

1.Existing rights in respect of Holy Places and religious buildings or sites shall not be denied or impaired.

2.In so far as Holy Places are concerned, the liberty of access, visit and transit shall be guaranteed, in conformity with existing rights, to all residents and citizens of the other State and of the City..., as well as to aliens, without distinction as to nationality, subject to requirements of national security, public order and decorum. Similarly, freedom of worship shall be guaranteed in conformity with existing rights, subject to the maintenance of public order and decorum.

3.Holy Places and religious buildings or sites shall be preserved. No act shall be permitted which may in any way impair their sacred character. If at any time it appears to the Government that any particular Holy Place, religious building or site is in need of urgent repair, the Government may call upon the community or communities concerned to carry out such repair. The Government may carry it out itself at the expense of the community or communities concerned if no action is taken within a reasonable time. ...

5.The Governor ... shall have the right to determine whether the provisions of the Constitution of the State in relation to Holy Places, religious buildings and sites within the borders of the State and the religious rights appertaining thereto, are being properly applied and respected, and to make decisions on the basis of existing rights in cases of disputes which may arise between the different religious communities or the rites of a religious community with respect to such places, buildings and sites. He shall receive full co-operation and such privileges and immunities as are necessary for the exercise of his functions in the State.

It is clear that further study would be needed, both by Ukrainian and non-Ukrainian specialists, to determine which precedents might be further shaped and developed to fit Ukrainian conditions. Nevertheless, Ukraine's religious problems are neither intractable nor insolvable, and Ukraine's media outlets and educational centers can both play a major role in helping to raise awareness of such solutions before civil society and the state.

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## **RELIGIOUS FREEDOM IN HUNGARY WITH SPECIAL REGARD TO EDUCATION AND MASS MEDIA**

### **1. Constitutional Regulations on Religious Freedom**

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

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

*(2) This right includes free choice or acceptance of religion or other conviction and the liberty to publicly or privately express or decline to express, exercise and teach such religions and convictions by the way of religious actions, rites or in any other way, either individually or in a group.*

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

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

Hungary has joined the major human rights conventions both under the auspices of the UN as well as those under the auspices of the Council of Europe. Hungary signed and ratified the International Covenant on Civil and Political Rights<sup>1</sup>, the Convention of the Rights of the Child<sup>2</sup> as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup> with its additional protocols.

<sup>1</sup> Ratified by the lawdecree 8/1976.

<sup>2</sup> Ratified by Act LXIV/1991.

<sup>3</sup> Ratified by Act XXXI/1993.

## 2. The Act on the Churches and Other Relevant Legislation

The Act on the Freedom of Conscience and Religion, and the Churches<sup>1</sup> was passed a few months before the first democratic elections. The Act was a major step to realize religious freedom: it provided both for the individual and the collective freedom and for a strict but benevolent separation.

The Act on Settlement of Ownership of the Former Real Estates of the Churches<sup>2</sup> was a major step in 1991 to enable churches to retake a social role especially serving the public and providing space for religious life. A number of norms affected church activities (in detail below). In 1997 a separate Act was passed on the Financial Conditions of Religious and Public Activities of Churches<sup>3</sup>. A number of other acts of parliament as well as government decrees affect churches.

## 3. Agreements with Churches

On 9<sup>th</sup> of February 1990 – a few days after Parliament has passed the new law on the freedom of religions but still before the new law was promulgated – the Holy See and Hungary had re-established the diplomatic relations on the highest level. The accord signed in Budapest states that the issues related to the church are settled by the new *Codex Iuris Canonici* and the new law on religious freedom<sup>4</sup>. This means on the one hand that the Hungarian law on churches is primarily not based on agreements but on the law<sup>5</sup>, on the other hand the law enjoys the positive acknowledgement of the Catholic Church. Two further agreements were concluded with the Holy See. On the 10<sup>th</sup> of January, 1994, an agreement was signed on the military ordinariate<sup>6</sup> as this was a precondition for the Government to set up the army chaplaincy<sup>7</sup>. On the 20<sup>th</sup> of June, 1997 a third accord was signed solemnly in the Vatican on the financial issues concerning the Catholic Church<sup>8</sup>.

Other churches entered into contractual relations with the state too – certainly lacking the international character. Contracts were signed on the army chaplaincies and on financial issues. The latter were promulgated by the government.<sup>9</sup> These contain a number of fundamental issues of church-state relations, however, their juridical value has not been clarified yet, they are more of a declarative character.

## 4. The Fundamental Principles of Church-State Relations

Neutrality can be seen as the most important principle governing the state in regard to the religious communities as well as to other ideologies. The state shall have no ideology, however "*from the right to freedom of religion, follows the State's duty to ensure the possibility of free formation of personal convictions*"<sup>10</sup>. Neutrality means on the one hand that the state shall not identify itself with any ideology (or religion), and consequently on the other hand, that it must not be institutionally attached to churches or to one single church. This shows that the underlying doctrine behind the principle of separation (explicitly stated in the Constitution) is the neutrality of the state. It is to be noted that neutrality has to be distinguished from indifference which is not meant by the Constitution - as follows from the concept of neutrality elaborated in the quoted decision of the Constitutional Court. Neutrality is not "laicism", the state may have an active role in providing an institutional legal framework as well as funds for the churches to ensure the free

<sup>1</sup> Act IV/1990. (On the Freedom of Conscience and Religion, and the Churches; available in English: <http://www.nkom.hu/english/egyhazi/>)

<sup>2</sup> Act XXXII/1991. (On the Settlement of the Ownership of Former Real Properties of the Churches)

<sup>3</sup> Act CXXIV/1997. (On the Financial Conditions of the Religious and Public Purpose Activity of Churches)

<sup>4</sup> Published in the official gazette Magyar Közlöny 1990/35.

<sup>5</sup> ERDŐ, P., *Aktuelle staatskirchenrechtliche Fragen in Ungarn*, in *Österreichisches Archiv für Kirchenrecht* 40 (1991), 390.

<sup>6</sup> AAS 86 (1994) 574-579, 19/1994 international agreement from the minister of defense; BAURA, E., *L'Accordo tra la Santa Sede e la Repubblica di Ungheria sull'assistenza religiosa alle Forze Armate e di Polizia di Frontiera*, in *Ius Ecclesiae*, 7 (1995), 374-381.

<sup>7</sup> Government Decree 61/1994. (IV. 20.) Korm.

<sup>8</sup> Ratified by the decree of the Parliament: 109/1997. (XII. 8.) OGY; AAS 90 (1998) 330-341.

<sup>9</sup> Government Resolution 1056/1999. (V. 26.) Korm. (Agreement with the Lutheran Church); 1057/1999. (V. 26.) Korm. (Agreement with the Reformed Church); 1058/1999. (V. 26.) Korm. (Agreement with the Federation of Jewish Communities).

<sup>10</sup> Decision 4/1993. (II. 12.) AB

exercise of religion in practice. Separation (especially institutional separation), however, is stricter than in the "coordination-model" functioning in Germany.

The meaning of separation can be defined on the one hand by the respect of the autonomy of the churches ("*the State must not interfere with the internal operation of any church*"), and on the other hand by the principle stated in the law on religious freedom: "*No state pressure may be applied in the interest of enforcing the internal laws and rules of a church.*"<sup>1</sup>

## 5. Churches and Education

### 5.1. Religious instruction in state (public) schools

Most schools in Hungary are maintained by the municipalities. The Constitution gives positive acknowledgement to the right of the parents to decide on the education of their children<sup>2</sup>. Corresponding to this right, churches have the right to provide religious education in public schools on demand of the students or the parents<sup>3</sup>. (Non-public schools, like church schools are not obliged to enable religious instruction.) Public schools must be of neutral character and should be accessible to everyone, without an "undue burden"<sup>4</sup>.

Neutral public schools should not endorse any religion or ideology, but have to provide objective information about religions and philosophical convictions. Schools should provide fundamental ethical knowledge<sup>5</sup>. The public education on religion and the church education of religion are of different nature. Religious instruction is not a part of the program of the school, the teacher of classes in religion is not member of the school's staff, notes are not given in the school reports, the churches decide freely on the content of the religion classes as well as on their control<sup>6</sup>. Teachers of religion classes are in church service, however the state provides funding for the churches to fund the teachers' activities. The school only has to provide an appropriate time for religion classes (this is a difficult issue in many cases) and the teaching facilities. Churches are free to transmit their belief during the religion classes: they do not have to provide neutral education. Religious education is not part of the public school's task (that would be to provide information on religion), but a form of introduction into the life and belief of a given religious community on demand of the parents.

### 5.2. Church schools

The Hungarian law does not know "denominational" or "religious" schools: the term used is "church" schools. Schools maintained by non-public entities are not bound by the principle of neutrality<sup>7</sup>. That means that private schools can have religious character but they can also exclude religious instruction delivered by the churches. For a period of transition there were some municipal schools as well as some classes in public schools with religious character. This scheme was accepted only for a period of transition<sup>8</sup>. Church schools are free to identify themselves with the teachings of a given religion<sup>9</sup>. It is to be noted that the number of educational institutions (from kindergartens to secondary schools) maintained by churches has risen from 10 secondary schools to 262 institutions by the year 1998/99<sup>10</sup>. The percentage of students visiting church schools is still rising each year as newly founded schools are filled up, however they are not likely to exceed 10%, that is, it will remain under the percentage of active believers and way behind the social demands.

### 5.3. Institutions of higher education

Prior to the elections in 1990 the law on education was changed in the sense that institutions of higher theological education were acknowledged as such while existing theological faculties were qualified as "theological universities"<sup>11</sup>. This, however, did not affect the purely

<sup>1</sup> Act IV/1990 § 15 (2)

<sup>2</sup> Constitution § 67 (2)

<sup>3</sup> Act IV/1990. § 17. (2), Act LXXIX/1993. (On Education) § 4. (4), § 10. (3) d), § 13. (3)

<sup>4</sup> Decision 4/1993. (II. 12.) AB; Act LXXIX/1993. § 4. (2)

<sup>5</sup> Act LXXIX/1993. § 4. (2)-(3)

<sup>6</sup> Act LXXIX/1993. § 4. (4)

<sup>7</sup> Act LXXIX/1993. § 4. (2)

<sup>8</sup> Act LXXIX/1993. § 125. (1)

<sup>9</sup> Decision 4/1993. (II. 12.) AB

<sup>10</sup> 69 kindergartens (1,4 %), 168 primary schools (4,5 %) and 77 secondary schools (7,4 %). 5 thousand visit church kindergartens (1,3 %), 39 thousand study in primary schools (4 %) and 20 thousand in secondary schools (5,3 %).

<sup>11</sup> Act XXIII/1990. on the modification of Act I/1985.

ecclesiastical charter of these institutions. Church institutions – including institutions of higher education – were granted a state subsidy in a similar way as public institutions. A list on the theological institutions – having been extended several times – was published in the official gazette; this list is now attached to the law on higher education<sup>1</sup>. The law on higher education requires the accreditation of theological institutions, but the content of theological courses is not subject of scrutiny<sup>2</sup>. Degrees are acknowledged by the state. The law has detailed provisions that provide for exemptions for church institutions from various obligations, while in other cases there are no distinctions made. Besides the training of clergy, the training of chatechets has become a major activity of church institutions.

Churches also have the right to maintain universities and other institutions of higher education that provide training in fields other than theology. The training in secular professions is subject to the same scrutiny in the procedure of accreditation as at public universities, the degrees have the same value, and the institutions are to be funded to the same extent as public institutions<sup>3</sup>. The number of subsidised student places is set every year within the frames of agreements concluded between the maintaining church and the government. After the Reformed Church set up a teacher training college, the Catholic Theological University in Budapest was extended to become the “Péter Pázmány Catholic University” that has besides a Faculty of Theology a Faculty of Humanities, a Faculty of Information Technology and a Faculty of Law and Political Science as well as an Institute of Canon Law. A few months after the Catholic University was founded, the Reformed Church founded a university too, extending its Faculty of Theology in Budapest by a Faculty of Humanities (a Law Faculty was added later and a teacher training college integrated to the university).

It is to be noted that there are no theological faculties at state universities in Hungary. The interpretation of separation and neutrality rule out the possibility of a religious institution maintained by or entangled to the state. Certainly courses *on* religion can be delivered at state institutions too, courses *of* religion not.

## 6. Religion and the Mass Media

A religion or a belief may also be spread through the means of mass communication<sup>4</sup>. However, this cannot happen via commercials on television or in radio<sup>5</sup>. The religious character of the broadcasting has to be indicated in advance<sup>6</sup>. Before, during and after the broadcasting of religious services, commercials are not allowed to be broadcast<sup>7</sup>.

In the public media there is space provided for religious broadcasting. The “Hungarian Television” has concluded collaboration agreements with eight denominations<sup>8</sup>. Their representatives work with the “Editing of religious and church programs”. The material and technical equipment are provided by the Television. The allocation of broadcasting time shows “positive discrimination” towards smaller communities<sup>9</sup>. Religious programs in the (public) media show some similarities with the role of religious education in public schools: there are two fundamentally different models. According to the first one, religious issues have to be covered by the media, but it is the media that determines the programs, the media is responsible for the editing etc. According the other model (“window model”), the media has to provide space for the religious communities themselves: in this case the program is in the hands of the church

<sup>1</sup> Act LXXX/1993 (On Higher Education); At present there are five “church universities” (a Catholic, a Lutheran, a Jewish and two Calvinist, as well as 23 other institutions of higher education, 13 of which are Catholic, while a number of smaller religious communities operate such institutions (like Baptists, Adventists, Pentecostals, Buddhists etc.) For the list of the institutions (including profile description and links) and the law see the website of the Ministry of Education: [www.om.hu](http://www.om.hu)

<sup>2</sup> Act LXXX/1993. § 114.

<sup>3</sup> In this respect difficulties have been constantly arising.

<sup>4</sup> Act IV/1990. § 2. (2)

<sup>5</sup> Act I/1996. (Media Law) § 19. (2)

<sup>6</sup> Act I/1996. § 5. (2)

<sup>7</sup> Act I/1996. § 10. (3); § 17. (4) d)

<sup>8</sup> These are the Catholic Church, the Reformed Church, the Lutheran Church, the Alliance of Jewish Communities, the Unitarian Church, the Baptist Church, the Methodist Church and an Orthodox Church.

<sup>9</sup> 50% of the time is determined for Catholic programs, 25% to the Reformed Church, 12.5% to the Lutheran Church and 12.5% to the further denominations. The total broadcasting time of religious programs was 11,607 minutes in 2000, plus 6,760 of which was repeated on a second channel.

concerned. In the Hungarian public media both models are present: there are programs on religion (especially on the radio), but most religious programs are determined by the churches themselves and the media is only broadcasting the program.

Institutions of public media are share holding companies, directed by boards. These boards are comprised of various organizations. The four “mainstream” churches (these are the Catholic Church, the Reformed Church, the Lutheran Church and the Alliance of Jewish Communities) rotate on one seat in all boards, while the other churches have an other seat in all boards: their participation is decided by drawing of lots<sup>1</sup>.

The media landscape is determined by the lack of frequency. The allocation of frequencies is done by the National Radio and Television Commission comprised of delegates of the political parties (who, however, have a free mandate)<sup>2</sup>. So far there are religious radio stations only on the local level (a Catholic one in Eger and Miskolc and an ecumenical one in Pécs).

Concerning the printed media, there is no special regulation. Churches are free to pursue all kinds of publishing activities. There is a wide range of various press organs and of editorial activities.

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### **ТЕОРЕТИЧЕСКИЕ УСТАНОВКИ ОТДЕЛЕНИЯ ЦЕРКВИ ОТ ГОСУДАРСТВА И ДОПУСТИМЫЙ ИНТЕРЕС ГОСУДАРСТВА К ОБРАЗОВАНИЮ, РЕГИСТРАЦИИ И ДЕЯТЕЛЬНОСТИ РЕЛИГИОЗНЫХ ОРГАНИЗАЦИЙ**

Отделение церкви от государства означает, что государственные органы носят светский характер, а религиозные организации только в особых, предусмотренных в законе случаях, могут выполнять государственные функции. Взяв за основу степень кооперации государства с религиозными организациями, можно разделить государства на 5 групп:

1) церковные государства, где существует религиозный диктат и государство отождествляет себя с одной религией (исламские государства);

2) частично обособленные государства, где, несмотря на то, что конституционно декларировано отделение церкви от государства, на практике его нет; государства этой модели (Латвия, Германия) не отождествляют себя с какой-либо религией, и здесь существует религиозная терпимость;

3) полностью обособленные государства (США, Франция), где четко обозначены границы между церковью и государством;

4) государства государственной церкви, где определена государственная церковь (Англия);

5) антицерковные государства (бывш. СССР). В государствах ЕС при оценке свободы деятельности религиозных организаций распространены следующие подходы: 1) церковное государство (Англия); 2) полностью обособленное (Франция); 3) частично обособленное (Испания, Италия). Латвия относится ко второй группе, так как согласно статье 99 Конституции в Латвии церковь отделена от государства.

Можно перечислить пять главных условий, которые определяют суть принципа отделения церкви в конкретном государстве: 1) государство и его учреждения не контролируют отношение своих граждан к религии и не учитывают религиозную принадлежность конкретных граждан; 2) государство не вмешивается во внутреннюю деятельность церкви (религиозных организаций), если они не переступают рамки закона; 3) государство не оказывает материальной поддержки церкви, в том числе и финансовой поддержки; 4) церковь не выполняет по заданию государства ни одной юридической функции (в том числе и функцию регистрации брака); 5) церковь не вмешивается в государственные дела, а занимается только теми вопросами, которые касаются ее деятельности. Государство охраняет законную деятельность церкви. Нужно сказать, что в Латвии практически не существует ни одного из этих условий, однако, думается, такая

<sup>1</sup> Act I/1996. § 56. (1) b)-c), (2) b)-c)

<sup>2</sup> [www.ortt.hu](http://www.ortt.hu) (also the Media Law available on the website in English)