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**THE SOURCES AND SPECIAL PRINCIPLES OF
CANONIC LABOR LAW WITH REGARD TO
HUNGARIAN CHARACTERISTICS**

Thesis booklet

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I. THE PROPOSED RESEARCH TASK

The Church itself is a "perfect society" (*societas perfecta*). It is not only a spiritual community, but also an institution with a visible organizational system. The constitutional organization of the Church reasonably requires that it shall possess at its disposal a system of regulatory norms capable of managing and moderating its operation as an independent, internal body of law, as well as in some cases regulating and determining its relations with various different persons, entities and other "perfect societies". In the twentieth and twenty-first centuries, this special legislation of theological character shall already answer many secular questions. As a result of the Church's ever-expanding social role, more and more living conditions shall be the subject of such regulation; more and more social groups are demanding canon law to respond to their individual life situations.

One such new area of regulation covers a wide range of employment relationships. The Church itself is an employer, however due to its special place and role in society it shall be regarded as a quite unique one. It is not profit-oriented, yet it must fulfil its role as an employer within the framework of the market economy, in such a way that the proclamation of the Gospel shall be ensured above all.

Worldwide, schools, hospitals, and social institutions are increasingly being maintained by the Church, either as new founders or by taking over the state's responsibilities. The Church is becoming a key participant in the employment sector; in Germany it is already the second largest labor market participant after the State. The above cited tendency can also be observed in Hungary; the transformation of the Central and Eastern European political system at the end of the last century induced social changes in Hungary as well. The awareness and recognition of the Church increased, and social religiosity intensified. Nowadays, the Hungarian Catholic Church operates 6 addiction care services, 14 nursing homes, 25 diocesan and parish social and health institutions, and 48 monastic social institutions. In addition, the Catholic Caritas maintains 16 diocesan centres as well as 3 independent Caritas institutions. There is also a significant number of diocesan, or monastic primary and secondary education institutions. According to the latest statistical summary, the Catholic Church in Hungary offers Catholic education in 171 kindergartens, 254 primary schools, 101 grammar

schools, 27 vocational secondary schools, 50 vocational grammar schools, 44 art schools and 57 colleges. Higher education is provided by 9 theological colleges in addition to the Catholic University.

It can be observed that the number of employees in church-run institutions shall be estimated at tens of thousands, so the Hungarian Catholic Church is one of the largest employers in Hungary as well. For all the above reasons, an internal collection of church norms shall be elaborated in Hungary as well, which sets the basic norms of the church-specific labor regulations that all church-maintained employers shall at all times apply as a guideline. Although these norms are rooted in secular law, they acquire their uniqueness by their Catholic interpretation according to the teachings of the Church. It is common knowledge that nowadays there is no such uniform regulation in Hungary. However, the principles of national and international law are also applicable in Hungary, as well as the cornerstones of the dogmatic teachings of the Church, from which all the basic norms to which the Catholic maintainer shall pay attention in terms of both secular and canon law can be deduced.

While presenting and analysing these principles, I am looking for answers to the following questions in my dissertation:

- How did the principles of labor law that are still in effect today develop and form, how did their significance change in the history of law?
- What are the principles of common law (natural law, positive divine law, international law) and national (Hungarian) law that shall also be applied in church employment?
- In addition, does the Church provide any additional principles that can be interpreted specifically in the field of employment relations?
- How do these principles correspond to the Church, and especially the social teachings of the Second Vatican Council?
- How has the itemized codification of these principles been realized, what are the further possibilities of codification?
- How can the interpretation of the principles resolve the potential conflicts between secular legal rules and canonical norms?
- In which direction of legal development does the current application of these principles point?

– What effect does all this have on the canonical legal system of the Hungarian Catholic Church and how can it influence its formation?

My aim is that by answering the above questions, the dissertation – through and derived from the principles of labor law – may present and summarize to the rights-seekers, the minimum labor law standards, the application of which is obligatory in all church employment relations, even if there is no explicit itemized legal norm behind it. My proposed aim is to bridge the gap created by the current lack of a comprehensive Hungarian canonical labor law regulation and may offer the present dissertation as a compass to all those who may want to apply the secular rules of labor law in accordance with the canons and the social teachings of the Church. I do hope that the dissertation may also be of help to those who may discover a contradiction between certain secular paragraphs and ecclesiastical canons within the mazes of law; and find the proper explanations needed to resolve them.

Similarly, by the introduction of the legal theoretical analysis and summaries included herein and by the presentation of the already established, itemized law of certain particular churches, I would like the dissertation to have a helping and encouraging effect on all efforts aimed at the completion of a fundamental rule book of Hungarian canonical labor law in Hungary in the near future. A fundamental rule book which, not only as a recommendation, but also by means of legal binding effect, could uniformly regulate the legal relations of the employees of all church-maintained institutions, making Hungarian church employment transparent and predictable.

II. RESEARCH PROCESS AND INVESTIGATION METHOD

In order to answer the questions examined, it was necessary to summarize, analyse and compare the principles of labor law.

For the above reason, I conducted research in the Roman archives of the Pontifical Council for Legislative Texts (*Pontificum Consilium de Legum Textibus*). I have reviewed the documents published during the creation of the canon law codes in force and effect today. I have learned of the regulatory intent of the Pontifical Commission for Revision of the Code of Canon Law (*Pontificia Commissio Codici Iuris Canonici Recognoscendo*) and the detailed

opinion of the consultants on the canonical codification of labor law. I have reviewed the labor law regulations of certain particular churches. The dioceses of Germany and Austria are of great importance in this context. I have also examined the labor law of the Vatican City State and the particular canon law issued in respect of the Holy See. I have interpreted the papal statements on labor law and inspected the activities of the Labor Office of the Holy See (*Ufficio del Lavoro della Sede Apostolica*). I have analysed the decisions of the European Court of Human Rights, the Court of Justice of the European Union, some national constitutional courts and supreme judicial bodies that interpret the principles that fall within the scope of the dissertation. I have also reviewed the case law of the labor courts at different levels in the Vatican City State and the Holy See, as well as the law enforcement activities of the German Ecclesiastical Labor Court (*Kirchliches Arbeitsgericht*).

In possession of the research results, I look at and – in the static part of the dissertation – I reveal the concept, justification and content of labor law. I present the process of its formation, the main stages of its evolution. I tend to discuss the development of secular labor law separately from ecclesiastical labor law, but pointing out the visible parallels and the interaction of the two processes.

I intend to describe the canonical labor law currently in force within the universal Church, with particular reference to the close connection between social teachings and itemized, canonical legal norms. For the above reason, I analyse the events and results of the codification after the Second Vatican Council. In light of all this, I explain the significance of the principles of labor law.

By reviewing the literature in question, I am looking for the sources of legal theory and legal dogmatics of the principles. In the dynamic part of the dissertation, I present the content of the individual principles, their formation and the main stages of their development one by one.

Relating to the above, I also examine in which itemized text of secular and canon law these are reflected or displayed. I interpret these normative texts and derive from them the unavoidable regulatory content, which, due to its fundamental significance, requires application in the Church even in the absence of an explicit itemized legal wording.

In the course of my work, I analyse secular and canon law separately, but I also point out their connection points. With regard to civil law, I examine international law and national law separately; while as regards canonical norms, the regulation of universal ecclesi-

astical law and particular churches; in this context, paying special attention to the conditions in Hungary. I am looking at not only the currently applicable itemized law, but also the legal regulation no longer in effect, as although the principles pervade the wording of legislation, they do not derive from it.

Furthermore, I analyse the case law of international, national and canonical courts, in which they set out in a theoretical manner the content of each of the principles of labor law and point out the rules for their application.

Where possible, I also intend to give an outlook on labour law of other confessional denominations so that the reader may also enrich their experiences relating to canon law as well; as many of the principles of labor law have roots deriving from natural law, while divine law is binding regardless of confessional denomination.

I analyse the synergistic effect of these principles on each other, but I also point out their possible conflicts, describing at the same time how to resolve the arising contradictions.

In my dissertation, I summarize the partial results of the research at the end of each chapter. While doing so, I determine all the itemized rules of conduct that can be deduced from the principles, and which shall be applied in all particular churches of the Universal Church through the referring rule of the canonical codes due to their special relation to natural law, positive divine law, and the ecclesiastical explaining of their teachings as well as international or national law.

In the conclusions of the dissertation, I summarize the individual partial results and outline the system of criteria according to which the canonical legislature may create a uniform, national labor regulation that not only fits the legal system as a whole, but also meets the local conditions of the Hungarian Catholic Church.

III. SUMMARY OF SCIENTIFIC RESULTS

In the course of my research, I established – on the basis of itemized, canonical legal norms concerning church employment, the regulatory principles formulated during the preparation of the Code, as well as other relevant statements of the central authorities of the Church, the rules of secular law, and individual decisions in legal practice – that the principles of ecclesiastical employment have crystallized in the last century and a half of legal

history, along with the development of secular law. The parallelism of the formation of the two legal systems and the synergistic effect of their processes on each other can be clearly identified. Certain early statements and encyclicals of the universal canonical legislator containing normative expectations, drew attention to the need for a comprehensive, globally justified, civil law regulation on employment relations. Later, however, the individual statements of the Holy See followed the achievements of the development of international law within the field of employment relations. This dual effect can still be felt today. The canon law of the particular churches with advanced labor legislation still takes into account the results of the development of civil law and the guiding decisions of some highly prestigious international, state courts. On the other hand, national legislation relating to these particular churches is also aligned with canonical labor law; it respects special life situations affecting ecclesiastical employment and the need of the Church to regulate them independently.

The principles of ecclesiastical employment, with few exceptions, can be traced back to divine law. This is why theology is of outstanding importance for canon law. Therefore, the social teaching of the Church – not only in accordance with the general principles of the interpretation of canon law, but also pursuant to the explicit, item-by-law provisions of the code-maker – shall be considered as part of the complex normative material governing ecclesiastical employment relations. Thus, the principles of divine law – deriving from the general, natural law regulations of employment through the secular law and the practice of the given place – constitutes the backbone of canonical labor law. These principles can be of two kinds: on the one hand they are general, so they can be applied in all life relationships, on the other hand they are special, that is, they can be interpreted specifically for the relational system of church employment. In fact, in the latter mentioned canonical principles of labor law are embodied the general, classical principles of law which can be considered to have meaning in several interpretive media; through these, in the light of these, they gain their special, canonical meaning in labor law.

The first of these principles shall be the *principle of servants' community*. Within this, the principle of the universality (*communio*) of the ecclesial community, the principle of spreading the gospel-message of salvation, or the principle of secular apostolate acquires a special, labor law meaning. The next organizing principle, which is a characteristic of church

employment relations, is the *principle of loyalty*. It expresses the rule of striving for a holy life, the requirement of Christian obedience. Through this, the principle of freedom of opinion within the Church, the principle of freedom of research and communication, and the principle of free choice of living status can also be interpreted. The third group aims to *ensure fair working conditions*. These include the principle of fair remuneration, the principle of respect for human dignity, the principle of protection of privacy and the principle of wise equality. The fourth group can be determined as an *approach towards collective interest*. It embodies the principles of freedom of articulation of interests, the principle of the promotion of social justice, the principle of self-government, the principle of freedom of association and the free exercise of collective labor rights, as well as the protection of the rights of individuals.

These principles are fully in line with the social teaching revealed at the Second Vatican Council and with the regulatory intention expressed during its codification. The professional opinions of the consultants involved in the Codex-revision proceedings, the resolutions of the Synodal Fathers, or of the individual diocesan episcopal conferences, supported, with few exceptions, almost unanimously the transposition of the above regulatory principles into the specific law to be created.

However, the universal codification of ecclesiastical labor law has been executed in an extremely frame-like manner. The current law in force in itself canonizes only the applicable secular itemized regulation and the regulatory principles formulated in the social and societal teaching of the Church. However, in laying down the general norms for believers of Christ, all the provisions that make the general applicability of the above principles to the special living conditions of ecclesiastical employment have been included in the Code in sufficient detail.

There are other reasons why universal law contains only the statutes and general norms of employment. The canonical legislator was determined to empower the competent particular church legislators to regulate certain local conditions of life at their own discretion, in accordance with the principle of subsidiarity. Accordingly, canonical labor law can also adapt to individual local regulatory needs, which in many cases are determined by the legal en-

vironment created by secular labor law, as well as to micro- and macro-social expectations. In the process of local legislation, some European churches have gained significant experience, and their work shall be considered as exemplary. Their established standards can serve as a model for all local churches. The particular churches, like the central entities of the Holy See, the dioceses of Germany, Austria and the German-speaking Switzerland have developed their internal system of labor law fully adapting to the local legal and social conditions. Even without the support of state legislation, they are able to settle employment relations in a comprehensive and predictable manner and to resolve individual or collective conflicts of interest in employment.

However, a comprehensive canonical codification of this depth can often conflict with other provisions of law. It may be that the Church's rule-making right of self-determination, which is ultimately a manifestation of the right to collective religious freedom of a particular group of individuals, is in conflict with other fundamental human rights attached to individuals. With regard to canonical employment, these other fundamental rights are classically the following: the right to freedom of opinion, the right to choose one's state of life and the fundamental right to exercise institutional forms of collective interest protection. The fundamental right to be protected in the event of a conflict between these and the Church's right of self-determination shall only be determined on the basis of careful consideration of all the circumstances of the case. There is no objective priority. In some cases, especially in relation to the enforcement of certain employment loyalty requirements, the right of ecclesiastical self-determination may be more pronounced, while in other cases, especially in the context of ensuring the protection of employees' interests, the right to exercise institutional labour law advocacy shall prevail. As a fundamental rule, however, we shall declare that a normative environment or life situation cannot be maintained in which the exercise of any fundamental right may be completely and in any form prohibited or objectively impossible; this would be contrary to the purpose and natural roots of these rights.

Contemplating the central regulatory concept of the Universal Church, the individual declarations of the Holy See and the particular law established in certain particular churches, as well as the normative content that can be deduced from the decisions made during law enforcement, we can conclude that canonical labor law is still undergoing significant

development. The role of the Church in society requires that it operates a predictable employment system, one, that also guarantees effective legal protection for all parties involved in employment relationships. These days, the church employment sector is expanding in Hungary as well. Compared to the volume of the previous years and decades, the number of institutions employing various groups of employees has significantly increased not only in the fields of education, social- and patient care, but also in newer and newer sectors of the national economy. The government today seeks to involve the Church more and more in the organization of education; it intends to transfer the right of maintenance many – hitherto state-owned – primary, secondary and higher educational institutions to a Christian church or denomination. Thus, the existing situation clearly requires the Hungarian Catholic Church to create its own canon law collection at the national level, which could settle all segments of particularly ecclesiastical employment relations worthy of regulation, based on Western European models.

In the above national collection shall be laid down the basic organizational principles of the servants' community and the elementary rules relating to it. This uniform regulation shall replace the diversified standards having been developed so far by each separate institution. Furthermore, it may also be essential to identify the corner points along which the pastoral mission of each institution may become apparent to the outside world. This would mean defining, at the institutional level, the goal area and manner of action of lay-apostolate in the employment sector, with which the particular employer would participate and take part in the central mission of the Universal Church.

The comprehensive loyalty rules of the Hungarian Catholic Church shall also be laid down within this form of regulation. In this context, attention shall have to be paid to the special relationship of the Church's right of self-determination and other personal freedoms. The private autonomy of individuals shall also be respected to the appropriate extent.

While on the other hand, I do not consider it essential that the rules set out in detail shall contain provisions regarding the scope of fair working conditions. In Hungary, the applicable state legislation in this respect requires such a strict and unconditional enforcement that it clearly makes it unnecessary – or even almost impossible – for the Church to establish its own regulation within this field of law. The “copying duplication” of the secular regulat-

ory environment may lead to anomalies in the application of law in light of the changes in state law, which are so common these days.

It also seems crucial that the set of norms to be created shall contain appropriate rules for the mechanisms of collective bargaining within the Church. It shall support the institutional protection of interests as well as ensure the establishment and operation of organizations supporting the approach towards collective interest within the Church. These organizations shall be characterized by self-government, parity composition, the possibility of institutional trade union participation in the work of the organisation, and the normative binding effect of their agreements or decisions on church owned employers.

I am convinced that the creation of such labor regulation could provide the Hungarian Catholic Church with a worthy place among the particular churches, which – in accordance with the universal canon law and the general principles of national-international law rooted in natural law – aimed to create predictable employment conditions. I do hope that this dissertation may also contribute to initiating the necessary regulatory proceedings.

IV. LIST OF PUBLICATIONS

Independent studies published in connection with the preparation of the doctoral dissertation:

1./ BODNÁR Zoltán: „A kánoni munkajog kialakulása és fejlődéstörténete”, in: KISS Gábor (szerk.): *Fiatal Kutatók és Doktoranduszok IX. Nemzetközi Teológus-Konferenciája 2019*, Budapest: Doktoranduszok Országos Szövetsége 2020, 125-138. oldal.

2./ BODNÁR Zoltán: „Roots of bargaining in the work community of the Church”, in: CSISZÁR Beáta / HANKÓ Csilla / KAJOS Luca Fanni / MEZŐ Emerencia (szerk.): *IX. Interdiszciplináris Doktorandusz Konferencia 2020 [9th Interdisciplinary Doctoral Conference 2020]*, Pécs: Pécsi Tudományegyetem Doktorandusz Önkormányzat, 2020 90-99. oldal.

3./ BODNÁR Zoltán: „Szolgálati közösség és érdekegyeztetés a kánoni munkajogban”, in:

KISS Gábor (szerk.): *Fiatal Kutatók és Doktoranduszok X. Nemzetközi Jubileumi Teológuskonferenciájának Tanulmánykötete*, Budapest: Doktoranduszok Országos Szövetsége 2020, 118-130. oldal.