Religious Symbols in the Public Sphere

Analysis on Certain Central European Countries

Studies of the Central European Professors' Network
ISSN 2786-2518

Description
The book series *Studies of the Central European Professors' Network* publishes the results of research by members of the Central European Professors' Network with the coordination of the Budapest-based Ferenc Mádl Institute of Comparative Law. The primary aim of the series is to present and address legal issues that are strongly related to the Central European region, taking into account the particular legal traditions, culture, and approach of the countries therein. The authenticity of the books can be seen in the fact that renowned authors from the Central European region write about the legal instruments of countries of the Central European region in English. The book series aims to establish itself as a comparative legal research forum by contributing to the stronger cooperation of the countries concerned and by ensuring the "best practices" and making different legal solutions available and interpretable to all of the states in Central Europe. However, it also aims to provide insights and detailed analyses of these topics to all interested legal scholars and legal practitioners outside the region so that they might become acquainted with the legal systems of Central European countries regarding a great variety of subjects.

Religious Symbols in the Public Sphere

Analysis on Certain Central European Countries

Edited by
Paweł Sobczyk

FERENC MÁDL
INSTITUTE OF COMPARATIVE LAW

CEA
PUBLISHING

BUDAPEST – MISKOLC | 2021

STUDIES OF THE CENTRAL EUROPEAN
PROFESSORS' NETWORK

Religious Symbols in the Public Sphere
Analysis on Certain Central European Countries

Published by

© Ferenc Mádl Institute of Comparative Law
(Budapest, Hungary)
ISBN 978-615-6356-06-2
ISBN 978-615-6356-07-9 (eBook)

and

Central European Academic Publishing
(Miskolc, Hungary)
ISBN 978-615-01-3005-7
ISBN 978-615-01-3006-4 (eBook)

DOI: 10.54237/profnet.2021.psrs

The address of Ferenc Mádl Institute of Comparative Law: 1123 Budapest, Alkotás str. 55 (Hungary)
The address of Central European Academic Publishing: 3515 Miskolc-Egyetemváros, Building A/6 (Hungary)

The book was reviewed by
Dubravka Hrabar (Professor, University of Zagreb),
Blaž Ivanc (Professor, University of Ljubljana),
Matúš Nemec (Associate Professor, Comenius University in Bratislava),
Marta Osuchowska (Assistant Professor, Cardinal Stefan Wyszyński University),
Zoltán Pozsár-Szentmiklósy (Associate Professor, Eötvös Loránd University),
Stanislav Přibyl (Associate Professor, University of South Bohemia in České Budějovice),
Gerhard Robbers (Professor, University of Trier),
Mieczysław Różański (Associate Professor, University of Warmia and Mazury in Olsztyn).

Contents

Notes on the Contributors

Editor

Paweł Sobczyk is Dean of the Faculty of Law and Administration and Head of the Department of State and Legal Sciences of the University of Opole, as well as Head of the Fundamental Rights Research Team. He is Deputy-Director of the Institute of Justice in Warsaw. He holds a Certificate of Completion from the Network for Cooperation and Exchange of Experience between High-Level Officials from Central and Eastern Europe SYNERGIA, Lech Kaczyński National School of Public Administration and Others. His main education and research areas are the "classic" areas of constitutional law, human rights, and denominational law, and in recent years the axiology of law, the multicentricity of legal systems, and the principle of justice. He is the author of more than 100 scientific papers, over 30 expert and legal opinions, and more than 70 publication reviews.

Contributors

Lóránt Csink is Professor of Constitutional Law at the Faculty of Law of the Pázmány Péter Catholic University. He is the author of approximately 150 publications (among them four books) in the field of constitutional law and comparative law. He has participated in numerous international conferences and has been a visiting professor in Quito (Ecuador), Saint Louis (United States), and Torun (Poland). He is an editor of two scientific journals. Besides his academic career, he has worked in numerous offices in the field of constitutional law in the Hungarian Parliament, the President's Office, the Ministry of Administration and Justice, the Commissioner for Data Protection, and the Ombudsman's Office. Since 2018, he has worked for the Constitutional Court as a senior advisor.

Dalibor Djukić is Assistant Professor of Church Law at the Faculty of Law of the University of Belgrade. His research interests include religious freedom, the issue of religious autonomy in contemporary societies, the internal organization of Eastern Orthodox Churches, church-state relations, and Serbian legal history. He was engaged in a project of the Ministry of Justice of the Republic of Serbia for which he conducted a comprehensive comparative legal analysis of the regulations of the

registration procedures for churches and religious communities in the southeastern European states belonging to the EU. He has participated in several international and national projects dealing with religious freedom and the role of churches and religious communities in contemporary societies. He is a member of the International Consortium for Law and Religion Studies (ICLARS).

Damián Němec is Professor and Chairman of the Department of Church History and Church Law at the Sts. Cyril and Methodius School of Theology of Palacký University in Olomouc. He has taught church law at the Faculty of Law of the same university for several years, teaching the history of Church law and the relationship between church and state at the Faculty of Philosophy of the same university and church law at the Faculty of Law of Masaryk University in Brno (Czech Republic). He is a researcher at the Institute for Issues of Religious Freedom at the Faculty of Law of the Trnava University in Trnava (Slovak Republic). He is a specialist in the area of the law of the consecrated life, of the law of sacraments and of the relations between state and church, especially regarding the concordats between the Holy See and individual states. He is the author of four monographs, eight chapters in books, five contributions to Festschrifts, fifteen articles in international reviewed journals, twenty-five articles in domestic reviewed journals, and twenty-six articles in reviewed proceedings.

Michał Poniatowski is Doctor of Legal Sciences in the field of canon law, adjunct at the Faculty of Canon Law of the Cardinal Stefan Wyszyński University in Warsaw, lecturer at the District Bar Council in Warsaw, secular and church lawyer.

Vanja-Ivan Savić is Associate Professor at the Faculty of Law of the University of Zagreb. He teaches Legal Theory and Religion and Legal Systems of the Middle East and North Africa. His areas of expertise include the theory of law and state, comparative law, law and religion, religious freedoms, religious legal systems, law and interfaith and interreligious dialog, corporate criminal law, and human rights. Furthermore, his main interests cover law, religion, and the state and religious legal systems as well as human rights in the European context, focusing especially on the ECHR. In 2005, he was a British Chevening Scholar at the University of Edinburgh, where he clerked for Rt. Hon. John Robert Reed, now judge and president of the Supreme Court of the United Kingdom. In 2010, he was an International Fellow at DePaul University's International Human Rights Law Institute in Chicago, United States. He is one of the original signatories to the Punta Del Este Declaration on Human Dignity for Everyone Everywhere signed in December 2018 in Uruguay in connection with the celebration of the 70th anniversary of the UN General Declaration on Human Rights. Most recently, he served as a Distinguished Visiting Research Fellow at the University of Adelaide's Research Unit for the Study of Society, Law and Religion and as a visiting scholar at the Buffett Center at Northwestern University in the United States, where he conducted the project "Law as a Tool for Religious Cohabitation:

Religious Laws and Laws on Religion in Modern Europe, Middle East, and North Africa." At the same time he was guest professor at DePaul University, where he taught Law, Religion, and Politics in Europe and the United States for students of political science and Catholic studies. He was also a visiting researcher and lecturer at the University of Vienna's Platform Religion and Transformation in Contemporary European Society. He has published articles in Croatian, English, and Vietnamese in Zagreb (Croatia), Hanoi (Vietnam), Cluj-Napoca (Romania), Chicago (DePaul), New York (Columbia), Provo (BYU), and Cambridge (United Kingdom), and has prepared a (working) paper at Chicago/Evanston (Northwestern). His textbook, *Criminal Liability of Juristic Persons*, was published in 2013. He is the author of the chapter on Croatia for the 3rd edition of *State and Church in the European Union* (Nomos, Ed. G. Robbers, 2019), a leading lexicon on church-state relations in Europe. He is co-editor (c with Paul Babie) of *Law, Religion, and Love: Seeking Ecumenical Justice for the Other* (Routledge, 2018). He is a member of the International and African Consortiums for Law and Religion Studies and Regular Full Member of the Croatian Academy of Legal Sciences. He is also a member of the Presidency of the Croatian Catholic Association MI and Advisor of the Croatian Bishops' Conference in COMECE in Brussels (The Catholic Church in the European Union).

Frane Staničić is Associate Professor at the Department of Administrative Law of the Faculty of Law of the University of Zagreb. He teaches administrative law, administrative procedural law, police law, religion, law, and society. He is a member of the Scientific Committee for State Administration, Judiciary and the Rule of Law of the Croatian Academy of Sciences and Arts. He is an expert member of the Legislative Committee of the Croatian Parliament. He has been a member of the Special Expert Committee for the Implementation of the Strategy of Education, Science and Technology, and Coordination of Strategies and Actions in the Field of Education and Science since 2017. He has been a member of the Ethics Committee of the University of Zagreb since 2018. He has published 4 books, 60 scientific papers, and more than 150 other papers. He has served as an expert in several domestic and international projects. His main interests are administrative procedures, administrative disputes, expropriation, and other forms of public law deprivations of property, regulatory agencies, and state-church relations.

Vojtech Vladár is Professor at the Department of Roman Law, Canon, and Church Law of the Faculty of Law of the Comenius University in Bratislava. He is the author of several monographs, such as *Pramene práva Katolíckej cirkvi v historickom vývoji* (*Sources of Law of the Catholic Church in their Historical Development*), *Remedia spolii v stredovekom kánonickom práve* (*Remedia Spolii in Medieval Canon Law*), *Držba v rímskom a kánonickom práve* (*Possession in Roman and Canon Law*) in collaboration with Prof. Peter Blaho and Dr. Matej Mlkvý, and the voluminous textbook *Dejiny cirkevného práva* (*History of Church Law*).

Foreword

Paweł Sobczyk, Michał Poniatowski

The discussion about the presence of religious symbols in the public sphere is often characterized by emotional intensity, reflecting the attitude of society toward the basic values on which European culture and civilization are based and also testifying to the Christian identity of many European nations. This discussion has been gaining momentum, particularly in recent years, and undoubtedly requires proper structuring, in which legal arguments may prove helpful.

The historical, social, and religious experiences of Central European states as well as international and supranational guarantees in the field of protection of the freedom of conscience and religion have influenced particular solutions of individual legal systems. As a rule, the use of religious symbols in the public sphere by private and public entities is not prohibited, and their significance often exceeds the religious dimension (Croatia, the Czech Republic, Poland, Serbia, Slovakia, Slovenia, and Hungary).

Therefore, the research team established by the Ferenc Mádl Institute of Comparative Law adopted a relatively broad perspective of comparative law research that consists of the following elements: (1) introduction: scope of research, methodology, basic concepts; (2) historical, social, cultural, and political context of the presence of religious symbols in the public space: political transformation of state after 1989 and its impact on the protection of freedom of conscience and religion; (3) axiological and constitutional foundations: values and principles related to the presence of religious symbols in the public space; (4) model of relations between the state and the Church: general principles, practice of cooperation between the state and religious associations; (5) constitutional guarantees of freedom of conscience and religion: basis, subject, object, limits, means of protection; (6) guarantees according to other sources of universally binding law: the subjective and objective scope of the possibility of manifesting religious beliefs through religious symbols; (7) limits of religious expression through religious symbols: public offices, schools and universities, hospitals, workplaces, business activities, the Internet, social networks; (8) the system of legal protection: the practice of the judiciary, case studies; (9) conclusions: conclusions *de lege ferenda*.

The current research also takes into account the jurisprudence of the European Court of Human Rights in Strasbourg. Through the adopted structure of individual chapters, we attempt to formulate comparative conclusions that are presented in the summary. The main aim of this research is to show the normative aspect of the presence of religious symbols in the public space of selected European countries and outline this issue within the jurisprudence of the European Court of Human Rights to indicate the relevant European perspective.

This monograph is composed of studies made by religious law specialists, who were invited to be the co-authors of this publication: Dr Hab. Csink Lóránt PPKE (Hungary)—religious symbols in the public sphere in Hungary's legal order; Ass. Prof. Dalibor Đukić, PhD (Serbia)—religious symbols in the public sphere in Serbia's legal order; Prof. lic. Damián Němec, dr (Czech Republic)—religious symbols in the public sphere in the Czech Republic's legal order; Prof. JUDr. Mgr. Vojtech Vladár, PhD. (Slovakia)—religious symbols in the public sphere in Slovakia's legal order; Izv. Prof. Dr Sc. Frane Staničić (Croatia)—religious symbols in the public sphere in Slovenia's legal order; Izv. Prof. Dr Sc. Vanja-Ivan Savić (Croatia)—religious symbols in the public sphere in Croatia's legal order; Prof. UO Dr Hab. Paweł Sobczyk (Poland)—religious symbols in the public sphere in Poland's legal order; Dr Michał Poniatowski (Poland)—religious symbols in the public sphere in ECHR's jurisprudence.

The analysis allowed to not only conduct the first international comparative study of issues related to the legal aspects of the presence of religious symbols in the public sphere of seven Central European countries but also to draw extremely important conclusions and *de lege ferenda* postulates.

The editors and authors of the publication express their sincere gratitude to Prof. Dr. János Ede Szilágyi, PhD Head of Ferenc Mádl Institute of Comparative Law, and his colleagues, for having been invited to participate in international research; this publication is a product thereof.

Chapter I

The Legal Regulation of Religious Symbols in the Public Sphere in Croatia

Vanja-Ivan Savić

1. Introduction

It has been thirty years since the dissolution of the former Yugoslavia, when Croatia gained its independence. This political event did not simply create new state entities; it also dismantled an era in which the religious and spiritual side of life was hidden and banned in public. For decades, religious life was suppressed in Croatia. It would not be an overstatement to say that, before 1990, there were two Europe: one in which religion could be practiced freely and another in which religion was suppressed and even banned from public life. Paradoxically, these two Europe still live two separate lives. In the former communist-bloc countries, hard times and the experience of *living in the catacombs* created a steady, tough, and sinewy religiosity, which was perceived, not just as a form of spiritual life and belief, but also as a way to resist the communist regime, which persecuted religion by every means possible. Religion became a symbol of the struggle and a way to retain freedom. The paradox is that areas where religious life flourished (e.g. Western Europe) experienced a serious decline in church attendance. Especially in the Protestant world, churches became more like museums than places of worship. During the past 50–70 years, two new Europe have emerged: one that has religious freedom but no active religious life and another in which the suppression of religion has had the opposite effect: religion is flourishing, at least in comparison to Western European countries.

Vanja-Ivan Savić (2021) The Legal Regulation of Religious Symbols in the Public Sphere in Croatia. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 11–38. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_1

Church attendance in many Central and Eastern European countries is still quite high. At the same time, in the West, many churches and monasteries are being turned into hotels, restaurants, and bars. In addition, Europe (especially the Western part) is entering a new era of 'deeper secularisation', in which religious worldviews are reserved for the private sphere. The antagonisms shaping the European continent are less between different religions than between believers and non-believers, as J. H. H. Weiler pointed out in the final oral argument in front of the Grand Chamber of the European Court of Human Rights in the *Lautsi v. Italy* case[1].

We live in a world of antagonisms. Secularity, a product of the Catholic Church, developed to shield the Church from the influence of feudal landlords and emperors, was basically an invention designed to protect the religious life, in its purest possible form, from an invasion by the profane world. However, that development of thought converted secularity into deep secularisation, transforming its principles into aggressive anti-religious views, in which only the absence of religion was considered acceptable or neutral, which it is not. Contemporary life produces more agnostics and atheists than religious people. While that fact must be noted and acknowledged, religious freedom—the freedom to believe, change beliefs, not believe, or become a believer again—lies at the core of human rights and the very essence of a human being: a spiritual creature. The term 'secular state' is often explained as the complete absence of religion in public spaces, as if being secular or an atheist were neutral positions, and that such positions were more relevant to the world we live in today. However, they are not neutral positions. As Weiler notes, it is not neutral to be a non-believer or agnostic; these too are worldviews. The present study focuses on religious symbols in the public sphere. The core of this discussion is the well-known case of *Lautsi v. Italy,* which will be examined as a landmark case on religious freedom and national identity, related to the personal and institutional dimensions of visible religion.

When discussing the presence of religious symbols in the public sphere, we must draw on methodology that incorporates two basic forms of analysis. The first reflects the *lege lata* concept, which covers historical, cultural, and ethical matters. The second relates to *lege ferenda,* analysing needs and principles that must be protected in the future. We must therefore approach the law as a reflection and summary of the beliefs and moral values of the majority of citizens, who, by the power of their original and genuine rights, transfer the capacity of making law to their national representatives. This is known as the democratic principle. Of course, in every decent democracy, the majority has to find a way to respect minority needs, creeds, and attitudes to the utmost extent, in order to preserve the core values of society. This is known as the human-rights principle. A just society, in my view, is one that tries to achieve the right balance between the two.[2]

1 See: https://bit.ly/3EY2gRh; J. H. H. Weiler's final argument, delivered in front of the European Court of Human Rights in *Lautsi v. Italy*, is available at: https://www.youtube.com/watch?v=ioyIyxM-gnM.

2 See Savić, 2016c.

This paper is not simply about religious symbols in the public sphere, but also about the broader framework in which those symbols appear. It obviously includes the larger issue of religion in the public sphere and the constitutional framework and space awarded to religious organisations and the religious life. All of these issues must be examined within the context of Central European law and culture, since Croatia was part of the former Yugoslavia, a communist state with an anti-religious ideology. Religion experienced hard times in Croatia and public religious traditions were disrupted. At the same time, Europe and the whole Western world are facing an unprecedented period of secularisation currently, which is not just about the separation of church and state. This separation began as a Catholic political initiative to prevent feudal influences on the Church but grew into an aggressive effort to remove religious life from streets and squares, not just to make space for secular life, but also to promote the view that atheistic and agnostic views were more 'neutral' than religion and therefore more acceptable in public life.[3] This approach has labelled hundreds and thousands of religious citizens as inferior people with more primitive and atavistic needs. As a consequence, whole communities are treated as unwanted, particularly when they have had to be silenced. Simultaneously, left-wing groups and parties have proclaimed themselves the sole keepers and rightful holders of the concept of human rights. This leads to a situation in which only left and liberal parties or doctrines are entitled to call themselves progressive or just. In Eastern Europe, the paradox is that most left-wing parties grew out of former socialist and communist regimes, which had no sympathy for the human rights they claim to defend so strongly today. In addition, these groups, who say that they accept differences, are not ready to accept different views and opinions; in fact, they have become more doctrinal than those whom they oppose. Fundamentally, their position is as follows: 'I will accept all differences as long as they do not differ from my own views'. As a humanist, I still believe that there is a middle path, where communication, argumentation, and listening are possible. As a realist, however, I am aware that this is hard to find. Too much of the time, the key word 'respect' is missing.

The obvious consequence of a half-century of socialist/communist rule is that the Continent was divided in the most unusual way. In countries that enjoyed freedom and freedom of religion as an integral (and important) feature of life, religion, with some exceptions, has lost its place in the public sphere, even though many people have become aware of religious roots and traditions that have shaped the normative world and system of values that all Europe lives by wholeheartedly. Freedom of choice, freedom to believe and change religion, freedom to not believe, the presumption of innocence, respect for the law of the land, taxes, and the sanctity of life are just a few values derived from religious norms, primarily those of Canon Law and Christian ethics. By contrast, Central and Eastern Europe, where religion was

3 See Savić, 2020.

suppressed, have preserved their Christian roots, both in spiritual terms and as a form of political resistance.[4]

Growing numbers of social scientists oppose the language of political correctness, which kills honest science and honest discourse. Of course there is a clear difference between hostile and evil language and hatred, which should never be tolerated (politeness and respect are needed on both sides), and honest scientific and thoughtful opinion, which does not have to please everyone. Science is not about being pleasant and non-critical; it is about being honest and truthful. However, the terms and substance of those critiques are used discredit religious arguments without being really dishonest, mean, or disrespectful.[5] The combination of these two factors, secularisation and the disruption caused by the communist regime, makes it seem harder to defend the presence of religion. However, the opposite is actually true.

This research builds on these two premises to prove that religious symbols are accepted in public spaces in Croatia. Although the freedom to not believe falls within the Christian concept of freedom, non-believers do not offer a reciprocal freedom to believers, even though they represent the majority in Central and Eastern Europe.[6]

4 Savić, Abstract from the Conference 'Religion and The Legacy of The Soviet State, A Twenty-Five-Year Retrospective', BYU International Center for Law and Religion Studies and Free University of Georgia in Tbilisi: 'After the times of communism and socialist rule in the former Eastern Europe and after opening towards the rule of law and democracy, observers of the religious life faced the strong paradox of having two Europes—one in the 'West' which has been open and free for decades, but where religious life, although free to exercise, became less practiced; and one in the 'East', where religious life flourishes, although it has been been penalized and suppressed. In the West, religion became less popular for two reasons: conformity and evident secularization. By contrast, in the East, religion was and still is perceived as being free, if only in a folkloristic (rather than spiritual) sense. All major religions in fragmented Eastern Europe retained specific roles in society because, during the communist regime, only religious practices provided a sense of freedom and belonging to the free world—even in the catacombs. In countries in which the religious life was strongly suppressed, people maintained a stronger sense of belonging to particular religious groups. Those repressive regimes appear to have kept religion alive and even stronger. As a consequence, Western Europe developed more freely, but drifted away from spirituality. Eastern Europe remained more traditional and spiritual. Despite differences, the Eastern European countries share one unique identity—a post-communist trend to become both religious and traditional'.

5 See 'University of Chicago Strikes Back Against Campus Political Correctness'. Available at: https://nyti.ms/3o0Rwez.

6 As was the case with the national constitutional referendum on marriage. Most citizens and almost all major religious groups supported the referendum and the definition of marriage as the union of one man and one woman. Obviously, this does not mean that same-sex partners should be separated or excluded from society. A secular state (in which religions and religious organizations can still contribute) should provide a mechanism that fits people's needs and desires without harming or influencing them or promoting immoral behaviour. The law on same-sex unions exists for this reason: it respects the freedom of choice (which is also God's gift in Natural Law Theory; conservatives should remember that), while preserving the moral order of the land (state). See Savić, 2016a: 'It seems that we are living in a world which tends to change its traditional concept of family and relationships between sexes. But that is not the case for everyone. It might look as if traditional concepts of family are losing the battle against post-modern concepts, which tend to dismantle nuclear concepts of family life. However, there are pockets of traditionalist revival: in those places, a more conservative approach seems to win, as being more modern and wanted. The Croatian referendum,

It is unfair for a minority group to suppress the majority by convincing them that they will only be 'progressive' and 'right' if they limit their religious activities to the private sphere of their houses and apartments. This is wrong, legally, politically, and morally. The majority should not have to feel like strangers in their own home. In the same way, minority groups must be respected and assisted. Everyone is in the minority somewhere, so these problems are global and universal. They cannot be resolved by telling the majority to stop behaving like a majority and exercising its rights.[7]

This paper makes the argument that, for cultural and historical reasons, religious symbols do belong in the public sphere in Central and Eastern Europe, including Croatia, for at least three valid conceptual reasons: a) Countries of the former Austro-Hungarian Empire (later the Kingdom of the Serbs, Croats and Slovenes) traditionally displayed religious symbols in public. b) Religious symbols are part of the national identity of Croatia, where most citizens identify as Catholic/Christian; this was particularly true after the dissolution of former Yugoslavia, when around 90% of Croatian citizens declared themselves Christian (Catholic, Orthodox, and Protestant). c) An analogy can be drawn between the Lautsi case and the modern Croatian reality; crucifixes and various Christian insignia are part of the nation's collective identity. There are also some additional arguments, as follows: d) religious symbols can be found in numerous seals and coats of arms, while religious terms can be found in the names of streets, villages, and towns; e) Religious freedom is one of the most important constitutional values in the republic. Most citizens who do not belong to the majority religion are regulated in accordance with the same principles; f) Religious belief cannot be and never is a prerequisite for public office; and g) Religious symbols as such do not offend people and often have symbolic value.

Bearing all this in mind, the present hypothesis is that the presence of religious symbols in the public sphere is a tradition in Croatia. This will be shown through relevant historical data and legal sources. Croatia, as a country with deep Christian

the most unusual socio-legal and political event in modern European legal history, shows exactly that: citizens of Croatia have changed their nation's fundamental document by inserting text that defines marriage as a union between a man and woman. The three monotheistic religions, Judaism, Christianity, and Islam, generally do not accept homosexual relationships and marriages, not just for moral reasons, but because they do not fit into the Creator's plans for preserving mankind through procreation. The major doctrinal issue is that such rules cannot be changed, regardless of what one wants. As those rules come from God himself, they are unchangeable. This article explains the reasons for claiming that only a man and a woman can marry by looking at Old Testament and Torah sources. Related texts in Leviticus 18 and Genesis 22 will be compared with the views of the American philosopher Brian Leiter and the Australian feminist Emily McAvan to prove that marriage has a religious and moral dimension, even in secular and post-secular societies. By connecting Abraham's faith and obedience to the procreation of all nations, we can see Isaac as a symbol of God's request for faith and loyalty. He becomes the archetypal image of all fathers and mothers who are stars and beams of dust in God's plan for humankind. This will become a cultural concept for the millions who will follow in the centuries to come. That concept will be a cornerstone of society, even in the secular or post-secular times that we are living in today'.

7 Savić, 2016a, pp. 725–726.

traditions, has sufficient legal space to accommodate religious symbols within the framework of public appearance, with one important feature—a respect for all who belong to different religions or no religion. This paper will show that Croatia can be a real leader in respecting religious freedoms, even worldwide.[8]

2. The historical, social, cultural, and political context of religious symbols in public spaces

There is a deep interconnection between Catholic faith and Croatian identity. To large extent, those two identities overlap. Of course, Croatia is influenced by modern trends linked to secularities and contemporary living. However, even those citizens who are not practicing Catholics describe themselves as such for cultural and social reasons. Catholic culture is part of everyday life in Croatia. For a long time, being Croatian automatically meant being Catholic; today more than 80% of the population identifies as Catholic and more than 90% as Christian. Croatia also has Islamic and Jewish populations, which are very well integrated. As noted, Croatia has developed a well-organised system of church and religious community channels, both with the state and between the religious communities and organisations themselves. Both horizontal and vertical cooperation are working well.[9] There is a long tradition of religion in the public sphere, except during the former Yugoslav regime, which was communist and anti-religious. However, even then, religion managed to maintain a presence in public life through private celebrations that were so huge and popular they could not be avoided. The Christmas trees were called New Year's Trees and St. Nicholas presents were sold in the markets and streets of Croatian towns and villages. Village names from which the 'saints' had been erased returned to their original versions after 1990, when the first democratic government was formed. One typical example was the small town of Sveti Ivan Zelina (Saint John of Zelina), which was called Ivan Zelina, although everyone knew it was named for the parish saint John the Baptist. The Dalmatian village of Saint Phillip and Jacob also recovered its name after the dissolution of the former Yugoslavia.

It would be impossible to detail here the whole history of religion on Croatian soil, from the first Croatian settlements until today. However, Croatian history is intertwined with Christianity, specifically Catholicism. For this reason, Croatian identity has always been linked to Christian spirituality, tradition, folklore, and

8 Savić, 2021.

9 Savić, 2019, Conference presentation, 'The Croatian Model of Church-State Relations as a role model for the Region?' *Social Changes in the Global World,* Goce Delčev University, Štip, Sjeverna Makedonija. 'By signing agreements with more than a dozen religious groups, Croatia become a role model in this field; a country where religious communities work together horizontally and vertically in relation to the state as an important partner'.

symbolism. This article aims to show that religious symbols in public spaces have a long and established tradition. Although this was interrupted by the former Yugoslavia, religious belief paradoxically accelerated in the parallel reality of private life, rather than being eliminated.[10]

Christianity was present in Croatia from the 7th century onwards. Given its geographical position, Croatia was always on the crossroads of cultures, mixing Mediterranean, Slavic, and Austro-Hungarian influences. As the 'last' south Slavic Catholic nation west of the Danube, it shared its border with the Ottoman Empire. The western and eastern Roman Empire split along the Croatian border, which ran through the Balkan Peninsula along the Danube River. This geography shaped Croatia's history and its special bond with the Holy See over many centuries. For a long time, Croatia was known as *'antemurale christianitatis'*.

For the purposes of this research, it is important to review the history of Croatia, as part of the Austro-Hungarian monarchy, during the State of Serbs, Croats and Slovenes, Socialist (Communist) Yugoslavia, and modern day Croatia. During the Austro-Hungarian period, the Catholic Church had a status that modern political scientists would describe as a 'state church'. The most prominent figure responsible for regulating religious communities was Joseph II, who signed the Law on Tolerance in 1781, when Catholicism was proclaimed the official religion and other religions were accepted and tolerated.[11] As Staničić explains, in his overview of the legal status of religious communities in Croatian law, the Church was protected by criminal and civil codes and apostasy was punishable as a criminal offence.[12] When the Concordat with the Holy See was signed in 1855, Catholicism became the official Church of the country.[13] In 1859, the Protestant and Catholic faiths were given equal rights.[14] When the dual monarchy was proclaimed, Croatian lands were divided into Croatia and Slavonia. 'Croatia' became the province of Croatia, as it is today. While Croatia consisted of central Croatia, Slavonia became part of Hungary and Dalmatia became part of Austria.[15] Since Croatia and Slavonia had religious autonomy, the Croatian parliament recognised the Catholic, Orthodox, and Evangelical churches and the Jewish and Islamic communities as officially registered and organised religions with legal status.[16] Croatia thus became only the second country in Europe to recognise Islam as a registered and organised religion in Europe, just four years after Austria. It is important to emphasise that Croatia had a Catholic tradition and lived within the scope of Christian values, showing respect for other religions and worldviews, especially during the rule of Croatian Vice-Roy Ivan Mažuranić. These values persist to this day and can be described as follows: a Christian (Catholic) tradition

10 Savić, 2018, pp. 239–240.
11 Savić, 2018, p. 241.
12 Staničić, 2014, p. 227.
13 Staničić, 2014.
14 Staničić, 2014, pp. 227–228.
15 Staničić, 2014.
16 Staničić, 2014, p. 229.

that welcomes everyone but requests respect for and accommodation of traditional Christian values in both the private and public spheres.[17] From those times on, religious symbols like the crucifix and cross have always belonged in the Croatian public domain. At the same time, those symbols are signs of respect for others.

The second period, which is important for understanding religious life in the lands that make up the Republic of Croatia, began in the years after 1919 (the end of the Austro-Hungarian period). This period is characterised by a union in which Croats were unable to express their full political and cultural potential. However, Catholicism remained publicly present, as an aspect of the Croatian national character.[18] The Serbian Orthodox Church had special status and a direct connection with the orthodox Serbian king. At the beginning of that period, King Alexander of Yugoslavia bestowed equality on all religions. The state religion was abolished and the State Ministry for Religions was established. As discussed, the Serbian (and Montenegrin) Orthodox churches had privileged status, which was especially visible in financial matters.[19] During the reign of the same king, the practices of all recognised religions were regulated. The status of the Catholic Church, despite being technically agreed in the new Concordat, was never signed or ratified, due to pressure from the Serbian Orthodox Church.[20] Most Serbian researchers agree that the Serbian government wanted to sign agreements with the Holy See, but was prevented by the Serbian Orthodox Church. It was a huge failure on the part of the state, given that almost 40% of the total population belonged to the Catholic Church (both Roman and Byzantine).[21]

Even though the Concordat with the Catholic Church was not signed, the existing legal framework and political environment provided more than enough space for the continuous presence of religious symbols, after the dissolution of the Austro-Hungarian monarchy. As various sources and archives show, there was clear continuity in religious practice and the presence of religious symbols in public schools in Croatia and Croatian lands. This reflected the close links between Croatian culture and Christianity, particularly Catholicism. This continuity ended abruptly with the emergence of socialist Yugoslavia and its regime, which took a hostile view of all

17 Mažuranić and Savić, 2015, pp. 41–62.

18 See Savić, 2018, footnote 11 and p. 242; Staničić, 2014, footnote 13.

19 Savić, 2018, p. 242.

20 Savić, 2018, p. 243; Staničić, 2014, pp. 234–236.

21 Rastoder, 2012, pp. 939–965. Vjerske zajednice i Jugoslavija: 'Nezavisno od toga, ostaje činjenica da niti jedna Jugoslavija, nije uspjela definisati položaj Katoličke crkve potpisivanjem konkordata sa Vatikanom. Ta činjenica uvjerljivo govori da se model rješavanja ovoga pitanja nije uspio pronaći u državi koja je morala imati interes i uređene odnose sa drugom po veličini vjerskom zajednicom'. Available at: YU historija, https://yuhistorija.com/serbian/kultura_religija_txt00.html, isto tako Novaković, Dragan, Versko zakonodavstvo kraljevine Jugoslavije, Zbornik Pravnog fakulteta u Rijeci, No. 2, pp. 939-965, 2012: 'Budući da odgovarajući zakon nije donet o Katoličkoj crkvi i da se zbog brojnosti i uticaja katoličke zajednice neposredno posle formiranja nove države pristupilo donošenju Konkordata, potrebno je predstaviti proces njegovog donošenja i konkordatsku krizu, koja je na manifestan način pokazala teškoće, pa i nesposobnost, države da rešava važna pitanja', p. 955.

religion, but especially the Catholic faith. As previously noted, this faith was intertwined with Croatian culture and folklore, which were perceived as anti-Yugoslav and anti-state. An examination of photographs available in museums and online proves that the crucifix (or cross) was present in classrooms, alongside a painting or a photograph of the monarch.[22] School certificates from this period show that religion was perceived as an aspect of national and personal identity. Religious education was clearly the most important subject, listed in first place on school certificates and diplomas. The actual subject, Science of the Faith *('nauka o vjeri')*, first appeared on diplomas issued during the Austro-Hungarian period. A second subject, Singing (both profane and sacred) was also linked to religious activities.[23] Certificates issued during the later Yugoslav period (1923 and 1934) included a similar subject, Science on Faith with Moral Instructions *('nauka o vjeri s moralnim podukama')*.[24]

Generally speaking, religious symbols were present in the heraldry of both the Austro-Hungarian Empire and the Kingdom of the Serbs, Croats, and Slovenes (and subsequently the Kingdom of Yugoslavia). Religious clothing and symbols were used by military chaplains, a tradition that was restored after the dissolution of Yugoslavia. Military chaplains, including Roman Catholic, Greek Catholic, and Orthodox priests had a long history and tradition during the Austro-Hungarian Empire. After the annexation of Bosnia and Herzegovina, Islamic spiritual support was established in 1882 through military imams.[25] Between 1918 and 1941, the status of military chaplains was chaotic but real. Although the Military Chaplaincy *(Vojni vikarijat)* was abolished in 1932, it was planned for and partly reestablished in 1939. [26] During the Second World War, the 'Independent State of Croatia' *(Nezavisna Država Hrvatska)* again created a military chaplaincy. The archbishop of Zagreb was named *vicarius castrensis sine titulo* by the Holy See in 1942 and a special office for military priests and religious assistance was established in the special administrative unit in Zagreb.[27] The fact that the Blessed Aloysius Stepinac was a vicar during that period was one of the key accusations levelled against the beloved Croatian cardinal, who saved many Serbs, Jews and others. That did not matter to the communist regime of the former Yugoslavia. Cardinal Stepinac resisted the Nazi puppet regime of Ante Pavelić and put his own life in danger, especially by openly criticising the demolition of Zagreb Synagogue at the Zagreb Cathedral. As a prominent American religious historian has pointed out, no one in the European Catholic Clergy spoke so clearly against Nazi crimes as the Croatian Archbishop Aloysius (Alojzije) Stepinac

22 See the Croatian School Museum, Hrvatski školski muzej, https://bit.ly/2W6rdYS (Accessed: 25 March 2021). It is also possible to examine relevant photos at various websites.

23 Example: Svjedodžba polaznica—Bai Marija, pupil of IV. A form is available from the State School for Girls in the City of Karlovac: https://bit.ly/3EJAMi9 (Sjećanja na 20. Stoljeće).

24 An example of a school certificate from Mandino selo in today's Bosnia and Herzegovina (inhabited by Croats): https://bit.ly/3o4Wwif. Osnovna škola J.J. Štrossmayera, https://bit.ly/3CHu9Lo.

25 Roščić, 2001, p. 455.

26 Roščić, 2001, pp. 459–462.

27 Savić, 2016b, p. 71.

and the Dutch Catholic Cardinal Johannes de Jong.[28] Cardinal Stepinac was beatified at the Croatian Marija Bistrica shrine in 1998 by Pope St. John Paul II. The truth is that Cardinal Stepinac and the Catholic Church managed to retain their presence in Croatian public life, preserving all areas and periods in which Croats lived in past centuries and the nation's religious and national identity. Cardinal Stepinac managed to resist the Pavelić administration, staying faithful to the Catholic Church and Holy See and to the spiritual needs of the Croatian people.[29]

The final point is that religion was publicly present in all aspects of life, regardless of the regime controlling Croatia. Although many of these regimes were unaccommodating toward Catholicism at best and hostile at worst, religious symbols were present in all aspects of public life, including schools, the military, the legal system, and state heraldry, except after the end of the World War II, when the communist regime proclaimed that religion was the opium of the masses. It is a paradox that freedom brought new restrictions and inequalities via the somewhat aggressive secularist movements of contemporary Europe; however, these were erased in the early 1990s by democratic movements in Central and Eastern Europe. To clarify this point: religious symbols have traditionally been used in public spaces in countries such as Italy. They were removed between 1945 and 1990, causing an unnatural and artificial gap in history.

3. Axiological and constitutional foundations

It is impossible to discuss the axiological foundations of Croatian law without a deep and committed exploration of the nature and sources of Croatian law and legal culture, viewing the nation as a group of individuals who live in a particular space, in accordance with specific principles. In legal theory, the law can be perceived as a mirror or reflection of values that are shared by the majority. Most citizens in Croatia are Catholics and the nation has one of the highest church-attendance rates in Europe. However, even those who do not practice their religion identify as Catholics and Christians and follow the faith in a symbolic and folkloristic way.[30] It is a democratic principle to adopt the moral values of the majority; in accordance with Judeo-Christian values, this approach must be combined with the principle of human rights, which respects all members of the society and ensures that minority groups also feel at home. Members of minority groups must similarly respect the

28 See Phayer, 2010. The Jewish author Esther Gitman wrote excellent book on Aloysius Stepinac; see Gitman, Esther, *Kad hrabrost prevlada: Spašavanje i preživljavanje Židova u Nezavisnoj Državi Hrvatskoj 1941–1945.,* Kršćanska sadašnjost., Zagreb, 2019.

29 Savić, 2008, p. 243.

30 Savić, 2008, p. 237.

beliefs of the majority and respect the home (state) in which they live. The needs of different groups must balance. A study of secularism in Europe and the presence of God in the public sphere proposes five steps, which provide a good approach to achieving this balance:

1. *Acknowledging that religion is an important part of the cultural life of citizens (Awareness);*
2. *Acknowledging that religion has shaped the culture (Foundations);*
3. *Securing a minimum of the prevailing set of norms of the majority by law (Democratic Principle);*
4. *Giving the maximum possible rights to the majority by law (Human Rights Principle); and*
5. *Balancing minority and majority rights (Cohabitation)*[31]

It is important to return to the legal and cultural roots of the living nation. Undoubtedly, things change but even new solutions and the necessary changes that arise follow the logic of the law, which is always present to provide security. Transformations are only necessary if groups try to change society by force to implement their own worldview narratives. Each transformation must respect the nation's roots and take the needs of all people into account; the aim is not to change and conquer, but to make life better for everyone. Viewing human rights as a tool to protect minority groups only can lead to oxymoronic situations in which the majority feel like a minority and a new round of problems begins.[32]

Historically speaking, religious symbols were always present in the public sphere. They appeared on the coats of arms of Croatian nobility; many towns and locations were named after saints, with religious characteristics and prefixes. Churches and chapels are an essential part of the Croatian landscape. Without them, Croatia would not be Croatia. Crosses and crucifixes hung on the walls of Croatian schools, courthouses, military barracks, and penitentiaries. Masses were held for the faithful in schools, military institutions, and religious life. Religion was always part of the

31 Savić, 2016c, p. 726.

32 'Aggressive secularism has no meaning in a territory that is deeply rooted in history and shaped by those traditions, which constitute the system itself. The recent judgments of the ECtHR and the socio-legal infrastructure of Europe and its nations are based on balancing two standards: democracy (the majority principle) and human-rights protection (the minority principle). These must be balanced, bearing in mind the following tenets:
1. Europe is not secular in its essence. When this seems to be the case, it is due to political decisions that do not reflect the democratic needs of citizens (the majority principle).
2. Europe, like every other political and legal space, is shaped by its own legal culture and history. The legal culture underpins public morality.
3. Before allowing the majority or minority to determine any position and before investigating the prevailing moral and legal rules, states should recognize religion as an exclusive phenomenon: for many people, it determines what life really should be and touches upon questions of ultimate reality that a vast number of people need.

Croatian national essence. From Corpus Christi processions to Croatian stamps with religious motifs, religion continues to be an integral part of Croatian everyday life.

4. Model of relations between the State and the Church

In his most famous book, Norman Doe, a leading expert on law and religion in Europe, proposed three models for regulating church-state relations. This framework is widely accepted.[33] The three models are: a) state church, b) separation, and c) cooperation.[34] Although these general categories are well established, alterations are possible. For example, it is a serious question whether the complete separation of church and state is really possible, at least in the European context. The standard model of a secular state is the French Republic with its principle of laïcité, which declares that religion is a private affair, reserved for private life—and that it should end at one's own doorstep. However, this is not the case, even in France. If people, inhabitants, or citizens are the most important aspect of the state and its existence, then their values cannot be ignored. Religious norms and morals are part of human creeds; as an integral aspect of values, they are embedded into individual notions of integrity. For this reason, if most people (or even just a few) live in accordance with specific values and consequently vote for a particular *inter alia* system of norms

4. Contemporary Europe is founded on the idea of human rights (the minority principle) and dedicated to the promotion of and respect for differences. At the same time, real legal frameworks are needed to ensure that the majority does not feel as if it lives in its 'own foreign country'.
5. It is necessary to balance the rights of the minority and majority; although this is difficult, this is an essential task for lawyers and politicians alike.
6. Making secularism the state religion imposes the rules of that 'religion' on all members of society. People are placed in a passive position by the state, which overrules all who cherish different cultures. That approach can lead to requests that oppose the legal or public order or public morals.
7. Understanding the traditions and foundations upon which a particular community is founded (e.g., Judeo-Christian, Islamic, Hindu) can produce real solutions, alongside requests to protect the public order as well as human rights. Solutions arise when the minimum requirements of mutual understanding are met and tolerance becomes acceptance.
These principles seek to protect both human rights and religious freedoms, although the latter contain the pure essence of human rights. Denying formative elements that contribute to the system of human rights can lead to serious and even tectonic disruptions of the legal system, which is built upon those elements. Amalgamating human rights with the public order and public morals can lead to a solution that protects higher values alongside necessary values. Necessary values are interconnected with the legal system; without them, the legal system would lose a distinctive aspect of its existence. If religion has a distinctive place in society, or, at a minimum, if religious beliefs have influenced the legal system in which it is rooted, all subjects should respect it and find a way to manoeuvre within it, even when they sometimes feel distant and as if it is not their own.' (Savić, 2016c, footnote 3, pp. 721–723).

33 Doe, 2011, pp. 30–39.

34 Doe, 2011.

(which are often just formalised values), then religion becomes important. One does not have to be religious to understand the social importance and the impact of religion on society.

According to Lasia Bloss, the French republic is not completely consistent about the secular principle that it proclaims.[35] As the 1958 French Constitution clearly states, 'France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs'.[36]

The key problem lies in the interpretation of the world 'secular'. Many years of research have convinced me that the secular state does not really exist, at least not in the sense that most people imagine. Even France is not secular in the way that the word 'laïcité' is generally translated, as a complete absence of religion in the public sphere. In its territorial applications, secularism is not applied equally: departments in Alsace and Moselle, as well as overseas French territories, have special relationships with the Catholic Church. For example, local authorities participate in electing local church officials, who are paid by the state.[37] There are specific tax provisions for religious entities on the one hand; on the other, organisations like the Jehovah's Witnesses, which do not meet the requirements for religious association, are taxed up to 60% on all funds they receive.[38] The point is that French Secularism and attitudes toward it, even without specific exceptions,[39] is steeped in Judeo-Christian legal thought and socio-legal and cultural traditions. The word secularism derives from secularity, a concept 'invented' by the Catholic Church to protect the church from interference from profane and political sources and the king's (feudal) business.[40] The modern, aggressive form of secularism is connected to the historical fight with the Catholic Church, through the French Revolution[41] and beyond. Paradoxically, however, France remains a Catholic country with more Christian bonds than one might imagine. This was clear after SAS v France,[42] which was held in front of the

35 See Bloss, 2003.

36 1958 Constitution of the French Republic, pmbl. art. 1; see ibid., 21.

37 Savić, 2016c, p. 702; also Bloss, 2003, p. 24.

38 Bloss, p. 23.

39 Bloss, 'As the history of these French territories developed differently, the current legal situation in this region differs significantly from the rest of France. The local law still in force dates back to the law Germinal year X (8 April 1802), which merged with a concordat signed on 15 July 1801 and organic articles of the Catholic and Protestant religions. The Israelite religion was established a couple of years later via a decree from 17 March 1808. Thus, four congregations were officially recognized by the state: the Catholic Church, the Lutheran Church (Confession d'Augsbourg, d'Alsace et de Lorraine), the Reformed Church Alsace-Lorraine, and the Israelite religion. Historically, the law of the recognized denominations was characterized by the principle of non-separation, which now exists only in theory. In fact, the public authorities intervene inter alia in the creation and modification of dioceses, parishes, and consistories, as well as in the nomination procedures of most of the ministers paid by the state.'

40 Savić, 2020, acc. to Jos Casanova, 2009.

41 Savić, 2016c, p. 701.

42 SAS v France, App. No. 43835/11, 2014 Eur. Ct. H.R.

European Court of Human Rights, in which the Court approved the French argument that wearing a veil (an Islamic headscarf) did not violate the European Convention on Human Rights and granted a wide Margin of Appreciation right to France.[43]

> [T]he Council of Europe prefers States to have a secular posture, with neutrality and separation between State and religion, but at the same time promoting dialogue with religion. However, the European Union formally respects the national church-state postures of its Member States.[44]

It is more than obvious that the French Republic had no objection to Christian crosses or Jewish kippahs, but only decided that religious clothing was a 'problem' when the number of Muslims in the public sphere increased.[45] Although this stance could be described as hypocritical, it reveals the cultural fibre and identity of the French nation, which disappears under the surface, erupting only when Notre Dame de Paris, a national symbol, is in flames. In this case, the church is a symbol of the nation.[46]

It is important to understand that the initial aim of secularism was to protect the church and religious life from interference from political sources that wanted to shape it to suit their own needs. In the 11th century, long before the European Convention of Human Rights, the Gregorian Reforms set out to protect religious freedom and independence of religion. As discussed in my previous research on secularism in Europe and Croatia, the historical line begins with 'the secular moment' of Pope Gregory VII and develops in various directions—from the church-state model, through the concept of cooperation, to the final complete detachment of religious and spiritual life from the public sphere (at least in theory; this is not really possible when the national sense of cultural and moral (ethical) belonging is hazy and approximate.)

> It begins with the historical moment of separation between the Pope and feudal lords, and then moves towards a more secular and secularised society where, even in the countries where there is an established state-church, the church role is more symbolic; then to the cooperation model, and further all the way to complete separation, as in the French model. There are also tendencies of aggressive secularization to move the line even further to a point where there is a danger of entirely eschewing the concept of recognition and of leading to intolerance of religion and everything

43 Savić, 2016c, p. 701.

44 DOE, see note 34, at 29, 29-30 nn. 168-172 (citations omitted).

45 'France's actions are, to some extent, inconsistent. Even though France is a secular state, it is still historically bound to its Judeo-Christian traditions. French society did not have a problem with the display of crosses and kippahs (yarmulkes), which reflect the nation's Judeo-Christian roots. However, it did have a problem with the expressions of Muslim worshippers. As a result, France decided that displaying religious symbols in French public schools would undermine the secular foundations of the French state. Manifestations of religion matter; they are a key reason why France decided to ban *burqas* and *hijabs*, a decision upheld by the European Court under its margin of appreciation principle.' See Savić, 2016c, p. 703.

46 See Savić, 2016c, p. 702.

that is labelled religious. The church and religion in that scenario would be 'outlawed' by the same method of constitutional shaping as in previous historical periods.[47]

The state-church model exists in some jurisdictions, such as Denmark and the United Kingdom, where royal families are involved in religious life at the church-administration level and the head of state is also the head of the church. In such countries, the national church has a constitutional position, which makes its place unique and somewhat different from those of other religions and religious groups. In Denmark, the constitution states that 'The Evangelical Lutheran Church shall be the Folk Church of Denmark, and as such shall be supported by the State'.[48]

The third group of countries, which follows the cooperation model, includes Poland, Italy, Spain, Portugal, Cyprus, Germany and Croatia, to name just a few. This group is by far the largest. Although these states have various ways of cooperating with religious groups, there are two main, overlapping subgroups: a) countries like Italy and Croatia, which have established relationships with a particular church (most commonly the Catholic Church, which is represented by the Holy See, an international entity); and b) countries like Poland, Lithuania, and Croatia again, which separate church from state but cite the cooperation model in their constitutions.[49] The next chapter will focus on the Croatian solution.

5. Constitutional guarantees of freedom of conscience and religion

As discussed in the previous section, Croatia's model of state-church cooperation connects it to the largest and most present and influential religious community and organisation in Europe: the Catholic Church. The special position of the Catholic Church in Croatia derives from contracts signed between the Holy See and the Republic of Croatia. Those contracts (agreements and treaties, which were previously called 'concordats') are less binding than the constitution but more influential than laws, placing the Catholic Church in a special position. However, the treaties agreed between the Holy See and the Republic of Croatia have opened the way for all major religious groups to have equivalent or similar contracts signed and performed. The Catholic Church thus became a leader in shaping the public sphere to accommodate the religious activities and beliefs of all citizens. The religious lives of 'others' were protected and developed under the auspices of the Catholic Church, which thus became a forerunner in securing religious rights for all citizens, not just Catholics or

47 See Savić, 2020, p. 275, explanation of Figure (2).
48 Constitution of the Kingdom of Denmark, art. 4; also see Doe, 2011, p. 30.
49 See Doe, 2011, pp. 35–39.

Christians. The Croatian constitution guarantees freedom of religion. Perhaps even more significantly, it offers a model of cooperation between church and state that benefits both sides.

It is important to emphasise that religious freedom can be observed through two lenses: a) individual freedom, and b) collective or organisational freedom. Individual freedom includes the right to believe, express religious views, and proselytise. Individual freedom is not complete unless organisational freedom also exists, since religion, by definition, belongs to specific groups with structured canons of beliefs and values, allowing followers to recognise themselves and others. The Croatian constitution protects individual religious freedoms in several sections of the text.

> All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other status[50];
> Freedom of thought and expression shall be guaranteed. Freedom of expression shall particularly encompass freedom of the press and other media, freedom of speech and public opinion, and free establishment of all institutions of public communication. Censorship shall be forbidden. Journalists shall have the right to freedom of reporting and access to information. The right of access to information held by any public authority shall be guaranteed. Restrictions on the right of access to information must be proportionate to the nature of the need for such restriction in each individual case and necessary in a free and democratic society, as stipulated by law[51];
> Freedom of conscience and religion and the freedom to demonstrate religious or other convictions shall be guaranteed.[52]

Church-state relations in Croatia are primarily governed by the constitution and Article 41, which guarantees equality to all religions in the country. Although it declares that the character of the state is secular, the wording shows that the Croatian state accepts the cooperative model of church-state relations. This formula places Croatia within the group of countries that have developed 'separation-with-cooperation',[53] which can also be found in Poland, for example. According to Miloš in the Rijeka Faculty of Law, the Croatian secular state is guaranteed by three major components: the equality of all religious organisations (communities); the separation of church and state; and state assistance and protection.[54]

> All religious communities shall be equal before the law and separate from the state. Religious communities shall be free, in compliance with the law, to publicly conduct

50 Ustav Republike Hrvatske (Constitution of the Republic of Croatia), 22 December 1990, art. 41. Available at: https://bit.ly/3ufCCST.
51 Ustav Republike Hrvatske (Constitution of the Republic of Croatia), art. 37.
52 Ustav Republike Hrvatske (Constitution of the Republic of Croatia), art. 40.
53 See Doe, 2011.
54 Miloš, 2014, pp. 651–677.

religious services, open schools, colleges or other institutions, and welfare and charitable organizations and to manage them, and they shall enjoy the protection and assistance of the state in their activities.[55]

6. Guarantees in other sources of universally binding law

Although the constitution is the most important guarantor of specific religious rights, it is hard to imagine any country in which other sub-constitutional sources do not exist. Croatia is no exception in that respect. As previously discussed, the Croatian legislature decided to accept the cooperation model. Although it is not explicitly stated in the constitution, the text does not forbid it and also leaves space for mutual assistance and support. Yes, that is correct—the support is genuinely mutual, as every country counts on religious groups and services. States rely on the extensive services provided by religious organisations and groups. This has been particularly true during the Covid-19 pandemic, when people of faith have provided consolation, psychological support, and humanitarian aid. Medical services tend to be supported by Catholic nuns and friars, who also distribute food and care for elderly and homeless people.[56]

Various constitutional documents show that the cooperation model has been followed and developed. The key document that covers this is the Law on Religious Communities,[57] alongside international treaties signed between the Republic of Croatia and the Holy See. Similar contracts were subsequently signed between the republic and various religious communities. Together, they form the framework of religious activity in Croatia. The most important documents are obviously the four treaties with the Holy See: a) the agreement on legal issues, signed on 18 December 1996[58]; b) the agreement on cooperation in the fields of education and culture, signed on 18 December 1996[59]; c) the agreement on religious assistance in military

55 Constitution of the Republic of Croatia, art. 14.

56 Torfs calls this behaviour 'positive neutrality'; see Robbers, 2005, p. 26; Savić, 2018, p. 247.

57 Zakon o pravnom položaju vjerskih zajednica (Law on Religious Communities), Narodne Novine (NN), National Gazette of the Republic of Croatia, No. 83/2002, 73/2013. Available at: https://narodne –novine.nn.hr/clanci/sluzbeni/2002_07_83_1359.html; see also Savić, 2020, pp. 276–277; Staničić, 2014, pp. 244–246; Savić, 2018, p. 244.

58 *Ugovor o pravnim pitanjima od 18. 12. 1996.* This agreement was the basis for registering legal entities of the Catholic Church into the register in the Ministry of Administration. Available at: https://hbk.hr/ugovor-o-pravnim-pitanjima/.

59 *Ugovor između Svete Stolice i Republike Hrvatske o suradnji na području odgoja i kulture od 18.12. 1996.* This agreement was the basis for another agreement on religious education, signed on 29 January 1999 between the state and the Catholic Church in Croatia. Available at: https://hbk.hr/ugovor-o-suradnji-na-podrucju-odgoja-i-kulture/.

and police units, signed on 18 December 1996[60] and d) the agreement on economic issues, signed on 9 October 1998.[61]

The following agreements also influence the presence of religious symbols in the public sphere: the 2002 contract between the Catholic Bishops' Conference and Croatian Radio Television on mutual relationships; the 2002 agreement on religious assistance in prisons and detention and rehabilitation centres; and two agreements signed in 2005, the first on religious assistance in hospitals and social-care institutions and the second on the return of church books and registers stolen after 1945.[62]

Croatia has developed relationships with numerous religious organisations, formalising most in accordance with the treaties signed with the Catholic Church. As discussed, the Catholic Church was the forerunner in Croatia, where most citizens identify as religious (Catholic and Christian) and there is demand for the institutional presence of religious institutions in the public sphere. Members of the public do not want religious symbols alone; they value the work that religious organisations perform in society. From a humanitarian and social perspective, this view makes sense. According to Staničić, five categories of organisations have signed agreements with the Croatian state:

> 1. the Catholic Church whose position is regulated by international treaties and which has a special, *sui generis*, status within the Croatian legal system, and which the LLSRC (Law on Legal Status of Religious Communities) does not apply; 2. RC that have signed special agreements with the state; 3. Registered RCs; 4. unregistered RCs that have the form of religious associations, the *in statu* nascendi religious communities; and 5. unregistered RCs that do not even have the form of religious associations.[63]

The fact that all major religious communities have signed agreements with the state means that the vast majority of citizens (believers) are 'covered' by those contracts.[64] In practical terms, this means that members of various religious communities can practice their religions *inter alia* in the public sphere. For instance, most religious (Catholic) holidays are also state holidays. Orthodox Christians (mainly Serbs) have the right to abstain from work at Christmas and Easter, Muslims at Ramadan and Eid al-Adha, Jews at Rosh Hashanah and Yom Kippur, and Adventists on Saturday.[65] According to the Islamic Community of Croatia, the Croatian regulation of religious freedoms and religious life and the integration of Muslims

60 *Ugovor o dušobrižništvu katoličkih vjernika pripadnika oružanih snaga i redarstvenih službi Republike Hrvatske od 18. 12. 1998*. Available at: https://bit.ly/3u7OoyA.
61 See Lončarević, 2018; Bajs and Savić, 1998, pp. 79–95.
62 Lončarević, 2018, p. 4.; also Savić, 2018, p. 249.
63 Staničić, 2014, p. 244.
64 See Savić, 2018., p. 250.
65 Savić, 2020, p. 278.

constitute a leading example internationally.[66] All in all, religion is broadly present in the lives of contemporary Croatian citizens. Although Croatia is a relatively small European Country, it occupies the crossroads of multiple faiths and cultures, setting a great example for how to accommodate the religious rights of various groups. Unusually, the Roman Catholic Church was the initial negotiator, securing rights and everyday support for all. Although Croatia is somewhat unique in this respect, it is no less vulnerable to criticism from the leftist spectrum and especially those who see agnosticism and atheism as more neutral and 'friendly' to all citizens. Perhaps paradoxically, prominent members of groups that claim to own and protect human rights continue to launch aggressive attacks on the church, forgetting that the right to believe is also key human right. All people have the right to believe and to live in a country where faiths are respected and treated with dignity.

7. Limits of religious expression through religious symbols

This chapter examines the current legal and political situation surrounding the presence of religious symbols in the public sphere. This topic may be examined through two important channels: relevant legal sources and public sources, which may not be binding in a legal or even moral way. The latter include written and oral statements made by public officers and commentaries published by journalists in written papers and online media. They also include public debates and initiatives.

Generally speaking, the presence of religious symbols is not regulated by any specific law, legal precedent, or quasi-juridical document. The present article has therefore moved from historical and axiological issues to constitutional issues and current debates. Despite the lack of relevant sources on religious symbols, this paper investigates the topic through the lens of legal theory, using existing juridical and quasi-juridical sources. The Republic of Croatia is a member state of the Council of Europe[67]; as such, it follows and accepts the European Convention on Human Rights[68] which must be observed not only via its original text and direct applications, but also through its relevance to casuistic production: case law.[69] In this area, case law from the European Court of Human Rights offers the only applicable precedent, specifically, the *Lautsi v. Italy* case. A historical and teleological interpretation of this case can be applied to all similar situations, meaning not only that public classrooms 'will be able' to 'contain' crosses, but also that this ruling will apply to other public

66 Ombudsman's Office (Croatia). Available at: https://bit.ly/3zOhAw1.

67 Croatia became a full member of the Council of Europe on 6 November 1996. See: Ministry of Foreign Affairs of the Republic of Croatia. Available at: https://bit.ly/3AGPkMR.

68 European Convention on Human Rights. Available at: https://www.echr.coe.int/documents/convention_eng.pdf.

69 Rodin, 1999, pp. 93–108.

places *(mutatis mutandis),* which can make the case for displaying religious objects. Such places include schools, hospitals, penitentiaries, courtrooms, and military and police premises, but not necessarily post offices, state companies, gas stations, or state-owned companies.

Why this is so? It is entirely clear that modern Croatian legal history is intertwined with Christian iconography, heraldry, and the presence of religious symbols in public. Such symbols have been displayed in Croatian schools, courtrooms, and military premises through the entirety of the modern Croatian state's stages of development. Croatia is located on the border between various cultures and religions. The historical border between the Eastern and Western halves of the Roman Empire left its legacy on subsequent centuries. Croatia held the border against the Ottoman invasion; it was the last Roman Catholic country before the Balkans adopted Orthodoxy as a major religion. As discussed, Croatia was, for centuries, a real '*antemurale christianitatis*'. It belongs to both Mitteleuropa and the Mediterranean regions, sharing its historical, cultural, and socio-religious identity with Italy, Austria, and Hungary. From a legal perspective, the only real argument is that Croatian legal tradition always included religious symbols in the public sphere. They were part of the juridical process and an important way of understanding justice.[70] This long-standing tradition was interrupted only once by the Yugoslav communist regime.

Similar situations in comparable states reveal the problem of discontinuity, a Croatian reality for 45 years, which other countries in the same legal and cultural circle did not experience. In all of the spaces and premises mentioned above, the cross (crucifix) was hung on the wall as a symbol of mercy, justice, and spiritual strength for those who sought strength or were vulnerable. Christ's cross is clearly a universal symbol of suffering, but also of strength and final victory. In a nation with a tradition of public religious symbolism, in which 90% of the population identifies as Christian (mainly Catholic), there cannot be any good reason to ban the display of the cross in contemporary classrooms, particularly given the *Lautsi v. Italy* case and the decision of the Grand Chamber of the European Court of Human Rights.

The second demonstrable reality is the fact that Croatia has regulated the presence of religious manifestations in public through various services and/or activities that necessarily include religious symbols. An example is the work of military chaplains and medical personnel (mostly nuns) within the health system. However, religious symbols are most powerfully displayed through the media, especially national radio and television stations. Specialist TV shows regular cover religious life and the activities of religious groups and organisations, while many radio shows present religious content. Prominent TV and radio shows include *'Susret u dijalogu*' (Meeting in

70 See Savić, 2015, pp. 3 and 341–347 on the US Supreme Court and the importance of symbols in the public sphere: 'Out of all architectural beauties in the United States Supreme Court, those friezes on the South and North Walls are the most striking and powerful. Those sculptures of culture are the most important part of the court because culture shows where the roots of the system are and where branches of laws are heading to. Being religious or not, we have to acknowledge that Jesus has its place there although we do not see him on the walls'.

the Dialogue), *'Riječ i život'* (Word and Life), *'Duhovna misao'* (Spiritual Thoughts), *'Religijski forum'* (Religious Forum), and *'Mir i dobro'* (Peace and Good). The latter focuses exclusively on the Catholic Church. Croatian Television regularly broadcasts the Holy (Catholic) Mass live on Sundays. During the Covid-19 crisis, Catholic masses were broadcast every evening. In all of these ways, religious symbols are visually and acoustically present in public spaces.

The third element involves a 'popular vote' on the presence of religious symbols in particular public institutions, namely schools, where school principals have the power to hang crosses on the wall. Although this has been the case in many schools, it has generated some problems and criticism. There was a well know case in a gymnasium in Zagreb where the school principal, who was later appointed as a Minister of Education of the HDZ (Croatian Democratic Union, centre-right party; today the EPP group in the EU parliament) justified her actions as follows: 'putting the cross on the wall is not forbidden; nor there is any recommendation—this means that what is not forbidden it is allowed. Also, this school was attended by the two sons of the Croatian Mufti, and they didn't have any complaints—if it didn't hurt them, there isn't any reason for others to feel hurt'.[71] The former Minister of Administration Lovro Kuščević, also from the HDZ party, defended the use of crucifixes in public spaces by saying that he hung them in his own office. Although he acknowledged that such a display might be inappropriate for some people in some situations, he argued that a crucifix did not have ability to hurt anyone.[72]

At the same time, left-wing politicians and public workers are advocating against the display of religious symbols in the public sphere. This may become a new ideological battlefield for people of different and/or opposing worldviews. For that reason, former Croatian Ombudsman Lora Vidović has said that, in her opinion, the use of religious symbols should be restricted.[73] The major problem with non-regulation is that religious symbols associated with Christianity will appear in particular public spaces, simply due to an arbitrary decision made by the head of an institution; this is not an adequate justification. Of course, plenty of private schools in Croatia are part of the public school system and follow the state curriculum. These include Orthodox, Jewish, Muslim, and non-denominational schools, which are all entitled to use religious or private symbols. Only schools

71 Vokić, 2007: 'Budući da nema ni zabrane ni preporuke, tko je htio staviti raspelo, mogao je to učniti—kaže ravnateljica Vokić, dodajući kako nikada nije dobila pritužbu da je ikoga u njezinoj školi zasmetalo raspelo na zidu. Budući da su našu školu pohađala i dvojica sinova muftije Ševka Omerbašića, kada njemu ono nije smetalo, nema razloga da ikome smeta'.(Croatian, translated by the author). Available at: https://www.jutarnji.hr/naslovnica/je-li-kriz-u-hrvatskim-skolama-zabranjen-3851772.

72 Minister Lovro Kuščević: I have a crucifix in my office (U uredu imam raspelo—*translated by the author*). Available at: https://bit.ly/3u8o878.

73 Ombudsman Lora Vidović: Restrict Religious Symbols in the Public Institutions in Croatia (Pučka pravobraniteljica Lora Vidović: Ograničiti vjerske simbole u javnim ustanovama u Hrvatskoj—*translated by the author*). Available at: https://bit.ly/3ua2u2k and https://bit.ly/2XMbLBS.

that use the state seal of the Republic of Croatia are legally obliged to restrict the use of religious symbols.

Table 1. Religious symbols in the public sphere, categorised by activity and legal source

TV and Radio Broadcast	Regulated	Contract between Croatian Radio Television and the Croatian Bishops Conference, based on the International Treaty with the Holy See
Military Chaplaincies	Regulated	International Treaty/Holy See
Police Chaplaincies	Regulated	International Treaty/Holy See
Public Schools	Non-regulated, but…	International Treaty/Holy See: religious education is regulated, but religious symbols are not.
Hospitals	Non-regulated, but…	Religious medical personnel can work in public hospitals. Some hospitals have chaplains. A major hospital in Zagreb restored its original name: 'University Hospital Sisters of Charity'.
Other Public Spaces	Non-regulated	N/a

8. The system of legal protection

There is little jurisprudence related to the presence of religious symbols in public spaces. As previously discussed, the display of religious items on public walls, entrances, or shelves has never been banned. In fact, their presence has a high level of presumed allowance. For historical, axiological, and constitutional reasons, organisations that carry out public duties in the military, police, health services, and education sector are entitled to use them. Based on the sources available at the time of writing, only minor complaints have ever been filed against the use of religious symbols in public schools. None of these have required court intervention.

The only case which is indirectly connected with the use of religious symbols in public spaces is *Savez Crkava Riječ Života and Others v. Croatia*,[74] which was filed with the European Court of Human Rights. This case cited agreements with the Republic

74 European Court of Human Rights Appl. No. 7798/08. See: https://bit.ly/3i2i7nZ.

of Croatia made by other religious communities. The State explained that the religious groups in question didn't have more than six thousand adherents or belong to a 'traditional' religious community. The ECHR found that a similar agreement had been made with the Bulgarian Orthodox Church in Croatia, which also lacked more than six thousand members and did not belong to a 'traditional' religious community. The Court found that the action of the state violated Articles 9 and 14 of the Convention.[75] The issue was that, unlike other communities/organisations, the applicants could not provide religious education in public schools and nurseries or obtain recognition for religious marriage through an official document that the local authorities would accept.[76]

9. Summary

Croatia, a country on the crossroads, belongs to the Central European and Mediterranean cultural and socio-legal circle, which is steeped in Judeo-Christian traditions. For centuries, the lives of its citizens have been infused with religiosity. In present-day Croatia, 90% of citizens identify as Catholic or Christian.[77] Religious symbols are a fundamental way of manifesting faith and adherence to specific religious groups. Such religious symbols have both internal and external characteristics. The internal aspect of a religious object is its ability to connect members of the same group through mutual recognition and religious practices. The external aspect is the message that a particular place has, maintains, and retains specific value. This is the most important part of the message that religious symbols address to spectators. A third aspect of the message, connected with the identity of the nation, signals

75 See: https://bit.ly/3i0ZMaA.

76 'In responding to the merits of a claimed violation of Article 14, in conjunction with Article 9, the Court noted that, given that the difference in treatment between the applicants and other religious communities was not in dispute, the court only needed to consider whether such a difference had an objective and reasonable justification, whether it pursued a legitimate aim, and whether it was proportionate to the aim pursued. Referring to the decision in Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria (no. 40825/98, 31 July 2008), the Court reiterated that there were delicate questions to consider when a religious community with a legal personality was required to satisfy criteria in order to obtain special privileges: '[a]s the State had a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs'. As the Government of Croatia was unable to fully explain why some religious communities satisfied the criteria for belonging to 'the European cultural circle', while others, including the applicants, did not, the Court found that such distinctions were without 'objective and reasonable justification'; as such, a violation of Article 14 (taken in conjunction with Article 9) was found'. Source: Equal Rights Trust (summary of the case in articles of the convention and protocols). Available at: https://bit.ly/3kJ6y6Z.

77 Državni zavod za statistiku Republike Hrvatske (State Bureau for Statistics of the Republic of Croatia). Available at: https://bit.ly/3uaqByg.

that the country in question belongs to a specific historical and cultural circle. This aspect can be cultural, rather than religious; it is equally important.

In Croatia, religious symbols of Christianity and Catholicism are part of a long-standing tradition, abruptly broken by war and the acts of the Yugoslav socialist regime, which was anti-religious and anti-Catholic. After the dissolution of the former Yugoslavia, conditions were right to resume the use of religious symbols in the public sphere. This has been particularly true in places where it is clearly beneficial to show that the Croatian state and its citizens are connected to specific values (e.g., Christianity), while at the same time keeping the country secular by separating church and state (religion and the state). A country can be secular without banning all religiosity from public spaces. Secularism means that religious groups do not have the right to interfere in politics except through legitimate public pressure, like other members of a democratic society. Religious affiliation cannot be a prerequisite for public office; no one can be forced to participate in a religious ceremony or penalised for not doing so.[78] Conversely, the government may not attempt to govern religious groups, as long as they follow the constitutional and legal order of the country.

Even non-religious people feel a connection to the culture they were raised in. Although religion is primarily spiritual, it has important cultural and cohesive elements, which are linked to the nation's origins and history. For example, many people who celebrate Easter are not believers; they simply enjoy being part of a tradition that they also belong to—in this case the culture of Christianity. European landscapes are filled with churches and chapels; those towers with crosses are related to national identity—at least in a historical sense. The flags of Finland, Denmark, Iceland, Sweden, Norway, the United Kingdom, and Greece all bear crosses, even though many of their citizens are non-believers or agnostics. Certainly, no one is suggesting that those flags should be changed because many citizens of those countries are not Christian. Who can imagine *St. Paul de Vence* in France or *Sveti Filip i Jakov* in Croatia without the prefixes of sainthood. In fact, no reasonable human should ever think about erasing words simply because they are etymologically religious.

In its judgement in the *Lautsi* case, The European Court of Human Rights basically said that the crucifix was a passive symbol that couldn't harm anyone.[79] Although I agree with this judgment, I disagree that the cross is merely a passive symbol. It is also an active symbol, which represents the values associated with it. These values are an important, if not essential, characteristic of the nation, revealing how it tends to behave in the world.

78 See J. Weiler's final argument in front of the Court in Strasbourg in *Lautsi v. Italy* (footnote 2). Unfortunately, although Weiler was a leading scholar, an expert in law and religion, a distinguished professor of NYU, and a valuable member of the International Legal Community, in my view, he engaged in unnecessary criticism of the politics of some Central European countries, without explaining his final arguments, which appeared to express dislike (Weiler, 2020, p. 99). I would like to thank to my dear colleague Fr. Franciszek Longchamps de Berier for pointing out this article.

79 Ibid.; Zucca, 2013, pp. 218–229.

In Croatia, religious symbols are and have always been present in various aspects of public life. Religion has never been reserved for the space before the doorstep. For this reason, religious symbols are present in public schools, medical facilities, and hospitals, as well as in military sites, police stations, and the media. To ensure an equal approach and avoid potential conflicts and complaints, it would be advisable to amend the current law on the legal status of religious communities[80] by adding a few normative lines of text to clarify which public premises (e.g. schools) should have crosses, where they should be placed, and how large they should be. Alternatively, parents and staff could be authorised to decide whether they want religious symbols on the wall or in other designated places. The simple majority principle should suffice here. As things stand, the law on religious symbols has evolved into a rather soft law, which does not cause much trouble. However, there will be many future challenges to Croatian legal culture, which is based on Judeo-Christianity, not due to the presence or absence of religious symbols, but rather to the constant and aggressive de-spiritualisation of public spaces in favour of other forms of symbolism: conformity and materialism. Either way, Christian symbols persist, signalling the path and values of the nation. Those who can read them, let them read.

80 Ustav Republike Hrvatske (Constitution of the Republic of Croatia), art. 14.

Bibliography

BLOSS, L. (2003) *European Law on Religion: Organizational and Institutional Analysis of National Systems and their Implications for the Future European Integration Process*. New York University Law School, Jean Monnet Program, Working Paper.

CASANOVA, J. (2009) 'The Secular and Secularisms', *Social Research*, 76(4), pp. 1049–1066 [Online]. Available at: https://bit.ly/3lRTXgY.

ČEPULO, D. (2003) 'Prava građana i modern institucije, europska i hrvatska pravna tradicija', *Pravni fakultet Sveučilišta u Zagrebu*, Zagreb, pp. 160–161.

DOE, N. (2011) *Law and Religion in Europe, A Comparative Introduction*. Oxford, UK: Oxford University Press.

GITMAN, E. (2012) Kad hrabrost prevlada: spašavanje i preživljavanje Židova u Nezavisnoj Državi Hrvatskoj 1941–1945 (When Courage Prevailed: The Rescue and Survival of Jews in the independent state of Croatia 1941–1945). Zagreb: Kršćanska sadašnjost.

MAŽURANIĆ A. and SAVIĆ, V-I. (2015) 'Neki pogledi na odnos Katoličke crkve i države u doba bana Ivana Mažuranića i danas', *Godišnjak Akademije pravnih znanosti Hrvatske (Yearbook of the Academy of Legal Sciences of Croatia)*, VI(1), pp. 41–62.

MILOŠ, M. (2014) 'Hrvatske vjerske zajednice u (protu) većinskoj prizmi svjetovne države', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 35(2), pp. 65–-677.

NOVAKOVIĆ, D. (2012) 'Versko zakonodavstvo kraljevine Jugoslavije', *Zbornik Pravnog fakulteta u Rijeci*, 2012/2, pp. 939–965.

PÉREZ-PEÑA, R., SMITH, M. and SAUL, S. (2016). 'University of Chicago Strikes Back Against Campus Political Correctness', *The New York Times* [Online]. Available at: https://nyti.ms/3i5v4NE.

PHAYER, M. (2010) *Pius XII, Holocaust and the Cold War, Golden Marketing-Tehnička knjiga*. Zagreb: XXX.

RODIN, S. (1999) 'Application of the European Human Rights Convention in the Republic of Croatia – an Element of Constitutional Checks and Balances', *Politička misao*, XXXVI(5), pp. 93–108.

SAVIĆ, V-I. (2015) 'Architecture and Law: Lawgivers of the US Supreme Court – So, Where is Jesus?' *Ecclesiastical Law Journal*, 17(3), pp. 341–347.

SAVIĆ, V-I. (2016a) 'From Biblical Law to the Country's Blessed Constitution (Reflections on Croatian Referendum on Marriage) in xxxxx (ed.) *Religion and Non-Religion in Contemporary Societies (Theoretical, Empirical and Methodological Challenges for Research in Central and Eastern Europe and Beyond)*, Abstract, Zadar, Croatia, ISORECEA.

SAVIĆ, V-I. (2016b) 'Report on Chaplaincies in Croatia: Legal and Historical Overview', in Ringolds, B., Rodrigez Blanco, M. (eds.) *Religious Assistance in Public institutions/Assistance spirituelle dans les services publics*. Proceedings of the XXVIIIth Annual Conference, Jurmala, Latvia, 13–16 October 2016.

SAVIĆ, V-I. (2016c) 'Still Fighting God in the Public Arena: Does Europe Pursue the Separation of Religion and State Too Devoutly or Is It Saying It Does Without Really Meaning It?' *2015 BYU Law Review*, 679, pp. 679–726.

SAVIĆ, V. (2018) 'State and Church in Croatia', in Robbers, G. (ed.) *State and Church in the European Union,* 3rd edn. Baden-Baden: Nomos.

SAVIĆ, V. (2020) 'It Works Better if it is not too Secularized: The Croatian Constitutional Model for Regulating State-Church Relations' in Babie, P., Rochow, N., Scharffs, B. (eds.) *Freedom of Religion or Belief, Creating the Constitutional Space for Fundamental Freedoms*. Cheltenham: Edward Elgar Publishing.

SAVIĆ, V-I. (2021) *Ljudska prava vezana uz vjerske slobode i odnos s islamskom zajednicom mogli bi biti vrhunski hrvatski izvozni proizvod*. Zagreb: Večernji list.

STANIČIĆ, F. (2014) 'The Legal Status of Religious Communities in Croatian Law', *Selected Papers of the Zagreb Law School*, 64(2), p. 227.

WEILER, J. (2020) 'The European Circumstance and the Politics of Meaning: Not on Bread Alone Doth Man Liveth (Deut. 8:3; Mat 4:4)', *German Law Journal*, 21, pp. 96–99.

Websites

Commentary on a decision by the ECtHR Grand Chamber (2013), *International Journal of Constitutional Law*, 11(1) [Online]. Available at: https://bit.ly/3END9QJ (Accessed: 6 April 2021).

Croatian School Museum, Hrvatski školski muzej [Online]. Available at: https://bit.ly/3EPza6s.

Croatia is a full member of the Council of Europe from 6 November 1996. Source: Ministry of Foreign Affairs of the Republic of Croatia [Online]. Available at: https://bit.ly/2ZmReo1.

Državni zavod za statistiku Republike Hrvatske (State Bureau for Statistics of the Republic of Croatia) [Online]. Available at: https://bit.ly/3u6pv6k.

European Convention on Human Rights [Online]. Available at: https://www.echr.coe.int/documents/convention_eng.pdf.

European Court of Human Rights Appl. No. 7798/08 [Online]. Available at: https://bit.ly/39wI7mv.

Equal Rights Trust (Summary of the case by articles of the Convention and Protocols) [Online]. Available at: https://bit.ly/2W9Hbld.

International Consortium for Law and Religion Studies [Online]. Available at: https://bit.ly/3kFbGcd.

Jutarnji list [Online]. Available at: https://bit.ly/3ufIRWP.

Lončarević, V. 'Pravni položaj crkava i vjerskih zajednica te njihovo stjecanje pravne osobnosti u Republici Hrvatskoj' [Online]. Available at: https://bit.ly/3uglRak.

Ombudsman's Office (Croatia) [Online]. Available at: https://bit.ly/3uc04AC.

Ombudsman Lora Vidović [Online]. Available at: https://bit.ly/3o2M3nD and https://bit.ly/3kCgvmi.

Osnovna škola J.J. Štrossmayera [Online]. Available at: https://bit.ly/3kCNC9D.

Rastoder, Š. 'Vjerske zajednice i Jugoslavija' [Online]. Available at: https://bit.ly/3lT0KHk.

State School for Girls in the City of Karlovac [Online]. Available at: https://bit.ly/3AFgZ0O.

Ugovor o pravnim pitanjima od 18. 12. 1996 [Online]. Available at: https://bit.ly/39BjSDL.

Ugovor između Svete Stolice i Republike Hrvatske o suradnji na području odgoja i kulture od 18.12. 1996 [Online]. Available at: https://bit.ly/3zBnssk.

Ugovor o dušobrižništvu katoličkih vjernika pripadnika oružanih snaga i redarstvenih službi Republike Hrvatske od 18. 12. 1998 [Online]. Available at: https://bit.ly/3i3sCav.

Ustav Republike Hrvatske (Constitution of the Republic of Croatia), 22 December 1990 [Online]. Available at: https://bit.ly/3uc0qaq.

Večernji list [Online]. Available at: https://bit.ly/2W9HM6r.

Zakon o pravnom položaju vjerskih zajednica (Law on Religious Communities), Narodne Novine (NN), National Gazette of the Republic of Croatia, bos. 83/2002, 73/2013 [Online]. Available at: https://bit.ly/2XJIgAy.

Chapter II

The Legal Regulation of Religious Symbols in the Public Sphere in the Czech Republic

Damián Němec

1. Introduction

The Czech Republic is among the regions that passed into the Soviet sphere of influence after the Second World War. From the Communist Party's seizure of power in February 1948 until the Velvet Revolution of 1989, freedom of conscience and religion were deliberately restricted. At this time, religious symbols were largely pushed out of public life. This study examines relatively recent legislation that stipulates the protection of human rights, and religious freedom in particular.

This study examines the laws and by-laws of Czechoslovakia (until 1992) and the Czech Republic (since 1993), treaties concluded at the national level (tripartite agreements between church representatives and the relevant representative of state power), and national case law (although some cases involved proceedings before the European Court of Human Rights).

Our research mainly employs the analytical method to examine legal solutions in the Czech Republic. Chapters addressing individual countries in this book allow the editors to synthesize the knowledge gained through comparison. We slightly deviate from this scheme by adding a few points that reflect other topics specific to the Czech situation.

Damián Němec (2021) The Legal Regulation of Religious Symbols in the Public Sphere in the Czech Republic. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 39–72. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_2

2. Historical, social, cultural, and political context of the presence of religious symbols in public spaces

After the Communist Party gained power in February 1948, the construction of a unified Czechoslovak legal system was established in place of the interwar dual system (with Austrian law in the Czech lands and Hungarian law in Slovakia) by the mid-1950s. This also included the new religion law, which caused legal discontinuity on the one hand,[1] and left many *lacunae legis* on the other, and was filled with administrative arbitrariness until 1989.

Although the right to freedom of conscience and religion was legally enshrined in both the Czechoslovak constitutions of 1948 and 1960,[2] in practice, state authorities did not respect these rights; on the contrary, they massively violated them.

The so-called Velvet Revolution in November 1989 laid the foundation for the creation of a new legal order, including the new religion law. Thus, after the fragmentation of Czechoslovakia in 1993, the constitutional system of both successor states remained similar.

2.1 Initial transition phase—elimination of the most discriminatory measures

Even after the state system was changed, it was decided to raise legal continuity. Thus, it was necessary in the first (and very hectic) stage to reduce glaring injustices by means of further amendments, which were mostly established by 1990.

Above all, penalties for the abuse of religious functions were abolished from criminal law at the end of 1989,[3] and shortly afterwards, the requirement of state approval for clergy activities was also revoked.[4]

In addition, civil service was introduced in place of military service,[5] church schools re-emerged,[6] and faculties of theology were reintegrated into universities.[7]

1 Above all, Act no. 218/1949 Sb., on economic indemnity of churches and religious communities by the state (Act on Churches and Religious Communities), of October 14, 1949, § 14: 'All ordinances that regulate the legal relationships of the churches and religious communities are repealed.'

2 Constitutional act no. 150/1948 Sb., Constitution of the Czechoslovak Republic; Constitutional act no. 100/1960 Sb., Constitution of the Czechoslovak Socialist Republic.

3 Act no. 159/1989 Sb., which amends and supplements the Criminal Code, the Act on Offenses and the Criminal Procedure Code.

4 Act no. 16/1990 Sb., amending Act no. 218/1949 Sb., on the economic indemnity of churches and religious communities by the state.

5 Act no. 73/1990 Sb., on civil service.

6 Act no. 171/1990 Sb., amending and supplementing Act no. 29/1984 Sb., School Act.

7 Act no. 163/1990 Sb., on faculties of theology.

2.2 Construction of a new democratic legal basis until 1992

The constitutional foundation was first laid through the Charter of Fundamental Rights and Freedoms.[8] Article 15 of the Charter enshrines the guarantee of freedom of thought and conscience, scientific research, and the creation of art, as well as the right to refuse military service on grounds of conscience or religion. Article 16 strongly guarantees both individual and corporate religious freedom. This document continued to play a very important role in the case law of the Constitutional Court.

The special act on churches and religious communities (further "CRC") was adopted in 1991.[9] The law was rather short and favorable for the activities of the CRCs. The minimum number of signatures necessary for an application to register as a CRC was further regulated (and in different manners) by the national assemblies of the individual parts of the Czechoslovak Federation: in the Czech Republic 10,000 adult members with permanent residence were required, while in the Slovak Republic up to 20,000 people were necessary, which in practice (according to the number of inhabitants) was four-times more demanding.[10] Based on this law, twenty-one CRCs were registered or reciprocated. For the first time, this law legally guaranteed the protection of confessional and similar secrets, especially in criminal proceedings.

The manner in which the right to perform civilian instead of military service was exercised was further regulated at the end of 1991, maintaining respect for individuals' conscience and religious beliefs.[11]

Conscience protection developed gradually in the healthcare field. Although the right to informed patient consent has been enshrined since 1966,[12] it was given little respect in practice, though this changed with amendments to the law from 1990 to 1991.[13] In 1991, professional chambers were established in the medical, dental, and pharmaceutical fields. They gradually developed their codes of ethics, which, to a limited extent, made it possible to exercise conscientious objection, but only for individuals (dental and pharmaceutical chambers in 1992, medical chambers in 1995).[14]

8 Constitutional act no. 23/1991 Sb., which introduces the Charter of Fundamental Rights and Freedoms as a constitutional law of the Federal Assembly of the Czech and Slovak Federal Republic.

9 Act no. 308/1991 Sb., Act on Churches and Religious Communities.

10 Act of the Czech National Council no. 161/1992 Sb., on the registration of churches and religious communities; Act of the Slovak National Council no. 192/1992 Zb., on the registration of churches and religious communities.

11 Act no. 18/1992 Sb., on civil service.

12 Act no. 20/1966 Sb., on public health care.

13 Act of the Czech National Council no. 220/1991 Sb., on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Chamber of Pharmacists.

14 Němec, 2013a, pp. 92–97.

2.3 Modification of the legal regulation of freedom of conscience since 1993 after the dissolution of Czechoslovakia

The constitutional enshrinement of the freedom of conscience remained unchanged: while the Constitution of the Czech Republic itself does not contain provisions on fundamental rights and freedoms,[15] Article 3 incorporated the current Charter of Fundamental Rights and Freedoms of 1991 into the constitutional order of the Czech Republic.[16]

Military service has changed significantly; the Czech army was professionalized in 2005,[17] which is why the civil service was discontinued.[18] The possibility of registering for the civil service due to conscience or religion is only retained for military service in exceptional circumstances: the proclamation of the state of emergency as a state of danger to the state or a state of war, but in fairly limited administrative circumstances and in a very short period.

Even greater changes have taken place regarding the possibility of conscientious objections in the field of healthcare. The new institute respects the previously expressed will of the patient, which is enshrined in the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: the Oviedo Convention on Human Rights and Biomedicine of April 4, 1997, and it was ratified in the Czech Republic in 2001.[19] However, for a long period, this institute was not enshrined in ordinary laws. In 2011, an extensive health care reform that took effect on April 1, 2012, was carried out despite strong opposition from left-wing parties, in particular through the Health Service Act. The Act was challenged by an action before the Constitutional Court, which modified one of the provisions of the Act and presented a constitutionally compliant interpretation of the challenged provisions, which it did not change.[20]

The new Act on Churches and Religious Communities understood the right to guarantee the confessional and pastoral secrecy for clergy as one of the so-called special rights of the CRCs.[21] This norm was echoed in the Criminal Code,[22] in which § 368 exempts the clergy of the CRCs with this special right from the penalty of not

15 Constitutional act no. 1/1993 Sb., Constitution of the Czech Republic.

16 Resolution of the Presidency of the Czech National Council no. 2/1993 Sb., on the promulgation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.

17 Act no. 585/2004 Sb., Military Service Act.

18 Act no. 587/2004 Sb., on the abolition of civil service.

19 Communication from the Ministry of Foreign Affairs no. 96/2001 Sb.m.s., on the adoption of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine.

20 Němec, 2013a, pp. 105–112; Madleňáková, 2010, pp. 102–130.

21 See below 2.4.

22 Act no. 40/2009 Sb., Criminal Code.

reporting some committed crimes, and in the Code of Criminal Procedure,[23] in which § 99 forbids hearing such a clergy as a witness.

2.4 Modification of the legal regulation of freedom of religion since 1993 after the dissolution of Czechoslovakia

The 1991 Act on Churches and Religious Communities guaranteed a legally equal position of the CRCs through the instrument of single-stage registration. However, the executive law established difficult conditions for registration, with a high number of signatures at 10,000 members. As a result, several groups of believers of the same faith had no legal option at that time to be recognized as a religious community.

The newer 2002 Act on Churches and Religious Communities[24] distinguishes between simple registration and the recognition of so-called special rights, which allow access to the public sphere. Thus, a two-stage registration has been introduced. For simple registration, one only needs signatures from 300 members, but for the recognition of the so-called special rights, the CRCs must meet other difficult conditions, with the number of signatures equalling of 1 ‰ of the inhabitants of the Czech Republic according to the last census, which currently means slightly over 10,000 members. On the one hand, the equal position of the CRCs is called into question; on the other hand, this regulation could better correspond to the diverse needs of the CRCs than a uniform solution. Based on this law, another twenty-one CRCs were registered before the end of September 2021.[25]

Part of religious freedom is also the economic autonomy of CRCs. The topic of restitution of the confiscated church property was strongly politicized. Therefore, it was not until 2000 that the law on the restitution of confiscated property of Jewish religious communities was adopted, which has a clear character of restitution.[26] The economic indemnity of other CRCs was only addressed by the 2012 Act on Property Settlement,[27] which is clearly future-oriented, with the aim of achieving economic separation of the CRCs and the state by allowing the state to restore part of the confiscated property and pay the agreed financial compensation for unissued property. Compensation is not intended primarily to redress past wrongs; to create an economic basis for the future self-financing of CRCs, and therefore non-Catholic CRCs receive a much larger share than would correspond to confiscated assets. This law creates the de-facto impoverishment of CRCs and remains associated with legal and political disputes.[28]

23 Act no. 141/1961 Sb., Criminal Procedure Code.
24 Act no. 3/2002 Sb., Act on Churches and Religious Communities.
25 Ministerstvo kultury. *Data registrace církví a náboženských společností a svazů církví a náboženských společností*.
26 Act no. 212/2000 Sb., on the alleviation of certain property injuries caused by the Holocaust.
27 Act no. 428/2012 Sb., on property settlement with churches and religious communities.
28 Němec, 2013b, pp. 161–200; Němec, 2019a, pp. 132–143; Přibyl, 2018, pp. 179–191.

3. Axiological and constitutional foundations

3.1 Religious neutrality of the state

The basic definition of the nature of the Czech Republic is expressed in Article 1, paragraph 1 of the Constitution of the Czech Republic of 1992:

> (1) The Czech Republic is a sovereign, unitary, democratic state governed by the rule of law founded on respect for the rights and freedoms of man and citizens.

The Czech Republic's religious neutrality is most clearly expressed in Article 2 (1) of the Charter of Fundamental Rights and Freedoms:

> (1) Democratic values constitute the foundation of the state, so that it may not be bound either by an exclusive ideology or by a particular religious faith.

The cited provisions of the Czech constitutional order clearly state that the Czech Republic is a material state governed by the rule of law, which is religiously and world-view neutral and therefore secularized (lay). This means that the state both has a postulate of equal (parity) access for all subjects forming civil society, as well as the acceptance of ideological, worldview, and religious plurality. However, this implies that the state should not tolerate a worldview or religion that conflicts with democratic values and values derived from the concept of a material rule of law. Nevertheless, it is obvious that the Judaic-Christian basis of our civilization still operates in Czech society, not strictly normatively, but as a moral and ethical correlate.[29]

3.2 Protection of the use of religious symbols in constitutional law

The Czech Republic's constitutional law lacks explicit provisions regarding the use and protection of religious symbols. The enshrinement of this right follows directly from Article 16 of the Charter of Fundamental Rights and Freedoms guaranteeing religious freedom,[30] the relevant texts of which are as follows:

> (1) Everyone has the right to freely manifest their religion or faith, either alone or in community with others, in private or public, through worship, teaching, practice, and observance.

29 Wagnerová, 2012, pp. 84–86.
30 See below 5.2.

> (4) The exercise of these rights may be limited by law in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others.

The decisions of the Constitutional Court of the Czech Republic in this regard are still missing.

A representative commentary on the Charter states that in light of the case law of the European Court of Human Rights, the wearing of religious symbols and clothing is understood as a limitable expression of religious beliefs rather than as part of an individual's religious freedom. At the same time, not only the formal aspect is decisive, but also the intention; for example, the headscarf itself is not a religious symbol, but if a Muslim woman wears it specifically in a stable form, it becomes a manifestation of her religious beliefs. In the same way, religious symbols can be a specific arrangement of one's exterior presentation (religious or clerical clothing, clerical collar, hijab, niqab, burkas, beard, yarmulke, uncut hair, kirpan, etc.). However, the specific limits of the application of this fundamental right must be understood in light of the cultural and social contexts of a given state. Although the Czech Republic is a lay state with religious neutrality, it does not share the understanding of French laïcité, but rather takes the context of a cooperative model of the relationship between the state and CRCs.[31]

3.3 Religious reservation of the Czech population

The Czech Republic is often considered a highly atheistic and secular country. This characterization is often based on the small number of inhabitants belonging to a religious entity. In the last compiled census in 2011,[32] it was optional to respond to questions about religious beliefs and church affiliation. The absence of religious faith was declared by 34.5% of the population, while 44.7% of the population did not answer this question. At the same time, only 1,058 people out of 10,302,215 inhabitants explicitly stated that they subscribed to atheism.[33]

The Czech population is predominantly characterized by individualism and there is a strong distance from any form of organized religiosity in Czech society. Therefore, the level of identification of inhabitants with individual CRCs was very low. Czech people are predominantly shaped with practical materialism, but they basically remain believers; however, belief is mostly viewed as highly intimate and is also composed of elements from different religions. Therefore, one can speak more of agnosticism, "aliquidism" (there has to be something), eclecticism, individualism, and superstition.[34]

31 Jäger, 2012a, p. 380; Jäger, 2012b, pp. 397–398. 416; see below 5.2.
32 In 2021, another census is underway; however, its results will not be known most likely until 2022.
33 Český statistický úřad (2014), pp. 3–6.
34 Tretera, Horák, 2019, pp. 69–71; Němec, 2017, pp. 220–221.

3.4 General attitude of the Czech population towards religious symbols

Religious symbols are therefore conceived in the Czech population from two points of view: immovable traditional Christian symbols are mainly evaluated positively as part of cultural heritage, but similar symbols of other religions and distinctive religious symbols (including striking Christian symbols) used by individuals are evaluated with reserve or negatively.

4. Model of the relationship between the state and the Church

4.1 Basic categories of the system of the relationship between the state and Church in the Czech Republic

The Czech Republic is a secular state in which the principles of non-identification with any religion or ideology (neutrality), parity, religious freedom, and autonomy of religious communities have been legally applied since 1991.

The principle of non-identification (neutrality) can be conceived of as a reaction to the previous Communist regime, in which the Marxist-Leninist ideology played a role of "state religion." Therefore, the communist regime could be called state religion à rebours. Because of this, no state religion exists in the Czech Republic, nor is there any legal definition of religion. Similarly, a regime of complete (strict) separation of CRCs and the state has never existed in the territory of the Czech Republic. On the contrary, the principle of cooperation between the state and religious entities prevails in the tradition, with the exception of the anti-religious struggle during the communist regime in 1948–1989. The common participation of representatives of state or municipalities and CRCs on national and memorial ceremonies and on important religious ceremonies is acceptable, and is usually organized on an ecumenical basis. All these acts are expressions of peace in society and respect for the religious faith of individual citizens.[35]

The principles of neutrality and parity are discussed in section 3.1. The principles of religious freedom and autonomy are described below in 5.2. In contrast, the principle of cooperation is not explicitly mentioned either in the Constitution nor in the Charter of Fundamental Rights and Freedoms. However, it is developed in practice, both in ordinary laws and primarily through contracts and agreements, which we will discuss in Section 4.2.

35 Tretera, Horák, 2019, pp. 76–77.

4.2 Contractual entrenchment in international agreements and state treaties

Since the establishment of Czechoslovakia in 1918, negotiations on an international agreement with the Holy See have always been difficult. As a result of these contentious state-church relationships, a special concordat agreement was concluded in Czechoslovakia at the turn of 1927/1928 called *modus vivendi* for the first time.[36] After this treaty was flagrantly violated by the so-called socialist legislature of 1949, it fell into oblivion. This is easier to understand because both contracting parties declared in 1990 that modus vivendi was no longer considered valid because of the rule *rebus sic stantibus*.[37]

The minority government of the Czech Socialist Party has tried since 2000 to conclude a new agreement. Finally, a concordat agreement was signed in 2002 (with the nature of a basic agreement), which mostly only petrified the legal *status quo*.[38] The House of Deputies refused to approve the ratification of the treaty in 2003, which is why the treaty has never become valid and the signed version is no longer enforceable.[39] Over the past few years, the contracting parties have discussed modifications to the text several times, but have so far been unsuccessful.

Although it has not yet been possible to validate a concordat agreement, and although it is not possible under Czech law to conclude a state treaty with other CRCs, another treaty instrument has been used for institutional cooperation concerning tripartite treaties, the contracting parties of which are the Czech Bishops' Conference, the Ecumenical Council of Churches in the Czech Republic, and the competent state body. These treaties regulate cooperation in the fields of the army, prisons, public radio, police, and healthcare. However, a legal problem arises: constitutional law regulating legal sources does not determine the legal status of such treaties.

According to the Act on Churches and Religious Communities of 2002, military chaplaincy is one of the so-called special rights of CRCs. Military chaplaincy was officially founded in 1998 by a tripartite treaty, although the service has existed *ad experimentum* since 1994 in a very unusual way: it is ecumenical, has no missionary activity, is more humanitarian-oriented in close cooperation with psychologists, and is unarmed. Chaplains are sent together by the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic as joint representatives; there are a number of chaplains for individual churches determined by a common consensus. The chaplains are soldiers on active duty, with officers paid by the state. A special church institution was established for the consultation—the military chaplaincy as

36 Modus vivendi inter Sanctam Sedem et Rempublicam Cechoslovaciae.
37 Přibyl, 2010, p. 21.
38 Accordo tra la Santa Sede e la Repubblica Ceca sul regolamento dei rapporti reciproci (25 luglio 2002).
39 Hůlka, 2004, pp. 46–47.

an association of the CRCs in accordance with the Act on Churches and Religious Communities of 2002.[40]

According to the Act on Churches and Religious Communities of 2002, chaplaincy in prison and detention facilities is also one of the so-called special rights of CRCs. The chaplaincy was established in 1990, but received its institutional form based on the tripartite treaty in 1994.[41] It is significantly different from military chaplaincy; it is a real pastoral service. The individual chaplain is sent by an individual CRC as its representative after consultation with other involved CRCs. The prison chaplain has either an employment relationship or an out-of-employment agreement with the prison or detention facility; in these two cases, he is paid by the state, or he performs this service voluntarily. However, he always has the position of a civilian, not a member of the Prison Service. Two organs are established for coordination: the registered association of Christian physical and legal persons Prison Chaplaincy as a voluntary association, and the Spiritual Prison Service as a special unit of the Prison Service of the Czech Republic, which is subordinate to the Ministry of Justice.[42]

According to the Act on Churches and Religious Communities of 2002, police chaplaincy is also one of the so-called special rights of CRCs. At first, the chaplaincy was not regular pastoral care, but only regulated participation of specially prepared clergy in the system of providing post-traumatic intervention care; that is, as members of an intervention team in the event of extraordinary events. As a legal basis, a tripartite agreement between the Czech Bishops' Conference, the Ecumenical Council of Churches in the Czech Republic, and the Ministry of the Interior was signed in October 2002 for a period of three years.[43] This treaty was extended twice in 2005 and 2008. The second treaty was signed in October 2011, which combined the regulation of participation in post-traumatic interventional care with care for the benefit of the police and fire brigade. This treaty was in force until 2014, and has not been extended.[44] The third treaty was signed in April 2020 and regulates the provision of spiritual care to all persons working in the police of the Czech Republic, or their family members and relatives. It is a real pastoral service; the individual chaplains are sent by individual CRCs as their representatives after consultation with other involved CRCs. The chaplain must be both a clergyman in his church and a member of the Police of the Czech Republic in the active service. Their service is voluntary and there is no right to remuneration. The Council for Spiritual Care was established in the Police of the Czech Republic and

40 Holub, 2004, pp. 122–124.

41 The official state publication came about by Order of the Director General of the Prison Service no. GR-635/107/94. Three new treaties are then agreed in 1998, 2008 and 2013.

42 Rameš, 2004, pp. 124–128.

43 The treaty was published in the *Věstník Ministerstva vnitra [Bulletin of the Ministry of Interior]* under no. 106/2011.

44 Horák, 2019, pp. 135–137.

other security forces as a coordinating body within the structure of the Ministry of the Interior.[45]

According to the Act on Churches and Religious Communities of 2002, healthcare chaplaincy is not a so-called special right of the CRCs; therefore, it is accessible to all registered CRCs. Since 1990, patients in hospitals have been served by the clergymen of CRCs and volunteers. On a broader, current scale, special healthcare chaplains have only been present since 2000. It has become clear that care needs to be targeted not only at patients, but also to relatives of patients and to the staff of healthcare facilities. The starting points for the necessary ecumenical understanding of this service were the Standards for Health Care Chaplaincy in Europe, elaborated by the European Ecumenical Network of Health Care Chaplaincy in 2002. This service was initially regulated by a treaty between the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic in 2006, which was significantly amended in 2011. Initially, chaplains were paid by their churches. Over time, based on experience with this service, the hospital facilities themselves took over part or all of the financing of their services. It was not until 2017 that their service was legally enshrined in the Czech legal system, albeit very temporarily, by a methodological instruction of the Ministry of Health, which, however, is only of a recommendatory nature. This guideline created the Council for Spiritual Care in Health Care and integrated it into the structure of the Ministry. More stable regulations were established in a tripartite agreement of the mentioned entities from July 2019, which, among other things, recommends that chaplains be employed by a hospital. However, there is still a lack of legal grounding of the position of hospital chaplains in the health legislation itself (in laws and by-laws) and of the regulation of the financing of their service, although it is often taken over voluntarily by hospital facilities. Two associations were established to support the professional organizations. The first is the Association of Healthcare Chaplains on the platform of the Ecumenical Council of Churches in the Czech Republic established in 2011, with the nature of civic (voluntary) association. The second is the Catholic Association of Healthcare Chaplains on the platform of the Czech Bishops' Conference established in 2012, with the nature of a professional chamber for Catholic healthcare chaplains, volunteers, and experts. All of the hospital chaplains commissioned by the Catholic Church are *ipso iure* members.[46]

45 The treaty was published in *Revue církevního práva (Church Law Review)*, no. 79 (2/20), pp. 117–120.

46 Němec, 2019b, pp. 107–118. The Author of the present chapter is member of the Council for Spiritual Care in Health Care at the Ministry of Health (as representative of the Czech Bishops' Conference) and member of the committee of the Catholic Association of Healthcare Chaplains.

5. Constitutional guarantees of freedom of conscience and religion

5.1 Embedding freedom of conscience in constitutional law, limits and means of protection

Freedom of conscience is clearly enshrined in Article 15 of the Charter of Fundamental Rights and Freedoms:

> (1) The freedom of thought, conscience, and religious convictions are guaranteed. Everyone has the right to change their religion or faith, or to be non-denominational.
> (2) The freedom of scholarly research and artistic creation is guaranteed.
> (3) No one may be compelled to perform military service if it is contrary to their conscience or religious conviction. Detailed provisions are stipulated in the law.

The provisions of Article 15 guarantee the absolute inviolability of individuals' spiritual and mental autonomy. This follows from the nature of human dignity, especially in ethical, moral, and religious matters. Public authorities must not directly or indirectly interfere with the sphere and restrict or prevent this freedom. This fundamental right is natural law and belongs to the requirements of the rule of law.

Thinking can be understood as a very wide range of mental and cognitive activities undertaken by humans (especially the processing of knowledge about the outside world). Conscience can be understood as the ability to measure human behavior with more general ethical and moral rules and values (not only religious). In the legal literature, however, the concept of conscience is conceived of differently and is therefore not entirely unambiguous.

The first paragraph of this article, especially the first sentence, is a guarantee of the inviolability of the essentially private intellectual, value, and emotional activities of a physical person, referred to as the *forum internum*. The absolute nature of this right follows from the nature of the *forum internum*. Therefore, it cannot be subject to legal restrictions.

In exceptional cases, freedom of conscience manifests in a specific form of conscientious objection that consists of refraining from action and the absence of compulsion for what is perceived to be in conflict with individual conscience. For the legislature, it is imperative to identify alternative solutions that minimize the impact on the individual's moral and ethical sphere. However, a conscientious objection is not as autonomous as freedom of conscience itself; it cannot be linked only to a subjective assessment and a subjective disagreement with a legal obligation. Only the necessary assessment of the amount of good and evil is the essence of the objective significance of this instrument and the basis for its legal grasp (objection *secundum legem*). Typical areas are, for example, military service in arms or military service in general, the field of health care, especially

the bioethical area (artificial abortions, human training, assisted reproduction, birth control, euthanasia, human cloning, human organ management), but also seemingly common medical acts (provision of blood transfusion, compulsory vaccination), the area of function of the public authority (entering into a registered partnership, divorce) and other obligations (swearing on the Bible, refusal to participate in the jury). Only the right to an objection against military service is explicitly mentioned in the Charter. The exercise of the right to conscientious objection was regulated in the Armed Forces Act of 2004.[47] The possibility of engaging in civil service due to conscience or religion retains its meaning only for military service in exceptional circumstances: the proclamation of the state of emergency or a state of war, but in fairly limited administrative circumstances and in a very short period of 15 days (§ 6).

In the Czech legal system, the application of conscientious objection *secundum leg*em is also regulated by the Act on Health Services for the area of healthcare.[48] Its §§ 28 and 32 protect the rights of patients (informed consent, previously expressed will). Its § 50, with understandable restrictions, also protects the right of all health workers, and even of all health service providers (juridical persons) to refuse individual health services due to conscience or religion on the condition that another person or another provider of the health service is offered by the health staff or by the provider who has entered a conscientious objection.[49]

The prohibition of illegitimate discrimination is also a significant means of protecting conscience. Its legal instrument is the Anti-Discrimination Act.[50] In § 2 (3), direct discrimination is defined thus:

> (3) Direct discrimination means such conduct, including the omission of one person being treated less favorably than another, has been or would be treated in a comparable situation, on grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief, or worldview, as well as in legal relations in which the directly applicable regulation of the European Union in the field of free movement of workers applies, also on the grounds of nationality.

In § 3 (1) it defines indirect discrimination:

> (1) Indirect discrimination refers to an act or omission where, based on a seemingly neutral provision, criterion, or practice, a person is disadvantaged compared to others for one of the reasons stated in § 2 (3). It is not indirect discrimination if that provision, criterion, or practice is objectively justified by a legitimate aim, and the means of achieving it are proportionate and necessary.

47 Act no. 585/2004 Sb., Military Service Act.
48 Act no. 372/2011 Sb., Health Services Act.
49 Němec, 2013a, pp. 100–104.
50 Act no. 198/2009 Sb., Anti-Discrimination Act.

However, the law stipulates that there is no discrimination, although there is a difference in treatment between individuals. The area of freedom of conscience is covered by the provisions in § 6 (3):

> (3) Discrimination is not a difference in treatment in matters of the right to employment, access to employment or occupation, in matters of employment, service, or other dependent activity, if there is a factual reason to do so due to the nature of the work or activity and the requirements applied. Discrimination on the grounds of sex does not consist of a difference in treatment with regard to access to or training for employment or occupation, provided that the factual reason for doing so is the nature of the work or activity performed and the requirements applied are proportionate to that nature.

Most of the Constitutional Court's findings on freedom of conscience concerned a conscientious objection to refusal to engage in military service: findings of the Constitutional Court's plenary Pl. ÚS 18/98 and Pl. ÚS 6/02, and also the judgment of the Senate of the Constitutional Court I. ÚS 671/01. These findings confirmed and specified the right to refuse military service because of the superiority of a responsible dignified human being over the state. In all of these cases, the plaintiffs were members of Jehovah's Witnesses who refused military service because of their religious beliefs. In the other two cases (III. ÚS 449/06 and I. ÚS 1253/14), the object was the refusal of compulsory vaccination of minors by their parents, in the first case for religious reasons, in the second one because of secular reasons (adherents of homeopathy). The court emphasized that the autonomy of parents in deciding on medical interventions for their children is not absolute, but on the contrary may be limited, even if parents do not consent to medical interventions for religious reasons and that the Czech constitutional order does not recognize any fundamental right not to be vaccinated. On the other hand, the Supreme Administrative Court did not take into account all the relevant circumstances of the case, in particular the urgency of the person's alleged reasons, their constitutional relevance, and the danger to society that the person's actions may pose, and therefore annulled the decision of the Supreme Administrative Court to impose a fine. It is therefore clear that all these cases of conscientious objection were based mainly on religious beliefs. The final reasoning of the Constitutional Court in the second case draws attention to an important feature of conscientious objection: it is socially acceptable if only a minority applies it.[51]

5.2 Embedding of freedom of religion in constitutional law, limits and means of protection

The principles of religious freedom, autonomy, and cooperation are logical consequences of the principle of religious and worldview neutrality of the state discussed in section 3.1.

51 Jäger, 2012a, pp. 389–390; Molek, 2019, 298–301.

The basis for the constitutional anchoring of religious freedom can be found in the Charter of Fundamental Rights and Freedoms.

Article 15 (1) enshrines, among others, the individual dimension of religious freedom *(forum internum)* as an absolute right:

> (1) The freedom of thought, conscience, and religious convictions are guaranteed. Everyone has the right to change their religion or faith or to be non-denominational.

This provision reproduces Article 18 of the Universal Declaration of Human Rights in 1948. It explicitly adds the right to non-confessionalism, which is a *superfluum* from a legislative-technical point of view.[52]

Article 16 of the Charter regulates the exercise of freedom of religion *(forum externum)* very broadly, but not absolutely:

> (1) Everyone has the right to freely manifest their religion or faith, either alone or in community with others, in private or public, through worship, teaching, practice, and observance.
> (2) Churches and religious societies govern their own affairs; in particular, they establish their own bodies and appoint their clergy, as well as found religious orders and other church institutions, independent of state authorities.
> (3) The conditions under which religious instruction may be provided at state schools should be set by law.
> (4) The exercise of these rights may be limited by law in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others.

The provisions of this article are based on several international conventions, particularly Article 18 of the Universal Declaration of Human Rights and Values of 1948 and Article 18 of the International Covenant on Civil and Political Rights of 1966. However, it guarantees a higher legal standard, particularly in corporate areas, especially in (2), where the autonomy of the CRC is strongly entrenched in an illustrative list of areas of its application. Therefore, this regulation is preferentially used in the Czech Republic, especially in court proceedings.[53] This was particularly evident in the case law of the Constitutional Court, which often refers to this article. However, Article 16, Paragraph 4, clearly mentions the limit to the exercise of religious freedom. The restriction of a fundamental right is not an end in itself, but must always be applied to the protection and realization of all other rights and freedoms contained in the constitutional order. If the aim of the legislature was to restrict the fundamental right itself and not to protect the values referred to in the mentioned paragraph, it would *per se* be an unconstitutional act.

52 Hrdina, 2004, p. 102.
53 Jäger, 2012b, pp. 394. 403.

In the case of freedom of religion, the prohibition of illegitimate discrimination is also a significant means of protecting religious beliefs. Its legal instrument is the Anti-discrimination Act (see Section 5.1). Special consideration for the internal law of CRCs contains one of the provisions that do not constitute discrimination, namely § 6 (4):

> (4) Discrimination is not a difference in treatment in matters of the right to employment, access to employment or occupation, in the case of dependent work performed in churches or religious communities, if due to the nature of these activities, the context in which they are performed, or the person's worldview, a substantial, legitimate, and justified request for employment with regard to the ethics of the church or religious community.

A relatively large group of constitutional court findings concerns the autonomy of CRCs. The question of the extent of autonomy in the establishment of legal entities is of fundamental importance. The original wording of the Act on Churches and Religious Societies of 2002 in § 6 (2) presupposed the establishment of legal entities only for the purpose of organizing, professing, and spreading religious faith. The Constitutional Court annulled this provision by finding Pl. ÚS 6/02, stated that this restrictively defined concept is in clear conflict with the very purpose and goal of churches and religious persons and testifies to their fundamental misunderstanding.[54]

Other findings concern sub-areas: the validity of the proceeding or decision of the member assembly of the religious community (I. ÚS 1244/07, I. ÚS 611/06, I. ÚS 1037/11), the dissolution of the church legal entity by the church (I. ÚS 137/05), granting of certain intra-church rights by a church body (I. ÚS 1217/08), interpretation of internal regulations of CRCs (I. ÚS 1240/09).

The question of the church staff is always very important, especially the position of the clergy. State power is completely incompetent in filling church offices and appointing clergy, and their relationship to the church and religious community is referred to as service (I. ÚS 211/96, III. ÚS 136/2000), the state power is competent only in accompanying issues of labor law, such as compensation of wages and length of leave.[55]

The Constitutional Court also addressed the specific issue of refusing blood transfusions for an oncological minor patient by his parents, who were Jehovah's Witnesses. In this case, it stated that in the conflict of constitutionally guaranteed rights, the protection of the child's health is a value that allows legal disrespect of the parents' religious decisions (III. ÚS 459/03).

54 Jäger, 2012b, p. 406; Němec, 2013c, pp. 219–228; Madleňáková, 2014, pp. 159–181.
55 Jäger, 2012b, p. 407; Kříž, 2017, pp. 115–132.

6. Guarantees according to other sources of universally binding law

To understand the Czech legal situation, it is necessary to consider the very limited use of religious symbols in the public during the communist regime (1948–1989). Due to this history, Czech legislation since 1990 has been very modest in setting restrictions on religious symbols. This reticence is also reflected in actual practice, which, in some cases, goes beyond the legal definition.

6.1 The subjective extent of the expression of religious faith through religious symbols

The subjective aspect of human rights is usually understood primarily as the area of individual-state relations, especially the negative claims of the individual (the duty of public authorities to refrain from encroachment), but also positive claims (the duty of public authorities to act). This concept applies primarily to first-generation rights, including the right to religious freedom.[56] This area is completely illimitable.[57]

With the legal recognition of human rights by the state, they have become public, subjective rights. They either ensure the autonomous sphere of the individual, protected from the interference of public power (freedom), or the ability of individuals to behave in a certain way (rights). The consequence is the possibility for the individual to enforce fundamental rights in public authorities through the courts. Thus, the constitutional judiciary plays an important role within the state as the last national means of protecting human rights. Most errors in this area should be remedied earlier, in proceedings before other public authorities, typically before ordinary courts.[58]

Thus, the state does not have the right to determine for individuals (neither religious groups, i.e., legal entities) what external manifestations of religious beliefs should and should not be. That is why this right has somewhat vague contours—motivation must be taken into account when assessing it. The assessment of the right to use religious symbols as religious includes the assessment of the envy of such conduct. Again, simply stated: when two people do the same thing, it does not have to be the same thing.[59]

56 Bartoň, 2016a, pp. 44–49; Moravčíková, 2014, pp. 87–89.
57 Molek, 2019, pp. 267–268.
58 Bartoň, 2016a, pp. 50–51.
59 Bartoň, 2016b, p. 339.

6.2 The objective extent of the expression of religious faith through religious symbols, legal restrictions

Objective law is understood as the material entrenchment of rights as part of the legal order. However, not every determination of an objective right necessarily implies a subjective claim. In terms of content, these are both negative and positive.[60]

Freedom of expression of religion or belief is a relative, limitable right. In the Czech legal order, the restrictive clause is enshrined in Article 16 (4) of the Charter of Fundamental Rights and Freedoms: (i) restrictions by law, (ii) legitimate purpose, and (iii) necessity in a democratic society. The state must therefore ensure an institutional legal environment for the exercise of the right (e.g., sufficient freedom of association) and sufficient protection of this right in horizontal relations against attacks (e.g., through criminal law). Here, too, the scope of these commitments is not generally clear: it is still being discussed and clarified, typically through case law.[61]

The Czech Republic usually does not regulate the presence of religious symbols in public legislation based on the above-mentioned constitutional principles, especially of religious freedom, and introduces mainly negative regulations consisting of the restriction of religious symbols to the public only in narrowly specified areas.

7. Limits of religious expression through religious symbols

7.1 Public offices

No Czech legal act prohibits the wearing of religious symbols and clothing in public offices, whereas, for work reasons, higher demands may be placed on employees (see below 7.4).

The only legal exception concerns official identity documents. The decree of the Ministry of Interior,[62] implementing the act on identity cards[63] and the act on travel documents,[64] allows in § (3) an official photograph with a head covering to be used in an identity document for medical or religious reasons. However, this headgear shall not cover the facial part in a way that makes it impossible to identify the citizen.

The current wording of the above-mentioned decree stipulates in § 19 that the official digital photograph is taken by the relevant officials at the office itself and is sent to a specially established data box of the Ministry of Interior.

60 Bartoň, 2016a, pp. 48–50.
61 Bartoň, 2016b, pp. 338–339; Mlek, 2019, p. 328.
62 Decree of the Ministry of Interior no. 281/2021 Sb., on the implementation of the Act on Identity Cards and of certain provisions of the Act on Travel Documents and of the Act on Basic Registers.
63 Act no. 269/2021 Sb., Act on Identity Cards.
64 Act no. 329/1999 Sb., Act on Travel Documents.

The website of the Ministry of Interior contains a file showing the model photos as permissible and prohibited execution of the official photo. In this set, the hijab is given as an example of permissible headgear, but the niqab is an example of an inadmissible one (as is the burqa).

7.2 Schools and universities

During the communist regime (until 1989), the placement of religious symbols was banned in unified public schools in Czechoslovakia. The only exception was the tolerance of religious symbols in faculties of theology, which, however, were legally excluded from the school network and subordinated to a state body competent for the management (or rather controllership) of religious affairs. In the years 1949–1956 this was the State Office for Ecclesiastical Affairs, and since 1956 until now, it has been the Ministry of Culture. The renewal of the possibility of establishing private and church schools since 1990 has diversified the situation.

The classification of school type varies in the Czech Republic. The Education Act, which regulates non-university schools (from kindergartens to higher vocational schools), distinguishes between public, private, and church schools. In contrast, the Higher Education Act distinguishes between state schools (e.g., military and police academies) and public and private schools (the last category includes universities established by CRCs—such schools do not currently exist in the Czech Republic).

In public schools, the tradition of tolerance to stably placed religious symbols persists only in the faculties of theology (crosses and photos of the relevant Church authority, e.g., of the actual Pope and eventually of the diocesan bishop at the Catholic faculties) and similarly in church schools. For all types of schools, there is a lack of general regulations of the wearing of religious symbols in the case of pupils and students; the rules of employment apply to teachers (see below 7.4).

The way pupils and students dress can be regulated by school rules issued by the director of the school after approval by the school council. In response to the Somali student case (see below 8.1), the Ministry of Education issued a communication in 2014 urging school directors to be very careful when including dress codes in school rules, especially head covering, with regard to the right to freely express their religion or belief.[65] The wording of this communication is general and recommends that in the case of specific guidelines in school rules, the director should be empowered to grant exemptions, primarily for religious reasons. The content of the communication can thus be summarized by the popular saying: “less often means more.”

65 Ministry of Education. Communication “The right to freely express one’s religion or belief in the context of the rules of theoretical and practical teaching in schools and school facilities,” File no. ČŠIG-3601/14-G21, of October 6, 2014.

7.3 Hospitals

In hospitals and medical facilities in general, depending on the nature of the activity, health professionals and other workers are obliged to comply with prescribed hygiene measures, which also include regulations regarding clothing and clothing accessories. For individual-type situations, general measures are issued by the Ministry of Health through decrees that have the nature of by-laws.

Due to the protection of health guaranteed in Article 31 of the Charter of Fundamental Rights and Freedoms, these regulations take precedence over the exercise of a range of constitutionally guaranteed rights. In several places, the Charter itself explicitly provides for the possibility of restricting the exercise of fundamental human rights for reasons of health protection, including the right to express religious beliefs, as provided for in Article 16 (4) of the Charter.

This is why Catholic nuns working in health care, in relevant situations, do not wear their religious veils or even their religious robes. The same requirements apply to other people with specific clothing or clothing accessories, such as Muslim women.

However, the principle of maximum respect for the religious and worldview of patients applies, which leads to the professional treatment of the necessary situations; in the Czech Republic, this increasingly concerns Muslim patients.[66]

7.4 Workplaces and business activities

For many workers, it is necessary to use significant means of protection at work for safety. This applies especially to technical professions and many areas of natural sciences, especially in laboratory conditions. Details are usually established by the by-laws of relevant ministries. These prescribed means generally preclude the use of religious symbols.

The situation is different in the sphere of trade and services. Marketing interests play a far greater role, to which some employers (especially large retail chains) also routinely subordinate the clothes of their employees. On the contrary, other employers, especially small companies, give their employees considerable freedom.

Workers in public institutions are bound by the principle of the religious neutrality of the state, which here acts as a lay state. Therefore, in these professions, the use of strong religious symbols is not desirable; sometimes, it is restricted or prohibited by internal rules, especially regarding dress code. This situation is particularly pronounced in the case of public-school teachers, as their individual freedoms to express their religion in public are met by three other roles: the role of employees, the role of teachers in shaping pupils, and the role of *de facto* representatives of a religiously neutral public institution. The exception is the position of teachers of religion.[67]

66 Hájek, Bahbouh, 2016, pp. 9–10.
67 Molek, 2019, pp. 357–359; Jäger, 2012b, pp. 400–401.

7.5 Media, the Internet, and social networks

A significant positive component of legal regulations is the law governing public service media. The Act on Czech Television[68] and the Act on Czech Radio[69] stipulate in § 2 (2) litt. c) with the same wording that one of the tasks of public service broadcasting is to "provide a balanced range of programs for all sections of the population, taking into account their freedom of religion or belief, culture, ethnic or national origin, national identity, social origin, age, or gender so that the programs reflect the diversity of views and political, religious, philosophical, and artistic orientations, with a view to strengthening mutual understanding and tolerance and promoting the cohesion of a pluralistic society."

There are no other similar regulations regarding private media.

Negative definitions apply to advertisements that appear in all media discussed in this section. The act on the regulation of advertisements[70] is intended according to § 1 (3) to cover a very wide range of communication media: the "means of transmitting advertisements, in particular periodicals and non-periodical publications, radio and television broadcasting, on-demand audio-visual media services, audio-visual production, computer networks, audio-visual media, posters, and leaflets." The basic text is § 2 (3):

> Advertisements must not be contrary to good morals; in particular, they must not discriminate on the grounds of race, sex, or nationality or attack religious or national feelings, endanger morality in a generally unacceptable manner, reduce human dignity, or contain elements of pornography, violence, or elements of fear. Advertisements must not challenge political persuasion.

Based on this Act, the permission of advertisement was regulated in the Act on the Operation of Radio and Television Broadcasting: advertisements may not interrupt, among other things, religious programs. The currently valid Act on the Operation of Radio and Television Broadcasting[71] stipulates in § 48 (1) litt. (d) that broadcasters may not include religious and atheistic commercial communications in their broadcasts. In § 48 (1), its litt. (k) prohibits commercial communications attacking faith, religion, political or other purpose, and its litt. (l) prohibits commercial communications containing discrimination based on sex, race, color, language, religion or belief, political or other opinions, national or social origin, membership of a national or ethnic minority, property, gender, disability, age, sexual orientation, or other status.

68 Act of the Czech National Council no. 483/1991 Sb., on Czech Television.
69 Act of the Czech National Council no. 484/1991 Sb., on Czech Radio.
70 Act no. 40/1995 Sb., on the regulation of advertisement and on the amendment of Act No. 468/1991 Sb., on the operation of radio and television broadcasting.
71 Act no. 231/2001 Sb., on the operation of radio and television broadcasting.

A specific body in the field of advertisement is the Advertising Council, which has the nature of a non-governmental and non-profit civic association, was established to promote self-regulation of advertisements.[72] The main goal of the Advertising Council is to ensure and promote honest, legal, truthful, and decent advertisements in the Czech Republic. The Advertising Council assesses complaints about advertisements in the press, billboards, mail order services, audio-visual production, cinemas, radio and television broadcasting, and on the Internet. The basis for the assessment is the Advertising Code developed by this council. In the event of a breach of the Code, the Council submits an initiative to the relevant Regional Trades Licensing Office for further resolution; this office has the statutory power to impose sanctions. In addition, it provides an expert assessment of the advertisement on request, usually during the preparation phase. The advantage of this advice as a non-governmental organization is the possibility of a more flexible response to factual changes, including the necessary amendments to the Advertising Code.

Czech legislation does not contain any provisions that specifically regulates communication on the Internet and social networks. It leaves them to their own regulation (operator's right) or self-regulation, with some excesses being included as criminal offenses in the Criminal Code.

7.6 Public religious assembly

The right to peaceful assembly is one of the fundamental rights guaranteed by Article 19 of the Charter of Fundamental Rights and Freedoms:

> (1) The right to a peaceful assembly is guaranteed.
> (2) This right may be restricted by law in cases of assembly in public places, if it is a measure in a democratic society necessary for the protection of the rights and freedoms of others, protection of public order, health, morality, property, or security of the state. However, the assembly may not be subject to the permission of a public authority.

The exercise of this right is regulated in detail by the Act on the Right of Assembly, adopted before the Charter.[73] In principle, all assemblies in public places are subject to the notification of obligation toward the municipality pursuant to § 4 (1), with the exception of assemblies organized by churches or religious societies in a church or other places of worship, processions, pilgrimages, and other processions and assemblies used to express religion. The provision of § 10 (1) has a negative character, giving the authorities the power to prohibit an assembly that would aim to deny or restrict the rights of persons or to incite hatred and intolerance, inter alia,

72 Rada pro reklamu, Profil: https://www.rpr.cz/cz/profil.php (Accessed: 26.05.2021).
73 Act no. 84/1990 Sb., on the right of assembly.

due to religion. These provisions provide a great rate of freedom in the expression of religious beliefs externally, including the use of religious symbols.[74]

All participants of any assembly, without exception, are obliged according the provisions of § 7 (4), to "not have their faces covered in such a way as to make it difficult or impossible to identify them,"[75] if the authority or the police of the Czech Republic issues such an instruction, in case the peaceful course of the assembly is disrupted or endangered. The ban on covering the face during an assembly is therefore very limited.

8. The system of legal protection

8.1 Student of secondary medical school again the school—wearing of hijab

The wearing of religious symbols in the Czech Republic was strongly affected by the court case of a student at a secondary medical school against this school.

In September 2013, two girls wanted to attend a secondary medical school in Prague 10, both of whom received asylum in the Czech Republic. Both girls were Muslim, one from Somalia, and the other from Afghanistan. Their attempts to study ended in conflict. The Somali girl signed a declaration of dropping out of school on the day she started after a conflict with the schoolmistress, the Afghan girl started school but left after two months. Both argued that their religious rights had been violated because according to the school rules, they were not allowed to cover their heads by wearing the hijab during class, including theoretical subjects, which the schoolmistress required that they take. It should be noted that both students should have agreed to postpone wearing the hijab during practical classes in healthcare facilities.

In November 2013, the Somali girl lodged a complaint with the ombudswoman, who in July 2014 issued an opinion stating that the school's conduct was discriminatory.[76] The same girl filed a lawsuit against the school in February 2016, in which she demanded an apology for the discriminatory conduct and a payment of 60,000 Czech crowns (approximately 2,400 euros) as non-pecuniary damage. The court proceedings lasted many years, and the individual court instances commented quite differently on the merits of the case.

74 Religious meetings in public places may be associated with, among other things, worship. Therefore, they were held in several places in the Czech Republic at a time of severe restrictions on services in churches and places of worship.

75 The very recent novelisation has been made by the Act no. 94/2021 Sb., on emergency measures in the event of an epidemic of COVID-19 and amending some related acts. This law makes it possible to take certain epidemiological measures without declaring a state of emergency.

76 Public Defender of Rights. Inquiry report on the ban on wearing headgear in a secondary medical school, file number 173/2013/DIS/EN, of 2 July 2014.

First, in January 2017, the court of the first instance, the district court for Prague 10, accepted the opinion of the schoolmistress that there could be no discrimination against the student. Even by the first day of school, the student had not delivered the legally required documents: a permit to stay in the Czech Republic, together with a hand-signed enrollment form for studying at the school. The schoolmistress therefore claimed that the applicant had not become a student at the school at all and that, consequently, the non-entry of studies was not discriminatory on the part of the school. Therefore, the court did not address the question of whether the school rules showed signs of direct or indirect discrimination.[77]

The applicant then appealed to the court of the second instance, the Municipal Court in Prague. On the one hand, the judgment of the Court of Appeal of September 19, 2017 upheld the judgment of the Court of First Instance dismissing the action. On the other hand, it addressed the issue of possible indirect discrimination against the applicant by the school based on school rules. The court stated that no discrimination had occurred because the provisions of the school regulations were uniform for all students and fully corresponded to the secular nature of public education in the Czech Republic. The court described the Ombudswoman's report as contradictory and untrue in the context of other facts. At the same time, however, it also stated that there are no unanimous views on the wearing of religious symbols, especially in European Union countries.[78]

The plaintiff then lodged an extraordinary appeal for cassation to the Supreme Court of the Czech Republic. In its judgment on November 27, 2019, the Supreme Court reversed the current development of the case. Unlike previous courts, it declared it to be irrelevant whether the plaintiff became a school student or not. In particular, it addressed the issue of possible discrimination by the school and concluded that the school had indirectly discriminated against the applicant because the school rules prevented the legitimate expression of religious freedom, which is the wearing of the hijab for Muslim women. The court thus agreed with the Ombudswoman's opinion in 2014, overturned both previous judgments, and returned the case to the Court of First Instance with the fact that the lower courts are bound by the legal opinion of the Supreme Court.[79]

However, the Court of First Instance, the District Court for Prague 10, did not begin to hear the merits of the case itself, as the applicant withdrew its action on April 24, 2020. She argued that almost seven years have elapsed since the events in question and, with a view to further years of litigation, the required apology or symbolic compensation could not give her reasonable satisfaction, considering the Supreme Court's decision as satisfactory in the given situation. As a

77 Judgment of the District Court for Prague 10, file number 17 C 61/2016-172, of 27 January 2017.

78 Judgment of the Municipal Court in Prague, file number 12 Co 130/2017—228, of 19 September 2017.

79 Judgment of the Supreme Court of the Czech Republic, file number 25 Cdo 348/2019-311, of 27 November 2019.

consequence of this action, the applicant had been exposed to further troubles (threats, disgraceful claims in the media, difficulties in finding housing and employment), and hoped to find peace of mind at work and to lead a normal life without having to deal with a seven-year-old event. Therefore, the court decided to stop the proceedings.[80]

However, the school did not agree with the withdrawal of the proceedings and demanded that a decision be made on the merits of the case. It therefore lodged an appeal due to its serious moral interest in the decision on the merits of the case (including the impact on the school's reputation and the personal rights of the schoolmistress), suggesting that the Court of Appeal declared the ineffectiveness of the withdrawal of the action. In addition, the school stated that it "absolutely does not agree with the judgment of the Supreme Court; it considers it to be factually and legally incorrect and argumentatively erroneous." The Municipal Court upheld the appeal and finally stopped the proceedings on January 27, 2021. An appeal to the Supreme Court as an extraordinary remedy in this case can only be raised if the procedure of the court of appeal would be contrary to legal norms.[81] The school wants to continue a lawsuit with a student over the hijab. It therefore appealed to the Supreme Court in April 2021,[82] but the outcome of the proceedings is uncertain.

It is obvious that the case law of the Czech courts on discrimination against Muslim women due to the ban on wearing the hijab in theoretical classes is extremely inconsistent. The only legally binding case law is the judgment of the Supreme Court, which is, however, still factually unique in such cases, in clear contradiction with the judgments of lower general courts. Regarding the school's opposition to the withdrawal of proceedings, the context indicates that its aim could have been to reach a different legal opinion of the Supreme Court, or even to present the whole case to proceedings before the Constitutional Court of the Czech Republic, which is competent to the final intrastate sentences regarding the constitutionality, including human rights. The possibility of submitting the whole matter to the European Court of Human Rights for a decision, which could correct the statements of the Czech courts, cannot be ruled out.

In addition, it must be noted that the whole matter was strongly politicized. First, it concerns the very significant media coverage of the entire case. Second, all court proceedings were accompanied by petitions and demonstrations, which in the majority supported the position of the school and its schoolmistress. Third, the President of the Czech Republic, Miloš Zeman, entered the case, awarding the state award "Medal for Merit of the First Degree to the schoolmistress [name] of the

80 Judgment of the District Court for Prague 10, file number 17 C 61/2016-350, of 20 July 2020.

81 Judgment of the Municipal Court in Prague, file number 12 Co 304/2020—375, of 27 January 2021.

82 *Škola chce pokračovat v soudním sporu se studentkou o hidžáb. Obrátila se na Nejvyšší soud [The school wants to continue a lawsuit with a student over the hijab. It turned to the Supreme Court]*. Available at: https://zpravy.aktualne.cz/domaci/hidzab-rozsudek-soud/r~115932d67b4211eb99faac1f6b220ee8/ (Accessed: 26.08.2021).

secondary medical school and a brave woman in the fight against intolerant ideology, for merit for the State" in October 2018.[83] According to my modest opinion, this was inappropriate, in the situation of the ongoing proceedings before the Supreme Court, which finally reversed the legal qualification of the conduct of the school and of its schoolmistress. Fourth, the schoolmistress politicized the case herself, accepting in 2020 candidature for the Senate of the Parliament of the Czech Republic, that is, for its upper chamber. As part of the election campaign, she emphasized her consistent position that immigrants must clearly adapt to the legal and cultural customs of the host country. However, the schoolmistress in her constituency in the first round of the election finished only in ninth place out of eleven candidates, winning only 3.64% of votes.[84]

8.2 Cardinal Duka and his attorney again the theater—protection of religious symbols against profanation

The issue of the use or alleged profanation of religious symbols was sparked by a lawsuit in which two plaintiffs as natural persons (then President of the Czech Bishops' Conference Cardinal Dominik Duka and his lawyer) sued two legal entities (Center for Experimental Theater in Brno and National Theater Brno). The subject of the dispute was the holding of two theatrical performances written by the Croatian playwright Oliver Frljić, The Malediction (May 24, 2018) and Our Violence, Your Violence (May 26, 2018) by the ensemble Slovensko Mladisko Gledališče (Slovenian Youth Theater) as part of the Brno Theater World Festival.

Both performances included controversial scenes with religious undertones. In the first performance, a statue depicted in a manner similar to John Paul II, depicts fellatio. At the end of the second performance, the figure of a young man with signs of the crucified Jesus Christ descends from the cross and, signifying violence, depicts coitus with a young Muslim woman (who had previously pulled the national flag of the Czech Republic out of her vagina).

On July 11, 2018, the above-mentioned individuals filed a lawsuit objecting to the inequality of rights (easy profanation of Christian symbols versus difficult profanation of Islamic symbols, usually associated with violent protests), support for hatred of one group of people against another (almost all of the actors were Muslim), interference with freedom of religion and its expressions, protection of the rights and dignity of specific persons (the plaintiffs), and public denigration of the state symbol.

83 Pražský hrad, Prezident ČR. *Prezident republiky udělil státní vyznamenání, 28. října 2018*. Available at: https://www.hrad.cz/cs/pro-media/tiskove-zpravy/aktualni-tiskove-zpravy/prezident-republiky-udelil-statni-vyznamenani-8-14366 (Accessed: 25.05.2021).

84 volby.cz. *Volby do Senátu Parlamentu ČR konané dne 2.10.—3.10.2020*. Available at: https://www.czso.cz/csu/czso/volby-do-senatu-parlamentu-cr-2020 (Accessed: 25.05.2021).

The lawsuit was heard in the first instance by the Municipal Court in Brno[85] and in the second instance by the Regional Court in Brno.[86] The plaintiffs appealed against their decisions to the Supreme Court of the Czech Republic as a third instance.[87]

In addition to the defendants' statements, the courts relied on performance annotations. The first performance was stated to ask questions such as "to what extent our decisions are influenced by Catholic morality, how the church influences the behavior of atheists or to what extent contemporary art is within the limits of censorship and avoiding accusations of insulting the faith." The second performance was intended to present the question, "Are we aware that our wealth depends on the thousands of dead in the Middle East, whether we have the same approach to the dead after the terrorist attacks in Europe as those from Baghdad? When were we to convince ourselves of the greater power of our God than of the other Gods?"

This time, the case law of all courts was in agreement; all instances found that the applicants lacked active legitimacy because they had not seen the performances in person, that the prevailing freedom of artistic expression (which takes the form of a metaphor using art forms that may be critical, offensive, and shocking or disturbing, even if they are addressed to specific individuals) collided with the protection of religious symbols as manifestations of religious freedom and protection of human dignity, and the reciprocity of indications of violence in the second performance (also from the Muslim side). Moreover, the protection of a state symbol falls within the scope of public law, not within the private sphere of the protection of personality. All three ordinary courts therefore dismissed the action in the same manner. The question remains whether the plaintiffs will file a constitutional complaint with the Constitutional Court, or perhaps even the European Court of Human Rights, or whether the case will end in this legal failure.

8.3 Supplement: Disputes concerning mosques

While Christian and Jewish symbols, especially buildings, are understood as a typical expression and part of the Czech cultural heritage, the relationship to cult buildings of other religions is highly problematic. This is especially true for Muslim mosques. Proposals for their construction have always been associated with significant resistance in a large part of the local population.

The application for the construction of a mosque in the spa town of Teplice in 1995 was finally rejected in 1996 by the town vestry. The repeated attempt in 2003 was responded to with a heavily publicized petition that received about 4,500 signatures. The building was officially rejected for urban and architectural reasons.

85 Judgment of the Municipal Court in Brno, file number 112 C 88 / 2018-190, of March 18, 2019.
86 Judgment of the Regional Court in Brno, file number 70 Co 170/2019-243, of November 20, 2019.
87 Judgment of the Supreme Court of the Czech Republic, file number 25 Cdo 1081/2020-282, of April 28, 2021.

A similar 1995 application for the construction of a mosque in Brno was first rejected in December of that year, but was finally allowed in an appeal procedure in 1996 under the conditions of compliance with the city's zoning plan (i.e., the absence of a minaret and other conspicuous features). The inconspicuous two-floor building was completed and inaugurated in 1998, and currently stands between high-rise buildings.

In 1997, the Islamic Foundation in Prague bought a plot of land with an unused industrial building and a family house on the outskirts of the city that was accessible only by car. The building was converted into a mosque, but was publicly called an Islamic center. The building was opened in 1999 without public attention.

The project of the Islamic Center and Mosque in the Moravian town of Orlová in 2003 also met with resistance from the local population. After finding that the project did not have sufficient financial coverage, the city council in 2004 suspended all steps in favor of the construction.

Resistance against mosques has intensified as a result of the wave of migration to Europe, mainly from Muslim countries, which was particularly strong in 2015 and 2016. This fact was also politicized, especially during the campaign before the 2018 presidential election.[88]

It is clear that conflicts over mosques are inherently conflicts over religious symbols. If typically Muslim symbols are not highlighted, as is the case in Brno, or if the buildings are located outside the common interest of the public as in Prague, the problems with their construction do not occur or can be overcome.

9. Conclusions

Freedom of conscience and religion was constitutionally guaranteed in Czechoslovakia throughout the communist regime in 1948–1989, but in practice, it was strongly and purposefully violated. Therefore, not until the end of 1989 was building a political and legal regime that protects human rights truly in focus. First, the most significant injustices were corrected by amending the laws by the end of 1990. This was followed by a period of positive construction of the new legal system, especially until the end of 1992, that is, until the dissolution of Czechoslovakia on January 1, 1993. The most important foundations were laid during this period, especially at the human rights level with the adoption of the Charter of Fundamental Rights and Freedoms in 1991, which remained part of the Czech Republic's constitutional order.

88 In this context, it is possible to better understand the awarding of the state award by President Zeman, which is discussed above in 8.1.

The democratization process continued in the era of the independent Czech Republic. Gradually, laws were adopted that fixed the exercise of human rights, in particular the Anti-Discrimination Act, as well as the possibility of enforcing conscientious objections, in particular laws related to civil service and health care. Although the Concordat Treaty with the Holy See, signed in 2002, has not yet been ratified, the model of tripartite agreements between representatives of the Catholic Church and the Evangelical Churches on the one hand and the competent state authority on the other has proven successful at the national level. Its legal disadvantage is that such agreements do not have a defined position in the hierarchy of the sources of law. Of great importance is the adoption of laws confirming the autonomy of churches and religious communities: the Church Acts of 1991 and 2002 and the Property Settlement Act of 2012. Thus, a model of a religiously neutral (lay) state was created, characterized by extensive cooperation between the state and churches.

On this basis, the legal regulation of the use of religious symbols is developing, even in the public sphere. The Czech Republic typically does not regulate the presence of religious symbols in public in its legislation. The country's constitutional principles, especially regarding religious freedom, mainly support negative regulations consisting of the restriction of religious symbols to the public only in narrowly specified areas, and only occasionally contain positive norms, such as in the area of conscientious objection and the public service mission of the media.

It follows from this approach taken by the state that the legislative regulation of religious symbols in the public sphere has been and will continue to be poor and fragmentary. In addition, case law has been sporadic. Due to the targeted avoidance of interventionism, it is not possible to expect the creation of extensive normative regulations in the near future, but rather to follow the path of case law.

Therefore, it is also not possible to design solutions in the area of *de lege ferenda*. The content and focus of the new legislation must first be shown through legal practice, which is still underdeveloped in this area.

Bibliography

"Accordo tra la Santa Sede e la Repubblica Ceca sul regolamento dei rapporti reciproci (25 luglio 2002)," in Anon. (2003) *Enchiridion dei Concordati. Due secoli di storia dei rapporti Chiesa – Stato*. Bologna: Edizioni Dehoniane Bologna

Bartoň, M. (2016a) "Úvod do teorie základních práv [Introduction in the Theory of Fundamental Rights]," in Bartoň, M. et al. (2016) *Základní práva [Fundamental Rights]*, Praha: Leges.

Bartoň, M. (2016b) "Svoboda myšlení, svědomí a náboženského vyznání. Svoboda vědeckého bádání a umělecké tvorby [Freedom of Thought, Conscience and Religion. Freedom of Scientific Research and Artistic Creation]," in Bartoň, M. et al. (2016) *Základní práva [Fundamental Rights]*, Praha: Leges.

Communication from the Ministry of Foreign Affairs no. 96/2001 Sb.m.s., on the adoption of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine.

Constitutional act no. 150/1948 Sb., Constitution of the Czechoslovak Republic

Constitutional act no. 100/1960 Sb., Constitution of the Czechoslovak Socialist Republic

Constitutional act no. 23/1991 Sb., which introduces the Charter of Fundamental Rights and Freedoms as a constitutional law of the Federal Assembly of the Czech and Slovak Federal Republic

Constitutional act no. 1/1993 Sb., Constitution of the Czech Republic

Český statistický úřad [Czech Statistical Office] (2014) *Náboženská víra obyvatel podle výsledků sčítání lidu – 2011 [Religious Faith of the Population according to the Rsults of the Census – 2011]*. Praha: Český statistický úřad

Decree of the Ministry of Interior no. 281/2021 Sb., on the implementation of the Act on Identity Cards and of certain provisions of the Act on Travel Documents and of the Act on Basic Registers

Hájek, M., Bahbouh, Ch. (2016) *Muslimský pacient [Muslim Patient]*. Praha: Grada.

Holub, T. (2004) "Militärseelsorge," in Wieshaider, W., Tretera, R. J., Potz, R. (eds.) (2004) *Recht und Religion in Mittel- und Osteuropa (Band 2, Tschechien)*. Wien: WUV Universitätsverlag.

Horák, Z. (2019) "Spiritual Care in Public institutions in the Czech Republic," in Tretera, J. R., Horák, Z. (eds.) (2019) *Spiritual Care in Public Institutions in Europe*. Berlin: Berliner Wissenschafts-Verlag.

Hrdina, I. A. (2004). *Náboženská svoboda v právu České republiky [Religious Freedom in the Legal Order of the Czech Republic]*. Praha: Eurolex Bohemia.

Hůlka, Š. (2004) "Die wichtigsten Rechtsquellen," in Wieshaider, W., Tretera, R. J., Potz, R. (eds.) (2004) *Recht und Religion in Mittel- und Osteuropa (Band 2, Tschechien)*. Wien: WUV Universitätsverlag.

Jäger, P. (2012a) "Svoboda myšlení, svědomí a náboženského vyznání [Freedom of Thought, Conscience and Religion]," in Wagnerová, E. et al. (2012) *Listina základních práv a svobod: komentář [Charter of Fundamental Rights and Freedoms: Commentary]*. Praha: Wolters Kluwer.

Jäger, P. (2012b) "Právo svobodně projevovat své náboženství a autonomie církví [The Right to Freely Express one's Religion and the Autonomy of the Churches]," in Wagnerová, E. et al. (2012) *Listina základních práv a svobod: komentář [Charter of Fundamental Rights and Freedoms: Commentary]*. Praha: Wolters Kluwer.

KŘÍŽ, J. (2017) *Autonomie církví [Autonomy of Churches]*. Praha: C.H. Beck.

MADLEŇÁKOVÁ, L. (2010) *Výhrada svědomí jako součást svobody myšlení, svědomí a náboženského vyznání [Conscientious Objection as Part of Freedom of Thought, Conscience and Religion]*. Praha: Linde.

MADLEŇÁKOVÁ, L. (2014) *Církve a náboženské společnosti. Správněprávní aspekty jejich vzniku a činnosti (churches and religious communities. Administrative aspects of their origin and activities*. Praha: Leges.

Ministerstvo kultury [Ministry of Culture]. *Data registrace církví a náboženských společností a svazů církví a náboženských společností [Registration Dates of Churches and Religious Communities and Associations of Churches and Religious Communities]*. Available at: https://bit.ly/3uaybZF (Accessed: 30 April 2021).

Ministry of Education. Communication "The right to freely express one's religion or belief in the context of the rules of theoretical and practical teaching in schools and school facilities," File no. ČŠIG-3601/14-G21, of October 6, 2014

"Modus vivendi inter Sanctam Sedem et Rempublicam Cechoslovaciae," in *Acta Apostolicae Sedis* vol. XX (1928), pp. 65–66.

MOLEK, P. (2019) *Základní práva. Svazek druhý – Svoboda [Fundamental rights. Volume Two – Freedom]*. Praha: Wolter Kluwer.

MORAVČÍKOVÁ, M. (2014) *Ľudské práva, kultúra a náboženstvi [Human Rghts, Culture and Religion]*. Praha: Leges.

NĚMEC, D. (2013a) "Ochrana svobody svědomí v oblasti zdravotnictví v České republice [Protection of the Freedom of Conscience in the Sanitary Services in the Czech Republic]," in Moravčíková, M., Križan, V. (eds.) (2013). *Právna ochrana slobody svedomia [Legal Protection of the Freedom of Conscience]*. Trnava: Typi Universitatis Tyrnaviensis.

NĚMEC, D. (2013b) "Das tschechische Gesetz über Eigentumsvergleich mit Kirchen und Religionsgemeinschaften aus dem Jahr 2012," *Archiv für katholisches Kirchenrecht. Mit besonderer Berücksichtigung der Länder deutscher Sprache, 182. Band*.

NĚMEC, D. (2013c) "Problematika právní subjektivity charit a diakonií v České republice neboli spor o pojetí povahy a poslání církví a náboženských společností [Problematic of the Juridical Personality of Charities and Diaconias in the Czech Republic alias Controversy on Conception of Nature and Mission of Churches and Religious Congregations]," in Šmid, M., Moravčíková, M. (eds.) *Medzinárodné a vnútroštátne právne aspekty praktickej aplikácie inštitútu uznania štátu a ich interakcia s postavením fyzických a právnických osôb [International and Intrastate Juridical Aspects of the Practical Application of the Institute of the Acknowledge by State and their Interaction with the Position of Physical and Juridical Persons]*. Trnava: Trnavská univerzita v Trnave, Právnická fakulta [University of Trnava, Faculty of Law].

NĚMEC, D. (2017) "Kirche und Staat in Mittel- und Osteuropa seit 1990: Die Twchechische Republik," in Mückl, S. (ed.) (2017) *Kirche und Staat in Mittel- und Osteuropa. Die Entwicklung des Staat-Kirche-Verhältnisses in der Transformationsländern Mittel- und Osteuropas seit 1990*. Berlin: Dunker & Humblot.

NĚMEC, D. (2019a) "Pokusy o změnu zákona o majetkovém vyrovnání s církvemi a náboženskými společnostmi v České republice a jejich realizace v současné české společnosti [Attempts to Amend the Act on Property Settlement with Churches and Religious Societies in the Czech Republic and their Implementation in Contemporary Czech Society]," in Moravčíková, M. (ed.) (2019) *Financovanie cirkví a náboženských spoločností v modernom demokratickom štáte [Financing of Churches and Religious Societies in a Modern Democratic State]*. Praha: Leges.

NĚMEC, D. (2019b) "Spiritual Care in Healthcare Facilities in the Czech Republic," in Tretera, J. R., Horák, Z. (eds.) (2019) *Spiritual Care in Public Institutions in Europe*. Berlin: Berliner Wissenschafts-Verlag.

Pražský hrad, Prezident ČR [Prague Castle, President of the Czech Republic]. *Prezident republiky udělil státní vyznamenání, 28. října 2018 [The President of the Republic awarded the state decoration on October 28, 2018]*. Available at: https://bit.ly/3o8WdTU (Accessed: 25 May 2021).

PŘIBYL, S. (2010) *Tschechisches Staatskirchenrecht nach 1989.* Brno: L. Marek.

PŘIBYL, S. (2018) *Die Rechtstellung der Kirchen und Religionsgesellschaften in Tschechien.* Praha: Společnost pro církevní právo [Church Law Society].

Public Defender of Rights. Inquiry Report on the Ban on Wearing Headgear in a Secondary Medical School, file number 173/2013/DIS/EN, of 2 July 2014

Rada pro reklamu, Profil [Advertising Council, Profile]: https://www.rpr.cz/cz/profil.php (Accessed:: 26 May 2021).

RAMEŠ, P. (2004) "Anstaltsseelsorge," in Wieshaider, W., Tretera, R. J., Potz, R. (eds.) (2004) *Recht und Religion in Mittel- und Osteuropa (Band 2, Tschechien)*. Wien: WUV Universitätsverlag.

Škola chce pokračovat v soudním sporu se studentkou o hidžáb. Obrátila se na Nejvyšší soud [The school wants to continue a lawsuit with a student over the hijab. It turned to the Supreme Court]. Available at: https://bit.ly/3lX0APc (Accessed: 26 August 2021)

TRETERA, J. R., HORÁK, Z. (2019) "State and Church in the Czech Republic," in Robbers, G. (ed.) (2019) *State and church in the European Union* (Third edition). Baden-Baden: Nomos

Věstník Ministerstva vnitra [Bulletin of the Ministry of interior] under no. 106/2011

volby.cz. *Volby do Senátu Parlamentu ČR konané dne 2.10. – 3.10.2020 [Elections to the Senate of the Parliament of the Czech Republic held on 2.10. – 3.10.2020]*. Available at: https://bit.ly/3i7KpND (Accessed: 25 May 2021)

WAGNEROVÁ, E. (2012) "Charakteristika státu a jeho vztahu k soukromým osobám [Characteristics of the State and its Relationship to Private Individuals]," in Wagnerová, E. et al. (2012) *Listina základních práv a svobod: komentář [Charter of Fundamental Rights and Freedoms: Commentary]*. Praha: Wolters Kluwer.

Legal sources

All cited laws and by-laws are freely available online at https://www.zakonyprolidi.cz/. However, case law is only partially publicly available in anonymized form: the findings of the Constitutional Court is available at https://nalus.usoud.cz and the sentences of the Supreme Court at https://nsoud.cz/Judikatura/ns_web.nsf/WebSpreadSearch. Sentences from lower tribunals are accessible only on demand and addressed to the respective tribunal, which is also obliged to send the sentence in anonymized form.

Act no. 218/1949 Sb., on economic indemnity of churches and religious communities by the state (Act on Churches and Religious Communities)

Act no. 141/1961 Sb., Criminal Procedure Code

Act no. 20/1966 Sb., on public health care

Act no. 159/1989 Sb., which amends and supplements the Criminal Code, the Act on Offenses and the Criminal Procedure Code

Act no. 16/1990 Sb., amending Act no. 218/1949 Sb., on the economic indemnity of churches and religious communities by the state
Act no. 73/1990 Sb., on civil service
Act no. 84/1990 Sb., on the right of assembly
Act no. 163/1990 Sb., on faculties of theology
Act no. 171/1990 Sb., School Act
Act of the Czech National Council no. 220/1991 Sb., on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Chamber of Pharmacists
Act no. 308/1991 Sb., Act on Churches and Religious Communities
Act of the Czech National Council no. 483/1991 Sb., on Czech Television
Act of the Czech National Council no. 484/1991 Sb., on Czech Radio
Act no. 18/1992 Sb., on civil service
Act of the Czech National Council no. 161/1992 Sb., on the registration of churches and religious communities
Act of the Slovak National Council no. 192/1992 Zb., on the registration of churches and religious communities
Act no. 40/1995 Sb., on the regulation of advertisement and on the amendment of Act No. 468/1991 Sb., on the operation of radio and television broadcasting
Act no. 329/1999 Sb., Act on Travel Documents
Act no. 212/2000 Sb., on the alleviation of certain property injuries caused by the Holocaust
Act no. 231/2001 Sb., on the operation of radio and television broadcasting
Act no. 3/2002 Sb., Act on Churches and Religious Communities
Act no. 585/2004 Sb., Military Service Act
Act no. 587/2004 Sb., on the abolition of civil service
Act no. 40/2009 Sb., Criminal Code
Act no. 198/2009 Sb., Anti-Discrimination Act
Act no. 372/2011 Sb., Health Services Act
Act no. 428/2012 Sb., on property settlement with churches and religious communities
Act no. 94/2021 Sb., on emergency measures in the event of an epidemic of COVID-19 and amending some related acts
Act no. 269/2021 Sb., Act on Identity Cards
Judgment of the District Court for Prague 10, file number 17 C 61/2016-172, of 27 January 2017
Judgment of the District Court for Prague 10, file number 17 C 61/2016-350, of 20 July 2020
Judgment of the Municipal Court in Prague, file number 12 Co 130/2017 – 228, of 19 September 2017
Judgment of the Municipal Court in Brno, file number 112 C 88 / 2018-190, of March 18, 2019
Judgment of the Municipal Court in Prague, file number 12 Co 304/2020 – 375, of 27 January 2021
Judgment of the Regional Court in Brno, file number 70 Co 170/2019-243, of 20 November 2019
Judgment of the Supreme Court of the Czech Republic, file number 25 Cdo 348/2019-311, of 27 November 2019
Judgment of the Supreme Court of the Czech Republic, file number 25 Cdo 1081/2020-282, of 28 April 2021
Resolution of the Presidency of the Czech National Council no. 2/1993 Sb., on the promulgation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic

Chapter III

The Legal Regulation of Religious Symbols in the Public Sphere in Hungary

Lóránt Csink

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.

Lóránt Csink (2021) The Legal Regulation of Religious Symbols in the Public Sphere in Hungary. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 73–102. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_3

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 Constitution 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.

Bibliography

Antal, Á. (2015) *Bölcseletek, Vallások, Jogi Alapértékek*. Pécs: Pécsi Tudományegyetem Állam- és Jogtudományi Kar.

Antalóczy, P. (2012) 'Az Alaptörvény és az egyházakról szóló törvény összefüggései' (Connections between the fundamental law and the Church Act), in Rixer, A. (ed.) *Állam és közösség*. Budapest: KRE-ÁJK.

Doe, N. (2004) *Religion and Media in Europe: A Comparative Study.* In Doe, N. (ed.) *The Portrayal of Religion in Europe: The Media and the Arts*, Leuven: Peeters, pp. 287–315.

Fejes, Z. (2015) 'Constitutional Identity, the Historical Constitution Clause in the Hungarian Fundamental Law, and its Effects on Constitutional Interpretation,' in Szente, Z., Mandák, F., and Fejes Z. (eds.). *Challenges and Pitfalls in the Recent Hungarian Constitutional Development,* Paris: L'Harmattan.

Halász, I. and Schweitzer, G. (2020) 'Nemzeti Jelképek' (National Symbols) in Jakab, A. et al., *Internetes Jogtudományi Enciklopédia*. Available at: http://ijoten.hu/szocikk/nemzeti-jelkepek.

Hill, L. (1983) 'The Self–Perceptions of Ombudsmen: A Comparative Survey,' in Caiden, G. (ed.), *International Handbook of the Ombudsman*, London: Greenwood Press.

Hill, M, and Sandberg, R. (2017) 'The Right to Blaspheme,' in Temperman, J. and Koltay, A. (eds.), *Blasphemy and Freedom of Expression*, Cambridge: Cambridge University Press.

Koltay, A. (2017) 'Az emberi jogok európai bírósága és a blaszfémia mint a szólásszabadság korlátja' (The European Court of Human Rights and Blasphemy as the Limit of Freedom of Expression), *Iustum Aequum Salutare*, 13(1), pp. 175–189.

Marx, K. (1843) *Critique of Hegel's Philosophy of Right* [Online]. Available at: https://www.marxists.org/archive/marx/works/1843/critique-hpr/index.htm (Accessed: 13 September 2021).

Paczolay, P. (1996) 'The Role of Religion in Reconstructing Politics in Hungary', *Cardozo Journal of International and Comparative Law*, 4(2), pp. 261–276.

Schanda, B. (2006) 'Religion and Law in Dialogue: Covenantal and Non-Covenantal Cooperation of state and Religion in Hungary,' in Puza, R., and Doe, N. (eds.) *Religion and Law in Dialogue: Covenantal and Non-Covenantal Cooperation between State and Religion in Europe*. Leuven: Peeters.

Schanda, B. (2014) 'Romboló bírói aktivizmus vagy a vallásszabadság győzelme?' ('Harmful judicial activism or the victory of freedom of religion?'), *Pázmány Law Working Papers*, 2014/7. Available at: https://plwp.eu/docs/wp/2014/2014-07_Schanda.pdf.

Schanda, B. (2019) 'State and Church in Hungary,' in Robbers, G. (ed.): *State and Church in the European Union*. Baden-Baden: Nomos Verlagsgesellschaft.

Schanda, B. (2020) 'Hungary's Christian Culture as Subject of Constitutional Protection', *Studia Z Prawa Wyznaniowego*, Vol. 23, pp. 55–72; https://doi.org/10.31743/spw.9696.

Somody, B. (2008) 'Jogállami paradoxon—A sikeres ombudsmani jogvédelem sajátosságai (Rule of Law Paradox—Features of Successful Legal Protection by Ombudsman)', in *Az ombudsman intézménye és az emberi jogok védelme Magyarországon*. Budapest: OBH.

Torfs, R. (2016) 'The Presence of the Cross in Public Spaces from the Perspective of the European Court of Human Rights,' in Stanisz, P., Zawiślak, M., and Ordon, M. (eds.) *Presence of the Cross in Public Spaces*. Cambridge: Cambridge Scholars Publishing.

Uitz, R. (2012), 'Hungary's New Constitution and Its New Law on Freedom of Religion and Churches: The Return of the Sovereign', *BYU Law Review*, 2012/3, pp. 931–966.

Chapter IV

The Legal Regulation of Religious Symbols in the Public Sphere in Poland

Paweł Sobczyk

1. Introduction

The presence of religious symbols in Poland's public space not only has religious and legal aspects, but also historical, cultural, and social dimensions.[1] This is due to the state's historic close association with Christianity, the multicultural and multireligious nature of the First Polish Republic (until 1795), the time of partitions (1795–1918), the struggle for independence during the two world wars of 1914–1918 and 1939–1945, and the fight against communism (1945–1989). Over the state's highly complicated history, religious symbols (the Christian cross in particular) became symbols of identity, sovereignty, and tradition in addition to their basic, religious meaning. This can be indirectly confirmed by the wording of the Constitution of the Republic of Poland on April 2, 1997, framed during the political system changes initiated by the "Polish Round Table" talks in 1989.[2] This was recalled by the Sejm of the Republic of Poland at a special resolution on December 3, 2009, stating, *inter alia*, that "the sign of the cross is not only a religious symbol […], but in the public sphere, it is a reminder of the readiness to sacrifice for another human being, it carries the values that build respect for the dignity of every human being and their rights."

1 See e.g., Ożóg, 2010, pp. 55.

2 The importance of this context for the issues discussed in this paper was noted, for example, in Dudek, 2016, pp. 180–82.

Paweł Sobczyk (2021) The Legal Regulation of Religious Symbols in the Public Sphere in Poland. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 103–140. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_4

Following up on that statement, it further stressed that "in difficult times, during the partitions and occupation […], the cross became a symbol not only of Christianity and its values, but also of longing for the Homeland."[3] A similar statement was adopted by the Senate of the Republic of Poland in the resolution of February 4, 2010, concluding that "any attempt to prohibit the placement of the cross in schools, hospitals, offices, and public spaces in Poland must be considered contrary to our tradition."[4]

The scope and methodology of the research described in this paper are in line with those of the international research project *Freedom of Conscience and Religion in Europe* pursued within the framework of the Central European Professors' Network coordinated by the Ferenc Mádl Institute of Comparative Law in Budapest (Hungary).

At the conceptual stage of research work on a multi-authored monograph titled *Religious symbols in the public sphere in the legal orders of Central and Eastern European countries*, a team of experts from Croatia, Czechia, Slovakia, Serbia, Hungary, and Poland proposed the following structure:

1. Introduction: scope of research, methodology, basic concepts.
2. The historical, social, cultural, and political context of the presence of religious symbols in public spaces: political transformations of state after 1989 and their impact on the protection of freedom of conscience and religion.
3. Axiological and constitutional foundations: values and principles related to the presence of religious symbols in public spaces.
4. Model of relations between the state and the Church: general principles, practice of cooperation between the state and religious associations.
5. Constitutional guarantees of freedom of conscience and religion: basis, subject, object, limits, and means of protection.
6. Guarantees according to other sources of universally binding law: the subjective and objective scope of the possibility of manifesting religious beliefs through religious symbols.
7. Limits of religious expression through religious symbols: public offices, schools and universities, hospitals, workplaces, business activities, the Internet, and social networks.
8. The system of legal protection: the practice of the judiciary, case studies.
9. Conclusions *de lege ferenda*.

At the outset, a linguistic remark should be made. The word "symbol" in Polish has several meanings. According to *Dictionary of the Polish Language*, symbol

3 Resolution of the Sejm of the Republic of Poland of 3 December 2009 (Monitor Polski of 2009, No. 78, item 962).

4 Resolution of the Senate of the Republic of Poland of 4 February 2010 (Monitor Polski of 2010, No. 7, item 57). Both resolutions of the chambers of the Polish Parliament were issued after the judgement of the European Court of Human Rights of 3 November 2009 in the case of Lautsi v Italy.

denotes: "1. a concept, object, sign, etc., having one literal meaning and more hidden meanings; 2. a person or an animal personifying something; 3. a conventional sign to denote something, for example, units of measurement, chemical elements, etc.; 4. in literature: a motif or set of motifs in a literary work which is a sign of a deeper, hidden content, intended to suggest its existence."[5]

A "religious symbol," in turn, belongs to the sphere of religious worship (religion) and is used or clearly associated with a religious system. Often, religious symbols are given additional mystical or magical meanings. The genesis of religious symbols varies; religious symbols do not have a "genetically" religious origin.[6]

2. Historical, social, cultural, and political context of the presence of religious symbols in public spaces

Articles concerning religious matters had a special place in the Polish constitutions of 1791,[7] 1921,[8] 1935,[9] and even 1952,[10] defining the legal standing of an individual due to the professed religion and the legal standing of religious associations, especially the Catholic Church.[11] An analysis of religious matters in these four constitutions indicates that the provisions concerning religion were outcomes of debates or even fierce constitutional disputes (often taking longer to resolve than the work on solutions for the system of government), ultimately ending with a political and legal agreement in accordance with the principle of *consensus facit legem* (except 1952). The complex national and state tradition, in which the religious factor in the functioning of the state and its bodies and institutions has played an essential role, has

5 Słownik Języka Polskiego [Online], https://sjp.pl/symbol.

6 Cf. Szymanek, 2012, 33ff.

7 Government Act of 3 May 1791. The first article of that Constitution was titled "The Prevailing Religion" and read as follows: "The prevailing national religion is and shall be the sacred Roman Catholic faith with all its laws. Passage from the prevailing religion to any other confession shall be forbidden under penalties of apostasy. Inasmuch as that same holy faith bids us to love our neighbours, we owe to all persons, of whatever persuasion, peace in their faith and the protection of the government, and therefore we guarantee freedom to all rites and religions in the Polish lands, in accordance with the laws of the land."

8 The religious provisions of the Constitution of 17 March 1921 were framed in two blocks of articles. The first comprised provisions on the freedom of conscience and religion (Articles 54, 111, 112, and 120), while the other regulated institutional relations (Articles 113–116). Constitution of the Republic of Poland of 17 March 1921 (Journal of Laws No. 44, item. 267).

9 The Constitution of 23 April 1935 incorporated religious provisions of the March Constitution, with one exception—the Preamble did not include *invocatio Dei*.

10 Constitution of the Polish People's Republic of 22 July 1952 (consolidated text: Journal of Laws of 1976, No. 7, item 36).

11 For a detailed and comparative analysis of the relationship between the state and religious organizations in Polish Constitutions, see Sobczyk, 2019, pp. 259–296.

had a significant impact on the framing of religion-related provisions in the Polish Basic Laws. In addition to the essential guarantees of the freedom of conscience and religion for individuals, the provisions governing state-Church relations were of key importance, confirming the *primus inter pares* status of the Catholic Church vis-à-vis other religious associations due to the state's centuries-long association with it.[12]

The direct constitutional legacy that the framers of the current Basic Law faced after 1989 were the provisions of the Constitution of the Polish People's Republic of July 22, 1952. The religious article of the 1952 Constitution also remained in force after the adoption of the Constitutional Act of October 17, 1992, on mutual relations between the legislative and executive powers and on local government, or the "Small Constitution,"[13] although its meaning and interpretation were completely different due to the process of systemic transformation that started in 1989 and the adoption of the "religious laws," among which the Act on guarantees of freedom of conscience and religion and the Act on the relations between the state and the Catholic Church in the People's Republic of Poland were of fundamental importance.[14]

The religious article in force at the time of the commencement of work on the new Basic Law read as follows: "1. The Republic of Poland guarantees freedom of conscience and religion to its citizens. The Church and other religious associations are free to perform their religious functions. Citizens may not be compelled to participate in religious activities or rites, nor may anyone be forced to participate in religious activities or rites. 2. The church is separate from the state. The principles of the relationship between the State and the Church as well as the legal and property standing of religious associations shall be determined by statutes."[15] With some exceptions, the multiple amendments to the constitutional provisions did not affect the religious article. These changes consisted of the 1976 repeal of para. 3 in the following wording: "The abuse of the freedom of conscience and religion for purposes detrimental to the interests of the Polish People's Republic shall be punishable."

The centuries-old history of the state's linkage with the Catholic Church and its supra-religious role in the history of the nation meant that the Church could not be missing in an important period of political and socio-economic changes, which began with the round table talks in 1989. Moreover, various axiological, historical, legal, and social factors contributed to the conviction that the new Basic Law should

12 For interesting considerations on the presence and role of religious symbols in religious and secular states, see Szymanek, 2012, p. 33.

13 Constitutional Act of 17 October 1992 mutual relations between the legislative and executive powers and on local government (Journal of Laws No. 84, item 426, as amended).

14 Act of 17 May 1989 on guarantees of freedom of conscience and religion (consolidated text: Journal of Laws of 2000, No. 26, item 319, as amended), and the Act of 17 May 1989 on the relations between the State and the Catholic Church in the Republic of Poland (Journal of Laws No. 29, item 154, as amended). The third of the 'May Acts' was the non-binding Act of 17 May 1989 on the social insurance of clergy (Journal of Laws No. 29, item 156, as amended).

15 The issues concerning freedom of conscience and religion as well as the principles of state–Church relations were covered in Article 70 of the 1952 Constitution, and then—following the amendment and renumbering—in Article 82.

include completely new provisions concerning the freedom of conscience and religion and the status of religious associations in the state. In the case of individual guarantees, the model that the Constitution framers were bound to replicate was the 1993 Convention for the Protection of Human Rights and Fundamental Freedoms and the accession of the Republic of Poland to the Council of Europe.[16] However, in the case of the relations between the state and the Church, the available options were extremely broad, as they were determined not by historical experience or international standards, but by current politics. The Polish Constitution framers faced several problems in defining the institutional relations between the state and the Church. The first was due to the need to determine the wording of the provisions to be included in the constitution. The other, of a substantive nature, concerned the choice and definition of the state model from the perspective of its attitude to religion, philosophical views, and institutional religious subjects.[17]

The drafters of the new Constitution, including the provisions on religious matters and indirectly on the presence of religious symbols in public spaces, faced the challenge of determining the state bodies that would be legitimized to proceed with framing the new Constitution and the procedure for constitutional work. The 1952 Constitution, apart from the amendments to its specific provisions, did not resolve any matters in the event that the need to adopt a new constitution should arise. Józef Krukowski rightly highlighted that the developments in religious policies in the countries of Central and Eastern Europe after 1989 were influenced by two factors, namely the respect for religion as a fixed component of national culture, and the assumptions of liberalism, including the postulate for building a secular state, neutral in matters of religious beliefs, accompanied with the postulate for respect for the freedom of conscience and religion.[18] It must be emphasized that in the Polish reality, placing crosses in public places was not only an expression of attachment to the Catholic religion and Polish traditions, but also a reaction to the concept of an irreligious state that was actively promoted by the authorities of the Polish People's Republic.[19]

The work on the new constitution formally commenced on December 7, 1989 when the Sejm of the 10th term and the Senate of the first term appointed their constitutional committees.[20] The work was completed only after nearly eight years of

16 Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, as amended (Journal of Laws of 1993, No. 61, item 284).

17 Cf. Krukowski, 1993, pp. 319–330.

18 Cf. Krukowski, 2002, p. 9.

19 Justification for the judgement of the Court of Appeal in Szczecin of 25 November 2010, case ref. I ACa 363/10, 2012, *Przegląd Prawa Wyznaniowego*, no. 4 (2012): 195–218 (cited from p. 201).

20 The path of subsequent amendments to the Constitution of the People's Republic of Poland in the years 1989–1993 was described, among others, by Maria Kruk. She pointed out that the Small Constitution, in the "inter-Constitution" period, "could well be an attempt to provide teaching on new principles and rules and on the need to abide by these in the interests of the culture of exercising power, efficiency, stability and effectiveness of government" (Kruk, 1993, p. 17).

extremely politically and legally turbulent debates, with the adoption of the Constitution of the Republic of Poland on April 2, 1997.[21]

Regardless of the legal context, as a consequence of the processes described above, crosses once again became a fairly common element in the Polish public space, although their presence was not required by any legislation.

3. Axiological and constitutional foundations

The enactment of the Constitution of the Republic of Poland on April 2, 1997, represented a certain political and legal consensus, especially since the majority in the National Assembly, which framed and adopted the text of the Constitution, vested in the post-communists, and the influence of the circles linked to the Solidarity movement (i.e., the anti-communist opposition of the 1980s) on final wording was limited. This was confirmed by the results of the constitutional referendum of May 25, 1997, which preceded the signing of the Polish Constitution by the President and its entry into force on October 17, 1997. Citizens voting in favor of the Constitution numbered 6,396,641 (53.45%) and 5,570,493 were against it (46.55%), with a turnout of merely 42.86%.[22]

The 1997 Constitution does not directly refer to the presence of religious symbols in public spaces. However, this does not mean that its text does not contain any significant provisions related to the issues discussed. On the contrary, both the religious provisions (Articles 25 and 53) and other provisions (e.g., the Preamble) refer to the presence of religious symbols in public spaces.

Articles 25 and 53, which are of key importance in terms of religious matters, are discussed below in this paper; at this point, one should note the linking of the presence of religious symbols in public space to a number of other constitutional provisions[23] that form an intermediate axiological and systemic context.

First, one should consider the Preamble and the references it contains to religious matters. The excerpt of the Preamble, "We, the Polish Nation—all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources," indicates respect for pluralism regarding philosophical

21 Journal of Laws, No. 78, item 483, as amended.

22 The voting results and revised voting results can be found in the Journal of Laws—the original results: Journal of Laws of 1997, No. 54, item 353; for the revised results and Notice of the National Electoral Commission of 8 July 1997 on the revised voting results and the outcome of the constitutional referendum held on 25 May 1997, see Journal of Laws No. 75, item 476.

23 For the systematics of the constitution and the positioning of the religious provisions in the constitutions of modern states and the 1997 Constitution of the Republic of Poland, see, among others, Szymanek, 2000, 22–39.

views in society and equal treatment of the "sources of values." Moreover, it confirms that the state treats all religious and philosophical options in the same manner, "that is, that their followers have equal rights to manifest their postulates regarding respect for their recognized values towards state authorities, including postulates resulting from convictions as to the existence of Christian values."[24] Further, another excerpt from the Preamble states: "Beholden to our ancestors for their labors, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the nation and in universal human values," which refers to the tradition and history of the Polish state and emphasizes the importance of the Nation's Christian heritage for culture. One may challenge that the Christian heritage of the nation should be important only for culture, as it is for other areas of life. The last of the three excerpts on philosophical and religious matters reads as follows: "Recognizing our responsibility before God or our own consciences, we hereby establish this Constitution of the Republic of Poland." This excerpt, both during and after the completion of the work on the Preamble, has raised many controversies. Catholic Church representatives proposed that the word "or" should be replaced with the conjunction "and." They rightly pointed out that responsibility before God does not make void or supersede responsibility before one's conscience. On the other hand, account had to be taken of the opinions of secular circles, for which such a change could lead to the invalidation of the autonomy of conscience in relation to religious faith.[25] Therefore, one should agree with Krukowski that "[s]uch a provision indicates that the Constitution of the Republic of Poland assumes an ethical relativism characteristic of liberal democracy."[26] The dispute over this provision really concerns the meaning of the conjunction "or." This conjunction, next to, *inter alia*, the conjunctions "and," "if … then," "always and only if," is a binary truth-functional connective. The problem is that the conjunction "or," as used in the above-discussed provision of the Preamble by the Constitution framers, has three different meanings that may complicate the construction of this part of the Preamble.[27]

Chapter I of the Polish Constitution, among the principles defining the relations between the state and the Church, in Article 25(2), lays down the principles of the impartiality of public authorities in matters of religious and philosophical beliefs, as well as the freedom to express religious and philosophical beliefs in public life. These do not directly refer to the relationship between Church and state.[28] However, the relationship between constitutional impartiality and equality cannot be denied. As the Constitutional Court noted, "The principle of impartiality precludes the enactment of any regulations that would significantly differentiate the legal standing

24 Krukowski, 1999, p. 66.
25 Cf. Gowin, 1999, p. 246.
26 Krukowski, 1999, p. 66.
27 For more about the conjunction "or," see, among others, Stanosz, 2000, p. 20; Ziembiński, 1992, pp. 76–77.
28 Cf., for example, Małajny, 2002, p. 293, and Szymanek, 2004, pp. 32–33.

of religious communities in terms of the material foundations of their activities. In a situation in which the contested provision on the material conditions of the activity of religious communities does not violate the principle of their equality, there are no grounds to conclude that it goes beyond the scope of the regulatory freedom delimited by the principle of impartiality under consideration."[29]

Representatives of the Polish doctrine of constitutional and religious law, during the work on this constitutional provision and after its enactment, held fierce discussions over the meaning of "impartiality," especially in the context of this concept notoriously conceived in its negative meaning of "neutrality."[30] It was noted, among others, that "neutrality" and "impartiality" are synonyms, and the essence of the constitutional compromise in this matter lies in the clarification of the principle of "neutrality" by "adding a clause to guarantee the respect by the state authorities of the freedom to express religious and philosophical beliefs in public life." This clarification is dictated by the need to prevent any risks that could arise from a radical understanding of neutrality.[31] The need for clarification arose during the framing of the 1997 Constitution due to the ambiguity of neutrality and the use of the concept of ideological neutrality of the state in the times of the People's Republic of Poland to fight religion and its manifestations both in the individual (individual's religious freedom) and community aspects (religious freedom of churches and other religious associations).[32]

To interpret the principle of impartiality of public authorities in matters of religious and philosophical beliefs, it is important to distinguish between the neutrality of authorities towards religion in a closed and open sense. Neutrality refers to the removal of all manifestations of religious beliefs from public life, while the contemporary doctrine speaks of impartiality (neutrality) of public authorities in an open sense.[33] The elimination of manifestations of religious and philosophical beliefs may consist, *inter alia*, of the prohibition of the participation of those holding public office in religious ceremonies on the occasion of state celebrations or the prohibition of placing religious symbols in state premises, even if those employed wish to do so. The formula of neutrality in the open sense applies to public authorities and requires them to treat all people equally, regardless of their religious or philosophical beliefs: neutrality, as Leszek Garlicki states, "must not undermine the cultural tradition

29 Judgement of the Constitutional Court, case ref. K 3/09 (OTK ZU no. 5/A/2011).

30 Cf. Dudek, 2016, p. 184ff.

31 Krukowski, 2000a, pp. 106–107.

32 For more on this see, for example, Borecki, 2008.

33 Cf. Krukowski, 2006, p. 62. Jarosław Szymanek was negative about the distinction between open and closed neutrality in Szymanek, 2004, p. 43. In his opinion, "neutrality, to be neutrality at all, and therefore an objective attitude towards other people's matters and other people's disputes, can actually be only one, i.e., indifferent." It seems that this author, bringing the charge of logical nonsense against the authors who make such classifications of neutrality, is making a substantial error himself. The point is not, on the constitutional level, whether neutrality has an open or closed form, but about the way in which it is applied by bodies of public administration, and that is something completely different.

of individual societies, which should and is reflected in normative acts."[34] At the same time, this formula implies the obligation to refrain from accepting one religion, opinion, or philosophy as the only true one.[35]

Article 25(2) *in fine* provides for an obligation on public authorities to ensure conditions for the free expression of religious and philosophical beliefs by everyone in public life.[36] "Public life" should be understood as the opportunity to present views at public gatherings or in the press, for example. However, the right to present one's views is not absolute and may, therefore, be subject to generally accepted limitations. Article 31(3) of the Constitution is of fundamental importance regarding restrictions on the freedom of expression of religious and philosophical beliefs: "any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights." This article contains the classic dyad of limitations due to *bonum commune* (state security, public order, environmental protection, public health, and morality) and *iura aliorum* (freedoms and rights of others).

For a proper understanding of religious matters regulated under the Constitution, including the presence of religious symbols in public spaces, other provisions of Chapter I of the Constitution are also of fundamental importance: Article 1, laying down the concept of the state as the common good ("The Republic of Poland shall be the common good of all its citizens"); Article 2, in which the Constitution framers state that "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice"; Article 5, with its provisions categorized as program norms that establish the objectives and stages of the state's activities and the means for their achievement ("The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, **safeguard the national heritage** [emphasis added] and shall ensure the protection of the natural environment pursuant to the principles of sustainable development"); and Article 6(1), reading as follows: "The Republic of Poland shall provide conditions for dissemination and the people's equal access to the products of culture which are the source of the Nation's identity, continuity, and development").[37]

P. Stanisz notices that, regardless of the above-mentioned constitutional guarantees concerning the presence of religious symbols in public spaces—the natural rights of national and ethnic groups (and, consequently, also of their individual members), to cultivate traditions and behaviors that they have developed as such,

34 Garlicki, 1999, p. 50.
35 Krukowski, 2005, p. 62.
36 See, e.g., Zawiślak, 2016, pp. 178–179.
37 Cf. Krukowski, 2004, pp. 79–101.

are also of great importance for the issues under consideration.[38] In this context, one cannot omit Article 35(1) of the Polish Constitution, which provides that "the Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, **to maintain customs and traditions, and to develop their own culture**" (emphasis added). This provision should be construed in the context of Articles 5 and 6 of the Basic Law.

Regarding Chapter II of the Polish Constitution, titled "The freedoms, rights and obligations of persons and citizens," next to the above-mentioned Article 53, which defines the freedom of conscience and religion, Article 48 is key, and especially its para. 1 concerning parents' right to raise their children according to their beliefs (the second sentence of that paragraph states that "such upbringing shall respect the degree of maturity of a child as well as their freedom of conscience and belief and also their convictions"). Moreover, the triad of articles defining the values of dignity, freedom, and equality as the source, foundation, and interpretation rules for the entire catalog of freedoms, rights, and obligations of persons and citizens should be noted. Further, one may count among the provisions of Chapter II of the Polish Constitution concerning religious matters, a specific list of means for the defense of freedoms and rights contained in Articles 77–81, as discussed in more detail below.[39]

4. Model of relations between the state and the Church

The model of relations between the state and religious associations applicable in Poland comprises the principles stipulated in Article 25 of the Constitution: equality of rights of churches and other religious associations, respect for the autonomy and mutual independence of the state and of churches and other religious associations, cooperation between the state and churches and other religious associations for the individual and the common good, and legal forms for structuring relations between the state and religious associations.[40]

The constitutional regulation of the relations between the state and institutional religious subjects is essentially specific in that a single article of the Polish Constitution contains a catalog of principles that correspond directly to the wording of the article itself. The religious article is positioned in Chapter I of the

38 Stanisz, 2016, pp. 171–172.

39 The means for the defence of human and citizen freedoms and rights guaranteed in the Polish Constitution of 2 April 1997 include, first of all: the right to a fair trial, an individual constitutional complaint and an application to the Commissioner for Citizens' Rights. Cf. Garlicki, 2012, pp. 116–117.

40 For more on this, see Sobczyk, 2013.

Basic Law, among the supreme constitutional principles.[41] Undoubtedly, this was due to historical factors and awareness of the importance of religious matters in Poland.[42] As Garlicki noted, "Poland's specific historical experience, especially the role of the Catholic Church, requires that churches and religious organizations be included in political considerations of civil society. This is what the Constitution envisages by introducing into the principles of the political system of the Republic of Poland, in addition to guarantees of conscience and religion to individuals (Article 53), a general definition of the role of churches and religious organizations."[43]

In a brief description of the principles that compose the Polish model of relations between the state and religious associations, one should follow their systematics as adopted by the Constitution framers. Article 25(1) sets out the principle of equal rights of churches and other religious associations, which is a complement and a determination of the principle included in Article 32 of the Polish Constitution (equality before the law), as emphasized several times by the Constitutional Court in its jurisprudence.[44] Hence, the principle opening the constitutional religious article must be construed not only on the basis of the literal rule of interpretation, which takes into account the meaning of such terms as "equal rights" or "Churches and other religious associations," but also in the context of guarantees of respect for equality in the law and before the law, along with inherent human dignity.

The framers of the Polish Constitution did not define the principle of equal rights, but merely stated in general terms that "Churches and other religious organizations shall have equal rights." A definition of this principle, based on the established jurisprudence regarding the principle of equal rights, was only given by the Constitutional Court, according to which "the principle of equality of churches and religious organizations means that all churches and religious organizations with a shared essential feature should be treated equally. At the same time, this principle assumes a different treatment of churches and religious organizations that do not have a common feature that is essential from the point of

41 In the judgement on the constitutionality of the Property Committee, the Constitutional Court stated, *inter alia*, that "the regulations on the institutional position of churches and religious associations, as contained in Article 25 of the Constitution, were given by the Constitution framers the form of a systemic principle." Cf. the Constitutional Court's judgement of 8 June 2011 (case ref. K 3/09), item 39. Further, Michał Pietrzak concluded that the opinion that this regulation was important for the state model, which prevailed among deputies and senators, was decisive in giving religious matters such a high rank and the establishment of their positioning among the political system principles. Cf. Pietrzak, 1997, p. 176.

42 Cf. Winczorek, 1995b, p. 71.

43 Garlicki, 2012, p. 69.

44 E.g., in the judgement concerning the Act of 26 June 1997 amending the Act on guarantees of freedom of conscience and religion and amending certain other acts. Judgement of the Constitutional Court of 5 May 1998, case ref. K 35/97 (*OTK ZU* no. 3/1998), item 32.

view of a regulation."[45] The Constitutional Court, by supporting the construction of the principle of equality of rights on the concept of equality before the law and equality in the law, as inferred from the principle of equality established in Article 32 of the Basic Law, came to the conclusion that the essence of the principle of equal rights of churches and religious organizations lies in the assumption that all churches and religious organizations, which share essential features, should be treated equally. This principle also assumes a different treatment of churches and other religious organizations that do not have common features, which is essential from the perspective of regulations.[46] In other words, the principle of equal rights of churches and religious organizations does not presume that all religious organizations should be treated in the same way. It is a merely guarantee that public authorities will create a legal framework that will enable the achievement of equal rights, depending on the features and characteristics of individual churches and religious associations.[47] This means that equal rights, such as equality, are not equivalent to egalitarianism.[48]

The differences between religious subjects must have been recognized by the Constitution framers, since in Articles 25(4) and (5) they provide different definitions of the legal status of individual institutional religious subjects.[49] Moreover, it follows from Article 53(4) that teaching religion in public schools is possible only for churches and other "legally recognized" religious organizations.[50]

Due to the inclusion of the framers of the current Polish Constitution of the principle of equal rights of churches and other religious associations among the basic principles of state-Church relations, there is no privileged (supreme) religious denomination in Poland, nor any legally privileged Church or other religious organization.

45 Judgement of the Constitutional Court, case ref. K 13/02; cf. Paweł Borecki, who points to three different constructions of the principle of equal rights of religions in the Polish constitutional and religious law. In his opinion, the Constitutional Court in the cited judgement referred to the position supported by Józef Krukowski, Artur Mezglewski, Henryk Misztal, Piotr Stanisz, as well as Witold Adamczewski and Bogusław Trzeciak. According to Borecki, its opposite is the stance of Michał Pietrzak and Piotr Winczorek, who believe that it follows from the principle of equal rights that neither Churches nor religious organizations can be granted a legally privileged position in Poland. In his opinion, the optimum solution is the one proposed by Zbigniew Łyko, who recognizes equality of rights as the right to equal opportunities, i.e., the same legal opportunities for religious associations; see Borecki, 2007, pp. 134–38.

46 Cf. the Constitutional Court's judgements: K 13/02 and K 3/09.

47 Judgement of the Constitutional Court, case ref. K 3/09. Andrzej Czohara wrote that the principle of equal rights of religious associations requires the state to treat them equally and to provide them with equal rights; see Czohara, 1994, p. 25.

48 Cf. Dudek, 2004, p. 201.

49 This was pointed out by the Constitutional Court, which noted that the equality of rights of churches and other religious organizations is not inconsistent with the differentiation of the status of individual religions, stressing that the principle of institutional equality of rights cannot be understood as a principle creating the expectation of factual equality; see the K 3/09 judgement.

50 Ibid.

They all enjoy the same rights and have the same obligations.[51] As a further consequence, this principle precludes the emergence of a confessional state that grants one of the churches or other religious organizations the position of the state Church.

Article 25(3) of the Polish Constitution established the principles of autonomy and independence. It is quite commonly accepted that in religious articles, it plays the role of a "principle of principles" in defining the relations between the state and institutional religious subjects.[52] It follows from the meaning of the term "autonomy" in the Polish language and the wording of Article 25(3) that, on the basis of the religious article, one can speak of the autonomy of churches and other religious organizations in relation to the state, as a certain sphere of their activity, with which the state does not interfere.[53]

However, delimitation of the sphere of autonomy remains an open question, as it was left undefined by the framers of the constitution, leaving this issue to the ordinary legislator.[54] The wording finally adopted in the Constitution, which establishes "the principle of respect for their autonomy and the mutual independence of each in its own sphere" as the basis of relations between the state and churches and other religious organizations indicates that the state does not grant autonomy and independence to institutional religious subjects. The state only confirms that it exists and undertakes respect to it.

The constitutional principle of autonomy and independence is, in the subjective aspect, a confirmation of the separated nature of the two institutions of public life, the state and churches, and other religious associations.[55] The constitutional drafters,

51 Cf. Majchrowski and Winczorek, 1998, p. 48. Jarosław Szymanek, in contrast, writes that the principle of equality of rights established in Article 25(1) of the Polish Constitution is an obligation on the part of the state to treat Churches and other religious associations equally before laws. At the same time, equality of rights understood in this way cannot create an expectation towards factual identity of rights, as to extrapolate their absolute equality would be unwarranted and exaggerated. Cf. Szymanek, 2006, pp. 97–98.

52 This conclusion is warranted both by the genesis of the religious article and the role of autonomy and independence in shaping the relation between the state and institutional religious subjects.

53 This matter was construed in a similar manner by the representative of the President of the Republic of Poland in the Constitutional Committee Władysław Kulesza, who stated, among other things: 'Therefore, it is not about mutual autonomy; the state vis-à-vis the Church, and the Church vis-à-vis the state, but one-way autonomy between the state and the Church;' see Kulesza, 1995, p. 69. On the other hand, Włodzimierz Cimoszewicz considered the wording concerning the autonomy and independence of Churches and the state to be a logical error, in that the state cannot be defined with the use of a feature of autonomy in relation to Churches; see Cimoszewicz, 1995, p. 79; Działocha, 1995, p. 8. As the principle established during the Second Vatican Council demonstrates, the Catholic Church perceives autonomy and independence in a different way. The Pastoral Constitution on the Church in the Modern World *Gaudium et spes* provides that 'The Church and the political community in their own fields are autonomous and independent from each other;' see Sobczyk, 2005, pp. 154ff.

54 Wiktor Osiatyński, one of the experts of the Constitutional Committee, proposed to limit the autonomy of Churches and other religious organizations to religious and organizational functions, while recognizing that activities of a different nature, e.g., charitable work, would find their justification in the principle of cooperation between the state and Churches and others religious organizations; cf. Osiatyński, 1995, p. 87.

55 Winczorek, 2000, p. 39.

as the wording of the provision demonstrates, do not grant institutional religious subjects autonomy, but only confirm their special status in the state.[56] Therefore, the position presented in the doctrine of constitutional law, from which it follows that the subjects of religious relations have their objective value seem fully legitimate.[57]

The fact that the principle of respect for the autonomy and independence of the state and the Church implies that power vesting in each of these subjects to legislate their own law is not tantamount to consent to the infringement of the law established by the other subject. Churches and other religious associations are required to respect the state legal order and *vice versa*, as they are subjects operating in the state and in accordance with Article 83 of the Constitution, they are under a constitutional obligation to observe the law: "Everyone shall observe the law of the Republic of Poland."

The special character and, at the same time, the legal position of institutional religious subjects finds its confirmation in "mutual independence of each in its own sphere." It follows from this wording that the independence provided for the state and the Church is not absolute, that is, complete. Its boundaries are delimited by the constitutional wording "in its own sphere"; hence, the distinction of the objective aspect of the principle. It seems that in this way, the Polish Constitution framers indirectly referred to the classical division of matters of interest to the state (*res temprorales*) and the Church (*res spirituales*). These spheres were specified in detail at the constitutional level, as any such determination is the subject matter of an international agreement and acts governing the status of religious associations, pursuant to Article 25(4) and (5) of the Polish Constitution.

The relationship between the state and churches and other religious organizations are structured around the principle of cooperation for the good of the individual and the common good. This is a confirmation of their autonomy and mutual independence: each in its own sphere, and there is an assignment of a positive meaning to the separation of these subjects. The principle of cooperation, rooted in European legal culture since the times of Emperor Constantine the Great (4th century CE), serving in the religious article primarily to define the relations between the state and the Church, may be considered a necessary principle because of the affiliation of the same people to the state and the Church. In the author's opinion, it is also a form of involvement of churches and other religious associations under the Constitution in the pursuit of state objectives, in accordance with the principle of subsidiarity and the common good, which indirectly manifests the position and role of institutional religious subjects in a democratic state ruled by law.[58]

However, the Polish Constitution does not specify what is meant by the terms that set out the objectives of cooperation. The "individual good" seems to be a clearer

56 The special status of Churches and other religious associations in the state is confirmed by their autonomy and independence and *vice versa*.

57 This e.g., in Krukowski, 2006, p. 74.

58 Cf. Mojak, 2007, p. 96.

term which, in the context of the Preamble to the Constitution, can be identified with dignity of a person, as but also with the guarantees of respect for rights and freedoms of persons and citizens.[59] However, the problem with interpretation may be that the individual good as a constitutional category appears only in the context of cooperation, as referred to in Article 25(3). The common good as an objective of cooperation between the state and churches and other religious organizations should be interpreted in the context of the wording of the Constitution, which contains a direct reference to this idea and value in the Preamble,[60] Articles 1 and 82,[61] as well as that which creates this concept indirectly, for example, as a delimitation category relating to the freedom of persons and citizens (Article 31(3)).[62]

Cooperation is a general obligation to pursue activities aimed at achieving the individual and common good. At the same time, the drafters did not specify any forms of cooperation or areas of activity that would be the object of the subjects' joint activities mentioned in the religious article. They only provided for a duty for permanent dialog guided by respect for the autonomy and mutual independence of the subjects specified in Article 25 of the Polish Constitution.

The drafters rightly did not specify in detail the areas of cooperation between the state and churches and other religious associations, but only pointed to their objectives. This, in turn, is a task for the ordinary legislator, and in the case of the Catholic Church, a task for the parties to an international agreement signed between the Republic of Poland and the Holy See. Hence, a number of legal acts set out the obligation of the state to cooperate with churches and other religious associations.

In Article 25(4), they resolved that "[t]he relations between the Republic of Poland and the Roman Catholic Church shall be determined by the international treaty concluded with the Holy See and by statute." Further, Article 25(5) contains the following provisions: "The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers." The diversification of the definition of the relations between the Republic of Poland and the Catholic Church as well as other churches and

59 Among other things, the Preamble to the Constitution states: "We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland."

60 In the preamble to the Constitution, the common good is equated with Poland: "equal in rights and obligations towards the common good—Poland."

61 Article 1 of the Polish Constitution provides that "[t]he Republic of Poland shall be the common good of all its citizens,' while in Article 82, the one opening the constitutional catalogue of obligations, the Constitution framers envisaged that "Loyalty to the Republic of Poland, as well as concern for the common good, shall be the duty of every Polish citizen."

62 In the delimitation category of the common good concerning limitations in the use of constitutional freedoms and rights, the Constitution framers included in Article 31(3): state security, public order, environmental protection, public health and morality. It should be noted that another delimitation category refers to the freedoms and rights of others.

religious associations raises a question about the justification of the concept adopted by the Constitution framers. Nevertheless, the Constitution framers, taking due account of historical and legal reasons, including the specific character of the Catholic Church and other institutional religious subjects without legal personality under public international law, resolved to diversify the aforementioned forms under which the relations between the state and religious subjects are regulated.[63]

In Article 25(5), the Constitution framers set out provisions concerning the need for an agreement to be entered into between the Council of Ministers and the relevant representatives of a religious organization before a religious act would be adopted. Unfortunately, despite the fact that the Polish Constitution has been in force for almost 25 years, relevant procedures for the implementation of this constitutional norm have not been developed. The practice in this area should be considered insufficient and marginalizing the constitutional position and role of institutional religious subjects.[64]

5. Constitutional guarantees of freedom of conscience and religion

Article 53 of the Polish Basic Law is modeled on Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Article is one of the most extensive constitutional provisions and contains several

63 This understanding of equality of rights and diversification in the forms for regulating these relations was raised during the first session of the subcommittee for the foundations of the political and socio-economic system, which discussed the issue of equal rights (2 December 1994) by the expert of the Constitutional Committee of the National Assembly Piotr Winczorek (Winczorek, 1995a, p. 153). The equality of rights was also mentioned as one of the principles determining the relations between the State and the Church by another expert to the Committee, Leszek Wiśniewski (Wiśniewski, 1995, p. 154). As was mentioned in the first chapter of the monograph, representatives of the Catholic Church repeatedly pointed out that the Church supported the principle of equal rights of Churches and other religious associations and did not expect any privileges for itself. At the same time, they pointed to the status of the Holy See as a legal person under public international law and to the need that fact entailed to diversify the forms under which the relations between the state and the Church would be regulated: "It is not the fault of the Catholic Church," Bishop Tadeusz Pieronek said, that "the Orthodox Church and the Protestant Churches do not have a legal personality under international law, as they have chosen to be state churches. Hence, we have no objections as to the equality of Churches before the law. The Catholic Church will be pleased if the Constitution ensures such equality for all"—see 'Wolność religijna obywatelom i Kościołowi, 1997, p. 3; and 'Potrzeba uszanowania misji Kościoła," 1995, p. 5.

64 For more on this, see primarily Leszczyński, 2012. Also, for an interesting attempt to interpret the religious article in this aspect, see Olszówka, 2010. This matter is also discussed in a multi-authored monograph Układowe formy regulacji stosunków między państwem a związkami wyznaniowymi (art. 25 ust. 4–5 Konstytucji RP) (Stanisz and Ordon, 2013).

legal solutions that were developed as a result of extremely turbulent constitutional work.[65]

The freedom of conscience and religion, as a personal human right, derives from natural law, especially the inherent and inalienable dignity of the person, which is the source of freedoms and rights, including the freedom of conscience and religion. Pursuant to Article 30 of the Polish Constitution of April 2, 1997, human dignity is "inviolable." The respect and protection thereof shall be the obligation of public authorities. It follows from this provision that the freedom of conscience and religion is an inherent human right that is vested in the person regardless of the decisions of anyone, especially state authorities.

In addition to dignity, the value underlying religious freedom in Poland is the freedom to do whatever a person believes is right, as long as this does not violate the freedom and rights of other persons.[66] Further, Article 32 of the Constitution contains guarantees of the third value, which is at the same time the fundamental and general rights of all persons to whom Polish law applies and an obligation on the Republic of Poland.[67] That is, equality is an extremely important value in the process of exercising religious freedom, as confirmed, *inter alia,* in Article 25(1) of the Constitution, which stipulates that churches and other religious organizations have equal rights. In this way, the Constitution framers expressed a personalistic vision of freedoms and the rights of persons and citizens.[68]

Every person has the right to exercise freedom from conscience and religion. In Article 53(1), the drafters of the Polish Constitution defined those who individually or collectively exercise religious freedom with the word "everyone," thus indicating that nationality and place of residence or stay do not affect the right to the freedom in question. The freedom of conscience and religion may not be grounds for discrimination in political, social, or economic life, as resolved under the fundamental principle of equality, which applies to all freedoms and rights guaranteed in the

65 It should be noted that the freedom of conscience and religion in the jurisprudence of the Constitutional Court before the entry into force of the 1997 Polish Constitution was covered in the Polish report prepared by judge of the Constitutional Court Andrzej Mączyński and the general report prepared by judges of the Constitutional Court Wiesław Johann and Biruta Lewaszkiewicz-Petrykowska for the XI Congress of the Conference of European Constitutional Courts devoted to the issues of freedom of conscience and religion in constitutional jurisprudence; see Johann and Lewaszkiewicz-Petrykowska, 1999, pp. 15–29; Mączyński, 1999, pp. 50–59.

66 CF. Article 31 of the Polish Constitution.

67 Cf. Majchrowski and Winczorek, 1998, p. 60.

68 The extensive Chapter II of the Polish Constitution provides, besides the principle of respect for dignity, freedom and equality, for a codification of natural law in that it distinguishes between personal freedoms and rights (Articles 38–56), political freedoms and rights (Articles 57–63), and economic, social and cultural freedoms and rights (Articles 64–76), means for the defence of freedoms and rights (Articles 77–81) and citizens' obligations (Articles 82–86). Maria Kruk put it as follows: "In this way, the state recognizes the superiority of human rights and freedoms as those that it cannot dispose of, although it is also bound by the democratic order and international norms when defining the rights of citizens" (Kruk, 1997, p. 14).

Constitution[69]: "All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities."[70]

Parents are the subjects of religious freedom in the second place[71]: "the status of the family as a subject of religious freedom is usually justified by the need for parents to decide on the extent and direction to which and in which these rights are exercises by their children."[72] Therefore, in Article 53(3), the Constitution guarantees that "parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions." The general wording contained in Article 48(1), to which the second sentence of Article 53(3) refers, poses many difficulties in interpretation and may also contribute to the weakening of parental authority.[73] It should be noted that as far as the exercise of parents' rights resulting from religious freedom is concerned, guardians who substitute for parents unable to raise their children are equated with them.[74] Parents may be deprived of the right to raise their children or may be limited in their rights only on the basis of a final court judgment issued under a statute.[75]

Children have the right to upbringing, which should be provided primarily by their parents.[76] A divergence of opinions arises in the case discussed above, that is, the granting of freedom of conscience and religion to minors.[77]

The subjects of freedom of conscience and religion in teaching religion at school are churches or other religious associations. The status of the subject of this freedom vesting in churches and other religious associations in this respect results directly from the status of parents and children. Article 53(4) of the Constitution provides that "the religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience may not be infringed thereby." The provisions of the Polish Constitution, in this regard, uphold the provisions of the Education System Act of September 7, 1991, from which it follows that "[p]ublic kindergartens, primary schools, and middle schools organize religious education at the request of parents, public upper secondary schools at the

69 Cf. Article 32(2) of the Polish Constitution.

70 Article 32(1) thereof.

71 Krukowski, 2000b, p. 95.

72 Cf. Pietrzak, 1997, p. 33.

73 "Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as their freedom of conscience and belief as well as their convictions."

74 Cf. Krukowski, 2000b, pp. 95–96.

75 Cf. Article 48(2) of the Polish Constitution.

76 Cf. Krukowski, 2000b, pp. 94–96.

77 Cf. Pietrzak, 1997, p. 33. Contemporary constitutional regulations of democratic states of law either transfer that entitlement to parents or guardians, or grant minors aged 10 to 18 the right to exercise the freedom of conscience and religion independently. The Constitution of the Republic of Poland restricts parents' right to religious and moral upbringing of their children internally (e.g., within the family) and externally (e.g., at school) for the benefit of minors. However, it does so in a vague manner, which may be a source of multiple misunderstandings and conflicts, especially in the case of differing views between parents or guardians and children.

request of parents or students themselves; after reaching the age of majority, students decide whether or not to study religion." Thus, parents or students themselves decide whether to attend religious lessons, and choose their own religious association. This solution indicates that religious education is optional in Poland. The status of the subject of this freedom vesting in churches and other religious associations as entities with legal personality is expressed in their right to establish and run public or private schools and institutions, in accordance with the provisions of Article 5(2)(3) of the Education System Act.

It should be noted that public authorities are also subject to freedom from conscience and religion. At the same time, Krukowski emphasizes that "the state as a political structure by its nature is not a subject capable of performing religious acts, as its powers relate to the order of temporal reality."[78]

Moving on to a brief analysis of the objects of the freedom of conscience and religion, one should first note that the "freedom of conscience" was not defined by the Constitution framers, and the doctrine takes the position that it means freedom in the internal dimension, which includes both the freedom of philosophical choice (religious or irreligious, adopted within an existing religious community or individual one), as well as the freedom to make moral choices and judgments.[79]

However, with regard to the freedom of religion, the Constitutional Court rightly noted that "freedom of religion is set out in very general terms in the constitutional norm, as it covers all religions and affiliation to all religious organizations; therefore, it is not limited to participation in religious communities that form a formal, separate organizational structure and registered in the relevant registers kept by the public authority."[80] This conclusion of the Constitutional Court was warranted by the wording of paragraph 2 in Article 53 of the Polish Constitution, from which it follows that freedom of religion not only includes the freedom to profess or accept religion at one's own discretion, but also to manifest it individually or with others, publicly or privately by worshiping, praying, participating in ceremonies, performing rites, and teaching. Moreover, freedom of religion also includes the possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the rights of individuals, wherever they may be, to benefit from religious services of

78 Krukowski, 2000b, p. 98.

79 This, for example, in Krukowski, 2005, p. 73; Banaszak, 2009, p. 271; Stanisz, 2016, p. 165.

80 Judgement of the Constitutional Court of 16 February 1999, case ref. SK 11/98. In this judgement, the Constitutional Court ruled on the incompatibility of para. 132(4) of the Regulation of the Minister of National Defence of 19 December 1996 on the military service of professional soldiers (Journal of Laws of 1997, No. 7, item 38, as amended) with Article 32 of the Constitution of the Republic of Poland of 2 April 1997 and Article 80(2) of the Act of 30 June 1970 on the military service of professional soldiers (consolidated text of 1997, Journal of Laws No. 10, item 55, as amended), and thus with Article 92(1) of the Constitution. At the same time, the Court determined that the challenged provision of the Regulation was compatible with Article 53(1) and (2) of the Polish Constitution.

religion, which are referred to by the doctrine as special pastoral care.[81] The Court pointed out that the broad understanding of the concept of the freedom of conscience and religion under Article 53 of the Polish Constitution is adequate to its perception in the light of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It should be noted that the right to manifest religion also includes the right to do so with the use of signs and symbols that express religious affiliation and personal adherence to a specific set of beliefs. The custom of wearing a cross (or a scapular or medal with the image of the Mother of God or saints) is additionally sanctified in Poland (and not only) by an established and quite carefully cultivated tradition.[82] As is clear from the constitutional provision, the right to manifest religion also covers activities undertaken "collectively," a number of which are related to the display of religious symbols such as the cross.

Among the constitutional guarantees regarding the freedom of conscience and religion, there are also provisions concerning the teaching of religion. Article 53(4) of the Polish Basic Law provides that "the religion of a church or other legally recognized religious organization may be taught in, but other peoples" freedom of religion and conscience schools not be infringed thereby." Interestingly, in this way, religion as the only subject in public education received a constitutional rank, which was also confirmed in the international agreement of the Concordat between the Holy See and the Republic of Poland on July 28, 1993, ratified on February 23, 1993. These are important insofar as the withdrawal of religion from schools, postulated by left-wing and liberal circles, would require amendments to supra-statutory law, which, in the situation of divisions on the political scene and, consequently, difficulties in gaining an appropriate majority, is difficult.

In Poland, at the constitutional level, restrictions were also defined with regard to the manifestation of religion, which results from the fact that the manifestation of religion is not absolute. However, these restrictions must fulfill the conditions expressly set out in Article 53(5) of the Constitution of the Republic of Poland, acts and provisions of international law, particularly Article 9(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitution framers decided that the freedom to publicly express religion may be limited only by means of statute and only "where necessary for the defense of state security, public order, health, morals, or the freedoms and rights of others." The catalog of premises indicated in this provision is practically the same as the general regulation concerning all freedoms and rights specified in Article 31(3) of the Constitution. The difference lies in the lack of "protection of the natural environment" among the substantive premises justifying any restrictions on the manifestation of the freedom of religion.

81 Cf. Krukowski, 2006, pp. 167–179. In the constitutional complaint, the applicant argued that para. 132(4) of the Regulation of the Minister of National Defence on the military service of professional soldiers violates the right to choose to manifest and practice religion guaranteed in the Constitution, as it prevents a person whose religious principles are in conflict with military service from leaving the army.

82 Stanisz, 2016, p. 169.

In view of the general principles of legal construction in Poland, in this case, the principle *lex speciali derogat legi generali* applies, where Article 53(5) is *lex specialis* and Article 31(3) is *lex generalis.*[83]

The rank of the freedom of conscience and religion among constitutional freedoms and rights is also upheld under Article 233 of the Polish Basic Law,[84] from which it follows that the introduction of further-reaching limitations is not justified by the order of any of the three extraordinary measures (i.e., martial law, state of emergency, or state of a natural disaster).

Unlike the restrictions on the manifestation of religion, as discussed above, the Polish Constitution framers did not create a special catalog of means for defense of the freedom of conscience and religion. This means that, in this case, general constitutional measures apply, as provided for with respect to all freedoms and rights upheld in Chapter II of the Basic Law.

The system of protection of freedoms and rights is defined in Articles. 77–81 of the Constitution of the Republic of Poland on April 2, 1997, is a novel solution in Polish constitutional practice. However, these are not all legal protection measures provided by the Polish Constitution framers, as some guarantees are outside this catalog. The key to safeguarding the freedom of conscience and religion at the constitutional level lies in the principle set out in Article 31(1) and (2): "Freedom of the person shall receive legal protection. Everyone shall respect the freedoms and rights of others. In the event of a violation of the freedom of conscience and religion, the Constitution provides several protection measures: fundamental is the right to a fair trial (Article 45). It follows from the constitutional provision that every person, that is, the person concerned or a specially appointed body, or the prosecutor, has the option to initiate proceedings and the case should be heard before a competent, impartial, and independent court. This is a systemic principle that provides for the positioning of the judiciary in the system of public authorities, and also applies to judges and their standing. In view of the negative historical experience in this respect, *inter alia*, the openness of hearings was already guaranteed at the constitutional level. There are exceptions to this principle, and it is up to the court to decide to keep the proceedings close to the public. However, the verdict is publicly announced.

As a measure of protection of freedoms and rights, being a complement and determination (*lex specialis*) of Article 45(1), the Constitutional Court recognized the right to compensation for damages.[85] It follows from Article 77(1) of the Constitution (which opens the above-mentioned catalog of means for defense of freedoms and rights) that "[e]veryone shall have the right to compensation for any harm

83 For more on this, see Sobczyk, 2019b, pp. 19ff. The Constitutional Court concluded that "Article 31(3) is *lex generalis* in relation to all constitutional freedoms and rights, regardless of whether specific provisions set out separately the conditions for limiting a right or freedom"—Judgement of the Constitutional Court of 10 April 2002, case ref. K 26/00.

84 This is one of the provisions of the Chapter on extraordinary measures.

85 Judgement of the Constitutional Court of 10 May 2000, case ref. K 21/99.

done to him by any action of an organ of public authority contrary to law." The premises of liability for damages on the part of public authorities are a public authority, an action of a public authority, a harm understood in accordance with the concept under civil law. The *ratio legis* of such constitutional solutions is based on respect for the principle of a democratic state ruled by law, in particular legalism, and the guarantee function. Liability for damages is not based on the principle of fault, which means that anyone to whom harm has been caused by the unlawful action of a public authority has the right to compensate for the harm regardless of the fault, or a lack of it, on the part of an officer of that authority.[86] The State Treasure bears the liability for actions of bodies of all types of public authority taken in this capacity, and the extent of compensation should be determined on the basis of the Civil Code, especially Article 361 § 1.[87] In the context of this measure (Article 77 (2)), a guarantee is provided that "[s]tatutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights."

The right to a fair trial is linked to the staged structure of court proceedings, as referred to in Articles 78 and 176 of the Polish Constitution. The *ratio legis* of this principle is expressed in the optimal and relatively uniform implementation of the norms of substantive law. The constitution framers shaped that principle relatively broadly in terms of its subjects and objects: "Each party shall have the right to appeal against judgments and decisions made at the first stage." The provision cited refers to participants in the proceedings and all kinds of statements by public authorities.

A *novum* in Polish constitutional law, modeled on German solutions, is an individual constitutional complaint. Under Article 79 of the Basic Law, everyone has the right to seek protection of their freedoms and rights violated by bodies of public authority in accordance with the principles specified by the statute. The subject is, therefore, every person under the jurisdiction of the Republic of Poland. The extent of protection is broad, as it covers Polish citizens, foreign citizens, and stateless persons. This protection has a double meaning: on the one hand, it serves to protect individual interests and, on the other hand, to protect the public interests. A distinctive feature of the Polish individual constitutional complaint is its subsidiary nature, as it concerns a situation in which a court or a public administration body has made a final decision on freedoms or rights (including as a matter of course the freedom of conscience and religion) or on obligations specified in the Constitution. The rules for filing a constitutional complaint are specified in the Act of November

86 This was confirmed in the judgement of the Constitutional Court of 4 December 2001, case ref. SK 18/00.

87 See ibid.

30, 2016, on the organization and procedure before the Constitutional Court, Journal of Laws of 2016, item 2072.[88]

The institution of the Commissioner for Citizens' Rights is also a means of defending the freedom of conscience and religion. The right to complain to the commissioner applies where freedoms or rights have been violated by public authorities. Such a complaint amounts to an application for assistance in the protection freedoms or rights violated, but the complaint itself does not warrant protection. Only the commissioner's initiative can bring a case to a desired end. The catalog of powers vested in the Commissioner for Citizens' Rights is defined in the Commissioner for Human Rights Act.[89]

Apart from the catalog of measures for the protection of freedoms and rights, there is—similar to the right to a fair trial—the right to submit petitions, complaints, and proposals. The broadly understood right to petition is rooted in the tradition of democratic constitutionalism. Complaints and proposals have well-established meanings under the applicable law, as the procedure for examination of complaints and proposals is defined by the Code of Administrative Procedure Act of June 14, 1960.[90] The distinctive features of these measures are as follows: they are often combined; they are publicly available forms of legal action; they serve the protection of all individual, group, and public rights and interests; they complement the other constitutional measures of defense; and they cannot be used to initiate court proceedings.[91] In turn, the petition as such is a *novum* not only in the Constitution, but also in Polish law. The Petitions Act of July 11, 2014 is an extension of constitutional guarantees in this respect.[92] It should be noted that in democratic countries, the petition is a means by which an individual or group addresses a public authority with a request for specific action. In view of the fact that the drafters of the Polish Constitution distinguished between petitions, complaints, and proposals, the content of the request determines whether a letter is a petition, and not its external form, as in Article 3 of the Petitions Act cited above. A petition as a defense measure may include a question for a public authority, elements of criticism, proposals for reforms, changes, desired actions, and others. The right to petition entails an obligation to respond.

88 Act of 30 November 2016 on the organization and procedure before the Constitutional Court (Journal of Laws of 2016, item 2072). This act provides, among other things, as follows (Article 77): "1. A constitutional complaint may be brought after the legal route has been exhausted, provided that this route is foreseen, within 3 months of the delivery of a final judgement, final decision or other final resolution to the complainant. 2. A constitutional complaint shall be examined by the Court on the terms and in the manner provided for examining applications on the conformity of normative acts with the Constitution, ratified international agreements or statutes."

89 Commissioner for Human Rights Act of 15 July 1987 (Journal of Laws of 1987, No. 21, item 123).

90 Code of Administrative Procedure Act of 14 June 1960 (Journal of Laws of 1960, No. 30, item 168).

91 The last of these features also applies to petitions, as confirmed by the Constitutional Court in its judgement of 16 November 2004, case ref. P 19/03.

92 Journal of Laws of 2014, item 1195.

6. Guarantees according to other sources of universally binding law

Moving on to the indication of other sources of Polish law related to the presence of religious symbols in public spaces, it should be noted at the outset that "the sources of religious law are norms enacted or recognized by the state, with the help of which it determines the legal standing of a person due to their religion and the legal standing of churches and other religious organizations." The systematics of the sources of religious law, as a section in the legal system, results from the hierarchy of sources of law adopted by the Polish Constitution framers in Chapter III of the 1997 Constitution. The framers of the Polish Constitution distinguished between universally binding sources of law and acts of internal law. Article 87(1) states that the sources of universally binding law in Poland are the Constitution, statutes, ratified international agreements, and regulations. Under Article 87(2), the sources of universally binding Polish law are enactments of local law issued by the operation of organs in the territory of the organ issuing such enactments. Acts of internal law, under Article 93 of the Constitution, are also the source of law.[93]

The Concordat between the Holy See and the Republic of Poland, signed in Warsaw on July 28, 1993 and ratified on February 23, 1998, occupies a special place among the sources of religious law relating to the relations between the state and the Catholic Church.[94] Due to the mode of ratification under an act in which the Sejm agreed to the ratification of the Concordat by the President of the Republic of Poland, in the event of a conflict between concordat norms and statutory norms, the former prevails.[95] There are no provisions in the Concordat that would directly refer to religious symbols in public spaces *in genere*, nor to the cross *in species*. The conduct of religious services by the Catholic Church is governed by Article 8, which reads:

> 1. The Republic of Poland guarantees the Catholic Church the freedom to conduct religious services in accordance with Article 5. 2. The organization of public worship shall fall within the competence of Church authorities, in accordance with Canon Law and with regard to the relevant Polish laws. 3. The State shall guarantee the inviolability of places designated by the competent Church authorities

93 Sobczyk, 2014, pp. 591–603.

94 Journal of Laws of 1998, No. 51, item 318.

95 The procedure for ratifying and terminating international agreements of particular importance for the state is called in the doctrine of international and constitutional law a "major ratification," and relies on a consent of the legislature, by virtue of a statute, to the ratification of the agreement by the President of the Republic of Poland. Article 89(1) of the Polish Constitution provides that 'Ratification of an international agreement by the Republic of Poland (…) shall require prior consent granted by statute' in specific cases set out in the Constitution.

> for the purposes of religious services and for the burial of the dead. For important reasons and with the consent of the competent Church authorities, such places may be used for other purposes. This provision shall not restrict the application of Polish law in cases of expropriation in accordance with the provisions of international law. 4. The performance of public worship in places other than those specified in para. 3 shall not require permission from state authorities unless otherwise determined by the relevant provisions of Polish law, in particular with regard to security and public order. 5. Public authorities may take required measures in the places referred to in para. 3, even without advance notification to the Church authorities, where these are necessary for the protection of life, health, or property.

Among the sources of law relating to the subject matter discussed in this paper, the Act of May 17, 1989 guarantees freedom of conscience and religion. As indicated by the Constitutional Court in its judgment of December 2, 2009, this act "specifies what the freedom of conscience and religion means for citizens, and what it means for Churches and religious organizations, by listing specific rights of citizens and specific rights of Churches and religious organizations, falling within the freedom of conscience and religion, which, on the basis of this act, becomes a comprehensive systemic principle, going beyond the status of the individual's fundamental freedom. A note must also be made that both the rights of the individual (citizens) and the rights of Churches and religious organizations do not constitute a closed-ended catalog, which is consistent with the understanding of the presumption of 'freedom' in a democratic society."[96]

The above-mentioned act preceded the adoption of the Polish Constitution and—*de jure* and *de facto*—together with two other acts passed on May 17, 1989, started the process of changes in the broadly understood area of religious relations in the state. However, the act does not contain (nor does the Constitution), a direct reference to the presence of religious symbols in public spaces. Of key importance in this matter is the open-ended catalog of specific rights granted to citizens who exercise their freedom of conscience and religion. Active rights include the right to establish religious communities created in order to profess and spread religious faith; have their own system, doctrine, and worship rites; participate in religious services; fulfill religious duties; celebrate religious holy days; belong to churches and other religious associations; profess their religion; to raise children in accordance with one's religious beliefs; maintain contact with fellow believers, including participation in the work of religious organizations on an international scale; use sources of information on religion; make, acquire, and use items necessary for the purposes of worship and religious practices; make, acquire, and possess items necessary to observe religious rules; choose clerical or monastic life; and associate in

96 Judgement of the Constitutional Court of 2 December 2009, case ref. U 10/07.

secular organizations in order to carry out tasks resulting from religion or convictions in matters of religion.[97]

According to the position of the Supreme Administrative Court, the Act on guaranteeing freedom of conscience and religion should be construed from the point of view of the relationship between the objective scope of this act and the scope of acts on the relations between the state and individual religious associations, while taking into account the basic principles of Article 25 and Article 53 of the Constitution, as well as from international law in the form of Article 9(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 18 of the Universal Declaration of Human Rights of 1948.[98]

Apart from the above-mentioned Act on guarantees of freedom of conscience and religion, essential for the religious relations in the state are "specific laws" that regulate the legal standing of individual churches and other religious associations. The model for regulations of this type was the Act of May 17, 1989, on the relations between the State and the Catholic Church in the Republic of Poland.[99]

97 See Article 2 of the Act of 17 May 1989 on the guarantees of freedom of conscience and religion. It should be noted that, in addition to the above catalogue of rights, citizens may also apply for a substitute service due to their religious beliefs on the terms and in the manner specified in the Substitute Service Act of 28 November 2003; and freely work for the benefit of churches and other religious associations and charity and care institutions, or—at their own request (or in the case of minors, at the request of their parents or legal guardians)—obtain an exemption from work or education for the time necessary to celebrate holy days, in accordance with the requirements of their religion.

98 Cf. also the verdict of the Supreme Administrative Court of 14 October 2014, case ref. II OSK 200/13.

99 These are as follows: Regulation of the President of the Republic of Poland on the relations between the State and the Eastern Old Believers' Church having no clerical hierarchy (Journal of Laws of 1928, No. 38, item 363 as amended); Act on the relations between the State and the Karaim Religious Union in the Republic of Poland (Journal of Laws of 1936, No. 30, item 241, as amended); Act of 17 May 1989 on the relations between the State and the Catholic Church in the Republic of Poland (Journal of Laws of 1989, No. 29, item 154 as amended); Act of 14 June 1991 on financing the Catholic University of Lublin from the state budget (Journal of Laws of 1991, No. 61, item 259 as amended); Act of 4 July 1991 on the relations between the State and the Polish Autocephalous Orthodox Church (Journal of Laws of 1991, No. 66, item 287, as amended); Act of 13 May 1994 on the relations between the State and the Evangelical Church of the Augsburg Confession in the Republic of Poland (Journal of Laws of 1994, No. 73, item 323, as amended); Act of 13 May 1994 on the relations between the State and the Evangelical Reformed Church in the Republic of Poland (Journal of Laws of 1994, No. 73, item 324, as amended); Act of 30 June 1995 on the relations between the State and the Polish-Catholic Church in the Republic of Poland (Journal of Laws of 1995, No. 97, item 482, as amended); Act of 30 June 1995 on the relations between the State and the Seventh-day Adventist Church in the Republic of Poland (Journal of Laws of 1995, No. 97, item 481, as amended); Act of 30 June 1995 on the relations between the State and the Baptist Christian Church in the Republic of Poland (Journal of Laws of 1995, No. 97, item 480, as amended); Act of 30 June 1995 on the relations between the State and the Evangelical Methodist Church in the Republic of Poland (Journal of Laws of 1995, No. 97, item 479, as amended); Act of 20 February 1997 on the relations between the State and the Old Catholic Mariavite Church in the Republic of Poland (Journal of Laws of 1997, No. 41, item 253, as amended); Act of 20 February 1997 on the relations between the State and the Pentecostal Church in the Republic of Poland (Journal of Laws of 1997, No. 41, item 254, as amended); Act of 20 February 1997 on the relations between the State and the Catholic Mariavite

Regulations, which are instruments that implement statutes, are particularly important for this discussion. The Regulation of the Minister of National Education on April 14, 1992, on the conditions and manner of organizing religious education in public schools, in its § 12 **allows for the placement of the cross** and reciting of prayers before and after classes. The legislator also indicated that "Saying prayers at school should be an expression of the shared aspiration of students as well as tactful and gentle benevolence on the part of teachers and educators." **The significance of this normative act lies in the fact that it contains a provision of generally applicable law, which covers guarantees directly relating to the display of the cross in a public place.** The Constitutional Court in its ruling of April 20, 1993, concluded that § 12 of the Regulation "indicates only the possibility, and not the obligation, of placing the cross and saying prayers." Moreover, the Court clarified that the inclusion of that provision in the Regulation "finds its justification in the context of the Recitals to the Education System Act, as well as in Article 13, which provides for an obligation on schools to enable students, *inter alia*, to maintain their religious identity. Paragraph 3 of that article imposes an obligation on the Minister of National Education to lay down, by way of a regulation, the conditions and manner for schools to fulfill that obligation." Despite the ruling of the Constitutional Court, the issue of the placement of religious symbols still raises numerous doubts in Poland, relating, *inter alia*, to the placement of symbols other than the cross.

Similar legal solutions have been included in the ordinance of the Minister of National Education on July 3, 1992, on the conditions for ensuring the right to perform religious practices for children and youth staying in educational and care institutions, as well as in holiday camps. § 4 of the ordinance provides that "crosses and other religious symbols may be placed in the facility, taking into account the feelings of students of individual religions and denominations."[100]

7. Limits of religious expression through religious symbols

In reference to the introductory notes to this paper, it should be emphasized that religious symbols, especially crosses, were "returned to schools, hospitals, and some offices as a result of grassroots initiatives that enjoyed broad social support during the period of democratic transformations." According to the general rules, the continuance of this state of affairs does not require any justification today; rather, any attempt to change it would require such justification. However, for places and rooms

Church in the Republic of Poland (Journal of Laws of 1997, No. 41, item 252, as amended); Act of 20 February 1997 on the relations between the State and Jewish religious communities in the Republic of Poland (Journal of Laws of 1997, No. 41 item 251, as amended).

100 *Monitor Polski* of 199, No. 25, item 181.

that are still being arranged, the choice regarding the presence of the cross should be left to the prudent and mature decision of those who will be their users. At the same time, one should agree with the opinion that no one has the right to appropriate public spaces.[101]

Regardless of legal disputes on the placement of religious symbols in public places, on the basis of the interpretation of the above-indicated articles of the Polish Constitution and "religious statutes," restrictions in this respect may result from the requirements of occupational health and safety.[102]

8. The system of legal protection

The protection of the presence of religious symbols in public space in Poland in the practice of common courts has been a fact since the political transformation of 1989. Two cases that were heard before the Provincial Court and the Court of Appeal in Łódź, as well as the Regional Court and the Court of Appeal in Szczecin, can serve to illustrate this.

In the former case, in 1990, a cross was placed in the meeting room of the City Council in Łódź. On November 12, 1997, the claimant requested that the Chairman of the City Council remove the cross, referring to Article 25(2) of the Constitution of the Republic of Poland. The petition was referred to a committee and the claimant was not provided a meaningful response. As a result, the claimant brought an action to the Provincial Court in Łódź against the Community of Łódź for the protection of personal rights.

The Provincial Court in Łódź, in its decision of June 29, 1998,[103] found that the claim was unfounded given the facts of the case. The claimant derived his claim from the provisions on the protection of personal rights. In the justification of the decision, the Court of the first instance undertook, *inter alia*, as is important from the point of view of the present considerations, to interpret Article 25(2) of the Polish Constitution, to conclude that the placement of the cross was not unlawful. The impartiality of public authorities in matters of personal religious or philosophical convictions applies to the exercise of the functions of the authority by making and applying legal enactments within its territory. It does not apply to the interior design of the premises of collective bodies. The presence of the cross is neither prohibited by the Constitution of the Republic of Poland, which also refers to God in its Preamble, nor by ordinary statutes.[104]

101 Stanisz, 2016, p. 173.
102 For more on this, see e.g., Mielczarek, 2013, pp. 186–188.
103 Judgement of the Provincial Court in Łódź of 29 June 1998, case ref. II C 2857/97.
104 Ibid.

The Court of the first instance also referred to Article 18 of the International Covenant on Civil and Political Rights, Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the judgment of the Supreme Court of September 6, 1990.[105]

The Court of Appeal in Łódź dismissed this appeal after hearing the case brought by Łukasz M. against the Community of Łódź for the protection of personal rights as a result of the claimant's appeal against the decision of the Provincial Court in Łódź of June 29, 1998, case ref. II C 2857/97.[106]

The Court of Appeal in its judgment of October 28, 1998 referred *inter alia* to the symbolism of the cross, noting that "the symbol of the cross in the experience of the Polish Nation, apart from the religious meaning for essentially all Christian denominations, and not just one, has entered the social consciousness also as a symbol of death, pain, suffering, sacrifice, and reverence to all those who fought and fell for freedom and independence during the national liberation struggle during the partitions and during the wars with invaders."[107]

Further, the Court stated that "the symbol of the cross next to the state emblem is an expression of the community's exercise of its own subjective rights in relation to the extraordinary history of their country and the people who gave their lives for it. The exercise of one's subjective rights precludes the unlawfulness of an act."[108] The court pointed to one of the fundamental principles defining the status of an individual in the state—the principle of freedom expressed in Article 31(2) of the 1997 Polish Constitution—as follows: " everyone shall respect the freedoms and rights of others." The Court's opinion stated that when exercising their rights, an individual may not deprive others of the right to cultivate their tradition, culture, customs, and pursue collective feelings, which, in relation to the existence and continuity of the State, are realized in the performance of public functions *sensu largo* to the extent that goes beyond making and applying the law.[109]

Hence, the Court of Appeal concluded that the mere presence of a religious symbol in the building of a public authority is not sufficient to determine that the freedom of conscience was violated.[110]

The latter case relates to the dismissal of Lesław M.'s appeal for the protection of personal rights by the Court of Appeal in Szczecin on November 25, 2010. In the claimant's view, the presence of the crucifix violated, *inter alia*, his basic constitutional rights as defined in Article 25(2), because a public authority should be impartial, and its use of religious symbolism violated his right to equal treatment

105 Cf. I PRN 38/90—OSNCP 1991/10-12, item 126.
106 Judgement of the Court of Appeal in Łódź of 28 October 1998, case ref. I ACa 612/98 (*OSA* 1999/6/26).
107 Ibid.
108 Ibid.
109 Cf. ibid.
110 *OSP* 1999/10, item 177, *OSA* 1999/6, item 26, 21.

by that authority because of a different religious conviction.[111] In his opinion, the display of the cross in the City Hall, which he does not accept or share, could contribute to his affairs being left unresolved or resolved worse than they should.

Regarding the alleged failure on the part of the respondent to observe the principle of impartiality in matters of religious convictions as expressed in Article 25(2) of the Polish Constitution, the Regional Court, in the justification of its decision of March 26, 2010, stated that "this impartiality in the case of the Polish constitutional order does not mean indifference, but rather—as the case law of the Constitutional Court upholds—the principle of benevolent interest, which is manifested in the statutory regulation of relations with certain religious organizations or churches."[112] In the justification of its decision, the court cited an analysis of the legal obligations of public authorities carried out by the Constitutional Court in the judgment of December 2, 2009.[113] The Court pointed out that under Article 25(2), public authorities are obliged to ensure everyone the freedom of convictions and the freedom to express the same in public life, as well as the related freedom to make relevant decisions.[114]

The claimant appealed to the decision of the Regional Court, alleging that the challenged decision violated Article 25(2) of the Constitution of the Republic of Poland in recognizing that placing the symbol of the crucifix in the conference room of the City Council and other premises of the City Hall did not undermine the impartiality of public authorities in matters of religious and philosophical beliefs of the claimant.

In the opinion of the appellant, the unlawfulness of the respondent's action was demonstrated, *inter alia*, by its acceptance of the display of crucifixes and crosses in public places, which in his opinion supported the argument that the respondent, in exercising public authority, was not impartial in matters of religious and philosophical convictions and actually induced the claimant to recognize the Catholic religion as his own, which violated Article 25(2) of the Constitution of the Republic of Poland and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

111 Cf. Judgement of the Court of Appeal of 25 November 2010, case ref. I ACa 363/10.

112 Judgement of the Regional Court of 26 March 2010, case ref. I C 28/10.

113 Judgement of the Constitutional Court of 2 December 2009, case ref. U 10/07.

114 In the same justification for its judgement, the Court stated that "the impartiality of public authorities in the Republic of Poland, referred to in Article 25(2) of the Constitution may not be understood as factual institutional equality between the Roman Catholic Church, which dominates in Polish society in terms of the number of believers, and other churches and religious organizations. The impartiality of public authorities in matters of religious and philosophical convictions does mean, however, that it is admissible that the existing *status quo* in the sphere of the religious structure may be changed, but this without state interference, in a 'natural' manner, as a result of the evolution of the structure of social consciousness, with the existing freedom of religious or philosophical beliefs, and the freedom of choice made by each individual."

The Court of Appeal concluded that the claimant's appeal was unfounded. For the most part, it upheld the arguments of the Regional Court regarding the violation of the appellant's personal rights.[115]

To conclude this section, the seven lawsuits filed with the Regional Court in Warsaw by deputies of the Palikot's Movement should be noted. In these lawsuits, the deputies demanded that the Latin cross be removed from the assembly room of the Sejm. The legal construction of the lawsuits referred to the protection of personal rights under Article 24 of the Civil Code. This case has been described in detail in the literature.[116]

9. Conclusions

In contemporary democratic states ruled by law characterized by religious pluralism, the place and meaning of religion and religious symbols in culture, law, and tradition are changing. The role of religious symbols as factors that consolidate the state and that are essential for proper operation is diminishing. As a consequence, with the proclamation of the freedom of conscience and religion and the separation of church and state, religious symbols cease to be components of national identity.[117] Nevertheless, such processes may prove beneficial to religion, as religious symbols will begin to be identified with religion itself again rather than with culture, state, or tradition.

The recent history of the Polish state in particular made religious symbols—especially the cross—important factors integrating the nation and a symbol of the struggle for independence and sovereignty. Placing crosses in public places in Poland was an expression of the fight against invaders and occupiers, and after the country regained sovereignty in 1989, it became an important element in the country's "return to its roots and Christian identity."

The Polish Constitution of 1997 contains a number of guarantees of the rank of constitutional principles and values, which relate to the display of religious symbols

115 It should be noted that the Court of Appeal pointed out that "in Poland, crosses are not only found in or near sacred buildings. They are placed, for example, by roads to commemorate the victims of accidents or to warn others of their consequences; in squares in cities, villages, or even outside the residential areas, at crossroads. Moreover, crosses are present in the Polish Sejm and Senate. Therefore, it cannot not be possibly assumed that the claimant is not aware of it, or—in the case of the assembly rooms of the Sejm and the Senate—does not notice it, if only while watching the reports from the sessions presented in television news programs. The claimant does not claim, however, that the sight of these crosses—especially in the Sejm and Senate—violates his personal rights."

116 In particular, see Sadomski, 2015, pp. 221–240; Zawiślak, 2016, pp. 174–177.

117 Szymanek, 2012, p. 37.

in public spaces. Article 53 (freedom of conscience and religion) and Article 25(2) (the impartiality of public authorities) are of particular importance in this respect.

Polish constitutional solutions related to the manifestation of religion significantly overlap with the wording of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and (at least partially) with the construction made by the European Court of Human Rights in Strasbourg.

The basic constitutional guarantees concerning the freedom to manifest religion were reiterated in the Concordat, the "religious statutes," and other legal acts. None of these prescribe or prohibit the placement of religious symbols in public places. Among the sources of law essential from the perspective of the presence of religious symbols in public spaces, the following are of key importance: Regulation of the Minister of National Education on April 14, 1992, on the conditions and manner of organizing religious education in public schools, which allows for the placement of the cross and reciting prayers before and after classes, and the Ordinance of the Minister of National Education on July 3, 1992, on the conditions for ensuring the right to perform religious practices for children and youth staying in educational and care institutions, as well as in holiday camps, from which it follows that crosses and other religious symbols may be placed in the facility, taking into account the feelings of students of individual religions and denominations. Thus, these two acts make it admissible to place religious symbols in public spaces.

It can therefore be concluded that the thesis of Michał Pietrzak, one of the most distinguished representatives of the Polish religious law doctrine, that "[n]o religious signs or symbols are placed inside and outside public buildings"[118] as "[t]he functions of the state are not performed by religious associations, and religious tasks are not performed by state bodies and institutions,"[119] goes too far in the Polish legal reality.

The analysis of sample court cases on various aspects of the presence of religious symbols in public space, especially in the buildings of public offices, leads to the conclusion that jurisprudence regarding the right to manifest religion addresses numerous cases in which this right has been challenged. Claimants have alleged that the display of crosses is incompatible with the constitutional principle of impartiality and was a violation of personal rights under civil law. Despite certain exceptions, it seems that the existing jurisprudence regarding the presence of religious symbols in Poland warrants a statement that "the line of jurisprudence is well-established."[120] As noted by Wiesław Śniecikowski, "court decisions clearly indicate that the cross can be displayed in the Sejm, just like a cross in the premises of a city office, or a cross worn around the neck without any legal obstacles in the case of airline ground service personnel. The mere fact of displaying a religious symbol in a public authority building is not sufficient to conclude that the freedom of conscience has been

118 Pietrzak, 2013, p. 94.
119 Ibid., 94.
120 This, e.g., in Zawiślak, 2016, p. 173.

violated, nor is it a form of discrimination against a non-believer, and therefore it does not infringe upon his or her personal rights."[121]

The findings of the present study indicate that there is currently no need to amend the applicable legislation on the presence of religious symbols in public spaces. In this respect, the legal bases (primarily under constitutional and international law and statutes) correspond to the religious and social needs of the addressees of legal norms. Turbulent discussions, especially in the 1990s (mainly during the work on the Constitution and the ratification of the Concordat), as well as constitutional and judicial practice have resulted in the development of a relatively universally acceptable *status quo*.

121 Cf. Śniecikowski, 2016, p. 62.

Bibliography

Banaszak, B. (2009) Konstytucja Rzeczypospolitej Polskiej. Komentarz. Warszawa: C. H. Beck.

Borecki, P. 'Zasada równouprawnienia wyznań w prawie polskim," Studia z Prawa Wyznaniowego 2007/10, pp. 115–159.

Borecki, P. (2008) Geneza modelu stosunków państwo-kościół w Konstytucji RP. Warszawa: Wydawnictwo Sejmowe.

Cimoszewicz, W. (1995) Statement in Biuletyn KKZN, 1995/16.

Czohara, A. (1994) Stosunki państwo–Kościół. Belgia, Francja, Hiszpania Włochy. Warszawa: Instytut Studiów Politycznych PAN.

Dudek, D. (2004) 'Równouprawnienie kościołów i związków wyznaniowych na tle konstytucyjnych zasad prawa wyznaniowego' in Mezglewski A. (ed.) Prawo wyznaniowe w systemie prawa polskiego. Materiały I Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 14-16 stycznia 2003). Lublin: Wydawnictwo KUL.

Dudek, D. (2016) 'Obecność krzyża w przestrzeni publicznej a zasada bezstronności władz publicznych w Rzeczypospolitej Polskiej' in Stanisz, P., Zawiślak, M., Ordon, M. (eds.) Obecność krzyża w przestrzeni publicznej. Doświadczenia niektórych państw europejskich. Lublin: Wydawnictwo KUL.

Działocha, W. (1995) Statement in Biuletyn KKZN, 1995/17.

Garlicki, L. (1999) 'Wolność sumienia i wyznania w orzecznictwie konstytucyjnym—status wspólnot religijnych' in 'Wolność sumienia i wyznania w orzecznictwie konstytucyjnym. XI Konferencja Europejskich Sądów Konstytucyjnych; Warszawa, 16-20 maja 1999," Biuletyn Trybunału Konstytucyjnego, Special issue, pp. 30–47.

Garlicki, L. (2012) Polskie prawo konstytucyjne. Zarys wykładu. Warszawa: Liber.

Gowin, J. (1999) Kościół w czasach wolności 1989–1999. Kraków: Znak.

Johann, W., Lewaszkiewicz-Petrykowska, B. (1999) 'Wolność sumienia i wyznania w orzecznictwie konstytucyjnym—status jednostki' in 'Wolność sumienia i wyznania w orzecznictwie konstytucyjnym. XI Konferencja Europejskich Sądów Konstytucyjnych; Warszawa, 16-20 maja 1999," Biuletyn Trybunału Konstytucyjnego, special issue, pp. 15–29.

Krukowski, J. (1993) 'Katolickie postulaty konstytucyjne," Rocznik Teologiczny ChAT, 1993/1, pp. 319–330.

Kruk, M. (1993) 'Wstęp. Między Konstytucją a Konstytucją' in Kruk M. (ed.), Mała Konstytucja w procesie przemian ustrojowych w Polsce. Warszawa: Wydawnictwo Sejmowe.

Kruk, M. (1997) Konstytucja Rzeczypospolitej Polskiej z komentarzem. Warszawa: Awa.

Krukowski, J. (1999) Konkordat Polski. Znaczenie i realizacja. Lublin: Verba.

Krukowski, J. (2000a) 'Konstytucyjny system relacji między Państwem a Kościołem katolickim oraz innymi kościołami i związkami wyznaniowymi' in Mojak R. (ed.) Ustrój konstytucyjny Rzeczypospolitej Polskiej. Lublin: Wydawnictwo UMCS, pp. 95–107.

Krukowski, J. (2000b) Kościół i Państwo. Podstawy relacji prawnych. Lublin: Wydawnictwo KUL.

Krukowski, J. (2002) 'Polityka wyznaniowa państw postkomunistycznych. Główne linie." Roczniki Nauk Prawnych, 12(2), pp. 5–19.

KRUKOWSKI, J. (2004) 'Konstytucyjny model stosunków między państwem a kościołem w III Rzeczypospolitej' in Mezglewski A. (ed.) Prawo wyznaniowe w systemie prawa polskiego. Materiały I Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 14-16 stycznia 2003). Lublin: Wydawnictwo KUL, pp. 79–101.

KRUKOWSKI, J. (2005) Polskie prawo wyznaniowe. Warszawa: LexisNexis.

KRUKOWSKI, J. (2006) Polskie prawo wyznaniowe, 2nd edn. Warszawa: LexisNexis.

KULESZA, W. (1995) Statement in Biuletyn KKZN, no. 14.

LESZCZYŃSKI, P. (2012) Regulacja stosunków między państwem a nierzymskokatolickimi Kościołami i innymi związkami wyznaniowymi określona w art. 25 ust. 5 Konstytucji RP. Gorzów Wielkopolski: Państwowa Wyższa Szkoła Zawodowa w Gorzowie Wielkopolskim.

MAJCHROWSKI, J. WINCZOREK, P. (1998) Ustrój konstytucyjny Rzeczypospolitej Polskiej. Warszawa: Hortpress.

MAŁAJNY, R. M. (2002) 'Regulacja kwestii konfesyjnych w Konstytucji III RP (refleksje krytyczne)' in Tokarczyk R., Motyka K. (eds.) Ze sztandarem prawa przez świat. Księga dedykowana Profesorowi Wieńczysławowi Józefowi Wagnerowi von Igelgrund z okazji 85-lecia urodzin. Kraków: Zakamycze.

MĄCZYŃSKI, A. (1999) 'Wolność sumienia i religii w orzecznictwie polskiego Trybunału Konstytucyjnego' in 'Wolność sumienia i wyznania w orzecznictwie konstytucyjnym. XI Konferencja Europejskich Sądów Konstytucyjnych, Warszawa, 16-20 maja 1999," Biuletyn Trybunału Konstytucyjnego, Special issue, pp. 50–59.

MIELCZAREK, M. (2013) Realizacja wolności religijnej w zatrudnieniu pracowniczym. Warszawa: Difin.

MOJAK, R. (2007) 'Kościół a sprawy publiczne w demokratycznym państwie. Podstawy doktrynalne oraz zasady prawne współdziałania Kościoła i państwa w sferze życia publicznego' in Mezglewski, A. (ed.) Funkcje publiczne związków wyznaniowych. Materiały III Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 16-18 maja 2006). Lublin: Wydawnictwo KUL.

OLSZÓWKA, M. (2010) Ustawy wyznaniowe. Art. 25 ust. 5 Konstytucji RP—próba interpretacji. Warszawa: Wydawnictwo UW.

OSIATYŃSKI W. (1995) Statement in Biuletyn KKZN, 1995/14.

OŻÓG, K. (2010) 'Krzyżu, bądź pozdrowiony. Krzyż w przestrzeni publicznej i społecznej w dziejach Polski' in Bujak, A., Ożóg, K., Sosnowski, L. (eds.) Krzyż polski, vol. 1, Przybytek Pański. Kraków: Biały Kruk.

PIETRZAK, M. (2013) Prawo wyznaniowe, 5th edn. Warszawa: LexisNexis.

PIETRZAK, M. (1997) 'Stosunki państwo—Kościół w nowej Konstytucji,' Państwo i Prawo, 1997/11–12, p. 176.

'Potrzeba uszanowania misji Kościoła. Rozmowa z Sekretarzem Generalnym Episkopatu Polski, Biskupem Tadeuszem Pieronkiem." Nowa Europa, 20 March 1995, p. 5.

SADOMSKI, J. (2015) 'Symbol religijny jako źródło naruszenia dóbr osobistych jednostki. Uwagi na marginesie sporów sądowych o obecność krzyża w instytucjach sądowych' in Biłgorajski, A. (ed.) Wolność wypowiedzi versus wolność religijna. Studium z zakresu prawa konstytucyjnego, karnego i cywilnego. Warszawa, C. H. Beck.

Słownik Języka Polskiego [Online]. Available at: https://sjp.pl/symbol (Accessed: 20 May 2021).

SOBCZYK, P. (2005) Kościół a wspólnoty polityczne. Warszawa: Santiago.

SOBCZYK, P. (2013) Zasada konsensualnego określania stosunków między Rzecząpospolitą Polską a Kościołem Katolickim. Warszawa: Aspra-Jr.

Sobczyk, P. (2014) 'Źródła prawa wyznaniowego' in Mezglewski A. (ed.) Leksykon prawa wyznaniowego. 100 podstawowych pojęć. Warszawa: C. H. Beck.

Sobczyk, P. (2019a) 'Modele relacji państwo—Kościół w konstytucjach Rzeczypospolitej XX wieku' in Paruch W. (ed.) Niepodległość—Suwerenność—Podmiotowość. Polskie projekty polityczne 1918–2018. Warszawa: Wydawnictwo Sejmowe.

Sobczyk, P. (2019b) 'Porządek publiczny i moralność publiczna wartościami współtworzącymi konstytucyjny porządek aksjologiczny' in G. Blicharz, M. Delijewski (eds.) Klauzule porządku publicznego i moralności publicznej. Warszawa: Wydawnictwo IWS.

Stanisz, P. (2016) 'Obecność krzyża w przestrzeni publicznej w kontekście wolności myśli, sumienia i religii. Perspektywa polska' in Stanisz, P., Zawiślak, M., Ordon M. (eds.) Obecność krzyża w przestrzeni publicznej. Doświadczenia niektórych państw europejskich. Lublin: Wydawnictwo KUL.

Stanisz, P., Ordon M. (eds.) (2013) Układowe formy regulacji stosunków między państwem a związkami wyznaniowymi (art. 25 ust. 4–5 Konstytucji RP). Lublin, Wydawnictwo KUL.

Stanosz, B. (2000) Wprowadzenie do logiki formalnej. Podręcznik dla humanistów. 4th Warszawa: PWN.

Szymanek, J. (2000) 'Konstytucyjna regulacja stosunków państwo—kościół (ujęcie komparatystyczne),' Państwo i Prawo, 2000/4, pp. 22–39.

Szymanek, J. 'Bezstronność czy neutralność światopoglądowa państwa (Uwagi na tle art. 25 ust. 2 Konstytucji RP,' Państwo i Prawo, 2004/5, pp. 32–33.

Szymanek, J. (2012) 'Obecność symboli religijnych w przestrzeni publicznej' in Wieruszewski, R., Wyrzykowski, M., Kondratiewa-Bryzik L. (eds.) Prawne granice wolności sumienia i wyznania. Warszawa: Wolters Kluwer.

Szymanek, J. (2006) 'Prawo wyznaniowe w praktyce III RP (zagadnienia wybrane)', Ruch Prawniczy Ekonomiczny i Socjologiczny, 2006/1, pp. 93–109.

Śniecikowski, W. 'Prawo osób wierzących do uzewnętrzniania religii." Przegląd Prawa Publicznego, 2016/4, pp. 45–64.

Winczorek, P. (1995a) Statement in Biuletyn KKZN, 1995/10.

Winczorek, P. (1995b) Statement in *Biuletyn KKZN*, 1995/14.

Winczorek, P. (2000) Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. Warszawa: Liber.

Wiśniewski, L. (1995) Statement in Biuletyn KKZN, 1995/10.

'Wolność religijna obywatelom i Kościołowi. Z biskupem Tadeuszem Pieronkiem, Sekretarzem Generalnym Episkopatu Polski, rozmawiają Zdzisław Szuba i Tadeusz Żeleźnik." Słowo. Dziennik Katolicki, 1997/43, p. 3.

Zawiślak, M. (2016) 'O ekspozycji symboli religijnych w budynkach publicznych' in Longchamps de Berier, F., Szczucki K. (eds.) O wolność słowa i religii. Praktyka i teoria. Warszawa: Wydawnictwo Sejmowe, Fundacja 'Utriusque Iuris."

Ziembiński, Z. (1992) Logika praktyczna. 15th Warszawa: PWN.

Legal sources

Constitution of the Republic of Poland of 17 March 1921 (Journal of Laws No. 44, item. 267).
Regulation of the President of the Republic of Poland on the relations between the State and the Eastern Old Believers' Church having no clerical hierarchy (Journal of Laws of 1928, No. 38, item 363 as amended).
Act on the relations between the State and the Muslim Religious Union in the Republic of Poland. (Journal Of Laws of 1936, No. 30, item 240 as amended).
Act on the relations between the State and the Karaim Religious Union in the Republic of Poland (Journal of Laws of 1936, No. 30, item 241, as amended).
Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (Journal of Laws of 1993, No. 61, item 284).
Constitution of the Polish People's Republic of 22 July 1952 (consolidated text: Journal of Laws of 1976, No. 7, item 36).
Code of Administrative Procedure Act of 14 June 1960 (Journal of Laws of 1960, No. 30, item 168).
Act of 30 June 1970 on the military service of professional soldiers (consolidated text of 1997, Journal of Laws No. 10, item 55, as amended).
Commissioner for Human Rights Act of 15 July 1987 (Journal of Laws of 1987, No. 21, item 123).
Act of 17 May 1989 on guarantees of freedom of conscience and religion (consolidated text: Journal of Laws of 2000, No. 26, item 319, as amended).
Act of 17 May 1989 on the relations between the State and the Catholic Church in the Republic of Poland (Journal of Laws No. 29, item 154, as amended).
Act of 14 June 1991 on financing the Catholic University of Lublin from the state budget (Journal of Laws of 1991, No. 61, item 259 as amended).
Act of 4 July 1991 on the relations between the State and the Polish Autocephalous Orthodox Church (Journal of Laws of 1991, No. 66, item 287, as amended).
Constitutional Act of 17 October 1992 mutual relations between the legislative and executive powers and on local government (Journal of Laws No. 84, item 426, as amended).
Act of 13 May 1994 on the relations between the State and the Evangelical Church of the Augsburg Confession in the Republic of Poland (Journal of Laws of 1994, No. 73, item 323, as amended).
Act of 13 May 1994 on the relations between the State and the Evangelical Reformed Church in the Republic of Poland (Journal of Laws of 1994, No. 73, item 324, as amended).
Act of 30 June 1995 on the relations between the State and the Evangelical Methodist Church in the Republic of Poland (Journal of Laws of 1995, No. 97, item 479, as amended).
Act of 30 June 1995 on the relations between the State and the Baptist Christian Church in the Republic of Poland (Journal of Laws of 1995, No. 97, item 480, as amended).
Act of 30 June 1995 on the relations between the State and the Seventh-Day Adventist Church in the Republic of Poland (Journal of Laws of 1995, No. 97, item 481, as amended)
Act of 30 June 1995 on the relations between the State and the Polish-Catholic Church in the Republic of Poland (Journal of Laws of 1995, No. 97, item 482, as amended).
Regulation of the Minister of National Defence of 19 December 1996 on the military service of professional soldiers (Journal of Laws of 1997, No. 7, item 38, as amended).
Act of 20 February 1997 on the relations between the State and Jewish religious communities in the Republic of Poland (Journal of Laws of 1997, No. 41 item 251, as amended).

Act of 20 February 1997 on the relations between the State and the Catholic Mariavite Church in the Republic of Poland (Journal of Laws of 1997, No. 41, item 252, as amended).
Act of 20 February 1997 on the relations between the State and the Old Catholic Mariavite Church in the Republic of Poland (Journal of Laws of 1997, No. 41, item 253, as amended).
Act of 20 February 1997 on the relations between the State and the Pentecostal Church in the Republic of Poland (Journal of Laws of 1997, No. 41, item 254, as amended).
Constitution of the Republic of Poland on 2 April 1997 (Journal of Laws, No. 78, item 483, as amended).
Resolution of the Sejm of the Republic of Poland of 3 December 2009 (Monitor Polski of 2009, No. 78, item 962).
Resolution of the Senate of the Republic of Poland of 4 February 2010 (Monitor Polski of 2010, No. 7, item 57).
Petitions Act of 11 July 2014 (Journal of Laws of 2014, item 1195).
Act of 30 November 2016 on the organization and procedure before the Constitutional Court (Journal of Laws of 2016, item 2072).
Concordat between the Holy See and the Republic of Poland (Journal of Laws of 1998, No. 51, item 318).

Case law

Judgement of the Constitutional Court of 5 May 1998, case ref. K 35/97.
Judgement of the Constitutional Court of 8 June 2011, case ref. K 3/09.
Judgement of the Constitutional Court of 10 April 2002, case ref. K 26/00.
Judgement of the Constitutional Court of 10 April 2002, case ref. K 26/00.
Judgement of the Constitutional Court of 4 December 2001, case ref. SK 18/00.
Judgement of the Constitutional Court of 16 November 2004, case ref. P 19/03.
Judgement of the Constitutional Court of 2 December 2009, case ref. U 10/07.
Judgement of the Supreme Administrative Court of 14 October 2014, case ref. II OSK 200/13.
Judgement of the Provincial Court in Łódź of 29 June 1998, case ref. II C 2857/97.
Judgement of the Court of Appeal in Łódź of 28 October 1998, case ref. I ACa 612/98.
Judgement of the Court of Appeal of 25 November 2010, case ref. I ACa 363/10.
Judgement of the Regional Court of 26 March 2010, case ref. I C 28/10.
Justification to the judgement of the Court of Appeal in Szczecin of 25 November 2010, case ref. I ACa 363/10.
Decision of the Provincial Court in Łódź of 29 June 1998, case ref. II C 2857/97.

Chapter V

The Legal Regulation of Religious Symbols in the Public Sphere in Serbia

Dalibor Đukić

1. Introduction

1.1. Scope of the research

This study scrutinises the use of religious symbols in the public sphere and the interplay between the freedom of religion or belief and the right to manifest one's religion through religious symbols. First, there is the question of how religious symbols should be defined. Just as it is difficult to define religion, so it is difficult to determine which symbols should be considered religious. In this paper, religious symbols are symbols related to or inspired by religion.[1]

To write about religious symbols in public spaces, it is also necessary to define the concept of public space. Much has been written on this topic.[2] Without bringing in too many theoretical concepts, it is enough to say that this study uses the terms 'public space' and 'public sphere' in the broadest possible sense. Public space is outside both the private sphere and the internal domain of religious organisations.

This chapter analyses the legal use of religious symbols in the Republic of Serbia. It covers constitutional and legal regulations related to the right to manifest religious beliefs, relevant case law, and other legal sources, including statutes and regulations.

1 Howard, 2012, p. 27.
2 See Habermas, 1991, pp. 1–14; Emerson, 2018, pp. 286–289.

Dalibor Đukić (2021) The Legal Regulation of Religious Symbols in the Public Sphere in Serbia. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 141–170. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_5

1.2. Methodology

The present study analyses and critically interprets Serbian legislation on churches and religious communities, focusing on the use of religious symbols in public spaces and more generally in the public sphere. The historical method is used to determine the circumstances that led to the adoption of certain measures and the meaning of norms at the time they were created and applied. Since the paper analyses applicable law, the historical method is of secondary importance and will only be used to introduce this chapter.

Legal rules are described using doctrinal legal research methodology. This section is followed by a systematic exposition, a comprehensive and detailed analysis, and a critical review of the relevant legal rules, statutory materials, jurisprudence, and legal principles and concepts. The comparative method is used to investigate the interaction and interplay between current legislation in countries with different models of church-state relations.

1.3. Basic concepts

The presence of religious symbols in the public sphere relates to the broader issue of the expression of faith or belief in the public sphere. This area is regulated by the constitution, international instruments designed to protect human rights, and laws and bylaws that regulate the freedom of religion. In addition, the freedom to manifest religious beliefs depends on extra-legal factors, including political, sociological, cultural, and religious factors. An interdisciplinary approach makes it possible to consider all aspects of this complex issue.

In accordance with its constitution, the Republic of Serbia is a secular state, separated from churches and religious communities. However, separation does not imply confrontation. This paper will begin by considering the relationship between the constitutional principle of state secularity and the right to manifest religious beliefs in the public sphere.

The position of religion in the public sphere is related to the issue of regulating the relationship between the state and the church. The Serbian system of cooperative separation implies a benevolent attitude towards religious organisations, which has implications for the use of religious symbols in public spaces. Thanks to the state's comprehensive cooperation with churches and religious communities, there is space for the use of religious symbols in public and state institutions, print and electronic media, and state services.

In the Republic of Serbia, there are no regulations that explicitly regulate the use of religious symbols. In fact, the legislature seems to have relied on important actors in the public sphere to independently determine how religious symbols should be used. This approach has not caused tensions, disputes, or conflicts. The paper will scrutinise and present the advantages and disadvantages of such a system, as well as its consequences for religious freedom in the Republic of Serbia.

2. The historical, social, cultural, and political context surrounding religious symbols in public spaces

Until the political changes in 1991, the public expression of religious beliefs in Serbia was limited both *de jure* and *de facto*. Of course, state interventionism in this area did not always have the same intensity. In accordance with the regime's ideology, the use of religious symbols was not formally banned. However, religious symbols were banished from the public sphere. For reasons of realpolitik, communist ideologues devised completely new symbols, which did not derive from existing religious or national symbols.[3] The official intention of the Communist Party was to 'remove' religion from society, but the removal of religion from public life was euphemistically presented as respect for the principle of freedom of religion, 'a personal and private matter for every citizen'.[4] Religious symbols were removed from schools, universities, and public institutions. The display of religious symbols in public places was a rarity. This militant secularisation of society confined religion to the homes of believers and the premises of religious organisations. The goal was to marginalise churches and religious communities, and to limit their activities to performing rituals and services.[5]

After the disintegration of the Socialist Federal Republic of Yugoslavia, social, political and religious circumstances changed significantly. In 1977, the Law on the Legal Status of Religious Communities became practically inapplicable; it ceased to be valid on 16 March 1993, based on the Law on the Repeal of Certain Laws and Other Regulations.[6] Because the legal position of churches and religious communities was not regulated, the repeal of the 1977 Law created a legal gap. Newly established religious organisations could acquire legal personalities and regulate their legal positions as simple associations of citizens.[7] In addition to the legislative gap, there was also a doctrinal one. During communist rule, scientific processing and the development of theoretical conceptions of different systems of relations between the state and the church were neglected. As in many other Central and Eastern European countries, there was also a special problem: the decades-long isolation and lack of insight or deliberate oversight of the modern and balanced solutions that existed in the Western countries on the European continent.

In addition, the adoption of new regulations to protect the freedom of religion was complicated by political circumstances. A striking example was the Draft Law on Religious Freedom adopted in 2002 by the government of the Federal Republic of Yugoslavia. It was never put to a vote in the Chamber of Citizens because, at

3 Naumović, 1995, p. 117.
4 The Programme of the League of Yugoslav Communists, p. 253.
5 Radulović, 2014, p. 81.
6 Law on the Repeal of Certain Laws and Other Regulations, art. 1.
7 Avramović, 2007, p. 14.

the end of the debate, the session was abruptly interrupted and never resumed; the Federal Republic of Yugoslavia ceased to exist shortly afterwards.[8] During that time, several other important issues, such as the question of religious education in public schools, were resolved by passing special laws or individual bylaws.[9] In the new state, the Law on Churches and Religious Communities was drafted and enacted in 2006, alongside the social framework.[10] In the same year, the Law on the Restitution of Property to Churches and Religious Communities was passed.[11] This resolved the issue of reparations for the historical injustice inflicted on churches and religious communities after the Second World War in Serbian territory. While the Law on Churches and Religious Communities restored the legal position, the Law on the Restitution of Property to Churches and Religious Communities created a legal framework for returning property confiscated without just compensation after the Second World War.

Although the legal position of churches and religious communities in the Republic of Serbia was unregulated after 1993, their actual position improved, because society's attitude towards them changed significantly. This change was made visible through the presence of religious symbols in the public sphere. Icons, crucifixes, celebrations of religious feast days, and other expressions of freedom of religion slowly returned to classrooms, public institutions, and other public spaces. This process took place spontaneously and voluntarily. It was not organised or regulated by special legal structures, but depended largely on individuals, who decided at certain moments which symbols would be displayed in public. After the new constitution was adopted in 2006 and a system of cooperation between the state and churches and religious communities was implemented, the use of religious symbols in the public sphere was in some way legalised. Churches and religious communities were given a place in the public sphere, corresponding to their importance in and influence on modern Serbian and European society.

3. Axiological and constitutional foundations

The 2006 Constitution of the Republic of Serbia guarantees the right to exercise freedom of thought, conscience, and religion.[12] The right to freedom of religion is inseparably linked to the right to manifest religious beliefs, which can be exercised through the use of religious symbols, the wearing of characteristic vestments and

8 Avramović, 2007, p. 15.
9 Avramović, 2007, p. 15.
10 Law on Churches and Religious Communities.
11 Law on the Restitution of Property to Churches and Religious Communities.
12 Constitution of the Republic of Serbia, art. 43.

symbols, and the public display of essential elements of religious identity. The public display of religious symbols is based not only on constitutional principles, but also on the social values that underpin the modern Serbian legal system.

3.1. History and tradition

Religious symbols are deeply rooted in the history and traditions of the people who live in the territory of the Republic of Serbia. Significant state and national holidays are also religious holidays; their celebration involves the performance of religious rites, with the inevitable use of signs and symbols associated with particular churches and religious communities.[13] Prohibiting or restricting the use of religious symbols in the public sphere would be contrary to the historical and traditional values of Serbian society. The same statement could be applied to most, if not all, European countries.

3.2. Religious pluralism

One of the characteristics of modern Serbian society is religious pluralism. In general, pluralism is integral to democratic societies.[14] The origins and survival of a democratic society depend on religious pluralism, among other things. Importantly, the Republic of Serbia is an 'autochthonous multi-religious state'.[15] In its religious structure, it resembles many other European countries, although its multi-religiousness does not come from immigrants bringing their religions from other countries. Instead, it reflects a population divided into several different religions and denominations. One manifestation of autochthonous religious pluralism is the presence and use of religious symbols associated with traditional churches and religious communities in the public sphere. This not only protects the right of traditional religious organisations to express their religious beliefs, but also helps to democratise society, creating a modern framework of state-church relations. Since religious and ethnic affiliations are often intertwined,[16] the protection of religious pluralism helps to develop harmonious interethnic relations. In particular, it improves the position of religious and national minorities.

3.3. The secularity of the state

State secularity is one of the main principles underpinning the regulation of relations between the state and religious organisations in modern democratic states. In the Republic of Serbia, the principle of secularity is a key constitutional principle.

13 See: http://www.spc.rs/sr/proslava_sretenja_u_ustanichkom_orashcu.
14 Metropolitan Church of Bessarabia and others v. Moldova, application no. 45701/99, para. 119.
15 Radulović, 2014, p. 96.
16 Đurić, 2014, p. 62.

The first part of the Serbian constitution, which includes constitutional principles, describes Serbia as a secular state (art. 11, the Republic of Serbia is a secular state). This raises the following questions: Do the presence and display of religious symbols in the public sphere violate the principle of state secularity prescribed by the constitution? If so, is it unconstitutional to manifest religious beliefs or display religious symbols in public? According to J. Toron and C. Durham, 'one of the major areas where the difference between secularity and secularism has been evident in various legal systems around the world is in its attitudes toward religious symbols in public space'.[17]

Uncertainties about the meaning of the term 'secular state' in the 2006 Constitution of the Republic of Serbia were resolved by the Constitutional Court, which considered proposals to determine the unconstitutionality of the Law on Churches and Religious Communities. The court ruled that 'these constitutional provisions by themselves do not imply a system of the complete separation of church and state; however, there is no state church and no identification of the state with a particular religion or religion in general…'.[18] Since manifesting religious beliefs in public and displaying religious symbols in public spaces cannot establish a state church or identify the state with a particular religion, it can be argued that such practices do not violate the constitutional principle of state secularity.[19]

3.4. The principle of separation between the state and churches and religious communities

The separation of the state and religious organisations is linked to the principle of state secularity. As the Serbian constitution explicitly states, 'Churches and religious communities shall be separated from the state'.[20] However, although the constitution separates religious organisations from the state, it does not specify the type of separation in question: strict (absolute) or cooperative (relative).[21] Either way, the presence of religious symbols in state institutions and the public sphere does not establish an institutional unity between the state and religious organisations. For this reason, it does not violate the constitutional principle of church-state separation. The fact that the symbols and signs of various associations, humanitarian organisations, and political parties are displayed in state and public spaces supports this position; there is currently no institutional connection between the state and those entities and none is likely to be established.

17 Toron and Durham, 2015, p. 50.
18 IUz- 455/2011.
19 Calo, 2012, p. 811.
20 Constitution of the Republic of Serbia, art. 11.
21 Avramović, 2011, p. 294.

3.5. Establishment clause

The constitution of the Republic of Serbia stipulates that no religion may be established as a state or mandatory religion.[22] The ban on establishing a state or obligatory religion is a logical consequence of the constitutional norm that makes Serbia a secular state. Although many countries with state-church systems do not discriminate against other religious organisations or deny them the rights and privileges enjoyed by state churches,[23] a ban on establishing a state church can actually open up a space for a wide range of religious symbols to be used in the public sphere, in the broadest sense of the term. Due to objective differences between religious groups, the largest and most traditional religious organisations take up the most space in the public sphere. Thus, the presence of religious symbols in the public sphere does not violate the establishment clause because it does not establish a state religion. The fact that a symbol associated with a particular religion is used in a state or public space does not determine the status of that religion or religious organisation in the legal system. If it did, images of Lady Justice in courtrooms around the world would give the religion of ancient Rome the status of state religion in many countries, which clearly they do not.

3.6. The protection of freedom of religion

The constitution of the Republic of Serbia guarantees freedom of thought, conscience, belief, and religion, 'as well as the right to stand by one's belief or religion or change them by choice'.[24] The constitutional provisions contained in art. 43 of the constitution affirm the principle of individual religious freedom and the protection of collective religious rights. The Law on Churches and Religious Communities elaborates on both of these principles, making them concrete.[25] This freedom includes the freedom to manifest religion or belief. The constitution expresses this in the following way: 'Everyone shall have the freedom to manifest their religion or religious beliefs in worship, observation, practice, and teaching, individually or in community with others, and to manifest religious beliefs in private or public'.[26] The constitution of the Republic of Serbia guarantees the right to freely express religious beliefs collectively and individually. It therefore protects the use of religious symbols in private or public, as one way of expressing religious beliefs.

The individual right to freedom of religion is generally exercised within a certain collectivity, associated with a concrete collective identity. The freedom to express religious beliefs makes sense only if it is guaranteed to both individuals and religious

22 Constitution of the Republic of Serbia, art. 11.
23 Avramović, 2007, p. 105.
24 Constitution of the Republic of Serbia, art. 43.
25 Radulović, 2014, p. 25.
26 Constitution of the Republic of Serbia, art. 43.

communities, giving them the right to express their collective religious identities and beliefs.[27] For this reason, the constitution guarantees the right to use religious symbols in public to individuals and religious groups (churches and religious communities) equally.

3.7. The principle of restriction of freedom of religion

The freedom to express religious beliefs is one element of freedom of religion. Freedom of religion in its external aspect (*forum externum*) is not an absolute right. However, any restriction of this right must meet the conditions prescribed by the constitution:

> Freedom to manifest religion or beliefs may be restricted by law only if it is necessary in a democratic society to protect the lives and health of the people, the morals of a democratic society, the freedoms and rights guaranteed by the constitution, or public safety and order, or to prevent the incitement of religious, national, or racial hatred.[28]

Similar restrictions are included in international human-rights instruments, from which they are derived.[29] Such restrictions are needed to prevent possible abuse, as religious symbols can be manipulated and instrumentalised by extremist organisations and movements.[30] Appropriate restrictions can prevent members of such organisations from hiding behind a veil of protection while promoting their organisations and misleading the public. Serbia's restrictions on the freedom of religion are in line with international standards for the protection of human rights and freedoms.

3.8. The principle of cooperation between the state and churches and religious communities

The constitution of the Republic of Serbia does not declare explicitly that the state may cooperate with churches and religious communities. However, such cooperation is not explicitly prohibited; the prevailing view is that state-church cooperation is not unconstitutional, as long as it does not violate the principle of state secularity. The laws that regulate the status of churches and religious communities in Serbia, as well as those that regulate rights they exercise in various domains, are based on the principle of state-church cooperation or cooperative separation.[31] Cooperation between the state and churches and religious communities is realised

27 Avramović and Rakitić, 2009, p. 96.
28 Constitution of the Republic of Serbia, art. 43.
29 European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9; International Covenant on Civil and Political Rights, art. 18.
30 Prevention of Radicalization and Terrorism, pp. 20–22.
31 Avramović, 2011, p. 299.

in various spheres and areas. One consequence of this cooperation is the presence of religious symbols in public and state institutions. For example, religion classes taught in public schools entail the use of didactic aids which, as a rule, contain the symbols and signs of religious organisations. Another example is the Law on Public Service Broadcasting, which provides media space to churches and religious communities,[32] enabling the use of various religious symbols in public media-service programs. Thus, the principle of cooperation between the state and churches and religious communities has indirectly contributed to strengthening the presence of religious symbols in public, in all areas where the state and religious organisations can cooperate.

3.9. The principle of non-discrimination

The constitution of the Republic of Serbia prohibits discrimination, in particular discrimination on grounds of religion.[33] It is worth asking whether the use of certain religious symbols in the public sphere discriminates against all religious organisations that do not identify with those symbols. Generally speaking, all religious communities are equal; in regulating the cooperation between the state and the church, Serbian legislation does not differentiate between different religious organisations. In practice, there are reasonable limits to the freedoms of religious organisations, as the symbols of all existing, registered, and unregistered religious organisations can be present at the same time or to the same extent in the public sphere. Such factual and reasonable restrictions do not represent discrimination, since they do not involve the unequal regulation of similar situations.[34] In addition, objective differences between religious organisations result in different levels of public interest. It is completely natural for the religious symbols of traditional churches and religious communities, to which most citizens belong, to be more present in the public sphere than those of other religious organisations. Importantly, no regulation legitimises such restrictions, which would make religious affiliation the basis for discriminating against other religious organisations and their members.

3.10. The principle of equity and equality of churches and religious communities

The principle that all churches and religious communities are equal is connected to the principle of non-discrimination. The constitution of the Republic of Serbia states twice that churches and religious communities are equal.[35] As with the principle of discrimination, the question is whether the use of symbols

32 Law on Public Service Broadcasting, arts. 4 and 7.
33 Constitution of the Republic of Serbia, art. 21.
34 Etinski and Đajić, 2012, p. 390.
35 Constitution of the Republic of Serbia, art. 44.

associated with certain religious organisations violates the principle of equity and equality of all religious organisations. It would be extremely impractical to display the symbols of all existing religious organisations in the public sphere. In practice, the symbols of traditional churches and religious communities dominate the public sphere, although other religious organisations face no legal obstacle in displaying their own. Importantly, the regulations on cooperation between the state and churches and religious communities do not restrict the use of religious symbols or distinguish between religious organisations. Finally, it is important to emphasise the distinction between equality and identity. As G. Robbers observed: 'To safeguard religious liberty, the correct paradigm is equal rights, not identical rights … Identical rights would preclude a multitude of manifestations of positive religious freedom'.[36]

4. Model of relations between the state and the church

4.1. General principles

The literature presents various systems of relations between the state and the church. Their criteria differ, as do the total number of identified models.[37] For example, R. Hirschl identifies nine archetypical models of church-state relations.[38] This section presents three systems of relations between the state and the church, known as the classical, conventional, and traditional models in the European literature.[39] As previously mentioned, this classification has been accepted in the Serbian literature; it significantly influenced the outcome of the debate on the constitutionality of the 2006 Serbian Law on Churches and Religious Communities. In accordance with this classification system, all systems of relations between the state and the church belong to one of the following three models: the model of strict (absolute) separation, the model of the state church, and the model of cooperative separation.

In the state-church system, one or more religious entities has a special constitutional status, is institutionally connected to the state, and enjoys special privileges. These privileges consist mainly of funds from the state budget and tax exemptions. State-church systems are not monolithic. There are significant differences in the degree of autonomy given to the established churches. For example, the Church

36 Robbers, 2001, p. 667.
37 Ahdar and Leigh, 2013, pp. 90–121; Halmai, 2017, pp. 180–183.
38 Hirschl, 2010, pp. 26–40.
39 Robbers, 2005, pp. 578–579; Pukenis, 2014, pp. 499–504; Ferrari, 1995, p. 421; Monsma and Soper, 2009, pp. 10–12; Sandberg, 2008, pp. 329–352, Džomić, 2012, p. 358.

of Denmark is institutionally connected to the state, or rather, integrated into the state apparatus. The Church of Denmark does not have its own synod or council. It has no central organs or religious leader and is not a corporate body.[40] The Church of England has a slightly higher degree of self-government, adopting its own measures with its own General Synod.[41] Although Greece has a state-church system, the Greek Church has wide autonomy. Like other Orthodox churches, it also has its own central administration (a Council and Synod). It has the legal subjectivity of public law and can independently pass regulations to govern church affairs exclusively.[42] It is important to emphasise that implementing a state-church system does not imply discrimination against religious organisations that lack the same status as the state church. This system in its classical form in Europe is a relic of the past. The number of countries that use it is constantly decreasing. In fact, most countries are modifying these systems and moving toward systems of cooperation, as discussed below.

Another model in the tripartite classification of European state-church relations is the system of strict separation. In systems of strict separation, the state and church are institutionally separated and act independently, each in its own domain. This does not mean that the state is indifferent to the religious needs of its citizens. On the contrary, the state works proactively to guarantee all preconditions for the unimpeded exercise of freedom of religion. Another feature of these systems is state neutrality: a lack of identification with any religious organisation. Writing about systems of strict separation, Russell Sandberg explains the obligation of state neutrality as follows:

> Neutrality is not a passive obligation: rather, in its pursuit of religious freedom and equality, the state actively seeks to remove all existing boundaries and often seeks to provide the means whereby all citizens—regardless of their religious convictions—enjoy the equal right to manifest their religiosity throughout their everyday life.[43]

In the vast majority of papers on this topic, France is used as an example of a system of strict separation, likely because this system appeared following the French Revolution. However, as some authors have already pointed out,[44] the principle of *laïcité* in France does not present an obstacle to cooperation between the state and religious organisations. This cooperation has developed over time, as the idea of hermetically isolating the state and church has proved unsustainable in practice. There are numerous examples of cooperation, from the maintenance of religious buildings belonging to one group (Roman Catholics) being financed from the budget, and state

40 Sandberg, 2008, pp. 329–352.
41 Avramović, 2007, p. 106.
42 Đukić, 2011, p. 32.
43 Sandberg, 2008, pp. 329–352.
44 Avramović, 2007, p. 104; Sandberg, 2008, pp. 329–352.

funding of religious education in certain parts of France, to the development of the theoretical concept of *laïcité positive,* which French President Nicolas Sarkozy defined as 'an open secularism, an invitation to dialogue, tolerance, and respect. It is a new chance, a jump, a further dimension to public debate'.[45] In practice, strict separation systems are gradually approaching the cooperative separation model; in fact, it can be difficult to identify their differences or the criteria that differentiate the two systems.

4.2. Cooperation between state and religious communities

Between the two extremes, i.e. the system of church-state unity and strict separation, a whole range of different models has emerged. In the classical tripartite classification system, these are known as systems of cooperation, hybrid systems, or systems of cooperative separation.[46] In the Serbian literature, they are defined as systems in which the state and the church are separate but cooperate in matters of common interest and actions that cannot be performed well without cooperation.[47] The problem with this definition is that it does not include criteria for distinguishing between systems of strict and cooperative separation. It can therefore be applied to most countries with strict separation systems (France, the US, Slovenia). Cooperation between the state and religious organisations exists in both state-church and strict separation systems.[48] The difficulty is that the tripartite division is based mainly on an analysis of constitutional norms. The real relationship between state and church is far richer than any constitutional description. Due to the obvious convergence of different European systems of state-church relations, it is increasingly difficult to draw a clear line between them. A system of cooperative separation can be defined as a system in which the constitutional principle of church-state separation does not represent an obstacle to cooperation in various domains. In this system, the scope of cooperation is not specified by the constitution (it does not belong to *materia constitutionis*) and varies, depending on circumstances. Legislatures have a broad remit for determining specific areas in which the state and church will cooperate and how that cooperation will be realised. The state's benevolent attitude towards religious organisations recognises the positive role they play in the development of democratic pluralistic societies. This system of relations between the state and the church is accepted in the vast majority of European countries and can be said to represent the expression of European Christian values in the modern age.

45 Gomes, 2009, pp. 214–215.

46 Đurđević, 2009, p. 125; Marinković, 2011, p. 378; Avramović, 2011, p. 296; Avramović, 2007, p. 107; Sandberg, 2008, pp. 329–352; Gujaničić, 2012, p. 121.

47 Avramović, 2007, p. 107; Robbers, 2005, pp. 578–579.

48 Sandberg, 2008, pp. 329–352.

5. Constitutional guarantees of freedom of conscience and religion

Freedom of conscience and religion is a basic human right, guaranteed by numerous universal and regional human-rights instruments.[49] The guarantees contained in international documents have been received and incorporated into the constitutions and legislation of most, if not all, European countries. Provisions in the 2006 Constitution of the Republic of Serbia provide the same range of protections of freedom of religion as most international treaties and conventions that regulate that freedom. The framers of the Serbian constitution paid special attention to individual and collective ways of exercising the freedom of religion, while leaving some important issues, such as the possibility of financing churches and religious communities, to the legislature.

Freedom of religion is a specific right with two dimensions: individual and collective. For this reason, it has two subjects: individuals and their communities. Freedom of religion for individuals is regulated by art. 43 of the constitution of the Republic of Serbia, while art. 44 is dedicated to the collective or corporate aspect of that freedom.

In the first category of subjects of religious freedom, it is theoretically possible for someone to possess religious beliefs but not to express them in any way. In its internal form (*forum internum*), freedom of religion is an absolute right.[50] In essence, *forum internum* is beyond the reach of the legislature, because it is theoretically possible to conceal religious beliefs or to simulate an affiliation with a religious organisation (e.g. Crypto-Christianity). In that sense, the *forum internum* of religious freedom is an absolute right, thanks not only to absolute legal protection, but more importantly to the freedom and elusiveness of the human spirit, which is never subject to any restrictions.

However, religion, the inner relationship between human beings and the transcendent, tends to be manifested in the outer world. It has an innate tendency to move beyond the frame of the inner human sphere (*forum internum*) to manifest in the outer world in various ways.[51] When internal religious beliefs are manifested, they enter the world of law and become the subject of legal regulations, like every other legally relevant statement of will (the *forum externum* of freedom of religion). As freedom to manifest religious beliefs is not an absolute right, it can be restricted, in accordance with the standards prescribed in international documents that protect human rights and freedoms.

49 Universal Declaration of Human Rights, art. 18; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9; International Covenant on Civil and Political Rights, art. 18.

50 Marinković, 2011, pp. 368–369; Đurđević, 2009, p. 67.

51 Harris, O'Boyle, Warbick, 2014, p. 428.

Arts. 43 and 44 of the constitution of the Republic of Serbia regulate both elements of freedom of religion: external and internal. The constitution regulates in more detail certain aspects of freedom of religion in relation to the relevant international documents. The drafters of the constitution had greater freedom because they were regulating a specific legal system, while universal international treaties must be compatible with a range of different legal systems and legal traditions. In addition, the drafters of the constitution had to consider the practice of international courts, which interpret and elaborate the provisions laid out in international conventions and declarations.

In accordance with art. 43, para. 1 of the constitution of the Republic of Serbia 'Freedom of thought, conscience, belief, and religion is guaranteed, as well as the right to adhere to one's belief or religion or to change them according to one's own choice'.[52] In accordance with the tendencies observed in international instruments for the protection of human rights, freedom of religion is guaranteed, alongside freedom of thought, conscience, and belief.[53] These freedoms, which are absolutely protected, imply the right to have, retain, change, and choose a religion or belief. Such constitutional guarantees protect the individual aspect of freedom of religion from unauthorised state intervention. They also protect people's individual rights in relation to religious organisations, which cannot prevent their followers from freely choosing or changing their religious beliefs. Finally, these provisions protect individuals from the forcible or forced imposition of religious beliefs or the establishment of a mandatory religion, which art. 11 of the constitution of Republic Serbia explicitly prohibits.[54]

Art. 43, para. 2, of the constitution of the Republic of Serbia stipulates that 'No person shall have the obligation to declare his religious or other beliefs'.[55] The constitution thus regulates the right to manifest no religion or belief, which, in the practice of the European Court of Human Rights, is referred to as a negative aspect of the right to manifest religious beliefs.[56] It includes the right of every individual to not manifest his or her religion or belief, to not declare them, and to not be forced by legal procedures to even partially reveal his or her religious beliefs or their non-existence.[57] The literature generally argues that the right to not declare one's religious beliefs belongs to the *forum internum* of freedom of religion, a category of rights that must not be restricted.[58] The question is whether the use of religious symbols in the public sphere can violate the negative aspect of protection of freedom of religion. Bearing in mind that there is no obligation to use religious symbols in the public sphere, and that their use depends exclusively on individual free choice, it cannot be

52 Constitution of the Republic of Serbia, art. 43.
53 Charter of Fundamental Rights of the European Union, art. 10.
54 Đurić, 2012, p. 33.
55 Constitution of the Republic of Serbia, art. 43.
56 Υπόθεση Αλεξανδρίδη κατά της Ελλάδος, Προσφυγή υπ' αριθ. 19516/06, § 38.
57 Đukić, 2014, pp. 57, 75.
58 Roberts, 2014, pp. 43–47.

claimed that the use of religious symbols in the public sphere represents a form of coercion or pressure, designed to force individuals to declare their religious beliefs. In addition, the presence of religious symbols in the public sphere does not imply that anyone identifies with the religious organisation that those symbols represent.

The constitution of the Republic of Serbia guarantees the right to manifest religious beliefs: 'Everyone shall have the freedom to manifest their religion or religious beliefs in worship, observation, practice and teaching, individually or in community with others, and to manifest religious beliefs in private or public'.[59] The constitution, by way of example, specifies a few ways in which religion can be manifested. The last part of the provision generally states that everyone has the right to manifest religious beliefs in private or in public. Religious beliefs can be manifested through the use of religious symbols and in other ways. The constitution guarantees that all individuals can publicly manifest their religious beliefs through the use of religious symbols.

As previously mentioned, the *forum externum* of freedom of religion is not an absolute right; under certain conditions, it can be limited. After the provision guaranteeing the individual and collective right to manifest religious beliefs, the drafters of the constitution imposed restrictions on that right. According to art. 43, para. 4:

> Freedom to manifest religion or beliefs may be restricted by law only if this is necessary in a democratic society to protect the lives and health of people, the morals of the democratic society, freedoms and rights guaranteed by the constitution, and public safety and order, or to prevent inciting of religious, national, and racial hatred.[60]

This provision does not differ much, either from the regulations of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which restricts the right to freedom of expression or belief, or from the restrictions of other rights guaranteed by that convention.[61] In relation to the European Convention, the constitution specifies several legitimate aims that can justify the restriction of religious freedoms; however, it does not depart from the solutions contained in other international treaties, such as the International Covenant on Civil and Political Rights.[62]

In addition to the individual aspect of freedom of religion, the constitution of the Republic of Serbia also regulates its corporate aspect. The constitution first guarantees the equality of all religious organisations, twice mentioning the separation between the state and churches and religious communities (in arts. 11 and 44) It describes the protection of religious autonomy in detail: 'Churches and religious

59 Constitution of the Republic of Serbia, art. 43.
60 Constitution of the Republic of Serbia, art. 43.
61 Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9.
62 International Covenant on Civil and Political Rights, art. 18.

communities shall be equal and free to organise independently their internal structure, religious matters, to perform religious rites in public, and to establish and manage religious schools and social and charity institutions, in accordance with the law'.[63] It is important to note that the constitution of the Republic of Serbia guarantees the right to perform religious rites publicly to all subjects, both individuals and religious organisations. Since the performance of religious rites generally implies the use of certain symbols, the constitution also guarantees the right to use such symbols in public. In accordance with the provisions of the constitution, this right is limited only in the case of religious rites conducted by religious organisations. Individuals can use religious symbols to manifest their religion both privately and publicly without restriction.

According to the constitution, the Constitutional Court has the right to ban a religious community under certain conditions:

> 'The Constitutional Court may ban a religious community only if its activities infringe on the right to life, the right to mental and physical health, the rights of the child, family integrity, or public safety and order—or if they incite religious, national, or racial intolerance'.[64]

This provision contains an interesting terminological inconsistency. Unlike the rest of the constitutional text and the other regulations that govern religious freedom, this provision mentions religious communities only—not churches.

For some authors, this omission suggests that the constitution intentionally provides for the possibility of banning only religious organisations not identified as churches.[65] The Law on the Constitutional Court, which regulates the prohibition procedure supports that position.[66] At the same time, the constitution states that churches and religious communities are equal; such an interpretation would mean that the drafters of the constitution were inconsistent and created an inequality and inequity between churches and religious communities. This contradiction suggests that the omission was unintentional, as Ministry of Religion representatives have pointed out.[67] The issue has more theoretical than practical significance because the Constitutional Court has never banned any church or religious community.

Since banning a religious organisation restricts its right to freedom of religion, art. 20 of the constitution of the Republic of Serbia provides the following clarification:

> When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, the pertinence of the

63 Constitution of the Republic of Serbia, art. 44.
64 Constitution of the Republic of Serbia, art. 44.
65 Đurđević, 2009, p. 201.
66 Law on the Constitutional Court, arts. 80, 81.
67 Đurđević, 2009, p. 201.

> restriction, the nature and extent of the restriction, the relation of the restriction, its purpose, and the possibility of achieving that purpose with less restrictive means.[68]

Also, in accordance with art. 202, the derogation of human rights is allowed in a state of emergency or war, as long as no measures are allowed to interfere with certain rights, including freedom of religion.[69]

To ensure the effective judicial protection of human rights, the constitution stipulates that a constitutional complaint may be lodged against individual acts or the actions of state bodies or organisations entrusted with public authority and denied human rights and freedoms,[70] if the legal remedies for their protection are exhausted or not provided. All persons who are subjects of the human rights guaranteed by the constitution have active legitimation. In accordance with the law, the Constitutional Court may 'annul an individual act, ban further performance of an action, or order another measure or action to eliminate the harmful consequences of an established violation or denial of guaranteed rights and freedoms and determine the manner of just satisfaction of the applicant'.[71] The constitutional complaint has proven to be an effective way of resolving disputes over human-rights restrictions. The Constitutional Court case law on restrictions of the right to freedom of religion is based entirely on constitutional appeals.

6. Guarantees provided by other sources of universally binding law

The cardinal law that regulates the freedom of religion in the Republic of Serbia is the 2006 Law on Churches and Religious Communities. This law comprehensively regulates the legal position of churches and religious communities. Although it was passed a few months before the current constitution, its provisions on the freedom to manifest religious beliefs do not differ fundamentally from the constitutional provisions. According to art. 1 of the law, freedom of religion includes, among other things, the

> freedom to manifest belief or religious conviction either individually or in community with others, in public or in private, by participating in religious services and performing religious ceremonies, through religious teachings and instructions, cherishing and developing religious tradition.[72]

68 Constitution of the Republic of Serbia, art. 20.
69 Constitution of the Republic of Serbia, art. 202.
70 Constitution of the Republic of Serbia, art. 170.
71 Law on the Constitutional Court, art. 89.
72 Law on Churches and Religious Communities, art. 1.

Importantly, the manifestation of freedom of religion extends to nurturing and developing religious traditions.

Religious officials often wear special insignia or vestments. In accordance with art. 8 of the Law on Churches and Religious Communities, the vestments of religious officials have official uniform status. This law obliges the state to protect the official uniforms of all religious officials, as well as all aspects of their insignia of rank and dignity. The protection is exercised 'in accordance with the law and the autonomous right of a church or religious community'.[73] All religious symbols are subjects of state protection; they are also an integral part of the vestments of priests and religious officials.

The Constitutional Court debate on the constitutionality of the Law on Churches and Religious Communities articulated the state's obligation to protect only its own symbols, implying that the law cannot establish the state's obligation to protect the official uniforms of priests and religious officials.[74] In response, the National Assembly pointed out that the state not only protects its symbols, but must also protect 'religious symbols and signs'.[75] The Constitutional Court argued that the official uniforms of religious people were a way of expressing freedom of religion, implying that the state is obliged to 'protect the wearing of an official uniform and its parts, as a sign of rank and dignity of clergy, that is, of religious officials'.[76]

The Law on Churches and Religious Communities regulates the worship-related activities of all religious organisations. Such activities may be carried out in public places 'as well as in the places related to significant historical events or persons, in accordance with the law'.[77] The places and times associated with religious ceremonies also enjoy protection. Since most religious rites are performed with the use of religious symbols, religious freedom cannot be protected without also protecting the use of religious symbols in the public sphere.

Importantly, the legislature guarantees that religious rites 'may also be performed in hospitals, military and police facilities, institutions for executing criminal sanctions, and other institutions and facilities, upon request of the competent body, while in schools and social and child-care institutions, religious service and ceremonies may be performed only on appropriate occasions'.[78] One assessment of the constitutionality of this law claimed that performing religious rites in public places or state institutions would turn a public space into a place of worship, placing state institutions under the illegal influence of religious organisations.[79] According to the

73 Law on Churches and Religious Communities, art. 8.
74 IUz- 455/2011.
75 Otvorena pitanja postupka ocene ustavnosti Zakona o crkvama i verskim zajednicama, p. 160.
76 IUz- 455/2011.
77 Law on Churches and Religious Communities, art. 31.
78 Law on Churches and Religious Communities, art. 31.
79 IUz- 455/2011.

Constitutional Court, the performance of religious rites in public spaces or state institutions does not violate their secular character. The right to practice religion freely in public is guaranteed by the constitution and can be restricted only under precise, predetermined conditions.[80] Religious rites are regulated in ways that do not affect the work of state institutions and or make their activities in any way religious. Instead, they remain religiously neutral, ensuring that the principle of church-state separation is not violated.

The presence of religious symbols in state institutions in Serbia goes beyond the framework needed for worship. Since the introduction of confessional religious education in the Serbian school system,[81] religious symbols have been used both as teaching tools and to decorate the school premises they were removed from decades earlier. Religious education is offered in all primary and secondary school grades.[82] It is an elective, confessional subject, which can be only be taught at state expense by traditional churches and religious communities.[83]

In the Serbian Armed Forces, chaplaincy service is regulated by the 2011 Decree of the Government of the Republic of Serbia.[84] In accordance with that decree, chaplains who perform religious services for the Serbian Armed Forces have the right to wear religious clothes but only while performing religious activities. Their uniforms can also include religious symbols. Military priests perform liturgical services and religious rites. They also organise lectures and pilgrimages, cooperate with other services, carry out pastoral-advisory work, and equip liturgical areas with movable objects and literature. Military priests can also perform religious rites outside religious premises, with the consent of military elders and religious dignitaries. Thanks to religious officers in the Serbian Armed Forces, the number of religious symbols in military facilities has increased.

Preventing or restricting the freedom to express religious beliefs or perform religious rites is sanctioned by the Criminal Code.[85] Any restriction of religious freedom is punishable by a fine or imprisonment of up to one year. In addition, preventing or obstructing religious rites incurs the same penalty. An official who commits a qualified form of this crime can receive a prison sentence of up to three years. Freedom of religion means the freedom to express religious beliefs (*forum externum*).[86] Although this provision of the Criminal Code is not sufficiently precise, when religious organisations use religious symbols to express their beliefs in public or private, they also enjoy criminal justice protection.

80 IUz- 455/2011.
81 Decree on the organisation and realisation of religious education and the teaching of alternative subjects in primary and secondary schools.
82 Law on the fundamentals of the education system, art. 60.
83 Avramović, 2016, pp. 39-46.
84 Decree on the performance of religious services in the Serbian Army.
85 Criminal Code, art. 131.
86 Vuković, 2016, p. 101.

The Identity Card law stipulates that a person who wears a hat or a scarf for religious reasons may be photographed with that garment to provide biometric data.[87] The laws on travel documents[88] and driver's licenses[89] do not include similar regulations in relation to biometric data.[90] In practice, there has never been a problem with the issuance of biometric personal documents, due to the wearing of religious symbols.

According to the Law on Public Media Services, the respect and encouragement of religious pluralism is a public interest.[91] The main activity of public media 'includes the production, purchase, processing and publishing of radio, television and multimedia content, especially informative, educational, cultural and artistic, children's, entertaining, sports, religious, and other categories of public interest to citizens'.[92] The Law on Electronic Media stipulates that churches and religious communities can act as media-service providers to satisfy the interests of certain social groups.[93] The content of these programs must relate to the activities of churches and religious communities; permits are issued for local and regional coverage only. This means that church and religious media, which the legislature classifies as civil-sector electronic media, cannot receive national coverage. These laws enable churches and religious communities to edit their own media and spread their ideas, attitudes, and doctrines through electronic media, increasing their participation in the public sphere.

For the most part, Serbian legislation indirectly and affirmatively regulates the presence of religious symbols in the public sphere. Although religious symbols are not explicitly mentioned, both the freedom to manifest religious beliefs and the right to disseminate religious ideas are protected by various regulations, which also cover the use of religious symbols in the public sphere.

7. Limitations on religious expression through the use of religious symbols

The freedom to manifest religious beliefs is not an absolute right, as it is subject to certain restrictions. The conditions under which the freedom of religion can be restricted are prescribed by the constitution of the Republic of Serbia and the Law on Churches and Religious Communities. However, the presence of religious symbols in public is not regulated by special regulations. According to the norms that regulate

87 Identity Card Law, art. 10.
88 Law on Travel Documents.
89 Rules on driving licenses.
90 Rules on Travel Documents.
91 Law on Public Service Broadcasting, art. 7.
92 Law on Public Service Broadcasting, art. 3.
93 Law on Electronic Media, art. 72.

the expression of freedom of religion, state regulations permit the use of religious symbols within the framework of freedom of religious expression.

The Republic of Serbia has no special regulations restricting the use of religious symbols, unlike some Western countries, which prohibit the wearing of religious symbols in public institutions. Although no normative solutions limit the use of religious symbols, scholars have argued that religious symbols in the public sphere desecularise society and the state.[94] However, none of the cases analysed in these papers has had a judicial epilogue or led to judicial interventions.

In the Code of Conduct for Civil Servants, passed by the High Council of Civil Servants,[95] a civil servant cannot express a religious affiliation through his or her dress, as this could 'call into question his impartiality and neutrality'. Only those religious symbols that could call into question the impartiality and neutrality of a public servant are banned. They include symbols of extremist organisations that abuse religious symbols for their own purposes.

The special regulations that govern the arrangement, equipping, and appearance of public offices belonging to notaries, executives, and attorneys do not limit the use of religious symbols in these offices. People working in public offices often display various religious symbols. Individuals generally arrange their own workspaces to express their own personal religious beliefs. These practices have not resulted in any litigation to date.

The use of religious symbols is not legally restricted in Serbian public schools. Based on the Law on the Fundamentals of the Education System, school councils may lay down rules of conduct, including dress codes for students and teachers.[96] Although it is not possible to analyse the rulebooks of every school, most prohibit discrimination based on religious affiliation; some ban clothing that promotes a religious affiliation. In addition, parents may be prohibited from expressing their religious or personal affiliations through their clothes.[97] However, most schools do not ask students or parents not to wear religious symbols.

Religious symbols are often present in kindergartens and schools, with no regulations to control their presence.[98] Occasionally, some NGOs or individuals speak out against this practice, referring to the separation of church and state.[99]However, this practice is not institutionalised. It simply reflects the fact that schools celebrate the feasts of their patron saints. As parents themselves donate icons and other religious symbols, this does not violate the principle of church-state separation. The presence of religious symbols does not affect teaching, learning, or school administration. The religious symbols are chosen by independent school bodies, not religious

94 Simović and Simeunović-Patić, 2016, p. 112.
95 Code of Conduct for Civil Servants, art. 17.
96 Law on the fundamentals of the education system, art. 119.
97 Rules of conduct and dress code.
98 Approach in the UK: Bacquet, 2009, pp. 123–125; in Europe: Ringelheim, 2012, pp. 283–304.
99 See: https://www.021.rs/story/Novi-Sad/Vesti/115592/Da-li-je-ikonama-mesto-u-vrticima-i-skolama-u-Novom-Sadu.html.

organisations. Nonetheless, this issue is not legally regulated by the Republic of Serbia.

According to the statutes of the University of Belgrade, religious feast days may be celebrated,[100] but all other religious activities and organisations are prohibited. Religious holiday celebrations tend to involve religious symbols. In many university premises, such symbols are present only during religious holidays. We should remember that many religious symbols also have secular significance, while many church figures have made a huge contribution to the development of science and literacy.

Hospitals have their own house rules, which determine the treatment of healthcare users and employee rules of conduct. Some hospitals allow priests to visit patients to perform religious rites.[101] Many hospitals have chapels, where believers can fulfil their religious needs. Over the last few years, there has been a noticeable tendency to build new hospital chapels. This means that healthcare users in all Serbian hospitals will soon be able to exercise the rights guaranteed by the Law on Churches and Religious Communities, which explicitly stipulates that liturgical and religious rites can be performed in hospitals at the request of the competent authority.[102]

When it comes to companies, the law does not restrict the use of religious symbols or words in business names or logos. The Law on Companies simply states that a company's name must not offend public morals.[103] The Law on Trademarks gives companies the right to have trademarks and logos, as long as they are not 'contrary to the public order or accepted moral principles'.[104] According to the Intellectual Property Office Methodology of Conduct, all signs that insult religious beliefs are treated as immoral in trademark recognition proceedings and proceedings under registered trademarks. In addition, a trademark cannot be granted for a mark that represents or imitates a religious symbol.[105] The same act specifies that signs can be expressed in words and/or graphics; it gives examples of names and figures of saints used inappropriately. In this way, the legislature protects religious symbols from possible corporate abuse. It also protects the dignity of religious organisations and their followers.

The use of religious symbols on the Internet and social networks is not sufficiently regulated by law. Religious symbols, including the official symbols of religious organisations, are often abused online.[106] Given the development of social networks and their importance during the current pandemic, this area is likely to be managed through special regulations.

100 Statute of the University of Belgrade, art. 8.
101 See: http://bolnica.org.rs/wp-content/uploads/2019/03/Kucni-red.pdf.
102 Law on Churches and Religious Communities, art. 31.
103 Law on Companies, art. 27.
104 Law on Trademarks, art. 5.
105 Methodology of Conduct of the Intellectual Property Office, pp. 54–55, 70.
106 See: www.spc.rs/sr/zloupotreba_zvanichnih_naziva_eparhije_vranjske_manastira_na_drushtvenim_mrezhama.

8. The system of legal protection

Courts in the Republic of Serbia rarely deal with cases involving the protection of religious freedom.[107] The legal framework that governs the exercise of individual and collective religious freedoms enables the unconstrained manifestation of religious beliefs in both the public and private domains. The lack of restrictive laws limiting the use of religious symbols leaves room for their use in the public sphere. This relaxed approach has been optimal because it does not cause inter-religious or interethnic tensions; instead, it gives each individual enough space to decide independently whether or how to manifest religious beliefs through various religious symbols.

In case law, disputes over trademarks and intellectual property have focused on religious symbols. One of the first lawsuits about religious symbols was a dispute over the use of the name and image of Saint Sava from a fresco in the medieval Orthodox Mileševa Monastery. The defendants sold bottles of wine labelled 'Sanctity' with an image of Saint Sava. The court ruled that the defendants had committed an act of unfair competition and violated the trademark protected by the Serbian Orthodox Church.[108] Although a similar dispute arose over the unauthorised use of an image of the White Angel from the same Orthodox monastery, it did not lead to a verdict.[109]

In the Republic of Serbia, religious symbols enjoy criminal justice protection. One of the few regulations that explicitly mentions religious symbols is the Criminal Code. The criminal offense of inciting national, racial, or religious hatred and intolerance carries a prison sentence of six months to five years. One version of this crime is denigrating religious symbols; this carries a prison sentence of one to eight years. Only secular uses of religious subjects that provoke or incite religious hatred are forbidden;[110] other secular uses are not forbidden. During the 2019 Belgrade Pride, one participant marched in the parade with an icon of the Virgin Mary with her halo painted in rainbow colours. A few citizens and the head of the police union filed lawsuits against him for initiating and provoking religious hatred. The court has still not decided those cases.[111]

Based on a constitutional complaint, filed by the Islamic Community of Serbia, the Constitutional Court ruled on an alleged violation of the freedom of thought, conscience, and religion.[112] A constitutional appeal was filed against the Supreme Court of Cassation judgment, rejecting a request to review the Administrative Court judgment. The judgment rejected a lawsuit, which claimed that the Ministry of Religion and Diaspora was silent on this subject. In 2006, the subject who submitted

107 Approach in the US: Gunn, 2010, pp. 291–294.
108 Pž. 6501/2004/1.
109 Pž. 7528/2009.
110 Vuković, 2016, p. 106.
111 See: *https://www.bbc.com/serbian/lat/srbija-49745940*.
112 Už-303/2017.

the constitutional complaint to the Ministry of Religion applied for inclusion in the Register of Churches and Religious Communities. In accordance with the Law on Churches and Religious Communities, the Islamic community is one of seven traditional churches and religious communities that recognise legal subjectivity *ex officio*.[113] Due to divisions within the Islamic community and the simultaneous operation of two non-recognised Islamic communities, the authorities did not register either. Both are treated as traditional religious communities, but without entries in the register. The Constitutional Court analysed case law from the European Court of Human Rights, examining the activities of states facing divisions within once united religious communities. In its decision, the Court found that the restrictions to which the appellant was exposed

> could be considered proportionate to the permissible objectives of restricting religious freedom and necessary in a democratic society, given that this was not an obstacle to gaining and enjoying traditional religious community status and that this enabled the peaceful coexistence of both Islamic communities in the same status'.[114]

Thus, the legal protection of freedom of religion in the Republic of Serbia takes into account European Court of Human Rights practice, using the same methodology to identify freedom-of-religion violations.

9. Conclusions

The use of religious symbols in the public sphere is not regulated exhaustively by Serbian laws. The legal guidelines associated with the Law on Churches and Religious Communities regulate the right to manifest religious affiliations, as well as the liturgical activities of churches and religious communities. In practice, religious symbols are often present in the public sphere, mainly due to informal initiatives and the individual expression of religious beliefs. Although there have been attempts to limit the use of religious symbols in public, they have not received court judgments. In addition, the legislature has never intervened by amending the existing legislation.

Various situations related to the presence of religious symbols in the public sphere generate ardent controversies. The first is the presence in public of symbols that most citizens perceive to be exclusively religious, including icons, crucifixes, and statues of saints. These symbols are often present in the public sphere because they have wider historical, identity-related, and cultural significance, as well as

113 Law on Churches and Religious Communities, art. 15.
114 Už-303/2017.

religious meaning. Although such symbols are not mandatory in the public sphere, they should not be unregulated or left to potential abuses.

The law should clarify the conditions under which symbols with a religious dimension can be used in public, which bodies make the decision, and how their decisions are implemented. This is especially important for public offices, educational institutions, hospitals, and companies. The law should identify the conditions under which the use of such symbols should be restricted and which limits competent authorities must respect. The legislature must protect the use of religious symbols in public spaces, especially given the frequent misconception that their presence violates the constitutional principles of state secularity and church-state separation.

The second situation involves the use of religious symbols in public spaces, such as courts, educational institutions, and state offices. In the Republic of Serbia, there have been no disputes about religious symbols or clothes that reveal someone's religious beliefs. This area should also be regulated, as certain religious practices may conflict with the relevant laws. In some European countries, certain modes of dress are forbidden, even though they manifest faith or belief. In Serbia, the legislature should apply a balanced approach, restricting costumes and symbols, in line with the practices of European countries and the European Court of Human Rights. At the same time, it should leave room for the expression of religious beliefs, using symbols that do not disrupt the harmonious lives of Serbian citizens.

The third controversy involves the practice of constructing religious symbols and monuments in public spaces financed by the government, local authorities, or state-owned companies. In recent years, various religious symbols have been built in public areas. Most have been crosses, chapels, and public fountains with religious ornaments. In academic discourse, such practices are seen as desecularising the public space. However, such facilities do not have merely religious purposes. They express the culture and identity of the vast majority of citizens of the Republic of Serbia. The law should regulate the construction of such facilities, considering both the neutrality of the state and the equality of all religious organisations. At the same time, when drafting urban plans, one should take into account not only the Law on Churches and Religious Communities, but also religious symbols and their visibility in relation to other buildings. For this reason, the law should include religious symbols, as well as religious buildings.

Lastly and most importantly, there is the question of whether manifestations of religion or belief in the public sphere are constitutional—or more precisely, whether religious services and ceremonies that use religious symbols in public or state institutions violate the principle of state secularity. The Constitutional Court has argued that liturgical services carried out in public facilities meet the needs of individuals who use their services without violating the principle of church-state separation. Noticeably, however, many public institutions do not provide the religious rites requested by service users. Although they can refer directly to the Law on Churches and Religious Communities, public institutions should ensure that service users are familiar with their rights and how they should be used.

No regulations in the Republic of Serbia explicitly prohibit the use of religious symbols. Unlike some European countries, Serbia does not restrict the right to wear religious clothes or insignia. Since prohibitions in European countries relate mainly to non-Christian religious minorities, autochthonous religious pluralism is one reason for this difference. The churches and religious communities that most Serbian believers belong to have existed for centuries and generally share a similar culture and social values.

This situation could change if more migrants settle in the Republic of Serbia. Most pass through on their way to the European Union. If a significant number stay in the Republic of Serbia, however, religious symbols must be regulated within the state's margin of appreciation to achieve a legitimate aim, preserving 'the conditions of "living together" as an element of the 'protection of the rights and freedoms of others'.[115]

Although there have been no legal debates on religious symbols in the public sphere, such debates are a part of the academic and public discourse. For the first time, this paper deals in a comprehensive and interdisciplinary way with the use of religious symbols in the public sphere in the Republic of Serbia, making a significant contribution to that public and academic debate.

115 Case of S.A.S. v. France, Application no. 43835/11, para. 153. Howard, 2020, p. 87; Marinković, 2018, p. 86.

Bibliography

Ahdar, R., Leigh, I. (2013) *Religious Freedom in the Liberal State*. Oxford: Oxford University Press.

Avramović S. (2011) 'Poimanje sekularnosti u Srbiji – refleksije sa javne rasprave u Ustavnom sudu' (Understanding Secularity in Serbia – Reflections on Public Hearing in the Constitutional Court), *Annals of the Faculty of Law in Belgrade (Belgrade Law Review)*, 2011/2, pp. 279–301.

Avramović, S. (2007) *Prilozi nastanku srpskog državno-crkvenog prava (State-Church Law in Serbia)*. Beograd: Službeni glasnik.

Avramović, S. (2016) 'Religious Education in Public Schools and Religious Identity in Post-Communist Serbia', *Annals FLB – Belgrade Law Review*, 64(3), pp. 25–56.

Avramović, S., Rakitić D. (2009) 'Kolektivna prava i verska sloboda u Srbiji-Istorijsko-pravno utemeljenje kolektivnih prava tradicionalnih crkava i verskih zajednica u Srbiji' (Collective Rights and Religious Freedom in Serbia – The Historical and Legal Foundation of Collective Rights of Traditional Churches and Religious Communities in Serbia), in Jovanović, M. (ed.) *Kolektivna prava i pozitivna diskriminacija u ustavnopravnom sistemu Republike Srbije (Collective Rights and Positive Discrimination in the Constitutional System of the Republic of Serbia)*. Beograd: Pravni fakultet Univerziteta u Beogradu, Službeni glasnik.

Bacquet, S. (2009) 'Manifestation of Belief and Religious Symbols at Schools: Setting Boundaries in English Courts', *Religion and Human Rights*, 2009/4, pp. 121–135.

Calo, Z. R. (2012) 'Higher Law Secularism: Religious Symbols, Contested Secularisms, and the Limits of the Establishment Clause', *Chicago-Kent Law Review*, 87(3), pp. 811–831.

Đukić D. (2014) 'Negativni aspekt slobode veroispovesti u praksi Evropskog suda za ljudska prava (Negative Aspect of Freedom of Religion in the Jurisprudence of the European Court of Human Rights)', *Harmonius Journal of Legal and Social Studies in South East Europe*, 2014/1, pp. 56-77.

Đukić, D. (2011) *Državno-crkveno pravo i grčka pravna tradicija (State-Church Law and Greek Legal Tradition)*. Beograd: unpublished.

Đurđević, N. (2009) *Ostvarivanje slobode veroispovesti i pravni položaj crkava i verskih zajednica u Republici Srbiji (Exercising Freedom of Religion and the Legal Status of Churches and Religious Communities in the Republic of Serbia)*. Beograd: Zaštitnik građana.

Đurić, V. (2012) *Sloboda veroispovesti u jurisprudenciji evropskih ustavnih sudova (Freedom of Religion in the Jurisprudence of European Constitutional Courts)*. Beograd: Institut za uporedno pravo.

Đurić, V. (2014) *Pravni aspekti prikupljanja, upotrebe i značaja statističkih podataka o nacionalnoj, jezičkoj i verskoj pripadnosti stanovništva (Legal Aspects of Collection, Use and Importance of Statistical Data on Ethnicity, Mother Tongue and Religious Affiliation)*. Beograd: Republički zavod za statistiku, Institut za uporedno pravo.

Džomić, V. (2012) 'Ustavno-pravni sistemi odnosa države sa crkvama i verskim zajednicama u modernoj državnosti (Constitutional and Legal Systems of Relationships Between a State and its Churches and Religious Communities in the Context of Modern Statehood)', *Church Studies*, 2012/9, pp. 357–383.

Emerson, G. (2018) 'Public Spaces and Religion: An Idea to Debate, A Monument to Analyze', *Horizontes Antropológicos*, 24 (52), pp. 279–309.

ETINSKI, R., ĐAJIĆ, S. (2012) *Međunarodno javno pravo (International Public Law)*. Novi Sad: Pravni fakultet.

FERRARI, S. (1995) 'The Emerging Pattern of Church and State in Western Europe: The Italian Model', *Brigham Young University Law Review*, 1995/2, pp. 421–437.

GOMES, E. X. (2009) 'Church-State Relations from a Catholic Perspective: General Considerations on Nicolas Sarkozy's New Concept of Laïcité Positive', *Journal of Catholic Legal Studies*, 48(2), pp. 201–218.

GUJANIČIĆ, D. (2012) 'Načelo svetovnosti države u Srbiji (The Principle of Secularity in Serbia)', *Politička revija*, 34(4), pp. 105–126.

GUNN, J. T. (2010) 'Religious Symbols and Religious Expression in the Public Square' in Davis, D. (ed.) *The Oxford Handbook of Church and State in the United States*. Oxford: Oxford University Press.

HABERMAS, J. (1991) *The Structural Transformation of the Public Sphere*. Cambridge, MA: The MIT Press.

HALMAI, G. (2017) 'Varieties of State–Church Relations and Religious Freedom through three Case Studies', *Michigan State Law Review*, 2017(2), pp. 175–207.

HARRIS, D., O'BOYLE M., WARBICK C. (2014) *Law of the European Convention on Human Rights*. Oxford, UK: Oxford University Press.

HIRSCHL, R. (2010) *Constitutional Theocracy*. Cambridge, MA/London: Harvard University Press.

HOWARD, E. (2012) *Law and the Wearing of Religious Symbols. European Bans on the Wearing of Religious Symbols in Education*. London/New York: Routledge. New Edition: Howard, E. (2021) *Law and the wearing of Religious Symbols in Europe*. London: Routledge.

HOWARD, E. (2020) 'Freedom of Religion and the Wearing of Religious Symbols', in Portaru, A. (ed.) *A 'Precious Asset'?* Vienna: Kairos Publications.

MARINKOVIĆ, T. (2011) 'Prilog za javnu raspravu o ustavnosti Zakona o crkvama i verskim zajednicama' (Contribution to the Public Debate on the Constitutionality of the Act on Churches and Religious Communities of the Republic of Serbia), *Annals of the Faculty of Law in Belgrade (Belgrade Law Review)*, 2011/1, pp. 367–385.

MARINKOVIĆ, T. (2018) 'Religion in Public Spaces-Controversies in the European Court of Human Rights' Case Law' in Brunkhorst, H., Vujadinović, D., Marinković, T. (eds.) *European Democracy in Crisis: Polities Under Challenge and Social Movements*. Hague: Eleven International Publishing.

MONSMA, S., SOPER, J. (2009) *The Challenge of Pluralism-Church and State in Five Democracies*. Lanham: Rowman & Littlefield Publishers.

NAUMOVIĆ, S. (1995) 'Srpsko selo i seljak: između nacionalnog i stranačkog simbola' (Serbian Village and Peasantry Between National and Party Symbols), *Glasnik Etnografskog instituta SANU*, 1995/XLIV, pp. 114–127.

PUKENIS, R. (2014) 'The Models of Church and State Relations in a Secularised Society of European Union', *Asian Journal of Humanities and Social Studies*, 2(3), pp. 496–505.

RADULOVIĆ, M. (2014) *Obnova srpskog državno-crkvenog prava (Renewal of Serbian State-Church Law)*. Beograd: Konrad Adenauer Stiftung.

RINGELHEIM, J. (2012) 'Rights, Religion and the Public Sphere: The European Court of Human Rights in Search of a Theory?' in Ungureanu C., Zucca L. (eds.) *A European Dilemma: Religion and the Public Sphere*, Cambridge: Cambridge University Press.

ROBBERS, G. (2001) 'Religious Freedom in Germany', *Brigham Young University Law Review*, 2001/2, pp. 643–668.

ROBBERS, G. (2005) *State and Church in the European Union*. Baden-Baden: Nomos. New Edition: Robbers, G. (2019) *State and Church in the European Union*. Baden-Baden: Nomos.

ROBERTS, C. (2014) *The Other Side of the Coin? A Critical Examination of the Right Not to Manifest Religion or Belief in art. 9 of the European Convention on Human Rights* [Online]. Available at: https://pure.aber.ac.uk/portal/files/27525081/Roberts_Caroline.pdf (Accessed: 27 April 2021).

SANDBERG, R. (2008) 'Church-State Relations in Europe: From Legal Models to an Interdisciplinary Approach', *Journal of Religion in Europe*, 1(3), pp. 329–352.

SANDBERG, R., DOE, N. (2007) *Church – State Relations in Europe* [Online]. Available at: https://bit.ly/3CLf7Eb (Accessed: 27 April 2021).

SIMOVIĆ, D., SIMEUNOVIĆ-PATIĆ B. (2016) 'Normative Sacred versus Real Desecularisation – Road to (in)tolerant and (un)violent Serbian Society', in Jevtić, M., Veković, M. (eds.) *10 Years of the Politics and Religion Journal*. Belgrade: Centar za proučavanje religije i versku toleraciju, Univerzitet u Beogradu – Fakultet političkih nauka.

TORON, J., DURHAM, C. (2015) 'Religion and the Secular State' in Donlu, D. T. (ed.) *Religion and the Secular State: National Reports*. Madrid: Servicio de Publicaciones Facultad de Derecho Universidad Complutense de Madrid.

VUKOVIĆ, I. (2016) 'O unapređenju krivičnopravne zaštite slobode veroispovesti u srpskom i crnogorskom pravu (On Improving the Criminal Protection of the Freedom of Religion in Serbian and Montenegrin law)', in Ćirić, J., Džomić V., Jevtić M., (eds.) *Religija, Politika, Pravo (Religion, Politics, Law)*. Beograd-Budva: Institut za uporedno pravo, Pravoslavna Mitropolija Crnogorsko-primorska, Centar za proučavanje religije i versku toleranciju.

Legal sources

Case of S.A.S. v. France, Application no. 43835/11.

Code of Conduct for Civil Servants, *Official Gazette of the Republic of Serbia*, nos. 29/2008, 30/2015, 20/2018, 42/2018, 80/2019, 32/2020.

Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 98/2006, http://www.spc.rs/sr/proslava_sretenja_u_ustanichkom_orashcu

Criminal Code, *Official Gazette of the Republic of Serbia*, nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019.

Decree on the organisation and realisation of religious education and the teaching of alternative subjects in primary and secondary schools, *Official Gazette of the Republic of Serbia*, no. 46/2001.

Decree on the performance of religious services in the Serbian Army, *Official Gazette of the Republic of Serbia*, no. 22/2011.

Identity Card Law, *Official Gazette of the Republic of Serbia*, nos. 62/2006, 36/2011.

Identity Card Law, *Official Gazette of the Republic of Serbia*, nos. 62/2006, 36/2011.

IUz- 455/2011, *Official Gazette of the Republic of Serbia*, no. 23/2013.

Law on Churches and Religious Communities, *Official Gazette of the Republic of Serbia*, no. 36/2006.

Law on the Constitutional Court, *Official Gazette of the Republic of Serbia*, nos. 109/2007, 99/2011, 18/2013, 103/2015, 40/2015.

Law on Electronic Media, *Official Gazette of the Republic of Serbia*, nos. 83/2014, 6/2016.

Law on the fundamentals of the education system, *Official Gazette of the Republic of Serbia*, nos. 88/2017, 27/2018, 27/2018, 10/2019, 6/2020.

Law on Public Service Broadcasting, *Official Gazette of the Republic of Serbia*, nos. 83/2014, 103/2015, 108/2016, 161/2020.

Law on the Restitution of Property to Churches and Religious Communities, *Official Gazette of the Republic of Serbia*, no. 46/2006.

Law on Travel Documents, *Official Gazette of the Republic of Serbia*, nos. 90/2007, 116/2008, 104/2009, 76/2010, 62/2014, 81/2019.

The Methodology Applied by the Intellectual Property Office to the Procedure Relating to the Registration of Trade Marks and the Procedures Based on Registered Trade Marks, https://www.zis.gov.rs/upload/documents/pdf_en/pdf_zigovi/methodology.pdf

Otvorena pitanja postupka ocene ustavnosti Zakona o crkvama i verskim zajednicama (Open issues of the proceedings for an assessment of the constitutionality of the Law on Churches and Religious Communities), in Raković, A., Đurić, V. (eds.) *Pravo, vera, kultura (Law, Religion, Culture)*. Belgrade 2012.

Prevention of radicalization and terrorism (Prevencija radikalizacije i terorizma) [Online]. Available at: https://www.osce.org/files/f/documents/d/b/447076.pdf (Accessed: 27 April 2021).

The Programme of the League of Yugoslav Communists. (1980) Belgrade: Komunist.

Law on the Repeal of Certain Laws and Other Regulations, *Official Gazette of the Republic of Serbia*, no. 18/1993.

Rules of conduct and dress code, http://ostrajkostamenkovic.nasaskola.rs/strana/122/PRAVILA-PONASANjA/.

Pž. 6501/2004/1, Presuda Višeg trgovinskog suda od 29.10.2004. godine.

Pž. 7528/2009 Rešenje Višeg trgovinskog suda od 22.9.2009. godine, Sudska praksa trgovinskih sudova, Bilten br. 4/2009.

Rules on driving licenses, *Official Gazette of the Republic of Serbia*, nos. 73/2010, 20/2019, 43/2019, 128/2020.

Rules on travel documents, *Official Gazette of the Republic of Serbia*, nos. 54/2008, 34/2010, 3/2016.

Statute of the University of Belgrade, Gazette of the University of Belgrade, nos. 201/2018, 207/2019, 213/2020, 214/2020, 217/20.

Už-303/2017, Odluka o odbijanju Ustavne žalbe.

Υπόθεση Αλεξανδρίδη κατά της Ελλάδος, Προσφυγή υπ' αριθ. 19516/06, § 38.

Chapter VI

The Legal Regulation of Religious Symbols in the Public Sphere in Slovakia

Vojtech Vladár

1. Introduction

In modern societies, the freedom of thought, conscience, and religion is a basic human right. Even continued secularisation cannot reduce its importance. We may therefore describe it as the freedom of freedoms, since many other freedoms are derived from it, including freedom of speech, association, and meeting.[1] From the point of view of human rights, this freedom is considered fundamental and included among the first generation of human rights.[2] In the contemporary world, societies that respect and observe human rights are generally perceived to have achieved real democratisation.[3] Although this topic is—to a significant extent—theoretical in nature, no less importance is attributed to its constitutional, international as well as historical and sociological delimitation. Slovakia is the same in this sense because throughout its history, churches and religious societies (especially the Catholic Church) have played one of the most significant roles. This can be best demonstrated by the large number of people avowing to the religion or to the memberships of any of the churches or religious societies. Moreover, according to the last census of population and housing of 2011, the confession of certain religion declared 76% of

1 Jäger and Molek, 2007, p. 26n.
2 Madleňáková, 2010, pp. 12 and 36.
3 Čeplíková, 2011, pp. 5 and 7.

Vojtech Vladár (2021) The Legal Regulation of Religious Symbols in the Public Sphere in Slovakia. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 171–210. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_6

population.[4] These statistics also prove that most citizens of the Slovak Republic see churches and religious societies as an integral part of the social structure and important to their own identities. In the past, representatives of the communist regime, which regarded religious institutions as an ideological enemy, restricted their activities and social influence in every possible way and subjected them to government and economic surveillance and international isolation.[5]

The current status of churches and religious societies in the Slovak Republic proves that the events of November 1989 created unprecedented possibilities, giving religious institutions the opportunity to continue on in their traditional role of forming the nation. The high percentage of religious people and the significant engagement of churches and religious societies in social, educational, and charitable endeavours have influenced the state, as it determines how much and to what extent to cooperate with them, while setting guidelines for areas of common collaboration. First and foremost, the state respects their social and legal status as legal entities *sui generis*, acknowledging them under certain conditions the status of corporations in public law. Overall, given this cooperation, the mutual relationship between the state and churches and religious societies can be considered more than appropriate, despite certain controversies. In other words, the state has accepted their social status fully and cooperated with them, following the principles of partnership collaboration.[6] For this reason, the status of churches and religious societies in the Slovak Republic is not simply comparable to their status in other democratic countries, but somewhat better. In most highly-developed states, disputes and conflicts over the use of religious symbols in the public sphere are increasing. In Slovakia, the problem barely exists. This chapter focuses on that question and attempts to clarify it from the point of view of Slovak life and institutions, while also pointing out individual reasons for the *status quo*. First and foremost, this study considers the historical, axiological, sociological, and religious context, analysing these methodologically, while also examining relevant historical and contemporary phenomena. The final results are synthesised and partially compared with developments in other countries to highlight Slovak peculiarities.

2. Religious symbols in public spaces

The fact that the Constitution of the Slovak Republic reflects in its Preamble the Cyrilo-Methodian heritage points out the importance of Christianity and its

4 See: https://census2011.statistics.sk/tabulky.html. The author was unable to use the results of the 2021 census, which was in progress while this chapter was being written.

5 Grešková, 2008, p. 10.

6 Čikeš, 2010, pp. 8 and 39.

culture on our historical territory that was situated in the period of Early Middle Ages at the crossroad of power and the cultural-spiritual influences of Christian West and East.[7] After adopting Western Christianity and accepting the domination of Rome, the spiritual centre of Christianity, during the Great Moravian Empire, the Slovak population was involuntarily incorporated into the Hungarian state, where it remained involuntary for about a thousand years. Since that time, many generations have contributed to the Christianisation and cultivation of the new nation.[8] As a consequence of longer-term direct contact, the ruling Hungarians adopted the Slavonian religion and law, as well as several words, known as moravisms. From that time forward, the development of the church on Slovak territory depended on the Kingdom of Hungary, to which it was ecclesiastically, as well as politically, subordinated.[9] After the Battle of Mohács in 1526, a new era began in the church and political history of Hungary, which was thereafter administered by the House of Habsburg. The contemporary religious situation had its roots in the 18th and 19th centuries. From the end of the 18th century onwards, freedom of religion was practiced in the Habsburg Monarchy; even non-Catholic churches began to emancipate.[10] This period also laid the foundations for contemporary interconnections between the state and churches and religious societies, which depended on the state financially because the sovereigns considered them an effective tool for improving the public morals.[11] After the Austro-Hungarian Compromise of 1867, the Hungarian state established several religious rules, which differed markedly from the Austrian regulations and significantly influenced developments in Slovakia.[12] For example, in 1894, the obligatory civil marriages and state registers were established, taking effect on 1 October 1895. From that time forward, public bodies did not accept the judgment of Church tribunals in relation to marriage.[13] In 1895, the Hungarian legislative assembly declared a general policy of religious tolerance, which, for the first time, allowed all citizens to leave any church or religious society and become officially

7 Cyrilo-Methodian traditions were used to support defense arguments during the national revival in the 19th century, becoming the authentic national Slovak tradition *sensu stricto*. Marsina, 1985, p. 110. Even nowadays, we find mentions of the contributions made by missionaries to Slovakian education. Orendáč, 2014.

8 From the beginning, Hungary was typical in its tolerance of all Christian rites, especially after the Mongol invasion of 1241, when Vlachs of Romanian nationality who practiced Eastern rite appeared in the territory, alongside the German population. Šabo, 2008, pp. 25–26.

9 Moravčíková, 2003, p. 100.

10 Valeš, 2008, p. 110n.

11 Čikeš, 2010, pp. 16–17.

12 For example, in 1868, liberal politicians in the Hungarian legislative assembly recognised Catholic Church courts only in cases of Catholic marriage; children of mixed marriages had to follow the religion of the same-gender parent and church patronage was completely removed from the education system. Although one liberal Hungarian politician proposed the complete separation of church and state in 1873, the monarch, Franz Joseph I (1848–1916), vetoed this project, forcing the Hungarian legislative assembly to withdraw it. The government's attempt to unleash a culture war was likewise a fiasco. Kumor and Dlugoš, 2004, p. 389.

13 Zák. čl. 31/1894 and 32/1894.

creedless.[14] Subsequently, all received churches and religious societies had the recognised status of public-law privileged, independent, and autonomous corporations, providing some functions of state machinery.[15]

Since the Czechoslovak Republic, which came into existence on the ruins of Austro-Hungarian Empire, 'received' Hungarian law and order for its Slovak territory, there were still Hungarian religious rules in force in Slovakia and Carpathian Ruthenia, in accordance with the conditions of the year 1895.[16] International acceptance of the new state significantly advanced its early diplomatic recognition by the Apostolic See.[17] Faith withered in much of the Czech nation, following the arraignment of the Catholic House of Habsburg on charges of long-term national servitude. These tendencies were strengthened by Czech liberal-humanistic politicians and intellectuals, who hoped to instigate a culture war,[18] leading to the sporadic removal of crosses from schools.[19] The proposal to separate church and state, which was raised in the constituent assembly, was rejected due to opposition from Catholic representatives, especially in relation to Slovakia.[20] The Catholic Church had a particularly high status and its priests, who belonged to the nation's elite, continually supported the national and political revival of the Slovak nation.[21] Achieving a separation between church and state could moreover strengthen autonomist and separatist tendencies in Slovakia.[22] Importantly, the boundaries of Catholic dioceses (especially in Slovakia) did not replicate the boundaries of the state.[23] Despite the efforts mentioned above, churches and religious societies in the First Czechoslovak Republic continued to hold the status of privileged corporations in public law.[24]

The new state's constitutional bill ultimately proclaimed and guaranteed the broadest freedom of conscience, religion, and public worship.[25] However, the differentiation between the accepted and non-accepted churches and religious societies,

14 Zák. čl. 43/1895. See also Valeš, 2008, p. 129.

15 For example, these churches and religious societies could set up public schools. The state even gave them increased criminal-law protection, while also helping to collect church taxes, charges, and fees. Bušek, 1931, p. 326.

16 Zákon č. 11/1918 Zb. z. a nar. o zřízení samostatného státu. The attachment of Carpathian Ruthenia to the new state in 1919 contributed to religious, as well as national, diversity. One of the most important factors binding the nations together was Catholicism, since approximately 85% of the population of the republic was Catholic. Kumor and Dlugoš, 2004, p. 388.

17 Tretera, 2002, pp. 35–36; Hrabovec, 2008, p. 184.

18 Dejmek, 2004, pp. 75–83.

19 For example, in 1921, approximately 1.4 million members left the Catholic Church in Czech and Moravia. Čeplíková, 2011, pp. 64–65.

20 Pehr and Šebek, 2012, p. 46n.

21 They also protected the Slovak nation from the Hungarian state's brutal efforts to Magyarise non-Hungarian nations, which lasted until the disintegration of the Austro-Hungarian Empire. Grešková, 2008, p. 10.

22 Surmánek, 2009, p. 75.

23 Čikeš, 2010, p. 20.

24 Čeplíková, 2011, pp. 69–70.

25 §§ 121–122 ústavného zákona č. 121/1920 Zb., Ústavná listina Čekoslovenskej republiky.

applied from the second half of 19th century, was preserved.[26] In terms of funding, the Catholic Church was harmed to a considerable extent by the tax and land reforms, which confiscated all larger landed church estates.[27] Moreover, in the whole republic the facultative civil marriages were put into practice, but the civil-law force of Church marriages were recognized, though qualified as divorceable.[28] In 1925, the parliament approved a law regulating feast days, which were considerably reduced.[29] Despite strained relations between the state and churches and religious societies, a new Congrua law was issued in 1926, slightly increasing the pensions of members of the clergy.[30] The situation improved considerably after 1928, when an agreement in the form of *modus vivendi* between Czechoslovakia and the Apostolic See delimited the boundaries of Catholic dioceses and revoked the state administration of church property, which was a constraint.[31] On the other hand, the Apostolic See was reciprocally obliged to present the name of the proposed candidates for bishoprics to the government, due to the potential political reservation on the part of the state. The government set aside the goal of realising the agreement, which was only put into practice after 1935, when mutual relationships had genuinely improved.[32]

During the final period, conflicts appeared between the Czech and Slovak nations in the Czechoslovak Republic, which disintegrated in 1939, due to European political events and German expansion. Both the Czech nation and Moravia were annexed by the German Empire as a protectorate.[33] Under threat from Hungarian expansion during the same year, a new autonomous Slovak Republic was established on the reduced territory of Slovakia, with a Catholic priest as its head.[34] His purpose was to govern the state in the spirit of Christian principles, in accordance

26 Wierer, 1935, p. 393.

27 Zákon č. 215/1919 Zb. z. a nar. o zabrání velkého majetku. The deteriorating relationship between the Catholic Church and the state was also related to the efforts of the Czechoslovak government to usurp the right of nomination of prelates, which was based on the ancient patronage of the Hungarian kings. Although the obligatory teaching of religion was cancelled by the constitutional act, it was taught in all Slovakian schools as a required subject. Pehr and Šebek, 2012, p. 105.

28 Zákon č. 320/1919 Zb. z. a nar. o obřadnostech smlouvy manželské, o rozluce a překážkách manželských; vykonávacie nariadenie č. 362/1919 and zákon č. 113/1924 Zb. z. a nar.

29 Bušek, 1931, p. 337.

30 Zákon č. 122/1926 Zb. z. a nar. o úpravě platů duchovenstva církví a náboženských společností státem uznaných případně recipovaných and vládne nariadenie č. 124/1928 Zb. z. a nar. o úpravě platů duchovenstva.

31 Dolinský, 1999, pp. 42–46; Halas, 2002, p. 66. In this case, the creation of a Slovak Church province with the archbishop at the head was proposed, as a way to exempt all Slovak dioceses from the jurisdiction of the ordinary residing beyond state borders. The greatest success was the removal of Slovak territory from the jurisdiction of the archbishop of Esztergom and the constitution of the Apostolic Administrature in Trnava. Tretera, 2002, pp. 39–40. Interestingly, this agreement was never formally denounced. Researchers have assumed that it ceased to exist because it was discontinued (*desuetudo*) due to a 'substantial change in circumstances' (*rebus sic stantibus*) on 1 November 1949. Suchánek, 2002, p. 219; Šmid, 2001, p. 63.

32 Dejmek, 2004, p. 85.

33 Valeš, 2008, pp. 136–137.

34 Dolinský, 1999, pp. 76–79.

with the eternal Law of God.[35] Due to the German protectionism, Slovakia had to adopt laws that expressly trespassed *ius Divinum* (including the limitation of personal and property freedom, the Jewish Codex, and the deportation of Jewish fellow-citizens). The constitution of 21 July 1939 declared that every citizen had the right to freely engage in religious activities, as long as these did not undermine legal regulations, the public order, or Christian morals. All churches and religious societies were recognised by the state as public-law corporations, with their own administration and property.[36] Religious education was required in primary and secondary schools, carried out under state control by recognised churches and religious societies. Although no church was constitutionally preferred, the Catholic Church *de facto* dominated.[37] With reference to state religious laws, relevant regulations, including the Congrua legislation, were taken from Czechoslovak law.[38] State efforts to regulate the relationship with the Holy See included the preparation of an extensive concordat, which consisted of 35 articles and embraced all aspects of public religious life. However, the Vatican representatives ultimately recessed without setting a date to ratify the concordat. The next religious development in the territory took place during World War II, when all Church schools (from public nurseries and shelters to universities) were secularised, as instructed by the insurrectionist Slovak National Counsel.[39]

After the end of World War II, the Czechoslovak Republic was restored on 9 May 1945, without the territory of Carpathian Ruthenia.[40] The government, in exile in London, sought to preserve the *modus vivendi* agreement of 1928, establishing correct relationships between churches, religious societies, and the state at the beginning of the post-war period. However, communists in both countries struggled to obtain state power and finally succeeded in 1948, by means of a putsch. Despite the freedom of religion and conscience enshrined in the Constitution of the People's Democratic Republic in 1948 (§§ 15–17), a completely new platform was built that year for the next development in the relationship between the state and churches and religious societies.[41] The most difficult measures were imposed against the Catholic Church,

35 For example, approximately one-fifth of the members of the Assembly of the Slovak Republic were Catholic clergymen. Moravčíková, 2003, p. 101. Moreover, symbols from earlier historical periods were banned by the government, including the crown of St. Stephen. Hetényi and Ivanič, 2010, p. 340.[28] Furthermore, the Ministry of Education and National Culture decreed that every classroom had to display the sign of the cross as a symbol of Slovak Christian culture. Both before and after class, schoolchildren had to say a prayer. Garek, 2010, p. 223.

36 Kamenec, 2011, pp. 175–192.

37 Kumor and Dlugoš, 2004, pp. 394–396.

38 Čikeš, 2010, pp. 28–29.

39 Nariadenie Slovenskej národnej rady č. 5/1944 Zb. n. See also Londáková, 2008, p. 336n; Dolinský, 1999, pp. 95–96.

40 The loss of approximately one million highly religious people diminished the status of believers in the Czechoslovak post-war state. Tretera, 2002, p. 41.

41 Of course, the constitution did not specify the legal status of churches and religious societies. For a short period, they therefore retained the status of privileged, autonomous corporations. Kindl, 1998, pp. 311–313.

which more than 70% of the Czechoslovak population belonged to, as it enjoyed a very special position in Slovak territory.[42] These measures consisted especially in the restriction of the activities of bishops, their isolation from clergy, the establishment of new state-controlled Catholic Action and the individual State Office for the Church Matters, the support of clergymen properly performing their "socialistic duties", the intervention to the activities of Catholic institutions and print, limiting the impacts of the Apostolic See and the effort to constitute an independent national particular church.[43] These politics was put into practice in 1949, when diplomatic relations with the Apostolic See were interrupted and several anti-ecclesiastical laws were issued.[44] Churches and religious societies were viewed as institutions opposed to the state, or—to be more precise—as ideological or governmental rivals.[45] The state also set out to secularise almost all of the property owned by churches and religious societies, apart from sacral objects. In this way, religious property was brought under state financial and political control.[46] The State Office for Church Matters played the most important role, supervising all church activities directly or indirectly.[47] The establishment of this office meant that the state never had to think about separating church and state. The communists believed that such a separation would increase the social influence of churches and religious societies and prevent the state from interfering with their internal affairs.[48]

Economic surveillance deepened after the establishment of Law No. 218/1949, through which the state regulated the economic affairs of churches and religious societies. The regime obligated itself to pay the personal salaries of clergy belonging to recognised churches and religious societies, on condition that they obtained state authorisation, awarded only to Czechoslovak citizens recognised for their reliability and probity (§ 1).[49] Through this law, churches and religious bodies ceased to be public-law subjects and became completely dependent on state, both politically and

42 Pešek and Barnovský, 1999, p. 35n.

43 Balík and Hanuš, 2007, p. 111n; Pešek and Barnovský, 1997, p. 61n; Vaško, 2004, p. 113n.

44 Casaroli, 2001, p. 129n.

45 Fiala and Hanuš, 2001, p. 9n. During the communist period, the Czechoslovak Republic resembled an 'à rebours' theocratic state, which promoted the ideology of atheism in response to the religion and faith of classical theocratic states. Tretera, 2002, p. 12; Campenhausen, 2002, p. 453; Doe, 2011, pp. 9 and 142.

46 Of course, the regime primarily confiscated church property. The rest was then qualified as a private ownership (the third form of socialistic ownership). Juran, 2008, p. 12; Hlavová, 2008, p. 356n.

47 In addition, the Slovak Office for Church Matters was responsible for normative, directive, and supervisory tasks. It intervened in the administration of churches and religious societies, protected church monuments, resolved salary issues involving clergymen, teachers, and employees of theological faculties, provided religious schooling, and expertly appraised churches and religious prints and publications. Pešek and Barnovský, 1997, pp. 10–11, 84–85, 98–99.

48 Čikeš, 2010, p. 32.

49 § 1 zákona č. 218/1949 Zb. The anti-ecclesiastical laws were enacted through five statutory orders, continually enforced against individual churches and religious societies. Balík and Hanuš, 2007, p. 26n; Vaško, 2004, p. 160n.

economically.[50] Next, the education system was secularised and a new atheistic and Marxist didactical program was brought in.[51] Religion could be taught only by clergyman with the agreement of the state. Concerning marriages, in the whole territory of Czechoslovakia the obligatory civil form of its contracting was decreed that had to precede the eventual marriage before the clergyman of church or religious society.[52] In 1950, most members of male religious orders were discharged and interned during 'Operation K'; later, female members of religious orders were subjected to the same punishment in 'Operation R'.[53] In 1960, a new constitution was passed, which renamed the state the 'Czechoslovak Socialist Republic', while once again formally guaranteeing the freedom of religious belief.[54] However, the situation did not ease in Czechoslovakia until relatively recently, especially after Alexander Dubček (1968–1969) became the general secretary of the Communist Party of Czechoslovakia and tried to introduce various democratic changes to society.[55] The Prague Spring (1968) revival movement adopted those ideas and helped to entrench many positive elements in political, social, and religious life.[56] All of the processes of democratisation ended on 21 August 1968, when the country was occupied by the Warsaw Pact armies. Then the so-called normalisation process (1968–1989) caused the status of churches and religious societies to deteriorate further.[57] Subsequently, the government interfered to a significant extent with religious life, limiting the number of students (*numerus clausus*) in seminaries, depriving clergymen of state approval, and intimidating members of the laity through state security (ŠtB) activities.[58]

When more liberal politics were introduced to the Soviet Union, the situation in Czechoslovakia also improved. The fall of communism and the establishment of democratic changes in society ultimately fell into alignment after the events of the 17 November 1989 'Velvet Revolution', which led to a revision of the constitution and changes to the state name, first to the Czechoslovak Federative Republic and then to the Czech and Slovak Federative Republic. After the Communist Party of Czechoslovakia lost its political monopoly,[59] diplomatic relations were established

50 The derogatory clause § 14 abrogated all of the rules that had previously regulated the legal status of churches and religious societies. Tretera, 2002, p. 49.

51 Horák, 2011, pp. 52, 65 and 149.

52 Family-law violations were criminally prosecuted through sanctions imposed on the content of the criminal acts. § 211 trestného zákona č. 140/1961 Zb.

53 Chenaux, 2012, pp. 77–79. None of the religious orders could dispose of novices; violating this prohibition constituted the criminal act of obstructing the supervision of churches and religious societies. § 178 trestného zákona č. 140/1961 Zb. See also Pešek and Barnovský, 1997, p. 161n.

54 Čl. 32 Ústavného zákona č. 100/1960 Zb, Ústava Československej socialistickej republiky. Along with this vague provision, it also declared that no one could refuse a civic duty prescribed by law on grounds of religious belief or conviction. Tretera, 2002, p. 52.

55 Pešek and Barnovský, 1999, p. 165n.

56 One very positive consequence was the restoration of the Greek Catholic Church that had been dissolved and violently joined to the Orthodox Church in 1950. Pešek and Barnovský, 1997, p. 240n.

57 Balík and Hanuš, 2007, p. 91.

58 Pešek and Barnovský, 2004, p. 123.

59 Šimulčík, 1999, p. 33n.

with the Apostolic See and the previously illegal male and female religious orders were officially restored, in accordance with Federal Assembly Laws nos. 298/1990 Zb. and 338/1991 Zb. Several badly damaged properties were returned to churches and religious bodies during the first period of restitution.[60] However, the state continued to supervise churches and religious societies *de iure* until 1991, when Law No. 308/1991 Zb. on the freedom of religious belief and the status of churches and religious societies (still valid in Slovakia) recognised them as individual corporations with the right to self-administration. This development genuinely improved the relationship between the state and churches and religious societies, ultimately achieving a status that was completely comparable with that of other democratic states and guaranteed external and internal autonomy.[61] The state recognised the important role played by religious bodies in forming society and henceforth supported them, within a framework that included certain forms of funding for clergymen's salaries, church funds, and partially even headquarters. Since churches and religious societies ran church schools and operated various social and charitable activities, public resources could be used even for these purposes.[62]

Democratic development continued after the formation of the Slovak Republic on 1 January 1993, establishing a new independent state against the backdrop of various misunderstandings between Czech and Slovak politicians. The new state immediately established diplomatic relations with the Apostolic See, reflecting both international standards and historical traditions. Simultaneously, the restitution of real estate as well as movable estates continued, in accordance with Law No. 282/1993 Z.z.; this mitigated some property injustices suffered by churches and religious societies (the second period of restitutions). One example of Vatican diplomacy was the Basic treaty between the Slovak Republic and the Holy See in 2001. In 2004, the Slovak Republic joined the European Union, confirming its democratic stance and wholesale defence of human rights.[63] In 2005, the final period of restitutions took place; in accordance with the Law No. 161/2005 Z.z., several properties were returned to churches and religious societies. At the time of the 2011 census, religious affiliations in the Slovak Republic were as follows: 65.8% of citizens self-identified as Catholics, 62% as Latin Church members, 3.8% as Greek Catholics),

60 Halas, 2002, p. 51n. The reality showed that constructive dialogue between the state and churches and religious societies was the best way to resolve the problems and tensions of society. Čeplíková, 2011, p. 111. Alongside the moral and legal satisfaction of having the existence of religious orders accepted without special permission from the state, they also received compensation for lost property. Kalný, 1995, p. 23n.

61 Kumor and Dlugoš, 2004, pp. 472–473.

62 Through a system of grants, the Ministry of Culture of the Slovak Republic began to provide funding, so that they could renovate and revitalise national cultural monuments. Čikeš, 2010, p. 51.

63 It is worth remembering that the European Union does not have a unified view on questions of religious freedom or the church-state relationship. Every member state resolves these issues in accordance with its own cultural-historical traditions. See for example Deklarácia č. 11 o postavení cirkví a náboženských spoločností a nenáboženských organizácií, tvoriaca prílohu Záverečného aktu Amsterdamskej zmluvy. See also Ferrari, 1995, p. 149.

5.9% as Evangelicals, and 13.4% as non-religious. Compared to the previous census, the population self-identifying as religious rose by 11.3%, from 75.8% to 84.1%. It is therefore clear that religious beliefs have not lost their significance in society. Instead, they remain one of the most important factors influencing everyday social reality.[64] This development, including contemporary adjustment of Slovak society, may be denoted as the main factors for the non-existence of conflicts on the account of the use of religious symbols in the public sphere.

3. Axiological and constitutional foundations and sources of state religious law

Slovakia does not actually have a serious problem with the use of religious symbols in the public sphere. This study will explain the fundamental axiological and constitutional scope of the state religious laws that enable this status. The first and most important determinative factor is the historical development of Slovakia.[65] Especially the communist period imposed that after the fall of this regime the state urged to meet the needs of churches and religious societies, which were prosecuted on a long-term basis, and that led to several steps to the majority of the countries unknown. The proclaimed axiological setting of the Slovak legal system can also be deduced from the preamble to the constitution, which reflects 'the Cyrilo-Methodian spiritual heritage and the historical legacy of the Great Moravian Empire'.[66] On the other hand, the Slovak Republic keeps the formal character of a religiously neutral state, what is evident from the fact that no rights or duties enforceable by the public bodies result from the moral or legal system of any church or religious society.[67] Of course, the state simultaneously recognises traditional democratic standards, guaranteeing private, as well as corporate (institutional) religious freedom. Although the state still funds the material needs of churches and religious societies, present circumstances indicate that the separation of church and state will not be discussed during the next few years.[68] Concerning the use of religious symbols in the public sphere, as mentioned several times, it is not pertracted in Slovakia. Most

64 At the same time, the number of people with no affiliation to a church or religious society increased by 3.16% to 12.98%. The public discussion of the new model of church and religious-society financing may have played a role in this, as well as contiguous campaigns denoting those contributions as misused. Moravčíková, 2003, p. 98.

65 Campenhausen, 1994, p. 47.

66 Preambula ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky. See also Šústová Drelová, 2019, p. 388.

67 čl. 1, ods. 1 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.

68 However, some liberal political parties sometimes formally raise these endeavors, and the present situation is no different. See for example: https://www.noviny.sk/554769-sulik-odluka-cirkvi-od-statu-je-pre-sas-dolezita-strana-sa-jej-bude-venovat-nadalej.

legal sources treat this topic as unimportant, assuming that potential problems will be resolved through court decision-making, based on constitutional rules and laws, the laws and legislative rules of the Slovak Republic, or binding European laws. As pointed out, it is not possible for them to apply any other rule and that was also declared by the Constitutional Court of the Slovak Republic.[69] The Constitution on the other hand expressly guarantees the right of every individual to manifest his or her religion or faith; it can be deduced that this right includes the right to manifest a religion or faith through religious symbols.[70] Concerning their use in the public sphere, all of the relevant legal sources are silent.[71]

Of course, another important factor has been the developing political situation. Even Slovak politicians have frequently used the so-called religious card to make political capital. This generally damages the relationship between the state and churches and religious societies, eventually creating negative perceptions among non-religious people. Even in Slovakia's recent history, some politicians have been consistently helpful, especially towards the dominant Catholic Church, in order to maximise their own political capital with a majority of Slovak citizens. In 2006, negotiations on the highly anticipated conscientious objection treaty between the Slovak Republic and the Holy See and the agreement between the Slovak Republic and registered churches and religious societies concerning the same topic, caused the government coalition to disintegrate, resulting in snap elections.[72] This showed that the ideological diversity and incompatible worldviews of liberal politicians could, even in the 21st century, lead to something like a civil culture war.[73] Religious issues in Slovakia are distinctively emotional and members of the public pay attention to them. However, in general, we may allege that from those times politicians essentially shun these topics, as well as the extreme opinions in the field of religious belief of individuals.[74] Of course, once the needs of Catholic Church were met, equivalent treatment was officially requested

69 Nález Ústavného súdu Slovenskej republiky sp. zn. III. US 64/00.

70 Čl. 24, ods. 2 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.

71 The fourth section of this article indeed declares that the conditions of exercising these rights can be limited by law only in cases when it is necessary for a democratic society to protect public order, health, morality, or the rights and freedoms of others. Čl. 24, ods. 4 ústavného zákona č. 460/1992 Zb.

72 Čl. 7 Základnej zmluvy medzi Slovenskou republikou a Svätou stolicou vyhlásenej pod číslom 326/2001 Z.z. ako oznámenie Ministerstva zahraničných vecí and čl. 7 Dohody medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami publikovanej pod č. 250/2002 Z.z. See also Čeplíková, 2011, p. 216.

73 Čikeš, 2010, pp. 72–73.

74 Liberal politicians revealed their fundamental attitudes when discussing the Basic treaty between the Slovak Republic and the Holy See. They disrupted the Slovak Republic's plan to align its legal system with the text of the treaty and refused the declaration of the contracting parties that only the heterosexual, monogamous family is the basis for a healthy society and worthy of protection. Slovensko, 2001. Súhrnná správa o stave spoločnosti, 2001, p. 130. The actual situation indeed arouses serious ideological dissimilarities in the opinions of liberal and conservative politicians. While the former began to argue about the separation of church and state, the latter repeatedly discuss the issue of regulating conscientious objection through an individual law. Their efforts are related to the visit of Pope Francis (2013–) to Slovakia. See: https://bit.ly/3okkyWZ.

by non-Catholic churches and religious societies and the state automatically complied, in accordance with the principle of parity.[75] In contrast to other European countries, according to the secretaire of the Central Union of Jewish Religious Communities, Slovakia is 'a paradise'.[76] It is therefore not surprising that any conflict between the churches and religious societies in the Slovak Republic is actual and their relationships are more than excellent. An important aspect of the non-existence of causes relating to the problems of religious symbols in the public sphere is also connected with the attitude of Slovak politics refusing mandatory migrant quotas, evoking in the minds of the majority of the population Islam and the fear of possible terrorist attacks.

The state religious law of the Slovak Republic is included in the provisions of several enactments of various types and of legal power. First and foremost, it is necessary to distinguish between internal state religious law, international and contractual state religious law, and European religious law. Explaining this structure makes it easier to understand the relationships between the state and churches and religious societies, as well as the regulations used to solve potential problems. Internal state regulations are contained in the normative legal acts of Slovak Republic government bodies (the constitution, constitutional laws, and other laws), which regulate the general rights and duties of respondents.[77] More detailed regulations may be found in the statutory orders of the government of the Slovak Republic and in the ordinances of ministries and other central state-administration institutions. Specific legal sources include the findings of the Constitutional Court of the Slovak Republic, in contrast to the internal normative acts of ministries and central administrative bodies, including instructions, directives, edicts, and provisions. Above all, international and contractual state religious law represents treaties with the Holy See as international laws that does not have priority over the laws of the Slovak Republic.[78] Multilateral treaties that regulate issues involving religious freedom, via the 1950 European Convention on Human Rights (as amended through additional protocols) and the 1966 International Covenant on Civil and Political Rights are prioritised sources, in relation to the laws of the Slovak Republic.[79] Individual statutes have also

75 Tretera, 2002, p. 14.

76 Within this context, it is important to note that the Slovak Republic did not exaggerate the protection offered to small and (in the long term) established churches and religious societies. I am grateful to my esteemed colleague, Prof. JUDr. Matúš Nemec, PhD., for bringing this to my attention.

77 Čeplíková, 2011, p. 20. Internal and moral regulations are not legal sources in the Slovak Republic, even though Christian morals and other principles are expressed *via facti* in certain provisions of state law (for example in relation to the criminal acts of homicide, theft, and bigamy and the legal regulation of public holidays). Baláž, 2000, p. 62n.

78 Čl. 7, ods. 4 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.

79 These international agreements fall under the heading of international treaties on human rights and fundamental freedoms, respectively international treaties that do not need laws for their enforcement or international laws constituting the direct rights and duties of natural persons and corporate entities, as decreed by law. Čl. 7, ods. 5 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky. The European Convention on Human Rights is exceptional because it is applied directly to the legal systems of member states, unlike universal agreements on human rights. Moravčíková, 2003, p. 106.

internal agreements between state and non-Catholic churches and religious societies. Due to their subjectivity, these agreements are not ranked among the rules of international law.[80] The legal sources do not include various declarations officially sanctioned by the United Nations or European Parliament as recommendations or appeals.[81] However, the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief encourages all member states to ensure that their citizens can exercise their subjective rights.[82]

In various ways, European state religious law is positioned as supranational law. The European Union has explained its decision to protect individual religious freedom by referring to art. 6, sect. 2 of the Treaty on the European Union and the importance of respecting the human rights guaranteed by the European Convention on Human Rights.[83] In relation to corporate religious freedom, art. 17, sect. 1 of the Treaty on the European Union emphasises the fact that the European Union respects and does not interfere with the status of churches and religious communities in member states.[84] The significance of these treaties is evident because they take precedence over the laws of the Slovak Republic.[85] Especially when discussing forms of regulation, it is difficult to speak about European state religious law, because the primary sources of European Union law, with the exception of the two provisions mentioned above, pay no attention to institutional religious freedom.[86] As previously mentioned, the section on community law represents, in accordance with the 1950 European Convention on Human Rights, the regulation of individual religious freedom. The European Union first and foremost defines certain principles that bind individual member states directly or indirectly.[87] Religious freedom, according to European supranational standards, is clearly protected by secondary sources of

80 § 4, ods. 5 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností.

81 Within this context, one example is the 1948 Declaration on Religious Liberty of the World Council of Churches, considered to be the predecessor of church-state agreements at the international or supranational level (especially the Universal Declaration of Human Rights). See also Hanuš, 2002, p. 57n.

82 This declaration was the international community's response to the widespread denial of religious freedom worldwide and the avoidance of UN responsibilities. It appealed to individual states to prevent the proliferation of religious intolerance by enacting effective laws. Davala, 2013, p. 118[24].

83 Witte and Green, 2012.

84 The same approach was also adopted in art. 11 of the Declaration on the Status of Churches and Non-Confessional Organisations, part of the Treaty of Amsterdam, which supplanted the Treaty on the European Union. Doe, 2011, p. 29.

85 Čl. 7, ods. 2 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.

86 This is not surprising because the primary focus of European integration was economics and the protection of human rights, not institutions. Kaiser and Varsori, 2010, p. 140.

87 We may mention especially following principles: the principle of neutrality; tolerance of all religions and worldviews; parity (maintaining the same approach towards all religious organisations); loyalty to the constitutional systems of members states, while rejecting the one-sided adjustment of state religious systems to these models; European Union non-involvement in state religious affairs; and EU proportionality (not overstepping its role beyond the steps needed to achieve its objectives). See also Taylor, 2005.

European Union law, including judgments of the Court of Justice of the European Union, principles of the European Community, and European-international standards adjudicated by the European Court for Human Rights, which uses the European Convention on Human Rights to decide cases related to individual religious freedom, in accordance with art. 9 of that convention.[88] It is important to note that the effects of the judicial decisions in cases involving citizens in the religious matters must be transformed to the legal system of the Slovak Republic.[89]

4. Model of relations between the state and churches and religious societies

Throughout history, several models of state-church relations changed in Slovak territory. Due to the high religiosity of the Slovaks, no separation of church and state ever took place. By contrast, most regimes have sought to collaborate with religious institutions to satisfy citizens and secure good relationships, especially with the dominant Catholic Church. During the First Slovak Republic, there was an attempt to privilege the Catholic Church; by contrast, the communist regime replaced mainstream religions with its own non-religious cult, which had its own forms and symbolic manifestations. The new democratic regime strove to attain perfect cooperation between the state and churches and religious societies. Although the Slovak state is now considered secular, there is still a strong, collaborative relationship between state power and individual churches and religious societies. It is therefore appropriate to speak about a cooperative, coordinated, or conventional model.[90] As is generally known, such models typically produce harmonious cooperation and freedom of religion, while respecting the external and internal autonomy of churches and

88 Of interest is the critical stance of foreign studies towards this institution's controversial decision-making in the field of freedom of thought, conscience, and religion. It is generally accused of inconsistency and failing to settle controversial and ambiguous questions. Evans, 2003; Taylor, 2005. It is worth mentioning the view that claims of court protection and the relocation of human-rights protection from political instruments to the courts paradoxically made them more complicated and confused. Barány, 2007, p. 66.

89 Klíma, 2009, p. 76.

90 Madleňáková, 2010, p. 8. We consider this division even though some publications consider wrong to classify states as separationist and cooperative, since the two are continually converging. Such authors typically argue that the division reflects a formal view of institutional adjustments to these relationships, without really considering the actual course of events. Even the classification of the models of relations between the state and religious societies according to the status of their corporate entities of private or public law is problematic. For example, in Greece and Germany, some churches have the status of corporate entities in public law; in France and the Netherlands, the relevant law is private. Due to this division, it is impossible to include these countries in the same group. Čikeš, 2010, p. 81; Kiderlen, 1993, p. 104.

religious societies.[91] Since the state regulates the legal status of all churches and religious societies equally, despite the domination of the Catholic Church, the principle of religious parity is also accepted in Slovakia.[92]

Art. 1 of the Constitution presents the Slovak Republic as secular state, which is not bound or affiliated to any religion.[93] As an established democratic state, however, its constitution provides a full guarantee of individual religious freedom (freedom of thought, conscience, religion, and faith) as a fundamental human right, while also respecting the right of every individual to be non-religious.[94] Churches and religious societies are allowed to act in public, as well as in private, offering their services to society.[95] Within this context, the spheres of both legally perfect societies (*societates iuridice perfectae*) often meet and overlap, since they relate to the same people, as citizens of the state and members of churches and religious societies.[96] When it comes to institutional religious freedom, or the freedom of religious institutions to engage in public social activities, Slovakia is a cooperative (coordinative) state.[97] Although the Slovak Republic is not bound to any religion, it is not neutral. Several Slovak legal sources directly or indirectly note the great importance of religion in underpinning education and the formation of human beings. Churches and religious societies provide activities that the state would find difficult or impossible to offer.[98] The principle of parity applied to relationships with churches and religious societies in Slovakia is partially modified through the guaranteed opportunity to achieve public-law status after meeting certain conditions.[99] The registration of religious organisations leads some experts to speak of 'two-step parity'. Through the process of registration, the state formally recognises each organisation as a spiritually oriented entity with its own stable religious doctrine and membership and a functional organisational structure.[100] It is clear that the Slovak Republic respects their particular

91 Čikeš, 2010, p. 14.

92 § 4, ods. 2 zákona č. 394/2000 Z.z. See also Tretera, 2002, p. 14.

93 Čl. 1, ods. 1 and 2 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností. See also Campenhausen, 1994, p. 78.

94 Wolterstorff, 2012, p. 42n.

95 In this connection, it is appropriate to mention that people consider churches and religious societies to be highly trustworthy. Čeplíková, 2011, p. 227.

96 In accordance with the principle of territoriality, state power impacts everyone in state territory. By contrast, churches and religious societies exert spiritual power only over their members. They must therefore accept the principles of the rule of law, especially the sovereignty of law. Hrdina, 2004, p. 60.

97 State non-identification with churches and religious societies helps to preserve the ideological neutrality of the state, while respecting the right of every individual to have freedom of religion. Moreover, the state provides the legislative framework for the corporate functioning of religious organisations. Čikeš, 2010, pp. 11, 14.

98 Úvod Základnej zmluvy medzi Slovenskou republikou a Svätou stolicou vyhlásenej pod číslom 326/2001 Z.z. ako oznámenie Ministerstva zahraničných vecí and Úvod Dohody medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami publikovanej pod č. 250/2002 Z.z. See also Tretera, 2002, pp. 14–16.

99 Čeplíková, 2011, p. 32.

100 Nemec, 1997, p. 21.

status as subjects *sui generis*, not identical to any non-governmental subject.[101] Undergoing registration is also a condition for acquiring material subventions from the state.[102]

In addition to claiming a state subsidy for clearly specified purposes, registered churches and religious societies also have the right to carry out some official acts as public-law subjects. Their clergymen, as public officers, have public-law powers, such as the power to conduct a marriage.[103] In addition, they can set up their own organisations, including schools, hospitals, and various types of charitable institutions. Once legally specified conditions have been met, they also have the right to minister to believers in public facilities, such as hospitals, jails, and universities. They have some access to public media and can teach religion in public schools.[104] To achieve better cooperation, registered churches and religious societies make individual contracts with the Slovak Republic, such as an international-law treaty with the Holy See, in the case of the Catholic Church, or internal agreements, in the case of non-Catholic churches and religious societies. Some experts agree that the church-state relationship in Slovakia is midway between a strict separation of church and state and an established church.[105] All religious institutions are established and enjoy individual prerogatives, but all are governed by the state law.[106] Returning to the topic of this paper, the state guarantees citizens the right to manifest their religious beliefs externally; no relevant legal sources prohibit the use of religious symbols in the public sphere, as is for example the case in France under the 2004 law on secularity and conspicuous religious symbols.[107]

5. Constitutional guarantees of freedom of conscience and religion

The Constitution of the Slovak Republic protects freedom of thought, conscience, and religion as fundamental human rights that pertain to every citizen, regardless of his or her nationality, race, skin colour, religion, political or other

101 See also Duffar, 1995, p. 152.

102 On the other hand, the Slovak Republic accepts churches and religious societies that do not meet the conditions of registration (in particular, the legal minimum of 50,000 members). Such groups include the Jewish religious community and smaller Christian denominations. Based on this legal requirement, the Slovak Republic is often described as having the most severe registration law in the European Union. Zákon č. 39/2017 Z.z. See also Řepová, 2004, p. 95.

103 Čikeš, 2010, p. 11.

104 Čl. 24, ods. 2 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.

105 If there were no financial cohesion between the state and churches and religious societies, we could perhaps speak of the separation of church and state. McCrea, 2014, pp. 8–9.

106 Moravčíková, 2003, p. 105.

107 See also Doe, 2011, pp. 34–35, 146, 199 and 205; Evans, 2012, p. 188n.

convictions, social origin, education, financial or social status, genetic makeup, or other individual attributes.[108] Essentially it acknowledges the character of natural law, which relates to the essence of every individual as a human being.[109] This approach was adopted after the fall of the communist regime, when Constitutional Law No. 23/1991 Zb. was enacted as a Bill of fundamental rights and freedoms. This legal source, which remains a foundation stone of the legal system of the Slovak Republic, provides a fundamental legal platform for special legal regulations in this area.[110] Its importance is reflected in both the Constitution of the Slovak Republic and Law No. 308/1991 Zb. on freedom of religious belief and the status of churches and religious societies.[111] The sources mentioned here do not constitute these rights, but simply declare them, asserting that their recognition, declaration, and confirmation are inalienable, vested, and inviolable.[112] Art. 15, sect. 1 of the bill states that that 'Freedom of thought, conscience and religion is guaranteed. Everyone has the right to change his religion or faith or be unreligious'.[113] This paper draws on art. 16 in particular, as it establishes the point that everyone has the right to manifest freely his or her own religion or faith, either alone or with others, privately or publicly, through worship, teaching, religious acts, or the observation of religious ceremonies. Sect. 2 of this article is

108 Čeplíková, 2011, p. 5. For example, the Basic treaty between the Slovak Republic and the Holy See (art. 7) guarantees everyone the right to conscientious objection, based on the doctrinal and moral maxims of the Catholic Church, assuming an international-law treaty on the extent and conditions of this right in Slovakia. Čl. 7 Základnej zmluvy medzi Slovenskou republikou a Svätou stolicou vyhlásenej pod číslom 326/2001 Z.z. ako oznámenie Ministerstva zahraničných vecí. See also Moravčíková, 2007.

109 See also Sousedík, 2010, p. 40n. The term 'freedom' is used to indicate human rights that must be absolutely secured and guaranteed by the state. Human rights have a broader meaning here, since they belong to every individual, regardless of whether any law regulates or guarantees them. The term 'fundamental freedom' refers to the constitutionally embodied and legally guaranteed opportunity to realise or not realise an undetermined and unspecified activity. Madleňáková, 2010, pp. 12 and 35.

110 Svák and Cibulka, 2006, p. 169n.

111 Although the Bill of fundamental rights and freedoms was enacted by the Czechoslovak Federation, it still provides the basic rules of state religious law, regulating questions of freedom, religion and conscience, as well as the status of churches and religious societies and their relations with the state. This law meets the conditions for the statute specified in art. 152, sect. 1 of the Constitution of the Slovak Republic. As a matter of interest, this bill was accepted in the Czech Republic, but only with the force of law; it was never incorporated into the text of the Constitution itself. Ústavný zákon č. 4/1993 Sb. o opatřeních souvisejících se zánikem České a Slovenské Federativní Republiky. See also Koudelka and Šimíček, 1996, p. 176.

112 Čl. 1 ústavného zákona č. 23/1991 Zb., ktorým sa uvádza Listina základných práv a slobôd. The legislature was mainly inspired by the standard documents of international law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. Legislators also reflected on the constitutional traditions of Germany and the United States. Several experts have even mentioned natural-law theories, including the Christian religious tradition. Madleňáková, 2010, p. 28; Pavlíček, 2004, p. 41.

113 Čl. 15, ods. 1 ústavného zákona č. 23/1991 Zb., ktorým sa uvádza Listina základných práv a slobôd.

particularly important in shaping the mutual relationships between the state and churches and religious societies, guaranteeing their autonomy and independence in internal matters as follows: 'Churches and religious societies administer their own matters, especially by establishing their own institutions, appointing clergymen and founding religious or other church institutions independently of public bodies'. As is typical in democratic societies, these rights can only be restricted under legal authority to protect public safety, the social order, health, morality, and the rights and freedoms of others.[114]

As mentioned, the constitution first and foremost refers to the 'Cyrilo-Methodian spiritual heritage and historical legacy of the Great Moravian Empire'.[115] Art 12, sect. 1, following the Bill of fundamental rights and freedoms, declares that 'People are free and equal in their dignity and rights. Fundamental rights and freedoms are vested, inalienable, imprescriptible and irrevocable'. While this statement refers to all fundamental rights and freedoms, sect. 2 of this article declares that: 'Fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to everyone, regardless of sex, race, colour of skin, language, faith or religion, political or other thoughts, national or social origin, membership of a nationality or ethnic group, property, birth or other status'.[116] Again, following the Bill of fundamental rights and freedoms, arts. 14–25 of the constitution accept that fundamental human rights and freedoms are connected with the essence of human beings, their dignity, and the reverence due to them as human beings. The subjects of public power must proceed always and only in accordance with the constitution, in its bounds and to its extent, as constituted by law.[117] Therefore, every individual who is the subject of fundamental rights and freedom may, in accordance with the principle that 'everything which is not forbidden is allowed', do anything that is not prohibited by law; likewise, no one may be forced to do anything that is not ordered by law.[118] Even individual duties are legally binding only to the extent that fundamental rights and freedoms are observed.[119] They can only be implemented on legally justified occasions, after meeting all legal conditions and completing all forms and proceedings.[120] Of course, all fundamental rights and freedoms are protected to that extent and range, unless and until they restrain or deny the rights and freedoms of others. The subjects of fundamental human rights and freedoms are referred to in different ways. The broadest term under natural

114 Čl. 24, ods. 4 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.
115 Preambula ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.
116 Čl. 12, ods. 1 and 2 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.
117 Čl. 2, ods. 2 ústavného zákona č. 23/1991 Zb., ktorým sa uvádza Listina základných práv a slobôd.
118 Čl. 2, ods. 3 ústavného zákona č. 23/1991 Zb., ktorým sa uvádza Listina základných práv a slobôd.
119 Čl. 13, ods. 1 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.
120 Čl. 13, ods. 2 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.

law is 'everyone'; this term is used even to refer to freedom of thought, conscience, and religious belief or faith.[121]

In state religious law, art. 24 of the Constitution of the Slovak Republic guarantees freedom of thought, conscience, religious belief, and faith. Concretely, it states that 'Freedom of thought, conscience, religious belief and faith are guaranteed'. Neither the constitution, nor any other legal source, specifies these terms and that leads to the deduction they can be analysed by the theory of law, sociology, psychology, ethics, or theology.[122] A more detailed analysis suggests that the subject this article protects is not just religious freedom, but the spiritual and intellectual freedom of every human being, whether a believer or an atheist. The churches and religious societies may be then designated as main institutional guarantees of these freedoms.[123] The second sentence of art. 24, sect. 1 suggests that an individual's right to change his or her religious belief or faith is an absolute right pertaining to the *forum internum*.[124] No one may be at the same time forced to change his or her religious belief or faith or to have any religious belief or faith at all.[125] Of course, these rights would have no real value, if their public and external manifestation would not be legally guaranteed. The last sentence of sect. 1 therefore declares that 'Everyone has a right to manifest his thinking publicly', while sect. 2 develops this idea further by saying that 'Everyone has a right to freely manifest his or her religion or faith either alone or with others, privately or publicly, through worship, religious activities, observing ceremonies or participating in education'.[126] No one can be compelled to manifest a particular belief in public, as is the case with freedom of thought, conscience, religious belief, and faith.[127] The main difference between these rights is the fact that freedom of manifestation can be subject to legal limitations for legitimate reasons.[128]

With reference to institutional religious freedom, art. 1 of the Constitution of the Slovak Republic implicitly declares the principle of pluralism in the spiritual arena, declaring that the 'Slovak Republic is sovereign, democratic and legally consistent state. It is not bound to any ideology or religion'. The legal system of the Slovak Republic clearly refuses to privilege any ideology or religion; in fact, it prohibits the preferential treatment of any church or religious society. In accordance with the principle of confessional neutrality, no church or religious society has the right

121 Čeplíková, 2011, pp. 12–13.
122 Hrdina, 2004, p. 59, 67n.
123 Král, 2004, p. 72.
124 Madleňáková, 2010, p. 24.
125 This may be supported by art. 1 of the constitution, which says that the Slovak Republic is not bound to any ideology or religion. Čl. 1 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.
126 The term 'thinking' implies every externally identifiable manifestation of a person that is motivated by his or her thinking, including conscience, religious belief, and faith. The term 'everyone' not only means every citizen of the Slovak Republic, but also every foreigner. Čikeš, 2008, p. 32.
127 Čl. 2, ods. 3 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.
128 Čl. 24, ods. 4 and čl. 13, ods. 2 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky. See also Vozár, 2015.

to dominative or privileged status.[129] In accordance with the Bill of fundamental rights and freedoms, sect. 3, art. 24, of the constitution proclaims respect for and legally guarantees the individual identities of churches and religious societies that administer their own affairs, especially by establishing their own bodies, appointing clergy, teaching religion, setting up religious orders, and establishing other institutions, independent of state bodies.[130] It is therefore clear that the constitution guarantees their autonomy and independence in internal matters, which relate to the organisation of church life and independence from state power. Sect. 4, art. 29 of the constitution also notes that religious organisations are separated from the state.[131] Within this context it is necessary to clarify that these freedoms are only granted to the corporate entities, which may also solely object against their violations.[132] This provision, in combination with sect. 1, art. 1, is not a constitutional rule establishing the separation of church and state.[133] Instead, it should be read as a plea to lawgivers and those who hold executive power to respect the principle of spiritual pluralism in law making.[134] Although the state does not interfere with the internal matters of any church or religious society, the conditions in which those rights are exercised may by restricted by law to protect the public order, health, morality, and the rights and duties of others in a democratic society.[135] The cited constitutional criteria for restricting the freedom of religious belief and faith, as well as the activities of churches and religious societies, are also the criteria used to register or deregister religious organisations.[136]

129 Robbers, 2000, p. 87. Thus the Slovak Republic does not identify itself with any church or religious society in the sense of a personal interconnection. Instead, it respects the legal equality of all churches and religious societies (§ 4, ods. 2 zákona č. 394/2000 Z.z.); citizens do not have to declare their religious affiliations to work in state or public services (§ 4, ods. 3 zákona č. 312/2001 Z.z. o štátnej službe; and § 2, ods. 1 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností); it does not force any natural person to confess any religious belief (čl. 24 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky; and § 1, ods. 3 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností); guarantees fundamental rights and freedom to everyone in its territory, regardless of his or her faith or religion (čl. 12, ods. 2 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky); does not allow the courts of the Slovak Republic to enforce the internal regulations of any church or religious society (Nález Ústavného súdu Slovenskej republiky sp. zn. III. US 64/00); does not allow its institutions to participate in creating or applying internal church or religious-society regulations. Orosz, 2009.

130 Madleňáková, 2010, p. 57.

131 Due to this, there is likewise no supervision over churches or religious societies. The Ministry of Culture of the Slovak Republic, through its Church Department, only implements rules associated with state religious laws; it also regularly distributes advisory funds to churches and religious societies from the state budget. Juran, 2008, p. 13.

132 Čeplíková, 2011, pp. 155–156.

133 Drgonec, 2004, p. 165.

134 Čeplíková, 2008, p. 20.

135 Čl. 24, ods. 4 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky.

136 Čič, 1997, p. 140n.

6. Guarantees provided by other sources of universally binding law

The sources of state religious law, enacted in accordance with the Constitution of the Slovak Republic *secundum et intra legem,* are expressed in regulations of various kinds and legal force. First and foremost is the rather short Law No. 308/1991 Zb. on freedom of religious belief and the status of churches and religious societies. This law consists of 25 paragraphs and a supplementary list of churches and religious societies registered by the state.[137] The content of this law can be divided into three parts, of which the first contains general provisions regulating religious freedom, its guarantees and realisation. Para. 1, sect. 1, which determines the fundamental rights, refers first and foremost to the Bill of rights and fundamental freedoms and indirectly to the state contractual obligations based on international human rights documents. It then transposes and specifies the provisions of art. 24 of the constitution by specifying that a confession of religious belief cannot be the basis for restricting a citizen's constitutionally guaranteed rights and freedoms, in particular the right to education, the choice or exercise of a profession, or access to information.[138] This law refers to churches and religious societies as autonomous legal entities *sui generis*; the state approaches them individually and may cooperate with them, in accordance with the principle of partnership cooperation.[139]

137 As of 2021, the following churches and religious societies are registered in the Slovak Republic: 1. The Apostolic Church in Slovakia; 2. The Bahá'í Faith in the Slovak Republic; 3. Unity of the Brethren Baptists in Slovakia; 4. The Seventh-day Adventist Church, Slovak Congregation; 5. The Church of the Brethren in the Slovak Republic; 6. The Czechoslovak Hussite Church in Slovakia; 7. The Church of Jesus Christ of the Latter-day Saints; 8. The Evangelical Church of the Augsburg Confession in Slovakia; 9. The Evangelical Methodist Church, Slovak Province; 10. The Greek Catholic Church in the Slovak Republic; 11. The Christian Corps in Slovakia; 12. The New Apostolic Church in the Slovak Republic; 13. The Religious Society of Jehovah's Witnesses in the Slovak Republic; 14. The Orthodox Church in Slovakia; 15. The Reformed Christian Church in Slovakia; 16. The Roman Catholic Church in the Slovak Republic; 17. The Old-Catholic Church in Slovakia; and 18. The Central Union of Jewish Religious Communities in the Slovak Republic. Most of these churches and religious societies were recognised on the basis of so-called received registration. Príloha k zákonu č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností and http://195.49.188.210/cirkev-a-nabozenske-spolocnosti/registrovane-cirkvi.

138 § 2 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností.

139 They have their own internal structure, bodies, internal regulations, and ceremonies. They may associate with each other, establish communities, religious orders, societies, and other similar bodies. § 5, ods. 2 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností. See also Juran, 2008, p. 13. Their individual character consists in their doctrinal and spiritual foundation. The state, however, recognises only registered churches and religious societies. § 4, ods. 4 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností and zákon č. 192/1992 Zb. o registrácii cirkví a náboženských spoločností. However there are also approximately 50 unregistered non-traditional religious organisations in the Slovak Republic. Čeplíková, 2011, p. 122.

Indirectly, they may be characterised as non-profit organisations in the non-governmental sector; along with saving souls, they carry out various public services and humanitarian activities.[140] Although this law does not mention it, churches and religious societies have a similar status to public corporations.[141] The second part of the law enumerates the rights of believers, as well as recognised churches and religious societies. The third part defines the conditions under which a church or religious society can become registered and claim appropriate financial subsidies from the state.[142] The registering body is the Ministry of Culture of the Slovak Republic; during the process, a minimum of three people must represent each church or religious society.[143] However, no provision in this law expressly discusses the use of religious symbols in the public sphere.[144]

As previously mentioned, the status of state religious law and members of the Catholic Church in Slovakia (both Roman and Greek Catholic) is also influenced by the Basic treaty between the Holy See and the Slovak Republic. Political representatives

140 Čikeš, 2010, p. 39.

141 As mentioned, the clergy of registered churches and religious societies enjoy the status of public officers, especially when conducting church marriages, which are equivalent to state-registry marriages in the Slovak Republic. § 5 zákona č. 36/2005 Z.z. o rodine.

142 The most important rights are as follows: the right to personal salaries for clergymen, financial contributions, partial funding for headquarters operations; the right to contend with the 2% income tax from natural persons and corporate entities; a tax exemption for church collections and gifts; an exemption from local real-estate taxes for sacral objects; an exemption from the Labour code; the right to teach religion at state schools; the right to establish church schools and special-purpose social and charitable institutions; the right to a church wedding and burial; the right to provide spiritual services to the army, the police, and at jails and social institutions; the right to access public-law media; the clergy's right to silence; the right to send their own representatives abroad and to receive representatives from foreign churches and religious societies, etc. As previously mentioned, members of non-registered churches and religious societies also have fundamental human rights and duties, according to the Constitution of the Slovak Republic. See also Macháčková and Dojčár, 2000, p. 11n.

143 § 18 ods. 1 písm. i) zákona č. 575/2001 Z.z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy; zákon č. 192/1992 Zb. o registrácii cirkví a náboženských spoločností and § 10, ods. 2 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností. All churches and religious societies that want to achieve this status must prove that they have at least 50,000 adult members with a permanent address in the Slovak Republic. The Ministry of Culture of the Slovak Republic keeps the register of all church corporate entities, including those associated with registered churches and religious societies. Churches and religious societies that defy the law or registration conditions can be deregistered through an administrative procedure by the same body. § 19 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností. Although the Ministry of Culture of the Slovak Republic is the central body of state administration in church and religious matters, it is not superior to them and may not interfere with their internal affairs or direct their activities. Čeplíková, 2011, p. 124.

144 Within this context, we refer again to the Bill of fundamental rights and freedoms in para. 1, sect. 1, according to which everyone has the right to manifest his or her religious belief or faith alone or with others, privately or publicly, through worship, teaching, religious activities, or observing ceremonies. From this sentence, we may deduce that people also have the right to present themselves externally through the use of religious symbols. See also Wagnerová et al., 2012.

in the late 1990s understood very well that such initiatives would have wide social support, given the high percentage of Catholic believers.[145] Actual steps were taken in 1996; in 2000, after challenging negotiations involving financial and economic issues, the final text of this treaty was prepared for promulgation. The text was approved by the government and then discussed and approved by the National Council of the Slovak Republic. Finally, on 18 December 2000 in Vatican City the instruments of ratification were exchanged and the treaty came into force.[146] It was followed by so-called partial treaties, initially included within the basic treaty, concerning financial provisions of the Catholic Church, education and the teaching of religion, and ministry in the armed forces.[147] Neither the treaty on conscientious objection nor that on financial provisions were enacted; it seems unlikely that this will happen in near future.[148] As these treaties are not self-enforceable, they may not be applied directly to relevant social relationships. However, the Slovak Republic is contractually obliged to ensure that its legislation fulfils these international-law obligations. Given the content of the basic treaty, the Slovak Republic has had to guarantee the inviolability of the sacred places and the seal of confession, respect specified church feasts as public holidays, provide facilities for the Catholic education of children in schools and pre-school institutions, and recognise marriages contracted under canon law.[149] The use of religious symbols in the public sphere is an analogous issue, closely associated with state recognition of the right of the Catholic Church and its

145 According to the research 'Náboženstvo 1998', organised by the Sociological Institution of the Slovak Academy of Science, 68.7% of the citizens of the Slovak Republic were Catholics. Čeplíková, 2011, p. 192.

146 Čl. 24, ods. 2 Základnej zmluvy medzi Slovenskou republikou a Svätou stolicou. It was issued by the Foreign Ministry of the Slovak Republic on 23 August 2001, as no. 326/2001 Z.z. of the Laws of the Slovak Republic. This source is ranked with presidential international treaties that require the approval of parliament, as well as the government, and ratification by the President of the Slovak Republic. Šmid, 2001, pp. 39–41, 125.

147 These treaties are actual and concrete: Treaty no. 648/2002 Z.z. between the Slovak Republic and the Holy See on saving souls in the armed forces, issued by the Foreign Ministry of the Slovak Republic on 28 November 2002; Treaty no. 394/2004 Z.z. between the Slovak Republic and the Holy See on Catholic education and schooling, issued by the Foreign Ministry of the Slovak Republic on 9 July 2004. Following the former, the Military Ordinariate of Slovakia was established for the armed forces of the Slovak Republic, as a separate diocese for believers employed by the army, police, or prison service, with the bishop at its head. It has both canonical and state subjectivity and is organisationally integrated into the armed forces of the Slovak Republic. Moravčíková, 2007, p. 353. Both treaties were classified by the National Council of the Slovak Republic as international treaties, in accordance with art. 7, sect. 5 of the Constitution of the Slovak Republic, with priority to the laws of the Slovak Republic. Moravčíková, 2003, p. 117.

148 The financial treaty was replaced with a problematic new law on funding churches and religious societies. The main problem is the fact that it was issued unilaterally, not on the level of an international treaty. Zákon č. 370/2019 Z.z. o finančnej podpore cirkví a náboženských spoločností.

149 There is also a right to save souls in detention centers and houses of correction, where people are imprisoned as a punishment. Although all of rights of the Catholic Church were incorporated into other legal regulations in 1989, this treaty changed their legal force. Kubina, 2003, pp. 148–167.

members to function freely and independently through public worship, preaching, and expressing the Catholic faith.[150]

The need to comply with the principle of parity complicated things for the Slovak Republic, because of presented worries of the minor churches and religious societies. In 1999, therefore, a draft law was submitted on the fundamental relationship between the state and churches and religious societies. The conclusion was reached that it would be sufficient to revise Law No. 308/1991 Zb. on freedom of religious belief and the status of churches and religious societies; this took place in 2000. The revised law included a declaration of parity, clarifying the position of all churches and religious societies and recognising their right to conclude bilateral treaties with the state. According to several experts, this law settled all questions about the equality of churches and religious societies.[151] Eleven religious bodies immediately took advantage of the revised law, submitting proposal for basic contract with state in 2001. This was approved in 2002, first by the government and then by the National Council of the Slovak Republic.[152] Of course, since non-Catholic churches and religious societies are not subjects under international law, only contracting of internal treaty was topical. There are no similar sources in the legal system of Slovakia; this document is generally considered the atypical internal treaty *sui generis*.[153] It is therefore unsurprising that the paradigms used to create this treaty and its content were drawn from the Basic treaty between the Holy See and the Slovak Republic.[154] The main principle underpinning the regulation of mutual relationships was religious freedom: allowing believers to express their own convictions and attitudes. The Slovak Republic considers all contractual churches and religious societies to be independent, autonomous subjects. The treaty remains open to future registered churches and religious societies; new subjects may join with the unanimous consent of the subjects already engaged.[155] Even this source has a normative character; from

150 Čl. 2, ods. 1 Základnej zmluvy medzi Slovenskou republikou a Svätou stolicou. See also Šmid, 2001, pp. 84–86.

151 § 4, ods. 2 zákona č. 394/2000 Z.z. This provision must be interpreted within the context of art. 1, sect. 1, the second sentence of the Constitution of the Slovak Republic, which declares that the Slovak Republic is not bound to any ideology or religion. In this way, the equality of churches and religious societies is expressed explicitly and settled legally, having previously been simply functional. See also Čeplíková, 2011, pp. 203–205.

152 We refer concretely to the following contractual subjects that represent, according to the 2011 census of population and housing, 10.4% of the citizens of Slovakia: Evangelical Church of the Augsburg Confession in Slovakia; the Reformed Christian Church in Slovakia; the Orthodox Church in Slovakia; the Evangelical Methodist Church, the Slovak Province; Unity of the Brethren Baptists in Slovakia; the Church of the Brethren in the Slovak Republic; the Seventh-day Adventist Church, the Slovak Congregation; the Apostolic Church in Slovakia; the Central Union of Jewish Religious Communities in the Slovak Republic; the Old-Catholic Church in Slovakia; and the Czechoslovak Hussite Church in Slovakia. See also Juran, 2008, p. 19.

153 Kanárik, 2002, pp. 84–85.

154 Čikeš, 2010, p. 71.

155 The complete text of the Agreement between the Slovak Republic and registered churches and religious societies (no. 250/2002 Z.z.) was included in the Collection of Laws of the Slovak Republic.

the beginning, churches were expected to establish partial contracts in the same areas, as the Catholic Church did.[156]

Given the remaining sources of valid state religious law in the Slovak Republic, it is also important to analyse Law No. 245/2008 Zb. on education and schooling, the so-called Educational law.[157] As previously mentioned, the problem of crosses in schools emerged for a short time during the First Czechoslovak Republic. Despite this, it is not covered by this legal source. Not even Law No. 279/1993 on educational institutions, which widened the domain of churches and religious societies, addresses this topic.[158] Of course, Slovak lawmakers chose the same approach to the normative legal acts regulating the funding of churches and religious societies. Of particular note is Law No. 370/2019 Z.z. on the financial support of churches and religious societies; this law regulates financial subventions that fund the salaries of clergymen, contributions, and partially headquarters operations.[159] The same is true for regulations that support the activities of churches and religious societies through taxes, customs, and other forms of relief.[160] The objective problem is not reflected even by the provisions of Law No. 311/2001, the Labour code, which is valid until the end of 2021. Law No. 300/2005 Z.z., the Criminal code, contains several provisions that protect the freedom of thought, conscience and religion, including public practice.[161] The same may be said of Law No. 301/2005 Z.z., the Criminal procedure

156 The field includes education, funding, pastoral care for the armed and police forces, and consciencious objection. Previously, there were other agreements, analogous to the Catholic Church agreement: the Agreement between the Slovak Republic and registered churches and religious societies on religious education and schooling (No. 395/2004 Z.z.); the Agreement between the Slovak Republic and registered churches and religious societies on pastoral care for members of the armed forces of the Slovak Republic (No. 270/2005 Z.z.). Interestingly, these agreements were approved by the government of the Slovak Republic and the National Council of the Slovak Republic and then signed by the President. This was not necessary, because they were not international treaties. However, the same approach was used to ensure equal treatment of all churches and religious societies in Slovakia. See also Čeplíková, 2011, p. 211. An expert in this field, who helped to draft the Basic treaty between the Slovak Republic and the Holy See, Prof. doc. JUDr. Marek Šmid, PhD., told me that more serious conflict over the use of religious symbols in the public sphere was avoided through these two contracts.

157 Of course, state religious law includes other regulations that have nothing to do with this problem and do not mention the use of religious symbols in the public sphere. They include Law No. 36/2005 Z.z. on family, which guarantees state recognition of a marriage contracted before the clergy of a registered church or religious society. § 5 zákona č. 36/2005 Z.z. o rodine.

158 The same is true for Law No. 131/2002 Z.z. on universities.

159 Of the eighteen registered churches and religious societies do not claim a state subsidy Religious Society of Jehovah's Witnesses in the Slovak Republic, the Christian Corps in Slovakia, the Bahá'í Faith in the Slovak Republic, and the Church of Jesus Christ of the Latter-day Saints. Príloha č. 2 k zákonu 370/2019 Z.z.

160 Zákon č. 582/2004 Z.z. o miestnych daniach a miestnom poplatku za komunálne odpady a drobné stavebné odpady and zákon č. 595/2003 Z.z. o dani z príjmov.

161 § 340, ods. 3 (Neoznámenie trestného činu); 341, ods. 4 (Neprekazenie trestného činu); § 65, ods. 2, písm. b) (Trest vyhostenia); § 418 (Genocídium); § 423 (Hanobenie rasy, národa a presvedčenia); § 140, písm e) (Osobitný motív); § 140a (Trestné činy extrémizmu); § 193 (Obmedzovanie slobody vyznania); § 359, ods. 1 (Násilie proti skupine obyvateľov a proti jednotlivcovi); § 189, ods. 2, písm. c) (Vydieranie); § 145, ods. 1, písm. d) (Vražda); and § 155, ods. 2, písm. c) (Ublíženie na zdraví).

code.[162] Neither legal source relates *expressis verbis* to the use of religious symbols in the public sphere. However, there is an indirect connection. The criminal offence of denigrating a race, nation, or belief can, under certain circumstances, involve religious symbols; an example would be destroying a statue, etc.[163] Similarly, the criminal offence of restricting freedom of faith also protects manifestations of individual religious freedom.[164] To conclude, Law No. 480/2002 Z.z. on asylum, which approves asylum for people who require it, also covers individuals persecuted for religious reasons.[165]

7. The limits of religious expression through religious symbols

As previously discussed, none of the relevant legal sources suggest limiting the use of religious symbols in Slovakia. In fact, this would be almost impossible, since almost all state symbols, including the national coat of arms, flag, and seal, include an early Gothic double cross that stands on the second of three hills, a typical Christian image.[166] Naturally, this symbol appears in public areas everywhere.[167] According to the law on state symbols in the Slovak Republic, they must be used by the supreme legislative authority (the National Council of the Slovak Republic), executive bodies (the government, president, and ministries), the offices of public prosecutors, the armed forces, state schools and educational institutions, territorial administrative offices, state scientific organisations, museums, galleries, and sportspeople who

162 § 130, ods. 2 (Právo svedka odoprieť výpoveď); § 510, ods. 2, písm. b) (Povolenie vydania); and § 4 (Spolupráca so záujmovými združeniami občanov a s dôveryhodnou osobou). Distinctively, the right to refuse to testify is protected, as is the right of churches and religious societies to participle in penitentiary work with convicted persons. § 17, ods. 4 zákona č. 171/1993 Zb. o Policajnom zbore SR; § 8 vyhlášky č. 346/2008 Z.z. (Poriadok výkonu trestu); and § 44, ods. 1 zákona č. 221/2006 Z.z. o výkone väzby. The right of convicted persons to the cure of their souls is also expressed in other legal sources. § 68, ods. 1 zákona č. 475/2005 Z.z. o výkone trestu odňatia slobody. Provisions include concrete provisions associated with articles of the Basic treaty between the Slovak Republic and the Holy See and the Agreement between the Slovak Republic and registered churches and religious societies. Čeplíková, 2008, p. 23. See also Nemec, 2013, p. 233-240.

163 § 423 zákona č. 300/2005 Z.z., Trestný zákon.

164 § 193 zákona č. 300/2005 Z.z. See also Čentéš, 2018, pp. 390–391, 933–936.

165 Under the term 'religion' this law includes the expression of opinions and types of personal and social behaviour based on religious belief, which can also include the use of religious symbols in the public sphere (for example, a conviction for holding the Bible in Saudi Arabia). § 8, písm. a) zákona č. 480/2002 Z.z. o azyle.

166 §§ 2, ods. 1; 6a and 13b zákona č. 18/1993 Z.z. o štátnych symboloch Slovenskej republiky a ich používaní. See also Halász, 2020, p. 72n; Vrtel, 2010.

167 Of course, that is also the reason why this symbol is protected by criminal law. § 364, ods. 1, písm. b) zákona č. 300/2005 Z.z., Trestný zákon. See also Mašľanyová, D. Postih extrémizmu podľa slovenského Trestného zákona. In Záhora, 2012, pp. 148–150.

represent Slovakia. These symbols appear in interiors, but also, of course, on buildings.[168] For example, the state symbol must be printed on the school reports produced by private and church schools, which are not required to use any other symbols for this purpose.[169] Of course, the main reason for this regulation is the knowledge, among lawgivers, that schools (and particularly church schools) would rather use their own religious symbols than state symbols. At the same time, state institutions can only use state symbols; the use of religious ones is out of the question, even if organisation heads would like to do so. To date, there has never been a case in Slovakia on this issue. In state schools, universities, and hospitals, when minor disputes arise, they are usually resolved promptly by the institution.[170]

After the European Court for Human Rights prohibited the exhibition of crosses in schools (Lautsi and others vs Italy: complaint No. 30814/06), the National Council of the Slovak Republic responded with the 2009 Declaration on Installing Religious Symbols in Schools,[171] which declared that the European court's decision undermined the cultural heritage and Christian history of Europe. As it was a tradition in several European states to display crosses in schools and public institutions and spaces, respecting this tradition could not be seen as limiting the freedom of religious belief or violating the rights of parents to raise their children in accordance with their own convictions.[172] For this reason, the National Council of the Slovak Republic argued that every member state of the European Union had the right to install religious symbols in schools and public institutions.[173] The Ministry of Culture of the Slovak Republic, which represents the central state administration responsible for churches and religious societies, is aware of a few such cases and must intervene

168 § 4 zákona č. 18/1993 Z.z. o štátnych symboloch Slovenskej republiky a ich používaní.

169 §§ 3, ods. 5 and 5, ods. 1 zákona č. 18/1993 Z.z. o štátnych symboloch Slovenskej republiky a ich používaní and § 3, písm. q) zákona č. 245/2008 Z.z. o výchove a vzdelávaní, Školský zákon.

170 Hospital chapels are commonly established in hospitals (with management approval) and pastoral centres in universities (as agreed between the relevant church or religious society and the university). Čl. 16 Základnej zmluvy medzi Slovenskou republikou a Svätou stolicou vyhlásenej pod číslom 326/2001 Z.z. ako oznámenie Ministerstva zahraničných vecí and čl. 16 Dohody medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami publikovanej pod č. 250/2002 Z.z.

171 In addition, research carried out by the Focus agency found that two-thirds of respondents opposed a law forbidding the use of religious symbols at schools in Slovakia. See: https://bit.ly/2XXfKeZ. See also Čurila, 2010.

172 Within this context, one can mention the example of a strong, faithful teacher who hung a cross in the classroom of a state school; following complaints from parents, it had to be removed, under the direction of the schoolmaster. In 2006, in the town of Svit, a nun began working in the town nursery school. Her habit had the sign of the cross. Some parents objected that their children were being exposed to the influence of the Catholic faith, which violated their right to raise their children in accordance with their own convictions. At the same time, in an elementary school in Budkovce, almost all rooms are decorated with crosses and no one complains because the place has a strong Christian tradition. See: https://bit.ly/3ARFms5.

173 Vyhlásenie Národnej rady Slovenskej republiky o umiestňovaní náboženských symbolov v školách a vo verejných inštitúciách v súlade s kultúrnou tradíciou krajiny, schválené Národnou radou Slovenskej republiky uznesením z 10. decembra 2009, číslo 1845. Available at: https://bit.ly/3F20U7N.

sporadically.[174] In some cases, registration has been denied due to religious intolerance, directed against the religious symbols of other churches and religious societies. In particular, the Christian associations in Slovakia have applied to register three times and been rejected each time; this case is now being tried by the Supreme Court of the Slovak Republic. The reason for this rejection was religious intolerance, as the Christian associations were accused of abusing (even destroying) religious symbols belonging to the Catholic Church. Expert testimony has shown that members of this religious society were encouraged to commit these misdeeds by their own pastors.

Performers have occasionally abused religious symbols in Slovakia. In 2014, for example, various religious symbols (a cross, a rosary, religious statues, and pictures of the Pope, Vatican, and cardinals) were damaged or destroyed in a rap video.[175] Criminal justice officials requested a report for the Ministry of Culture of the Slovak Republic and its employees asserted (although it was not in their competency to decide) that art. 5, sect. 2 of the Basic treaty between the Holy See and the Slovak Republic guarantees the inviolability of sacred places abused through such behaviour.[176] In addition, members of various extremist movements have violated criminal law by using, profaning, or destroying religious symbols.[177] For this reason, competent bodies generally specify the procedures for controlling extremists through executive enactments, which are instructions directly related to criminal justice.[178] The misuse of religious iconographies, including symbols (especially, the so-called iron cross, Celtic cross, and spinning-wheel symbol) is a typical feature of rightist extremist attitudes, usually in reference to paganism or individual perceptions of Christianity.[179] Various neo-Nazi movements use the religious symbols of Nordic mythology (especially the god Odin), as well as Christian symbols.[180] As in other countries, religious symbols in Slovakia are misused or destroyed by certain sects, such as Satanists.

The Council for the advertising regularly addresses the problem of religious symbols in the public sphere, using its own code to consider advertising-related issues. In 1997, it responded to a complaint made by Catholics that a poster promoting the movie 'The People vs. Larry Flynt' profaned the cross as a Christian religious symbol. The Council rejected that complaint on grounds that the poster did not rudely or undoubtedly offend religious consumers; however, it also advised the sponsor of the advertisement to consider the placement of the posters carefully and sensitively.[181]

174 This useful information was provided by an employee of this ministry, PhDr. Radovan Čikeš, PhD., to whom I am very grateful.

175 See: https://bit.ly/3EX1GmH.

176 MK-946/2014-260/8990.

177 § 130, ods. 7, písm. a) zákona č. 300/2005 Z.z., Trestný zákon.

178 Nariadenie Ministerstva vnútra SR č. 45/2004 o postupe v oblasti boja s extrémizmom a o zriadení monitorovacieho strediska rasizmu a xenofóbie.

179 See also Milo, 2005, pp. 28, 30 and Hetteš, 2015, p. 57.

180 See also Chmelík, 2000.

181 See: https://bit.ly/3marL9n.

In 2011, the Council responded to another complaint that an advertisement for men's body spray misused the religious symbol of angels to provoke sexual desire. The Council similarly rejected this complaint as baseless, arguing that angels were not exclusively perceived as purely religious symbols.[182] Another complaint argued that a Facebook poster, for an event called Helloqueen 2019, misused the religious and national symbols of the Lady of Sorrows (*Mater Dolorosa*) and her Son Jesus Christ by imitating a Pieta. This motion too was denied as baseless on grounds that the '… advertisement did not emanate and had no concern to display religious symbols in relation to the religion or certain group of citizens'.[183] The Council for broadcasting and retransmission sometimes deals with analogous complaints. For example, in 2013, it refused to uphold the complaint of three subjects who felt that certain gloss to the election of a new pope treated religion in a profane or vituperative way.[184] Among other Slovak regulations, pictograms representing churches and synagogues are used on traffic signs.[185] Similarly, trademarks that contain high-value or religious symbols can not be registered in the Slovak Republic.[186]

8. The system of legal protection

As noted above, no legal cases have directly or indirectly raised the issue of the use of religious symbols in the public sphere in Slovakia. To date, all minor and more significant issues have been settled out of court, unusually by agreement and to the full satisfaction of all involved. Slovak courts are by no means burdened with religious cases, although such cases do appear occasionally. Most of the time, these cases involve the restitution of church property, which has not been returned to the church or religious society within the legally required timeframe. There have also been a few labour-law cases involving clergy, ex-clergy, and the registered churches and religious societies that employ them. Slovak courts (including the Supreme Court of the Slovak Republic) did not deal with the processes to deregister churches or religious societies.[187] They even did not decide cases related to the activities of non-registered

182 See: https://bit.ly/2Y8MKBl.

183 https://refresher.sk/78487-Katolici-nahlasili-reklamu-propagujucu-DJku-BComplex-vraj-hanina-narodny-symbol.

184 Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2013, p. 72.

185 https://www.ssc.sk/sk/technicke-predpisy-rezortu/zoznam-kulturnych-cielov-a-atraktivit-cestovneho-ruchu/piktogramy-legenda.ssc.

186 § 5, ods. 1, písm. j) zákona č. 506/2009 Z.z. o ochranných známkach. In one example, an application to register *Ave maria* for packaging beer, soft drinks, fruit juices, and alcoholic beverages and wine was rejected. Hajnalová, 2010, p. 29.

187 Čl. 18 zákona č. 125/2016.

churches or religious societies.[188] The Constitutional Court of the Slovak Republic has established one of the most important and widely known court practices by ruling that church and religious society rules are not sources of law of the Slovak Republic; every citizen has a right to an independent and impartial state trial, even when a case was previously decided by a church court.[189] In another finding, the same court confirmed that requiring numerous members to register a church or religious society is not unconstitutional, since it is necessary to differentiate between the right to manifest a religion or faith and right to register a church or religious society.[190] The court also decided that the right to refuse military service for reasons of conscience or religious belief may be conditioned by the need for every group of entitled persons to keep the appointed time. It is therefore impossible to refuse military service because of a recent change of religious belief or faith.[191] A local court decided a case in which a member of the Greek Catholic Church applied to the state court to force the church to erase the baptismal mark caused by being baptised as a child. The court denied this request, declaring that the state could not interfere with the doctrine of an individual church or religious society.[192]

9. Conclusions

As the Introduction notes, freedom of thought, conscience, and religion are fundamental human rights that guarantee freedom and dignity in the spiritual and intellectual sphere; some experts even consider them more important than the right to life.[193] This conception of the structure of human dignity is based on individual rights; it draws on European cultural traditions with Judeo-Christian roots.[194] The European states essentially accept that human rights are not merely expressed in the

188 Juran, 2008, p. 14. For example, there were efforts to register a so-called Atheist Church of Unbelievers with the Ministry of Culture of the Slovak Republic. The Church Department refused to register the group on 18 December 2006 and the case was appealed to the Supreme Court, which dismissed the suit on 23 August 2007. Rozhodnutie č. MK 4457/2006-320/22106. In Slovakia, more than ten churches, religious societies, and prank fellowships made similar attempts; even another group that called themselves the shepherd's pipers ('fujaristi'). See: https://bit.ly/3kLhBw7 and https://bit.ly/3kLZ9U8.

189 Nález Ústavného súdu Slovenskej republiky sp. zn. III. US 64/00.

190 Nález Ústavného súdu Slovenskej republiky sp. zn. 10/08.

191 Nález Ústavného súdu Slovenskej republiky sp. zn. PL ÚS 18/95. Compulsory military service, replaced in some cases with civilian service, ended on 31 December 2005, in connection with the professionalisation of the Slovak army. Zákon č. 346/2005 Z.z. o štátnej službe profesionálnych vojakov ozbrojených síl Slovenskej republiky.

192 Nález Ústavného súdu Slovenskej republiky sp. zn. III. ÚS 313/09. See also Bubelová, 2010, pp. 257–262.

193 Pavlíček, 2004, p. 113.

194 Čikeš, 2008, p. 30.

constitution or laws of a given state, but also in principles and values that go beyond the state, constitution, and the law itself. These criteria for human and civil rights are generally recognised in the democratic world.[195] They also underpin the definition of freedom of thought, conscience, religious belief, and faith in the Constitution of the Slovak Republic.[196] In contrast to that of the Czech Republic, the Slovak constitution expressly guarantees the right to manifest individual thinking. This right has been interpreted by the Constitutional Court of the Slovak Republic as including every externally identifiable expression of an individual, motivated by his or her thoughts, conscience, religious beliefs, or faith.[197] For this reason, Slovakian law protects all manifestations of religion or thinking at the same level, within uniform legal limits.[198] The main principle in this constitutional article is the axiom that everyone has the right to manifest and/or confess his or her convictions, which can only be limited to protect public security and the rights of others. The European Court for Human Rights reasoned in a similar way when protecting art. 9 of the European Convention on Human Rights.[199] Freedom of religion is thus considered a universal, fundamental right of every person and a criterion that determines the application of democratic principles in practice.[200]

Law No. 308/1991, on freedom of religious belief and the status of churches and religious societies, defines them as voluntary associations with religious beliefs within organisations established to enable membership in those religious beliefs, through the internal regulations of given churches or religious societies.[201] From a political point of view, they can be defined as individual institutions *sui generis*, which cannot be classified as other types of organisations.[202] Their specific nature reflects a doctrinal and spiritual foundation, without which no church or religious society can be registered and recognised by the state.[203] Although the Ministry of Culture of the Slovak Republic administers this sector, this is not a form of control—in fact, it is just the opposite. It supports efforts to develop perfect cooperation by providing proper conditions for religious activities that qualify as socially useful. In the Slovak Republic, the need to establish a regime of high-class cooperation is related, not only to the fact that a high proportion of the public is religious, but also to the extensive involvement of churches and religious societies in social, educational,

195 Blahož, 2005, p. 15.
196 Čikeš, 2008, p. 32.
197 Uznesenie Ústavného súdu Slovenskej republiky sp. zn. Pl. ÚS 18/95.
198 Čl. 24, ods. 4 ústavného zákona č. 460/1992 Zb., Ústava Slovenskej republiky. See also Madleňáková, 2010, p. 57.
199 If this article is violated, the given state cannot use national security as a reason for restricting these rights. Guiora, 2009.
200 Šabo, 2008, p. 33.
201 § 4, ods. 1 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností.
202 Čeplíková, 2011, p. 122[289].
203 §§ 10–13 zákona č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností.

and charitable areas. The relevant question of religiousness in Slovakia is extremely interesting, providing educational content for several socioscientific fields. In most prior studies, respondents have commented on the ethical aspects of religion and its ability to stabilise the family and interpersonal relationships. Most believers also find in religion meaning and purpose of life, while those with less faith highlight its ability to help individuals deal with difficult life situations.[204]

As previously noted, the country suffered decades of lost freedom under the communists, who limited both institutional and individual religious freedom. After the fall of communism, the state tried hard to establish and guarantee future religious freedom, thus enabling the development of religious and church life. This approach naturally promoted excellent collaboration between the state and churches and religious societies, benefitting all concerned. It is reflected in the accommodating stance of state religious law, which has enabled the development of religious freedom on a large scale.[205] These relationships were strengthened, particularly with the Catholic Church, when the Basic treaty between the Holy See and the Slovak Republic was enacted in 2001, with other churches and religious groups following suit in 2002, through the Agreement between the Slovak Republic and registered churches and religious societies. Domestic and foreign experts and the public approved of the fact that this document managed to unite eleven ideologically different religious subjects; it is often cited as an example worth following.[206] For the most part, the various churches and religious societies also have excellent relationships, as evidenced by the 2001 agreement between the Catholic Church and the Evangelical Church of the Augsburg Confession to mutually recognise baptism. The success of Slovak state religious law in meeting social needs can also be deduced from the lack of serious issues arising over the use of religious symbols. As noted above, Christian symbols are an integral part of Slovak national identity; in particular, the national symbol of the double cross is typical and natural for Slovakia, just as the Star of David is for Israel. Although cases appear sporadically, they have never been brought before the court, since the parties concerned have always managed to agree on a solution.

It is clear that for good mutual relationships between the state and churches and religious societies was necessary to compensate them for the loss of church property during the communist regime. In fact, the Slovak Republic was the first post-communist country to implement a law of restitution, requiring the return of real estate and movable estates to churches and religious organisations.[207] Such restitutions did not lead to their complete economic emancipation, although several governments

204 On the other hand, most were critical of the involvement of churches and religious societies in politics. See also Čikeš, 2010, pp. 88 and 90.

205 Given this account, it makes sense to compare the legal regulation of the relationship between the state and churches and religious societies in the Slovak Republic with the Czech Republic, within the European context. As a natural consequence of their common historical development after 1918, both countries followed the practice of Austria-Hungary. Juran, 2008, p. 12.

206 Čikeš, 2002, p. 183.

207 Čeplíková, 2011, p. 161.

considered this eventuality from 1992 onwards. In 1996, for example, the following models were proposed: retaining a system of financing based on the state budget; a system of taxation resembling that in Italy and Spain (preferred by the Catholic Church); financing churches and religious societies through individual contributions (favoured by the Evangelical Church of the Augsburg Confession); or making financial contributions to churches and religious societies in form of tax deduction (preferred by smaller evangelical churches and religious societies).[208] We suggest eventually, *de lege ferenda*, that a system of tax assignment, in which every taxpayer can decide where to allocate some of his/her taxes should be preferred. Under this system, taxpayers could choose churches, religious societies, or other publicly useful recipients or aims.[209] The Slovak legal system already provides taxpayers with the opportunity to allocate 2% of their assessed income tax to the corporate entity of their choice, including entities run by churches or religious societies.[210] Despite some criticism of the current model of financing, the new Law No. 370/2019 Z.z. on the financial support of churches and religious societies, strives to sustain it, primarily because this model appears to function very well in practice.[211] Looking back over the historical development of Slovakia, it is also possible to speak metaphorically about the traditional Congrua system continuing.[212]

In Slovakia, the main topic of discussion has been the treaty on conscientious objection, anticipated following the Basic treaty between the Slovak Republic and the Holy See, as well as the Agreement between the Slovak Republic and registered churches and religious societies. This absolute right allows the individual to refuse to undertake civil, work-related, official, or other duties that conflict with his or her conscience or religious belief. As previously discussed, the last effort to implement this treaty led to the fall of the government. The objections were that it interfered with state sovereignty and civil principles, violating the principles of equality and non-discrimination.[213] Opponents also argued that the right to conscientious objection could not be applied to everyone without exception, as it was unclear how people who did not belong to any church or religious society would apply it.[214] Contemporary changes in society suggest that these objections will be raised again. Slovakia thus even nowadays faces politically and ideologically motivated discussions that ignite useless passions, even though most of the proposed rights are

208 Juran, 2008, p. 17.

209 Under these circumstances, the tax rate would have to be 4% – several times more than in states that apply this model. In Spain, for example, the assignment represents 0.5%, in Italy 0.8%, and in Hungary 1% of the total tax. Although it would be appropriate to add funds from the state budget, this procedure casts doubt on the propriety of the solution in general. See also Čikeš, 2010, p. 58.

210 § 50, ods. 4 zákona č. 595/2003 Z.z., Zákon o dani z príjmov.

211 Nemec, 2019, pp. 131–149.

212 Tretera, 2002, p. 53.

213 Several experts remarked that Slovakia would be the first state in the world to give believers such an extensive opportunity to follow the doctrinal principles of their own churches or religious societies in common, as well as in professional life. Čeplíková, 2011, p. 216.

214 Poláček, 2007, pp. 186–187.

already protected by the legal system.[215] From the perspective of *de lege ferenda*, the state may rethink the conditions of registration for churches and religious societies, considered to be the most severe in the entire European Union. Already, the high membership bar has been raised to 50,000, making it impossible for smaller religious organisations to obtain the status of official churches or religious societies recognised by the state. After all, even concerns that bar set at 20,000 members would make it necessary to register various non-established religious organisations were never probated.[216]

215 In this context, the three most serious activities related to life and death are the termination of pregnancy, sterilisation, and assisted human reproduction; all are *expressis verbis* contained in Law No. 576/2004 on healthcare. This legal source allows medical employees to refuse to carry out these medical interventions, based on their own beliefs. § 12, ods. 2, písm. c) zákona č. 576/2004 Z.z. o zdravotnej starostlivosti. A related document is the ethical code for medical employees, which states that medical employees cannot be asked to carry out procedures that they believe to be wrong, unless there is an immediate threat to a person's life or health. If the medical employee wishes to conscientiously object, he or she must inform his or her employer and patients. § 2, ods. 3 Etického kódexu zdravotníckeho pracovníka, príloha k zákonu č. 578/2004 Z.z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov.

216 For this reason, some authors suggest two-step registration. First, the church or religious society would obtain the legal personality of a civil-society organisation; then, after a period of time specified by law, it would also acquire the status of a registered church or religious society. Čikeš, 2010, p. 47.

Bibliography

BALÁŽ, P. (2000) 'Trestné právo a jeho úlohy pri ochrane ľudských práv a slobôd v našej spoločnosti'. In Barancová, H., Krsková, A. (eds.) *Ľudské práva na prahu tretieho tisícročia*. Trnava: Právnická fakulta Trnavskej University.

BALÍK, S., HANUŠ, J. (2007) *Katolická církev v Československu 1945–1989*. Brno: Centrum pro studium demokracie a kultury.

BARÁNY, E. (2007) *Pojmy dobrého práva*. Žilina: Poradca podnikateľa.

BLAHOŽ, J. (2005) *Sjednocující se Evropa a lidská a občanská práva*. Praha: ASPI.

BUBELOVÁ, K. (2010) 'Slovenský civilní soud rozhodoval o neplatnosti křtu'. In Moravčíková, M., Valová, E. (eds.) *Ročenka Ústavu pre vzťahy štátu a cirkví 2009*. Bratislava: Ústav pre vzťahy štátu a cirkví.

BUŠEK, V. (1931) 'Pomer štátu k církvím v ČSR'. In Dědina, V. (ed.) *Československá vlastivěda. Díl V*. Praha: Sfinx.

CAMPENHAUSEN, A. (1994) 'Der heutige Verfassungsstaat und die Religion'. In Listl, J., Pirson, D. (eds.) *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland. Erster Band*. Berlin: Duncker & Humblot.

CAMPENHAUSEN, A. (2002) *Lexikon für Kirchen- und Staatskirchenrecht. Band 2. G–M*. Paderborn: Ferdinand Schoningh.

CASAROLI, A. (2001) *Trýzeň trpělivosti. Svatý stolec a komunistické země* (*1963–1989*). Kostelní Vydří: Karmelitánské nakladatelství.

ČENTÉŠ, J. A KOL. (2018) *Trestný zákon. Veľký komentár. 4. aktualizované vydanie*. Žilina: Eurokódex.

ČEPLÍKOVÁ, M. (2008) 'Súčasný stav konfesného práva v Slovenskej republike'. In Grešková, L. (ed.) *Vzťahy štátu a cirkví v Európe*: *Súčasné otázky a trendy na začiatku 21. storočia. Zborník z rovnomennej medzinárodnej konferencie, ktorú usporiadal Ústav pre vzťahy štátu a cirkví v Bratislave v dňoch 8–10. novembra 2007*. Bratislava: Ústav pre vzťahy štátu a cirkví, Bratislava.

ČEPLÍKOVÁ, M. (2011) *Konfesné právo v Slovenskej republike. Vybrané kapitoly z histórie a súčasnosť*. Bratislava: Ústav pre vzťahy štátu a cirkví.

CHENAUX, P. (2012) *Katolická církev a komunismus v Evropě* (*1917–1989*). *Od Lenina k Janu Pavlu II*. Praha: Rybka Publishers.

CHMELÍK, J. (2007) *Symbolika extrémistických hnutí*. Brno: Armex.

ČIČ, M. A KOL. (1997) *Komentár k Ústave Slovenskej republiky*. Martin: Matica slovenská.

ČIKEŠ, R. (2002) 'Zmluva medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami'. In Kolektív autorov: *Ročenka Ústavu pre vzťahy štátu a cirkví 2001*. Bratislava: Ustav pre vzťahy štatu a cirkvi.

ČIKEŠ, R. (2008) 'Náboženská sloboda v slovenskom konfesnom systéme'. In Grešková, L. (ed.) *Vzťahy štátu a cirkví v Európe*: *Súčasné otázky a trendy na začiatku 21. storočia. Zborník z rovnomennej medzinárodnej konferencie, ktorú usporiadal Ústav pre vzťahy štátu a cirkví v Bratislave v dňoch 8–10. novembra 2007*. Bratislava: Ústav pre vzťahy štátu a cirkví, Bratislava.

ČIKEŠ, R. (2010) *Vzťahy štátu a cirkví na Slovensku*. Bratislava: Ústav pre vzťahy štátu a cirkví.

ČURILA, D. (2010) 'Sloboda náboženského vyznania a formálna spravodlivosť vo veci Lautsi v. Taliansko'. In Dávid, R., Sehnálek, D., Valdhans, J. (eds.) *Dny práva 2010*. Brno: Masarykova univerzita.

DAVALA, M. (2013) 'Vývoj v úprave rovnosti ako základnej hodnoty'. In Kolektív autorov: *Vybrané texty k ľudským právam*. Bratislava: Univerzita Komenského v Bratislave.
DEJMEK, J. (2004) 'Vztahy mezi ČSR a Vatikánem v meziválečnému období'. In Loužek, M. (ed.) *Vzťah církví a státu*. Praha: Centrum pro ekonomiku a politiku.
DOE, N. (2011) *Law and Religion in Europe. A Comparative Introduction*. Oxford: Oxford University Press.
DOLINSKÝ, J. (1999) *Cirkev a štát na Slovensku v rokoch 1918–1945*. Trnava: Dobrá kniha.
DRGONEC, J. (2004) *Ústava Slovenskej republiky. Komentár*. Šamorín: Heuréka.
DUFFAR, J. (1995) 'Le regime constitutionnel des cultes'. In *European Consortium for Church-state Research*. Paris, Milan: Litec – Giuffrè.
EVANS, C. (2003) *Freedom of Religion under the European Convention on Human Rights*. Oxford: Oxford University Press.
EVANS, C. (2012) 'Religion and Freedom of Expression'. In Witte, J., Jr., Green, M. Ch. (eds.) *Religion and Human Rights. Introduction*. Oxford: Oxford University Press.
FERRARI, S. (1995) 'Church and State in Europe. Common Pattern and Challenges'. In *European Journal for Church and State Research*. Vol. 2.
FIALA, P., HANUŠ, J. (2001) *Katolická církev a totalitarismus v českých zemích*. Brno: Centrum pro studium demokracie a kultury.
GAREK, M. (2010) 'Školstvo na území hornej Oravy v rokoch 1939–1945'. In Sokolović, P. (ed.) *Život v Slovenskej republike. Slovenská republika 1939–1945 očami mladých historikov IX*. Bratislava: Ústav pamäti národa.
GREŠKOVÁ, L. (ed.) (2008) *Vzťahy štátu a cirkví v Európe*: *Súčasné otázky a trendy na začiatku 21. storočia. Zborník z rovnomennej medzinárodnej konferencie, ktorú usporiadal Ústav pre vzťahy štátu a cirkví v Bratislave v dňoch 8–10. novembra 2007*. Bratislava: Ústav pre vzťahy štátu a cirkví, Bratislava.
GUIORA, A. N. (2009) *Freedom from Religion. Rights and National Security*. Oxford: Oxford University Press.
HAJNALOVÁ, Z. (2010) 'Ochranné známky (druhy označení a zákon o ochranných známkach)'. In Hajnalová, Z. (ed.) *Zborník z konferencie Duševné vlastníctvo na Slovensku X* (*pri príležitosti Svetového dňa duševného vlastníctva*). Banská Bystrica: Úrad priemyselného vlastníctva Slovenskej republiky.
HALÁSZ, I. (2020) *Minulosť a symbolika v ústavách štátov strednej Európy*. Praha: Ústav státu a práva AV ČR.
HALAS, F. X. (2002) *Vztahy mezi státem a církví hlediska jejich mezinárodního rozměru*. Olomouc: Univerzita Palackého v Olomouci, Cyrilometodějská teologická fakulta.
HANUŠ, J. (ed.) (2002) *Křesťanství a lidská práva*. Brno – Praha: Centrum pro studium demokracie a kultury – Vyšehrad.
HETÉNYI, M., IVANIČ, P. (2010) 'Poznámky k šíreniu kultu sv. Cyrila a Metoda v rokoch 1939–1945 na príklade mesta Nitra'. In Sokolović, P. (ed.) *Život v Slovenskej republike. Slovenská republika 1939–1945 očami mladých historikov IX*. Bratislava: Ústav pamäti národa.
HETTEŠ, M. (2015) *Ľudské práva a sociálna ochrana v sociálnej práci*. Bratislava: Vysoká škola zdravotníctva a sociálnej práce sv. Alžbety.
HLAVOVÁ, V. (2008) 'Cirkev a povojnová pozemková reforma 1945–1948'. In Dobrotková, M., Kohútová, M. (eds.) *Slovensko a Svätá stolica*. Trnava: Slovenský historický ústav v Ríme – Trnavská univerzita v Trnave.
HORÁK, Z. (2011) *Církve a školství*. Praha: Grada.

HRABOVEC, E. (2008) 'Slovensko a Svätá stolica 1918–1939 v kontexte medzinárodných vzťahov'. In Dobrotková, M., Kohútová, M. (eds.) *Slovensko a Svätá stolica*. Trnava: Slovenský historický ústav v Ríme – Trnavská univerzita v Trnave.

HRDINA, A. (2004) *Náboženská svoboda v právu České republiky*. Praha: Eurolex Bohemia.

JÄGER, P., MOLEK, P. *Svoboda projevu. Demokracie, rovnost a svoboda slova*. Praha: Auditorium.

JURAN, J. (2008) 'Vzťah cirkví a štátu'. In Grešková, L. (ed.) *Vzťahy štátu a cirkví v Európe: Súčasné otázky a trendy na začiatku 21. storočia. Zborník z rovnomennej medzinárodnej konferencie, ktorú usporiadal Ústav pre vzťahy štátu a cirkví v Bratislave v dňoch 8–10. novembra 2007.* Bratislava: Ústav pre vzťahy štátu a cirkví, Bratislava.

KAISER, W., VARSORI, A. (2010) *European Union History: Themes and Debates*. London: Palgrave Macmillan.

KALNÝ, M. (1995) *Církevní majetek a restituce*. Praha: Občanský institut.

KAMENEC, I. (2011) 'The Slovak State, 1939–1945'. In Teich, M., Kováč, D., Brown, M. D. (eds.) *Slovakia in History*. Cambridge: Cambridge University Press.

KANÁRIK, I. (2002) *Informatívne pôsobenie práva. Zborník z medzinárodnej konferencie: Public administration & informatics within public administration 2002, Lázně Bohdaneč 16.–18. 9. 2002*. Pardubice: Univerzita Pardubice, Fakulta ekonomicko-správní.

KIDERLEN, H. J. (1993) *Die Einingung Europas und die Staat-Kirche-Ordnung.* Münster: Marré.

KINDL, V. (1998) 'Kirchen, Religionsgemeinschaften und Bekenntnisfreiheit in der Rechtsordnung der Tschechischen Republic nach 1945'. In Mohnhaupt, H., Schonfeldt, H.-A. (eds.) *Normdurchsetzung in Ostereuropäsichen Nachkriegsgesellschaften (1944–1989) Einfuhrung in die Rechtsentwicklung mit Quelledokumentation. Band 4 – Tschechoslowakei (1944–1989)*. Frankfurt am Main: Vittorio Klostermann.

KLÍMA, K. A KOL. (2009) *Komentář k Ústavě a Listině. 1. a 2. díl*. Plzeň: Aleš Čeněk.

KOUDELKA, Z., ŠIMÍČEK, V. K právní povaze Listiny základních práv a svobod. In *Právník*. No. 2.

KRÁL, J. A KOL. (2004) *Ústavné garancie ľudských práv.* Bratislava: Vydavateľské oddelenie Právnickej fakulty Univerzity Komenského v Bratislave.

KUBINA, P. (2003) 'Úprava vzťahu štátu a katolíckej cirkvi v Slovenskej republike a jej východiská'. In *Justičná revue*. Vol. 55, No. 2.

KUMOR, B., DLUGOŠ, F. (2004) *Cirkevné dejiny 8. Súčasné obdobie, 1914–2000*. Levoča: Nadácia Kňazského seminára biskupa Jána Vojtaššáka.

LONDÁKOVÁ, E. (2008) 'Cirkevné školstvo a školská reforma na Slovensku po 2. svetovej vojne'. In Dobrotková, M., Kohútová, M. (eds.) *Slovensko a Svätá stolica*. Trnava: Slovenský historický ústav v Ríme – Trnavská univerzita v Trnave.

MADLEŇÁKOVÁ, L. (2010) *Výhrada svědomí jako součást svobody myšlení, svědomí a náboženského vyznání*. Praha: Linde.

MACHÁČKOVÁ, L., DOJČÁR, M. (2000) 'Registrované cirkvi a náboženské spoločnosti v Slovenskej republike v roku 1999'. In Moravčíková, M., Valová, E., Lojda, M. (eds.) *Ročenka Ústavu pre vzťahy štátu a cirkví 1999.* Bratislava: Ústav pre vzťahy štátu a cirkví.

MARSINA, R. (1985) *Metodov boj*. Bratislava: Obzor.

MAŠĽANYOVÁ, D. (2012) 'Postih extrémizmu podľa slovenského Trestného zákona'. In Záhora, J. (ed.) *Aktuálne otázky trestného zákonodarstva. Pocta prof. JUDr. Milanovi Čičovi, DrSc. et mult. Dr. h. c. k 80. narodeninám. Zborník príspevkov z celoštátnej konferencie s medzinárodnou účasťou konanej dňa 19. januára 2012*. Bratislava: Paneurópska vysoká škola.

MCCREA, R. (2014) *Religion and the Public Order of the European Union*. Oxford: Oxford University Press.

MILO, D. (2005) *Rasistický extrémizmus v Slovenskej republike*. Bratislava: Ľudia proti rasizmu.

MORAVČÍKOVÁ, M. (2003) 'Štát a cirkev v Slovenskej republike'. In Jozefčiaková, p. (ed.) *Štát a cirkev v postsocialistickej Európe*. Bratislava: Ústav pre vzťahy štátu a cirkví.

MORAVČÍKOVÁ, M. (ed.) (2007) *Výhrada vo svedomí. Conscientious Objection*. Bratislava: Ústav pre vzťahy štátu a cirkví.

NEMEC, M. (1997) *Vybrané kapitoly z cirkevného práva*. Bratislava: Manz a Právnická fakulta Univerzity Komenského v Bratislave.

NEMEC, M. (2013) 'Religion and Criminal Law in the Slovak Republic'. In Doe, N., Kotiranta, M. (eds.) *Religion and Criminal Law – Religion et Droit Pénal*. Leuven: Peeters, pp. 233–240.

NEMEC, M. (2019) 'Kánonickoprávne východiská a sekulárne prístupy k problému ekonomického zabezpečenia cirkví v Slovenskej republike'. In Vladár, V. (ed.) *Verejné právo na Slovensku a v Európe – aktuálne problémy a rímsko-kánonické súvislosti. Zborník z medzinárodnej vedeckej interdisciplinárnej konferencie uskutočnenej 27. septembra 2019 na Právnickej fakulte Trnavskej univerzity v Trnave*. Praha: Leges.

ORENDÁČ, P. (2014) *Odkaz sv. Cyrila a Metoda a edukačný process*. Bratislava: Metodicko-pedagogické centrum.

OROSZ, L. A KOL. (2009) *Ústavný system Slovenskej republiky* (*doterajší vývoj, aktuálny stav, perspektívy*). Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta.

PAVLÍČEK, V. A KOL. (2004) *Ústavní právo a státověda. II. díl, část 2*. Praha: Linde.

PEHR, M., ŠEBEK, J. (2012) *Československo a Svatý stolec. Od nepřátelství ke spolupráci* (*1918–1928*). *I. Úvodní studie*. Praha: Masarykův ústav a Archiv Akademie věd ČR.

PEŠEK, J., BARNOVSKÝ, M. (1997) *Štátna moc a cirkvi na Slovensku 1948–1953*. Bratislava: VEDA – Vydavateľstvo Slovenskej akadémie vied.

PEŠEK, J., BARNOVSKÝ, M. (1999) *Pod kuratelou moci. Cirkvi na Slovensku v rokoch 1953–1970*. Bratislava: VEDA – Vydavateľstvo Slovenskej akadémie vied.

POLÁČEK, P. (2007) 'Výhrada vo svedomí v judikatúre Európskeho súdu pre ľudské práva'. In Moravčíková, M. (ed.) *Výhrada vo svedomí. Conscientious Objection*. Bratislava: Ústav pre vzťahy štátu a cirkví.

ROBBERS, G. (2000) 'Vztah státu a církve v Evropě'. In *Revue církevního práva*. Vol. 6, No. 2.

ŘEPOVÁ, J. (2004) 'Poznámky k právnímu postavení církví v USA a Evropě'. In Loužek, M. (ed.) *Vztah církví a státu. Sborník textů*. Praha: Centrum pro ekonomiku a politiku.

ŠABO, M. (2008) 'Vývoj náboženskej slobody na Slovensku do r. 1989'. In Grešková, L. (ed.) *Vzťahy štátu a cirkví v Európe: Súčasné otázky a trendy na začiatku 21. storočia. Zborník z rovnomennej medzinárodnej konferencie, ktorú usporiadal Ústav pre vzťahy štátu a cirkví v Bratislave v dňoch 8–10. novembra 2007*. Bratislava: Ústav pre vzťahy štátu a cirkví, Bratislava.

ŠIMULČÍK, J. (1999) *Katolícka cirkev a nežná revolúcia 1989*. Prešov: Michal Vaško.

ŠMID, M. (2001) *Základná zmluva medzi Svätou stolicou a Slovenskou republikou s komentárom*. Bratislava: Konferencia biskupov Slovenska

SUCHÁNEK, R. (2002) *Modus vivendi*. In *Revue církevního práva*. Vol. 8, No. 3.

SURMÁNEK, Š. (2009) *Klerikalizácia verejného života na Slovensku ako prejav a dôsledok silnejúceho vplyvu Katolíckej cirkvi*. Košice: Elfa.

SVÁK, J., CIBULKA, Ľ. (2006) *Ústavné právo Slovenskej republiky*. Bratislava: Poradca podnikateľa.

TAYLOR, P. M. (2005) *Freedom of Religion: UN and European Human Rights Law and Practice*. Cambridge: Cambridge University Press.

TRETERA, J. R. (2002) *Stát a církve v České republice*. Kostelní Vydří: Karmelitánské nakladatelství.

VALEŠ, V. (2008) *Konfesní právo. Průvodce studiem*. Plzeň: Aleš Čeněk.

VAŠKO, V. (2004) *Dům na skále. Církev zkoušená 1. 1945–začátek 1950*. Kostelní Vydří: Karmelitánské nakladatelství.
VOZÁR, J. A KOL. (2015) *Sloboda prejavu v rozhodnutiach súdov.* Bratislava: VEDA.
VRTEL, L. (2010) *Štátne symboly Slovenskej republiky.* Bratislava: VEDA.
WAGNEROVÁ, E., ŠIMÍČEK, V., LANGÁŠEK, T., POSPÍŠIL, I. A KOL. (2012) *Listina základních práv a svobod. Komentář.* Praha: Wolters Kluwer.
WIERER, R. (1935) *Uznání a právní postavení náboženských společností podle zákona z 20. května 1874, č. 68 ř. z.* Praha – Brno: Orbis.
WITTE, J., JR., GREEN, M. CH. (eds.) (2012) *Religion and Human Rights. Introduction*. Oxford: Oxford University Press.
WOLTERSTORFF, N. P. (2012) 'Christianity and Human Rights'. In Witte, J., Green, M. (eds.) *Religion and Human Rights. Introduction*. Oxford: Oxford University Press.

Legal sources

Č. 245/2008 Z.z. o výchove a vzdelávaní, Školský zákon
Deklarácia č. 11 o postavení cirkví a náboženských spoločností a nenáboženských organizácií tvoriaca prílohu Záverečného aktu Amsterdamskej zmluvy z roku 1999
Dohoda medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami o náboženskej výchove a vzdelávaní publikovaná pod č. 395/2004 Z.z.
Dohoda medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami o výkone pastoračnej služby ich veriacim v ozbrojených silách a ozbrojených zboroch Slovenskej republiky publikovaná pod č. 270/2005 Z.z.
Dohoda medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami publikovaná pod č. 250/2002 Z. z
Etický kódex zdravotníckeho pracovníka, príloha k zákonu č. 578/2004 Z.z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov
Nález Ústavného súdu Slovenskej republiky sp. zn. 10/08
Nález Ústavného súdu Slovenskej republiky sp. zn. III. ÚS 313/09
Nález Ústavného súdu Slovenskej republiky sp. zn. III. US 64/00
Nález Ústavného súdu Slovenskej republiky sp. zn. PL ÚS 18/95
Nariadenie Ministerstva vnútra SR č. 45/2004 o postupe v oblasti boja s extrémizmom a o zriadení monitorovacieho strediska rasizmu a xenofóbie
Nariadenie Slovenskej národnej rady č. 5/1944 Zb. n.
Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2013
Ústavný zákon č. 100/1960 Zb, Ústava Československej socialistickej republiky
Ústavný zákon č. 121/1920 Zb., Ústavná listina Čekoslovenskej republiky
Ústavný zákon č. 23/1991 Zb., ktorým sa uvádza Listina základných práv a slobôd
Ústavný zákon č. 4/1993 Sb. o opatřeních souvisejících se zánikem České a Slovenské Federativní Republiky
Ústavný zákon č. 460/1992 Zb., Ústava Slovenskej republiky
Vládne nariadenie č. 124/1928 Zb. z. a nar. o úpravě platů duchovenstva

Vyhlásenie Národnej rady Slovenskej republiky o umiestňovaní náboženských symbolov v školách a vo verejných inštitúciách v súlade s kultúrnou tradíciou krajiny, schválené Národnou radou Slovenskej republiky uznesením z 10. decembra 2009, číslo 1845
Vykonávacie nariadenie č. 362/1919
Zák. čl. 31/1894
Zák. čl. 32/1894
Zák. čl. 43/1895
Základná zmluva medzi Slovenskou republikou a Svätou stolicou vyhlásená pod číslom 326/2001 Z.z. ako oznámenie Ministerstva zahraničných vecí
Zákon č. 11/1918 Zb. z. a nar. o zřízení samostatného státu
Zákon č. 113/1924 Zb. z. a nar.
Zákon č. 122/1926 Zb. z. a nar. o úpravě platů duchovenstva církví a náboženských společností státem uznaných případně recipovaných
Zákon č. 131/2002 Z.z. o vysokých školách
Zákon č. 140/1961 Zb., Trestný zákon
Zákon č. 18/1993 Z.z. o štátnych symboloch Slovenskej republiky a ich používaní
Zákon č. 218/1949 Zb.
Zákon č. 300/2005 Z.z., Trestný zákon
Zákon č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností
Zákon č. 312/2001 Z.z. o štátnej službe
Zákon č. 320/1919 Zb. z. a nar. o obřadnostech smlouvy manželské, o rozluce a překážkách manželských
Zákon č. 346/2005 Z.z. o štátnej službe profesionálnych vojakov ozbrojených síl Slovenskej republiky
Zákon č. 370/2019 Z.z. o finančnej podpore cirkví a náboženských spoločností
Zákon č. 39/2017 Z.z.
Zákon č. 394/2000 Z.z.
Zákon č. 475/2005 Z.z. o výkone trestu odňatia slobody
Zákon č. 506/2009 Z.z. o ochranných známkach
Zákon č. 575/2001 Z.z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy
Zákon č. 582/2004 Z.z. o miestnych daniach a miestnom poplatku za komunálne odpady a drobné stavebné odpady
Zákon č. 595/2003 Z.z., Zákon o dani z príjmov
Zmluva medzi Slovenskou republikou a Svätou stolicou o duchovnej službe v ozbrojených silách a zboroch publikovaná 28. novembra 2002 pod č. 648/2002 Z.z. ako oznámenie ministerstva zahraničných vecí Slovenskej republiky
Zmluva medzi Slovenskou republikou a Svätou stolicou o katolíckej výchove a vzdelávaní publikovaná 9. júla 2004 pod č. 394/2004 Z. z. ako oznámenie ministerstva zahraničných vecí Slovenskej republiky

Chapter VII

The Legal Regulation of Religious Symbols in the Public Sphere in Slovenia

Frane Staničić

1. Introduction[1]

This paper analyses the legal regulation of the presence and/or use of religious symbols in the public sphere. The presence/use of religious symbols in the public sphere is rarely governed by specific regulations, as noted in the now famous *Lautsi v. Italy* judgement of the European Court for Human Rights (ECtHR).[2] However, the fact that this matter is not regulated does not mean that it is not hotly disputed. The presence of religious symbols in public schools is particularly controversial; this issue has been brought before the supreme courts of several member states of the Council of Europe.[3] According to the ECtHR, only the former Yugoslav Republic of

1 The author wishes to express his gratitude to Akad. Prof. Dr. Marijan Pavčnik for his help in preparing this text.

2 *Lautsi v. Italy*, no. 30814/06 on 18 March 2011, para. 26.

3 In Switzerland, the Federal Court issued a communal ordinance, stating that the presence of crucifixes in primary school classrooms was incompatible with the requirements of confessional neutrality enshrined in the Federal constitution; however, it did not prohibit their display in other parts of the school (26 September 1990; ATF 116 1a 252). In Germany, the Federal Constitutional Court ruled that a similar Bavarian ordinance was contrary to the principle of state neutrality and difficult to reconcile with the freedom of religion of children who were not Catholics (16 May 1995; BVerfGE 93,1). The Bavarian parliament then issued a new ordinance supporting the

Frane Staničić (2021) The Legal Regulation of Religious Symbols in the Public Sphere in Slovenia. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 211–244. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_7

Macedonia (today Northern Macedonia), France (apart from Alsace and Moselle), and Georgia expressly prohibit religious symbols in state schools. By contrast, such symbols are either permitted or required in Italy, Austria, some German Lander, and some Swiss and Polish communes. Religious symbols are also found in the state schools of countries that do not regulate them, including Spain, Greece, Ireland, Malta, San Marino, and Romania.[4] In Slovenia, there is a direct prohibition against religious symbols in state schools. The nation's Organisation and Financing of Upbringing and Education Act (Education Act)[5] explicitly bans religious activities in public schools and all kinds of denominational activity in public schools and kindergartens. For obvious reasons, therefore, the presence of religious symbols in public schools is also prohibited. In other public spaces, there is no regulation, as in most European countries.

This paper analyses the legal regulation of religious symbols in the public sphere in Slovenia. In addition to desk research, it surveys research by contemporary authors in Slovenia and analyses the Slovene church-state model established by the Slovene constitution and executive practice. It also explores the role of the Constitutional Court, which has issued several interesting decisions (and one opinion) on religion and its role in society. It is important to show how historical development has influenced the legal regulation of religion in Slovene society, as the legal regulation of religion and church-state relations is indistinguishable from the legal regulation of religious symbols in the public sphere.

It is a key hypothesis of this paper that the chosen model of church-state relations has the most significant impact on the position of religion in the public sphere, and

previous measure, but enabling parents to cite their religious or secular beliefs when challenging the presence of crucifixes in the classrooms attended by their children. It also introduced a mechanism through which a compromise or a personalised solution could be reached. In Poland, the ombudsman referred an ordinance of 14 April 1992 to the Constitutional Court. The ordinance, issued by the Minister of Education, prohibited the presence of crucifixes in state-school classrooms. The Constitutional Court ruled that this measure was compatible with the freedom of conscience and religion and the principle of church-state separation guaranteed by art. 82 of the constitution because it did not make the display compulsory (20 April 1993; no. U 12/32). In Romania, the Supreme Court set aside a November 2006 decision of the National Council for the Prevention of Discrimination, recommending to the Ministry of Education that it should regulate the presence of religious symbols in publicly run educational establishments and, in particular, authorise the display of such symbols only during religious-studies lessons or in rooms used for religious instruction. The Supreme Court held that the decision to display such symbols in educational establishments should be a matter for the community of teachers, pupils, and pupils' parents (11 June 2008; no. 2393). In Spain, the High Court of Justice of Castile and Leon, ruling in a case brought by an association that promoted secular schooling, which had unsuccessfully requested the removal of religious symbols from schools, held that the schools should remove such symbols if they received an explicit request from the parents of a pupil (14 December 2009; no. 3250). *Lautsi v. Italy*, no. 30814/06 on 18 March 2011, para. 28.

4 *Lautsi v. Italy*, no. 30814/06 on 18 March 2011, para. 27.

5 Uradni list RS, nos. 16/07 (consolidated text), 36/08, 58/09, 64/09, 65/09, 20/11, 40/12, 57/12, 47/15, 46/16, 49/16, 25/17.

thus on the legal regulation of religious symbols. Much of this paper will therefore be dedicated to explaining the Slovene model of church-state relations.

Some scholars have argued that Slovenia and France have a similar approach to religion in the public sphere, sharing a model that resembles the famous French *laïcité* model. The second hypothesis is that this is not the case. Although the Slovene approach may appear to resemble *laïcité* on paper, Constitutional Court cases and a legislative analysis reveal that it functions differently in reality. This finding is vital for understanding the legal regulation of religious symbols in Slovenia. Relations between the state, churches, and other religious communities in Slovenia resemble the cooperation model, with some exceptions detailed in this paper. These exceptions help to determine the extent to which religious symbols are actually prohibited in the public sphere. The answer, as will be shown, is not without 'but ifs'.

2. The historical, social, cultural, and political context of religious symbols in public spaces

Slovene society cannot be described as particularly multicultural or heterogeneous. Compared to several other European countries, Slovenia is virtually homogenous.[6] Following Slovenia's independence from Yugoslavia in 1991 and the introduction of multiparty democracy, there were many examples of religious pluralism. The number of registered religious communities rose to 43. Today, 60 groups are listed in the register of religious communities, five of which have been erased, leaving 55 existing communities.[7] Although the Catholic Church has attempted to regain its former position and to maintain a cultural hegemony, it has not succeeded.[8] Baptism records indicate that the Roman Catholic Church is by far the largest religious body in Slovenia, accounting for 60–80% of citizens (the census records 57.8% in 2002 and 71.6 in 1991. According to data provided by the Public Opinion and Mass Communication Research Centre of the University of Ljubljana Faculty of Social Sciences, which has been conducting public-opinion surveys for more than thirty years, around 70% of Slovene citizens consider themselves 'adherents' of the Roman Catholic faith.[9]

6 Črnič and Lesjak, 2003, p. 350.
7 Available at: https://www.gov.si/teme/verske-skupnosti/
8 Črnić et al., 2013, p. 212.
9 Črnič, 2009, p. 119.

Table 1. Comparison of religious demographics, according to the 1991 and 2002 censuses[10]

Religious affiliation	**1991**	**2002**
Catholic	71.36%	57.80%
Orthodox Christian	2.38%	2.30%
Muslim	1.51%	2.40%
Protestant (including Evangelical)	0.97%	0.90%
Other religions	0.04%	0.30%
Believers with no specific religion	0.20%	3.50%
Response denied	4.21%	15.70%
No response known	14.97%	7.10%
Atheist	4.35%	10.10%
Total	**100.00%**	**100.00%**

From the 9th century onwards, as ancient Slovenians became ever more politically incorporated into the Frankish (Carolingian) Empire, which ultimately became the Holy Roman Empire, the power and status of the new religion—Roman Christianity—likewise became more consolidated and institutionalised.[11] The principle of *cuius regio, eius religio* brought about the end of the Reformation. The Counter-Reformation, which began in these lands at the end of the 16th century, adopted maxims that were part of the ideological arsenal of Roman Catholicism in Slovenia and endured well into the 20th century.[12]

During the Hapsburg Monarchy (after 1867, the Austro-Hungarian Monarchy), which included Slovenia, the Catholic Church became the 'state' religious community and Catholicism the state religion. There were, of course, other received religions (*religiones receptae)*, such as the Augsburg Protestants and the Orthodox churches, which had full civil rights but no privileges.[13]

During the rule of Joseph II (1780–1790), the *Toleranzpatent* was enacted. This edict proclaimed that Catholicism was the ruling faith, but other faiths would be

10 Statistical Office of the Republic of Slovenia. Available at : https://www.stat.si/popis2002/gradivo/2-169.pdf; Šturm, 2004, p. 608.
11 Črnić et al., 2013, p. 206.
12 ibid., p. 207.
13 Staničić, 2014, p. 226.

tolerated.[14] After the death of Joseph II, religious communities reverted to their former positions. During that time, the Catholic Church exercised an immense influence over all areas of everyday life, including education. Apostasy was a crime punishable under Section 122 of the Criminal Code and listed as grounds for disinheritance under Section 768 of the Civil Code.

The state made the Catholic Church responsible for many official duties, including marriages, funerals, and registries. In 1855, the Monarchy signed a concordat with the Holy See, which guaranteed that the Catholic Church would continue to be the official state church. In 1859, the Imperial Patent gave Evangelical churches equal status with the Catholic Church.[15] After the Austro-Prussian War of 1866, Emperor Franz Joseph had to unify the monarchy and deprived the Catholic Church of its status as the state religion, in particular through the 1874 May laws in Austria.[16]

Following the dissolution of the Austro-Hungarian Empire at the end of the First World War, the South Slavic nations formed a new political alliance, which became the Kingdom of Yugoslavia in 1929. This new multi-ethnic and multi-religious state, which was dominated by Orthodox Serbs, did not jeopardise the majority status or ideological monopoly enjoyed by the Catholic Church. The religious structure thus remained unaltered in the ethnic Slovenian lands encompassed by the new kingdom.[17] Both the 1921 and 1931 censuses documented a Catholic majority (97%) and the weak presence of six other religious communities. Protestants (Slovenian and German Lutherans and Reformed churches) accounted for a little over 2%, while other religious communities (Orthodox, Muslim, Greek-Catholic, and Jewish) together accounted for less than 1% of the total population.[18]

Nevertheless, the status of religious communities was a major problem in the new state. Among the many reasons, disagreements about the position of the two largest religious communities—the Serbian Orthodox Church (SOC) and the Catholic Church—were significant and an important reason for enacting a new constitution in 1921.[19] Before the constitution was enacted, a 'religious poll' was carried out in 15–21 February 1921, asking religious communities to express their views and make suggestions about their future position. According to some authors, it was clear from their responses that religious communities were not thinking about religious equality or the separation of church and state. They clearly wanted to preserve their own status quo, with the obvious problem that the SOC status quo negated that of the Catholic Church and vice versa.[20]

When the constitution of 1921 was finally enacted, it abandoned the system of state churches, but did not separate religious communities from the state. Instead,

14 See, also, Črnić et al., 2013, p. 213.
15 Staničić, 2014, p. 226.
16 Staničić, 2014, p. 228.
17 Črnič et al., 2013, p. 209.
18 Črnič et al., 2013.
19 Staničić, 2014, p. 231.
20 Staničić, 2014, p. 233.

they became public institutions with special privileges, a special position in the state, and the authority to perform some public-law duties.[21] The constitution recognised both 'adopted' and 'legally recognised' religious communities. The adopted religious communities had been legally recognised in some part of the state prior to 1 December 1918. Legally recognised religious communities would be recognised by law in future.[22] After 1929 and the dictatorship of King Aleksandar, a set of laws regulating the position of religious communities was enacted. The one exception was the Catholic Church, whose position continued to be regulated by a set of four concordats established before World War I. The Catholic Church demanded a new concordat, provoking the Concordat Crisis. The ultimate result of the crisis was that the concordat was never signed, leaving the Catholic Church, during the existence of the Kingdom of Yugoslavia, with a lower status than that of the Serbian Orthodox Church.[23] According to Šturm, Slovenia had become secularised by the end of the eighteenth century, with the church maintaining a special influence over secular politics until the creation of socialist Yugoslavia.[24]

According to Toš, Slovenia was part of a totalitarian state during the communist era.[25] As socialist Yugoslavia did not want to repeat the mistakes of earlier times, its primary aim was to prevent activities that could lead to interethnic strife or religious hatred. Very soon after the war, the Act Prohibiting the Incitement of National, Racial and Religious Hatred was enacted.[26]

In 1946, the first Federal People's Republic of Yugoslavia (FPRY) constitution introduced the separation of state and religion. For the first time, religious communities lost their prerogative rights over state registries and marriages. Religious teaching in schools was abolished or prohibited and religious communities had to begin financing their own activities (arts. 11, 12).[27] Free worship was possible only inside religious facilities and their auxiliary spaces, such as churchyards and cemeteries. Most other religious activities held in public required prior administrative authorisation. Initially, funerals and weddings were exempt; although weddings too required authorisation after the introduction of civil marriage.[28] Especially during the 1970s, legislation generally tightened these solutions by imposing more rigorous police penalties.[29]

Inside this essentially totalitarian structure, Slovenia's development had many distinctive features and divergences. The legal status and actual position of religious communities in the Socialist Federal Republic of Yugoslavia were not determined

21 Staničić, 2014.
22 Staničić, 2014.
23 Staničić, 2014, p. 234.
24 Šturm, 2004, p. 609.
25 Toš, 1993, p. 23.
26 Staničić, 2014, p. 236.
27 Staničić, 2014, p. 237.
28 Božić, 2019, p. 60.
29 Staničić, 2014.

solely by widely known and published legal rules. Instead, they were primarily shaped—especially in the case of the Catholic Church—by strictly confidential legal rules, which, together with other confidential regulations, formed a parallel secret legal system.[30] The ruling party took a negative view of all religious communities, especially the Catholic Church and to some extent the Serbian Orthodox Church, which were seen as anti-Yugoslav.[31]

Between World War II and 1991, religious communities were forbidden to engage in 'activities of a general or social significance', including educational activities.[32] The position of the Catholic Church improved during the 1960s, as Yugoslavia and the Vatican gradually converged. This process led to the signing of a protocol on 25 June 1966, which ultimately re-established diplomatic relations, severed since 1952, between Yugoslavia and the Vatican.[33] Although this legal order was considered the most liberal[34] in the communist world, it nevertheless restricted church activities severely. Those who wished to openly express their faith became, in many respects, second-class citizens.[35] According to Črnič and Lesjak, there was relative freedom in socialist Slovenia, although the regime generally disapproved of religion.[36] It is hard to agree with this assessment, as conscientious objectors were imprisoned and members of the public were subjected to systematic discrimination when applying for higher-level positions in the judiciary, state offices, educational institutions, and private sector (the criterion for social-political suitability was '*družbeno politična primernost*').

Slovenia, along with the other formerly communist Central and East European countries, was caught up in the third wave of democratisation that followed the Second World War. The transformation of these countries and their capacity to establish democratic institutions and political relations were determined by the sources and intersections of tensions and conflict relations, specifically: (a) the re-definition of the nation or nation state; the so-called national churches played an important part in these processes, having broken free from the marginalisation they faced during communist rule.[37] The churches experienced renewal, gaining importance by contributing to the awakening national consciousness, and thus becoming a political factor as well. (b) Questions about the relationship between democratic institutions and the economic restructuring of society; and (c) the eradication of the ideological monopoly of communist parties, which prevented the emergence of other idelologies.[38]

30 Šturm, 2004, p. 609.
31 Staničić, 2014, p. 238.
32 Šturm, 2004, p. 610.
33 Staničić, 2014, p. 238.
34 'Yugoslavia enjoyed one of the tolerant approaches to religion'. Črnič and Lesjak, 2003, p. 356.
35 Črnič et al., 2013, p. 216.
36 Črnič and Lesjak, 2003, p. 357.
37 Toš, 1993, p. 24.
38 Toš, 1993, pp. 24, 25.

The constitution moved away from negative perceptions of religion and began to build new foundations for the church-state relationship.[39] However, the Slovenian path did not resemble those of other former Yugoslav republics, most of which opted for a separation between church and state, while retaining strong ties to their largest religious communities (the Catholic Church in Croatia, the Serbian Orthodox Church in Serbia, and the Muslim community in Bosnia). By contrast, Slovenia envisaged its own model of church-state relations, which resembled, but was not legally linked to, the famous French principle of *laïcité* or secularism. In line with this approach, the preamble to the 1991 constitution of the Republic of Slovenia makes no reference to God or religion. Art. 7 of the new democratic constitution, which determined the role of churches and religious communities in relation to the state, set forth the following basic principles: separation between the state and religious communities; equality among religious communities; and the right of churches and religious communities to free activity (autonomy) within the legal order.[40]

One thing, however, should be mentioned. Throughout history, the Catholic Church had decisively influenced the development of Slovenian national culture and policies.[41]

3. Axiological and constitutional foundations

Freedom of conscience and religious belief are safeguarded in art. 41 of the constitution. This provision applies to moral and philosophical views, as well as to religious convictions.[42] According to the ECtHR (*Kokkinakis v. Greece*, 1993), freedom of thought, conscience, and religion is:

> one of the foundations of a democratic society. This freedom, in its religious dimension, is one of the most important elements that create the identity of believers and their conception of life, but it is also a precious tool of atheists, agnostics, sceptics and those who do not have any relation towards faith.

This stance was emphasised most vividly in the 2011 *Bayatyan* judgement, in which the ECtHR reiterated the doctrine that the state must fill the 'role of a neutral and impartial organiser of expression of various religions, beliefs, and convictions, thereby contributing to public order, religious harmony and tolerance in a democratic

39 Ivanc and Šturm, *Slovenia*, in Encyclopedia of Law and Religion—Europe, p. 379.
40 Ivanc and Šturm, Ivanc, 2015, p. 41.
41 Toš, 1993, p. 25.
42 Kaučić, 2002. p. 400.

society'.[43] Importantly, freedom of religion is recognised as both a moral and legal right. As Sparer said,

> …certain fundamental human rights are inalienable. They exist regardless of whether or not they have been legally recognised. These rights…including the right to free religious expression…are part of ourselves as human beings… But certain fundamental human rights are inalienable, regardless of the arguments for legal recognition… These rights are part of our potential, what we might be as living persons… We cannot give these rights away… any more than we can give away a part of ourselves. We certainly can deny them to ourselves and to others. But when we do, we deny a part of ourselves and a part of others. We can act as if these rights do not exist; … if we stop expressing these parts of our humanity, we become 'alienated' … We would be suppressing a piece of ourselves or acceding to the efforts of others to suppress us.[44]

When the ECtHR interprets the European Convention, it frequently argues in favour of freedom of religion as a fundamental human right, especially in the context of contemporary society.[45] Within ECtHR practice, religious freedom became an essential right of considerable importance. The ECtHR justified its actions by arguing that freedom of religion was 'one of the foundations of a democratic society. The pluralism indissociable from a democratic society, … depends on it' (*Bayatyan v. Armenia* 2011, para. 118). Similarly, it is 'necessary to maintain true religious pluralism, which is vital to the survival of a democratic society' (para. 122, *Manoussakis and Others v. Greece* 1996, para. 44, *Metropolitan Church of Bessarabia and Others v. Moldova* 2001, para. 119).[46]

Because freedom of religion constitutes an inalienable right, any violation of that right is likely to cause disturbances, violence, or strife in society. In the words of Sparer, freedom of religion is part of our potential, what we have the potential to become as living persons. Arguably, the violation of nonreligious beliefs rarely cause conflicts as violent as those caused by violations of freedom of religion. The suppression of religious beliefs has a documented tendency to provoke violence and wars.[47] Although restrictions on religious practice are sometimes justified, as a way of curbing violence and maintaining public order, the research suggests that they generally have the opposite effect. Restricting religious practice often leads to social conflict.[48] Religious freedoms generally defuse potential violence, while restrictions

43 Staničić, 2019, p. 190.
44 Sparer, 1984, pp. 512–513.
45 Staničić, 2019, p. 194.
46 Staničić, 2019.
47 Staničić, 2019, pp. 199–200.
48 Finke, 2013, p. 306

increase it. In fact, restrictions often create the very conditions that give rise to social conflicts.[49]

Freedom of religion is closely linked with freedom of expression, guaranteed by art. 39 of the constitution of Slovenia. The latter permits the unrestrained expression of an individual's religious convictions; it is linked with the right to personal dignity and safety (art. 34), personality rights and the right to privacy (art. 35) and the protection of personal data (art. 38).[50] As the constitution does not mention any special limitations to freedom of conscience, it is limited only by the rights of others (art. 15/3), like all other human rights and fundamental freedoms. However, the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 9, second para.) allows this right to be limited, as prescribed by law, where this is necessary to protect public safety, the public order, health, or morality.[51] Freedom of conscience and religious belief are defined in the constitution as individual human rights. However, they also relate to collective points of view, since believers may freely associate with religious communities. The freedom of religious association is embodied in the right of peaceful assembly; participation in public meetings and free association with others applies to religious communities as well as *sui generis* associations (art. 42).[52]

Other constitutional provisions should also be mentioned. For example, art. 63 of the constitution forbids the incitement of religious discrimination, hatred, or intolerance. Arts. 46 and 123 recognise the right to conscientious objection, based on religious, philosophical, or humanitarian convictions.[53] Art. 46 states that the right of 'conscientious objection shall be permissible in cases provided by law where this does not limit the rights and freedoms of others'[54]. Outside the arena of national defence, conscientious objection is also permitted in the field of medicine, where a medical worker may refuse any medical intervention (except in cases where urgent medical assistance is required) that violates his or her conscience or the international rules of medical ethics[55] (see the Law on the Medical Profession).

In addition, art. 16 ensures that the state cannot, even in a state of emergency, suspend or restrict the free functioning of churches, their equality, or their separation from the state.

It is hard to ascertain whether the aforementioned values and principles meet the standards set by the ECtHR, in relation to the protection of religious symbols in Slovenia. Prior to the S.A.S.[56] judgement, the answer would have been that reli-

49 Finke, 2013, p. 310.
50 Kaučić, 2002, p. 400.
51 Kaučić, 2002.
52 Kaučić, 2002, p. 401.
53 See also in Črnič and Lesjak, 2003, p. 352.
54 Today, conscientious objection is allowed by statute in only two areas: state defence and medical operations. Črnič and Lesjak, 2003.
55 Kaučić, 2002, p. 401.
56 Application no. 43835/11.

gious symbols are neither protected nor unprotected. As in most European states, the regulation of religious symbols is ambiguous. After the S.A.S. judgement, it is difficult to ascertain the ECtHR's future position on the use of religious symbols in public.

4. The model of relations between the state and the church

In both theory and practice, three general models of church-state relations have been identified: 1. The state or national-church model; 2. The cooperative or concordat model; and 3. The strict separation of church and state model (the separation model).[57]

Of course, these three are not the only 'pure' models. For example, they can be elaborated and combined into the following six models of church-state relations: 1. Aggressive animosity between church and state (communist regimes); 2. Strict separation in both theory and practice (France); 3. Strict separation in theory but not in practice (USA); 4. Separation and cooperation (FR Germany); 5. Formal unity, but with substantial divisions (UK, Denmark, Israel, Norway); and 6. Formal and substantial unity (IR Iran, Saudi Arabia—where Islamic communities and the state are substantively unified).[58]

One crucial question is whether state and religion are separated in all of the models above. Is the state secular in all of these models? Clearly, these questions are particularly relevant when discussing systems of state or national churches. Indeed, can it be said that the state or national-church model implies a secular state or allows any form of secularism? However, some studies have found a weak correlation between the existence of an official religious belief and actual state policy.[59] To illustrate this point, we may cite Brugger's church-state relationship model of 'formal unity, but with substantial division' in which there is no formal separation of church and state, but the two are anything but unified in practice.[60]

Based on the criterion of separation, Fox sets out a basic model and three additional models of church-state relations. The basic model is divided into the separation-of-church-and-state model and the secularist-laicist model. At the basic level, the difference stems from constitutional texts, as some constitutions declare that the state is secular or lay, while claiming a separation between church and state.[61]

57 Sokol and Staničić, 2014, p. 44.
58 Sokol and Staničić, 2014, p. 44; Brugger, 2007, p. 31.
59 Fox, 2011, p. 384.
60 Staničić, 2019a, p. 11.
61 Staničić, 2019a, p. 12.

In the first basic model, the system of separation symbolises state neutrality towards religion; the state, at least officially, neither favours a particular religion, nor limits the presence of religion in the public sphere. The second basic model reflects a laicist system, in which the state not only refuses to support any religion but also limits the presence of religion in the public sphere. The three additional models clearly reveal the differences between the approaches to secularism discussed by Fox.[62]

The first additional model represents the absolute separation of church and state, in which the state neither supports nor interferes with any religion. According to Fox, this model is the most extreme because it allows no state interference in religion or vice versa. The second is a neutral political model, in which the state, through its activities, does not support or impede any life plan or lifestyle; state activities are therefore neutral. In this model, the state may restrict or support religious freedoms, as long as the outcome is the same for all religions. The third model excludes ideals, barring the state from justifying its activities based a preference for any specific lifestyle. This model is focused on intent rather than outcome. Within this model, different religions can be treated differently, as long as there is no specific intention to support or obstruct a particular religion.[63]

The Slovenian model of church-state relations was established by art. 7 of the constitution. In Slovenian legal theory, the equality of religious communities has been, at least until mid-2000, understood by the state to be an 'undiscriminating affirmation of the whole religious field'.[64] In other words, all religious communities are equal before the law. According to Črnič and Lesjak, however, the Catholic Church understands legal equality differently—as 'relative equality'. Of course, absolute equality is impossible in real life and actual practice. Črnič and Lesjak show through examples that absolute equality would mean that a 'two-man religious community' would have exactly the same rights as the Catholic Church—or that the Catholic Church would give up certain rights so as to be treated in exactly the same way as a small religious community.[65] Some argue that the Slovene model of church-state relations can be called a 'model of separation with simultaneous cooperation' (*model ločitve ob hkratnem sodelovanju*).[66] In other words, religious communities are separated from the art. 3 separation-of-powers system and from state institutions *stricto sensu*. However, because believers are citizens with the right to vote, the restrictions on religious communities are derived from art. 7: religious communities are not allowed to organise themselves as political parties or to act within state institutions.[67] Other commentators argue that Slovenia has adopted the French model of *laïcité* and

62 Staničić, 2019a.
63 Staničić, 2019a.
64 Črnič and Lesjak, 2003, p. 362; Dragoš, 2001, p. 41.
65 Črnič, 2003, p. 363.
66 Avbelj, 2019, commentary on art, p. 7.
67 Avbelj, 2019.

that the principle of separation establishes state secularism.[68] This means that the state must not be tied to any church and cannot privilege, discriminate against, or opt for religiosity or non-religiosity.[69] According to Kaučić, in Slovenian legal theory and practice, the principle of separation between the state and religious communities is predominantly understood and interpreted as a strict and consistent separation, modelled on states with a more pronounced separation between church and state. Such a position cannot be attributed to the constitutional order; instead, this constitutional principle derives from the legal and executive derivation, in particular the influence of the previous political system.[70]

The principle of separation between church and state was previously understood in the negative sense of the church being expelled from public life. This conception was influenced by negative attitudes towards religion. For this reason, the state nowadays promotes a more positive conception of the principle of separation between the state and religious communities, as a friendly neutrality towards religious communities.[71]

The separation of the state from religious communities and—in this context—the concepts of secularism and state neutrality do not imply the forced secularisation of society by the state, antitheism, or secular indifference. They do not prevent the state from cooperating with religious communities, as long as this does not interfere with the constitutional principle of separation.[72]

Some Slovene authors even believe that the principle of separation limits itself in a modern democratic state, and is therefore unnecessary. In other words, the whole of civil society, including churches, is separated from the state, raising the following questions: 1) Does it follow from this that religious institutions and organisations must be more separated from the state than economic, recreational, cultural and educational associations are and, if so, what would this mean? Alternatively, should the state view the church in the same way that it views other civil-society institutions and associations?[73] According to Stres, a laic state (*laična država*) does not take upon itself roles that are religious by nature. For this reason, it neither threatens nor feels threatened by religion; it therefore cooperates with religion to benefit citizens and the public good.[74]

However, Slovenian authors agree that art. 7 of the constitution prescribes three principles, which define the legal position of religious communities in Slovenia: the principles of separation, the free action of religious communities, and the equality of religious communities.[75] In accordance with art. 5 of the constitution, the Religious

68 Naglič uses the term '*laičnost*' or '*laïcité*' in French. See in Naglič, 2017, p. 16.
69 Naglič, 2017.
70 Kaučić, 2002, p. 404.
71 Kaučić, 2002.
72 Kaučić, 2002, p. 405.
73 Stres, 2010, p. 484.
74 Stres, 2010, p. 489.
75 Mihelič, 2015, 1, p. 132; Naglič, 2010, pp. 491-492. See also decision U-I-92/07.

Freedom Act regulates the state's duty to respect the identity of religious communities and to uphold open and continuous dialogue with them, while developing forms of permanent cooperation. When we consider both arts. 5 and 7 of the constitution, alongside art. 41, it is clear that the constitution does not exclude religion from the public sphere, as prescribed by the earlier socialist constitutions of the Socialist Federal Republic of Yugoslavia and Slovenia, which regulated the profession of faith as *forum internum,* excluding religious communities from public life.[76] Instead, it guarantees the freedom to manifest religious beliefs, including public manifestations of faith as *forum externum*.[77]

It is said that the principle of separation is designed to establish genuine freedom of conscience and equality between individuals and religious communities. Its purpose is not to protect the state from religious or other groups and their associations, but to establish full freedom of conscience and equality for all people through a neutral stance.[78] This principle can be observed through its functional and institutional elements. Functionally, state neutrality safeguards the state and religious communities by ensuring that the state is religiously and ideologically neutral in its activities and does not identify itself with any religious or ideological community. However, state neutrality does not mean forcing religious communities to the outskirts of public life, as that would be a form of discrimination. Instead the institutional element demarcates the state, differentiating it from churches and religious and worldview groups. The principle of separation also prohibits churches from performing functions reserved to the state, based on the principle of sovereign countries. According to the Constitutional Court, reserved sovereign functions include conducting marriages, keeping registers, and issuing public documents.[79] In addition, state neutrality does not require the state to be indifferent to the religious needs of the people.

The second para. of art. 7 regulates the remaining two elements (or principles) which, in connection with state neutrality, create the principle of separation in a broader sense, substantively referring to the collective aspect of freedom of religion. The second principle is the constitutional guarantee of equality for religious communities, which obliges the state to defend all religious communities on an equal footing and, as such, is a special expression of the principle of equality (art. 14).[80] The third constitutional principle (element) is the constitutional guarantee of freedom of action for religious communities, which defends them from state interference. This guarantee defends various forms of autonomy for religious communities: the freedom

76 Avbelj, 2019. This can be seen in the communist Legal Status of Religious Communities Act (Uradni list RS, nos. 15/1976, 42/1986, 5/1990, 22/1991), which contained a provision that dealt explicitly with the separation of church and state. Thus, under the Legal Status Act, the principle of church-state separation in Slovenia means that religious communities are autonomous in their internal affairs but that public life is secular. Šturm, 2004, p. 620.

77 Šturm, 2004, p. 620.

78 Šturm, 2004, p. 620.

79 U-I-92/07.

80 Šturm, 2014, p. 620.

to establish religious communities, maintain organisational autonomy, perform religious rites, connect with other organisations or religious groups, and conduct other religious activities.[81] The autonomy of religious communities encompasses legal, administrative, and court or quasi-court autonomy (the system of resolving internal disputes), as well as institutional autonomy.[82] In addition, due to this principle, the state is free from the influence of religious communities, since no religious community is allowed to define or decide on matters under the jurisdiction of the state or political organs.[83] The state is also prohibited from forcing religious communities to organise themselves democratically, as other legal bodies are required to. It is also forbidden for the state to attempt to resolve religious disputes.[84]

All elements of the separation principle are intertwined; only in context do they enable the full implementation of the constitutional provision and the appropriate legal interpretation. If the state were to treat religious communities unequally and/or to interfere with their autonomy, it would breach its neutrality.

81 Šturm, 2014.

82 For a somewhat different view, see Dragoš, 2014, p. 172. Dragoš argues that the freedom-of-religion principle primarily involves the right to institutional autonomy, which protects religious groups from state intervention (in religious matters) and from being either privileged or discriminated against. In addition, it protects secularised public domains from interventions by (anti) religious actors.

83 The separation principle provides three kinds of prohibition or guarantee that are binding on the state, guaranteeing non-identification, neutrality, and abdication. The principle of non-identification means that the state cannot be equated with any religion or non-religious belief system (including atheism or agnosticism), be it institutional, ideological, or symbolic. Without this condition, the state would not be able to represent all citizens to the same extent, as the largest, most binding, and strongest form of organisation (holding a monopoly over the right to exercise violence). It is essential for the state to demonstrate that it does not consider any ideological, religious, or transcendental idea to be more important, appropriate, or desired than any other, as this would suggest that other ways of making sense of the world were less appropriate. As this rule applies to the state, it likewise applies to all of the state's representatives and functionaries. Dragoš, 2014, p. 173.

The second principle needed to realise the constitutional principle church-state separation is that of neutrality. Neutrality means that the state is bound to maintain an equal distance to all actors in the religious field, whether collective or individual, organised or non-organised, large or small, traditional or modern, older or more recent, 'autochthonous' or 'imported', rich or poor, powerless or influential, unorganised or internationally organised. As soon as the state attempts to practice neutrality in relation to certain religions but not others, it is no longer neutrality, but its opposite—partiality. Dragoš, 2014.

The third principle—abdication—derives from the two abovementioned principles of separation. With the state practicing non-identification and neutrality, those in power have little temptation to interfere in internal religious matters. If the state is not associated with any (non) religious communities and keeps them all at an equal distance, the main reasons for state intervention in this sensitive domain lose salience. By renouncing its right to religious interference (without renouncing other types of interference) the state relinquishes its power over the religious sphere. Religious intervention, once appropriated by the state, is now left to religious actors, who autonomously regulate their own affairs (except, of course, when offenders cite religious reasons for violating legislation). Dragoš, 2014.

84 U-I-92/07.

According to Dragoš, Slovenia has difficulty applying these principles.[85] In his view, the Catholic Church has always been privileged, except during the communist era. It maintained its privileged position in democratic Slovenia, especially after the enactment of the Religious Freedom Act in 2007. Dragoš argues that the most 'scandalous' problem is the privileged state funding of the Catholic Church,[86] prescribed by the Religious Freedom Act (see art. 27), which allows the state to cover the wages of clergy employed in hospitals, police departments, prisons, homes for the elderly, and other institutions, while offering tax exemptions to religious communities. In addition, the law allows the state to transfer 1% of a taxpayer's income tax to the religious community of his or her choice. It is hard, though, to prove that the Catholic Church is privileged, since all religious communities have equal rights under the Religious Freedom Act.

It is true that the Catholic Church enjoys the most financial gains, but this is to be expected, as it is by far the largest religious community in Slovenia. The Constitutional Court, in Decision U-I-92/07, confirmed that the state was entitled to support religious communities financially. In particular, the court said that the separation principle did not prevent the state from establishing relations with religious communities, as it would with other civil-society groups. State subsidies can therefore be given to all registered religious communities, which fit the description of organisations that support the general good. The Constitutional Court's interpretation of the principle of separation has evolved over time.[87] Initially, the court maintained that this principle required the state to be neutral, tolerant, and not to express opinions on religion.[88] Later, the court broadened its interpretation,[89] claiming that the principle of separation primarily concerned the autonomy of religious communities (in their own sphere), the secularisation of public life, and the neutrality of the state towards religious communities. The question of neutrality was further explored in the Constitutional Court opinion (Rm-1/02) on the constitutionality of the Treaty with the Holy See, in which the court said that the separation principle prohibited the state from identifying with any religious or other belief, establishing a state religion, or promoting/prohibiting any ideological beliefs.[90] It is important to note that the court explicitly emphasised the primacy of Slovene law over canon law.[91]

85 According to Dragoš, the Religious Freedom Act today represents 'the biggest deviation from the principle of separation'. It was enacted when a coalition of right-wing political parties was in power and adopted the Religious Communities Act that is currently in force'. Dragoš, 2014, p. 175. It is true that the law was passed with a one-vote majority. Naglič argues that, in the practice of the Constitutional Court, the state is not allowed to support religious communities because of the principle of state neutrality. See in Naglič, 2017, p. 17. However, Naglič notes that the constitution allows clergy to be paid for administering spiritual care to the faithful in hospitals. Naglič. 2017, p. 18.

86 Dragić, 2014, p. 183.

87 Ivanc, 2015, p. 47.

88 U-I-68/98.

89 U-I92/01.

90 Ivanc, 2015, p. 47.

91 Lesjak and Črnič, 2007, p. 71.

However, this principle also prevents the state from influencing religious matters or the internal organisation of religious communities.

The principle of separation does not prevent religious communities from freely pursuing activities in their own sphere. If the activities of the state and religious communities collide, their competence must be delimited through the internal sovereignty of the state, which must set limits without preventing religious communities from pursuing social activities.[92] Stres concludes that the separation of church and state (in the spirit of European political culture) requires more than simply preventing authorities from using religion for their own purposes and religions from abusing the state to achieve their own objectives.[93]

The practice of cooperation began in 1992, when the government appointed a mixed committee to hold a dialogue between the state and the Catholic Church.[94] Although the government founded its own Office for Religious Communities in December 1993, it has continued holding separate discussions with representatives of the dominant Catholic Church.[95] Certain provisions of the 1976 Law on Religious Communities were repealed, churches were granted the right to establish schools, and the (Catholic) Faculty of Theology was reintegrated into the University of Ljubljana.[96] However, the status of religious communities was regulated primarily through an outdated relic from the communist era—the 1976 Legal Status of Religious Communities Act.[97] This Act was clearly obsolete in Slovenia's new social context, as shown by the fact that religious communities found a place in public life, despite the legal prescription that faith was a private affair.[98] Although religious communities had to be registered, those that did not were not penalised. Only rudimentary data were required for registration, and religious communities were defined as legal persons under civil law. Legal personhood was obtained by applying to the Commission of the Republic of Slovenia for Relations with the Religious Community (known today as the Office for Religious Communities).[99]

Moreover, in 2001, the Republic of Slovenia entered into an international treaty with the Holy See on the legal position of the Catholic Church in Slovenia (signed on 14 December 2001). This Treaty on Legal Issues[100] was ratified by the Parliament in 2004. It is said that the state restricted itself, while the Catholic Church gained an international document to enforce its inviolability.[101] It is interesting to note that the first agreement between the state and religious communities in Slovenia was the

92 Ivanc, 2015, p. 47.
93 Stres, 2010, p. 492.
94 Črnič and Lesjak, 2003, p. 262.
95 Črnič and Lesjak, 2003, p. 262.
96 Črnič, et al., 2013, p. 217.
97 Uradni list SRS, nos. 15/76, 42/86 and Uradni list RS, no. 22/91.
98 Mihelič, 2015, p. 133; See also Lesjak, Lekić, 2013, p. 155.
99 Lesjak, Lekić, 2013, p. 155.
100 Uradni list RS-MP, no. 4/04.
101 Mihelič, 2015, p. 134.

2000 Agreement on the Legal Status of the Evangelical Church in the Republic of Slovenia (signed on 25 January 2000).[102]

There are additional agreements between the Republic of Slovenia and various religious communities:

1. The Agreement between the Slovenian Bishops' Conference and the government of the Republic of Slovenia on Spiritual Care for Military Persons in the Slovenian Army (signed on 21 September 2000),
2. The Agreement between the Evangelical Church in the Republic of Slovenia and the government of the Republic of Slovenia on Spiritual Care for Military Persons in the Slovenian Army (signed on 20 October 2000),
3. The Agreement on the Legal Status of the Pentecostal Church in the Republic of Slovenia (signed on 17 March 2004),
   The Agreement on the Legal Status of the Serbian Orthodox Church (signed on 9 July 2004).
4. The Agreement on the Legal Status of the Islamic Community in the Republic of Slovenia (signed on 9 July 2007),
5. The Agreement on the Legal Status of the Dharmaling Buddhist Congregation (signed on 4 July 2008).[103]

In 2007, Slovenia's parliament passed the Religious Freedom Act[104] with a one-vote majority (46/90).[105] Although preparations began in 1998, political problems held up work on the new legislation until 2007.[106] The Constitutional Court sanctioned the Act, in accordance with the constitution; this important decision (U-I-92/07) went into effect on 15 April 2010.[107] Through this decision, the court established individual and collective ways to realise freedom of religion. To exercise religious freedom, either individual or collective, it is important to distinguish between positive and negative aspects. The positive aspect of freedom of religion includes visible practices that are significantly related to an individual's religious beliefs. By contrast, the negative aspect of religious freedom is the right to hold no religious beliefs, and the option to not join a religious community.[108]

According to the court, an individual's perception of religious practice must not involve a confrontation with religious beliefs, if that will encroach on negative religious freedom. Examples include a mandatory oath on the Bible for people attending a political function, crosses in classrooms, and prayers and blessings at public-school

102 See in Ivanc, 2015, p. 44.
103 See in Ivanc, 2015, pp. 44, 45.
104 Uradni list RS, nos. 14/07, 46/10, 40/12, 100/13.
105 According to Lesjak and Lekić, the Act was passed through the votes of Italian and Hungarian minorities (2013, p. 158).
106 Lesjak and Lekić, 2003, p. 156.
107 This decision is analysed in detail in Naglič, 2010, pp. 483–493.
108 Naglič, 2010, p. 486.

graduation ceremonies.[109] The state is prohibited from deciding on matters that concern religious doctrine or the internal autonomy of religious communities; requiring a commitment to religious issues; rewarding or punishing acts that constitute a profession of religion; discriminating against human rights and fundamental freedoms; or privileging or neglecting individuals because of their religion.[110]

The impact of the Religious Freedom Act on the Slovenian model of church-state relations was huge; it marked a sharp turn in practice and legislation. Prior to its enactment, Slovenia was rightly portrayed as a country that mirrored the French *laïcité* model of church-state relations, which insists on state neutrality. After the enactment of the Religious Freedom Act in 2007, Slovenia underwent a huge change, embracing another model of church-state relations—the cooperation model—in which state neutrality did not have the same significance as in the earlier model. Moreover, according to the Religious Freedom Act, the state was obliged to enter into relations with various religious communities. However, the state entered into relations with religious communities prior to the enactment of the Religious Freedom Act (three agreements in the early 2000s), suggesting that the Slovene model of church-state relations was never really one of *laïcité*.

5. Constitutional guarantees of freedom of conscience and religion

Three main provisions of the Constitution of the Republic of Slovenia are important for freedom of conscience and religion: arts. 7, 14, and 41. The constitution guarantees other rights pertaining to religious exercise: (1) freedom of conscience, (2) the right of conscientious objection, (3) the right to peaceful assembly and free association, and (4) freedom from discrimination. Two other constitutional provisions prohibit discrimination on the basis of religion (arts 41 and 63).[111]

Art. 7 is included among the general provisions of the constitution; it explicitly regulates church-state relations in Slovenia. The fact that this article, which was designed to regulate church-state relations, appears so early in the 1991 constitution, shows that it is one of the basic legal and political principles underpinning the Slovenian state.[112] It provides the most important institutional guarantees to religious communities, as follows:

(1) The state and religious communities shall be separate.

109 Naglič, 2010, p. 487.
110 Naglič, 2010.
111 Šturm, 2004, p. 612.
112 Šturm, 2004.

(2) Religious communities shall enjoy equal rights; they shall pursue their activities freely'.[113]

The nature of art. 7 is programmatic and procedural, in relation to the description of freedom of religion in art. 41 of the constitution.[114] According to Naglič, freedom of religion must be the basis for legal regulations of the status of churches (religious communities). This status must not be based pragmatically on political, economic, or similar premises.[115]

Art. 14 represents the constitutional principle of equality before the law; it reads as follows:

> In Slovenia, everyone shall be guaranteed equal human rights and fundamental freedoms, irrespective of national origin, race, sex, language, religion, political or other convictions, material standing, birth, education, social status, or any other personal circumstance. All are equal before the law.[116]

art. 41 regulates the freedom of religion and belief; it reads as follows:

> (1) Religious and other beliefs may be freely professed in private and public life.
> (2) No one shall be obliged to declare religious or other beliefs.
> (3) Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions.[117]

Freedom of religion and other beliefs is a special form of freedom of expression (art. 39 of the constitution), freedom of association (art. 42 of the constitution) and right to private life (art. 35 of the constitution).[118] This right protects convictions and beliefs in the field of ethics and morality, especially all theistic, atheistic and non-theistic beliefs; worldview convictions, e.g. philosophical or ideological theories and thought systems that explain man, his being, and the world in which he resides.[119] As Ivanc notes, this provision broadly protects the freedom of self-definition, referring not only to religious beliefs but also to moral, philosophical, and other worldviews. It guarantees freedom of conscience and a person's right to have no religious or other beliefs (the right to be free from religion) and not to manifest such beliefs.[120] It also

113 Translation by Ivanc, 2015, p. 42.
114 Naglič, 2017, p. 9.
115 Naglič, 2017.
116 Translation by Ivanc, 2015, p. 43
117 Ivanc, 2015.
118 Avbelj, 2019, p. 398.
119 Avbelj, 2019.
120 Ivanc, 2015, p. 41.

gives parents the right to influence their children's upbringing in accordance, with their beliefs.[121]

Freedom of conscience in the Republic of Slovenia resists limitation, encompassing both positive and the negative entitlement.[122] Freedom of religion is implemented individually and collectively. Collectively, individuals have the right to establish churches. Churches (religious communities) have the right to internal autonomy and the internal position of the faithful.[123] Every member of a religious community has the right, in accordance with his or her beliefs, to profess religious teachings and perform religious practices.[124] In Slovenian legal literature, there is also a consensus that freedom of religion has two faces (levels): a positive level that allows people to profess their faith publicly, and a negative level allows for freedom from religion. The first and the second paragraphs of art. 7 include a positive and negative entitlement. They include both the freedom of thought (i.e. to shape and change convictions) and the freedom of manifestation (i.e. to profess or express) such convictions in private and public life.[125] Any use of force to coerce someone into making a declaration would amount to interference in that individual's integrity and thus a denial of his or her freedom of belief. It follows from this freedom that an individual may be a member of any religious community or belong to none and cannot be prevented from joining or abandoning any religious community.[126]

Freedom of religion also requires positive measures from the state to ensure the effective exercise of human rights and fundamental freedoms. As the state must ensure that individuals are not confronted with unwanted religious beliefs, religious education cannot be obligatory. The state must build and ensure tolerance among members of different religions to prevent unjustified discrimination on the basis of religion, establish a framework for acquiring legal subjectivity for religious communities, and, in special circumstances (for example, in the army or prisons) provide access to religious care.[127] In such cases, the state must allow individuals to perform individual acts of a religious nature (e.g. individual use of religious symbols), provide access to priests and books with religious content, and allow religious rites to be performed.[128]

121 This provision protects the freedom of self-definition, referring not only to religious beliefs but also to moral, philosophical, and other worldviews. The article includes three provisions: (1) positive entitlement, or the assurance that '[r]eligious and other beliefs may be freely professed in public and private life'; (2) negative entitlement, or a person's right to *not* have or manifest any religious or other beliefs; and (3) the parent's prerogative, or the right of parents 'to provide their children with a religious and moral upbringing, in accordance with their beliefs'. Šturm, 2014, p. 612.

122 Šturm, 2014, p. 613.

123 See U-I-111/04, U-I-92/07.

124 Naglič, 2017, p. 11.

125 Kaučić, 2002, p. 400.

126 Kaučić, 2002.

127 Kaučić, 2002, p. 488.

128 Kaučić, 2002 See also arts. 22–25 of the Religious Freedom Act.

6. Guarantees based on other sources of universally binding law

Here, it is important to highlight the Treaty with the Holy See. Art. 2 of this Treaty acknowledges the legal personality of the Catholic Church, including the legal personality of all territorial and personal church institutions that reside in Slovenia and enjoy(ed) legal personality under canon law norms (section 2). This does not mean that the Catholic Church is a public-law person because that would violate the constitution (principle of equality), but that it is a legal person in civil law *sui generis*.[129] The legal order of the Republic of Slovenia guarantees the Catholic Church freedom of activity, worship, and catechesis. All extraordinary public services and other public religious gatherings (e.g., pilgrimages, processions, meetings) shall be reported by the competent authority of the Catholic Church to the competent national body, in accordance with the legal order of the Republic of Slovenia (art. 3).

The church authority is only able to establish, alter, and cancel church structures, in particular, church regions (archdioceses, dioceses, apostolic administrations, personal and territorial prelacies, abbeys), monasteries, parishes, and institutes of consecrated life, and societies of apostolic life. No diocese of the Catholic Church in the Republic of Slovenia is permitted to occupy a territory outside the borders of the Republic of Slovenia and no part of the territory of the Republic of Slovenia can belong to a diocese based outside the Republic of Slovenia (art. 4). Legal entities of the Catholic Church, based in the Republic of Slovenia, may, pursuant to the legislation of the Republic of Slovenia, acquire, own, exploit, and dispose of real estate and movable property; they can also acquire or waive title rights and other rights *in rem* (art. 9).

In accordance with the legislation of the Republic of Slovenia and canon law, the Catholic Church is entitled to establish and manage schools of all types and levels, secondary schools, university halls of residence, and other educational institutions. The state supports the institutions referred to in the previous paragraph, under the same conditions that apply to similar private institutions. Secondary-school and university students and the pupils of these institutions are equal in status to secondary-school and university students and the pupils of public institutions (art. 10). The state and local authorities are obliged to maintain cultural monuments and other cultural properties and archives owned by the church (art. 11). The Republic of Slovenia allows individuals to observe religious freedom in hospitals, nursing homes, prisons, and other institutions that hinder the free movement of residents. The Catholic Church is entitled to provide pastoral activities in these institutions, in accordance with the relevant laws regulating this issue (art. 12).[130]

129 Mihelič, 2015, p. 135.
130 The English translation is available at: https://bit.ly/3CuApGc.

According to art. 4 of the Religious Freedom Act, the state is neutral in matters of religion; at the same time, art. 4 differentiates between churches and other religious communities in the context of the Slovenian legal order; art. 5 defines churches and religious communities as 'organisations of general benefit'.[131] Art. 29 stipulates that the state can provide material support to religious communities because of the 'general benefit' they provide. To register, a religious community must have at least ten members who are of age and Slovenian nationals or aliens with registered permanent residence, according to art. 13.[132]

The state acknowledges that the impressive archive of the Catholic Church represents an important aspect of Slovene culture.[133] For this reason, the archives of the Catholic Church have special legislative regulations.[134] The state provides financial support to the Archiepiscopal Archives of Maribor and the Diocesan Archives of Koper.[135] Regardless of state funding, however, the use of religious symbols is naturally permitted in Church archives. Of course, there are numerous religious symbols in public places, as there are at least 2,880 objects intended for worship in Slovenia, and religious motives are omnipresent in the arts.[136]

The presence and use of religious symbols in the media is not affected, since art. 39 of the constitution guarantees freedom of expression. Every Sunday, Slovene television broadcasts the religious series 'Obzorja duha' and a Sunday mass. It even has a special editor for religious programs.[137] Furthermore, religious communities can freely establish their own public media, using religious symbols as they choose. According to art. 2, sect. 3 of the Media Act, bulletins, catalogues, and other media that publish information about churches and other religious organisations exclusively are not considered public media. The same act prohibits the dissemination of program content that encourages, inter alia, religious or other types of hatred and intolerance (art. 8).[138] The Catholic Church has established a radio station and several TV channels. It is relevant to mention that, due to art. 17 of the Radio and Television of Slovenia Act,[139] the President of the Republic must appoint two members proposed by registered religious communities to the program board. It is clear that religious communities have access to television and radio, as some of their religious symbols can be seen on television and heard on the radio.

Constitutional protection of the right to religious freedom includes providing religious assistance to people who work, live, or are held in various types of public

131 Črnič, et al., 2013, p. 217.
132 The original art. 13 stated that, to be registered, a religious community had to have been operating in Slovenia for at least 10 years and to have at least 100 adult members.
133 Ivanc, 2015, p. 168.
134 See art. 52 of the Protection of Documents and Archives and Archival Institutions Act, Uradni list RS, no. 30/06, 51/14.
135 Ivanc, 2015, p. 168.
136 Ivanc, 2015, pp. 170, 172.
137 Ivanc, 2015, p. 176.
138 Ivanc, 2015, p. 177.
139 Uradni list RS, nos. 96/05, 9/14.

institutions.[140] They are entitled to personal religious items (including books[141]) and public religious rites in those institutions. According to the Religious Freedom Act, these institutions are the Army (art. 22), police (art. 23), prisons (art. 24), and hospitals and social welfare institutions (art. 25). Also, under the Defence Act, all members of the Army enjoy the right to religious spiritual assistance during their military service.[142] The general principles of religious assistance in public institutions are also regulated by other statutes, including the Police Act, Defence Act, Law on Military Service Act, Patients' Rights Act, and Enforcement of Penal Sentences Act.[143] For example, religious spiritual care in the Slovenian Armed Forces is organised by the Military Vicariate, which operates within the General Staff of the Slovenian Armed Forces.[144]

The use of religious symbols in public spaces, apart from public schools, is not regulated in any way through formal legislation. As can be seen *infra*, it is not customary to display religious symbols in public, as this is seen as a breach of state neutrality.

7. The limits of religious expression through religious symbols

As stated *supra*, there is no formal regulation of the use of religious symbols in the public sphere in Slovenia, except in the case of religious symbols in public schools and kindergartens. Even this regulation is implicit, not explicit.

There are no specific provisions in public-school law concerning religious symbols or religious garments at public schools. The statute deals with religious elements within the overall framework of working conditions for teachers and other staff.[145] Art. 72 of the Education Act prohibits organised religious rites in public schools and does not address any other matters related to the religiously motivated behaviour of pupils, teachers, or staff.

However, in the case of Jarc et al. (November 2001), No. U–I–68/98, the court reviewed the question of whether the provisions of the Education Act interfered with the positive aspects of freedom of religion, the principle of equality, parental rights, or the right to free education. Initially, the court declared that the general prohibition on denominational activities in public schools was not inconsistent with the constitution or the European Convention. The only constitutional inconsistency was

140 Šturm, Ivanc, 2019, p. 557.
141 Ivanc, 2015, p. 186.
142 Šturm, Ivanc, 2019, p. 557.
143 Ivanc, 2015, p. 186.
144 Ivanc, 2015, p. 189.
145 Ivanc, 2011, p. 461.

the prohibition on denominational activities in licensed kindergartens and private schools, in relation to denominational activities taking place outside the scope of valid public programs financed through state funds.[146]

The court instructed the National Assembly to remedy this inconsistency within one year. The legislature consequently changed art. 72 of the Education Act, allowing licensed kindergartens and schools to carry out denominational activities that did not involve public services.[147]

According to Stres, religious symbols find themselves in different public spaces because of their cultural and religious importance. Modern lay people tend to expel them from this space more or less violently.[148] However, the problem of religious symbols in public institutions does not exist in Slovenia because there are simply no such symbols, although they do exist in schools, as discussed above.

Stres notes that religious symbols are formally excluded by Slovenian legislation. Art. 72 of the Organisation and Financing of Education Act states:

> Activities, not related to upbringing and education, may be carried out in public kindergartens or schools only with the permission of the principal. Political parties and their members are prohibited from operating kindergartens and schools. In public kindergartens and schools and those with a concession, confessional activities are not allowed.

According to Stres, confessional activity encompasses the following: religious or confessional instruction, with the aim of educating children in a particular religion; lessons on content, textbooks, teacher education, and the suitability of individual teachers, as decided by the religious community and organised religious rites.[149] In this way, religion is completely expelled from one public space—schools.[150] It is true that art. 72, para. 5 of the Education Act allows an exemption from this strict rule; the minister may, under exceptional circumstances, allow the catechism or confessional religious teaching on the premises of a public kindergarten or school outside school hours, if there is no other suitable venue in the local community for the activity. In practice, when a public school does not have enough space (due to the large number of pupils, a natural event, or a fire, for example), church premises are used for public education.

146 Ivanc, 2011, p. 462.
147 Ivanc, 2011.
148 Stres, 2010, p. 490.
149 Stres, 2010, p. 491.
150 Stres mentions an interesting example, showing that the complete removal of religion from schools was taken to an extreme. In one case, a school was being renovated and classes were supposed to be held in church premises. There was a cross on the wall, which the pastor (*župnik*) refused to remove. The classes were moved elsewhere. ibid., p. 491. Šturm and Ivanc also note that, while the legislation does not specifically discuss the presence of a crucifix or cross in school, these symbols are prohibited in practice because they violate the principle of separation. Šturm and Ivanc, 2019, p. 552.

According to Šturm, based on an understanding of the freedom of religion and the freedom of the group of religious communities, the court placed the Republic of Slovenia at the extreme edge of the group of European countries with unfriendly or intolerant models of separation.[151]

It is true that extreme laicism makes negative religious freedom absolute, demanding the withdrawal of all private religious symbols.[152] However, when the Constitutional Court decided on the constitutionality of the Religious Freedom Act, it argued that negative freedom had no *a priori* advantage over positive freedom if the two came into conflict. This means that the rights of unbelievers (not to be confronted with religious beliefs or symbols) do not always or automatically take precedence over the positive religious freedom of believers to profess their faith and testify to it publicly.[153]

The right to religious assistance in public institutions guarantees a priest free access to the institution (with the right to perform his work undisturbed and to visit members of the faith); participation in religious ceremonies organised in the institution; and access to books with religious content and instructions.[154] However, the court found that hiring religious servants to work in public institutions (apart from the army and police) was unconstitutional. It quashed the corresponding provisions of the Freedom of Religion Act, which legal theorists criticised as unconvincing.[155] It is obvious that, as a general rule, Slovenia prefers to keep religion, including the use of religious symbols, out of public institutions. There are no legal norms to limit the use of religious symbols in the workplace, social networks, or on the Internet. Of course, the promotion of religious hatred is prohibited by the constitution and other laws. An analysis of the available data suggests that the position of religious symbols in the public sphere is not really an issue in Slovenia.

8. The system of legal protection

According to Slovene authors, the Constitutional Court has a friendly stance towards religious communities.[156,157] For example, churches and religious communities

151 Šturm, 2002, p. 139.
152 Stres, 2010, p. 492.
153 Stres, 2010.
154 Šturm, Ivanc, 2019, pp. 557, 558.
155 Ivanc, 2015, p. 193.
156 Stres, 2010, p. 491.
157 For example, the court found that the Military Service Act was not consistent with the constitution, insofar as the Act allowed a person to claim the right of conscientious objection at the point of conscription but not later. U-I-48/94 (25 May 1995), Uradni list RS, no. 37/95. See also Šturm, 2002, p. 124.

have been recognised as universally beneficent institutions.[158] The Slovenian Constitutional Court has also argued that churches and religious communities perform an important function in society.[159]

There have been no cases involving the use of religious symbols in public institutions. Slovene legal scholars note that the Constitutional Court has created a set of rules to regulate freedom of religion and church-state relations.[160] According to Šturm, a modern, free democratic state system establishes individual freedom as a fundamental human right. Even questions about what to believe, one of the deepest human choices, are answered by the individual and not the state. All are equal in this freedom. For these two reasons, the state no longer identifies with a particular religious or other belief. However, to ensure the peaceful coexistence of individuals and to preserve the foundations of the social order, the state may intervene in the religiously motivated decisions of individuals when necessary. If individuals are equivalent in their religious or other beliefs, state restrictions cannot do more to support freedom of belief than prevent people from feeling excluded and neglected, from an objective observer's point of view. The more direct the link between particular behaviours and beliefs, the less the state may interfere. Prohibiting neutrality and any interference with individual freedom is therefore a key duty of the state.[161]

Content of the right

At the constitutional level, Slovenia determines each citizen's right to defend the state in a way that does not conflict with his or her views. Prohibiting the promotion of religious discrimination and the incitement of religious hatred and intolerance is the fourth aspect of freedom of religion. This prohibition covers direct and indirect discrimination. (U-I-92/07)

Approach to realizing freedom of religion

For the Constitutional Court, it is important to distinguish between positive and negative levels of individual and collective freedom of religion. The positive level includes the right to hold a religious belief and connect with a church. An individual may profess religious beliefs freely, alone or with others, publicly or privately through instruction, fulfilling religious duties, worshiping, or performing religious rites.

Individual religious freedom covers oral or written and private or public expressions of faith, including prayer and the dissemination of religious ideas. The actions

158 See U-I-107/96 (5 Dec. 1996), Uradni list RS, no. 1/97, U-I-121/97 (May 23, 1997), Uradni list RS, no. 34/97.

159 U-I-326/98 (Oct. 14, 1998), Uradni list RS, nos. 67/98, 76/98.

160 See in Naglič, 2010, 2017. His analysis of court practice is used in this part of the paper.

161 Šturm, 2002.

associated with belief, such as compliance with religious rules (e.g., worship, rituals, processions, the use of religious clothing, and symbols) are also protected. Positive aspects of freedom of religion include outwardly perceptible behaviours that are significantly related to individual religious beliefs. Negative aspects of freedom of religion include the right to have no religious belief or church association. No individual is obliged to have faith or to speak about religious themes. As a result, no one can be punished, discriminated against, or overlooked for lacking religious faith. Individuals have the right to refuse to participate in practices that constitute the exercise of religion and cannot be forced to identify with a religion (U-I-92/01).

The relationship between positive and negative rights

For the reasons explained above, negative aspects of freedom of religion are not violated as long as the state preserves an individual's freedom of choice and does not require him or her to act in a religious way or express particular beliefs, taking into account the age and maturity of the person. However, the position that religion is *a priori* harmful and causes personal, family, or social differences reflects an intolerant attitude towards freedom of religion. The state is obliged to treat all religious communities equally. (U-I-68/98)

Obligations of the state

Freedom of religion also requires the state to take positive action. According to the constitution, individuals must be given the opportunity to exercise their human rights and fundamental freedoms. State support must allow them to exercise those rights effectively, in part by preventing any forced (unwanted) confrontations with religious beliefs. The government must also build and ensure tolerance among followers of different religions, preventing discrimination between individuals on the basis of religion, for example in employment, where this may be difficult, due to the nature of different kinds of jobs.

The state has special obligations in certain special circumstances and contexts, such as the military, prisons, and hospitals. In these cases, it must make it possible for people to conduct activities of a religious nature (e.g. by using religious symbols), access priests and books with religious content, and perform religious rites as individuals. (U-I-92/07)

The state is neither obliged to support and encourage the activities of religious communities, nor to refuse to support or assist them, as long as the principle of equality is upheld (Rm-1/02)

Religious education and religious symbols

Religious content must not be obligatory for all pupils in schools (U-I-92/07). According to the Constitutional Court, religious symbols are not permitted:

> Furthermore, the interference with the positive aspect of freedom of religion cannot be considered inappropriate as thereby the forced confrontation of non-religious persons or persons of other denominations with a religion they do not belong to can be prevented. This interference is also proportionate, in the narrow sense of the word, in so far as it relates to the prohibition of denominational activities in public kindergartens and schools. These are namely public (State) institutions financed by the State and are as such the symbols which represent the State externally and which make the individual aware of it. Therefore, it is legitimate that the principle of the separation of the State and religious communities and thereby the neutrality of the State be in this context extremely consistently and strictly implemented. Considering the fact that a public kindergarten or a public school do not represent the State only in carrying out their educational and upbringing activities (public services) but also as public premises, the principled prohibition of denominational activities does not constitute an inadmissible disproportionality between the positive aspect of the freedom of religion and the rights of parents to raise their children in accordance with their religious persuasion on one hand and the negative aspect of freedom of religion on the other hand. In the event that denominational activities cannot be carried out in a local community due to the fact that there are no other appropriate premises.

Art. 72.5 of Education Act envisages an exception from the general prohibition against denominational activities in public schools or public kindergartens. Thus, the statutory regulations are consistent with art. 41 of the constitution and art. 9 of EKČP.[162] However, the passage above does not apply to private schools and/or kindergartens. According to the court:

> …he interference with the positive freedom of religion and the rights of parents determined in Art. 41.3 of the Constitution is not proportionate in the narrow sense of the word in the part relating to licensed kindergartens and schools outside the scope of performing a public service. In this respect the adjective "public" does not refer to an institution as a premises, nor does it refer to an entire activity, but only to that part of the activity that the State finances for carrying out a valid public program. The principle of democracy (Art. 1 of the Constitution), the freedom of the activities of religious communities (Art. 7.2 of the Constitution), the positive aspect of freedom of religion (Art. 41.1 of the Constitution), and the right of parents to bring up their children in accordance with their personal religious beliefs (Art. 41.3 of the Constitution), impose on the State the obligation to permit (not force, foster, support or even prescribe as mandatory) denominational activities on the premises of licensed kindergartens and schools outside the scope of the execution of a valid public program financed from State funds. This is all the more so as there are milder measures that ensure the negative aspect of the freedom of religion. In reviewing proportionality

162 The English translation is provided by the Constitutional Court: https://bit.ly/3Ct1Ccm.

> in the narrow sense we must weigh in a concrete case the protection of the negative aspect of the freedom of religion (or freedom of conscience) of non-believers or the followers of other religions on one hand against the weight of the consequences ensuing from an interference with the positive aspect of freedom of religion and the rights of parents determined in Art. 41.3 of the Constitution on the other. There is no such proportionality if we generally prohibit any denominational activity in a licensed kindergarten and school. By such prohibition the legislature respected only the negative freedom of religion, although its protection, despite the establishment of certain positive religious freedoms and the rights of parents to provide their children a religious upbringing, could as well be achieved by a milder measure.[163]

9. Conclusions

Freedom of religion includes the right to freely profess one's religious beliefs. This, of course, includes the uncontroversial right to use religious symbols in private. However, the use of religious symbols in public is a hotly debated issue, with some people arguing that religious symbols are never acceptable in public because they can alienate people.[164] This paper analyses options for using religious symbols in the public sphere, which is under the jurisdiction of the state.

As discussed above, the Slovenian model of church-state relations leans towards the French model of *laïcité*; until the enactment of the Religious Freedom Act in 2007, the emphasis was on state neutrality. This is why Slovenia is one of the few European states that do not allow religious education in public schools. Based on the wording of the Education Act, professions of religion are prohibited in public schools, although the display of religious symbols is not explicitly prohibited. The consensus among most Slovene scholars is that the display of religious symbols breaches the duty of the state to be neutral towards religion.

A similar conclusion can be reached on the display of religious symbols in Slovenian public institutions, where religious symbols cannot be displayed. However, the state must allow religious people in particular circumstances (soldiers, the police, prisoners, and sick and elderly people) to access religious assistance. In practice, this can mean turning a prison space into a church or a place for worship, which clearly cannot be done without the display of religious symbols. Thus, state neutrality does not prohibit the display of religious symbols altogether.

Under art. 2, para. 2 of the Religious Freedom Act, the state must guarantee the smooth exercise of religious freedom. This can be construed to include the right to display religious symbols at work, in schools, and in other public spaces. In fact, no

163 The English translation is provided by the Constitutional Court: https://bit.ly/3nQmBBx.
164 As a reference point, see the S.A.S. v. France judgement on the ECtHR.

legal norm explicitly prohibits the display of religious symbols. The ECtHR has also confirmed that displaying a cross in a public-school classroom does not violate the Convention.

There are thus two possible interpretations of art. 41, taken in conjunction with art. 7 of the constitution. In the first interpretation, Slovenia is a secular state, in which neutrality is paramount; the display of religious symbols in public institutions violates said neutrality and is therefore prohibited. In the second interpretation, Slovenia's strict system of separation between church and state does not mean that religious symbols can never be displayed in public areas. According to the Constitutional Court ruling on the constitutionality of the Religious Freedom Act, negative freedom has no *a priori* advantage over positive freedom when positive and negative religious freedoms come into conflict.

This means that the right of unbelievers not to be confronted with religious beliefs or symbols does not always or automatically take precedence over positive religious freedom, which is the freedom of believers to profess their faith and to testify to it in public.[165] The right to religious assistance in public institutions guarantees that priests have free access to institutions, including the right to perform their work undisturbed and to visit members of their own religions; individuals are also allowed to participate in religious ceremonies held in the institution and to access books containing religious content and instruction.[166]

However, the court found that the employment of religious servants in public institutions (excluding the army and police) was unconstitutional, thus quashing the corresponding provision in the Freedom of Religion Act, which legal theorists had criticised as unconvincing.[167] In general, therefore, it is clear that Slovenia prefers to keep religion, including the use of religious symbols, out of public institutions. Although there is no legal or otherwise envisaged ban on religious symbols in public spaces, such as parks and squares, some authors point out that no such symbols can be seen there, apart from churches. As it is clearly difficult to ascertain whether the display of religious symbols in public schools is prohibited or not, it would be useful to regulate this issue legally. The present study argues that Slovenian legislators should choose whether to ban religious symbols from public schools and kindergartens explicitly—or to allow them—despite the ban on religious education. Like most of rest of Europe, Slovenia has no other regulations on the presence of religious symbols in the public sphere and debates about their presence are not unusual. It would be therefore be in the public interest to regulate this issue on a legislative level.

165 Stres, 2010, p. 492.
166 Šturm and Ivanc, 2015, pp. 557–558.
167 Ivanc, 2015, p. 193.

Bibliography

AVBELJ, M. (ed.) (2019) *Komentar Ustave Republike Slovenije—Del 1: Človekove pravice in temeljne svoboščine*. Ljubljana, Nova univerza, Europska pravna fakulteta.

BOŽIĆ, M. (2019) 'Neither Secular State nor Laical Republic? Legal Position of Religious Communities in Communist Yugoslavia—Legal Framework Analysis', *Pravni zapisi* 10(1), pp. 40–64.

BRUGGER, W. (2007) 'On the Relationship between Structural Norms and constitutional Rights in Church-State-Relations' in Brugger, W., Karayanni, M. (eds.) *Religion in the Public Sphere: A Comparative Analysis of German, Israeli, American and International Law*. Berlin/Heidelberg/New York: Springer.

ČRNIČ, A. (2009) 'Cult versus Church Religiosity: Comparative Study of Hare Krishna Devotees and Catholics in Slovenia', *Social Compass,* 56(1), pp. 117–135XX.

ČRNIĆ, A. ET AL. (2013) 'Religious Pluralisation in Slovenia', *Teorija in praksa,* 50(1), pp. 205–232.

ČRNIČ, A., LESJAK, G. (2003) 'Religious Freedom and Control in Independent Slovenia', *Sociology of Religion,* 64(3), pp. 349–366.

DRAGOŠ, S. (2001) 'Cerkev/država: ločitev ali razločitev' in Hvala, I. (ed.) (2001) *Država in cerkev: laična država kot jamsto*. Ljubljana: Fakulteta za družbene vede.

DRAGOŠ, S, (2014) 'The Separation between Church and State in Slovenia: A Political Fiasco' in: Ognjenović et al. (eds.) (2014) *Politication of Religion, the Power of State, Nation, and Faith, The Case of Former Yugoslavia and its Successor States*. New York: Palgrave Macmillan.

FOX, J. (2011) 'Separation of Religion and State and Secularism in Theory and Practice', *Religion State and Society,* 39(4), pp. 384–401.

FINKE, R. (2013) 'Origins and consequences of religious freedoms: A global overview', *Sociology of Religion,* 74(3), pp. 297–313.

IVANC, B., (2011) 'Religion in Public Education—Slovenia' in Robbers, G. (ed.) *Religion in Education*. Germany: European Consortium for Church and State Research.

IVANC, B. (2015) *Religion and Law in Slovenia*. Netherlands: Wolters Kluwer.

IVANC, B., ŠTURM, L. (2015), *'Slovenia'* in *Encyclopedia of Law and Religion—Europe*. Leiden, Netherlands: Brill Nijhoff.

KAUČIĆ, I. (2002) *The Principles of constitutional Regulation of Relation Between Church and state in Slovenia*. Ljubljana: SAZU.

LESJAK, G., ČRNIČ., A. (2007) 'O, Holy Simplicity! Registering a Religion in Slovenia', *Religion, State & Society,* 35(1), pp. 69–79.

LESJAK, G., LEKIĆ D. (2013) 'Država in verske skupnosti: kronika odnosov med letoma 2008 in 2011', *Teorija in praksa,* 50(1), pp. 154–171.

MIHELIČ, R. (2015) 'Posebej o pravnem statusu katoliške Cerkve v Sloveniji', *Bogoslovni vestnik,* 75(1), pp. 129–142.

NAGLIČ, A. (2017) 'Svoboda cerkva v Sloveniji', *Res Novae,* 2(2), pp. 7–32.

NAGLIČ, A., (2010) 'Svoboda vere v odločbi Ustavnega sodišča Republike Slovenije o ustavnosti Zakona o verski svobodi', *Bogoslovni vestnik,* 70(4), pp. 483–493.

SOKOL, T. STANIČIĆ, F., (2018) 'Pravni položaj Katoličke Crkve kao gospodarskog subjekta u pravu Europske unije i hrvatskom pravu', *Zbornik Pravnog fakulteta u Zagrebu*, 68(3-4), pp. 31–60.

SPARER, E. (1984) 'Fundamental human rights, legal entitlements, and the social struggle: A friendly critique of the critical legal studies movement', *Stanford Law Review*, 36(1-2), pp. 509–574.

STANIČIĆ, F. (2019) 'Does Religious Freedom Warrant Protection as a Fundamental Human Right?', *Društvena istraživanja*, 28(2), pp. 189–206.

STANIČIĆ, F. (2019a) 'A Contribution to the Debate on the Republic of Croatia as a Secular State and on the Terms Secularization and Secularism', *Pravni vjesnik*, 35(3-4), pp. 7–34.

STANIČIĆ, F. (2014) '*The Legal Status of Religious Communities in Croatian Law*', *Zbornik Pravnog fakulteta u Zagrebu*, 64(2), pp. 225–254.

STRES, A. (2010) 'Sekularno društvo, laičnost i prisutnost vjerskih obilježja i simbola u Sloveniji', *Riječki teološki časopis*, 18(2), p. 2.

ŠTURM, L., (2004) 'Church-State Relations and the Legal Status of Religious Communities in Slovenia', *BYU Law Review*, 2004/607, pp. 607–650.

ŠTURM, L., IVANC, B. (2019), 'Church and state in Slovenia' in Robbers, G. (ed.) *Church and State in the European Union*. Baden-Baden: Nomos.

ŠTURM. L. (2002) *Komentar Ustave Republike Slovenije*, Fakulteta za podiplomske državne in evropske študije, Ljubljana.

TOŠ, N. (1993) '(Non)Religiousness in Slovenia', *Occasional Papers on Religion in Eastern Europe*, 13(5), pp. 23–41.

Chapter VIII

Religious Symbols in the Public Sphere in the Case Law of the European Court of Human Rights

Michał Poniatowski

1. Introduction

The manifestation of religious symbols in public space results primarily from the will of the individual. The essence of religious freedom also includes the possibility of manifesting one's religious beliefs. The mere disclosure of religious symbols in public spaces precedes public authorities' use of religious symbols. The beginning of Christianity marks a period of martyrdom when this religion was forbidden (*religio illicita*) and when public authorities fought against it. Even before the Edict of Milan of 313 introducing religious freedom, ancient Christians used religious symbols in public spaces, such as the famous symbol of *Ichthys*. This illustrates the importance of the use of religious symbols for believers. Therefore, such use of symbols precedes state use of the symbols in public space.

The history of most modern European countries is related to Christianity. In the Middle Ages, there was even a term for the Christian community (*societas christiana*). Moreover, this notion was ahead of the very notion of nation-states, as they are understood today. It was only in the 18th century that, next to the model of a religious state, a model of a secular state appeared in the relationship between the state and religious associations. For this reason, the use of religious symbols in public space is not a novelty; on the contrary, it can be said that it is part of the tradition of many

Michał Poniatowski (2021) Religious Symbols in the Public Sphere in the Case Law of the European Court of Human Rights. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 245–272. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_8

European countries, particularly those that were or are still religious states. There are many countries where religious symbols are present even in the national flag, for example, in Switzerland[1], Slovakia, and Scandinavian countries. It is hard to find a more striking example of the use of religious symbols in public spaces, which is often a reference to a centuries-old tradition. Such symbols also appear in other countries around the world, regardless of the adopted model of the state–church relationship.[2] Of course, religious symbols also appear in other places, such as symbols of the cross in state schools and other public buildings, such as hospitals.

Bearing the above in mind, it is not surprising that religious freedom is currently guaranteed, *inter alia*, by the European Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on November 4, 1950[3], which is ensured by Strasbourg's European Court of Human Rights (ECHR) that relies thereon. This Court repeatedly resolves disputes concerning religious freedom, including matters related to the presence of religious symbols in public space, which are even more complicated as a result of pluralism in terms of the relationship between the state and the church.[4]

This paper presents selected judgments of the ECHR along with an analysis of the applied subsumption of norms in order to present general conclusions. Due to the limited framework of this study, only those judgments that synthetically refer to the issue of private and then public entities' use of religious symbols in public space are included. At this point, it is worth making a reservation that the analysis concerns religious symbols *sensu stricto*. Judgments related to religious clothing are only comparatively presented (in the case law, e.g., Islamic hijabs or Sikh turbans are treated heterogeneously as religious clothing or religious symbols in the broad sense).

The paper also discusses a few specific issues, such as the assessment of the degree of the ECHR's recognition of individual countries' legal order in the field of religious law regarding the use of religious symbols in public space. It is also interesting that the ECHR draws attention to the relationship between human rights guaranteed in the Convention and the European pluralism of the relations between the state and the church pursuant to the legal order of individual states. On the practical side, the paper highlights what type of argumentation proved to be effective in each case law.

1 The provenance of the flag of Switzerland is associated with the Battle of Laupen of June 21, 1339.

2 For example, the sign of the red cross itself is an element of the flag of such countries or dependent territories as: 1) Georgia, 2) Fiji, 3) Iceland, 4) Tonga, 5) Great Britain, 6) Saint Helena, Ascension Island and Tristan da Cunha. The red cross is also part of the coat of arms of the following countries: 1) Australia, 2) Fiji, 3) Iceland, 4) Jamaica, 5) Puerto Rico, 6) Tonga, 8) Saint Helena, Ascension Island and Tristan da Cunha. For Iceland and Great Britain, the red cross is not isosceles.

3 Hereinafter also referred to as "the Convention."

4 Many systems of these relations can be found in the doctrine in today's Europe. It seems that the most common division boils down to distinguishing between religious and secular states (both of which are further divided according to different criteria), cf. Mdina, 2020, pp. 35–48.

2. The European Convention for the Protection of Human Rights and Fundamental Freedoms in European Legal Culture

First, it should be emphasized that the Convention is not the only source of law regulating issues related to religious freedom in Europe. Both in the historical and the present aspect, religious freedom has been and is guaranteed in many normative acts, both those binding on the territory of a given state and in the international space, such as the Polish Confederation of Warsaw of 1573 or the Spanish dispute in Valladolid of 1570/1571, which took place at the other end of Europe and concerned the situation in another continent, just to name a few. In modern times, religious freedom is protected by multilateral international agreements, both universal[5] and European.[6] In addition, there are also bilateral agreements, such as in the form of the many concordats the Holy See has concluded with individual countries. At the same time, apart from international law, religious freedom is protected by individual European countries' constitutional and religious law.[7] This illustrates that the need to guarantee religious freedom is universal, regardless of time and place. Thus, the transition to the analysis of ECHR case law requires contextualization within individual countries' legal orders. The Convention is not exclusive as a normative act for the protection of religious freedom and is one of the many sources of law in this respect. It was also shaped by the recognition of the axiology formed in Europe for centuries, such as the dignity of the human person and the religious freedom resulting therefrom.

5 For example, the Universal Declaration of Human Rights, New York, December 10, 1948; Convention concerning Discrimination in Relation to Employment and Occupation, Geneva June 25, 1958; Convention on Combating Discrimination in the Field of Education, Paris, December 15, 1960; International Covenant on Civil and Political Rights, New York, December 19, 1966; International Covenant on Economic, Social and Cultural Rights opened for signature in New York on December 19, 1966; Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, New York, November 25, 1981; Convention on the Rights of the Child, adopted in New York on November 20, 1989; Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities signed, New York, December 18, 1992.

6 Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950 (hereinafter also referred to as "the Convention").

7 For example, pursuant to Art. 53 of the Polish Constitution of 1997: "1. Everyone is guaranteed freedom of conscience and religion. 2. Freedom of religion includes the freedom to profess or accept a religion of one's choice, and to manifest one's religion, individually or with others, publicly or privately, through worship, prayer, practice and teaching. Religious freedom also includes having temples and other places of worship according to the needs of believers, and the right of individuals to receive religious assistance wherever they are. 3. Parents have the right to provide their children with a moral and religious education and teaching in accordance with their convictions. […] 5. The freedom to manifest religion may be restricted only by statute and only when it is necessary to protect the security of the state, public order, health, morals or freedom and rights of other persons. 6. No one may be compelled to participate or not participate in religious practices […]."

The above lack of exclusivity does not mean, however, that the Convention is only a joint declaration. Individual states, following the *pacta sunt servanda* rule, have voluntarily obliged to recognize the ECHR's judgments, and mainly for this reason, its case law gradually has an increasing impact on the legal orders of individual states as well as on European legal culture.[8] At the same time, states' individual legal orders are still the basic source of legal regulations. This also applies to issues in the field of religious law, including the issue of the presence of religious symbols in public spaces when used by both private and public entities.

This can be illustrated using a few examples. An example of private entities' use of religious symbols is the wearing of religious symbols in the workplace. In this regard, the Court presented in its case law comparative legal regulations in this field, and it is quite worthwhile to examine them here. In most countries under the European Council, this is not regulated by law. The exceptions are three countries, namely Turkey, Ukraine, and some cantons in Switzerland, where public sector employees are forbidden to wear religious symbols.[9] Therefore, it can be concluded that such a situation is not accidental, and it is almost a rule that the rational legislator will leave these issues to judicial decisions. The Court itself noticed this complementary role of jurisprudence, which in this respect, despite the lack of legal regulations, indicated that employers may restrict the wearing of religious symbols (Belgium, Denmark, France, the Netherlands, and Germany). Moreover, according to jurisprudence in France and Germany, civil servants and state/public sector employees may not wear symbols. Interestingly, in France itself, the law clearly prohibits such a ban, and any restriction must proportionately achieve the legitimate aim of sanitation, health, and moral protection, or the company's credibility or image in the eyes of the customer. However, European solutions are not exclusive to a global scale. In its

8 For example, according to the judgment of the Polish Constitutional Court of 2 December 2009 (file ref. no. U 10/07; Journal of Laws 2009 no. 210, item 163): "[…] the parties to the Convention not only undertook to observe the catalogue of fundamental rights and freedoms contained in the Convention, but have committed themselves to submit to the judgments of the European Court of Human Rights […] adjudicating on the basis of the Convention and the Protocols supplementing it. The case-law of the Court establishes the normative content of the rights and fundamental freedoms summarized […] in the Convention and the Protocols. The judgments of the European Court establish common normative content of fundamental rights and freedoms, the legal regulations of which (including constitutional ones) in individual countries sometimes differ significantly. This also applies to the freedom of conscience and religion, one of the fundamental freedoms enshrined in the Convention. The legal regulation of the freedom of conscience and religion in individual European countries differs, but the European Court established the normative content of the principle of freedom of conscience and religion common to European democratic states, interpreting the provisions of the Convention, in particular its Art. 9, defining the freedom of conscience and religion." On the analysis of Art. 9 of the Convention in the case law of the Polish Constitutional Court cf. also Poniatowski, 2018, pp. 85–94. M. Rynkowski carried out an interesting comparative legal analysis on the understanding of the cross within the framework of European Union law. The case law of the Court of Justice of the European Union did not deal with the issue of the presence of the cross in public space, cf. Rynkowski, 2016, p. 37.

9 Cf. Eweida, § 47.

case law, the Court examines this perspective for comparison purposes. For example, in the United States, the wearing of religious symbols by government officials and employees is protected by the constitution and legislation.[10] It is worth adding that the United States is the first secular state in the world, based on the so-called wall of separation.[11]

The second example of a comparison of individual countries' legal orders made by the Court is public entities' use of religious symbols by placing them in state school classrooms. The Court noted that, as mentioned above, this issue is not governed by any specific provisions in the vast majority of Council of Europe member states.[12] In the Court's comparative compilations, one can note various models developed in individual countries' legal orders, starting with prohibition and ending with an obligation to place religious symbols, although the principle is basically the lack of regulation and leaving such disputes to the judiciary.

Such symbols are prohibited by law in France (except Alsace and the Moselle Department), Georgia, and Macedonia.[13] It is worth noting that in these countries, the so-called model of hostile separation is or was in place.[14] The use of these symbols in public place is clearly defined in Austria, Poland, Italy, and some federal states and cantons of Germany and Switzerland. Moreover, there is a group of countries where such symbols are used in classrooms without legal regulations in force, such as Greece, Spain, Ireland, Malta, Romania, and San Marino.[15] In the case law of the countries belonging to the Council of Europe, we can also find various positions, ranging from the lack of obstacles with regard to placing crosses in classrooms (Poland)[16], the need to seek a compromise with parents and students (Spain, Germany, Romania), and prohibition (Switzerland).[17]

Therefore, several preliminary conclusions were drawn. First, the Convention is *only* part of the European legal culture, which is based on axiology and tradition. Thus, the Convention cannot be interpreted in a specific legal vacuum. One can even say, paraphrasing physics nomenclature, that it is one of the "connected vessels" in the system that protects religious freedom. Consequently, in the Court's case law, one can find comparisons of norms concerning the use of religious symbols in public

10 Cf. Eweida, § 48.

11 In this country, one can also see the juxtaposition of religious freedom with other freedoms. There is even a saying that religious freedom is, in fact, the enemy of women's freedom, cf. Alvaré, 2013, p. 7.

12 Cf. Lautsi [Grand Chamber] v. Italy, 18 March 201, 30814/06. For the sake of distinction, the judgment of the first instance will be referred to as "Lautsi" and the second instance as "Lautsi [Grand Chamber]."

13 Cf. Lautsi [Grand Chamber], § 27.

14 This separation occurs in two ideological versions: extremely liberal—French and totalitarian—Soviet, cf. J. Krukowski, 2008, pp. 30–33.

15 Cf. Lautsi [Grand Chamber], § 27.

16 As P. Stanisz aptly points out, the return of crosses to state school classrooms in Poland after 1989 was not without controversy (the then Ombudsman unsuccessfully applied to the Constitutional Court in this regard). Cf. Stanisz, 2016, p. 157.

17 Cf. Lautsi [Grand Chamber], § 28.

space, both in the scope of the states with membership to the Council of Europe and other states, as well as other legal cultures. However, these comparative compilations are not only indicative. As it turns out, they are important for the decisions and judgments to be made in this respect. The Court has in view the (dys)functioning of the so-called European-wide compromise. For example, with regard to the use of religious symbols in public space in the form of a cross in state school classrooms, the Court did not find such a compromise and noticed a specific pluralism of solutions in individual countries.[18] As a result, the Court does not adjudicate unequivocally whether religious symbols may or may not be used in public spaces throughout Europe. The case law therefore focuses not on introducing a single binding interpretation and a unified position, but on an individual approach depending on the legal situation in a given country, which results largely from its tradition. Such an approach should be welcomed with appreciation, as it allows for the functioning and further development of religious pluralism. Consequently, various regulations regarding the use of religious symbols in public spaces are possible. This can be summarized as the Court's conditional approval of solutions in a given legal order in the field of the use of religious symbols in public space within the framework of the widely understood ideological pluralism. The Court's intervention would only be possible if these solutions have violated the general principles set out in the Convention. It also seems that a specific presumption of state solutions' compliance with the Convention can be drawn, which can be rebutted in the course of the proceedings by proving violation of these general principles.

3. General rules directly and indirectly concerning religious freedom as regards the use of religious symbols in public space

3.1 Freedom of thought, conscience, and religion

In the ECHR's judgements that were selected for the purposes of this paper (through the prism of the very use of religious symbols in public places), one can note that the Court refers first of all to several so-called general principles relating directly or indirectly to religious freedom. From a structural perspective, this is how the proper legal argument begins (preceded by the so-called historical part of the merits)—it is not accidental and allows the Court an appropriate subsumption

18 It can be noted that one of the reasons for this pluralism is the recognition of a specific axiological and systemic context. For example, in Poland one can find a position according to which the principles of human dignity and equality are recognized as the basis for the equality of religious associations, cf. Sobczyk, 2013, pp. 115–121.

process. These principles can be grouped as issues related to religious freedom, specifically the prohibition of discrimination and parents' right to raise children in accordance with their beliefs.

Addressing the first of these principles, that is, freedom of thought, conscience, and religion, it should be noted that in the Court's case law, the substantive aspect precedes the resolution of a given case. As regards the presence of religious symbols in public space, the key starting point seems to be Art. 9 of the Convention, according to which:

> 1. Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance. 2. 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.

A proper understanding of this freedom is the key to a proper understanding of the analyzed portion of the Court's case law. The significance of this freedom is evidenced by its recognition as one of the foundations of a democratic society.[19] Similar observations appear in the individual member states' legal orders.

The abovementioned article of the Convention has two dimensions. First, it relates to the subject and object of this freedom. Second, there are limitations to the sphere of externalization. Addressing the first aspect, it should be noted that freedom itself can have a positive aspect (freedom of belief) and a negative aspect (freedom of non-belief).

Both aspects are protected by Article 9 of the Convention.[20] Moreover, this freedom has internal and external aspects, with only the first aspect being absolute.[21] On the other hand, the second aspect, which may consist of manifesting religious beliefs in various forms, has an impact on others. Accordingly, the law should address this issue in a democratic society.[22] However, the Court did not conclude that the use of religious symbols in public places should be legally regulated. Interestingly, the above four aspects can be combined in every possible direction, including

19 Cf. Eweida, § 79. The Court has therefore confirmed a long line of case law in this regard. Cf. also Kokkinakis v. Greece, 14307/88, § 31; Otto-Preminger-Institut v. Austria, 13470/87, § 47; Şahin v. Turkey [Grand Chamber], 44774/98, § 104. The hallmarks of a democratic society are pluralism, tolerance, and broadmindedness, cf. Şahin, § 108.

20 Cf. Lautsi v. Italy, 30814/06, § 47. Cf. also Moravčíková, 2015, p. 38.

21 Cf. also judgment of the Polish Constitutional Court of 7 October 2015 (file ref. no. K 12/14; Journal of Laws 2015, item 143).

22 Cf. Eweida, § 80.

crossing; for example, the analyzed use of religious symbols in public places may refer to the positive and external aspects.

For an act to constitute a manifestation of beliefs in the sphere of the external aspect of this freedom, it should meet certain conditions.[23] Such an act must be related to religion. The Court emphasized that the existence of a close and direct link must be established in each case based on the facts. However, the applicant does not have to prove his or her religious obligation.[24] Thus, it can be seen again that the Court's position is not based on a simple dichotomy, but on various possibilities of classifying acts depending on the circumstances of a particular case, which should be considered prudent.

One can even speak of a certain "individualization" of these judgments in relation to a given legal order and, additionally, to a specific factual state. For example, an arbitrary judgment prohibiting the wearing of crosses in the workplace in any case could lead to specific paradoxes (e.g., prohibition of the wearing of crosses by employees of a church legal entity conducting charitable activities or organists). Therefore, the decisive factor is an individual and not a general approach to a given case, as evidenced by, for example, the increasing number of decisions concerning the use of religious symbols in public places (it can be even better observed in the example of religious clothing). Therefore, the question of issuing further judgments is open.

As already indicated, the above freedom may be subject to limitations in accordance with Art. 9 Sec. 2 of the Convention. In the opinion of the Court, states have a margin of appreciation in deciding whether and to what extent it is necessary to interfere with the freedom referred to in Article 9 of the Convention. The concept of the margin of appreciation is of key importance. However, this margin is subject to the supervision of the Court itself, which assesses whether the measures taken at the national level were justified in principle and proportionate.[25] Therefore, one may conclude that the Court's intervention is conditional and depends on violation of legitimacy and the proportion of state or non-state entities' interference.[26] The violation may be directly attributable to the state (negative aspect) or to private entities,

23 As G. Szubtarski points out, an act which is not a manifestation does not enjoy the protection of the Convention, cf. Szubtarski, 2016, p. 188. According to this author, the key to distinguishing between an action that expresses religious beliefs directly and an action that is only inspired by the professed faith is in the determination in the Court's case law of whether a given behaviour is a commonly accepted form of practicing in a given religion. cf. ibid. p. 189. Cf. also https://bit.ly/3kTo5ct

24 Cf. Eweida, § 82. Such a position is not a novelty in the Court's case law, even at the level of the Grand Chamber. Cf. also Şahin, § 78.

25 It is worth noting that such a line of case law was confirmed at the level of the Grand Chamber's judgement, cf. Şahin, § 110, 122. Earlier, such a position can be found in other judgments concerning Art. 9 of the Convention, e.g., religious meetings without the authorities' permission, cf. Manoussakis and Others v. Greece, 18748/91, § 44.

26 It is also worth noting that the restriction should be anchored in national law, which should be available and sufficiently precise to meet the requirement of predictability, cf. Arslan and Others v. Turkey, 41135/98, § 37; Şahin, § 84-94.

or indirectly through the state (positive aspect). In the latter case, when the violation takes place in a private enterprise, it should be considered in the category of state authorities' positive obligation to secure the right under Article 9 of the Convention. In both contexts, regard must be paid, in particular, to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, subject in any event to the margin of appreciation enjoyed by the state.[27]

The discrepancies in the Court's case law are also worth noting. It may be interesting to note that the possibility of resigning from work or changing jobs does not mean interference with religious freedom in the current place of employment.[28] There is also a different position to be found there, indicating that when an individual complains about restriction of religious freedom in the workplace, it is better to consider the proportionality of the restriction.[29] Therefore, there is a conclusion about the changing line of case law and its development toward increasing the protection of religious freedom in the individual aspect.

In summary, it can be said that Article 9 of the Convention is of key importance in the analyzed scope. This is the starting point, and it introduces a cascade structure. Other norms should be interpreted in accordance with this study. They gain independence when their interpretation does not conflict with Article 9 of the Convention.

3.2. Prohibition of discrimination

In the Court's case law on the use of religious symbols in public places, parties' arguments can be found that relate to the violation of the prohibition of discrimination for religious reasons. Pursuant to Article 14 of the Convention, the enjoyment of the rights and freedoms mentioned therein should be ensured without discrimination due to reasons such as sex, race, color, language, religion, political and other beliefs, national or social origin, membership to a national minority, property, birth, or for any other reason. However, the Court emphasizes that this prohibition should be systemically interpreted. This prohibition does not exist independently and applies only to the rights and freedoms safeguarded by other substantive provisions of the Convention and its protocols.[30]

Differences in the treatment of persons require objective and reasonable justifications.[31] Thus, states have a certain margin of appreciation in differentiating the

27 Cf. Eweida, § 84.

28 In the merits of the judgment, a reference was made to previous judgments. Cf. Kosteski v. the former Yugoslav Republic of Macedonia, 55170/00, § 38–39.

29 Cf. Eweida, § 83.

30 Cf. Eweida, § 85.

31 Cf. Eweida, § 87. In this respect, the Court referred to the requirement of objective and reasonable justification, which is also well-established in the case law at the level of the Grand Chamber. Cf. DH and Others v. the Czech Republic [Grand Chamber], 57325/00, § 175.

legal situation.[32] In practice, the allegations of discrimination did not appear to be effective in all cases. For example, in the case of N. Eweida and S. Chaplin (concerning the use of religious symbols at work), despite the Court's different judgments, in both cases, the Court did not find any violation of the prohibition of discrimination. The main reason was the lack of evidence of a broader reference, that is, to the group of people and not just the applicants. The above implies the lack of independence of the prohibition of discrimination which is preceded by the freedom guaranteed in Article 9 of the Convention.

3.3. Parents' right to ensure that their children are raised and educated in accordance with their own religious and philosophical convictions

Another important issue in the analyzed scope is Article 2 of Protocol No. 1 to the Convention, according to which:

> No person shall be denied the right to an education. In the exercise of any functions that it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.

There is a wealth of case law regarding the state's exercise of its function in the field of education and teaching.[33]

Regarding the interpretation of law, it should be noted that the Court's case law emphasizes that this article, like the previous prohibition of discrimination, should be interpreted systemically in the light of Articles 8, 9, and 10 of the Convention.[34] In the field of education and teaching, Article 2 of Protocol No. 1 is, in principle, a *lex specialis* in relation to Article 9 of the Convention.[35] Parents' right to provide education and teaching in accordance with their own convictions, referred to in this protocol, should also be interpreted systemically within the same article and Article 9 of the Convention.[36] Apart from the systemic interpretation, it is worth paying attention to the functional interpretation of this norm (*ratio legis*). As emphasized by the Court, educational pluralism is indispensable for the protection of a democratic

32 Cf. Eweida, § 88.

33 Cf. Lautsi, § 47. The Court (and also the Grand Chamber) has repeatedly referred to the famous judgment in the case of Folgerø and Others v. Norway [Grand Chamber] of 29 June 2007, no. 15472/02, § 84. In this judgment (in particular, § 84) one can find a summary of the previous jurisdiction in this respect. Moreover, it should be noted that, apart from the Convention, this right is protected by other multilateral international agreements of universal and regional scope, as well as by bilateral agreements in the form of concordats, cf. Warchałowski, 1998, pp. 29–36.

34 Cf. Lautsi, § 47. Cf. also Folgerø, § 84.

35 Cf. Lautsi [Grand Chamber], § 59. Cf. also Folgerø, § 84.

36 Cf. Lautsi [Grand Chamber], § 60. Cf. also Folgerø, § 84.

society.[37] This shows that while religious freedom is the foundation of such a society, educational pluralism protects this foundation.

States have the duty, on the one hand, to ensure—in a neutral and impartial manner—the exercise of various religions, faiths, and beliefs, and on the other hand, to help maintain public order, religious harmony, and tolerance in a democratic society composed of often opposing groups (relations between believers and non-believers and among adherents of various religions).[38] The state has no right to judge the validity of religious beliefs and the ways in which they are expressed. Neutrality guarantees pluralism.[39]

In its case law, the Court clearly emphasized the absolute prohibition of indoctrination. Information and knowledge contained in curricula should be communicated in an objective, critical, and pluralistic manner.[40] This prohibition is so strict that it may be the basis for judgment. [41] On the other hand, states are not prevented from imparting, directly or indirectly through education, information, or knowledge of a religious or philosophical kind (even against the parents objecting to the integration of such teaching or education in the school curriculum).[42]

There is also Court case law regarding the place of religion in the curriculum.[43] It is the competence of states to define and plan the curriculum. As a rule, the Court does not adjudicate such issues; solutions may legitimately vary according to the country and the era.[44] In view of the above, it can be concluded that according to the Court's case law, the principles in question should be interpreted systemically; preceded by Article 9 of the Convention.

4. Examples of cases related to private entities' use of religious symbols in public space

The manifestation of religious symbols in public spaces is inherently related to the subject performing this activity. The Convention does not limit religious freedom to adherents of a particular religion or non-believers. This issue is complex because the state is not capable of an act of faith, and at the same time, there are examples of states that, for instance, order the placement of religious symbols in school classrooms or use flags with a religious symbol. However, it is difficult to argue that in

37 Cf. Lautsi, § 50.
38 Lautsi [Grand Chamber], § 60. The Grand Chamber expressed a similar position earlier. Cf. Şahin, § 107.
39 Cf. Lautsi, § 47. Cf. also Folgerø, § 84.
40 Lautsi [Grand Chamber], § 62. Cf. also Folgerø, § 84.
41 Cf. Lautsi case.
42 Cf. Lautsi [Grand Chamber], § 62.
43 Cf. ibid. Cf. also Folgerø, § 84.
44 Cf. Lautsi [Grand Chamber], § 62.

such a case, the state would enjoy religious freedom. How can such use be justified in a secular state?

Therefore, attention should be paid to the case law of the ECHR in the context of an entity that has the right to use religious symbols in public space. It is worth presenting the structure of the Court's legal arguments in a few examples.

As already indicated, the case law of the ECHR in this respect can be divided into those concerning the use of religious symbols in public space by 1) private entities or 2) public entities. With regard to private entities' use of religious symbols in public spaces, two specific issues can be distinguished in the Court's case law: 1) the use of religious symbols in state or public institutions (e.g., workplaces, educational establishments, courtrooms and offices, personal control) and 2) the use of religious symbols in generally accessible places (e.g., city squares, etc.). Additionally, common to both of these aspects is the issue related to limiting the manifestation of one's beliefs through images placed in documents (e.g., for inspection at an airport or city square).[45]

In the first case, it is possible to observe the performance of a certain legal obligation (e.g., performing work, appearing as a witness in court to testify), and in the second case, exercising the right to access public places. In earlier ECHR case law, the use of religious symbols *sensu stricto* is essentially focused on the employment-related field. In other cases, the issues relate in principle to the use of religious clothing or their elements, which may potentially be classified as religious symbols in the broad sense. With this in mind, the case law on the use of religious symbols in the workplace is analyzed in this paper, and the case law on the use of religious clothing is presented only as a guide for comparative purposes.

In the case of private entities' use of religious symbols *sensu stricto*, it is worth following the Court's judgment on January 15, 2013 in the case of N. Eweida and others against Great Britain (due to the subject of the study, the cases of the two applicants, i.e., N. Eweida and S. Chaplin are presented).

Electing to use this judgment as an example to present the ECHR's legal argument seems to have been correct, as the facts pertaining to both applicants refer in the first case to employment by a private entity (N. Eweida) and in the second case by a public entity (S. Chaplin). Moreover, the judgment contains a legal argument leading in one case to admission of the complaint and in the other (quite analogous) to its rejection. Both applicants alleged that the domestic law had failed to adequately protect their right to manifest their religion in the form of wearing visible crosses around their neck at their workplace, allegedly in breach of Article 9 of

45 In terms of documentation, there was an issue of the requirements for the photos used for a driver's license. In Mann Singh v. France, the applicant, as a Sikh, complained about the order to take the photograph without headwear. In this case, the Court, in its 13 November 2008 decision, stated that such a requirement results from the care for public safety and the necessity to identify the driver, which constituted a justified restriction of religious freedom within the meaning of Art. 9 Sec. 2 of the Convention and fell within the state's margin of appreciation while observing the principle of proportionality.

the Convention independently and in connection with Article 14 of the Convention. What, then, is decisive for the Court's opposing conclusions?

At this point, it is worth briefly outlining the facts of these two cases and looking for common distinctive features. The facts of Ms. Eweida's case concerned her employment with an airline, which, five years after Ms. Eweida started work, introduced a new uniform design for employees working in direct contact with the public. According to the new instructions, all religious symbols should be uniformly covered. However, if it proved impossible, the wearing of such symbols would require the approval of local management. Violation of the ban resulted in not being allowed to start work and the company's refusal to pay the employee's salary. After two years, N. Eweida decided to no longer hide her cross and wear it openly. First, she was asked to remove the cross, and she was offered administrative work that she refused. Therefore, N. Eweida was not allowed to work. In the face of public criticism, the company soon adopted a new policy, in which the wearing of the cross was allowed *ex lege*. The complainant returned to work after the introduction of the new company policy but had not received remuneration for the previous period. Therefore, she brought a case to the court for payment of compensation for indirect discrimination, alleging a violation of the right to manifest religion in accordance with Article 9 of the Convention. However, the domestic courts did not grant this request.[46] What seems to have escaped the Court's attention at this stage of the proceedings was that the complainant had originally agreed to be employed under other conditions; that is, the wearing of crosses in the workplace had not yet been prohibited.

A similar situation occurred in the case of S. Chaplin, who, as a practicing Christian, wore a cross around her neck as an expression of her faith. In her opinion, removing the cross would be a violation of her faith. Unlike N. Eweida, S. Chaplin was employed at a public hospital. As in the previous case, an internal framework related to clothing was introduced. The hospital banned the use of jewelry to minimize infection. New uniforms were introduced in the hospital, and the applicant was ordered to remove the cross necklace.[47] The applicant had unsuccessfully alleged direct and indirect discrimination in the course of domestic proceedings.[48]

In the aforementioned states of facts, one can find: 1) common threads: a) the Christian faith, b) employment before the company changed its uniform policy, c) the will to wear religious symbols, d) proposing a different job position, and e) raising the allegation of discrimination based on religious beliefs; and 2) separate threads: a) employment in a private and public entity; b) prohibiting the wearing of religious symbols due to the company's image and the safety of the company's customers.

The essence of the dispute in the present case was revealed in the parties' arguments that also relied upon the Court's case law, which proves, on the one hand, its inconsistency and, on the other, subsequent changes. At the same time, it should

46 Cf. Eweida, § 10, 12–13, 16.
47 Cf. Eweida, § 18–20.
48 Cf. Eweida, § 22.

be borne in mind that according to Cicero's famous maxim *non numeranda sed ponderanda sunt argumenta*, the Court weighs the strength of individual arguments, not their number. The Court often does not engage in polemics regarding the parties' individual arguments. In the parties' arguments, however, there are several contentious issues referred to by the Court. First, is the wearing of the cross obligatory or not? Interestingly, in the government's opinion, since wearing religious symbols is not an obligation, it does not fall under the scope of Article 9 of the Convention, which does not protect every act or form of behavior motivated or inspired by religion or belief.[49] As indicated by the applicant and some of the interveners, it is outside the scope of the courts' competence to be involved in a theological dispute.[50] Second, does the possibility of changing jobs exclude the possibility of violating the convention? In this respect, one can see a change in the case law toward an individualized approach to the assessment of the level of restriction. It is worth adding that in this case, both applicants had been employed before uniform policy changes were made. According to N. Eweida, no fundamental rights should be granted through employment. It is therefore necessary to examine the validity of the restrictions in accordance with Art. 9 Sec. 2 of the Convention.[51] Some interveners, however, indicated that forcing them to choose between work and faith was unacceptable.[52] The second applicant, in the context of a change of job, referred to more recent cases heard by the Court relating to the wearing of religious symbols in educational institutions and at work.[53] In addition, there is a dispute regarding the question of proportionality. The parties also exchanged arguments as to whether the objectives of the restrictions (company image and patient safety) were proportionate.

In the Court's argument, it can be noted that within a certain logical scheme, the emphasis is that the first thing to be determined is the nature of the act. The mere wearing of the cross may be a manifestation of religious beliefs in the form of worship, practice, and ritual activities, and is protected.[54] If so, then the refusal of permission to work was an interference with the right to manifest religion. Therefore, it must be determined whether the right to manifest one's convictions was sufficiently secured under the domestic legal order and whether a fair balance was struck between the rights of the applicant and those of others.[55]

The essence of the judgment in the case of N. Eweida was the statement that the domestic authorities, including the courts, acting within the margin of appreciation,

49 Cf. Eweida, § 58.

50 Cf. Eweida, § 64. In this respect, S. Chaplin stated that determining whether the wearing of the cross is a religious obligation raises the threshold for the protection of freedom under Art. 9 of the Convention too much and leads to differences between religions in terms of the level of protection. Cf. Eweida, § 67.

51 Cf. Eweida, § 65.

52 Cf. Eweida, § 77.

53 Cf. Eweida, § 68. The party referred, *inter alia*, to L. Dahlab v. Switzerland, 42393/98 and to the aforementioned L. Şahin v. Turkey.

54 Cf. Eweida, § 89.

55 Cf. Eweida, § 91.

should examine the proportionality of the measures taken by a private company in relation to an employee.[56] In the case at hand, the right balance was not struck between the right to manifest one's faith (which is one of the fundamental rights) and the employer's prerogative to build the company's image. A healthy democratic society must tolerate and sustain pluralism and diversity.[57] In the case of Ms. Chaplin, the essence of the judgment was again to examine the proportionality of the measures taken. In the case of S. Chaplin, the reason for limiting the wearing of jewelry, including religious symbols, was to protect the health and safety of nurses and patients in contact with an open wound.[58] A certain gradation can be noticed in the analyzed judgment because in the Court's opinion, the reason for the restriction in the case of Ms. Chaplin was greater because it concerned health protection, and in this area, the national authorities must have a wide margin of appreciation.

The Court therefore concluded that there had been interference, but it was necessary in a democratic society and that there had been no violation of Article 9 with regard to the second applicant.[59] It is worth mentioning that in both cases, the Court did not find it necessary to investigate the case based on religious discrimination. In summary, it can be concluded that the logic of reasoning in these cases is as follows: 1) determining whether the act is a manifestation of religious beliefs, 2) determining whether there has been interference with the right to manifest religious beliefs, 3) determining whether the interference was proportionate, and alternatively, 4) determining whether the state has ensured through law or case law an adequate level of protection against disproportionate interference.

At this point, it is worth referring to one more previously mentioned issue. In the case of N. Eweida and S. Chaplin, the description of the facts also indicated the application of these principles to Muslims and Sikhs. However, they were not applicable in these cases. It was in the case of C. Ebrahimian v. France,[60] where the applicant's hospital work was not extended due to refusal to stop wearing the hijab. In this case, however, the Court found that the French authorities' margin of appreciation had not been exceeded, in view of the requirement of state neutrality and impartiality in France. It is debatable whether religious symbols are identified each time with religious clothing. Each has its own specific nature. Undoubtedly, the garment itself does not have to be a symbol, but its use in a public place may mean manifesting one's religious beliefs.

In the field of religious clothing, it is worth pointing to the Court's case law regarding the wearing of religious clothing (or their elements) both in public facilities

56 One should agree with A. Abramowicz that the principle of proportionality consists in weighing the value of the protected good and the infringed good as a result of the introduced restriction of the right to freedom of thought, conscience, and religion. Cf. Abramowicz, 2015, p. 18.

57 Cf. Eweida, § 94.

58 Cf. Eweida, § 98.

59 Cf. Eweida, § 100.

60 Cf. Ebrahimian v. France, 64846/11.

and in generally accessible places. In the first case, we can additionally distinguish situations in which the use of religious clothing (similar to religious symbols *sensu stricto*) is permanent (e.g., workplace, educational institutions) or incidental (e.g., personal inspection, courtroom).

As mentioned, the permanent nature of the use of religious clothing may take place in educational institutions, both on the part of teachers and students. In the case of teachers, there is an additional link with employment relationships. Several cases concerning teachers' use of religious symbols, such as the cases of L. Dahlab v. Switzerland[61] and Kurtulmuş v. Turkey,[62] can be found in the Court's case law. The comparison of these two cases is interesting because judgments have been issued, confirming the possibility of prohibiting the wearing of the hijab by educational institution staff. However, the cases concerned separate states of facts and state legal orders. In the first case, the question of wearing concerned the wearing of a headscarf in a primary school, and in the second, in a university. Thus, clothing exerts a different influence on children and students. Consequently, in the case of L. Dahlab, it was found that the prohibition introduced was justified, which made the action inadmissible. On the other hand, in the second case, the Court stated that the state did not exceed the margin of appreciation by limiting the wearing of the hijab in the face of a conflict with the protection of the rights and freedoms of others, as well as the will to maintain the principles of secularism and the neutrality of state education. A similar logic of reasoning can be found in the Court's case law regarding the wearing of Islamic headscarves by pupils[63] and students.[64] Such judgments were issued based on separate legal systems, that is, Turkey and France. The Court has developed a fairly uniform line in such cases, which was undoubtedly influenced by the judgment of the Grand Chamber in the case of L. Şahin v. Turkey. Issuing the judgment boils down to recognizing interference with religious freedom through such a prohibition, however, within the scope of recognizing the state's margin of appreciation in the scope of restricting religious freedom under Article 9 of the Convention.

Apart from cases where the use of such religious clothes in institutions with public access is permanent, there may be incidental cases. On the one hand, it may concern a body search[65] or identification,[66] and on the other hand, showing respect for the court during procedural activities.[67] In the former case, the Court found that the order to remove the turban for security purposes at the airport during passenger

61 Cf. Dahlab v. Switzerland [decision], 44774/98.
62 Cf. Kurtulmuş v. Turkey [decision], 65500/01.
63 Cf. Köse and the Others v. Turkey [decision], 26625/02; Dogru v. France and Kervanci v. France, 27058/05 and 31645/04.
64 Cf. Şahin v. Turkey [Grand Chamber], 44774/98.
65 Cf. Phull v. France [decision], 35753/03.
66 Cf. El Morsli v. France [decision], 15585/06.
67 Cf. Hamidovic v. Bosnia and Herzegovina, 57792/15; Lachiri v. Belgium, 3413/09.

check-in[68] as well as the order to remove the hijab for identification purposes[69] were justified on security grounds and fell within the states' margin of appreciation, which resulted in both complaints being declared inadmissible because of their obvious groundlessness. On the other hand, in the second case concerning the courtroom, the Court's case law developed in the other direction, as it was found that the order for the participants to remove their skullcap[70] and hijab[71] during the proceedings was not proportionate and justified in a democratic society. Not taking them off did not mean a lack of respect for the court. Therefore, the Court concluded that there had been a violation of Article 9 of the Convention.

In addition to the use of religious clothing in public institutions, such clothing may be used in public areas. In such a case, it turns out that the Court's interpretation was often needed. Such matters can be divided into those where the clothing used covered the face (e.g., burqa, niqab)[72] and those where it did not cover the face.[73] In the first case involving the prohibition of covering the face, the Court found in the above judgments that there had been no violation of Article 9 of the Convention, while states (France, Belgium) used their margin of appreciation, striving to guarantee social cooperation rules and the rights and freedoms of others. In the opposite case with no face veil, the issue of proselytism may arise through the use of religious clothing or a threat to public order.[74] The Court, in the absence of proving the above-mentioned proselytism and the threat to public order by using religious clothing that does not cover the face, found it unjustified to introduce such restrictions in public space.

Bearing this in mind, several conclusions can be drawn regarding private entities' use of religious symbols in public spaces. First, theological considerations on the existence of religious obligation seem to be of no great importance for resolution. The Court did not consider such considerations. In the Court's opinion, a relationship with the religion and personal conviction of a given person as well as recognition of such behavior as a manifestation of beliefs are sufficient. Therefore, what matters are the objective and subjective aspects of this relationship. In the current case law, the possibility of finding another job does not exclude the possibility of violating religious freedom, even if the employee voluntarily agreed to the job. The change in the case law is worth emphasizing in this respect.

Moreover, there is a specific gradation of reasons for restricting religious freedom in the workplace and the obligation to maintain appropriate proportionality in such

68 Cf. Phull v. France [decision], 35753/03.
69 Cf. El Morsli v. France [decision], 15585/06.
70 Cf. Hamidovic v. Bosnia and Herzegovina, 57792/15.
71 Cf. Lachiri v. Belgium, 3413/09.
72 Cf. S.A.S. v. France [Grand Chamber], 43835/11; Belcacemi and Oussar v. Belgium, 37798/13; Dakir v. Belgium 4619/12. Definitions of these concepts may even be found in the Court's case law. Cf. Şahin, § 63.
73 Cf. Arslan, § 7.
74 Cf. ibid, § 50–52.

cases. This gradation is also visible in issues related to private persons' use of religious clothing in public places. The basis for introducing restrictions on the use of such clothes is primarily the issue of safety or even care for social life, but not respect for the court. In the case of the juxtaposition of the use of religious symbols in the form of a cross and religious clothing in the Court's case law, one can note an appropriate reference to the traditions arising from individual countries' social conditions, which allows the Court to determine the appropriate scope of the state's margin of appreciation. In the case law in question, an intensification can be observed with respect to countries where a secular state model involving hostile separation is in place (including France).

5. Examples of court cases related to public entities' use of religious symbols in public space

In ECHR case law, one can also find reference to public entities' use of religious symbols in public spaces. An apt example seems to be the famous case of S. Lautsi v. Italy, in which the issue of placing religious symbols in state schools was widely addressed. It is worth recalling that in the present case, Ms. Lautsi brought an application on behalf of herself and two children of hers aged 11 and 13. According to the applicant, placing crosses in the classrooms of the state schools where her children were studying was an interference contrary to: 1) the freedom of religion and belief, 2) the right to education and teaching in accordance with her religious and philosophical convictions, 3) the principle of secularity of the state, and 4) the principle of impartiality of public administration.

The arguments of the parties in the case at hand can be divided into several groups. First, it is worth pointing out a formal aspect. It was argued that the pre-war regulations on the placement of crosses in state school classrooms were tacitly abolished with the adoption of the Constitution. This thread was not of great importance to the Court's decision. Another thread developed in the arguments of the parties concerned the meaning of the cross. On the one hand, it was emphasized that the basic or even the only overtone of the cross is a religious one. The opposing party presented a long argument that the cross is also a universal symbol. Its message is, among others, humanistic and accessible to everyone. The arguments also concerned individual aspects of religious freedom. The point was raised that the cross influenced students and favored a given religion. On the other hand, it was pointed out that the cross is a passive symbol, and its influence cannot be compared with active teaching. The Court explicitly referred to this argument. Another group of arguments concerned the institutional aspects of religious freedom. It has been argued that the state should be neutral. On the other hand, the notions of neutrality and secularism were unclear, and the pluralism of relations existing in Europe was pointed

out. Therefore, the state has a great deal of freedom in the absence of consensus. In this case, the Court explicitly referred to this argument.

In the first judgment, the Court began its substantive argument that the state was forbidden to indoctrinate (even indirectly), particularly in places where people are vulnerable to influence. Such people are children with a diversified level of critical capacity.[75] In the Court's opinion, in applying the above principles to the present case, it was necessary to analyze the issue of whether the respondent state, when imposing the display of crucifixes in classrooms, ensured that in exercising its functions of educating and teaching, knowledge was passed on in an objective, critical, and pluralist manner, respecting parents' religious and philosophical convictions, in accordance with Article 2 of Protocol No. 1.[76]

In the Court's opinion, the manifestation of religious symbols without restrictions as to place and form in a country where there is a religious majority in society may put pressure on students who do not practice this religion or on others professing a different religion. The religious meaning of the cross is dominant. The very location of the cross was such that it was impossible to notice it.[77] The Court concluded that the applicant's apprehension that the state sided with the Catholic religion was, therefore, not arbitrary as regards displaying the sign of the cross.[78] When the cross is seen as an integral part of the school environment, it can be viewed as a powerful external symbol.[79] Such presence of the cross can easily be interpreted by any student as a religious sign, and they may feel that they are being shaped in the school environment marked by the religion in question.[80] Therefore, it does not serve as educational pluralism.[81]

At this stage of the proceedings, the Court also concluded that the placement of the cross could not be justified by the demands of parents wishing to raise their children in accordance with their religious beliefs or the need for a political compromise. The state should respect confessional neutrality as part of public education in compulsory classes. The aim of education should be to support the development of young people's critical capacity.[82]

Summarizing its argument, the Court stated that the presence of the cross in classrooms limited parents' right to raise children in accordance with their beliefs and students' right to believe or not believe. This restriction is inconsistent with the state's obligation to respect neutrality in the performance of public functions,

75 Cf. Lautsi, § 48.
76 Cf. Lautsi, § 49.
77 Cf. Lautsi, § 54.
78 Cf. Lautsi, § 53.
79 In that regard, the Court referred to the case of L. Dahlab v. Switzerland.
80 Cf. Lautsi, § 55.
81 Cf. Lautsi, § 56.
82 Cf. ibid.

particularly in the field of education. Therefore, it was a violation of Article 2 of Protocol No. 1, along with Article 9 of the Convention.[83]

Considering the above, it can be concluded that the essence of the judgment boils down to the fact that the presence of the cross in classrooms was in violation of the prohibition of indoctrination. At the same time, it is worth noting that in this judgment, the Court stated that in order to adjudicate, it is not necessary to weigh the rights of believers and non-believers.

The above judgment was widely echoed in Europe.[84] Many entities, including governments of other countries, joined this case. As a result of the appeal lodged, the case was referred to the Grand Chamber of the Court.

As part of the additional argumentation put forward by the "defenders of the cross," emphasis is placed on tradition, pluralism of relations, lack of consensus, states' margin of freedom and appreciation, and the lack of evidence of the cross's negative impact on young people.

It was also emphasized that in Europe, there is a variety of relations between the state and the church (half of Europe's population lives in non-secular states).[85] Many state symbols are of religious origin and are used in state education. States should not eliminate their cultural identity. The position contained in the challenged decision is an expression of the value of a secular state. Extending this position to all of Europe would be tantamount to rigid separation.[86]

On the other hand, the arguments the opponents of the cross put forward can be divided into those that relate to the individual aspect (the cross interferes with freedom and exerts a special influence; the cross is a religious symbol) and the institutional aspect (the state is obliged to ensure pluralism, minorities must be protected, and the cross contradicts the foundations of Western political thought).

Moving from the historical to the substantive part of the judgment's merits, the Court emphasized that the case concerns only the presence of crosses in state schools.[87] Placing crosses in classrooms is an area where the state is committed to respecting parents' right to educate their children in accordance with their

83 Cf. Lautsi, § 58.

84 Cf. also http://www.istitutoeuroarabo.it/DM/religious-symbols-in-the-european-public-space-the-role-of-the-european-court-of-human-rights/

85 As B. Schanda rightly pointed out, after joining the European Union, the states of Central Europe did not begin to adopt the model of separation (laïcité) or the model of the state church. Central Europe is a region based on a model of "benevolent separation" or "cooperation." Concordats have been concluded in these states, cf. B. Schanda, 2015, p. 236. At the same time, it is worth adding that the data P. Borecki quoted show that at the beginning of the 21st century, 73.5% of Europe's population were Christian, 1.6% were Muslim, 0.3% were Jewish, 0.1% were Hindu, 0.04% were Buddhist, and 0.07% were followers of other religions, while 24.4% were atheists and non-religionists, which is proof that Europe experienced the processes of secularization and privatization of beliefs in religious matters, cf. Borecki, 2016, p. 28.

86 Lautsi [Grand Chamber], § 47

87 Cf. Lautsi [Grand Chamber], § 57.

own religious and philosophical beliefs.[88] Therefore, the placement of crosses should also be assessed in the context of their relationship with the rights of the individual.

Entering into the polemic about the meaning of the cross, according to the Court, the cross is primarily a religious symbol.[89] However, by itself, it is not sufficient to bring the consequences of indoctrination and violation of Article 2 of Protocol No. 1. The Court also referred to the topic of the cross's influence on students. The cross is essentially a passive symbol.[90] It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities.[91] There is no evidence before the Court that the placement of a religious symbol in classrooms could have an impact on students.[92] The applicant's private perception is not sufficient to establish a violation of Article 2 of Protocol No. 1.[93] Thus, an objective finding is required.

The essence of the Court's analyzed judgment was, however, the adoption of the position that the decision concerning the consolidation of the tradition of the presence of the cross in state school classrooms falls within the state's margin of appreciation. However, reference to tradition cannot absolve a state from its obligation to respect the rights and freedoms set forth in the Convention and its protocols. The Court is obliged to consider the great diversity between the states, including in the sphere of cultural and historical development.[94] There is no European consensus on this question.[95] It is also worth noting that it was only the Grand Chamber that compiled relevant regulations and judgments from all over Europe, as presented in the earlier part of the paper.

The Grand Chamber also referred *mutatis mutandis* to the earlier case law. The issue of teaching subjects in school such as "Christianity, Religion and Philosophy" (Folgerø v. Norway) or "Religious Culture and Ethics" (Zengin v. Turkey) was raised first. In both cases, it was found that such teaching was within the margin of appreciation left in planning and setting the curriculum. The Court considered the place Christianity occupies in Norway's history and traditions and the fact that Islam is

88 Cf. Lautsi [Grand Chamber], § 65.

89 Cf. Lautsi [Grand Chamber], § 66. On the basis of this judgment, R. Torfs distinguishes two perspectives of perceiving the cross, i.e., religious and pluralistic, cf. R. Torfs, 2016, p. 18. Here, for comparison, it is worth referring to A. Romanko's pertinent observation that the jurisprudence of Polish courts also indicates different meanings of the cross and emphasizes, apart from the religious meaning, important cultural values as well, cf. Romanko, 2013, p. 208.

90 The presence of crosses is not related to compulsory teaching about Christianity. The cross opens up the school environment in parallel to other religions, cf. Lautsi [Grand Chamber], § 74.

91 Cf. Lautsi [Grand Chamber], § 72. In terms of this influence, the Court referred, *inter alia*, to the Zengin v. Turkey case, 1448/04, § 64.

92 Cf. Lautsi [Grand Chamber], § 66.

93 Cf. ibid.

94 Cf. ibid. This position was approved by some part of the doctrine. Cf. also J. Sadomski, 2015, p. 235.

95 Cf. Lautsi [Grand Chamber], § 70.

the most practiced religion in Turkey.[96] However, the Grand Chamber disagreed with Chamber's position that the sign of the cross is a powerful external symbol, as understood in the Dahlab case of wearing an Islamic headscarf while teaching.[97] The Court indicated that the facts of both cases were completely different.[98]

In the Court's view, the contracting states therefore enjoy a certain margin of appreciation in education and teaching, while respecting parents' right to provide education and teaching in accordance with their own religious and philosophical beliefs.[99] However, this margin of appreciation comes under the Court's supervision regarding the prohibition of indoctrination.[100] The sign of the cross undoubtedly refers to Christianity, although it also has a secular symbolic value.[101] However, this was insufficient to result in indoctrination and a violation of Article 2 of Protocol No. 1. Thus, in the Court's view, maintaining the presence of crosses in classrooms was within the state's margin of appreciation.[102]

It is worth presenting a few conclusions. First, in the Court's opinion, the earlier position that the presence of crosses in classrooms means indoctrination was incorrect. The Court recognized the pluralism and lack of compromise applicable to Europe in this respect. Accordingly, states are free to perpetuate tradition within their margin of appreciation, albeit subject to constant scrutiny by the Court, which examines possible excess of this margin. In this case, it is also important that the use of religious symbols as part of state recognition does not restrict an individual's freedom.

6. Summary

The analysis of ECHR case law on the use of religious symbols in public spaces also leads to general conclusions.

In formal terms, it should be noted that the relatively small number of judgments concerning religious symbols in a strict sense is quite surprising. A larger number of judgments can be seen in cases of religious clothing. It seems that this can be

96 Cf. Lautsi [Grand Chamber], § 71. It is worth adding that, according to the Court in Turkey, the Islamic headscarves started to be worn at schools and universities in 1980, cf. Şahin, § 35. Such a finding then affects whether or not tradition is invoked. On the other hand, the debate on the use of these headscarves has spread across Europe since the 1990s.

97 Cf. Lautsi [Grand Chamber], § 73.

98 Moreover, it is worth noting that in the Dahlab case itself, the Court acknowledged that it is very difficult to assess the impact of wearing the hijab on very young children's freedom of conscience and religion.

99 Cf. Lautsi [Grand Chamber], § 69.

100 Cf. Lautsi [Grand Chamber], § 70. This supervision relates to the law and the judgments issued on its basis, Cf. Şahin, § 110.

101 Cf. Lautsi [Grand Chamber], § 71.

102 Cf. Lautsi [Grand Chamber], § 76.

explained, among other reasons, by the fact that the use of religious symbols was so entrenched in European legal culture that it did not currently simply raise major disputes on a European scale. Although the history of Europe is turbulent, there is no doubt that Christian symbols themselves have been used appropriately in Europe for nearly two millennia. Moreover, this may be because most Europeans live in non-secular countries. On the other hand, due to the manner of adjudication and the Court's desire to issue judgments that generally take into account the legal order of a given state in the field of religious law concerning religious symbols in the strict sense, the question of issuing subsequent judgments remains open.

Many more conclusions concern substantive issues. In the ECHR's judgments, one can find a specific search for European consensus. At the same time, it should be noted that this consensus on religious symbols has not been developed so far because there are differences in countries' traditions and the nature of relations between the state and the church. One can even note the principle of priority of European consensus. Only if it cannot be found—by analyzing the previously examined legal order and other European countries—does the Court proceed to "individual assessment" of a given case. There is an individualized subsumption of the norms of the Convention and its protocols. In this assessment, the starting point is recognition of European pluralism of state–church relations. Determining the adopted model of the relationship determines the Court's further considerations (e.g., the French or Italian model of separation). The Court therefore examines whether the margin of appreciation enjoyed by the state has been exceeded.

The limits of a state's margin of appreciation are determined by the axiology, tradition, legitimacy, and proportion of limitations, which the Court then compares with the general principles of the Convention. Among these principles, the starting point is the freedom guaranteed by Article 9 of the Convention, along which the other relevant norms of the Convention (e.g., Article 14) that should be interpreted systemically and functionally. Therefore, the Court's legal argument does not come down to a lexical interpretation of the Convention and its protocols only. On the contrary, the Court's case law in the field of religious symbols in public space refers to the tradition, axiology, and state–church relations in a given country and, in a comparative approach, also in other European countries (and sometimes, in addition, even from other continents). This leads to the conclusion that individual states' legal orders in the field of religious law concerning the use of religious symbols in public spaces are highly recognized by the Court. Thus, the pluralism of relations between the state and the church may even be the basis for restricting the freedom of thought, conscience, and religion. It therefore seems that the Court has in mind that the Convention is part of European legal culture but is not exhaustive.

The above restriction of this freedom—in the Court's analyzed judgments– must, however, be justified and proportionate. The Court weighs the reasons for this restriction. As a result, in some cases, the restriction may be groundless (e.g., protection of the company's image under given conditions) or fundamental (protection

of patients' health). Moreover, the Court refers to the relation of these reasons for limitations, indicating which of them are more serious.

Bearing in mind the distinction between private versus public entities' use of religious symbols, other legal grounds for the Court's assessment of the dispute can be noted. In the case of private entities, the Court examines, first, whether the state has adequately secured the protection of an individual with regard to their right to manifest religious beliefs through religious symbols through law and jurisprudence (the courts are an element of power) and whether the proportionality of restrictions has been breached. However, in the case of public entities' use of these symbols, the Court focuses on institutional aspects and whether the state has exceeded its margin of appreciation. At this point, it is worth noting that these two aspects were the essence of the Court's judgment on the use of religious symbols in public space. Therefore, it is precisely this type of argumentation that should be raised and properly justified within the framework of legal measures submitted to the Court.

Bibliography

Abramowicz, A. M. (2015) 'Uzewnętrznianie symboli religijnych w miejscu pracy w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka z dnia 15 stycznia 2013 r. w sprawie Eweida i inni v. Zjednoczone Królestwo' in Stanisz, P., Abramowicz, A. M., Czelny, M., Ordon, M., Zawiślak, M., *Aktualne problemy wolności myśli, sumienia i religii*. Wydawnictwo KUL: Lublin, pp. 11–19.

Alvaré, H. (2013) 'Legal protection of freedom of conscience' in Moravčíková, M., Križan, V. (eds.) *Právna ochrana Slobody svedomia*. Vytlačila VEDE: Trnava, pp. 7–16.

Borecki, P. (2016) 'Państwo laickie w świetle dorobku współczesnego konstytucjonalizmu europejskiego', *Przegląd Prawa Wyznaniowego*, 8, pp. 27–46.

Krukowski, J., (2008) *Polskie prawo wyznaniowe*, Wydawnictwo LexisNexis: Warsaw.

Mdina, A. L. (2020) 'Systemy relacji Państwo-Kościół w dzisiejszej Europie' in Ryguła, P. (ed.) *Relacje Państwo-Kościół w Europie. Studium prawa obowiązującego w Polsce i w Hiszpanii*. Wydawnictwo Naukowe UKSW: Warsaw, pp. 27–55.

Moravčíková, M. (2015) 'Freedom of Thought, Conscience and Religion or Belief' in Moravčíková, M., Šmid, M. (eds.) *Freedom of Conscience and Religious Freedom*. Nakladatelství Leges: Prague, pp. 33–54.

Poniatowski, M. (2018) 'The Analysis of Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the Judicature of the Polish Constitutional Court' in Steczkowski, P., Skwarzyński, M. (eds.) *The Influence of the European System of Human Right into National Law.* Wydawnictwo KUL: Lublin, pp. 85–94.

Romanko, A. (2013) *Symbol krzyża w sferze publicznej w kontekście wybranych orzeczeń*, *Kościół i Prawo*, 2(15), pp. 207–226.

Rynkowski, M. (2016) 'Krzyż i inne symbole religijne w prawie Unii Europejskiej. Uwagi o konsekwencjach przystąpienia Unii do europejskiej Konwencji o ochronie praw człowieka i podstawowych wolności. Czy Trybunał Sprawiedliwości Unii Europejskiej wydałby inne orzeczenie w sprawie Lautsi?' in Stanisz, P. Zawiślak, M., Ordon, M. (eds.) *Obecność krzyża w przestrzeni Obecność krzyża w przestrzeni publicznej. Doświadczenia niektórych państw europejskich*. Wydawnictwo KUL: Lublin, pp. 23–38.

Sadomski, J. (2015) 'Symbol religijny jako źródło naruszenia praw jednostki. Uwagi na marginesie sporów sądowych o obecność krzyża w instytucjach publicznych' in A. Biłgorajski (ed.) *Wolność wypowiedzi versus wolność religijna. Studium z zakresu prawa konstytucyjnego, karnego i cywilnego.* Wydawnictwo CH Beck: Warsaw, pp. 221–240.

Schanda, B. (2015) 'Concordatarian law and the domestic legal system. Equal freedom for everyone?' in Moravčíková, M., Šmid, M. (eds.) *Freedom of Conscience and Religious Freedom*. Nakladatelství Leges: Prague, pp. 227–236.

Sobczyk, P. (2013) *Konstytucyjna zasada konsensualnego określania stosunków między Rzecząpospolitą Polską a Kościołem katolickim*, Oficyna Wyd. ASPRA-JR: Warsaw.

Stanisz, P. (2016) 'Obecność krzyża w przestrzeni publicznej w kontekście wolności myśli, sumienia i religii. Perspektywa polska' in Stanisz, P., Zawiślak, M., Ordon, M. (eds.) *Obecność krzyża w przestrzeni publicznej. Doświadczenia niektórych państw europejskich*. Wydawnictwo KUL: Lublin, pp. 155–178.

Szubtarski, G., (2016) 'Prawo do manifestowania przekonań religijnych poprzez symbole religijne w świetle wyroku w sprawie Eweida i inni przeciwko Zjednoczonemu Królestwu z 15 stycznia 2003 r.', *Kościół i Prawo*, 18(2), pp. 185–203.
Torfs, R., (2016) 'Obecność krzyża w przestrzeni publicznej z perspektywy Europejskiego Trybunału Praw Człowieka' in Stanisz, P., Zawiślak, M., Ordon, M. (eds.) *Obecność krzyża w przestrzeni publicznej. Doświadczenia niektórych państw europejskich*. Wydawnictwo KUL: Lublin, pp. 11–21.
Warchałowski, K. (1998) *Nauczanie religii i szkolnictwo katolickie w konkordatach współczesnych*. Wydawnictwo Towarzystwa Naukowego KUL: Lublin.

Case law

European Court of Human Rights

Ahmet Arslan and Others v. Turkey, 23 February 2010, no 41135/98.
Belcacemi and Oussar v. Belgium, 11 July 2017, no 37798/13.
Dahlab v. Switzerland, 15 February 2001, no 42393/98.
Dakir v. Belgium, 11 July 2017, no 4619/12.
DH and Others v. Czech Republic [Grand Chamber], 13 November 2007, no 57325/00.
Dogru v. France and Kervanci v. France, 4 December 2008 – 27058/05 and 31645/04.
Ebrahimian v. France, 26 November 2015, no 64846/11.
El Morsli v. France [decision], 4 March 2008, no 15585/06.
Eweida and Others v. the United Kingdom, 15 January 2013 – resp. 48420/10, 59842/10, 51671/10 and 36516/10.
Folgerø and Others v. Norway [Grand Chamber], 29 June 2007, no 15472/02.
Hamidovic v. Bosnia and Herzegovina, 5 December 2017, no 57792/15.
Kokkinakis v. Greece, 25 May 1993, no 14307/88.
Kosteski v. the Former Yugoslav Republic of Macedonia, 13 April 2006, no 55170/00.
Köse and the Others v. Turkey [decision], 24 January 2006, no 26625/02.
Kurtulmuş v. Turkey [decision], 24 January 2006, no 65500/01.
Lachiri v. Belgium, 18 September 2018, no 3413/09.
Lautsi v. Italy, 3 November 2009, no 30814/06.
Lautsi [Grand Chamber] v. Italy, 18 March 2011, no 30814/06.
Mann Singh v. France [decision], 13 November 2008, no 24479/07.
Manoussakis and Others v. Greece, 26 September 1996, no 18748/91.
Otto-Preminger-Institut v. Austria, 20 September 1994, no 13470/87.
Phull v. France [decision], 11 January 2005, no 35753/03.
S.A.S. v. France [Grand Chamber], 26 June 2014, no 43835/11.
Şahin v. Turkey [Grand Chamber], 10 November 2005, no 44774/98.
Zengin v. Turkey, 9 October 2007, no 1448/04.

Constitutional Court (of the Republic of Poland)

Judgment of the Constitutional Court of 2 December 2009 (case file ref. no U 10/07; Journal of Laws of 2009, no. 210, item 163).
Judgment of the Constitutional Court of 7 October 2015 (file ref. no. K 12/14; Journal of Laws 2015, item 143).

Chapter IX

Summary

Paweł Sobczyk, Michał Poniatowski

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

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

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

Paweł Sobczyk, Michał Poniatowski (2021) Summary. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere,* pp. 273–279. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other titles in the book series
Studies of the Central European Professors' Network

ZOLTÁN J. TÓTH (ed.): *Constitutional Reasoning and Constitutional Interpretation*

MARCIN WIELEC (ed.): *The Impact of Digital Platforms and Social Media on the Freedom of Expression and Pluralism*

TÍMEA BARZÓ, BARNABÁS LENKOVICS (eds.): *Family Protection From a Legal Perspective*

Design, layout
IDEA PLUS (Elemér Könczey, Botond Fazakas)
Kolozsvár / Cluj-Napoca (Romania)

Printed and bound by
AK NYOMDA
Martonvásár (Hungary)