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**Churches as Legal Entities
(Doctoral thesis)**

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Part I

An outline of the aims of research

The aims of this thesis are to explain the notion of the church as a legal entity together with other relevant legal categories; to show the features of these legal categories; to place them in the Hungarian historical tradition and in the European context; to analyze the relevant rules that refer to the church as a legal personality; as well as to evaluate these rules based on the tendency of legal development and practical considerations. As the subject has never been dealt with thoroughly in Hungarian legal literature¹, several different viewpoints and methods were applied in order to present a possibly most complete picture. This thesis also elaborates on questions that have scarcely been discussed so far such as the questions of the application of church law or the cooperation of state law and church law concerning the legal personality of internal organizations; the possible forms of religious groups as legal entities; the application of general private law rules for churches; the termination of legal persons according to church law; as well as the historical legal succession of churches that were recognized before 1990.

As we can say that public ecclesiastical law is the “heart” of constitutional law,² we may say confidently that the legislation referring to churches as legal entities is the “Herzstück” in the public ecclesiastical law. (Public ecclesiastical law means the state law concerning churches and religious communities). Questions like what may be considered a church or a religious community according to state law, how communities may gain legal personality, and what rights these legal entities have are vital issues in the relationship of the state and the churches, and they are also determinant factors in terms of the freedom of conscience and religion.

We also have to note that in our country, in Europe, or in those parts of the world where fundamental human rights are guaranteed, the collective aspects of the freedom of religion are a bigger challenge for law today than the individual freedom of religion. This means that issues concerning churches in general or churches as legal entities gain more and more attention.

¹ Besides the relevant passages of comprehensive works discussing the relationship between the state and the church, we need to emphasize Péter Erdő's article on churches as legal communities. Rita Ferenczy focuses on open questions in connection with subjectivity; Áron Pánczél's OTDK thesis studies the subjectivity of churches of private law, in the mirror of their activities. See ERDŐ, Péter, A vallási közösségek és jogi kezelésük. In *Jogtudományi Közlöny* 1999, pp. 127-131., FERENCZY, Rita, Kérdések az egyházak és szervezeteik jogi személyiségének köréből. In *Magyar jog* 1999/9 pp. 518-529., PÁNCZÉL, Áron, Az egyházak magánjogi jogalanyisága. Az egyházi jogi személyek és tevékenységük a magyar társadalomban. In *Polgári jogi tudományos diákköri évkönyv* 2001, pp. 201-222

² SCHANDA, Balázs, *Magyar állami egyházjog*. Szent István Társulat, Budapest, 2003. 2nd revised edition.4.

This thesis mainly approaches legal entity through formal aspects; and it studies questions like what a religious group as a legal category is, how it is organized, and how it operates, comes to life or ceases to exist, etc. Studying the “material” side of being a legal entity - that is all the rights and obligations such a thing involves, or exploring the legal status of churches in its complexity - would have exceeded the size limits of this thesis. However, in some cases, considering such “material” aspects could not be avoided.

Part II

The brief description of analyses, the methods of research and collecting material, sources

The most important methods applied in this thesis were legal dogmatics (the analysis of terms and texts), the study of the history of law and comparative analysis.

The first part of the thesis, following a methodological introduction, studies fundamental theoretical questions, and tries to define such terms as church as a legal entity and a legal person, together with other relevant terms like religious community, religious denomination, etc. The thesis explores the conceptual components of the church, thus it deals with questions concerning religion, church as a community or specific church autonomy (the right to self-determination). The functions and forms of religious communities as legal persons are also analyzed. Then, the specifications of the field of law that the thesis mainly focuses on are dealt with.

In Part 2, there is a historical overview of the subject, with a brief summary of antecedents followed by a more detailed study of the age of civil society until today.

In Part 3, a European comparative analysis, an outline of possible legislative models and the short description of law in thirty-four different European countries are followed by the study of the European Union law with modern trends and challenges. The results of the historical and comparative analyses proved useful for drawing conclusions both *de lege lata* and *de lege ferenda*.

Part 4 contains a detailed analysis of the actual Hungarian legislation as the “general part” of the law concerning ecclesiastical legal persons. We deal with the issues of the foundation and the registration of ecclesiastical legal persons; and we do not neglect studying the rules referring to the different types of ecclesiastical legal persons, the problems of differentiating ecclesiastical legal persons from other legal persons, the specifications of their legal capacity and their capacity to act as distinct legal persons or the problems concerning the cessation of churches.

In Part 5, as a “special part” of this field of law, there is a study of the internal rules of eight major Hungarian churches and church groups that are relevant to our subject. As legislation is so

much determined by the historical aspect, a special subchapter was devoted to studying the historical aspects and the legal succession of churches as subjects of law.

The thesis is concluded with a general evaluation of the subject and the composition of *de lege ferenda* suggestions.

The thesis aims at the simultaneous consideration of both theoretical and practical points of view together with that of the judicature. It is based on the fact that “law is the servant of life,”³ whereas jurisprudence is the servant of the judicature. Thus, while analyzing Hungarian legislation, we had to keep in mind the related practice of courts (concerning both litigation and the registration procedure), and we had to face the question whether legislation is properly applicable in matters between churches and other legal subjects.

The fact that churches are subjects of law has, as subjectivity and legal personality generally do, interrelations in the spheres of public law and private law. Public ecclesiastical law is a mixed field of law. In its subject and attitude, the aspects of constitutional law and fundamental human rights are dominant⁴, which explains why the legal personality of churches is more often approached from the direction of public law. The present thesis, however, attaches at least as much significance to the aspect of private and personal law saying that the primary aim of ecclesiastical legal subjectivity is to guarantee the participation in private law relations for religious communities, therefore the applied legislation has to be “operable” in terms of private law too.

The thesis explores the legislations of Law 120/2009 concerning “the New Civil Code”, which are not entering in force due to the legislations of Law 73/2010. The personal part of the planned law involved such novelties that concerned ecclesiastical legal persons, or needed further analysis. The considerations that were expressed in connection with the planned law might be interesting when shaping the final new Civil Code. Until then, it is presumable that the law that did not enter in force will have an impact on the judicature, thus studying its legislations cannot be avoided.

Preparing the thesis involved the study of the relevant Hungarian legislation, the published judicial decisions and the relevant Hungarian legal literature. Useful consequences were drawn from the register of ecclesiastical legal persons, especially from the register of the Municipal Court of Budapest and its documentary supplements. Part 2 is based on the literature concerning constitutional and legal history, completed with the immediate analysis of certain sources. In writing Part 3, some foreign comparative omnibus works, especially the latest publication of the

³ Quoted from Bodnár, Szabolcs http://www.fszek.hu/szociologia/szszda/eletr_bsz.html (30.07.2010.)

⁴ SCHANDA, Balázs, Magyar állami egyházjog. Szent István Társulat, Budapest, 2003. 2nd revised edition. 3.

one edited by Gerhard Robbers⁵ was of great help, together with accessible foreign databases. Writing Parts 1 and 4 involved the careful study of Hungarian literature concerning public ecclesiastical law, and the relevant chapters of private and personal law. Part 5 is based on the own internal legislations of churches: laws, regulations, etc.

Part III

The conclusion of scientific results, possible applications

Hungarian jurisprudence is rather poor in omnibus works in the concerned field of law, especially compared to Western Europe. Therefore, the thesis would like to contribute to the internal development of the jurisprudence of public ecclesiastical law in Hungary, presenting the subject comprehensively, with the utilization of foreign results as well. Another aim of the thesis is to help churches and ecclesiastical legal persons gain a proper emphasis in the aspects of private law and personal law so that they are not neglected by the Hungarian jurisprudence of private law for their marginal character.

Especially parts 4 and 5 would like to support legal practice. The analysis explores the deficient or inconsistent dispositions of Law 4/1990 on churches and the freedom of religion and conscience, and would like to support its adequate construction. The uncertainty in the interpretation of the law on religion and conscience could have been lessened, and a uniform interpretation could have been achieved if the judicature had been provided with literature offering a comprehensive but practical analysis of the ecclesiastical legal persons' subjectivity of law. This thesis may not only help the work of courts or prosecutor's offices, but it may also assist ecclesiastical legal persons in establishing their own regulation on their organizations and function in order to make it harmonize with state law.

Part 5 analyzes the internal laws and regulations of churches, a matter that rarely gets into the field of sight of the judicature as it is difficult to access, and understanding it presumes a knowledge of the basic features of churches (system of organization, system of norms) and their history. The present thesis aims at showing this field of law to a necessary and sufficient extent.

Part 6 is focused on assessment. Its conclusions *de lege ferenda* could be directly applied in the reform process that our public law is undergoing, and which, as it seems, will have a significant influence on the system of relations between the state and the churches in the future.

⁵ ROBBERS, Gerhard: Staat und Kirche in der Europäischen Union. In: ROBBERS, Gerhard (Ed): Staat und Kirche in der Europäischen Union. Baden-Baden, Nomos. 2005. 2nd revised edition 629-640

PART IV

The relevant publications of the candidate

I. Chapters from books published in foreign languages

1. Recht und Religion in Mittel- und Osteuropa. Band 3 Ungarn. WUV Universitätsverlag (series of the University Vienna, more parts of the book, planned publication date: autumn 2011.)

II. Studies, articles

2. Egyházak és egyházi szervezetek képviselete. In: *Közjegyzőke Közlönye*. 2005/12. 28-31.
3. Egyházak az öröklési jogban. In: *Közjegyzőke Közlönye*. 2007/10. 14-21. (co-author: Csízi István)
4. Legal Status of Churches and Religious Communities in Serbia according to the New Law (with a comparative analysis) Only online: <http://www.revacern.eu/exchange-programme/ep-2-final/EP2%20%20schlosser..pdf> (September 2008.)
5. Újabb fejlemények az Európai Emberi Jogi Bíróság vallásszabadsággal kapcsolatos gyakorlatában. In: *Iustum, aequum, salutare*. 2009/2. 67-81. (co-author: Schanda Balázs)
6. Az egyházi jogi személyek azonosító adatai In: *Közjegyzőke Közlönye*. 2010/4 . 1-20.
7. Az egyházak jogalanyiségének történeti összefüggései In: *Iustum, Aequum, Salutare*. 2010/4. 243-256
8. Az egyházi jogi személyek megszűnésének kérdései. In: *Közjegyzőke Közlönye*. 2011/2. 1-21.
9. Az egyházakról és vallási közösségekről szóló törvény Szerbiában. In: *Jogtudományi Közlöny* 2011/5. (accepted by the publisher, planned publication date: May 2011)

III. Reviews of foreign publications

10. J. H. H. Weiler – Ein christliches Europa. Erkundungsgänge. In: *Iustum, aequum, salutare*. 2006/3-4.184-186. and *Ítélet* 2007/5. 10.
11. Ernst-Wolfgang Böckenförde – Staat, Nation, Europa. Studien zur Staatslehre, Verfassungstheorie und Rechtsphilosophie. In: *Európai Tükör*. 2006/6. 109-111.; online version: http://www.kulugyminiszterium.hu/NR/rdonlyres/89A42F98-DCC6-46EA-A10F-E8140C2BF03A/0/et_2006_06.pdf
12. Gerhard Robbers – Staat und Kirche in der Europäischen Union. In: *Jogtudományi Közlöny* 2007/12. 586-588.

IV. Published technical translations

from German

13. Prof. Dr. iur. Detlev W. BELLING: Szabadság és kényszer a nemzeti jogalkotó számára a 2000/78/EK-es anti-diszkriminációs irányelv átültetése során, tekintettel az egyházi munkajogra In: *Európai Jog*. 2005/4. 27-32.
14. Mariazell und Ungarn – 650 Jahre religiöse Gemeinsamkeit. Ed.: Walter BRUNNER. *Strigonium Antiquum 6. kötet* (German and Hungarian version). Graz-Esztergom, 2003. 219. p. (more co-authors)

from English

15. Catherine Dupré: Jogátvétel és alkotmányos változások. In: A magyar jogrendszer átalakulása 1985/1990-2005. Jog, rendszerváltozás, EU-csatlakozás. Eds: Jakab András és Takács Péter. Gondolat – ELTE-JÁK. Budapest, 2007. 1019-1034.