declaration whereby the organization they have set up has a religious character and its activities comply with the Constitution and the law. (sections 8-9)

All churches that are registered have the same rights and the same obligations. Equality, however, is a matter of legal status not of social significance. As the Constitutional Court stated: "*Also, treating the churches equally does not exclude taking the actual social roles of the individual churches into account.*"³² It does not raise a constitutional issue that more numerous faith are easier the practice (e. g. religious services are easier to access) or that the state makes distinctions between the churches according to their social significance. For example the State has set up the army chaplaincy for four denominations after having concluded respective agreements with them, while the free exercise of religion (not only in private but also in public) in the military is ensured for every denomination. As the Constitutional Court stated in its decision, the Government had the right to single out the churches that had members in a significant number in the army³³ (these were: the Catholic Church, the Reformed and the Lutheran Evangelic Churches (sharing a military bishop) as well as the Federation of Jewish Communities). The scheme remained open for further churches; so far the evangelical "Faith Church" joined the Chaplaincy concluding an agreement with the Protestant military bishop.

Churches do not have to have a democratic structure like it is the case with associations (church charters can be anti-democratic). The law on the churches, however, requires that the church to be registered "*has elected its organizations of administration and representation*" (section 9 (1) b). The churches that had already been operating (and recognized) before 1990

³² Decision No. 4/1993. (II. 12.) AB

³³ Decision No. 970/B/1994. AB, ABH 1995, 739.

were not subjected to a new registration but their new registration was done *ex officio*. That means that these churches were not required to have "elected" representatives.

It is to be noted that the practice of religion neither in private nor in public, neither alone nor with others is bound to any kind of legal status or structure. Groups registered as associations or groups not registered at all have the same right to manifest their beliefs as groups that have the legal status of a "church".³⁴

2.5.2. Distinctions between theological core institutions and other, non-directly related institutions

There are no general positive distinctions made between theological core institutions and others that are not directly related to the core of the religion. Distinctions in concrete matters, however, are made in cases where the state is involved in funding or other special legal interest (like the accreditation of institutions of higher education).

To take the institutions of higher education as an example, a clear distinction is made between the institutions and courses determined by religious beliefs and others that give secular training. The institutions of higher education of the churches provide education in theology and in other subjects "related to religious life" (like canon law). These institutions can establish non theological faculties (schools) and courses too (like the Law Faculty of the Catholic University Péter Pázmány). If they do so, and they comply with all the legal requirements, they are recognized by the state. At the recognition, the theological and other religion-related subjects the church requirements are to be fulfilled. If the training is of secular nature, but there are subjects included that are of religious character than concerning the latter the church requirements are applicable (e. g. law students study some canon law at the Catholic University)³⁵. Institutions may not take the religion or convictions of the candidates into consideration when selecting their students for the secular courses but they may do so with the religion related training³⁶. The autonomy of universities run by the churches is somewhat wider than that of state universities. The number of state funded study places in secular training are fixed every year by the Ministry of Education within the frames of agreements concluded with the churches.

³⁴ Decision No. 8/1993. (II. 27.) AB

³⁵ Act No. LXXX. of the year 1997. § 114 - 114/A.

³⁶ Act No. LXXX. of the year 1993. on the higher education § 32. (4)

There are also signs of differentiation between the "genuine religious" property of churches and "other" church property. According to the law on national defense the objects and rights of churches as religious denominations that are directly used for purposes of church functions and religious life are exempt from the general rule that all means that may have a role in defense have to be provided for this purpose. The scope of this exemption is decided upon the defense authorities. This distinction between the objects used directly for religious purposes and other assets according the strength of their relation to religious life is remarkable. It is unclear where the distinction could be drawn, more precisely if the protection of property is qualified by the protection of religious freedom only to protect worship or it may be interpreted in broader terms³⁷.

2.5.3. The status of church hospitals, schools, associations, foundations, trusts

Churches are free to set up institutions in all fields of social engagement. The status of church hospitals and schools will be determined by their founding charter that regulates the link between the church itself and the institution it carries.

In order to be registered as an association or a foundation the general provisions of private law are applicable also when church legal entities act as founders. Certainly there is a possibility to remain in the internal structure of the church, but in these cases the association or foundation will not be regarded as such by the state law and in this way will not benefit from the provisions granting various exemptions for non-profit organizations.

2.6. Contexts in public opinion and contemporary politics

Religiosity in Hungary is lower than in most countries of Western Europe. The trend, however, has been a steady growth since the late 70s. Undoubtedly there is a kind of religious revival in Hungary like in most post-communist countries, that dates back to before the fall of communism. Churches were the only significant social institutions that survived communism, and they were the only ones that could afford not to give account of their past. Religious identity is part of the personal identity with more than 95% of the population, though "churchliness" is considerably low, and the proportion of churchgoers is under 15%. The large

³⁷ Act No. CX. of the year 1993 § 193. (1) d); The European Court of Human Rights suggest a distinction possible in the protection of property of religious institutions according the closeness of property and worship in the case of *The Holy Monasteries v. Greece* of 9. Dec. 1994.

majority of the population trusts the churches and has positive views on them (the proportion of those fearing the power of the churches is considerably low). As to the social role of the churches the society is more split. There is a large minority (significantly larger than those following religious doctrines are) that supports a stronger presence of churches in education and especially in health care and social services. These desires are based more on emotions than on personal experience or convictions as the level of knowledge about religious matters is very low. The attitude for the social mission of churches is more receptive than that for the involvement of churches in issues of public policy: in general one could say that social service is far more accepted than the message it is supposed to carry. The vast majority of citizens favor the strict separation of church and state; while opinion polls concerning restitution, funding etc. rather show ignorance in these complex matters.³⁸

As churches seemed to enjoy a high level of respect, many politicians were eager to raise political capital from that. Although it turned out that the churches have very little direct influence on voters, left wing parties (like the Socialist Party that has emerged from the former communist party) liked to stress their good will towards churches while center-to-right parties often posed as "good Christians". The only notable political party that went on open conflict course with the traditional churches was the "Alliance of Free Democrats", a left-wing liberal party (forming a governing coalition with the socialists between 1994 and 1998) and acting as an advocate of religious minorities. This party (having now less than 10% of seats in the Parliament) can be expected to be opposed to any restrictions in registration (see below under "practical issues") and pushes for a laicistic interpretation of the role of the state in the separation. The center-to-right parties regard the (traditional) churches as allies in the moral revival of the nation, while most of the political arena is receptive to the social services of churches (the right wing seeming to be more supportive concerning funding).

2.7. Historical and cultural preconditions

Hungary is a country that has emerged to statehood by its adoption to western Christianity. Reformation reached the country when the central state power was weak and so it was highly successful in the 16th century. The Reformed (Calvinist-Presbyterian) Church became the birthplace of the national culture (Bible-translations, schools etc.). Counter-reformation

³⁸ For a comparative overview of attitudes see TOMKA, M. - ZULEHNER, P., *Religion in den Reformländern Ost(Mittel) Europas*, Ostfildern 1999.

achieved success, but the country has preserved a high level of denominational pluralism. The coexistence of Catholics and Protestants (mainly Calvinists who often regard themselves as the "Church of the nation") was not always free of conflicts but it proved to be a fertilizing tension enriching the national and everyday culture. After the Turkish wars (at the end of the 17th century) ethnic Hungarians became a minority in the Kingdom of Hungary. While Serbs in the south remained Orthodox, large numbers of Romanians in Transsylvania and Ruthenians in the Carpathians entered the Union with the Catholic Church, enhanced by the Habsburgs. The Jewish population had risen to over 5% by the end of the 19th century. The liberal era of the late 19th century enhanced the rapid assimilation of the Hungarian Jewry, while Jewish-Christian tensions proved to be enriching in a similar way to Catholic-Protestant tensions. This era produced the law No. XLIII. of the year 1895, which proclaimed religious freedom for all, restricting, however, the right of public worship to the communities that were acknowledged. The law established a de facto two tier system of religious communities as it upheld the legal framework that had emerged during history concerning the status of the Catholic Church, the Reformed (Calvinist) and the Lutheran Churches, the Serbian Orthodoxy and the Romanian Orthodoxy, the Unitarians and the Jews (the latter just having become an "accepted" religion). The law opened up the possibility to set up "recognized" denominations. The mainstream churches remained part of the establishment (not only in the legal, but also in the social sense – e.g. the Catholic Church remained the largest landowner until 1945 and 2/3 of the elementary schools were run by churches until 1948). After the trauma of the secession of Hungary that happened after World War I. national conservative forces dominated the political and the cultural landscape cutting back some of the liberal legislation of the late 1900s. Hungary became a small country surrounded all around by the former herself – and large ethnic Hungarian minorities. The country got involved into World War II and came under German occupation on the 19th of March 1944. In the following few months the vast majority of the Hungarian Jewry – enjoying relative security until then – was deported and killed. Hungary lost ¾ of its Jewish population (due to emigration waves in 1948 and 1956 and to the assimilation, the proportion of Jews has sunk to about 1% by now). Communists came into power with Soviet assistance and eliminated the democratic structures, the human rights as well as the rule of law. Communist authorities systematically harassed clergy and believers. Religious freedom was only on the dead paper of the Constitution. The "separation" imposed was nothing else but strict state control and persecution. As the control over the churches became almost total, the open persecution got somewhat milder ("goulash

communism"), but the guiding principles did not change until 1989. In the 70s and 80s churches were relatively free to worship within the very church buildings but there was no space for any kind of social action (communication, charity, organizations, institutions etc.). Hungary played a notable role in the *Ostpolitik* of the Holy See as an experimental test case; the detente between church and state did have beneficial effects, though some call the partial agreement between the Holy See and the Peoples' Republic of Hungary of the year 1964 instead of a *modus vivendi* a *modus muriendi*. The first three decades of communist rule brought a massive and forceful secularization of the Hungarian society. Communism has left Hungary an atomized society and a moral vacuum. Ironically, the churches – hit so hard by the regime – turned out to be the largest forces of civil society. Finding their new role in society (especially in the social communication) is a difficult process.

2.8. Practical issues

2.8.1. Property issues

The churches could reclaim their real estates with buildings secularized after 1948 and originally used and to be used for specified religious, educational, cultural, health care purposes in so far as these properties were - by the time of said Act coming into force - the property of the state or that of the local municipality³⁹. Well-functioning of churches was the guiding principle of the Act. A complicated system was established to handle the claims of the single Churches, while the final decisions were to be made by the Government. According to provisions of the Act, at least one half of the claims should have been satisfied within 10 years, which puts a heavy strain on the state budget, as by virtue of another Act a certain part of the state owned property has been handed over to the municipalities. Thus, the compensation of the present users of such real estate, and the costs of the removal of these institutions must be covered by the state budget. The Act concerned has been examined in terms of constitutionality. The Constitutional Court held in its decision brought thereon the followings: partial re-privatization in favor of the Churches – and for nobody else but for the churches – is constitutional as the partial compensation for the grave injury suffered by the

³⁹ Act No. XXXII of the year 1991. on settlement of ownership in respect of the former real estate of Churches.

churches serves to restore their functionality and to establish their operational ability and to ensure the freedom of religion⁴⁰.

The Government has concluded an agreement with the Holy See and later with a number of other denominations on their property claims. Most of the denominations opted for a financial compensation paid every year ("Staatsleistung") instead of getting back all the buildings they were entitled to. The deadline for the restitutions was extended until 2011. Although the agreements and decisions are regarded as final, the procedure of restitution is still raising difficulties.

2.8.2. Funding of the churches

Since the tax year 1997, taxpayers can offer 1% of their income tax to registered churches (an other 1% can be offered to non-profit organizations). This system should replace the direct subsidies after a few years of transition. After a few experimental years the system will be reviewed. One of the weak points of the system is that all taxpayers decide on the percentage of their own income tax: if the system is a personalized form of subsidizing, equality of the "votes" would be preferable. As the income tax is progressive, differences in incomes are even enlarged by the system⁴¹. The first experimental years showed that practically only the churchgoers were ready to fill in the form to direct this share of their income tax to their churches (in 1998, the first year as the possibility was opened only 10.25% of taxpayers made use of this right). Possible changes in the income tax system may undermine the system too.

2.8.3. Status of churches

The present system of registration of religious communities has been the target of criticism almost since the law on churches was passed in 1990. Many representatives of traditional churches felt offended having been put into the same legal category as "sects". Some Protestant ecclesiologists claimed a status in public law for the mainstream communities⁴²

⁴⁰ Decision No. 4/1993 (II. 12.) AB, ABH 1993, 48.; SCHANDA, B., *The Relationship between State and Church in Hungary: The Financing of the Church*, in *The Law of Religious Identity. Modes for Post-Communism*, A. Sajó - S. Avineri (Eds.), The Hague/London/Boston 1999, 175, 187; DOBSZAY, J., *Restoring Church Property Constitutionally*, in *East European Constitutional Review*, Spring 1998, 91.

⁴¹ This has been argued unsuccessfully before the Constitutional Court: only a strong dissent shared the opinion of the author raising doubts about the constitutionality of the regulation. Decision No. 10/1998. (IV. 8.) AB.

⁴² E.g. BOLERATZKY, L., *A magyar evangélikus egyházjog alapjai és forrásai*, II. rész (The fundamentals and

(which would hardly comply with the principle of separation as elaborated in the recent years). It is true that an unexpectedly large number of "churches" has been registered and in a number of cases the religious nature of these organizations is doubtful. (The case of Scientology is well known, but the UFO-believers and the association of witches could be mentioned too as examples for the broadness of the requirements.) Some individual members of Parliament handed in motions to change the law in 1993 and in 1998, raising the necessary minimum number of founders to 10.000 or requiring at least 100 years of presence in the country of the given faith. They would have imposed the additional requirement of submitting a creed with the registration, and that this should not violate the public order, health, morals and rights of others. These motions were not taken on the agenda of the Parliament; however, they contributed to the discussion over the status of churches. The easy accessibility of the legal entity "church" has turned to be in fact an invitation to various controversial groups and even to doubtful commercial undertakings to get this privileged status. The government that came into power in 1998 has the intention to have the law changed, but it is still unclear if this would just mean a raise in the formal requirements of registration, or a more precise circumscription of what the "religious" character of groups seeking registry is supposed to mean. It is to be noted that the free exercise of religion (neither in private nor in public, neither alone, nor in community with others) is not bound to any kind of legal form: unregistered groups enjoy the same freedom as registered ones.

3. The principles of the Hungarian system of state-church relations can be summarized as follows:

The state shall remain neutral in matters concerning ideology, there shall be no official ideology, religious or secular. The state shall not identify itself with any ideology. The state shall not enter in institutional entanglement with any organization that is based on a (religious- or secular) ideology. Freedom of religion and freedom from religion (positive and negative religious freedom) are equally protected – neither case shall be treated as an exception.

Church and state shall be separated: the religious communities shall have no possibility to make use of state power. The state shall respect the autonomy of the religious organizations and shall not interfere with their internal affairs. The state provides an appropriate legal form

the sources of the Hungarian Lutheran ecclesiastical law), Budapest 1998, 381.

for religious organizations and registers those who meet the formal criteria. The registered religious organizations have the same legal standing; there shall be no privileged or unfavored group. Different levels of accommodation are not permissible. However, the fact that there are significant differences between religious communities and the more numerous, more established religions are easier to practice, is outside of the scope of the Constitution.

The state has an active role in ensuring freedom: neutrality does not mean indifference. The state should promote the environment in which ideas and values (not to be judged by the state) can be born. The state has to keep itself out from the world of ideas and values however it should appreciate and enhance their existence (even by using public funds). It should work out legalized compromises in issues where constitutional rights and interests come into conflict.