Recent Legislation and Jurisprudence in Hungary on Religious Freedom (2023-2024)

Balázs Schanda[1]

1. New law on the Hungary Helps Programme

As a landlocked country with no colonial legacy, both migration to Hungary and the encounter with other cultures have been limited for centuries. Especially in the 20th century, more Hungarians have left the country due to the troubled history of the country than foreigners arrived. The challenge of coexistence has focused on neighbouring nations, different Christian denominations and to Jews who became highly integrated in the society in the course of the 19th century. From the age of wars between the Kingdom of Hungary and the Ottoman Empire (15-17th centuries) there is a deeply rooted perception that regards Hungary as a bulwark of the Christian West against Islam. Although the anti-Turkish sentiments have widely disappeared, the feeling of being a small and endangered nation with a unique culture is deeply rooted. Mass immigration is generally seen as a danger for the national culture, security and the established way of life. The Constitution clearly recognises the impact of Christianity in the history of Hungary as well as the duty of the state to defend the Christian culture of Hungary.[2] This is not formulated in a hostile way towards other religions but clearly favours preservation of the historically emerged cultural landscape. Also the responsibility of the political nation towards the cultural community is clearly stated.

In a country where religious communities during and after the communist regime have benefitted from aid of the sister churches, it is a new situation that religious communities as well as the state turn towards the third world, to churches in need. On the international level the Government has launched a remarkable foreign aid agency in 2017 as a kind of response to the migration crisis (‘Hungary Helps’). The government-sponsored programme clearly favours the help to persecuted Christians. Field action is primarily carried out in Iraq, Lebanon, Syria and some African countries. University scholarship programs provided by the Government explicitly target Christians from the Middle East. The religious bias is a clear message against the political correctness not giving special attention to the desperate fate of

[1] Professor of Constitutional Law and Ecclesiastical Law, Pázmány Péter Catholic University, Faculty of Law and Political Sciences. https://orcid.org/0000-0001-6876-4152

[2] Schanda, Balázs: Hungary’s Christian Culture as Subject of Constitutional Protection STUDIA Z PRAWA WYZNANIOWEGO / STUDIES IN LAW ON RELIGION 23 pp. 55-72 (2020).

Christian minorities in radicalising societies. Aid to Christian communities in need is regarded as a policy that can foster the survival of Christians in dominantly Muslim societies and slow international migration by helping people stay in their native countries. In 2023 Parliament passed a law providing for the legal framework of the program.3

According to the preamble of the new statute:

> Hungary expresses its solidarity with communities facing humanitarian crises or other situations that threaten the basic conditions of human life and is committed to assisting them in a spirit of humanity. As a member of the international community, Hungary is committed to addressing global challenges, establishing and maintaining peace and security, and ensuring sustainable economic development. Hungary must also contribute to reducing and preventing migratory pressures on Europe, while protecting the security of the Hungarian people. Hungary is committed to ensuring religious freedom as a fundamental human right, which is also the basis for peace and security. The Hungarian Parliament has expressed its solidarity with religiously persecuted minorities around the world through the Parliamentary Resolution 36/2016 (XII. 19.) on the condemnation of the persecution of Christians and genocide in the Middle East and Africa and support for the persecuted. Taking into account that Christian culture is the basis of Hungarian values, Hungary pays special attention to helping persecuted Christian communities.
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> Bearing in mind the linkages between sustainable development, development cooperation and peacebuilding, conflict prevention and humanitarian assistance, Hungary gives high priority to cooperation with developing countries and to direct and local support to vulnerable communities, which contributes to addressing the root causes of conflicts, building resilience to future crises and strengthening stability, thereby helping vulnerable communities stay in place and return to their homelands.
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> In the light of the Charter of the United Nations, the Universal Declaration of Human Rights, the development policy and humanitarian aid principles of the European Union, and in order to ensure the effective implementation of Hungary's activities as a member of the international community in solidarity, in the framework of international development cooperation, international humanitarian aid and strengthening the stability of vulnerable communities, the National Assembly hereby enacts the following Act:
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> The Hungary Helps Programme aims to integrate and coordinate Hungary's international development cooperation, international humanitarian assistance and activities to strengthen the stability of vulnerable communities, taking into account the country's carrying capacity, and to ensure that these activities complement and

[3] Act LXXXIX/2023.

reinforce each other. The Hungary Helps Programme enables the professional delivery of development cooperation and ensures that aid reaches the victims of humanitarian disasters and vulnerable communities quickly and efficiently.

The programme includes, in addition to humanitarian aid and international development activities, the implementation of all activities aimed at improving the situation of persecuted Christian communities, including research, documentation, awareness-raising and information activities to this end. (§ 1 (3) d) According to the statute, the activity shall be implemented in accordance with the needs and requirements of vulnerable communities. One of the purposes of donations and grants can be the promotion of the free exercise of religion and the preservation of the values of persecuted Christian and other religious minorities (§ 15 (2) 10).

2. Cases at the Constitutional Court

2.1. Autonomy of ecclesiastical procedures reinforced (Decision 3079/2024. (III. 1.) AB)

In a case connected to an ecclesiastical procedure on abuse of minors, the Constitutional Court ruled in favor of ecclesiastical autonomy.

The Constitutional Court has rejected the constitutional complaint seeking a declaration that a contested judgment of the Curia (the Supreme Court of Hungary) was contrary to the Fundamental Law (the Constitution) and its annulment. In the underlying case, the petitioner, who was a member of a religious order and has served in a boarding school for decades, brought an action against the defendant (a former student of the boarding school who filed a complaint against him) for breach of personality rights, alleging that the defendant had infringed his right to reputation by making untrue statements in a notification the defendant has submitted to the Provincial Superior of the Order. The petitioner submitted that the decision in the ecclesiastical proceedings brought against the defendant's notification meant that he could no longer carry out activities which were in the essence of his vocation. The Court of First Instance upheld the action, finding that the defendant had infringed upon the applicant's right to a reputation. The Court of Appeal reversed the judgment of the Court of First Instance and dismissed the action, which was upheld by the Curia. In principle, the decision held that the content of the notification leading to the initiation of proceedings under ecclesiastical law, must be assessed from a personality law point of view, in the same way as the assessment of the denunciation or notification made to the public. Accordingly, if the applicant did not use any unjustified insulting statement in the notification, if the wording did not offend human dignity and if the style was not defamatory, the defendant cannot be held

liable for any damage to reputation, honor or human dignity if the notification remained within the limits of the procedure.

In the petitioner's view, the Curia infringed his right to human dignity and his fundamental right to reputation. In its decision, the Constitutional Court stated that it is part of the institutional aspect of religious freedom that a religious community is free to organise its internal affairs separately from the State. The enforcement by a religious community of its own internal disciplinary rules, as long as the personal data of the person concerned are not made public, is part of the autonomy of the church. The issues raised may include those which are also sanctioned by state law and in which, where appropriate, even law enforcement authorities may intervene independently of the church's proceedings, but there may also be matters of faith or morals which have no relevance for the state legal system.

In the context of the case at hand, the Constitutional Court examined whether the expansive interpretation applied by the Curia was in line with the principle of the separation of church and state. The Constitutional Court took the view that there was no substantive reason for the court to assess a notification to a church agency made by the defendant differently from a notification to the police made in a criminal case. The possibility of making a report leading to action by a church body enjoys the protection of the autonomous functioning of religious communities, as long as the information raised in the proceedings is not made public. By applying the analogy of a report in a criminal case, and by assuming that the report alone cannot constitute an infringement of personality rights, the Curia has ensured that the separation of functions provided for in the Fundamental Law is respected. Therefore, the Constitutional Court decided that the practice of the Curia governing notifications and denunciations, and the present judgment, as well as its interpretation extending to notifications made in church proceedings, are not contrary to the Fundamental Law, and therefore rejected the constitutional complaint.

2.2. Transferring public schools to religious entities not unconstitutional (Decision 3192/2024. (V. 31.) AB)

The Constitutional Court dismissed the constitutional complaint for the declaration and annulment of Articles 11/A and 13(3) of Act CXXIV of 1997 on the Material Conditions of Religious and Public Purpose Activities of Churches as unconstitutional. Under the contested provisions (inserted into the statute in 2022), where the public education institutions have been transferred to ecclesiastical entities, the property also should be transferred to the ecclesiastical entity. In numerous cases municipalities have enabled ecclesiastical entities to run schools, but the school building has remained the property of the municipality. For some communes this move has freed them from the burden of running an institution, and the parental demand for more church-ran schools could be satisfied. This way church-ran schools

have emerged in buildings owned by the commune. In the long run, communes may trend to neglect the maintenance of buildings that host institutions not ran by themselves. The amendment of the statutes provided for transferring the property to the user free of charge –in the cases when this was requested by the ecclesiastical entity.

In the applicant municipality's view, the legislation has restricted its right of ownership in a way that is not unavoidable, does not have a compelling reason and does not satisfy the requirements of necessity and proportionality. It argued that the efficient performance of its tasks is ensured by other means, such as the tripartite use contract between the municipality and the diocese, the school district center and the applicant, which is still in force. In its view, the contested provisions also constitute a disguised expropriation of municipal property, but instead of providing for immediate, full and unconditional compensation, they require the property to be transferred free of charge.

In its decision, the Constitutional Court stated that the difference between the rights of local authorities to their movable and immovable property, which is the seat of a public education establishment, is based on reasonable grounds, according to the constitutional status of the person who maintains it. The property rights of municipalities are largely (but certainly not exclusively) functional. When a public function like education is carried out by another entity, making this entity an owner, does not qualify as expropriation in the strict sense. The Fundamental Law also provides for cooperation between the State and the established churches for community purposes, and stipulates at the highest level that, where the established churches participate in the provision of services, the State must grant them special rights in this respect. In addition to being fully obliged to fulfill the State's task, the church that maintains the school also has a special addition, as it has to maintain the school and to provide education. In any case the church entity would give up education in the given building, the property has to be transferred back to the municipality free of charge. This way the issue in focus is not the property but the function. The church may take the property over, but has to maintain the function, when the function is given up, the property has to be returned. What seems to be real property can and has to be used for a given purpose, but cannot be used for other purposes, nor can it be alienated. The Constitutional Court therefore rejected the constitutional complaint.

2.3. No state remedy in internal ecclesiastical procedures (Resolution 3062/2024. (II. 23.) AB)

Disciplinary proceedings were initiated against the petitioner, who was a pastor sanctioned by his Churches' Disciplinary Council. The petitioner asked the ecclesiastical court to review the disciplinary decision. The ecclesiastical court annulled the disciplinary decision and

imposed a disciplinary sanction of dismissal on the applicant. The judgment of the Council of Appeal of the Ecclesiastical Court upheld the judgment of the Court of First Instance.

The petitioner brought an appeal before the Labour Court, seeking to have the judgment of the ecclesiastical court of second instance set aside and to have his employment as a clergyman reinstated.

In its view, the ecclesiastical court had significantly exceeded the procedural time limit, and the decision therefore violated the right to a fair trial and should have been annulled. By refusing to proceed, the labor courts infringed on the applicant's right to a fair hearing.

In its resolution the Constitutional Court has rejected the application stating that labour courts were right not to assume jurisdiction over internal ecclesiastical matters. Church service is not governed by state law, but exclusively by autonomous church norms. As a consequence of church-state separation, state courts shall have no jurisdiction over internal ecclesiastical issues.

The approach is in line with the case law of the European Court of Human Rights. In a case that arose from a disciplinary procedure of a pastor removed by the Hungarian Calvinist Church, the ECtHR recognised that enforcing internal discipline in a religious community constitutes part of church autonomy. In internal church disputes, state courts shall have no adjudication. The ECtHR has acknowledged this principle as part of religious freedom, stating that Hungarian courts did not violate the ECHR when they refused to take a stance in a case arising from a disciplinary procedure of the Calvinist Church against a removed pastor.[4]

3. Cases at ordinary courts

3.1. Founding of internal entities of religious institutions cannot be reviewed by state organs (Curia, Kúria Pfv.III.20.461/2024/7.)

§ 8 (2) of Art CCVI/2011 (the law regulating the legal status of religious communities) clarifies the protected internal autonomy of religious communities with both a positive and a negative approach. In addition to excluding the use of public power for the enforcement of decisions based on the internal rules of religious communities, it also prohibits the judicial review (amendment, examination) of decisions based on the internal rules of religious communities. The central element of the conceptual specificity of the internal ecclesiastical legal person is the internal rule of the establishing church (established church, registered church or registered church –internal norm would be e.g. canon law): the internal rule itself is the internal rule by which the internal ecclesiastical legal person acquires its existence and legal

[4] Károly Nagy v. Hungary, Judgment of 14 September 2017 no. 56665/09.

personality, and it is the internal rule which determines its functioning. An amendment to the statute of an internal ecclesiastical legal person established by an internal norm of an established church and operating according to its internal norm is subject to ecclesiastical autonomy: it is a decision of an ecclesiastical legal person based on an internal rule which is not regulated by state law and therefore cannot be reviewed by a state court [Act CCVI of 2011 (Ecclesiastical Act), Articles 8(2), 11, 11/A].[5]

3.2. Ecclesiastical legal entities have no subjective right to pursue a concrete public activity (Curia, Kúria Pfv.II.21.213/2023/4.)

The cooperation of state and church for the public good, especially to pursue public services, is safeguarded by the Fundamental Law (Constitution Art. VII. (4)). This, however, does not mean that any ecclesiastical legal person had a subjective right to take over any public service at its choice. The plaintiff in the case was a Reformed parish and the defendant was a municipal government. The plaintiff sought to have the court replace the defendant's statement to the Government Office that the contract for the provision of the village nurse service in a municipality had been terminated by reason of the defendant's resignation, and to have that change registered and removed from the register as the maintainer. The applicant also requested that he be registered as the maintainer with effect from the same date. The Curia found that, although the Church has a substantive right to provide social services in general, the provision of the village nursing service at issue in the case was not covered by the Social Security Act. 56 (1) and §120 of the Social Security Act, and the church may only perform this task on the basis of a contract with this body. It is important to underline that the Curia has ruled that the Church has a substantive right to the non-religious activities listed in the law in general. However, in the case at hand, the Church did not meet the other specific legal conditions.

3.3. Conditions for 'upgrading' the legal status of religious communities strictly interpreted

(Curia, Kúria Pfv.III.21.303/2022/6)

In the four-tier system[6] provided for religious communities since 2019,[7] the Evangelical Fellowship (a breakaway Methodist community) has become listed and aimed at an upgrade

[5] https://kuria-birosag.hu/hu/kuriai-dontesek/86-i-az-ehtv-8-ss-2-bekezdese-pozitiv-es-negativ-megkozelitessel-egyuttesen-teszi

[6] Balázs Schanda, A tiered parity? The status of religious communities in Hungary. Studia z Prawa Wyznaniowego 2025. https://doi.org/10.31743/spw.18370

[7] Following an amendment of Act CCVI/2011 by Act CXXXII/2018

as an incorporated church (class one registration instead of a class two registration.) A condition for upgrading is being the beneficiary of at least 4,000 tax assignments over five years. In 2024 over 90 thousand taxpayers have assigned 1% of their income tax to the Evangelical Fellowship. The Metropolitan Court granted the upgrade, and the court of appeal has upheld this decision. The Curia, however, upon the procurators' appeal has rejected it, as the community has only benefited for one year from the sufficient number of assignments by the time of the request. It has to be noted that from 2012 to 2021 the community –as all other communities not recognised as established churches– was prevented from benefitting from tax assignments as this right was preserved for established churches. The CC requested opening the possibility to all religious communities as individual taxpayers cannot be differentiated on the basis of their belonging to more or less established religious communities.[8] The Parliament, however, only reopened the possibility of tax assignments with considerable delay, with the consequence that for additional years the Evangelical Fellowship (and other non-established churches) could not benefit from tax assignments. The Curia decided on a normative basis, stating that the applicant did not reach the required number of assignments for the time frame requested. Certainly by 2025 the community concerned will be able to meet criteria.

[8] Decision 17/2017. (VII. 18.) AB