

45 RELIGIONS, THE STATE AND FREEDOM OF SPEECH

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András Koltay: *A vallások, az állam és a szólás szabadsága (Religions, the State and Freedom of Speech)*, Századvég Kiadó, Budapest, 2016, p 438; ISBN 978 615 5164 26 2

“Religion remains a world shaping force even today, as such, religion as a phenomenon continues to pose both old and new challenges to the legal system of the secular state,” claims Balázs Schanda, university professor, a renowned scholar of religious freedom and the relationship between state and religion, in his endorsement.

The monograph by András Koltay entitled “*Religions, the state and freedom of speech*” leads us deep into this world of challenges, trying to make sense of this rather complex matrix of relations between religion, state and free speech.

As his main method, the author chooses to present foreign, mainly European and US jurisprudence and regulatory systems that challenge the limits of religion and free speech, also analysing their relevant human rights dogmatics and legal theory.

The book follows a user-friendly structure: the author uses the Introduction not only to highlight the topic, but to overcome traditional frameworks of form and content, setting theoretical and practical points of reference that are indispensable for understanding the subsequent case law, the relevant rules and the issues they raise. As such, the Introduction, in addition to presenting key information on the comprehensive issues covered (freedom of religion, conscience and speech; the issue of state neutrality; presentation of legal systems), already gives a short outline of typical conflicts, and the diverse interpretations offered by the theory of law and state.

The reader will not get a ready-to-use interpretation on, for example, the content of freedom of religion or freedom of speech or state neutrality at the outset, the author much rather confronts the recipient at the very start of the work with various views, premises and questions or their refutation. This framework assists in the subsequent understanding of the presentation and analytical parts of the book. For instance, in the part of the book on the characteristics of legal systems (Introduction, Section 5), the author conveys his views on the boundlessness of freedom of speech in the context of both the practice of the US Supreme Court, and the European approaches to free speech, in an accessible language.

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With these solutions the Introduction, prepares the groundwork for the analysis of case law and legislation, ultimately raising awareness in the reader about the points and arguments which will be dealt with later on when discussing the conflict between freedom of religion and free speech.

Following the Introduction, the book deals with the issues of free speech and freedom of religion in three big units (I to III), typically through presenting the case law and relevant legislation in Europe and the USA.

In Part I (Appearance of religions in the state sphere), the author examines cases where the state is forced to express views in any form on the issue of free speech, i.e. the state basically becomes a speaker in the issue at hand (in the American literature of free speech, this is called government speech). In this Chapter, important questions are raised, such as the use of religious symbols in public places, schools (I/1) or the issue of presenting religion in public education (I/2). In the above-mentioned part, the author draws heavily on the case law of the US Supreme Court related to the use of religious symbols in public places. Taking the fact that no uniform test has been developed in this area the rich jurisprudence notwithstanding, reading the different views of the judges makes the reader realise how complex the seemingly simple principle of state neutrality is.

Part II of the book details legislation and case law on the possible restriction of religious practices (Part II). It covers the limitations to wearing religious clothing and symbols (II/3), and the issue of advertisements with religious content in the media (II/4). Contrary to the divergent jurisprudence related to religious symbols, the European case law (of the Strasbourg Court) on religious clothing and symbols points in one direction, amounting to a significant restriction of religious freedom, including the communication of religious views, claims András Koltay. The author highlights the deficiencies apparent in the justification for these restrictions, drawing attention to the contradiction that the established case law goes against the values marking the image Europe has branded for itself: openness, mutual tolerance and cultural diversity.

The third unit of the book deals with the expression of views on religion and religious people (III Defamation of religion and criticisms of religion). This part covers the issue of possible restrictions on blasphemy (III/5), and hate speech against religious communities (III/6).

A short summary tops off each sub-topic within the parts covering the above mentioned areas, under the title of Conclusions. In these Conclusions, the author enumerates and evaluates the main lessons learned from the legislation, case law and the scholarly views represented in the relevant literature.

The outstanding value of this book comes from the detailed analyses covering specific issues in more detail within the three thematic frameworks; these could stand their ground even as shorter or longer individual studies.

For example, in Part I, there is an overview of the state support for religious symbols in connection with the case law of the US Supreme Court (I/1/2.5), and an analysis of the boundaries of the state's freedom of speech (I/1/2.6). But the discussion of the relationship between the state and religion (secularism, a diverse society and state neutrality) in light of the jurisprudence of the European Court of Human Rights (I/1/3.3) is also remarkable. Part II of the book offers a comprehensive overview of the arguments related to restrictions on wearing religious clothing and symbols. With this, the work fits well with the analytic studies mentioned above (II/3/4).

In the wake of the terrorist attacks that shocked Europe it can be assumed that the analysis of the possibilities for restricting blasphemy (Part III/5/3) will be of great interest in the near future.

In his analysis, making up nearly one fifth of the book's core text, the author does not stop at the mere legal analysis of the issue of blasphemy: Koltay puts the phenomenon into a much wider context by asking "What is the subject of a dispute on the possibilities to restrict blasphemy in a democratic society?" With his question, Koltay draws the reader's attention to the underlying disputes that influence the debate on the possible restriction of blasphemy, including their outcome or the related views presented. The message of the piece on blasphemy to the reader may be that, behind the "rigid" legal analysis and arguments presenting legal dogmas, there are always unavoidable questions such as what we think about secularism, Christianity, migration, multiculturalism, the co-existence of cultures and ultimately the future of Europe.

The book therefore offers much more than a comparative legal analysis of the conflict between two fundamental freedoms. The process of the legal analysis of the freedom of religion and free speech basically leads us into the debate on European identity, since European identity cannot be separated from Christianity and its traditions entrenched into everyday life.

In connection with the target readers of this monograph, I share the view of Professor Balázs Schanda, who wrote that the work can be expressly recommended to a "professional readership interested in fundamental rights issues", including not only the prominent representatives of academia, but also students participating in graduate or doctoral studies. In addition, this book may be of interest to readers "seeking to understand religious issues".

This work, apart from its topic, can claim a potentially wide audience on the basis of its well selected topics; its transparent structure, while the underlying literature is abundant and well researched and the author discusses complex issues in a comprehensible style. In view of the above, I believe it is worth considering publishing monograph in English as well.