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HUMAN RIGHTS ABOVE ALL? – THOUGHTS ON NECESSARY RESTRICTIONS CONCERNING THE FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

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Abstract
The freedom of thought, conscience and religion is one of the most essential human rights promulgated in the Declaration of the Rights of Man and of the Citizen during the French Revolution. However, a freedom without any limit can also hold unthinkable dangers to the society. That is the reason why the modern international human right documents and the constitutions of the countries acknowledge the possibility of restriction. Concerning this fundamental right, we are able to distinguish several elements, but only one of them – the freedom to believe – shall be unristricted. In particular cases, the practice of one's religion can lead to the violation of public order or other fundamental rights. There are minority religions which do not respect the order of law and tend to commit certain delicts. Against these movements, the tools of penal law shall be applicable.

Keywords: *freedom of thought, conscience and religion, human rights, restriction, cultism, criminal organisation*

INTRODUCTION

The 90s was a strange period of human history. After the fall of the Berlin Wall, new ideologies started to spread in the ex-Soviet region. The effects of the so-called wild capitalism created huge differences between the different layers of the society. Many could luckily benefit from privatization, yet the major part of the population found itself in an incovinient financial state. This economical environment began to influence the mental health of the citizenship. The depressed people would find something to believe in, a community of which they could be part of. This situation even increased the effectivity of the new religious doctrines.

One of the most well-known example of cultic movements in Hungary was the case of the Holic group (originally Holic Gruppe) also called the cult of Dunaföldvár.

During the 90s, its activity got the attention of several young adults who – by getting involved in the everyday life of the community – left behind their families. The apparently peaceful doctrine originated from christianity hid unpredictable menace (Lugosi –Lugosi, 1998, p. 78-86; Kamarás, 2011, p. 1-96).
Nowadays, the youth of the information society is even more endangered. Proselyters of new religious ideologies do not have to bring personally the message. Through online content, any type of idea can reach the user.

Unfortunately, our children are not well-prepared to cope with different methods of manipulation. Although the Fundamental Law of Hungary recognises everyone's right to teach their religion in article VII, it can be noticed that a possible restriction ought to be applied. In my judgement, as the religion is such an essential part of one's personality and view of life, the act of using one's faith to force him or her to realise illegal activity shall be restricted and punished by the most radical way known in the legal system, namely by penal law.

I. THE FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

To be able to deeply analyse the main issue, it is indispensable to summarise some essential features of the human right that theoretically allows the dangerous religious doctrines to spread. I found useful to revise the following three aspects: the history of the evolution of the fundamental right; the entitlements provided by it and the availability of their restriction; the conflict with other rights and freedoms.

I.1 History

The discussed freedom has a great history and has influenced several other principles, for example the idea of equality of the human beings was also created in connection with it. From the beginning, when Martin Luther started Reformation, the fight for the acknowledgement of all the religions lasted for centuries. The real breakthrough was the French Revolution, the year when the Declaration of the Rights of Man and of the Citizen was born. Article X. of the document proclaims that „*no one may be disquieted for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law*". This article – besides providing the freedom of thought – declares a possible ground for restriction: it states the priority of maintaining the public order, which is one of the most essential constitutional values.

After World War II, the international organisations protecting human rights were established. Concerning universal protection, Universal Declaration of Human Rights (1948) of the United Nations is the most fundamental document. In connection with the discussed freedom, two major novelties shall be mentioned. In the first place, it formulates the key elements of the right in Article 18. As it follows: „*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*" On the one hand, it declares that every human being possesses this right without distinction, furthermore the freedom to believe and the freedom to act

appears separately in the text. Secondly, a general prohibition on improper interpretation also appears in Article 30 saying that „*Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein*." In other words, none of these rights and freedoms can be interpreted with the intent of violating another one.

Two years later, European Convention on Human Rights (henceforward: Convention) was created within the framework of the Council of Europe which includes a special measure regarding the possibility of restriction of the analysed freedom (Art. 9 2.): „*Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others*." Here we have to underline two considerations. The text only acknowledges the possibility of restriction in connection with the manifestation of one's religion. This wording also implies that the freedom of choosing or changing one's belief can not be restricted. In addition, the three objective and conjunctive criteria of any limitation are defined. According to the rule, such measure can only be prescribed by law, must be necessary – which includes the principle of proportionality – with the intention of protecting a constitutional value like public order, health or moral; or the rights or freedoms of others, referring to other fundamental rights. It also has to be mentioned that the International Covenant on Civil and Political Rights (1966) gives the exact same formulation concerning this issue.

The Constitution of Romania (1991) also includes – like the Declaration of 1948 – a general rule regarding restrictions on fundamental rights. Article 53, in the first place, also records that a possible restriction can only be stated by law, however the range of the protected principles is wider than in the mentioned international sources. Besides the defence of national security, public order, health, morals and the citizens' rights, the priority of the *ius puniendi* of the country and the prevention of the consequences of disasters also appear. The second part of the article contains the necessity-proportionality test, the prohibition of discrimination and of „*infringing on the existence of such right and freedom*."

The Fundamental Law of Hungary also applies the same method of formulating the criteria of a possible restriction [Art. I. (3)] in connection with all the rights provided by it: „*The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right*." The requirement of regulating in an Act and no inferior source of law, the necessity-proportionality test and the protection of other human rights and constitutional values also appear just like in the Constitution of Romania. A slight difference is that the Hungarian provision does not contain a list of the protected values, but the practice of the Constitutional

Court also identified the same ones mentioned in other documents. The concept of the essential content is also a particular point of the regulation, yet the interpretaion of each fundamental right requires a different approach. The content is not well defined in many cases. Though the Constitutional Court has formulated it in connecton with a few ones like in the case of the right to life, this concept remained mainly a theoratical defence which forbids the total ignorance of a fundamental right. In my opinion, this provision has a similar meaning compared to the wording of the Constitution of Romania quoted above.

All in all, we could notice that the three conjunctive conditions were part of all measures concerning restrictions, namely the followings: the limitation has to be prescribed by law (created by the Parliament of the given country); it shall meet the requirements of necessity and proportionality; it shall defend a certain constitutional value or another fundamental freedom or right. Nevertheless, there are a few examples of entitlements that can never be limited even if these conditions were fulfilled. That is why the examination of the problem requires the identification of the elements of the described freedom.

I.2 Elements of the freedom

The freedom of thought, conscience and religion certainly can be divided into several indipendent entitlements, however in the related literature many distinct opinions can be found.

Joey Peter Moore cites the opinion of the Surpreme Court of the USA which states that the freedom of religion can be divided in two: freedom to believe and freedom to act (*Moore, 1980, p. 659)*.

With a more precise approach, Hungarian scholar of constitutional law, *Schweitzer Gábor* separates 4 distinct entitlements: the choice (and the alteration) of belief, the practice of religion, the freedom of religious assembly and the freedom of religious association (*Schweitzer, 2018, p. 464)*.

Judge of the Hungarian Constitutional Court, *Schanda Balázs* gives an even more chiselled interpretation when he makes difference between the positive and negative side of the choice of belief, in other words he emphasises the opportunity of deciding not to believe in transcendency; the freedom of worship, the freedom of manifestation of conviction, the free practice of religion, the freedom of teaching religious conviction and also includes the prohibition on discrimination based on one's belief (*Schanda, 2018 [17]-[55]*).

Analysing these categories, we have to notice that the freedom to act is also a group of numerous elements. Moreover, the discussed freedom has close connection with other fundamental rights such as the equality of people, the right to education or the right to association. Although the elements can be approached in many different ways; from our point of view, considering the division in two is the most suitable, since we can declare that all rights and freedoms that form part of the freedom to act could be limited to some extent. The reason behind this statement is that an action that is manifested in the world may result in the violation of other rights or principles. However, there can not be any ground for the

restriction of the freedom to believe, since one's conviction or in other words, the mental attitude of someone does not have any direct effect on the outer world, furthermore it is a dominant part of one's personality which shall not be modified by any legal pressure.

I.3 Conflict of rights

When it comes to the conflict of two fundamental rights, it is almost never obvious that which one should be prioritised. Nevertheless, it can be stated that the right to life takes the most important position among all the rights. Hungarian scholar, *Majtényi Balázs* describes the next scenario (*Majtényi, 2012, p. 36)*: if the doctrines of a newly spreading religious ideology provoked a serious decrease of population due to its prohibitions on food, how would the legislator react? Although the example is quite absurd, it shows clearly that in such a case, when religion certainly infringes the right to life, that ideology would be immediately restricted or banned.

The most problems emerge when the interest related to the freedom of speech collide with religious emotions. The European Court of Human Rights (henceforward: the Court) has a rich case law by which we can conclude that the relation of the two rights is different depending on the actual situation. For a better understanding, it is suitable to examine some cases.

The case *Otto Preminger Institut vs. Austria* (case no. 13470/87) is an outstanding, yet a bit extreme example. The applicant „Institut" was a private association founded in Austria with the aim of promoting creativity and art through audovisual media. The association wanted to present the film called "Das Liebeskonzil" ("Council in Heaven") which portrayed God as a senile old man kissing with the Devil and Christ as a person with mental disorder. The presentation was prevented by the authorities. The Court agreed with the decision of the domestic court. According to the reasoning, the films value as a piece of art and its contribution to public debate did not outweigh those features that made it offensive to the Christians. It has to be mentioned that the Roman Catholic religion was the most wide-spread in the affected region. Therefore the Court found the action of the domestic authorities appropriate, since they prevented the excessive offense of religious belief and did not consider it a violation of Article 10 (freedom of speech) of the Convention.

In the case *Klein vs. Slovakia* (case no. 72208/01) a weekly magazine published the applicant's article that criticised the Slovakian Arcbishop. It had a strong sexual connotation and also referred to the Arcbishop's cooperation with the secret police of the former communist government. A criminal prosecution was initiated by two associations and the applicant was convicted of the offence of defamation of nation, race and belief. During the prosecution, the Arcbishop publicly pardoned the incident, however the national court found the applicant guilty because of the defamation of the highest representative of the church in Slovakia and of disparaging the Catholic faith. The Court did not accept the reasoning of the domestic court, saying that the pejorative opinion was related to a certain person

(the Arcbishop) and had not unduly interfered with the right of believers. Furthermore, the magazine in which the article was published was not meant to be read by a wide range of audience, but only by a few intellectuals. Therefore the Court found the conviction inappropriate and did notice the violation of Article 10.

In a Turkish criminal procedure, the applicant – owner of „Berfin" publishing house – was charged with insulting „God, the Religion, the Prophet and the Holy Book" because of publishing the book entitled „*Yasak Tümceler*" („The forbidden phrases"). The book conveyed the author's views on philosophical and theological issues in a novelistic style. The applicant was sentenced to the payment of a small fine. The Court opined that the book did not only contain provocative comments, but also an abbusive attack on the Porphet Mohamed, by which Muslims could have probably been offended. Therefore the Court found that the implied measure was necessary and – since authorities did not seize the book, but only imposed a small amount of fine – proportionate to the aims pursued (case *I.A. vs. Turkey* no. 42571/98).

Finally, an honorable mention is the case *Larissis and Others vs. Greece* (no. 23372/94) in which three air force officers, members of the Pentecostal Church were convicted of proselytism by a national court. They had previously intented to convert numerous people to their faith, including three subordinates at the air force. The Court held that there had been no violation of Article 9 (freedom of thought, conscience and religion) of the Convention in connection with the measures imposed to protect the perpetreators' subordinates from being put under undue pressure by senior personnel. On the other hand, the Court found a violation of Article 9 with regard to the measures taken against the applicants for proselitysing civilians, since they were not subject to constraints as the subordinates. Summarising, in this judgement the Court found a violation and a non-violation of the Convention in the same case.

In short, we can conlude that the freedom of expression – without a doubt – is capable of being a possible cause of limitation of the freedom of religion, but it is far from evident. As we have seen, in many cases, where a significant part of the population founds a content offensive, the national authorities have to act under social pressure and also the Court tends to approve the opinion of the religious majority. On the contrary, an opinion is considered illegal only if it violates religious emotions directly without a proper reason. In this context, criticism can be acceptable under the law – even if it can be felt offensive – if the aim is to judge a public figure in the press. Last but not least, proselytising is always a difficult issue, as the teaching of one's belief is provided by the law, yet violating the freedom of belief is strictly prohibited [in the Hungarian Penal Code (henceforward Btk.) it is considered a delict, see: Section 215 (1)]. Through the case law of the Court, it seems that making difference is available by examining the relationship between the proselyter and the recipient.

II. DESTRUCTIVE RELIGIOUS MOVEMENTS

As previously mentioned, not all of the religious associations are completely harmless. Although the perilous cultic activity is not so significant nowadays in Eastern-Europe, there is a number of precedents. With the intention of being politically correct, avoiding mainly pejorative expressions like cult or sect, I preferred to use the word combination „destructive religious movement” (henceforward: DRM) when referring to such groups.

II.1 Concept

Firstly we have to admit that there is no legal term that would define DRMs. To find an acceptable definition, taking into consideration the results of other social sciences is required. As a beginning, religious studies seem to be convinient. According to the Hungarian bishop, *Bütösi János* (*Bütösi, 1994, p. 10)*, cultism is a doctrine that rejects the idea of the Holy Trinity or interprets the personality of Christ in an inappropriate way. This leads us to the definition of heresy, so in this case, we should make another consideration.

French sociologist, *Jean Vernette* states that since in the field of religious studies there is a serious debate about this topic, the science of sociology may provide an answer. From an objective point of view – he says – a cult is a dissident movement which protests against churches or societies (*Vernette, 2003 p. 8-9)*. That reveals an important aspect of DRMs, none other than the so-called „contra attitude”. This makes a difference between heresy and cultism: the previous one „only” rejects one of the main doctrines of the original religion, meanwhile the other endangers the society.

Considering these ideas, I found appropriate the following definition: a DRM is such a religious movement that – evangelizing the modified doctrines of a major world religion – exists and works separated from the historical churches and is harmful to society.

II.2 Categorisation

After having created an acceptable concept for the groups we call DRMs, we ought to make subcategories for a better understanding of the phenomenon. The authors opinons vary regarding this question too.

Vernette uses a sociological method to categorisee such groups (*Vernette, 2003, p. 17-18*):

- Ones inspired by Christianity and Judaism
- Ones inspired by oriental religions (Hinduism, Buddhism, Islam)
- Gnostic/mystique groups (combining the elements of the previous ones in a particular way)

This approach is based on the historical churches, whose doctrines were modified by the leader to create his or her own interpretation.

Chinese scholar, *Guobin Zhu* separates the concepts „sect” and „cult”: in his interpretation, the first one follows the modified version of classical doctrines, while the second one introduces radically new practice (*Zhu, 2010, p. 475-476*). This type of distinction rarely appears in European bibliography, since most of the European DRMs are based on Christianity.

Naturally, there are some pseudo-religious associations for whom the religious basis is just some sort of disguise. Concerning these organisations, we must mention the interpretation of Spanish lawyer, *Josue Domínguez Velasco* (*Domínguez Velasco, 2017, p. 194*) who says that in a sociological sense, a „sect" is such a pseudo-religious group that follows purposes that are against the law and has illegal activity under the disguise of religiousness. I strongly disagree with this point of view, as in many cases, DRMs are led by a mentally ill person whose only purpose is the fulfillment of his or her goals.

Unfortunately, these approximations are probably not applicable in the field of jurisprudence. Therefore I attempted to create useful subcategories that can be helpful in the practice:

- Who is offended directly by the crimes committed by the DRM?
  - the follower/member
  - the outsider/civilian
  - both
- Is the leader a mentally ill person?
  - yes
  - no
- What kind of protected legal interest is endangered?
  - human life and health
  - properties
  - both

It can be seen that these subcategories are based on the injured person, the perpetrator's (or abettor's) mental state and the endangered protected legal interest. As a termination of these considerations, I have to mention that those DRMs in which the leader is a mentally sane person usually endanger the properties of the followers. This is a formation that represents the interpretation of *Domínguez Velasco*.

III. DESTRUCTIVE RELIGIOUS MOVEMENTS AND CERTAIN LEGAL SYSTEMS

International sources of law only acknowledge the possibility of restrictions concerning religious associations, but they did not formulate a detailed regulation. Therefore it is the duty of the countries to cope with the problem.

III.1 The French way

During the 90s, questions regarding DRM activity were in the spotlight. *Morin* in 1995 stated that the criminal and laboural law regulation of that era was unable to protect people from the exploitation of the religious leaders (*Morin, 1995, p. 40-41*). *Macone* saw two alternatives in that situation: either applying a passive attitude and believing that the already existing regulation is able to moderate the situation or applying an active attitude and forcing the legislation to create new regulations regarding the control of DRM activity (*Macone, 2008, p. 186*). French legislator chose the latter option.

French lawyers saw various applicable methods in several branches of law. *Macone* planned to use the establishement of limited ability to act from the field of civil law, so the „stolen" money could have been claimed back at the court (*Macone, 2008, p. 191-193*).

Another French lawyer, *Claude Goyard* suggested to create an administrative establishment with the purpose of making suspicious religious organisations transparent. Among others, this organisation could have collected information about the improvement of particular movements, alerted the prime minister, the police forces and the publicity of the potential threat, mediated between the victims and their families to facilitate the reintegration process etc. (*Goyard 1996, p. 541*).

Finally the field of criminal law was chosen to cope with this issue. In 2001 the „Law Against Cults" was accepted by the French Parliament. Its technique was to increase the criminal law liability of legal entities in connection with several delicts in the Code pénal usually committed by DMRs (for more details see: *Macone, 2008, p. 205-208*). It was not a secret that the law's main objective was to stand up against the Church of Scientology.

III.2 A notable regulation of the Romanian Penal Code

Under Article 381. of the Romanian Penal Code (henceforth: RPC), we can observe the prohibition of preventing or disturbing the free exercise of a religious rite [RPC Art. 381 (1)]. As previously mentioned concerning in connection with the judgement of the Court, this rule also appears in the Btk. in the chapter „Crimes Against Human Dignity and Fundamental Rights", meant to protect both the freedom to choose and the freedom to practice one's belief. „Any person who: a) restricts another person in his freedom of conscience by force or by threat of force; b) prevents another person from freely exercising his religion by force or by threat of force; is guilty of a felony..." – it says.

However, the Romanian rule follows [RPC Art. 381. (2)]: „order a person under duress, to attend religious services of worship or to perform a religious act related to the exercise of worship shall be punished..." As I see, this rule was indirectly – and maybe unconsciously – designed against DRM activity. „Ordering to attend religious services of worship" can be interpreted as an abstract description of the prohibition of agressive recruitment and the expression „ordering to perform a religious act" – in a wider sense – may refer to illegal „rites" as well like murdering someone as a sacrifice or desecration. In the second scenario, I suppose that the act of the perpetrator of this crime would be also punished as the abettor of homicide or desecration. From this point of view, the fact that the initiation of criminal procedure depends on the injured person's complaint [RPC Art. 381. (4)] can cause a serious problem, since the followers usually do not disobey their leader.

Nevertheless, I believe that this particular state of affairs may be an acceptable alternative of restriction in any legal system and should be introduced in Hungary in a similar way too.

III.3 Categorising destructive religious movements under the scope of Hungarian criminal law

The Hungarian Penal Code (henceforward: Btk.) – like many other acts on criminal law in Europe – is made up of two main parts: the General Part and the Special Part. For a better understanding of DRMs, an analysis divided into two is required.

III.3.1 Analysis through the Special Part

The Special Part of the Btk. lists the particular properties of each delict one by one. At this point, we attempt to create sets of DRMs on the basis of the crimes they regularly commit. According to *Domínguez Velasco*, it is recommended to do the categorisation in this manner, thus DRMs usually commit a certain group of illegal activities such as misleading advertisements, manipulation of members, duress, forced labor, abuse of minor etc. (*Domínguez Velasco, 2017, p. 195*). To test the validity of this idea, we ought to check the activity of some well-known movements.

Finding the ideal subjects of the analysis is not that easy as it seems for the first sight. There are some particular incidents which can not be considered as a general scenario neither in the life of DRMs. For example, *Moore* tells the story of the Holiness Church that worked in Tennessee. During one of their rites, the chosen one could enjoy the blessing of contacting celestial creatures by getting bitten by venomous snakes (*Moore, 1980, p. 660-661*). The majority of the DRMs that exists or existed for a longer period of time has relatively more normal purposes. To get an apporpriate picture of religious radicalism, I chose 3 organisations whose names are presumably already heard: the Children of God, the Church of Scientology and the Unification Church.

Founded by David Berg, the Children of God, also known as the Family, began its activity in the 60s, in America. They foretold an international catastrophe and only joining them could save one's life. They condemned both the capitalist and the communist system. They supported free love except the love of homosexual men. They taught regularly the stories of the Holy Bible in their own interpretation. The members usually starved and were kept awake all day and night. Those who dared to violate the rules were punished physically. They seperated the followers from their families and forced them to sell their properties and sacrifice their wealth (*Lugosi, 1994, p. 15-17*). Despite the insane doctrines, they were not noticed by the authorities, as they lived in closed communities and moreover, they did not commit any extremely serious crimes. The physical punishments may have realised delicts of simple battery [Btk. Section 164 (2)], but due to the lack of private motion, they remained undetected. Because of the doctrine of free love, the members probably realised various times the delicts of sexual abuse and incest (Btk. Section 198-199), but there was also a low probability of detection in such a group. In my opinion, the most likely was that later or sooner, the leader had to face the charges of procuring for prostitution or sexual act and living on earnings of prostitution (Btk. Section 201-202), since he trained various underaged to earn money using their bodies and that kind of earnings was usually the only income of the group.

The Church of Scientology was founded by sci-fi writer L. Ron Hubbard who adopted numerous elements of his novels. According to *de Rosa*, though they

believe in the existence of souls (thetan) and reincarnation, this is not the core of the movement. He rather introduces their activity as some sort of a strange, scientifically not proved therapic method whose only purpose is the financial exploitaiton of the members (*de Rosa, 1991, p. 186-187*). We have knowledge about prosecutions in which certain leaders were condemned because of defamation, budget fraud and forgery of administrative documents (Btk. Section 226, 396, 342; *Lugosi, 1994, p. 69-60; Domínguez Velasco, 2017, p. 196*). In general, it is almost impossible to fight their activity, since manipulating innocent people to sacrifice all their wealth for the Church can not be evaluated as fraud. In addition, they usually defend themselves in front of the European Court of Human Rights saying that certain states intended to violate their right to religious practice without any reason. Nowadays, they have founded legal entities in several countries. One state may dismiss one of their organisations, but their international system is literally undestroyable.

The Unification Church or the Church of Moon was founded by Sun Myung Moon in the 50s. His main doctrines were published in his book „Divine Principle" in which he stated that he was the Second Coming himself. His writing is also characterised by an anti-communist ideology. At the beginning, they recruited violently and separated the new members from their families. They forced the followers to gift away their properties, since the „Messiah" shall be the richest of all (*de Rosa, 1991, p. 177-179*). This movement works through a hierarchic modell: leaders are always chosen by their superiors and everyone's superior was Moon himself. It was considered that his children would be free from the original sin. They practiced regularly a strange rite called „collective marriage" where they made strangers marrying eachother. Some reports say that they had traded weapons in the Far East (*Lugosi, 1994, p. 69-74*). During their recruitment, they probably committed several times the delicts of violation of personal freedom and duress (Btk. Section 194-195). Moreorver, the Far East activity surely realised the crimes of criminal offenses with explosives or blasting agents and criminal offences of firearms and ammunation (Btk. Section 324-325).

Additionally, we may mention the fact that these 3 organisations cooperated in the past to protect themselves from the authorities (*Moore, 1980, p. 710*).

Now we have noticed that the criminal portfolio of each DRM is completely different, since they do not share common purposes. This leads us to the conlusion that we need to find another way to categorise such entities.

III.3.2 Analysis through the General Part

The General Part of the Btk. consists of those rules that have to be applied during the interpretation of each part of the codex. In this chapter, we observe those rules that can be problematic to apply in procedures in connection with DRMs. In my judgement, two topics are conspicuous: the grounds for exemption – especially insanity (Btk. Section 17) and coercion and threat (Btk. Section 19) – and the question of organised crime.

In the first place, in connection with the grounds for exemption, we have to analyse the two main personality type that always appears in such organisations: the leader and the follower.

When it comes to the leaders, we should make difference between two basic personalities. The first one is the real criminal who has a „unique sense of business". This kind of false prophet only acts by economic means. Italian doctor, *Cesare Lombroso* mentions an outstanding case from the XIII. century when a self-styled prophet sold all his followers from France to African slave traders (*Lombroso, 1998, p. 145*). Such ridiculously bizarre cases do not occur nowadays, but the technique of making immense profit of people's faith still exists. For instance, the Church of Scientology accepts huge amounts of „donations" in exchange for their books and services (*Lugosi, 1994, p. 65*). Concerning this type, there is no chance for exemption.

The other case is far more interesting. According to Hungarian priest, *Süle Ferenc,* DRM leaders usually suffer from mental illness that makes them hear „celestial messages" (*Lugosi – Lugosi, 1998, p. 96-97*). *Le Bon* says that these ideological fanatics become the apostles of their own beliefs and adds that this kind of madness is usually accompanied by excellent rhetorical skills and a passion to act. He also mentions some sort of innate prestige or charisma that makes them respected leaders (*le Bon, 2018, 89-98, 98-101*). In this case, we should take into consideration the possibility of personality disorder that is one out of five categories of insanity according to Hungarian jurisdiction (for more details see: *Görgényi – Horváth – Gula – Jacsó – Lévay – Sántha – Váradi, 2019, p. 200*). This kind of antisocial personality can not be the basis of exemption in every cases, it must be examined every time by a psychiatrist expert. From the perspective of Hungarian scholar, *Belovics Ervin*, this state of mind can only be evaluated as insanity, if the perpetrator presents severe phatological, psychotic symptoms (*Belovics – Nagy – Tóth, 2015, p. 206*). All in all, exculpation in the case of an insane prophet is not beyond imagination.

Concerning followers, it is proved that the most endangered age group is the one of unstable, rootless, self-realising young adults who suffer from emotional crisis. Those who have recently become independent from parents' control (age 18-20) are especially endangered (*Lugosi – Lugosi, 1998, p. 98*). Psychologial experiments also proved that persons with low self-esteem feel less regret than mentally healthy people when committing crime (*Aronson, 1994, p. 176-178*).

In their case, neither a high-level manipulation nor „brainwash" could be the basis of exemption, insanity would not be diagnosed. However another ground, the coercion and threat might be able to be proved. We have to examine the validity of this ground if the perpetrator was compelled to do the illegal act by force (physical pressure) or by threat (psychical pressure). In both cases, we can make a differece between depriving and breaking the ability to act according to one's free will. According to Hungarian law, the previous scenario provides the possibility of limitless reduction of the penalty, while in the other case it can be the basis of full exemption. Our experiences show that in those DRMs where the members live together in a closed

community, the leader is able to blackmail its followers by threatening the life of their family. If this was the case, the follower would be acquitted and the leader would be condemned as a covert offender [Btk. Section 13 (2)].

Finally, it is relevant to examine if a DRM should be evaluated as a criminal organization. In the official English translation of the Btk. the definition says that „criminal organization shall mean when a group of three or more persons collaborate in the long term to deliberately engage in an organized fashion in criminal acts, which are punishable with five years of imprisonment or more" [Btk. Section 459 (1) 1.]. This translation is not completely satisfying, since it omits two important criteria appearing in the original version: conspirative working and hierarchic structure. All 5 conditions are objective, or in other words independent from the consciousness of the members. For a better understanding, let's see them one by one:

- *Three or more persons*: the fulfillment of this criterion does not require at least three persons to take part in each illegal act. Moreover, it is not necessary for the members to know eachother's identity. One person who makes the connection between them is sufficient. If during the prosecution it turns out that one perpetrator can not be condemned due to a ground for exemption it will not free the other perpetrators from the disadvantegous legal affect of being part of such an organisation. Regarding DRMs, we can easily recognise that this will not be the barrier of the more severe evaluation.
- *Long term collaboration*: this is also a precondition of conspirativity if we think about it. According to the Hungarian practice, this means at least a half or a whole year (*Görgényi – Horváth – Gula – Jacsó – Lévay – Sántha – Váradi, 2019, p. 283*). During this time, cooperation of all the members is not required, only the activity matters. In case of our research, we have seen that the more significant organisations can work over many decades, thus this criterion is also fulfilled.
- *Hierarchic structure*: this one consists of two subconditions: subordinate relationship between the members where the leader is above everyone and normally the inferiors commit the actual delicts and the distribution of tasks. This model can be observed through the Unification Church.
- *Conspirative working*: a new conceptual element replacing the expression „coordinated". It refers to the coordination between the members including the preplanned distribution of tasks, the distribution of the gained advantages, the common steps to avoid impeachment etc. (*Görgényi – Horváth – Gula – Jacsó – Lévay – Sántha – Váradi, 2019, p. 284*). Analysing DRMs, we could see how the surpreme leader defines the major tasks of the followers, than how he maintains the well-functioning system and community using the acquired goods and capital.
- *Engaging (intentional) criminal acts, which are punishable with five years of imprisonment or more*: means that the organisation was originally designed to commit at least two delicts of the discussed kind. It is important to mention that the original applicable penalty shall reach the minimum of five year imprisonment stated in the Special Part, not the increased version based on the legal effect of criminal organization (*Belovics – Nagy – Tóth, 2015, p. 330*). Since we are

considering an objective criterion, it does not matter if particular members do not know the exact means of the group. It is sufficient if they know about the other mentioned conditions and the general purpose of comitting crime. The legislator also punishes the simple preparation activities realised to help the perpetration of such groups. In this case, members will face the charge of „participation in a criminal organization" (Btk. Section 321). This is the property that many DRMs fail to have. Thinking about mad prophets and their manipulated followers, it is hard to declare that they do not act in favor of their particular belief. However, in such groups like the Unification Church or the Church of Scientology where the main purpose is the exploitation of the believers, the condition may be fulfilled. *De Rosa* mentions such judgements in Italy where the Church of Scientology was condemned as a legal entity (*de Rosa, 1991, p. 188-189*).

CONCLUSIONS

We have created the legal concept of DRM successfully that covers all the religious movements with which penal law should deal. After observing their activity both in and out of the group, we can constate that the major part of their illegal acts is already punished under common states of affairs. We have also analysed the potential issues that may emerge during jurisdiction, but all we know is that all cases require particular evaluation involving experts. Summarizing the gained experience I would make two suggestions.

In the first place, as I said before, various harmful activities of the discussed groups are under prohibition, though their recruitment and later their method to convince the victims to do terrible things is not forbidden directly by law. Thus a new *sui generis* abettor-like state of affairs that punishes „brainwashing" literally should be created.

At the same time, following the French solution, the liability of religious legal entities should be increased. In Hungary, a way of cancellation already exists in the field of public law, but it is an incredibly slow and circumstantial process. Therefore I suggest that those religious legal entities whose surpreme leader commits the previously mentioned hypothetical delict shall be *ipso iure* ceased.

Finally, I could also imagine a newly created administrative establishment that would register – completing the official public records based on the law concerning churches – all the religious movements which do not have a legal personality. This way, radicalisation of such groups could be noticed before their behaviour becomes agressive and the law enforcement agencies could be alerted in time.

Presumably, the fight against religious manipulation will never end, since lots of cases remain undetected, but these measures may be able to help to reduce the number of victims.

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