

Report on the International Scientific Conference 'The protection of religious freedom in Central and Eastern European countries' organised within the framework of the Central European Professors' Network



Béres, Nóra; Marinkás, György

Nóra Béres nora.beres@mfi.gov.hu
Institute of European and International Law,
Hungary
György Marinkás gyorgy.marinkas@mfi.gov.hu
University of Miskolc, Hungary

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redakcja.osap@gmail.com

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Abstract: The scientific conference under the title 'The protection of religious freedom in Central and eastern European countries' was held on 26 November 2021 in the Ministry of Justice of Hungary as the third element of the closing events of the Central European Professors' Network. The event hosted a book launch as well: the members of the research group titled 'Freedom of conscience and religion in Europe' presented their book entitled 'religious symbols in the Public sphere' which summarizes their results. Professor Sobczyk, the head of the research group, introduced the two main issues which the research group focused on, namely: 'the presence of religious symbols in public space' and 'protection of religious belief in east-Central European countries'.

Keywords: religious freedom, religious symbols, east-Central European countries.

Streszczenie: konferencja naukowa pt. „Ochrona wolności religijnej w krajach Europy Środkowo -Wschodniej” odbyła się 26 listopada 2021 r. w Ministerstwie sprawiedliwości Węgier, jako trzeci element wydarzeń zamykających działalność sieci Profesorskiej Europy Środkowej. Jednym z ważniejszych punktów konferencji była prezentacja książki, która powstała w wyniku prac członków grupy badawczej „Wolność sumienia i religia w Europie”, zatytułowanej „symbole religijne w sferze publicznej”. Profesor Sobczyk, przewodniczący tego zespołu naukowców, przedstawił dwa główne zagadnienia, na których skupiła się praca badaczy, tj. 'obecność symboli religijnych w przestrzeni publicznej' oraz 'ochrona przekonań religijnych w krajach Europy Środkowo-Wschodniej'.

Słowa kluczowe: wolność religijna, symbole religijne, kraje Europy Środkowo-Wschodniej.

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Professors' Network (Budapest, Ministry of Justice of Hungary, 26 November 2021)

The event started with the plenary session titled 'Manifestation of religious beliefs in the public sphere'. The moderator of the conference was associate Professor Dr. Balázs Gerencsér (Pázmány Péter Catholic University, Budapest), who briefly greeted the participants and gave the floor to Prof. Dr. Ede János Szilágyi (University of Miskolc), Head of Ferenc Mádl Institute of Comparative Law (hereinafter: FMI), to hold his introductory speech. Professor Szilágyi first expressed his gratitude for those from the Pázmány Péter Catholic University and the FMI, who took part in organising the event. Professor Szilágyi emphasized that he was especially thankful to Dr. Balázs Gerencsér and Prof. Dr. Balázs Schanda (Pázmány Péter Catholic University, Budapest) for their indispensable help. Then, Professor Szilágyi expressed his gratitude for the Ministry of Justice of Hungary for providing such a beautiful venue to hold the conference. Professor Szilágyi greeted the members of the research group titled 'Freedom of conscience and religion in Europe' and the other members of the Central European Professors' Network who appeared in person and the audience of the conference. Next, he presented the background and results of the activity run by the Central European Professors' Network.

The Central European Professors' Network started its international comparative law research activity on 1 January 2021, under the coordination of the FMI. The Professors' Network, with the active participation of 34 main researchers from seven countries (Czechia, Croatia, Poland, Hungary, Serbia, Slovakia, Slovenia), organises comprehensive international scientific activities in four research groups. The main frame issues are: 'Interpretation of fundamental rights in Europe', 'Family protection in law', 'Freedom of conscience and religion in Europe' and 'The impact of digital platforms and social media on freedom of expression and pluralism'. The primary aim of the initiative is to create and organise a Central European professional network through closer partnership. as Dr. Judit Varga, the Minister of Justice of Hungary, pointed out, the initiative also aims at '[...] establishing a professional community and knowledge base that can present a credible national, conservative, Christian-democratic alternative to the liberal and federalist direction.'

The partial and final results of the cooperation, which was to be run until 31 December 2021, will be made available by each research team on various professional platforms, including conferences, and in the form of publications (scientific articles and books summarizing research results). Professor Szilágyi presented the achievements of the Central European Professors' Network so far, including four books written in the English language. The first book under the title *The Impact of Digital Platforms and Social Media on the Freedom of Expression and Pluralism* summarizes the results of the research group with the same name and was edited by Marcin Wielec. The second book was edited by Paweł Sobczyk under the title *Religious Symbols in the Public Sphere*. This book summarizes the findings of the research group: 'Freedom of conscience and religion in Europe.' Professor Szilágyi emphasized that the book provided him with some important information that was new to him, namely that the use of these symbols in the public spheres is part of the tradition in the

countries that were subject of the research – namely the east-Central European states. Therefore, except for Slovenia, the issue rarely led to legal disputes, thus resulting in a low number of regulations and related case-law of the constitutional courts. One may conclude, however, that these countries share common characteristics regarding values and traditions, which was also apparent based on the third book that summarizes the achievements of the working group titled 'Family protection in law'. The book *Family Protection from a Legal Perspective* was edited by Prof. Dr. Tímea Barzó and Prof. Dr. Barnabás Lenkovics. As Professor Szilágyi highlighted, the east-Central European states share common characteristics regarding the family values and similar rules on marriage and adoption. The fourth book was edited by Prof. Dr. Zoltán Tóth J. and summarizes the achievements of the working group 'Interpretation of fundamental rights in Europe'. The book is titled *Constitutional Reasoning and Constitutional Interpretation*. Professor Szilágyi noted that while constitutional courts of the east-Central European countries quite frequently refer to the case-law of constitutional courts outside the region, they dispense to do so with the case-law of the constitutional courts within the region. In his view this is also a common – and unfortunate – characteristic.

The above-mentioned books and the scientific achievements included in them were introduced to the wider public at 56 dissemination events until 26 November 2021. In order to publish the further results of the cooperation, a new publishing house 'Central European academic Publishing' was established, specializing in publishing scientific books and journals in the English language. Professor Szilágyi also talked about the new journal of the FMI, called *Law, Identity and Values (LIVE)* which is aimed to host articles that reveal the above-mentioned common characteristics of the east-Central European countries.

Professor Szilágyi introduced the 'Central European Junior Programme' which provides the opportunity for young lawyers entering their careers (hereafter: juniors). The programme is built on two pillars, namely the doctoral studies at the Ferenc Deák Ferenc Doctoral school of Law and on an internship at the FMI. In order to provide proper books for the juniors, the MFI – in cooperation with other partner institutions – launched a book series consisting of 10 books written in the English language on various topics, including history of law, constitutional law, and the like.

Last, but not least, Professor Szilágyi confirmed that while the Central European Professors' Network project ended on the 31 December 2021, the cooperation would continue within the institutionalised framework called the 'Central European academy'. Professor Szilágyi also revealed that institutional changes were on their way: a new organisation was to be set up that should take over the coordination of the functioning of the Central European academy and the Central European academic Publishing.

The plenary session continued with the speech of Prof. UO Paweł Sobczyk (University of Opole), Head of the research group 'Freedom of conscience and religion in Europe', who expressed his gratitude for Dr. Judit Varga, the Minister of Justice of Hungary, and Professor Szilágyi, the Head of the FMI, for providing the opportunity of cooperation. Then, he introduced the members of the research group. Prof. Dr. Lóránt Csink (Pázmány Péter Catholic University, Budapest), Dr. Dalibor Đukić (University of Belgrade), Prof. Dr.

Damian Němec (Palacký University Olomouc), Prof. Dr. Vojtech Vladár (Comenius University in Bratislava) ass. Prof. Dr. Vanja-Ivan Savić (University of Zagreb), ass. Prof. Dr. Frane Staničić (University of Zagreb), Dr. Michał Poniatowski, (Cardinal Stefan Wyszyński University in Warsaw). Professor Sobczyk introduced the two main issues which the research group focused on, namely: 'the presence of religious symbols in public space' and 'protection of religious belief in east-Central European countries'. The research group analysed the case law of constitutional courts, the European Court of Human rights (hereinafter: ECtHR) and the case-law of the Court of Justice of the European Union (hereinafter: CJEU) (Sobczyk 2021: 103-140).

The third presenter of the plenary session was Prof. Balázs Schanda (Pázmány Péter Catholic University, Budapest) who, in his introductory lecture, talked about the state-church relations in the east-Central European countries. Professor Schanda stated that one cannot speak about the state-church relations in these countries, without taking into account the history of the respective country: in the case of Hungary, for example, these relations started with Stephen I. the first king and the founder of the Christian Hungarian kingdom. In the east-Central European countries – as another similarity – the organic development of state-church relations were interrupted by the communist regimes. after the collapse of these regimes the countries of the region had to legislate on the issue to eradicate the communist legacy. This legislation procedure typically occurred in two waves: the first wave arrived with the change of regime and was characterized by the euphoria of freedom and the intention to cease state control over the churches. except Slovakia, the countries of the region introduced a liberal regulation, which allowed acquiring a church status very easily. The second wave came some ten or fifteen years later and, after more than twenty years later, in the case of Hungary (2011). The second wave was characterised by the introduction of stricter regulations and differentiation among the individual churches based on their social importance and relevance. The result was a two-tier system in most countries, but in the case of Hungary – as a peculiarity – there are four categories. The countries of the region typically concluded concordats/treaties with the historically important churches. In Professor Schanda's view, these agreements served the legal certainty rather than providing privileges to these churches, which is proven by the fact that there is not a single state in the region, which reintroduced the institution of state church. On the other hand, no country in the region picked the French *laïcité* model. as a conclusion, Professor Schanda called this model, typical of the east-Central countries, a friendly separation (Schanda 2015: 227-236).

as the fourth presenter, Prof. KUL Piotr Stanisław (John Paul II Catholic University of Lublin) introduced the book of the research group 'Freedom of conscience and religion in Europe' entitled *Religious Symbols in the Public Sphere*. as Professor Stanisław emphasized, the presence of religious symbols in the public sphere, including the crucifixes in school rooms, is a current and important issue debated from time to time across the continent, but the final word has not been spoken yet, despite the ECtHR and other similar judicial bodies or UN organs dealt with the issue in several cases. although the wearing of Islamic scarfs has rarely emerged as an issue in the region, it may change in the future. even in the deeply religious Poland the return of crosses to state school classrooms

after 1989 was not without controversy: the then Ombudsman unsuccessfully applied to the Constitutional Court of Poland in this regard, which upheld the constitutionality of the 'Ordinance of the Minister of education of 14 april 1992'. In the Ombudsman's view the ordinance allowed the excessive display of crucifixes in state schools. The Constitutional Court, took the view that the ordinance was constitutional since it only allowed the display of crucifixes, but did not make them compulsory (Constitutional Court of Poland No. U 12/32). Professor Stanisiz reiterated that the crucifix is not only a religious symbol, but the expression of Europe's Christian traditions and that European culture is rooted in Christianity. 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.' Professor Stanisiz highlighted that Basic Law of Hungary creates a really favourable environment due to its article 1 (4), which states that: 'The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the state.' In conclusion, he repeated that it is culture-related aspects of Christian traditions which are the cornerstones of European identity (Stanisiz 2016). after the coffee break, the first panel's opening presentation titled 'Freedom of religion in pandemic times' was held by Prof. Dr. Lóránt Csink (Pázmány Péter Catholic University, Budapest). Professor Csink first introduced those hardships one has to face when it comes to the state of emergency in the Hungarian regulation, namely the: overcomplicated regulation – which was rooted in the distrust and political compromise at the time of the change of the regime – and the linguistic gap that is to say the 'state of emergency' does not cover all special legal orders in the Hungarian Basic Law. a significant difference is that while the previous constitution declared freedom of religion as a right that cannot be restricted during emergency, the Fundamental Law contains no special provision. The details had to be elaborated on by the Constitutional Court of Hungary (hereafter: CCH), which in its Decision No. 15/2021 (V.13.) CC stated that restrictions must be in connection with the emergency. Having regarded this general principle, the CCH upheld the government regulation and stated that state restrictions on many spheres of life, which varied according to the event – while there was no formal ban on religious services, funerals were allowed up to 50 people and family gatherings were allowed up to 10 participants, and there was a general ban on assemblies – were constitutional.

Professor Csink expressed his personal disagreement with the decision, since the 'Coronavirus does not know what kind of occasion it was, so it can spread anyway.' In Professor Csink's opinion, the most important question was why the government was – in his words – 'tiptoeing'? Why the government only asked the churches to 'consider the pandemic situation' – that is to say religious communities were free to decide on their own events – instead of issuing obligatory regulation? as Professor Csink emphasized, the state has the general obligation to protect life and to avoid conflict with conscience and the state has to act deliberately, since it is hard to decide whether a state regulation concerning religious issues is neutral or not by its nature (Csink 2021: 73-102; Csink 2021: 43-50).

The second presentation titled 'Nihil Est Tam Inaequale Quam Aequitas Ipsa – The Issue of Confessional Communities in Serbia' was held by Dr. Dalibor Đukić (University of Belgrade). Dr. Đukić's, in his presentation, analysed the problematic issues of the two-tier or multi-tier systems of religious communities, which is a characteristic feature of the region. Dr. Đukić referred to Professor Schanda, who had already pointed out this similarity in his presentation. subsequently, Dr. Đukić introduced the Serbian system, which is a three-tier system through the lens of the motto of his presentation, namely 'Nihil est Tam Inaequale Quam aequitas Ipsa' that is 'nothing is so unequal like equality itself'. He also used the thoughts of Dr. Gerhard robbers as a guideline, who said that: 'To safeguard religious liberty the correct paradigm is equal rights, not identical rights.' Having regarded the above, Dr. Đukić introduced the current legal framework, namely the 'Law on the repeal of Certain Laws and Other regulations' enacted in 1993. In the spirit of 'restitutio in integrum' – which took place after the fall of the communist regime – the 'Traditional Churches and religious Communities' – namely Serbian Orthodox Church, roman Catholic Church, Slovak evangelical Church, Christian reformed Church, evangelical, Christian Church, Islamic religious Community, Jewish religious Community – constitute the 'top tier'. requirements for registration in this tier are usually burdensome, they have to prove that they have had 'historical continuity within Serbia for many centuries'. These religious confessions enjoy tax benefits and state funding and access to public institutions, including religious instruction in public schools. The religious confessions at the second tier – called 'Confessional communities' – have the ability to obtain some privileges, but not to the same extent as the religious organizations that belong to the highest tier. religious confessions at the lowest tier – called 'other religious organizations' – have a basic form of legal personality and do not enjoy any advantages or benefits (Đukić 2014: 56-77).

as the third presenter of the first panel, Prof. Dr. Damian Němec (Palacký University, Olomouc) gave his lecture on 'Freedom of artistic expression and Protection of the Dignity of religion in the Light of a Lawsuit over a Theatrical Performance in the Czech republic'. In his presentation, first of all, Professor Němec provided a historical overview on constitutional guarantees and criminal protection of the freedom of religion as well as freedom of artistic expression by examining several laws from three historical periods (including Constitutional act no. 121/1920 sb. z. a n.; act no. 117/1852 RGBI., Penal Code; Constitutional act no. 150/1948 sb., Constitutional act no. 100/1960 sb., Constitutional act no. 100/1960 sb.; act no. 86/1950 sb., Penal Code, act no. 140/1961 sb., Penal Code; Constitutional act no. 23/1991 sb. = 2/1993 sb.; act no. 40/2009 sb., Penal Code). Then Professor Němec presented three examples of lawsuits over theatrical performances besides explaining the reasons for refusal of these actions (applicants' lack of active legitimacy, applicants' lack of protection of the state flag, collision of prevailing freedom of artistic expression over other freedoms). Lastly, Professor Němec mentioned a case filed to the Czech constitutional court with no results that probably will be lodged with the ECtHR in the near future (Němec 2021: 39-72).

The next presenter of the first panel was Prof. Dr. Vojtech Vladár (Comenius University, Bratislava) who gave the lecture on 'Freedom of Conscience and

religion in the Family Law in the Slovak republic'. Firstly, Professor Vladár emphasized the role and significance of churches and religion in the Slovak society and provided a brief historical overview of this issue. Within his historical overview, Professor Vladár pointed out the strong links between religion and family, i.e. canon law and family law (monogamy, the issue of abortion, church/civil marriages, etc.). In the rest of his presentation, Professor Vladár discussed and elaborated such issues in detail, besides adding some *de lege ferenda* conclusions (Vladár 2021: 171-210).

Prof. UO Paweł Sobczyk (University of Opole) was the last speaker of the first panel, giving the lecture under the title 'The necessity of Protecting religious Feelings under Criminal Law in a Democratic state'. In his presentation, Professor Sobczyk outlined the importance of establishing guarantees of religious feelings, including national and international guarantees. He also highlighted the procedural protection of religious feelings, such as the right to a fair trial and the ombudsman-type protection. Professor Sobczyk shared his research findings on criminal law issues from the perspective of constitutional law, providing also a case analysis to illustrate his topic (Sobczyk 2021: 103-140).

The first lecture of the last panel was given by ass. Prof. Dr. Vanja-Ivan Savić (University of Zagreb) with the title of 'Croatia as Italy? The presence of religion on the Public school system'. Ass. Prof. Vanja-Ivan made a very friendly gesture to the audience and expressed his thanks for his participation in the Central European Professors' Network, as well as at the conference in Hungary. In his lecture, when he recalled the *Lautsi and Others v. Italy* case before the ECtHR, ass. Prof. Vanja-Ivan referred to the applicability of the margin of appreciation doctrine before the ECtHR in cases coming from Central and eastern European states in the context of presence of religious symbols in public schools. He underlined, as his main message, that family should remain the core of society, and hopefully the values of Western and eastern Europe are the same, even though they are not seen to be on a par. As he said: 'The two »Europes« must sit at the same table' (Savić 2021: 11-38).

Then the floor was given to ass. Prof. Dr. Frane Staničić (University of Zagreb) who gave the presentation titled 'religious education in the Public sphere in Slovenia'. In his introduction, ass. Prof. Staničić devoted some remarks to the importance of school and education and a brief historical overview of this topic. He also described the state-church relations models with special regard to the Slovenian tendencies, analysed the religious Freedom act and the education act while explaining features of the religious education in Slovenia (Staničić 2021: 211-244).

The last speaker of the second panel was Dr. Michał Poniatowski (Cardinal Stefan Wyszyński University, Warsaw) who shared his thoughts on 'Freedom of Conscience and religion in Private schools' with the participants. Dr. Poniatowski divided his lecture into the following sections: in the introduction, he described the freedom of religion as a fundamental right and, likewise ass. Prof. Vanja-Ivan, he made reference to the *Lautsi and Others v. Italy* case before the ECtHR; next, he provided a brief historical overview on the freedom of religion in private schools, then outlined the sources of this issue and labelled the freedom of conscience and religion as a highly ranked one in the hierarchy of values. When

assessing the selected case-law of his topic, Dr. Poniatowski pointed to the very complex object of this fundamental right (Poniatowski 2021: 245-272).

At the end of the conference, Professor Szilágyi added his final remarks and thanked for the annual cooperation and the fruitful research. at this point, certificates were also granted to the participating presenters. additionally, all the presenters were invited to join the Central-European association of Comparative Law, which was set up in 2021 in order to conduct comparative law research, write papers related to private and public law, as well as European and international law, focusing on the Central-eastern-European region, and to formulate proposals and opinions for the academic community of the Central and eastern European region, international organisations and public bodies, in particular legislators and law enforcement bodies, with special regard to the promotion and development of the application of certain legal instruments domestically and abroad.

Case Law

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