

## CONSTITUTIONAL BACKGROUND FOR STATE FUNDING OF CHURCH SCHOOLS AND TEACHERS OF PUBLIC EDUCATION IN HUNGARY

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In Hungary, the relationship between the state and the churches is determined by Section 60, paragraph 3 of the Constitution and its interpretation by the Hungarian Constitutional Court. According to those regulations, the functions of the state and the churches are separated from each other [the principle of disestablishment]. According to the interpretation of the Hungarian Constitutional Court, the relation between the two entities must be formed by the neutrality of the state. The following elements emerge from the principle of disestablishment in accordance with decision No.4/1993 (II.12.)AB:

1. The state system joins neither the churches in general, nor one of them.
2. The state does not subscribe to any of the churches' teaching.
3. The state does not interfere in the churches' internal affairs.
4. It especially cannot take sides in issues relating to faith.
5. The state must treat the churches as being equal.<sup>1</sup>

Formally, this explanation meets the conditions of liberalism perfectly. According to liberalism, a neutral state has to treat all its citizens with equal respect, and has to be concerned also about their interests as equally important. This is called the principle of equal dignity by Kant and by János Kis.<sup>2</sup> Thereafter the question is whether the interpretation fulfils the requirements set by liberalism, namely if it formulates a necessary and existing political moral basis which enables the application of the constitutional rules in situations needing decision.

Before presenting a judicial point of view from the perspective of constitutional law, it is necessary to examine the circumstances of moral principles, religious beliefs, ideological convictions and the role of the individual in society from a politico-philosophical point of view. Let us turn again to the influential theoretician of Hungarian liberalism, János Kis. According to him, people do not relate to moral life-ideals, religious beliefs, and ideological convictions as they do to consumer goods. We sort out the latter according to the money we have, and the time needed for seeing about these things. We do all this with great flexibility because if we cannot afford these goods or we do not have time, we can substitute them with other articles. But we do not choose our persuasions, beliefs, or moral principles. Our freedom in relation to them is not based on the freedom of choice. We recognize, understand and accept the veracity of moral, ideological and religious decisions.<sup>3</sup> Beliefs raised this way constitute the major part of our personality, and their modification can cause a thorough change of our personality. "For this reason – as János Kis states – the way the state treats the individuals is not independent from the way the differences in their moral perception, their faith related to religion, and their ideological convictions are handled. If [the state] demands of some of its citizens to give up the essence of their personality and go through

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<sup>1</sup> According to the reasoning of the Constitutional decision, this derives also from the Constitution's Section 70 of the Act.

<sup>2</sup> János Kis, *Az állam semlegessége*, Politikatudományi Szemle 1992. no. 2. p.15.

<sup>3</sup> Several occasions can be confusing when we talk about the free choice of religion in relation to the freedom of religion's content component. Under this freedom can be understood not the freedom of choice but that of the formation of conviction.

basic conversion in order for the voluntary acceptance of the pressure of circumstances, then it does not consider all its citizens equal moral persons.”<sup>4</sup>

When considering this theme, the focus should be put on the process of forming views and on the circumstances in which our moral ideological and religious principles are consolidated. It must be clarified whether the state has obligations – in the name of ensuring equal respect – in connection with the running of educational institutions bearing quite an important role in their formation. Following this train of thought, the state should not only keep away from the aggressive alteration of views but has to ensure the free process of socialization in the midst of religious and ideological pluralism by means of juridical regulatory enactments. An appropriate educational system has to be attached to this free process of socialization. The basis of liberalism, however, is the freedom of the individual, but the free individual should be aware of the fact that the making use of one’s freedom lasts only as long as it does not preclude the liberties of the other person. But this idea sets quite a high moral standard for each individual, and whether liberalism’s idea-system becomes a realizable habit depends on the acquisition of this standard. In order for the individual to reach this standard, an educational and pedagogical organizational system is needed which is able, first to offer, then to pass on that knowledge and wisdom to the student being socialized. Which, having been acquired, she or he can form her or his own belief in a well-founded manner. This institutional system, however, has to be variegated enough to protect the possibility for all valuable religious and moral views of life to appear which can increase that mass of information, which can help the society’s improvement toward their own special values. By doing so, the state will be able to ensure the conditions for the free development and enrichment of the individual while fulfilling one’s social usefulness, and also the promotion of public welfare for all.

The state’s duty to organize education is laid down by the decision of the Hungarian Constitutional Court as noted above, in the following way:

1. The state must be neutral in religious and other issues concerning the constitution of conscience. From the right to freedom of religion derives the state’s duty to ensure the possibility for creating one’s own convictions. The separation of the church from the state does not mean that the state should ignore the characteristics of religion and church.
2. The public school must not be committed to any of the religions. The state has to guarantee the legal possibility for establishing church schools, but the state itself is not liable to found such schools. Where the state transfers the ownership of the public school building to the church, attendance at the public school has to be guaranteed, for those not wishing to go to church schools, in such a way that it does not mean an extra burden for them.

Referring to several of its earlier decisions, the Hungarian Constitutional Court emphasizes that the right to human dignity as a ‘general personal right’ includes the right to the free unfolding of the personality. Furthermore, the Hungarian Constitutional Court also interprets liberty of conscience as the right to the integrity of the personality. According to this interpretation, the state must not put anyone into a situation that would lead to coming into conflict with themselves, and which would not be compatible with one of the essential convictions that determines their personality. Liberty of conscience and freedom of religion are two separately existing rights which confirm that our conscientious convictions are part of our human quality. So the freedom for these rights is a condition for the right to the human personality’s free development.<sup>5</sup> The state’s duty to “respect and protection”<sup>6</sup> of basic rights concerning freedom of religion must not be confined

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<sup>4</sup> János Kiss, *Az állam semlegessége*, Politikatudományi Szemle 1992. no.2. pp.17-19.

<sup>5</sup> Decision No. 64/1991. (XII.17)AB, and No. 8/1990. (IV.25) AB.

<sup>6</sup> Constitution, Section 8 of the Act, paragraph 1,

to the avoidance of violating the individual's rights, but rather has to be seen as the necessary condition for the prevalence of the freedom of religion. In other words, it is the defense of the values and circumstances related to freedom of religion regardless of the individual's needs.<sup>7</sup> The state's neutrality with reference to the right to freedom of religion does not mean passivity. The state's duty is to provide scope for the practice and teaching of religious beliefs, and for following it as a way of living, and the churches' operation, just like the denial of religion and the silence about religious conviction, need room for expression. In such a scope, different ways of thinking can be formed and developed making the free development of an individual's conviction possible.

According to Act IV of 1990 on liberty of conscience, freedom of religion and churches, the parents or the legal guardians have the right to make decisions about their children's moral and religious upbringing. Churches can manage pedagogical-educational work which the law does not reserve exclusively for the state. However, Hungary accepted further obligations by signing international conventions. As Article 2 of the European Convention on Human Rights' first supplementary record says, "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." In accordance with The United Nations International Agreement on Civil and Political Rights, Article 18, point 4, the states that are party to the present Agreement commit to undertake to ensure respect for the liberty of the parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions. The Convention on the Rights of the Child given in New York on 20 November, 1989<sup>8</sup> declares the child's right to freedom of thought, religion, and acknowledges the parents' right to lead the child to the enforcement of her or his right consistent with her or his maturity. (Article 14)

In terms of objective institutional protection, the state is obliged to create the conditions of legal rule and organizational ones needed for the creation of some of the basic rights in such a way that it should consider its task related to other primary rights.<sup>9</sup> The conditions to assert the freedom of religion have to be harmonized with those primary rights which also have to prevail in the educational affairs. Above all, the state has to run primary schools free of charge and compulsory,<sup>10</sup> and the parents and legal guardians are obliged to take care of their children's educational activity.<sup>11</sup> It is the parents' legal duty to decide their children's education.<sup>12</sup> The state has to respect and support the freedom of study and that of the teaching.<sup>13</sup> The parents have the right to make their children go to the school they choose, and not to send the children to such school which differs from their religious belief and conviction of their conscience. Parents and the children may choose public or church school, and for this reason the state cannot refuse the establishment of either religious or atheist schools.<sup>14</sup> The state is not obliged to found non-neutral schools. But if the church or the parents establish and run committed schools, the state has to support them according to the national tasks these institutions undertake, since the operation of

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<sup>7</sup> Decision No. 64/1991. (XII.17.) AB

<sup>8</sup> Declared by the law of LXIV, 1991

<sup>9</sup> Decision No. 64/1991. (XII.17.) AB.

<sup>10</sup> Constitution, Section 70/F. of the Act, and the public education's law of LXXIX, 1993, and Section 3 of the Act, paragraph 3

<sup>11</sup> Constitution, Section 70/J. of the Act

<sup>12</sup> Constitution, Section 67 of the Act, paragraph 2

<sup>13</sup> Constitution, Section 70/G of the Act, paragraph 1

<sup>14</sup> Law of Public Education Section 4 of the Act, paragraph 5

the public education's system is state-duty.<sup>15</sup> Therefore, the Hungarian Constitutional Court in a further decision<sup>16</sup> laid down the following as a constitutional demand: the state or local government has to provide, besides similar budgetary support (normative support), such additional financial aid to the educational institutions of the church run by its legal representatives, as for state or local governmental schools, in accordance with state or local governmental tasks undertaken by them.

## II.

In this section we examine the non-legal approaches to this theme, and the reasons for financial obligations on sociological and economic grounds. In our present high-information society, the following question can be raised: whether the state wishes to have a part in the re-shaping of culture and knowledge.<sup>17</sup> If the answer is no, then although the state's "total" neutrality comes to fruition, the state allows the functioning of the free market in regard to culture and knowledge production, and in this aspect the state functions as a market controller. The state introduces restrictions of time, space and procedure in the market of ideas, but trying to stay impartial, it does not control the tenor of the thoughts appearing on the market. It only controls the market's operational mechanism, but supports none of the views appearing on the market.<sup>18</sup> However it involves the danger of the loss of values that are not supported, consequently one of the conditions of personal autonomy, namely the choice between a number of valuable choices in life and ways of living is constricted or discontinued.<sup>19</sup> If the answer is 'yes', the intensity and forms of the state's presence have to be looked into and into those roles which the state wants to support. Moreover those areas must also be investigated where the state intends some change, for which it wants to ensure the crucial mass of people needed.<sup>20</sup> In the case of an affirmative answer, its support of church education is the unquestionable form of the state's presence. Yes, it is the form of the state's presence, since church schools are under state-control,<sup>21</sup> where the body of knowledge specified by the state is taught.<sup>22</sup> Nothing can be taken away from it, or added to it.

If the state stopped supporting the educational institutions financially, it could only assert its claims with difficulty. That is why the state in an information society can not withdraw from it. Those people who oppose support of church schools see the problem as a matter of economics, and regard financial subsidies as for church actions which are not governmental tasks. As István Polónyi says, the citizens' claim for governmental support coming from the right of choosing schools is not substantiated because the taxpayer does not dispose of her or his tax but confers this to the parliament. Therefore if one does not choose a public service, one has to pay that service's

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<sup>15</sup> Law of Public Education Section 2 of the Act, paragraph 3

<sup>16</sup> Decision No.22/1997.(IV.25) AB

<sup>17</sup> It is in this area where Pál Tamás examines the various intensity and forms of the State's presence in the „creative sector” emerged from the fusion of the artistic and information technological sphere parts and that of forming popular culture. Pál Tamás, *„Kreatív iparok” a közép-európai információs társadalmaiban*. Magyar Tudomány, 2003.no.12. pp. 1518ff.

<sup>18</sup> Daniel Krystyna,-W. Cole Durham, *A vallási azonosságtudat mint nemzeti identitás összetevője*. Fundamentum, 1997. no.2.p.8.

<sup>19</sup> Therefore liberalism's trend favored by Joseph Raz rejects the requirement of neutrality. Joseph Raz, *The Morality of Freedom*, Oxford, Clarendon Press, 1986. Quoted by Tamás Györfi, *Az állam semlegességének elve az alkotmányjogban*, source: <http://jesz.ajk.elte.hu/gyorfi15.html>

<sup>20</sup> Pál Tamás, *„Kreatív iparok” a közép-európai információs társadalmaiban*, Magyar Tudomány, 2003, no.12. pp. 1518ff.

<sup>21</sup> According to the Law of Public Education's Section 92 of the Act, paragraph 2, the Educational Minister's competence of departmental arbiter covers all actions falling within the law irrespectively of the institution's maintainer.

<sup>22</sup> In the period of the establishment of the general culture, the contextual unity of schools' pedagogy and teaching, and the permeability between schools are ensured by the National Curriculum of Studies, Section 8 of the Act, paragraph 9.

special supply and quality indicators. Moreover – argues Polónyi – the obvious goal of the denominational identity, mission, is not a governmental task. Therefore the state pays for something which it is not obliged to finance. The state then pays for something which it does not have a financial obligation for.<sup>23</sup> According to the reasoning of the Hungarian Constitutional Court as noted above, the guarantee of additional support is the state's duty based not only on the basic law approved by parliament but on the Constitution itself as well. None of the churches consider this as the ground of direct taxpaying disbursement.

Let us start solving the second half of the problem from afar. If an affirmative answer is given to the question of whether the state's information politics forms social policy, it will be in the state's interest to be more present at the brain factories, doing it by intensive support of degrees and methods. It would be reasonable, especially when it considers the education in the schools, namely in church schools, to be perhaps indifferent,<sup>24</sup> or not up-to-date in their knowledge construction, so that their social usefulness could be questioned.

When examining the question from socio-political, educational-political and economic points of view, we are faced with the fact that nowadays the structure of the sphere of knowledge production is necessarily undergoing a transformation in Hungary. In public education the state is not merely an institution maintainer but partly buys this service. It buys it for itself and for its citizens. It undertook the insurance of free education in the Constitution but did not take on to guarantee it explicitly in institutions established by the state. Since the state is obliged to assure the conditions of freedom of religion due to its duty undertaken in the Constitution, it is bound to make it possible for children and their parents to decide which school they choose. Doing so, the state can satisfy all the conditions by buying one of the services. If the church school imparts a greater stock of learning beside what is imposed by the state and which can be and is actually called to account by it, it is adding knowledge springing from its own scale of values, with which the society is enriched without having to pay for it.<sup>25</sup> With this, the society's knowledge grows richer contributing possibly to the creation of social peace - the lack of which would force the state into heavy expenditures.

One should pay attention to the fact that here we meet a specific 'orderer-provider-customer' relationship. The state is the 'orderer', the church school is the provider and the customer is the children studying at the school. The parent's interest is that their children 'buy' knowledge useful for them. It is not the state, not governmental law and not even the church that directs the children to the church school, but it is their parents who have them enrolled. Thus the argument that the church considers or may consider its educational institutions basically an area for repayment can not be accepted. If the church did so, the circle of purchaser would soon drop away. Neither the state, nor the parents should be afraid of evangelization. Sociological inquiries prove all over the world that religious people's social profitability is above the average. Max Weber's evaluation on the interrelation between protestant ethics and capitalist economy is well known.<sup>26</sup> From today's inquiries Ákos Szalai points to the social effect from the utility of religious consumption, according to which "due to the appropriately created stimulators (moral orders, other-worldly presents and punishments) the function of the churches decrease the cost of economic transactions greatly, contribute to the safety of property and the creation of trust in

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<sup>23</sup> István Polónyi, *Az egyházi közoktatás néhány oktatásgazdasági sajátossága*. *Educatio* 2005, Fall, pp.609-610.

<sup>24</sup> István Polónyi-János Timár, *Oktatáspolitikai*. *Magyar Tudomány*, 2006 no. 1. pp.38ff.

<sup>25</sup> Even though István Polónyi does not see the calculation of the rate of return on education's economic yield attested, referring to Theodore W. Schultz admits that education regardless of its quality can forward and set back the improvement of a country. István Polónyi-János Timár, *Oktatáspolitikai*, *Magyar Tudomány*, 2006. no. 1. pp.38ff.

<sup>26</sup> Max Weber, *Die protestantische Ethik und der Geist des Kapitalismus*. 1905.

contracts and promises." Beside this he also emphasizes that "religion determines one's individual – uncontrollable by the other members of the community – deeds, where literature stresses religion's role of strengthening personal integrity: the believer experiences the violation of religious rules as the weakening of her or his own identity."<sup>27</sup> On the basis of Iannaccone's research, Orsolya Lelkes claims that church institutions urge us to right behaviour, and use various methods of social control. Referring to Hull's and Bold's research, she says that denominational membership diverts from improper behaviour by strengthening the enforcement of proprietary rights. She points to Ellison's results and says that religion contributes to the subjective welfare in a positive way.<sup>28</sup> Summing up her own observations of scientific research, she highlights the following: "Active religious people report a higher experimental utilitarian (namely satisfactory) level on the average; their contentment is little influenced by the amount of money they have, and economic change did not affect them very much."<sup>29</sup> If we accept this social usefulness, the state obtains a considerable profit (not necessarily measurable in cash) without surplus investment, thus – in agreement with Ákos Szalai – "it could really be in the government's interest to increase the number of believers."<sup>30</sup>

### III.

According to the above arguments, from the Constitutional point of view the existence of church schools and the financial obligation of the state for them cannot be doubted. Constitutionally, keeping to the subject of education, namely keeping the student's interest in first place,<sup>31</sup> no differentiation may be made between state schools and church schools. Proceeding along this line thinking about the issues, let us look into the question whether it is possible to make a difference constitutionally between teachers in the state schools and those in the church schools. This question is also related to the financing of the public educational institutions maintained by the church.

According to the regulation of the Law of Public Education for the educational-pedagogical institutions, a person may be employed who has attained a high educational level (university or college) and met qualifications established by the law.<sup>32</sup> It follows from this that the requirement is the same, relating to the qualifications and the material taught in the public institutions, whether they are state or church schools. This cannot be otherwise since the interest of the children, their equal judgment and the equal level education can only be accomplished in this way. However, the teachers' payment set by the provision of law is defined differently by some churches. Consequently, last year several church educational schools did not give a 13<sup>th</sup>-month-salary to their workers. According to the Law of Public Education, provisions established for civil servants must

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<sup>27</sup> Ákos Szalai: *Az egyházpolitika gazdaságtana*. Századvég, 2005. no. 4. pp. 19. Ha made reference to the following work: Harry G. Frankfurt: *Freedom of Will and the Concept of a Person*. Journal of Philosophy 1971/ 68. pp.5-20., Amartya K. Sen: *Rational Fools: A Critique of the Behavioral Foundation of Economic Theory*. Philosophy and Public Affairs, 1977/ 6. pp. 317-344.

<sup>28</sup> Orsolya Lelkes, *A szabadság íze: boldogság, vallás és gazdasági átmenet*, Századvég, 2005. no.4. p. 62, . A Work referred to: Laurence R. Iannaccone: *Introduction to the Economics of Religion* (Bevezetés a vallás gazdaságtanába) Journal of Economic Literature 1998/36.no.3. pp.1465-1495; Brooks B. Hold-Frederick Bold: *Preaching Matters: Replication and Extension* (A prédikálás számít: válasz és kiterjesztés) Journal of Economic Behavior and Organization 1995./ 27. pp.143-149., Christopher G. Ellison: *Religious Involvement and Subjective Well-being* (Vallásos aktivitás és szubjektív jólét). Journal of Health and Social Behavior 1991/ 32. no.1. pp.80-90.

<sup>29</sup> Orsolya Lelkes, *A szabadság íze: boldogság, vallás és gazdasági átmenet*, Századvég, 2005. no. 4. p. 87.

<sup>30</sup> Ákos Szalai, *Az egyházpolitika gazdaságtana*, Századvég, 2005. no. 4. p. 30.

<sup>31</sup> According to the Law of Public Education, Section 3 of the Act, (7), in the organization, management and actuation of public education the interest of the children is above all.

<sup>32</sup> Law of Public Education, Section 17 of the Act, paragraph 1.

be applied as salary scale for teachers' weekly hours, overtime and extra holiday for the teachers when employed by a non-state educational institution or one not financed by the local government. The teachers' salary and surplus payment cannot be less than the lowest proportion of the wage and compensation due for civil servants doing the same job. On the basis of all those wages, which are to be paid to the teachers working at local governmental educational institutions, these are due also to those working in the church educational institutions. Since the salary of the 13<sup>th</sup> month is a kind of wage allotment, it has to be paid to the teachers employed in a church educational establishment. The source of this – as also in state and local governmental schools – is the normative and additional support. And if the church educational establishment is required to receive these, it cannot allude to the lack of resources.