

BALÁZS SCHANDA<sup>1</sup>

## The Christian Roots of Hungary’s Fundamental Law

- **ABSTRACT:** *According to the statements made on the fifth anniversary of the Fundamental Law, the truly important question is what the chances are that the Fundamental Law will live to see its fiftieth anniversary.<sup>2</sup> In this regard, the defining content is important and not the form: Will the essence that defines the nature of the Fundamental Law withstand the test of time? The identity of the Fundamental Law is determined by its commitment and not the various technical legal details. The substantive question remains the same on the tenth anniversary: Is it possible to preserve a vision of man based upon the harmony between individual freedom and responsibility for the community; and the commitment to the identity of the state and nation, the matters of the state, and marriage and the institution of family?*
- **KEYWORDS:** Hungary, Christianity, Fundamental Law, Christian roots.

### 1. The call for Christian heritage in the text of the Fundamental Law

#### ■ 1.1. “God bless Hungarians!”

The first line of the National Anthem, referred to by the *National Avowal*, is not an *invocatio Dei* in its traditional sense: the constitution is not created in the name of God (as in the case of the Swiss or Irish constitutions, for example). Something that requires an explanation for foreigners is quite clear to Hungarians even without the use of quotes: the reference preceding the written text of the constitution links all of the nation’s members. Assuming healthy relations, the fact that the Anthem has an additional meaning for religious citizens does not mean it excludes anyone indifferent or even opposed to this added content. János Zlinszky’s notion that “the addressee of the order cannot be instructed to act on the basis of the legal text”<sup>3</sup> is more ironic than anything else—and it also illustrates the limits of its normative nature. The first

1 Professor, Faculty of Law and Political Sciences, Pázmány Péter Catholic University in Budapest, Hungary; Judge, Constitutional Court of Hungary; schanda@mkab.hu.

2 Schanda, 2016, pp. 65–73.

3 Zlinszky, 2011, p. 27.



sentence has a very important symbolic significance, although its legal significance is not as pronounced;<sup>4</sup> however, it is impossible to interpret the line without knowledge of the context. A reference to God cannot be a goal unto itself: it is recognition of the finite nature of power—in this case, constitutional power—which protects the people and not God (who hardly requires such protection). This is made especially clear in the text of the postamble (which is reminiscent of the Bonn Basic Law). The expression “... being aware of our responsibility before God and man...” does not mean that the state desires sacral legitimacy, but rather that it acknowledges its own limited nature and final responsibility that extends beyond law.

### ■ 1.2. *The National Avowal*

The National Avowal is centered on the invocation of Saint Stephen and Christian Europe,<sup>5</sup> which is why it makes no reference to the period preceding statehood; that is, it considers the point of origin to be the foundation of the state—and not the Hungarian conquest of the Carpathian Basin. The last sentence of the first paragraph in the preamble expressly acknowledges the role of Christianity in preserving nationhood. This recognition does not qualify the role of Christianity as a religion or the role that Christian faith currently plays in society, but pertains to the determining role played by Christianity in the nation’s history. There is no question that Christianity plays a role in preserving nationhood and that it is more than just a tradition—the tradition is deep-rooted and Christian faith is present even today. The National Avowal says much when it stops at the partial invocation of Christian traditions. This is a descriptive finding regarding a historical fact and not an obligation. Compared to other esteemed religious traditions, the constitutional legislator is merely recognizing a historical fact, and does so from the aspect of the nation as the legislating community: all it does is pay tribute to religious traditions; the recognition of non-religious traditions<sup>6</sup> is missing just as any mention of the role that religion plays today.

### ■ 1.3. *The order to protect Christian culture*

The seventh amendment of the Fundamental Law decrees that Hungary’s Christian culture shall be protected—and not Christian faith or religion. By decreeing the protection of Hungary’s Christian culture, the legislator intends to ensure that Christianity—or, more precisely, Hungary’s Christianity-based culture—is present not only as an element of the past but also as a value that is to be protected. Stemming from its nature, Christianity is a universal religion that has strived for inculturation ever since the beginnings. The Fundamental Law does not require the protection of Christianity, but rather the protection of a cultural reality created by faith over the course of generations in its transformation of individuals and leaven-like permeation of society.

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4 Horkay Hörcher, 2012, p. 296.

5 In the word combination, Nóra Chronowski puts the word “Christian” in quotes: Chronowski, 2012, p. 75; Tóth, 2013, pp. 3–6.

6 Jakab, 2011, p. 181.

However, constitutional protection is provided not to the faith but to the culture that it created, including the freedom to deny faith. A significant part of Hungarian society, including those who consider themselves Christian, fail to follow several moral commandments and traditions stemming from Christianity: the protection on freedom rooted in Christianity also extends to this freedom.

Culture primarily refers to the totality of the material and intellectual values created by humanity—the manifestation of the learning of a community or people. From an anthropological perspective, culture is the way of life of a community.<sup>7</sup> Threats to our culture can originate from various directions; as the wording of the Fundamental Law is quite general, it conveys a message of support for those striving to protect the cultural heritage, be it the protection of a cityscape, the maintenance of cultural traditions, or emphasizing the importance of teaching the Latin language. However, a general reference is also made to the whole of the Central European way of life, which includes everything from music education through dance schools to the evaluation and protection of partnerships, forms of behavior, and virtues. It would be impossible to define the entire scope of the content of our culture that we are to protect. Whether this culture can be deemed Christian or whether it would be more appropriate to talk about a Christian-rooted culture still needs clarification.

While the question as to what is reconcilable with the Christian faith is to be answered fundamentally by ecclesiastical communities and the heads of the Church, and is also a question of conscience, it is the job of the Constitutional Court to interpret the Fundamental Law. The wording of the Fundamental Law shows that the legislator targets the protection of present social practices and not the re-creation of Christian culture, even in cases where there is a gaping abyss between Christian ideals and the social practices. This is also indicated by the fact that it requires the protection of a given culture (Hungary's) and not of Christian culture. However, if the culture of Europe—and, thus, of Hungary—is Christian,<sup>8</sup> the protection of cultural self-identity can only mean the protection of Christian culture.

The role of faith in creating culture is an experience derived from history.<sup>9</sup> The culture that grew from Christianity can only be organically protected together with Christianity. Without living faith, the fruits of our predecessors' faith will be preserved for just a short while, maybe a generation or two. With its order to protect culture, the Fundamental Law protects the fruits of the faith of previous generations, and not the tree (Christian faith). The legislator has no influence on whether the tree is alive or if it is merely the skin—the visible shell of the fruit that we protect—that is ripped from the tree.

A peculiar question is whether the state can take action against those who voice Christian viewpoints based on theological principles or a moral basis in the interest of

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7 Pusztai, 2003, p. 774.

8 Europe's identity is based on its Christian heritage. See: Weiler, 2006; Király, 2006; Pünkösty, 2014.

9 Török, 2016, p. 16.

protecting the given culture. If we identify “Christian culture” with today’s predominant forms of behavior, it may be precisely the authentic Christian position that has to oppose the leading culture.<sup>10</sup> The protected sphere of freedom of religion includes the freedom of individuals, religious communities, and leaders to formulate positions on religious or moral issues; further, outsiders may not question the credibility of their positions, religious principles, and moral views. However, the question of whether the criticism is aimed at the renewal or destruction of the (fundamentally) Christian culture is quite important. In both cases, the freedom of criticism is protected by the right of free speech and, thus, of Christian culture. The state’s role in protecting Christian heritage does not raise any worries precisely from the point where heritage has become culture.

#### ■ 1.4. *The issue of education based on Christian culture*

The Ninth Amendment to the Fundamental Law (December 22, 2020) added a new sentence to Article XVI (1). The effective provision now reads as follows:

*“(1) Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary protects the right of children to identify as having the sex they are born with, and ensures an upbringing that is in line with Hungary’s constitutional identity and Christian culture.”*

According to the justification for the proposal, “The constitutional legislator had to clearly lay down the guarantees aimed at protecting the rights of children and future generations, such as mothers being created as women and fathers being created as men, and the right of the child to the identity of his/her sex at birth and to receive an education in line with values based on Hungary’s constitutional identity and Christian culture. (...) In line with the above, the Proposal guarantees the child’s right to receive an education in line with values based on Hungary’s constitutional identity and Christian culture, thus laying down a solid foundation for all members of future generations to learn of and protect Hungary’s Hungarian identity, sovereignty, and Christianity’s role in preserving the nation.”

The substantive change is not that Christian culture was set as an objective in education, but that the constitutional legislator linked a system of values to the Christian culture, that is, it defined an education based on values. Specifying educational goals at the constitutional level is not unprecedented. As a result of the catastrophic consequences of the National Socialist dictatorship, Christian churches in post-war West Germany experienced exceptional social expectations (even in 1965, 50% of the population were members of the Evangelical Church and 46% were members of the

<sup>10</sup> A typical example of this type of dispute is the strong stance taken by Dr. András Veres, President of the Hungarian Catholic Bishops’ Conference, against the expansion of the in vitro fertilization program after August 20, 2017.

Catholic Church<sup>11</sup>). The new German constitutional law, both at the federal and state levels, developed in this homogeneous social milieu. Under the Bonn Basic Law, education is the responsibility of the states, with the federal state providing supervision. The Basic Law decrees that denominational religious education qualifies as a regular subject (Article 7). To mention just one example, the constitution of Bavaria (1946) requires schools to not only convey knowledge, but also develop “the heart and the character.” The paramount educational goals are defined as reverence of God; respect for religious beliefs and human dignity; self-composure; a sense of responsibility and a willingness to accept responsibility; readiness to help others; open-mindedness for everything that is true, good, and beautiful; and a sense of responsibility toward nature and the environment. Pupils must be educated in the spirit of democracy, to love their Bavarian homeland and the German people, and in a spirit of international reconciliation. Further, girls and boys must, in particular, be instructed in baby care, child upbringing, and housekeeping.<sup>12</sup>

An education in line with the values based on Christian culture has to be interpreted and applied in light of the natural right of parents to choose the upbringing to be given to their children (Article XVI (2)), the freedom of conscience and religion (Article VII (1)), and the prohibition of discrimination based on religion (Article XV (2)). With this provision, the Fundamental Law specifies a commitment to values in addition to cultural commitments, which continues to remain free of any commitment regarding religion, faith, or world view. In this regard, the following question arises: Does practice correspond to “Hungary’s (...) values based on Christian culture” there, where there is a chasm between Christian faith and morals and the social practices prevailing in Hungary? If the state is not its own enemy, it can and does protect the culture that forms the basis of its existence, and it uses the system of public education to endeavor to pass it on to future generations.

## 2. A few questions on content

In addition to the expression of a commitment to values and the messages conveyed by symbols, certain priority issues may provide an answer to how the content of the Fundamental Law approaches that which stems from being called Christian.

### ■ 2.1. *Protection of the institutions of marriage and family*

Commitment to the institution of marriage can be a strong example of values, which is a hotly disputed topic today. Regarding marriage, the provision pertaining to opposite sexes is exactly the repercussion of the emancipation of same-sex partnerships, which

11 By today, the membership of the two major churches has dropped to 52%, thanks to Muslim immigration, reunification, and “quitting.” See: <https://www.bpb.de/nachschlagen/zahlen-und-fakten/soziale-situation-in-deutschland/61565/kirche>.

12 Constitution of the Free State of Bavaria, Article 131.

had previously never come up as an issue (Article L). In light of the Constitutional Court's 1995 decision pertaining to cohabitation, the declaration may seem superfluous as it specifies that only a man and woman can enter into marriage.<sup>13</sup> However, in the justification for the decision, the Constitutional Court mentions the institution of marriage that has developed "traditionally in our culture and law." This allows for the possibility of the Constitutional Court giving new meaning to the institution of marriage in light of the social and cultural changes at a later date (decades later). This shows that the legislator was driven by caution—a caution that protects a consensus reached today and, yet, threatened by the example of several other countries.<sup>14</sup> Whether the state is competent in using legal instruments to give preference to marriage as a way of life is a separate issue: Is it of any concern to the state how its citizens live their private lives? The protection of marriage as an institution is not justified only by traditions and not determined merely by demographic aspects (although it is true that the State requires the reproduction of its people, and married couples have more children than couples living in cohabitation). The fact that a man and woman enter into a lasting covenant and make their intent to form a family public is a constitutional value in itself. Marriage (as opposed to cohabitation) is not a private affair, but a behavioral pattern the state gives preference to even at the level of the constitution<sup>15</sup>—while giving everybody the freedom to live their lives as they see fit. A related question is regarding the obligation to show solidarity between generations, with which the legislator included a moral commandment in the operative part.

### ■ 2.2. *The vision of man in the Fundamental Law—dignity and responsibility*

Including human dignity as a basic element of human existence, the inviolability of human dignity (Article II of the National Avowal) and personal responsibility (Article O) are equal to recording the Christian vision of man in the constitution in a manner that is inoffensive to anyone (few people reason against our own dignity—at most, they deny their own responsibility). Mentioning responsibility, therefore, serves to heighten dignity. At the same time, regarding "the life of the fetus," the legislator specified the commitment to the protection of life determined as the minimum in 1991, opting to refrain from expanding the term human.

### ■ 2.3. *The command of social solidarity*

Emphasizing personal responsibility (Article O) also means doing away with excessive guardianship. However, the legislator does feel that we have a general duty to help "the vulnerable and the poor" (National Avowal). Even the terminology draws inspiration from the Bible. While social security is established as a state objective, the Fundamental Law specifies special protective measures (families, children, women, the elderly, and those living with disabilities: Article XV (5)) or support (maternity,

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13 Constitutional Court Decision 14/1995 of 13 March.

14 Frivaldszky, 2011, pp. 58–64.

15 Varga, 2011, p. 49.

illness, invalidity, disability, widowhood, orphanage, and unemployment for reasons outside of one's control: Article XIX (1)) in several cases.

#### ■ 2.4. *The issue of subsidiarity*

Of the key elements of Catholic social education, the principle of subsidiarity is notably missing from the Fundamental Law, though the right of local communities to govern themselves and the protection of the independence of religious communities is institutionally connected. However, the principle of subsidiarity means more than mere protection of autonomy and recognition of the responsible dignity of a person. Just as the Catholic Church's social teachings once put it, "it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them."<sup>16</sup> It is important to note that the principle does not merely pertain to the effectiveness of organizations, but rather the dignity of communities, which is closely connected to emphasizing the responsibility mentioned above.

### 3. Live roots?

Is the Fundamental Law equal to the Christian heritage we have inherited? The Fundamental Law took on this challenge, but does not try to do the impossible. It reflects the given social values from which the law is not capable of deviating in serious issues over the long term. It is suitable for specifying a consensus by making threats apparent, but not for making a consensus where there is none. Legal items without a general agreement cannot be upheld over the long term. The real question in this regard is whether there is a general agreement behind the values laid down by the Fundamental Law, including those regarding national solidarity, the role of the family, whether marriage is an alliance between a man and a woman, and whether such general agreement can be maintained or renewed. These are not issues of protecting the constitution, but pertain to the relationships between generations, families, communities, education, and culture. Just as we can expect those who have better hearing to do more in preserving musical traditions than those who are tone deaf, sensitivity toward a nation's cultural heritage is also not distributed evenly. Those who are endowed with greater sensitivity bear greater responsibility: it is up to them to determine whether they can pass on inherited values to future generations.

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16 Pope Pius XI (1931) *Quadragesimo Anno*, p. 79.

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