

CHAPTER IX

SUMMARY



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The presence of religious symbols in the public sphere in Europe is one of the most current issues in religious law, which is extremely complex and requires a broad research perspective that includes comparative research. The subject matter of the title goes far beyond the juridical aspect, arousing considerable interest from political as well as religious communities. A literal interpretation of the provisions related to the conducted analysis may be insufficient or even misleading. One should focus more on *ratio legis* and the systemic interpretation of regulations rather than on their literal wording. Due to the study's framework, the analysis has been narrowed down to the legal aspect, although the broader perspective of this issue should be properly considered when interpreting legal acts as well as formulating *de lege ferenda* conclusions.

The analysis of the legal systems of selected Central European countries (Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Croatia, and Serbia), in which religious symbols are relatively common in public spaces, leads to many common conclusions. For example, due to similarities in the said states' historical experiences in the context of religion's role in developing state structures as well as of the totalitarian regimes of the twentieth century and of the systemic transformations initiated at the end of this century.

The research primarily followed the analytical method and, in an auxiliary manner, historical and comparative methods. Due to the adopted unified structure of individual chapters—including an analysis of the legal orders of individual countries—it was possible to formulate the following conclusions of a comparative nature.

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The analysis of the norms in force in individual countries relating to the presence of religious symbols in the public space or to the justification of their absence first required to show a historical outline. As it turns out, for the nations of selected Central European countries, as in other European countries, religious symbols were basically one of the building blocks of state structures, resulting in their use on numerous flags, coats of arms, public places, monuments, and historic temples. This may even be considered a tradition. In the Middle Ages, there was a concept of the Christian community that preceded the emergence of nation states as they are understood today.

In the countries of Central Europe (or their legal predecessors in the area in question, respectively), the longest-functioning model of the state-church relationship was that of the denominational state in which the use of religious symbols was an integral part of state life and religion was an element of public life. Over the centuries, the current axiology of these states and their national identity have also been shaped, which have become a permanent basis for the introduction of current democratic systems with the recognition of the dignity of humans. Often, the *arengas* of acts of constitutional rank show expressions referring to axiology or Christian heritage, including references to God (e.g., Poland, Hungary); however, these references do not constitute the religious acts of the state.

The period of communism proved critical for the presence of religious symbols in public spaces as it had an adverse relationship with religious symbols. The common experience of Central European countries was a violent one and so was the systemic introduction of the communist regime, the program assumption of which was a real fight against religion, including its symbols. In the countries in question, this struggle was also conducted in a similar way in the juridical context as a result of the lack of these countries' their sovereignty and foreign system solutions imposed from the outside. Therefore, one should not be confused by illusory guarantees of religious freedom in communist constitutions and other legal acts. Under the guise of universal religious freedom, believers were denied this freedom.

In practice, religious symbols were rapidly and systematically removed from public spaces and were accompanied by other elements of the fight against religion, such as removing religion from schools, nationalizing the education system, confiscating property, persecuting believers, and interfering with the internal life of religious communities. The fight against religion took various forms and had different intensities. To a large extent, religious symbols, relegated almost exclusively to the private space, have paradoxically acquired an additional meaning—the symbol of freedom. After all, totalitarian states could not enter the sphere of people's conscience; thus, they sought to shape it by striking, *inter alia*, the teaching of religion at school and the presence of religious symbols in public places. Contrary to the intentions of the communist authorities, however, religious symbols united society and intensified the pursuit of freedom. Paradoxically, non-believers were able to gather around religious symbols, questioning

the assumptions of the communist state. In Poland, among others, it was the solidarity of the community that peacefully contributed to the gradual fall of communism, which was created and functioned around the struggle against religious symbols.

The devastation that the states suffered by over 45 years of imposed communism regime, although not permanent, is still perceived today from a legal perspective, particularly in the context of further defining the essence of the secular state as hostile to religion and as making attempts to remove religious symbols from public space or at least to gradually reduce their significance. Such an approach brings back memories from the communist regime period, where religious freedom was often an illusory legal provision and not the real freedom of a human being for whom this freedom was often of superior nature. In the case of many religions, mortal life is less important than the salvation of the soul. It is therefore important to bear in mind the gradation of values and its legal implications. At this point, it is worth mentioning the real reasons for the struggle between the communist system and religion. A man devoid of common values is an individual easy to manipulate. The fight against common values that are expressed, *inter alia*, through religious symbols, does not really bring freedom but even restricts it in the long run. Notably, nations living under the yoke of the communist regime, professing the common values, regained their freedom—including the religious one—on their own.

The religious structure of the analyzed countries should also be addressed. Despite decades of communism and the systemic struggle against religion, Christians have usually comprised the majority of society, although there are differences in proportion. When juxtaposing this with the religious structure of Western European countries, paradoxically, more believers can be found in post-communist countries. It seems that the building of national and religious identity using religious symbols for hundreds of years beforehand proved more durable in practice and so deeply rooted in the heart of the nation and its people that even a system that degraded people and did not, in practice, recognize human rights became only a temporary obstacle to the constant phenomenon of religiosity. These observations are well illustrated by the changes in law occurring in the analyzed countries. The decline of communism was marked by a significant discrepancy between the axiology accepted by individual nations and the content of the law in force and the practice of its application. Therefore, it should come as no surprise that one of the first legislative changes was to regulate issues related to religious freedom in its individual, collective, and institutional aspects.

Some differences can be observed in the sequence of standardization in individual types of normative acts. In some cases, domestic laws were passed first, then international agreements were concluded (incl. a concordat), and then the constitution was adopted; in others, the sequence was different, with all the elements or without some of them. The reasons for these differences are local, formal and political conditions. However, the common feature, despite the various ways

to achieve the goal, is the final guarantee of religious freedom at the level of the constitution, which subsequently enforces compliance with lower rank acts. States create a multifaceted protection of religious freedom, detailing it as a sub-constitutional source of law.

Most countries have concluded concordats that have entered into force. The legal order of these states also includes the universal acts of international law, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child, or regional acts, such as the European Convention on Human Rights (ECHR). Importantly, according to constitutional and international standards, this freedom includes the freedom to manifest religious beliefs without *expressis verbis*, defining a prohibition or the right to use religious symbols in the public space. Contrary to the law and practice of the communist period, regulations restricting the use of religious symbols in public spaces appear only on an exceptional basis. Moreover, from the perspective of more than 30 years since the fall of communism, the changes in the law in question are permanent and were not only a need to challenge the previous system.

For the presence of religious symbols in the public space, the model of the relationship between the state and the church, and thus relating to religious freedom in an institutional aspect, is important. In religious law, there are many divisions of states due to the adopted model of these relations, and individual authors have indicated many of these models in view of international and local scientific publications. A common feature of all the countries in question is the adoption of a secular state model in a version that is friendly toward religious communities (although, of course, there are systemic and state structure differences between them). There is no official religion or church in any country, and references to religion in denominational law are no longer religious in nature; instead, they refer to religious values.

It is important to recall the vagueness of the notion of secular state. What characterizes the states in question are, however, various forms of cooperation between the political and religious communities functioning separately from each other. Interestingly, the nations of the analyzed countries have historically experienced the functioning of the model of the denominational state (where religious symbols were an inseparable element of state life), the secular state in a version hostile to religious communities (where religious symbols had been eliminated from state life), and the current secular state in a version that allows for interaction with these communities. Therefore, it can be observed that these states have similar political assumptions. In these countries, religious symbols are deeply rooted in history and society, albeit with varying intensities. However, the adoption of the secular state model in the analyzed countries does not mean that their system is devoid of constitutional axiology; on the contrary, the experience of the communist regime and the Christian heritage resulted in axiology being the starting point for systemic solutions, and among many values, religious freedom

is of fundamental nature. In the countries in question, the protection of religious freedom acts within the general rights protection framework existing under the functioning justice system exercised by the judiciary.

The analysis of legal systems also leads to a general conclusion that the use of religious symbols in public spaces is generally not explicitly regulated at the level of constitutions, international agreements, and acts. However, some regulations may indirectly prohibit the use of religious symbols in public spaces in specific aspects, such as in the legal system of Slovenia, where it is expressly forbidden to teach religion in public schools (in the literature, a prohibition on the use of religious symbols in public schools is consequently drawn thereupon; however, this prohibition no longer applies to private schools). Concurrently, this does not mean a general prohibition to place religious symbols in the public space in this country, as pointed out by the Slovenian Constitutional Court. The right of non-believers of not being confronted with religious beliefs—and consequently, religious symbols—does not always and automatically take precedence over positive religious freedom, which represents the freedom of believers to profess their faith and bear witness to it in public. Despite the lack of the aforementioned legal regulations in Central European countries, a multifaceted interpretation is often applied, primarily taking into account the assumptions of a secular state open to cooperation with religious communities, leading to the conclusion that the use of religious symbols in public space is not prohibited and does not infringe on the essence of a secular state. However, exceptional legal regulations are positively related to the use of religious symbols in public spaces.

Following the famous case of *S. Lautsi*, which was the subject of ECHR judgments regarding the presence of crosses in Italian public schools, it is worth noting that in countries whose legal orders have been analyzed, there are no explicit legal prohibitions on placing crosses in public places. Possible exceptional restrictions may concern the uniformity of officials working in such places. Similar restrictions may apply exceptionally to other workplaces, such as health services. It is also worth underlining that in some countries, television and public radio transmit religious content, including religious symbols, as part of religious programs or broadcasts of religious celebrations that particularly intensified during the coronavirus pandemic.

The presence of religious symbols in public life is, to varying degrees, the subject of analyses by the judiciary. Constitutional tribunals (courts) play a special role here and, based on the analysis of norms concerning religious freedom, they sometimes refer to the issue of the use of religious symbols in public spaces. However, the common feature is that in the context of the presence of religious symbols in the public space, there are only a few judgments or even none in some countries. Disputes are generally settled amicably and do not require the court's intervention. In a few court cases, issues related to wearing religious clothes at school (the Czech Republic), using religious signs as trademarks (Serbia), or

placing the cross in the meeting room of a local self-government unit (Poland) were raised.

An equally small number of ECHR judgments concern the use of religious symbols in public spaces. Certain dynamics in the number of judgments can be observed in the case of those concerning religious clothing. It seems that this can be explained, among other things, by the fact that the use of religious symbols was entrenched in the European legal culture that it did not simply raise major disputes on a pan-European scale. In the context of the use of religious symbols in public spaces, in the judgments of the ECHR, one can find, in the first place, a specific search for the so-called European consensus, which is absent across Europe; therefore, the ECHR recognizes the European pluralism of relations between the state and the church. In a given case, the determination of the adopted model of relationship determines the further considerations of the court, which examines whether the margin of appreciation enjoyed by the state has not been exceeded. The limits of a state's margin of appreciation are determined by axiology, tradition, legitimacy, and the proportion of limitations, which are then compared by the court with the general principles of the convention.

At this point, one may be tempted to argue that a possible examination by the ECHR of the admissibility of the use of religious symbols in the public sphere of the analyzed Central European countries would probably result in a judgment considering the admissibility of such presence, taking into account the existing models of relations between the state and the church and recognized constitutional axiologies. It seems that the analyzed states, as a rule, operate within the margin of appreciation and European religious pluralism. Moreover, it seems that these countries can be an example of how the system can define the framework for the use of religious symbols in public spaces. These frames are often filled with tradition or customs resulting from the values adopted by the society.

Among the *de lege ferenda* conclusions formulated on the legal systems of individual countries, one can distinguish groups of postulates; in other words, the postulate to regulate where religious symbols may appear, leaving these issues to be settled at the local level (e.g., parents of students of a given school) or to be resolved by courts in individual cases. Interestingly, the authors of this research do not formulate an unequivocal conclusion about the positivization of this issue, and some even reveal a certain degree of skepticism regarding the effectiveness of such legal solutions. Among the presented *de lege ferenda* conclusions, it is worth paying attention to the postulate of a possible regulation of what symbols having a religious dimension can be used in the public sphere, what authority would decide it, and how such decisions should be implemented. On the other hand, a possible law could define under which conditions the use of such symbols may be restricted and which restrictions must be complied with by the competent authorities. Similar regulations can be applied to the use of religious clothing.

The authors did not critically refer to the most frequently observed lack of direct legal regulations regarding the use of religious symbols in public spaces.

The current general lack of legal regulations and judgments is not, in practice, a problem since these issues are usually resolved by consensus preceded by a discussion, and religious symbols in this part of Europe are common in the public space. The most common lack of a ban on placing religious symbols in public space results from a narrow catalog of possible restrictions on religious freedom, which is guaranteed at the level of constitutional and international norms.

Considering the above, it can be concluded that the countries of Central Europe, having significant experience in the fight for religious freedom, can set an example for other European countries on how to thoroughly justify and guarantee the presence of religious symbols in the public space while respecting worldview pluralism.