

CHAPTER III

THE LEGAL REGULATION OF RELIGIOUS SYMBOLS IN THE PUBLIC SPHERE IN HUNGARY



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1. Introduction

Freedom of religion is one of the most fundamental rights, and has a close connection to human dignity.¹ Freedom of religion has a dual nature: on the one hand, religion is very personal; everyone is free to decide what beliefs they accept, and how they practice their religion, if they practice one at all. On the other hand,, freedom of religion extends classic privacy issues. Faith is not simply a consideration of life, the world, or any supernatural aspects; it is, rather, a strong conviction that determines identity. Faith leads to actions, habits, and behavior, which obviously manifest in the public sphere. Consequently, the law needs to correlate religion—in what way people can manifest their religion in public, and whether there is any limit for such manifestation.

Symbols are possible manifestations of religion. One of the peculiarities of human beings, which differentiates them from other animals, is that they create symbols that represent something more than themselves. Human beings are '*homo symbolicus*'; they can formulate, acknowledge, and apply symbols.² Religious symbols have cultural content. In the last millennium, Christianity formed European history, and many religious symbols became parts of secular tradition. As such, they also appear in the public sphere.

¹ I am grateful to Eszter Benkő for her contribution.

² Antal, 2015, p. 239.

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This paper provides an overview of how the Hungarian legal system relates to religious symbols. For this purpose, it first analyzes the historical and social contexts of religion. Second, it describes how the Hungarian Constitution and the Fundamental Law stipulate freedom of religion, and how it is interpreted in constitutional adjudication. Third, it evaluates the relationship between church and state in Hungary and the statutory regulation of churches. Fourth, the paper describes the international background—the international agreements on freedom of religion in which Hungary is a participatory state—and analyzes the decision of the European Court of Human Rights (ECtHR) on a Hungarian freedom of religion case. Fifth, the paper turns to the key issue: the religious symbols on the public sphere; it deals with both the theoretical issue and case law. It is noteworthy that Hungarian case law on religious symbols is quite sparse, at least compared to other countries. Finally, some conclusions are drawn.

2. The historical, social, cultural, and political context of the presence of religious symbols in the public space

Unlike other European countries, which have an overwhelming Catholic or Protestant majority, Hungary is divided by religion. According to the latest census, 37% of the population is Roman Catholic, 12% is Calvinist (Presbyterian), and 2% is Lutheran; in addition, 1.5% declared themselves atheists, 17% answered that they were not religious, and 27% did not answer the question.³

The religious division in the country is historical. During the Reformation, Hungary was under the Ottoman Empire; many Muslims entered the territory, and many Hungarians became Protestants. However, the Turks did not occupy the Kingdom of Hungary, which was ruled by Catholic Hapsburgs.

Religious diversity necessitated legal regulation. Not coincidentally, Transylvania was one of the first territories with (relative) freedom of religion; the Edict of Torda in 1568 ensured the free practice of religion for Catholics, Calvinists, Unitarians, and Lutherans. The date of the treaty, January 13, became ‘Freedom of Religion Day.’

In the seventeenth century, Protestant nobility achieved considerable freedom in Hungary. However, due to the ‘re-Catholicizing’ efforts of the Hapsburg kings, this freedom was gradually curtailed. state influence in the affairs of the Catholic Church was also strong, especially in the enlightened absolutist Josephinist era (Emperor Joseph II, 1780–1790), when, for example, contemplative religious orders were dissolved.⁴ However, in reality, Protestants had not received equality until the 19th century. Non-Christian religions became equal even later; Jews were

³ Answers about religion was voluntary in the census.

⁴ Schanda, 2019, p 365.

emancipated only in 1867, in the year of the creation of the Austro–Hungarian Empire.

Relatively peaceful cohabitation of religions lasted until the mid-war period. Beginning in 1920, Jews were discriminated against in labor and education, and starting in 1938, they were persecuted not only on religious but also on ethnic grounds.

Soon after World War II, the Communists took over Hungary. Although the Constitution of the Peoples Republic of 1949 ensured freedom of conscience and the free practice of religion, it did not prevail in practice. According to Karl Marx’s frequently quoted critique,

‘Religious distress is at the same time the expression of real distress and also the protest against real distress. Religion is the sigh of the oppressed creature, the heart of a heartless world, just as it is the spirit of spiritless conditions. It is the opium of the people.

‘To abolish religion as the illusory happiness of the people is to demand their real happiness. The demand to give up illusions about the existing state of affairs is the demand to give up a state of affairs which needs illusions. The criticism of religion is therefore in embryo the criticism of the vale of tears, the halo of which is religion.’⁵
[emphasis original]

Education was nationalized (1948); religious education was limited (from 1949); theological faculties were detached from state universities (1950); religious orders were banned (1950); property of religious communities was mostly confiscated; numerous religious leaders were arrested and sentenced, including the primate of the Catholic Church in Hungary, Cardinal Mindszenty, who was arrested on December 26, 1948, and after being tortured, was sentenced to life imprisonment in February 1949.⁶ Practicing religion could easily be a cause for losing jobs, not being admitted to institutions of higher education, etc. The state, via the Office for Church Affairs, controlled the activity of churches.

After the revolution of 1956, the Communist regime intended to consolidate its power and seemed ready to grant certain allowances. As a result of negotiations with the Holy See, they signed an agreement in 1964 on certain issues (like procedures for nominating bishops), but diplomatic relations were not reestablished.⁷ The agreement resulted not only in the acceptance of the Catholic Church but also in a less hostile attitude toward traditional Protestant churches. On the other hand, the state found the activity of smaller communities to be suspicious. During the transition in February 1990, Hungary reestablished diplomatic relations with the Holy

5 Marx, 1843.

6 Schanda, 2019, p. 366.

7 Schanda, 2006, p. 80.

See.⁸ Merely setting up diplomatic relations did not require an agreement signed at the prime ministerial level, but the need to set aside the 1964 document made a formal agreement necessary.⁹

In 1990, all political parties agreed that religion and the church should have a definite place in the process of building a new society and reconstructing democratic politics, and reached a consensus on the cultural and educational role of the church.¹⁰ After the sad memories of anti-clerical Communism, the legislature intended to grant freedom of religion in its entirety, as stipulated in international agreements. The first freely elected Parliament considered churches to have special status; they were treated differently from others in the compensation acts.

This sentiment is reflected in the preamble of Act IV of 1990 on the Right to Freedom of Conscience and Religion (the Church Act). Interestingly, this was the only law in Hungary that was adopted as an ‘act with force of the constitution.’ This category was created in 1989 but repealed in 1990 after the elections; the Church Act of 1990 was the only legal norm of the period that was adopted in this way. Later, the Church Act operated as a supermajority statute.¹¹

The act consisted of two parts. The first chapter concerned freedom of religion, and the second laid down the principles of the regulation of churches. Regarding religious freedom, the Act first invoked Article 60 of the Constitution, dealing with freedom of religion, and then set out certain principles on how this freedom prevails in the wider legal system. It confirmed the possibility of proselytizing via telecommunications; a prohibition against discrimination based on religion; and a prohibition against collecting data on the religious beliefs of individuals in official records. In connection with the freedom to practice one’s faith, the act emphasized the prohibition against inhibiting individuals’ practice of religion (although establishing that this right does not exempt individuals from their civic duties). Moreover, it also proclaimed the right of parents to provide religious education for their children, and required that the practice of faith be facilitated in hospitals, in educational and social services, in prison, and in the military. As for the collective practice of religion, the act declared that individuals belonging to the same faith might establish churches or other religious gathering places as a means of collective religious practice. Houses of worship could be established to practice any legal religious activity that is not contrary to the Constitution.

With regard to the regulation of churches, the act set out the rules of their establishment and administration, their relationship with the state, their ability

8 This was a few months before the first free elections, so the Parliament still had a Communist majority. On the other hand, it was after the political negotiations and the proclamation of the Republic on October 23, 1989.

9 Schanda, 2006, p. 80.

10 Paczolay, 1996, p. 266.

11 Besides the formal difference between ‘acts with the force of the Constitution’ and supermajority statutes (the former needed two-thirds of all MPs, the latter needs two-thirds of MPs present), the latter do not refer that they have any special rank in the hierarchy of laws.

to undertake cultural, social, and healthcare services, and regulation of their financial activities. The establishment of a church was relatively simple—it required at least 100 members, a declaration of intent to pursue religious activities, and articles of association and established administrative and representative bodies of self-governance. In connection with church–state relations, the Act reiterated the constitutional principle of the separation of church and state, invoked the principle of equality/equal status of churches, and stated that the state shall not establish a separate agency to monitor and regulate them. The latter rule is a sad reflection on the Communist era, and most notably, on the Office of Church Affairs, imposed on the self-governance of churches.¹² The statute also allows churches to undertake activities in the fields of education, sports, child and youth welfare, culture, healthcare, and social services. Moreover, in the rules concerning the financial activities of churches, the act requires that any religious institution providing these services must receive the same financial support as would a state institution undertaking similar activities or providing the same services. Regarding other financial activities, the statute allows churches to collect donations according to their own internal rules.

The Act, together with the political climate, opened a new perspective on the freedom of religion. It introduced the possibility of establishing non-traditional churches in Hungary; some communities were absolutely new, while others were branches of churches in other countries. As a result, more than 300 religious communities earned church status while the act was in effect.¹³

In addition to the individual freedom of religion, the transition proved to be a new chapter in the connection between state and church. The first freely elected parliament had a center–right majority with a Christian–Democrat identity. They laid a strong emphasis on normalizing the relationship with churches.

In the '90s there were two further agreements with the Holy See. In 1994, an agreement on the military ordinariate was signed, which provided for the government to set up an army chaplaincy. In 1997, an agreement regulated the financial issues of the Catholic Church. This had a special importance in jurisprudence: international treaties had a special rank in the legal system at that time, which meant that not even the Parliament could overrule its provisions.

Other churches were in a disadvantageous position, as they did not have a background like the Holy See that was recognized by international law. However,, after the 1997 agreement, domestic law opened the possibility for other churches to turn to the government with their property claims, just as the Catholic Church had done.

12 Uitz, 2012, p. 939.

13 Uitz, 2012, p. 940.

3. Axiological and constitutional foundations

The Fundamental Law stipulates freedom of religion as follows:

‘Article VII (1) Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include the freedom to choose or change one’s religion or other beliefs, and the freedom of everyone to manifest, abstain from manifesting, practice, or teach his or her religion or other beliefs through religious acts, rites, or otherwise, either individually or jointly with others, either in public or in private life.

(2) People sharing the same principles of faith may, for the practice of their religion, establish religious communities operating in the organizational form specified in a cardinal Act.’

Torfs (2016) differentiates three layers in the freedom of religion. The first layer is that of individual religious freedom: individuals have the right to adhere to any religious conviction or belief they choose, including the right to change religion or not to be religious at all. The second layer is the collective religious freedom that implies the freedom of community-building and the freedom to organize manifestations of faith. The third layer is institutional religious freedom: the people’s right to organize themselves structurally into religious groups and associations, in communities and churches with internal norms, creating a proper subculture.¹⁴ The categorization of the Fundamental Law is slightly different. It mentions all elements of the right in Article VII, yet it considers the first layer as freedom of conscience and the second and the third as freedom of religion.

The freedom of religion is closely connected to human dignity. Believing or refusing any transcendental experience and forming opinions on the reasons for life clearly links to human dignity. Dignity necessarily protects the items that makes us human. Due to the strong connection between identity and religion, the protection of identity (an essential element of human dignity) also covers freedom of religion. In other words, without freedom of religion, dignity does not exist.

Article II of the Fundamental Law stipulates that ‘human dignity shall be inviolable’ Literally, the text of the constitution does not ‘grant’ human dignity but ‘acknowledges’ it; it is not the law that provides dignity, human beings have dignity *a priori*.

3.1. Freedom of thought and conscience

Article VII is even broader, as it protects freedom of thought, conscience, and religion. Freedom of thought is the least interesting for the law, as it appears infrequently in the outside world. Jurisprudence and even legal literature related to

¹⁴ Torfs, 2016, p. 3.

freedom of thought is quite lacking. At most, one may deduce that ‘brainwashing’ is not constitutionally permissible, neither literally nor by emphasizing an ideology to such an extent that the individual cannot think of anything else. However, even in extreme cases, this does not seem to be legally proven.

Freedom of conscience also appears in thoughts but has a direct effect on the outside world. Freedom of conscience is essentially the free choice of one’s views, ideology, and convictions. The content of one’s convictions is irrelevant to the law: accepting the view of an historical church is part of a free conscience, as is the acceptance of any other belief or even atheism.¹⁵

The freedom of conscience is closely connected to human dignity and privacy rights. Human dignity means that the personality of a human being is inviolable, and the law needs to protect individuals’ autonomy. Freedom of conscience dictates that the state cannot determine the truth of any conviction or religious belief.¹⁶

Freedom of conscience is complete if it does not pertain to others. If it does, using a test is necessary to determine the admissibility of the activity in question. In 39/2007 (VI. 20), the Constitutional Court examined whether people can refuse obligatory vaccination based on their freedom of conscience. The court stated,

‘In constitutional democracies, it is a frequently debated issue whether citizens may be exempted based on their conscience and religious beliefs from statutes that prescribe general obligations. (Such questions are whether they may use narcotics for religious ceremonies; whether they may wear, in the army, clothes required by their religion; whether they may deviate from rules governing marriage and family ties—for example, from monogamy, etc.) When considering the proportionality of the fundamental right restriction in this type of regulation, the Constitutional Court applies a different so-called *comparative test of burdens* for those whose conscience and religious freedoms are also violated by the regulations. On the one hand, one should take into consideration the basic principle of a state under the rule of law, which states that everyone has rights and obligations in the same legal system, and therefore the statutes apply to all in such a way that the law treats everybody as equals (as individuals with equal dignity). On the other hand, it should not be ignored that the fundamental values of a constitutional democracy include variety within the political community, as well as the freedom and autonomy of individuals and their communities. Therefore, it may not be established as a rule that the freedom of conscience and religion should always be an exception to the laws that apply to all, and likewise, the rule of law may not be fully applicable to the internal life of a religious community.’

15 Atheism is not neutral, but is one possible conviction. Interestingly, atheism is protected by the freedom of religion in the law.

16 27/2014 (VII. 23), Constitutional Court decision.

The point of the comparative burden test is first to examine the connection between the conscience and the activity in question: the closer the connection, the more it is reasonable to make an exception to the general rule. Second, it is also necessary to examine how much the activity influences others: the greater the effect, the less it is reasonable to make exceptions.

From the perspective of freedom of religion, the comparative burden test was as follows: Law may have a legitimate aim to restrict certain religious activities. Needless to say, one cannot sacrifice someone, not even on religious grounds. On the other hand, religion may provide exemptions from general rules under certain conditions.

3.2. Freedom of religion

Freedom of religion is the ‘external side’ of freedom of conscience: it is the right to perform activities derived from conscience. According to the Fundamental Law, the connection is so strong that it refers to freedom of conscience and freedom of religion as one (‘this right,’ in singular). The Fundamental Law provides examples for practicing freedom of religion, such as the expression of religion, participation in religious movements, or the restraint of such activities.

Freedom of religion can be performed either individually or in combination with others. This latter often means that there is a legally recognized form for practicing such activity, which is the church or religious institution. As law recognizes churches, there must be a legal (state) regulation for church activities.

Recently, the Constitutional Court stated that

‘Freedom of religion covers the idea that individuals may conduct their entire lives according to their faith, and according to the self-definition of the religious group to which they belong. Freedom of religion is not only the free performance of traditional religious activities, but also the performance any activity that is based on the conviction of the individual.’¹⁷

This decision examined the connection between the loud religious activity and the private lives of others.¹⁸ In that case, the court concluded that although freedom of religion covers prayers and singing, such activities must be balanced with the privacy of others. The latter covers a decent private life and the sanctity of the home. The Constitutional Court accepted the position and stated that the court decision was in accordance with the constitutional provision on freedom of religion. The Court added that it was necessary to balance competing interests case by case.

The Fundamental Law literally declares the ‘negative side’ of freedom of religion, which is to abstain from proclaiming religion. It is noteworthy that the negative side of freedom of religion is not the proclamation of being nonreligious. In constitutional

¹⁷ 3049/2020 (III. 2), Constitutional Court decision.

¹⁸ Neighbors of a Muslim individual referred to their privacy from the loud prayers of their neighbor.

terms, not believing in any religion is also a conviction that is protected by freedom of conscience. Being religious or nonreligious are equal to the law.

State authorities cannot collect data on religious convictions.¹⁹ The Constitutional Court also examined the negative side of the freedom of religion. It pointed out that everyone is free to decide whether to proclaim his or her conviction. Yet, if someone decides in favor of stating a religious opinion, he or she cannot decide later not to proclaim religion; this right can only be exercised in one way only. The positive and negative sides of freedom of religion exclude one another; logically, it is impossible to proclaim religion and to abstain from it at the same time. In the question of whether someone belongs to a specific religious community, state authorities must rely on the community's statement. If a community does not accept someone as one of its members, the state cannot say the opposite, even if the concerned individual states that he or she belongs to the community in question.²⁰

3.3. Protection of Christian culture

When speaking of freedom of religion, one must not neglect the connection between religion and culture. The Fundamental Law refers to God and Christianity several times. The Fundamental Law starts with the first line of the Hungarian national anthem: 'God, bless the Hungarians.' Schanda says this is 'not an *invocatio Dei* in its traditional sense: the Fundamental Law is not created in the name of God (as is the case with the Swiss Constitution or the Irish Constitution, for example)....The purpose of the reference preceding the normative text of the Fundamental Law is to link all of the nation's members.'²¹ Furthermore, among the closing provisions, it declares that the makers of the constitution were aware of their responsibility before God and humankind. Such a reference is very similar to the German *Grundgesetz*; its preamble starts with '*Im Bewußtsein seiner Verantwortung vor Gott und den Menschen*' (conscious of their responsibility before God and humankind).

More frequently, the Fundamental Law also refers to Christianity. Even the preamble has quite a clerical inclination (a national avowal of faith), and it states that King Saint Stephen (Stephen I, the first king of Hungary) made the country a part of Christian Europe. The preamble also recognizes that Christianity has a role in preserving statehood. The national avowal is a descriptive finding of an historical fact and does not lay down an obligation to resurrect that history.²²

Such symbolic references do not intend to posit Christianity as an official religion; rather, they draw attention to the fact that these Christian symbols attained a

19 Notwithstanding, data protection authorities have competence over religious communities how they collect and handle personal data. The Curia refused the objection of the Hungarian Church of Scientology, that the Data Protection Authority could not review its files, due to the separation of church and state (Kf.VI.39.029/2020/14).

20 3192/2017 (VII. 21) Constitutional Court decision.

21 Schanda, 2020, pp. 59–60.

22 Schanda, 2020, p. 57.

more secular, culturally significant meaning. Among the articles of the Fundamental Law, Article R (4) is the most important in this respect.²³ This provision stipulates methods of interpretation, and stipulates that ‘the protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the state.’ More interestingly, Article XVI (1) states that the state ensures the upbringing of children in accordance with the values based on the constitutional identity and Christian culture of our country.

The provision of Hungary’s Christian culture is not normative but prescriptive. It does not say that Hungary’s culture must be Christian, yet it acknowledges that the culture is Christian. In other way, the Fundamental Law does not require that the country be ‘Christianized’; instead, it obliges the state to preserve the culture of the country, which is, by the way, Christian. Many Hungarian (secular) folklores, customs, and holidays have Christian roots. In its early decision, the Constitutional Court examined whether it infringes on the separation of state and church that many Christian holidays are bank holidays (Christmas, Easter, Pentecost), while holidays of other religions are not. The Court arrived at the conclusion that the Labor Code stipulates certain days as bank holidays, which most of the society, irrespective of their faith, consider a holiday. Even non-religious people celebrate Christmas and Easter because of the general culture; even Christian culture-based countries celebrate different holidays (like Epiphany or Assunta), and the religious and secular elements of the holiday are mixed (undoubtedly, Easter eggs have no religious content at all). When stipulating bank holidays, the Labor Code does not rely on religion but on the expectations of society and economic interests. Most of the society intends to spend these days in family, with free-time activity or rest. The legislation was an effort to acknowledge historical and social expectations, not to show preference to one religion over another.²⁴

Article R (4) protects the culture of the country, and not Christians. Individual protection or the protection of the identity of religious communities derives from freedom of religion (Article VII) and not from the protection of the culture.

The role of Christianity in Hungarian history is reflected by many of the country’s national symbols. The most prominent is the coat of arms of Hungary, which, as established by Article I(1) of the Fundamental Law, contains a patriarchal cross and the *Holy Crown*. The patriarchal cross is the most ancient part of the coat of arms; it first appeared in the late 12th century.²⁵ The Holy Crown is one of the most important symbols of sovereignty and is relevant in public law as well. The Holy Crown doctrine is a historical public law concept in which the Holy Crown as a legal entity is a single holder and donor of power in the country. In the 14th century, the Holy Crown-substituted statehood (which did not exist at the time) and later sometimes manifested, sometimes represented the power to govern the country. According to

23 The paragraph was implemented by the seventh amendment to the Fundamental Law in 2018.

24 10/1993 (II. 27) Constitutional Court decision.

25 Halász and Schweitzer, 2020, p. 30.

this concept, traditionally, the king and the nation together constituted the Holy Crown, which was the mystical personification of Hungarian statehood and the constitutional symbol of the kingdom.²⁶

4. Model of relations between the state and the Church

Due to the sad memories of socialism under which the state supervised church activities, the Constitution found it important to separate state and church. However, the strict separation model of France and the United States has never existed in Hungary.

Although the wording of the previous constitution could have led to strict separation, the Constitutional Court interpreted the provision in a way that the model was closer to cooperation than to separation. In its early decision, the court examined the restitution of church property during the transition.²⁷ The court states that ‘the separation of church from state did not mean that the state ought to ignore the characteristics of religion and church in its legislation.’ Their reasoning continued:

‘The separation of the church from the state does not have any influence on that obligation of the state that it has to ensure (Constitution, Art. 60) the positive and negative forms of freedom of religion without making any differentiation. The positive and negative freedom of religion is equal: the state must not consider one as a basis and the other as an exception. The negative freedom of religion and the reduction of the support of religious indifference do not emerge from the fact that the state itself is neutral. The state violates its obligation deriving from the right to freedom of religion if it does not provide everyone with the possibility of freedom of conscience. The separation of church from the state does not mean that the state should not consider the characteristics of religion and church in its legislation. The only prohibition of limitations on the freedom of religion in the Constitution refers exclusively to religious conviction and the exercise of religion. There is no limit on the legislator to consider the characteristics of churches in his legislation regarding the freedom of religion. The church is not the same for religious and state laws. The neutral state must not follow different churches’ differing ideas. However, it can consider religious communities and churches in relation to their historical and social roles, which are different from those communities, unions, clubs (that can be established) that are based on [freedom of association].’

26 Fejes, 2015, p. 33.

27 4/1993 (II. 12) Constitutional Court decision.

Between 1990 and 2011, there were no differences among churches on the level of the constitution, some differences in the legal system (certain acts provided possibilities for historical churches only), but great differences in practice.

The Fundamental Law reconsidered the model of church–state relations. Articles VII (3) and (4) are as follows:

‘The state and religious communities shall operate separately. Religious communities are autonomous.

‘State and religious communities may cooperate to achieve community goals. At the request of a religious community, the National Assembly shall decide on such cooperation. The religious communities participating in such cooperation shall operate as established churches. The state shall provide specific privileges to established churches regarding their participation in the fulfillment of tasks that serve to achieve community goals.’

Regarding English translations, both the former and the current constitution use the term ‘separate’ for church and state relations. However, Hungarian originals use different words (*‘elválasztva’* and *‘különváltan,’* both of which mean ‘separate’). Antalóczy says there is a difference between the two: the former constitution emphasizes that they are separated (passive voice), while according to the current constitution, church and state are divided on their own decision.²⁸

Instead of separation, the Fundamental Law relies on coordination and cooperation, which is essentially the model used between 1990 and 2011. Seemingly, there is a big difference between the Fundamental Law and the previous constitution; however, the model did not change in practice. Even the Constitutional Court accepted that the changes in the wording of the constitutional text did not change the relationship between state and church in practice.²⁹

I find that separate operation has three consequences:

- The state cannot identify with the teaching of any religion. The state cannot consider the content of religions and churches, and cannot accept an ideology as more valuable than the other. On the other hand, state regulation is free to evaluate the social and historical roles of religious gatherings. Objective criteria, such as the number of members and its active role in society, may be grounds for differentiation.
- The state does not help churches execute their decisions. Church regulations that influence the interim life of churches or relate to the conviction and identity of the church cannot be enforced by law. Church decisions cannot be challenged by state courts. Unlike several other countries, the Hungarian legal system does not allow tax agencies to collect church taxes (voluntary donations to churches).

²⁸ Antalóczy, 2012, p. 206.

²⁹ 6/2013 (III. 1) Constitutional Court decision.

- If the state differentiates among religious communities, differentiation must be based on objective and reasonable grounds. For example, the Constitutional Court found it unconstitutional that the law did not entitle all taxpayers to grant 1% of their personal income tax to their religious communities.³⁰

In Hungary, taxpayers can offer 1% of their personal income tax either to a religious community or to a particular chapter of the central budget. However, the tax law provided only certain religious communities to receive the offering. The Constitutional Court stated:

‘It is not a constitutional requirement that all religious communities actually have the same rights, nor that the state actually cooperates to the same extent with all established churches. Practical differences in the exercise of rights related to the right to freedom of religion remain within constitutional limits as long as they result from non-discriminatory legal regulations and as long as the results of non-discriminatory practices.’

In this case, the Court concluded that the purpose of the aid granted based on the offer of a certain part of the personal income tax is not to support the public tasks of churches, but to support the religious activities of the communities. Considering the nature of religious conviction, taxpayers do not extend their offers to communities other than their own. Taxpayers whose religious community cannot accept the offer are practically excluded from the possibility of tax law grants.

5. Constitutional guarantees of freedom of conscience and religion

5.1. Institutional guarantees

The Fundamental Law does not stipulate any special guarantee for freedom of conscience and religion; instead, the general guarantees of fundamental rights are accessible, namely courts, the Constitutional Court, and the ombudsman. However, they all contribute to the protection of freedom of religion in a different way.

Courts have a dual task concerning freedom of religion. On the one hand, they register churches (see Section 4), which is theoretically not a judicial task, according to Montesquieu’s theory of separation of powers. Still, as church registration has a close relationship to the freedom of religion, it is an important guarantee on the right. On the other hand, courts decide in particular cases; both individuals and

30 17/2017 (VII. 18) Constitutional Court decision.

churches can turn to the court if they find that their rights or interests are violated. The nature of the case might vary, and freedom of religion may occur in civil law, labor law, family law, administrative law, or even criminal law cases.

Courts are free to decide in cases in which a church is a party, but they are not about deciding the religious elements of the case. Religious beliefs and convictions cannot be brought to court.³¹ In all cases, state authorities (including courts) must remain neutral in religious matters.

The Constitutional Court has a different task. The most general competence of the Constitutional Court is to decide on constitutional complaints. Anyone, whose constitutional right is infringed in a judicial decision, may challenge the court decision either on the grounds that the law the court decision based on is unconstitutional or that the application of the law is unconstitutional (so-called ‘real’ constitutional complaints). Consequently, people can turn to the court if they find that a judicial decision infringes on their freedom of religion.

The court also has the possibility of an abstract review of legal norms (in the lack of a particular case), yet it is exceptional: only one-fourth of the Parliament, the government, the ombudsman, the president of the Curia, and the supreme prosecutor can ask an abstract review of laws (posterior law review). An *ex ante* constitutional review might be initiated by the president of the Republic; he or she may challenge an adopted Act of Parliament before promulgation.

In addition,, the Constitutional Court has a special competence concerning churches. Article 34/A of the Act on the Constitutional Court stipulates: ‘In case of an acknowledged church, on the government’s petition, in case of an organization performing a religious activity, on the petition of the court, the Constitutional Court shall express an opinion in principle on whether the operation of a religious community is contrary to the Fundamental Law.’ However, this competence has not yet been used.

Articles 30 (1) and (2) of the Fundamental Law regulate the tasks of the ombudsman, that is, the Commissioner for Fundamental Rights. The provisions say:

‘The commissioner for fundamental rights shall perform fundamental rights protection activities; his or her procedures may be initiated by anyone.

‘The commissioner for fundamental rights shall investigate any violations related to fundamental rights that come to his or her knowledge, or have such violations investigated, and shall initiate general or specific measures to remedy them.’

Ombudsmen guarantee freedom of religion by handling complaints, or forming general opinions on the application of the right, either *ex officio* or upon request.

31 To highlight the difference: if a church provides a car for its minister and the car is damaged, the court is free to decide on the liability of the church and of the minister. Yet if parents cannot agree on the religious education of their child, the court is not about to decide.

The specific content of ombudsman activity is determined not only by the model or the competences provided. The peculiarity of the institution is that the ombudsman plays a significant role in interpreting his or her own competences: how the ombudsman interprets the laws pertaining to its function, and how actively the competences are performed.³² There is more than one correct role for ombudsmen: with regard to the social relations and challenges, they have to decide whether to focus on the systematic review of fundamental rights or the monitoring of public administration.³³ Two basic conceptions can be differentiated: the ‘people’s advocate,’ who emphasizes the complaints of individuals, and the ‘watchdog,’ who monitors the authorities. The ombudsman also runs whistleblower protection; people can turn to the ombudsman anonymously if a public agency infringes or endangers a constitutional right.

5.2. Criminal and civil law protection of religion and religious symbols

The Hungarian criminal code stipulates the violation of the freedom of conscience and freedom of religion as a criminal offense. It states:

‘Any person who:

- a) restricts another person in his or her freedom of conscience by force or threat of force, or
 - b) prevents another person from freely exercising his or her religion by force or by a threat of force,
- is guilty of a felony punishable by imprisonment not exceeding three years.’

The criminal code labels violence against religious groups as a crime against human dignity; calling for violence against a religious community is also punishable.

The criminal code also protects religious symbols. If theft or robbery is committed on ‘religious objects,’ the punishment is more severe. Unlike national symbols (the anthem, the flag, the coat of arms, the Holy Crown) that have a criminal law protection from being degraded, religious symbols have no special provision. However, under certain criteria, the degradation may be considered as ‘violence against a member of a community.’

The civil code also grants steps to take when an individual’s freedom of religion is infringed. Article 2:54 stipulates that:

‘Any member of a community shall be entitled to enforce his or her personal rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his or her personality, manifested in conduct

32 Somody, 2008, p. 106.

33 Hill, 1983, pp. 43–56.

constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personal rights, except for laying claim to the financial advantage achieved.'

Apparently the civil code considers conviction and religion to be related to personality. In the 2000s, Hungarian jurisprudence debated whether degrading a community might be a ground for any community member to initiate a civil law case. The civil code states that such cases are admissible, but only if the act degrades the essential part of conviction (Hungarian case law is evaluated in Section 8).

6. Guarantees according to other sources of universally binding law

6.1. International background

Apart from constitutional guarantees, Hungary is also a party to several international treaties and conventions ensuring freedom of religion and the prohibition of discrimination based on religion. As for freedom of religion, Article 18 of the Universal Declaration of Human Rights,³⁴ Article 18 of the International Covenant in Civil and Political Rights (ICCPR),³⁵ Article 14 of the Convention of the Rights of

34 Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change one's religion or belief, and the freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in teaching, practice, worship, and observance.

35 1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his or her choice, and freedom, either individually or in community with others and in public or private, to manifest his or her choice of religion or belief in worship, observance, practice, and teaching.

2. No one shall be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The states' parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

the Child,³⁶ Article 9 of the European Convention of Human Rights,³⁷ and Article 10 of the Charter of Fundamental Rights of the European Union.³⁸ Moreover, Article 26 of the ICCPR, Article 14 of the ECHR, and Article 21 of the EU Charter prohibits discrimination on the basis of, *inter alia*, religion.

Within the framework of international law, the display of religious symbols can be examined in three dimensions: 1) as an individual's right to manifest his/her faith, 2) as the possibility of a state-endorsed display of religious symbols in public locations, and 3) the role of religious symbols as a possible limitation on freedom of expression, protecting the rights of others (i.e., religious communities) by protecting religious symbols from misuse.

(1) The right to manifest one's faith

The display of religious symbols by individuals is generally considered to be part of the right to manifest one's religion, particularly the freedom of worship. Moreover, wearing religious symbols is considered part of the practice and observance of religion.³⁹ However, whether and to what extent this right can be limited is a slippery issue.

With regard to Articles 18 and 26 of the ICCPR, the Human Rights Committee held in 1989 that the requirement for Sikhs to wear safety headgear during work was justified under Article 26, as well as under Article 18, paragraph 3, which sets out the limitations on freedom of religion.⁴⁰ However, in 2005, the CCPR found in the case of a Muslim student who was allegedly suspended for wearing a headscarf, that

36 1. The states' parties shall respect the right of the child to freedom of thought, conscience, and religion.

2. The states' parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. The freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

37 1. Everyone has the right to freedom of thought, conscience, and religion; this right includes the freedom to change his or her religion or belief, and the freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice, and observance.

2. The freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others.

38 1. Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice, and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

39 The Human Rights Committee's General Comment No. 22: The right to freedom of thought, conscience, and religion, para. 4.

40 Communication No. 208/1986, *Bhinder v. Canada*. CCPR/C/37/D/208/1986, 9 November 1989, para 6.2.

‘to prevent a person from wearing religious clothing in public or private may constitute a violation of article 18, paragraph 2, which prohibits any coercion that would impair the individual’s freedom to have or adopt a religion.’⁴¹ Similarly, the CCPR held that the blanket ban in France on wearing any apparel intended to conceal the face, which seriously restricted the possibility of wearing a niqāb (or other Islamic veil covering the face) cannot be regarded as a necessary and proportionate restriction under Article 18, paragraph 3.⁴²

On the other hand, European jurisprudence allows for wider restrictions on religious attire. For example, the ECtHR examined the ban on face-concealing apparel introduced in France, and found that this restriction did not violate Articles 9 and 14 of the ECHR.⁴³ Interestingly, the ECtHR considered the French government’s argument that the regulation aims to ensure ‘respect for the minimum requirements of living together’ as a legitimate aim, while the CCPR arrived at the opposite conclusion about the same argument. With regard to wearing Christian crosses in the workplace, the ECtHR held that maintaining the employer’s corporate image, in itself, cannot be a sufficient counterweight against the employee’s right to manifest his/her faith by wearing religious symbols,⁴⁴ while it found that the protection of health and safety in a hospital ward might allow the restriction.⁴⁵ The case law of the European Court of Justice, examining Council Directive 2000/78/EC, establishes a general framework for equal treatment in employment and occupation, and thus indirectly regulates the wearing of religious symbols in the workplace, found in two cases that while a company’s policy of neutrality might be a legitimate aim to prohibit employees from adhering to a specific religious dress code, or from wearing at work visible religious symbols,⁴⁶ employers cannot simply discriminate between employees who wear religious symbols and those who do not, due to a customer’s demand.⁴⁷

(2) *State-endorsed display of religious symbols*

The ‘state-endorsed’ public display of religious symbols is a less salient issue in international law. This question might invoke states’ obligation to respect an individual’s right to have or adopt a religion of their choice, and the obligation not to subject any individual to coercion, which would impair their freedom to have a religion or belief in their choice.⁴⁸ In connection with this, the special rapporteur on freedom of

41 Communication No. 931/2000, Hudoyberganova v. Uzbekistan. CCPR/C/82/D/931/2000, 5 November 2004, para. 6.2.

42 Communication No. 2747/2016, Sonia Yaker v. France, CCPR/C/123/D/2747/2016, para 8.12.

43 *S.A.S. v. France* (No. 43835/11). 1 July 2014.

44 *Eweida and Others v. The United Kingdom* (No. 48420/10, 59842/10, 51671/10 and 36516/10), 15 January 2013, para. 94.

45 *Ibid.*, para. 99.

46 Case C-157/15, para 44.

47 Case C-188/15, para 40.

48 ICCPR Article 18, para 2.

religion recognized that different models of church–state relations may exist under international law,⁴⁹ and called on states having preferences toward one or more religion(s) not to unduly restrict people’s freedom of religion or belief, particularly religious minorities.⁵⁰ He expressed the view that international human rights law imposes a duty on states to be impartial guarantors of the enjoyment of freedom of religion or belief of all individuals and groups within their territory.⁵¹ However, it is not self-evident whether the display of religious symbols in public places violates the impartiality of states. The ECtHR examined this question in the case of *Lautsi and others v. Italy*, in connection with the display of crucifixes in public schools. The court found that while the cross is primarily associated with Christianity, since it is an essentially passive symbol, its mere presence in the classroom does not infringe the state’s obligation of impartiality in the classroom.⁵² Torfs refers to the Grand Chamber decision of the *Lautsi* case as a risky one: the decision can only be accepted if religious symbols stop being religious and eventually even become the opposite, a sign of absolute tolerance instead of a sign of outspoken identity.⁵³

In the EU, Article 22, of the EU Charter of Fundamental Rights establishes that the ‘Union shall respect cultural, religious, and linguistic diversity.’

(3) Religious symbols as a possible limitation on freedom of expression

The third dimension of the role of religious symbols in international law considers the issue from the point of view of freedom of expression, and examines whether constraints on the misuse of religious symbols might constitute a possible restriction on this right. In the case of the ICCPR, this theory might be supported either with Article 20 (2), prohibiting ‘Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence’ or with Article 19 (3)(a), which allows the restriction on freedom of expression for the respect of the rights or reputations of others. According to the Human Rights Committee, General Comment No. 34, the term ‘others’ relates to other persons individually or as members of a community, and thus, it may refer to individual members of a community defined by its religious faith.⁵⁴ Therefore, since the protection of members of religious communities can be a legitimate aim, this restriction might encompass the protection of religious symbols, provided that legislation with such an aim is also necessary and proportionate.

Regarding regional human rights treaties, Article 10(2) of the ECHR also allows the restriction of freedom of expression for the protection of, *inter alia*, the rights of

49 Shaheed, 2018, para 75.

50 Shaheed, 2018, para 78.

51 Shaheed, 2018, para 81.

52 *Lautsi and others v. Italy* (no. 30814/06), 18 March 2011.

53 Torfs, 2016, p. 7.

54 The Human Rights Committee’s General Comment No. 34 on Article 19: Freedoms of opinion and expression. CCPR/C/GC/34, 12 September 2011, para 28.

others. The court's long-held view is that if a state finds that the religious feelings of the citizen deserve protection, even proportionate criminal sanctions can be considered necessary in a democratic society.⁵⁵ Consequently, in the case of *Otto-Preminger-Institut v. Austria*, the court found that state measures based on a section of the penal code, prohibiting the disparagement or insult of 'a person who, or an object which, is an object of veneration of a church or religious community established within the country' that is likely to cause 'justified indignation,' can be regarded as having the purpose of protecting the rights of citizens.⁵⁶

In conclusion, international law and jurisprudence pertaining to freedom of religion in Hungary are ambiguous on some aspect of the individual freedom to wear or display religious symbols, does not generally prohibit state-endorsed display of such symbols and allows some level of restriction on the misuse of religious symbols to protect the rights of members of a religious community.

6.2. Influence of the European Court of Human Rights on freedom of religion in Hungary

The Fundamental Law and the connected legal regulations resulted in a great change in the lives of churches. Apparently, many religious communities lost their ecclesiastical status and remained independent. Only certain communities mentioned in the Church Act were deemed as 'churches' by law; otherwise, Parliament could decide on ecclesiastical status.

Several former churches that lost their status turned to the courts and finally challenged the regulation at the ECtHR.⁵⁷ The applicants submitted that the loss of their proper church status because of the 2011 Church Act had constituted interference with their freedom of religion. The proper functioning of religious communities necessitated the enjoyment of a specific and appropriate legal status, that is, church status in the legal sense. In Hungary, religious communities were given a reasonable opportunity to be registered as churches since 1990, and the applicants had indeed enjoyed that status. On January 1, 2012, the vast majority of churches (including theirs) lost their proper church status and had been forced to convert into ordinary civil associations or else cease to exist legally had constituted in itself interference with their freedom of religion, especially since the loss of church status had deprived them of privileges that had facilitated their religious activities. The fact that those privileges were guaranteed henceforth only to churches recognized by Parliament had placed them in a situation that was substantially disadvantageous vis-à-vis those churches [69].

55 *X. Ltd. and Y. v. United Kingdom* (no. 8710/79), 07 May 1982. para 12.

56 *Otto-Preminger-Institut v. Austria* (no. 13470/87), 20 September 1994.

57 *Case of Magyar Keresztény Mennonita Egyház and Others v. Hungary* (Applications nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, 8 April 2014).

According to the government, no article in the Convention was infringed. They claimed that the 2011 Church Act had defined the notion of religious activities for the purpose of recognizing churches as participants in the system of state–church relations from an exclusively legal perspective. The Hungarian legislature introduced a two-tier system of legal entity status for religious communities similar to the model prevailing in several European states. Self-defined religious communities were free to operate as associations in accordance with Articles 9 and 11 of the Convention, while those religious communities that wished to establish a special relationship with the state and share the latter’s social responsibilities, were expected to undergo an assessment of the nature of their activities by the authorities [64].

The court considered that there was a positive obligation incumbent on the state to put in place a system of recognition that facilitated the acquisition of legal personality by religious communities. This is also a valid consideration in terms of defining the notions of religion and religious activities. In the court’s view, these definitions have direct repercussions on the individual’s exercise of the right to freedom of religion, and can restrict the latter if the individual’s activity is not recognized as a religious one. According to the position of the United Nations Human Rights Committee, such definitions cannot be construed to the detriment of non-traditional forms of religion—a view shared by the court. In this context, it reiterates that the state’s duty of neutrality and impartiality, as defined in its case law, is incompatible with any power on the state’s part to assess the legitimacy of religious beliefs [90].

The court also noted that under the legislation in force, there was a two-tier system of church recognition in place in Hungary. Several churches—the so-called incorporated ones—enjoy full church status, including entitlement to privileges, subsidies, and tax donations. The remaining religious associations, although they have been free to use the label ‘church’ since August 2013, are in a much less privileged position, with only limited possibilities to move from this category to that of an incorporated church. The applicants in the present case, formerly fully fledged churches, now belong to the second category, with substantially reduced rights and material possibilities to manifest their religion, when compared either with their former status or with the currently incorporated churches [98].

The court considered that the applicant religious communities could reasonably be expected to submit to a procedure that lacks the guarantees of objective assessment during a fair procedure by a nonpolitical body. Their failure to avail themselves of this legal avenue could therefore result in their applications being declared inadmissible because they had not exhausted all domestic remedies, especially if the applicants in question could not objectively meet the requirements in terms of the length of their existence and the size of their membership [103].

Regarding the question of the duration of religious groups’ existence, the court accepts that the stipulation of a reasonable minimum period may be necessary in the case of newly established and unknown religious groups. However, it is hardly justified in the case of religious groups that were established once restrictions on confessional life were lifted after the end of the Communist regime in Hungary, which

must be familiar to the competent authorities by now, while just falling short of the required period of existence [111].

Finally, the court concluded that

‘In removing the applicants’ church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure whose justification as such is open to doubt and, finally, in treating the applicants differently from the incorporated churches not only with regard to the possibilities for cooperation but also with regard to entitlement to benefits for the purposes of faith-related activities, the authorities disregarded their duty of neutrality vis-à-vis the applicant communities. These elements, taken in isolation and together, are sufficient for the court to find that the impugned measure cannot be said to correspond to a “pressing social need.” Therefore, there has been a violation of Article 11 of the Convention read in the light of Article 9.’

Summing up the court decision, it is obvious that under the Convention, there is no possibility for Parliament to decide on ecclesiastical status. Similarly, the criteria for churches must be objective and non-discriminatory. There were various interpretations of whether the ECtHR left space for a two-tier church status. It is likely that states are free to decide whether they consider all religious groups as churches, or if they make differentiations. There is also a margin of appreciation concerning the required membership and duration of existence; however, such criteria cannot result in indirect discrimination.

Schanda noted that the ECtHR did not consider the difference between the 1990 and 2011 Church Acts: the old law required a formal registration while the new one stipulated recognition, which is a procedure on the merits. Therefore, the case is different from the one the ECtHR established: not just smaller communities but all communities lost their status, and everyone needed to ask for recognition.⁵⁸

7. Limits of religious expression through religious symbols

Compared to other countries, Hungarian jurisprudence on the use of religious symbols is very poor. There have been no cases of wearing crosses, other religious symbols, or dresses connected to religion (like burka cases). Neither have Hungarian courts faced questions of whether Nativity plays are admissible in public places or if churches can advertise themselves. In Hungary, there are no general legal regulations in the field of religious symbols. In certain fields, there are special regulations (such as advertisements in media); otherwise, religious symbols are

⁵⁸ Schanda, 2014, p. 2.

free to use, with respect to individual freedom of religion and the separation of church and state.

Questions of religious symbols do arise in public discussion, in the media, or among politicians, but hardly ever reach the level of courts. Political discussion does not turn to judicial discussion.

One of the few exceptions is a constitutional court decision on the constitutionality of a local government decree, which banned the wearing of Muslim niqābs and hijabs. The court annulled the decree on formal grounds: local governments cannot restrict freedom of religion (according to the Fundamental Law, human rights can be restricted by Acts of Parliament only).⁵⁹

Due to the small number of cases, scholars have only an ‘educated guess’ about how courts would handle cases if there were any. This section attempts to make guesses, while the few existing cases are discussed in Section 8.

First, one must differentiate between the public and private use of religious symbols. In general, for the individual, everything that is not forbidden is permitted, while for public authorities everything that is not permitted is forbidden. Public officials can only act on their tasks and competences. This general distinction may also be applicable when using religious symbols.

The basic standpoint in the case of individuals is that they are free to use, wear, or show any religious symbols, like anything else they would want to. The law states that religion is closely connected to identity. Manifestation of identity receives strong protection; however, it is not unlimited, either.⁶⁰

The Hungarian legal order acknowledges religious symbols as symbols that are close to identity. Their use connects to two separate rights: privacy, and freedom of expression. Symbols connected to identity have a strong link to privacy rights (right to private life, family life, correspondence, etc.). Because the symbol is manifested in the public sphere, freedom of expression must also be considered. In general, people are free to proclaim their religion, and they can perform this right either explicitly or by using symbols.⁶¹

The private use of symbols is not limited to open-air places. People can bring their symbols in hospitals, offices, schools, etc. One exception to the free use of religious symbols is media. Article 24 of the Media Act stipulates that

59 7/2017 (IV. 18) Constitutional Court decision.

60 The best example for this might be the wedding ring. For the owner the ring is more precious than its price; the owner has a special interest for the ring, it manifests the identity of being a husband or a wife. For others, the ring is just like any other ring. Consequently, a dress code in a workplace may easily require or ban certain pieces of clothing but there must be a special reason to ban a wedding ring (only if it closely connects to workplace security or some other specific reason like that).

61 Some symbols in the public sphere are cultural ones, while some others are clearly religious. Some people wear a cross in a necklace; some on religious grounds some because of tradition or fashion. On the other hand, many Protestants put the symbol of the fish (Greek *ἰχθύς*, which was used as an acronym for Greek words translated ‘Jesus Christ, Son of God, Savior’) on their cars, clearly manifesting their religion. Its admissibility has not been questioned.

‘The commercial communication broadcasted in the media service...may not express religious, conscientious, or ideological convictions except for commercial communications broadcasted in thematic media services with religious topics [and] may not violate the dignity of a national symbol or a religious conviction.’

In connection with freedom of assembly, Hungarian jurisprudence uses the ‘captured audience’ doctrine: assemblies cannot force others to face the purpose of the assembly, and the demonstration cannot intimidate others. The test might also be used in issues of freedom of expression or freedom of religion. However, the mere fact that you disagree with the symbol does not mean that you are ‘captured,’ only in cases where the symbol is offensive.

As for the evaluation of the public use of symbols, the ombudsman’s opinion is the most general statement to rely on. In 2016, a county local government turned to the ombudsman to inquire if the use of a cross in public places is permissible.

The ombudsman reckoned that two questions must be considered: (1) does the presence of the cross infringe the separation (separate operation) of church and state, and (2) does it infringe on the freedom of religion of individuals.

The opinion noted that according to the Fundamental Law, the church and state *operate separately*. The point of such ‘cooperative model’ is that the state is neutral in ideology issues, it does not identify with any religion (neither the teaching of a church nor atheism as an ideology), but it considers the role of churches in society (educational, cultural, social, health, etc.). The merging of secular and ecclesiastical power would infringe on the constitution, and if a state or municipal body exercised public power under a religious symbol.

However, crosses are not only religious symbols. The ombudsman reckoned the Lautsi case, in which the ECtHR concluded that the ‘the crucifix is capable of expressing, symbolically, of course, but appropriately, the religious origin of those values—tolerance, mutual respect, valorization of the person, affirmation of one’s rights, consideration for one’s freedom, the autonomy of one’s moral conscience vis-à-vis authority, human solidarity and the refusal of any form of discrimination.’ In Hungary, many towns, counties, and even Hungary itself have a cross in its coat-of-arms.⁶² In certain cases, the connection between the cross and religion is weak. The Scottish St. Andrew’s cross or the Scandinavian cross in flags have distinct connections to religion; when seeing these flags, hardly anyone thinks of any religious content.

The cross is a religious symbol of Christianity on the one hand and a cultural symbol with secular values on the other. The two components cannot be strictly separated; in particular cases, it must be examined whether the display of the cross has a religious or cultural meaning. Although it follows from the principle of pluralism

62 The coat-of-arms of Szentendre (a town near Budapest) is a lamb that carries a cross, close in design to the Calvinist symbol. The coat-of-arms of county Fejér represents St. Stephen of Hungary, offering the Hungarian crown to Jesus and Mary—very much a Catholic symbol.

that the state has no hegemony in either religious or cultural terms, in no area can it consider any trend to be exclusive. However, the possible state involvement differs between the two areas. In cultural matters, the state may have priorities, but in religious matters, it must treat individual beliefs equally. Religious beliefs are much more closely related to an individual's identity than a commitment to a cultural trend. In general, the more closely an issue is related to personal identity, the more restrained the state must be in its regulation.

I find that the ombudsman's opinion intended to neutralize the situation and argued that the distinction between cultural and religious symbols is not classification but qualification: they are not *either* cultural *or* religious symbols, but symbols that are *both* cultural and religious, yet not the same extent, and the evaluation might be different from person to person.

Freedom of religion is the right that individuals possess. Public power has no freedom from religion. Therefore, it cannot hold a religion as exclusive; it cannot be committed to any religious conviction.

The ombudsman's opinion concluded that to decide the permissibility of displaying the cross in the offices of the municipality, it is necessary to first examine whether the cross is a cultural or religious symbol or whether the cross is displayed in a room to exercise public power. In the latter case, it gives the impression that public power and religion are connected. The possibility of posting a cross can only be admissible in exceptional cases, especially if the cross has a tradition in the municipality. Tradition may result in secular content, which justifies the public use of the symbol.

Second, it must also be considered whether the display of the cross connects to the individuals' right to freedom of religion. The freedom of conscience and religion grants everyone to choose his or her conviction, either religious or not (freedom of conscience), and everyone is free to perform any activity deriving from their conviction (freedom of religion). The Fundamental Law does not limit freedom of religion to the private sphere: people holding public offices can also manifest their conviction, either explicitly or via symbols. Even if we consider the cross as a mere religious symbol, one cannot deny someone to keep the cross with him- or herself, as a 'personal subject.'

On the other hand, abstinence from religious activity is also part of the freedom of religion. Consequently, no one can be forced to show religious respect for a symbol. Symbols cannot be 'offensive'; everyone has the right to keep their 'religious privacy.' However, observing the cross (having the cross in sight) generally does not mean the infringement of freedom of religion; everyone has to respect the freedom of others (individuals do not have to respect the symbol, but they have to respect the freedom of religion of those who prefer the symbol).

Considering all above, the ombudsman concluded:

- Everyone is free to manifest their religion, either explicitly or through symbols. The right pertains to public officers, too; they can present religious symbols according to their personal conviction.

- No one can be forced to respect religious symbols. When displaying a symbol publicly, it must be considered whether the symbol is ‘offensive’ or not.
- Public authorities do not have freedom of religion. Therefore, in offices open for exercising public powers, religious symbols are admissible exceptionally, if the cultural content is obviously greater than the religious one.⁶³

8. The system of legal protection

In Hungary, the case law for the use of religious symbols is very poor when public officials intend to use them. The Hungarian jurisprudence on religious symbols consists of two recent cases on blasphemy.

When discussing religious symbols, it is also an interesting issue to what extent symbols can be targets of irony, memes, or direct hatred. When speaking of blasphemy, one may think of ancient, medieval cases, but there are also modern cases in which freedom of expression and freedom of religion compete.

Comparing the European experience, Norman Doe concludes that the portrayal of religion and its permissible limits raise a host of issues of relevance, not only to the media but also to governments and society. The way religion is portrayed not only conditions society’s understanding of religion but also impacts the political relations between religious groups, society at large, and the state.⁶⁴

It is noteworthy that even though the European Court of Human Rights is very cautious in defining a general standard, they decided not to establish a general rule; rather, they let states stipulate the limits of freedom of expression when it infringes on religious conviction.⁶⁵ Hill and Sandberg add that the abolishment of classic blasphemy laws resulted a ‘right to blasphemy’ at first sight, yet the protection of religious communities may still lead to punishment in certain blasphemy cases.⁶⁶

In Hungary, there have been two cases at the Constitutional Court, both in 2021, that examined the collision of freedom of expression and the dignity of an individual who belongs to a religious community. In the first case, there was a demonstration in Budapest in front of the Embassy of Poland in 2016; demonstrators protested the pro-life abortion rules Poland introduced. One of the demonstrators was dressed as a bishop and imitated serving the Eucharist with abortion pills instead of bread; he gave the pills to the others with the commonly used phrase, ‘Body of Christ.’ This activity was challenged as infringing on the dignity of Catholic people, yet the courts

63 AJB 5150/2016.

64 Doe, 2004, p. 287.

65 Koltay, 2017, p. 176.

66 Hill and Sandberg, 2017, p. 132.

decided in favor of the demonstrators; they claimed that if the Catholic Church has a strong and widely proclaimed view on abortion, they also have to face criticism.

The second case was against a political journal that is famous for ironic, satirical covers. One of the covers was an adaptation of Gerard von Honthorst's *Adoration of the Shepherds*; the face of the shepherds was replaced by current politicians, and instead of Jesus, they adored a bag of gold. The message of the image was clear: seemingly Christian politicians do not love Jesus, but money.

The Constitutional Court decided on two cases on the same day. The court stated that freedom of expression does not protect statements that are outside the scope of public issues—statements that aim only to degrade others' human dignity and humiliate them. Freedom of expression might be harmful for others but may not infringe on human dignity. Just because some members of the community feel offended by the statement, the expression falls under the protection of the constitution. However, if the expression is against the core content of personal conviction, freedom of conscience prevails. Consequently, the Constitutional Court concluded that the imitated Eucharist infringed freedom of religion,⁶⁷ while it found the cover page of the journal acceptable.⁶⁸

Remarkably, except for one concurring opinion, the decisions do not refer to the protection of Christian culture. When balancing competing rights and interests, the court put only freedom of interest and freedom of religion on the scale. In other words, the court protected the individual's right to religion, not the country's culture. Consequently, one may conclude that it has no relevance if the protected religion is Christian or another religion. Islam, Judaism, Buddhism, or any other religion have the same protection as Christianity. From the perspective of freedom of expression, it is irrelevant which religion the expression pertains to—the protection and the limits are the same.

9. Conclusions

Both the Hungarian constitution and international human rights agreements ensure freedom of religion in Hungary. Hungarian jurisprudence has had several issues concerning the relationship between the state and the church, and on the acknowledgment of religious communities. Individual freedom of religion and the admissibility of wearing religious symbols resulted in much less workload for the courts.

One possible reason for this is the relatively homogeneous society. Although a great part of the population is not religious or do not practice their religion,

67 6/2021 (II. 19) Constitutional Court decision.

68 7/2021 (II. 19) Constitutional Court decision.

practically everyone is Christian by culture. The greatest non-Christian community in Hungary is Jewish, whose culture is very close to that of the Christian majority. Muslim or Buddhist culture is rather different, but there are not many people in the country competing for Christian culture.

The biggest challenge for Christian culture is not the culture of a different religion, but the establishment of an anti-Christian, atheist culture. However, despite the rising number of non-religious people and the anti-religious socialist era, atheist culture has not yet stabilized in the country.

At present, wearing religious symbols (either Christian or other religion's symbols) is accepted in society, such as the public celebration of Christian holidays. Forthcoming events are unpredictable; legislation, sooner or later, always follows social expectations. The law cannot be far from reality.

The official use of symbols is a different issue. As for now, the Fundamental Law and government behavior greatly uses and relies on Christian culture. Yet, it is the ideology of the government majority and is not connected to the relationship between church and state. The Fundamental Law opted for the contribution model, which was practically the model between 1990 and 2011, despite the wording of the previous constitution. However, it is difficult to determine what this contribution means in practice.

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