

The Church Autonomy in the Czech Republic

**by Jiří Rajmund Tretera,
Ordinary of Ecclesiastical and Canon Law, Charles University, Faculty of Law, Prague**

Historical and cultural preconditions

The Czech Republic consists of the territories of three historic Czech provinces: Bohemia, Moravia and southern parts of Silesia. Firstly the Czech Republic was founded as a member state of former Czechoslovakian federation on January 1st, 1969. It has been an independent state since 1.1.1993, it means since the dissolution of Czechoslovakian federation. Czech citizens declared their profession to „all good traditions of the long-established statehood of the lands of the Czech Crown and Czechoslovakian statehood“ (see the preamble of the Czech Constitution from December 16th, 1992).

The ancestors of Czech people accepted christianity after the year 800 under influences of Irish, Franconian and Greek-Slavonic mission. The territory of the lands of the Czech Crown belonged to western church obedience from the beginning without interruptions. The Czech Kingdom was bounded in a free union with the Holy Roman Empire. Charles University as the first university in the middle Europe was founded in 1348 in Prague (capital of Bohemia). There were two beliefs in the Kingdom since the Hussite reformation in 15th century: Catholic and Utraquist. The recatholization after the year 1620 and after the Thirty Years War is connected with Habsburg dynasty. The unification of the Czech lands with Austrian parts of Habsburg monarchy follows after this date as well. The sovereign of this union appropriated *iura maiestica circa sacra* and therefore the Catholic Church lost an essential part of its autonomy.

The emperor Josef II. published his Letter of Tolerance in 1781. Approximately 2% of inhabitants of the Czech countries professed the Helvetic or Augsburgian confession. Since 1848 the process of emancipation of churches has started as far as their relation to the state is concerned. From 1867 (the new Austrian constitution was adopted) it is possible to talk about the system of coordination model in the relation state-churches holding the parity of the churches. All the churches without limits gained the right to be registered by state if they fulfill legal demands. Those churches which were registered by state had the right to teach religion at public schools and to practise religious services in the army. Salaries of priests were financed partially by state, if their churches were unable to finance them of their own property, other churches got other equal supports.

The Czechoslovakian Republic, which was founded in 1918 after the separation from the Austrian-Hungarian Empire, adopted and recognized the older legislation of monarchy. The choice between the civil and church form of marriage (recognized by state) was possible since 1919. The children who were belonging to registered churches were obliged to attend religious education at public schools. The Constitution from 1920 declared personal religious freedom. As far as public opinion is concerned the Catholic Church was accused of too near relation to Habsburg dynasty and dissolved Austrian monarchy. Cca 20% of the Czech people voluntarily gave up their membership in the Catholic Church, approximately one half of them stayed without any religion and almost the same number of these people founded the Czechoslovakian Church in 1920. 1% of citizens became protestants, 0,2% Orthodox. 75% of the Czech people stayed in the Catholic Church.

The Czechoslovakian Church developed from the catholic modernism, it united catholic and protestant aspects with the long time already non-existing Hussite tradition. It was

recognised by state in 1920, but not like a state religion. This church has used the name The Czechoslovakian Hussite Church since 1971.

It was spoken about the separation of church and state according to the French pattern of separation in the year 1905, but the political situation (the position of clerical and agrarian parties) did not enable this solution because of possible negative impact on stability in the country. A *modus vivendi* between the representatives of the Czechoslovakian government and the Holy See was adopted in 1927. The Holy See accepted the demand of the government to ask the government of the republic before the installation of diocesan bishops because of possible political objections.

During the Nazi occupation 1939-1945 catholics in Czech lands actively participating in the resistance against the Nazis and being persecuted by them were justified in the minds of the Czech people. All the churches became popular in common society after the World War II. The religious freedom was the same like before 1939, although the Communist party was very powerful and tried to increase own power.

The radical change came after the Communist coup d'état in February 1948. All the spheres of public life had to accept the „scientific“, i.e. marxistic ideology and atheism was a part of this ideology. The marxistic ideology played a role of state religion in the years 1948-1989.

Churches and religious societies were the only alternatively thinking institutions, whose existence was, with many limits, tolerated. The communists evolved this attitude to churches from the fact, that religious stand is deeply established in souls of people and that the total pushing of church activities in illegality would be very dangerous for their regime because of the loss of control.

All the land property (woods and fields) was taken over by state in 1948 as a basic source of their economic assurance. All the church schools and seminars were abolished. The education of priests was enabled only at three theological faculties (one Catholic, one Evangelic, one Czechoslovakian Hussite) under the state control with number limits of applicants.

The new law establishing the institutions of a state control over churches came into force on 1.11.1949. The next law from this year brings obligatory but very low salary for priests paid by state without the will of churches and binds the religious activity of priests on the state permission in geographically limited territory. The state permission could be without explanation taken back. The Penal Code from 1950 enabled to punish breaking this law by imprisonment.

In April 1950 all the monasteries were abolished without legal ground, the convents were relocated to the border-land a little later time, nuns could not take novices and they were obliged to work in factories.

The obligatory civil marriage was established in 1950. The religious education at schools was permitted on voluntary basis, but there was an effort to get it out of the school and children attending this education were discriminated.

The communist regime in Czechoslovakia did not call the relation between state and church like a separation. Legal subjectivity of individual ecclesiastical legal entities and their ownership of remaining church property (churches, parsonages, gardens) was recognized. Laic employees of churches, for example vergers, were usually paid by collection of money during God services.

All churches and especially the Catholic Church were symbols of resistance during the communism. They got the authority among all dissidents.

After „the Velvet Revolution“, which followed the brutal intervention of communist police forces against students demonstration in Prague on 17.11. 1989, the Parliament abolished the crimes considering the churches in December 1989, the state permission for religious activities of priests was abolished in January 1990.

According to statistics from the year 1991 40% of inhabitants of the Czech Republic are non-members of any church, 39% are catholics, 2% belong to Evangelic Church of Czech Brethren (unified calvinist-lutheran church), 1,8% are members of the Czechoslovakian Hussite Church, 1% belongs to other churches and 16% of inhabitants gave no response.

Fundamental understanding of church autonomy

is based in the Czech Republic on provision of art. 16/2 of the Bill of Basic Rights and Freedoms published under the No. 93 in the Journal of Laws for the year 1991 and again on provision of §5/2 of the law published in the Journal of Laws under the No.308 from the year 1991. There is written: „Churches and religious societies administer independently their own affairs, especially they create their authorities, establish their priests and establish orders and other bodies in independence on state.“¹

Normative frame

Firstly it is necessary among the rules of the Czech state church law (i.e. rules administering the relation between state and churches) to remind the provisions of constitutional law of the Czech Republic, which consists of constitutional laws and international agreements ratified by the Czech Republic, which relate to basic freedoms and are prior to laws.

The **Constitution of the Czech Republic** from 16. 12. 1992, published as a constitutional law under the number 1 of the Journal of Laws for the year 1993, declares (article 10) that „ratified and published international agreements considering rights of people and basic freedoms, which are bounding on the Czech Republic, are immediately bounding and are prior to laws.“ There are several treaties as a **International Agreement on Civil and Politic Rights** from the year 1966. This treaty became bounding on the Czech republic in 23.3.1976 and was published under the number 120 in the Journal of Laws for the year 1976. At that time that was not prior to laws and there was a problem of its transformation into the legal rules and laws of communistic Czechoslovakia. The article 18 of this treaty declares the freedom of thinking, consciousness and religion.

The Constitution of the Czech Republic declares in articles 3 and 112 that **Bill of Basic Rights and Freedoms** is a part of constitutional order of the republic. The Bill was adopted through federal Parliament and published under the number of 93 in the Journal of Laws for the year 1991 and then under number 2 in the Journal for the year 1993. The articles 15 and 16 create the basic source of the Czech state church law.

There is no treaty between the Holy See and the Czech republic as the *modus vivendi* (1927/28) was. This *modus vivendi* is considered to be obsolent and without legal effects.

¹ Since that time two Roman-catholic dioceses (1993,1996) and one Greek-catholic exarchat (1996) have been established. The church only informed about these facts the Department of culture for statistics. Some foreign orders provinces or abbeys at the territory of the Czech republic established through this way their subordinated order houses.

The **Law of Religious Freedom and Status of Churches and Religious Societies** from 4.7.1991 (published under the number 308 in the Journal of Laws for the year 1991) follows up with the provisions of the international relations and constitutional provisions. It is the essential specialized legal amendment of the Czech state church law. This law in § 1 declares the freedom to profess religion or belief together or lonely, to change religion, to be without religion, to spread religion and not to be compelled to a practising of a religion in accordance with article 16/1 of the Bill of Basic Rights and Freedoms.² Parents decide about the religious education of their children to their age of 15 according to § 3 of this law.

Institutional range

The law No. 308/1991 declares in § 4 that churches and religious societies are considered to be voluntary organisations of people who share the same religious belief in a corporation with own structure, own bodies, own internal provisions and ceremonies. The registration according to this law is *conditio sine qua non* for their activities like churches and religious societies at the territory of the state. There is no legal distinction between the terms „churches“ and „religious societies“, these forms are equal and it is a problem of the own choice of such a organisation which term to elect. We use in this essay the term „churches“ for a simplification.

In accordance with § 22 all the churches which were practising their activities based on another law or legal assent at the day of the legal force of this law and they are mentioned at the appendix to this law are considered to be registered churches according this law. There were such 19 churches in the Czech Republic.

The registration of other churches is carried out by pertinent body of state administration - i.e. the Department of Culture of the Czech Republic. Proceedings and conditions for this registration are mentioned in the law. It is possible to give an appeal against the decisions in accordance with principles of administrative law. If a church administers its activities in inconsistency with the law or conditions of registration, it is possible to abolish the registration. The Supreme Court of the republic is pertinent to review this decision if there is an appeal of such a church.

Two other churches were registered in years 1993 and 1995. No registration was revealed. There are now 21 registered churches in the Czech Republic.

All registered churches are legal entities on the basis of the law No. 308/1991 of Journal of Laws. Decisions about legal subjectivity of individual bodies of churches (religious societies), about its range and about the fact who is legitimate to act as their representative fall to the sphere of internal administering of individual churches. This fact follows § 13/1/g) of the mentioned law. The Department of Culture i.e. the registering body has „the evidence of all legal entities, which develop their legal subjectivity from the churches, if they are not registered according to another law.“ Another evidence is thought to be evidence of church schools kept by the Department of Education or evidence of church hospitals kept by the Department of Public Health etc.

In the practice there can be seen a distinction between theological core institutions and others, non-directly related institutions. These second ones enjoy church autonomy, too, but they are obliged to follow still other conditions of secular law more (hospitals, schools).

² As far as prisoners are concerned this right is assured by decrees of the Department of Justice No. 109 and 110 from the year 1994. In January 1994 an agreement was concluded between the Prison services of the Czech Republic, The Ecumenic Council of Churches in the Czech Republic and the Czech Bishops Conference about establishing of the Prison religious service.

Corporations which are in the Code of Canon Law from the year 1983 recognized like *consociationes et fraternitates* and they are according to this one established in order to support aims of Christian devotion and love have legal personality, they can obtain property and act independently in public affairs. Examples: associations of order tertiaries, association of laic ecclesiastical movements (for example *Opus Mariae* - Fokolare), diocesan and parish charities, evangelic diaconies etc.

Churches can associate mutually. Such an association is the Ecumenic Council of Churches in the Czech Republic.

The state church law does not concerns unions which are established by believers out of the structure of churches, usually following a coloboration of people of different churches and no believers in a field connected with religion. Examples: civil association Czech Christian Academy, the Society of Church Law, the Society of Christians and Jews, the Academic Weeks, YMCA, the Salvation Army or the „Orel“ - Eagle (physical-training association).

Church schools and state faculties of theology

It is possible to divide schools in the Czech Republic into three categories according to their founder: 1. schools established by state or municipalities, 2. schools established by church body (dioceses, orders, parishes), 3. schools established by natural person or legal entity of civil law. The bare necessity is to put the school to the net of schools by the Department of Education.

Church schools are not exactly private schools. Their usual costs are fully paid by state, the ecclesiastical founder regularly gives its own building and establishes the director of school. As far as students are concerned, they are absolutely chosen by results of entrance examinations, not by their religious conviction. Teachers can be without religion or of other religion, but a principal loyalty is presumed to the church which founded the school. This arrangement is considered to be suitable for deeply secularized Czech people. And the church schools found great popularity in common society.³

All registered churches have the right to establish church schools of all levels except universities. The Catholic Church founded several „high theological schools“. These schools accept students after matriculation, their character is near to universities, but their students get no academic degrees. They are used for teachers of religion, social workers in the Church, and leaders in pastoral assistance.

Three catholic, one evangelic and one hussite theological faculties create a part of state universities. They have their own statutes created in coloboration with churches. Their teachers are accepted only with a consent of churches. Representatives of churches are chancellors of these faculties. Future priests, religion teachers and laic employees of churches study at these faculties.

Private schools have the duty to fulfill state curriculum and their certificates have public power. Their costs are paid by state only partially, the rest is paid by school (this part evolves for example from school-fee). It is not excluded that school could have some own specific world view, even the religious one. This school can also choose its students according to its own discretion. Private universities can be founded from 1999. It is not excluded that their founders could be church bodies.

³ Believers had not access to pedagogic education in totalitarian (communistic) period because teachers should play a role of „priests of atheism“. It is interesting that from the year 1990 to this day there were established 83 catholic and several evangelic church schools and among these there is a great number of secondary schools and grammar schools. The first Jewish school was founded in 1998 in Prague.

Religious teachings

Churches have the right to teach religion at all public schools like a non-obligatory subject. The teacher needs permission of the church and he is paid by school. Religion is sometimes not taught because of total lack of teachers of religion.⁴ Such a religious education can be attended by students not pertinent to this church as well. This practice is supported by churches because of ecumenic cooperation and the common need. Students without belief can attend religious education as well.

The disadvantage of this system of religious education is the fact that there is no alternative subject to this and so that is taught in the only free half- day in a week, usually on Wednesday afternoon.

The religious education is voluntary at church schools as well, but there is an alternative subject - ethics. This model should be accepted by public schools.

Private schools have absolutely free choice to provide obligatory or voluntary religious education of one or more professions or they can exclude religious education from school at all.

Labour law

Finding of the Constitutional Court of the Czech Republic from March 26th, 1997 rejects the jurisdiction of secular courts in disputes dealing with the termination of service relationships involving members of clergy in accordance with article 16/2 of the Bill of Basic Rights and Freedoms (churches administer their affairs independently, especially establish their bodies, establish their priests and found church bodies separately from state institutions).

Labour relation of priests in church is lead by ecclesiastical (canon) law and its duration depends on pertinent church authorities involving church courts. If there is no internal legal rule of some church, it is necessary to use state legal rules subsidiary. As far as the work of laic employees, their labour contract follows secular law (the Labour Code) and their demands issuing from this contract are solved by secular law. On the other hand it is not excluded laic could stand in labour relation to a church according to internal legal rules of this church.

Charitable activities

Only several hospitals were given back church authorities (order bodies). State and insurance companies pay costs, churches take care of personal assurance of services.

The Catholic Church founded several hospices for people struggling from high developed cancer. The church obtained money and help for this purpose from state, organizations and individuals through its own effort. These hospices are founded where a background of several dozens of voluntary and paid devoted believers can be found.

Senior homes belong to the sphere of church charitable activities as well. In suburb of Prague (Prague-Řepy) there is women cloister where senior home is combined with women prison. These women work to the benefit of old and ill people and their work is a good mean for their resocialization.

Matrimonial law

The amendment to the Family Statute (No. 234 in Journal of Laws) restored with power from 1. 7. 1992 in the Czech Republic legal effects of church marriages. Nowadays there is a

⁴ The religious education at schools has general informative character. On the other hand there is practised religious education in church own facilities and buildings and this has catechistic follower's character.

free choice between church and civil form of marriage. But the decisions of church courts about matrimonial nullity are not recognized by state and they have no legal force.

Military service

It is possible for them who deny to enter into armed forces to recompense for this by work in social welfare. The position of military chaplains is solved by Agreement on Cooperation between the Ministry of Defence of the Czech Republic, the Ecumenical Council of Churches in the Czech Republic and the Czech Bishop Conference from June 3rd, 1998 and warrant of the Minister of Defence of the Czech Republic to the Establishment of the pastoral service in the resort of the Ministry of Defence with the force from the 22th of June, 1998.

Contexts in public opinion and contemporary politics

The last still permanent unresolved problem of the relations between state and churches is the open question of the restitution of church property which was dispossessed from February 1948 and the question of the continuity of the state subventions for clergy salaries.

There was restituted 86 monasteries to men orders and 84 convents to women orders through two statutes from years 1990 and 1991, mostly in disrepair. There was not restituted land property (woods, fields) whose proceeds were used for the maintenance of cloister buildings. The only way how to gain means for their maintenance which means to put out parts of them to lease is insufficient.

Some other cloisters and church buildings (for example rent houses of the Evangelic Church) were still not restituted. There were not even restituted some buildings and land property to Jewish communities dispossessed by the Nazi regime after October 1938. Henceforth the agricultural land property of benefices and churches in many catholic parishes and dioceses and evangelic parsonages was not given back to church legal entities.

The statute from 1949 imposed state salary to clergy as a compensation for abolished state supplement pays to church salaries, subventions and dispossessed church property. This new salary was of course very small. On January 1st, 1991 the amendment to this statute came into force. According to this amendment, subventions for clergy salaries are paid to head offices of individual churches or dioceses of the Catholic Church. The level of contribution to a priest increased, but priests salaries are still deeply under average salaries of inhabitants of the Czech Republic.

The Department of Culture submitted to past governments different proposals for legal solution of mentioned problems with the bill of new law of relations between state and churches together but it did not succeed. Contemporary executive prepare new bill of statute, this time with coloboration of experts committees. Representatives of churches should participate in the second committee, too. The first informative meeting which will be attended by the author of this essay will be held in the May of this year.

What kind of practical issues do occur?

It is generally clear that the whole restitution of the church property to church legal entities is very difficult problem and its solution probably does not economically assure the position of churches. The common society as well as members of churches are not satisfied with the present system of state subventions to churches. On the one hand it symbolizes the dependence of churches on state, on the other hand no believers can complain that their taxes help to finance religious services.

Members of churches belong still to economically not very well assured classes of inhabitants so it is not possible to await that all costs of churches could be paid by them. The

solution of this problem could be the increasment of tax allowances for the benefit of natural persons and legal entities who provide churches with subventions, and interests on deposit of funds which could be established as a compensation for debts of state towards churches.

There is no doubt about following public support of state in the sphere of education, healthcare, charity and maintenance of church historic monuments.