

REGULATION OF THE FREEDOM OF RELIGION IN CZECHOSLOVAKIA AFTER 1989 AS A REACTION TO THE LEGAL PRACTICE OF THE TOTALITARIAN REGIME*

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Abstract. Following the political changes of 1989, Czechoslovakian believers were finally able to enjoy their long-awaited freedom. This article highlights how the legislative framework of the new democratic system responded directly to the specific areas where the rights of believers and religious institutions were suppressed by the previous totalitarian government, influenced by Marxist-Leninist atheism. Compared to other Eastern Bloc countries, Czechoslovakia is unique in its complete suppression of Catholic male religious orders. The Charter of Fundamental Rights and Freedoms [Listina základních práv a svobod], which guarantees the autonomy of churches and religious societies, explicitly provides for the right of churches to establish religious institutions. The first four sections of the text examine the precise legal and extrajudicial measures taken by the Communist regime to curtail churches, with ensuing sections exploring the constitutional guarantees and legislative basis for religious freedom in Czechoslovakia and, later, the independent Czech Republic. Legal regulation encompasses more than the individual rights of believers. It also pertains to church activities in a variety of public interest areas, their financial provision, and state recognition of new churches and religious societies.

Keywords: freedom of religion; communist regime; Catholic Church

1. CONSTITUTIONAL REGULATION OF THE FREEDOM OF RELIGION UNDER THE COMMUNIST REGIME

The Communist regime in Czechoslovakia came to exist as a result of the coup d'état in February 1948.¹ At that time, a draft constitution was

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¹ "An important legal and political element in tackling the February crisis was the fact that the Parliament was excluded from the decision-making process. [...] Despite the seemingly constitutional solution to the political crisis, February 1948 constituted a coup d'état, albeit carried out without the open use of violence" [Kuklík, et al. 2011, 79-80].

being prepared to replace the 1920 Constitutional Charter of the Czechoslovak Republic (*Ústavní listina Československé republiky*).² The final version of the new constitution was approved shortly after the coup, first by the Central Committee of the Communist Party of Czechoslovakia, and only later – as was the typical practice in the era of one-party rule – was this “Ninth-of May Constitution” (*Ústava 9. května*) unanimously adopted by the Constituent National Assembly (*Ústavodárné národní shromáždění*).³

Unlike the “Stalinist” Soviet Constitution of 1936, the new Czechoslovak Constitution retained many of the formal features of parliamentary democracy, but its very preamble indicated that the state system was taking a new direction. A typical feature for the communist propaganda of the time was, e.g., the misinterpretation of history and the role of religion in the spirit of ideologically conceived “revolutionary traditions”: “The Czechs and Slovaks, two brotherly nations, members of the great Slav family of nations, lived already a thousand years ago jointly in a single State, and jointly accepted from the East the highest achievement of the culture of that era—Christianity. As the first in Europe they raised on their standards, during the Hussite revolution, the ideas of liberty of thought, government of the people, and social justice” [Gronský 2002, 12].⁴

Following the Soviet model, however, the Czechoslovak Constitution of 1948 contained two elements characteristic of the constitutional enshrinement of the freedom of religion as envisioned by the ruling Communist Party. The first of these related to service in the military: “No one shall suffer prejudice by virtue of his views, philosophy, faith or convictions be a ground for anyone to refuse to fulfil the civil duties laid upon him by law.”⁵ The second element is the freedom of atheist position, persistently and quite unnecessarily invoked in the context of freedom of religion, which subliminally revealed the real ideological monopoly enforced by the state under the leadership of the Communist Party: “(1) Every one shall be entitled to profess privately and publicly and religious creed or to be without denomination. (2) All religious denominations as well as the absence thereof shall be equal before the law.”⁶

However, an explicit acknowledgement of the ideological monopoly of “scientific atheism” can only be found in the so-called “Socialist” constitution of 1960: “The entire cultural policy of Czechoslovakia, the development

² Published under No. 121/1920 Coll.

³ Constitutional Act No. 150/1948 Coll., of 9 May 1948, *Constitution of the Czechoslovak Republic*.

⁴ The official English translation is available at: <http://czecon.law.muni.cz/content/en/ustavy/1948/> [accessed: 04.09.2023].

⁵ Constitutional Act No. 150/1948 Coll., § 15(2).

⁶ *Ibid.*, § 16(1) and (2).

of all forms of education, schooling and instruction shall be directed in the spirit of the scientific world outlook, Marxism, Leninism, and closely linked to the life and work of the people.”⁷ However, religious freedom is incompatible with this notion of a state-imposed ideology, including the one enshrined in the Constitution of the time: “Freedom of confession shall be guaranteed. Every one shall have the right to profess any religious faith or to be without religious conviction, and to practise his religious beliefs in so far as this does not contravene the law.”⁸ It is worth noting that the religious freedom referred to here is only *individual*. In the vocabulary of the regime, this very limited notion of religious freedom (i.e., individual freedom) was understood as “satisfying religious needs”. As if churches and religious societies, as corporations independent of the state, would not even exist.⁹ Interestingly enough, this was not necessarily the practice in every country of the former Eastern Bloc, as it can be documented in a provision of the Constitution of the German Democratic Republic:¹⁰ “The churches and other religious communities conduct their affairs and carry out their activities in conformity with the Constitution and the legal regulations of the German Democratic Republic. Details can be settled by agreement.”¹¹

2. HOW THE REGIME ATTEMPTED TO CONTROL THE CATHOLIC CHURCH

In the state and social system controlled by the Communist Party, the churches represented a foreign body. According to the official Marxist-Leninist doctrine, religion was deemed to gradually disappear. This process was supposed to unfold spontaneously, together with the changing social and cultural conditions; however, the aim of the repressive interventions

⁷ *Constitution of the Czechoslovak Socialist Republic of 11 July 1960*, published under No 100/1960 Coll., Article 16(1). The official English translation is available at: <https://www.worldstatesmen.org/Czechoslovakia-Const1960.pdf> [accessed: 04.09.2023].

⁸ Constitution No. 100/1960 Coll., Article 32(1).

⁹ “The general theoretical and legal framework of the constitutional regulation of the freedom of religion was the predominance of individual confessional norms, which define the legal status of the individual, but no longer the (collective) rights of churches and religious societies, following the example of Article 24 of the so-called Stalinist Constitution of the USSR of 1936. [...] One of the elements of this trend was the so-called privatization of religion, i.e., the reduction of religion to the level of ‘belief’ without external social and cultural manifestations” [Jäger 2009, 778].

¹⁰ 1968 Constitution, comprehensively amended in 1974, in: *Gesetzblatt der DDR*, I, No. 47 (29 September 1974).

¹¹ Constitution of GDR, Article 39(2). Citation. English translation available at: <https://web.archive.org/web/20050825141706/http://eis.bris.ac.uk/~gema/10015/week4.html#Rights> [accessed: 04.09.2023]. Cf. also Svobodová 1984, 119.

of the state was to deliberately accelerate this supposedly objective historical process. In Czechoslovakia, the regime opted for a combination of formal legal acts and numerous completely illegal or only subsequently “legalised” measures serving this particular end.

Based on the principle “divide and rule” (*divide et impera*), the regime treated various churches differently. From the outset, the Catholic Church was seen as the most dangerous, not only as the largest and thus the most influential denomination amongst the citizens of the country, but also as a church whose worldwide centre was in Rome, in the demonized Vatican, i.e., beyond the reach of the Communist Party’s domination and control. By far, the repressive crackdown on the Catholic Church was the harshest, especially in the first years after the Communist takeover; the other churches did not represent significant points of potential resistance to the new regime. In fact, some of the leading figures in most of the non-Catholic churches would even explicitly side with the new regime.¹²

Especially reliable for the regime was the Eastern Orthodox Church as it was controlled from the USSR. The Czechoslovak Church¹³ was thought to be exceptionally promising for the regime and its plans, as it represented a sort of “national” variant of the Catholic Church, separated from the hostile Vatican.¹⁴ According to this model, the whole Catholic Church was to become “independent” eventually. However, this plan failed. As a result, the regime resorted to attempts to at least divide the Catholic Church internally. The “reactionary” episcopate was to be separated from the “progressive” lower clergy and laity. This was to be done, for example, by the unsuccessful attempt to create a regime-controlled Catholic Action (*Katolická akce*). The plan immediately provoked a reaction from the Holy See: the Sacred Officium issued an excommunication decree, which directly addressed this particular decision of the Communist regime in Czechoslovakia.

¹² Communist propaganda tended to emphasise their positive attitude towards the ‘people’s democratic establishment’: “In the course of this development, however, an increasing number of the faithful gradually became convinced that the conflict between the Catholic Church and the state was not about restrictions on religion and the freedom of worship, but primarily about the property interests of the Catholic Church and their attempt to exploit religion for political ends. The normal activities and religious activities of all other, i.e., non-Catholic churches, whose actions in the new political situation after February 1948 did not come into conflict with the interests of the state, served as an argument here. In fact, they officially expressed their loyal attitude towards the state and sought to cooperate with it” [Mlýnský 1980, 8].

¹³ The church was recognised by a government declaration of 15 September 1920. In 1971, it extended its name to “Czechoslovak Hussite Church”.

¹⁴ “In particular, the highest Communist authorities initially considered the Czechoslovak Church as a good basis for the so-called national church, serving the regime. Later on, however, the non-Catholics faced both individual and collective repression” [Jäger 2009, 770].

The very opening words of the decree clearly evidence this connection: “Recently, the opponents of the Catholic Church in Czechoslovakia have fraudulently instigated a false Catholic Action. They use it as a means to attempt to lead the Catholics of this Republic to apostasy from the Catholic Church and thus away from obedience to the proper shepherds of the Church.”¹⁵ By its actions, the Communist regime made it clear that it no longer felt bound by the international treaty of *Modus vivendi* negotiated at the turn of 1927 and 1928.¹⁶ In 1950, the diplomatic relations with the Apostolic See were broken off completely.

The regime not only sought to remove bishops from their respective sees: some of them were even deprived of their freedom through imprisonment or internment. The Communists also attempted to separate priests from the hierarchy, both from the diocesan authorities and from the influence of the Pope and the Holy See. For this purpose, the Peace Movement of the Catholic Clergy (*Mírové hnutí katolického duchovenstva*) was founded: it was meant to summon, under duress, a meeting of all Catholic clergy operating with the approval of the state. In 1968, this movement was spontaneously dissolved. However, after the suppression of the democratization process of the “Prague Spring”, during the period of the so-called ‘normalization’, the regime instigated another puppet organization of Catholic clergy: it the Association of Catholic Clergy “Pacem in terris” (*Sdružení katolického duchovenstva “Pacem in terris”*), which was active between 1971 and 1989.¹⁷

3. SPECIFIC REPRESSIVE MEASURES OF THE REGIME

All the churches recognised prior to the rise of the Communist regime were, of course, affected by the complete transformation of their funding, which the system imposed unilaterally and uniformly on all of them. The churches were deprived of their property base from which they had hitherto covered their expenses¹⁸; state-imposed financing was introduced,

¹⁵ AAS 41 (1949), p. 333.

¹⁶ *Modus vivendi inter Sanctam Sedem et Rempublicam Cecoslovachum*, AAS 20 (1928), p. 65-66.

¹⁷ “After the Roman Congregation for Clergy issued a ban on the unilateral involvement of priests in the political sphere in 1982, the *SKD PiT* [Association of Catholic Clergy ‘Pacem in terris’] was dissolved by the Church. A part of the clergy gradually withdrew from the association, while the other part did not dare to obey the church leadership. This remnant of the organisation dissolved itself on 7 December 1989 at the call of the Conference of Bishops and Ordinaries in the Czechoslovak Republic” [Tretera and Horák 2015, 367].

¹⁸ Again, this mainly concerned the majoritarian Catholic Church, which was still a significant owner of land and other real estate until the Communists took power. Law No. 46/1948 Coll., on the new land reform, became an instrument for the withdrawal of church property immediately after the Communist coup d’etat.

which the 1949 Law on Churches and Religious Societies calls their “economic security”.¹⁹ The key means of administrative bullying of churches and of the regime’s arbitrariness in matters of personnel was, in particular, the institution of the state approval with the exercise of clerical activity.²⁰ The law did not lay down any specific conditions under which such a consent was to be obtained, nor did it clarify the circumstances under which the state power could withdraw it. Moreover, the development of any religious activity beyond the control of the state was subsumed under the criminal offence of “Obstructing the Surveillance of Churches and Religious Societies” (*Maření dozoru nad církvemi a náboženskými společnostmi*): “Whoever, with the intention of obstructing or hindering the exercise of state surveillance of a church or a religious society, violates the provisions of the law on the economic security of churches and religious societies by the state, shall be punished by imprisonment for up to two years.”²¹

This measure, however, would not exhaust the penal sanctions against clergy and believers. Especially during the Stalinist period of its existence (i.e., in the late 1940s and early 1950s), the regime held a number of staged trials, which also aimed to undermine the influence of the Catholic Church. Completely fictitious were the charges of, e.g. “espionage in favour of the Vatican”, subversion of the Republic, treason, charges of sedition, etc. The Communist judiciary and the entire state apparatus thus set out to the goal of establishing a new “class” justice.²² The offence called ‘Abuse of the Office of the Clergy’ was constructed specifically against the clergy: “Whoever abuses the their clerical or a similar religious office with the intention of exercising influence on the affairs of political life which would be unfavourable to the people’s democratic order of the Republic shall be punished by imprisonment for three months up to three years.”²³ Also, the introduction of compulsory civil marriage in 1950²⁴ was accompanied by a statute intended to punish clergymen who would perform a religious

¹⁹ Act No. 218/1949 Coll., on the Economic Security of Churches and Religious Societies by the State.

²⁰ *Ibid.*, § 7.

²¹ Penal Code No. 86/1950, § 173; Penal Code No. 140/1961, § 178.

²² “In fact, the reality was even worse because the power of the Communist Party dominated over the power of the state. It controlled everything: who was to be arrested, what was to be investigated, what was the scenario of the trial, it drafted sentences as well as instigated the ‘spontaneous’ resolutions of the workers demanding exemplary punishments for those who were to be seen as ‘traitors to the people’. What was the fruit of this? Nearly a quarter of a million political prisoners: 240 were executed, and eight thousand died in pre-trial detention, while serving the sentences or passed away from the effects of imprisonment” [Vaško 2004, 183].

²³ Criminal Code No. 86/1950 Coll., § 123; the facts of the offence were first formulated by Act No. 231/1949 Coll., on the Protection of the Republic, § 28.

²⁴ Act No. 265/1949 Coll., on Family Law, § 1.

ceremony without a prior civil marriage: “Whoever, in the exercise of his clerical or similar religious function, violates, even by negligence, the provisions of the Family Law Act, in particular by performing religious marriage ceremonies with persons who have not yet concluded a marriage, shall be punished by imprisonment for up to one year.”²⁵ Immediately after the events of 1989, religious and other punitive offences were abolished by an amendment to the Criminal Code.²⁶

In addition to trials intended to give the impression of “revolutionary justice”, in 1950 the StB (State Security) secret police resorted to two violent measures that lacked any support in any valid legal provisions: the so-called *Akce K* (“K” referring to ‘kláštery’ in Czech, i.e., monasteries) consisted in raiding most of the male monasteries in Czechoslovakia without any prior warning. Even before this event, trials had already been fabricated against some of the most important representatives of the male orders. The ‘K’ action was carried out in such a way that the monks (and partly also the nuns) were first interned in centralization camps. After that, the male monasteries were unable to resume their activities until 1989; the existence of religious priests and brothers was not tolerated by the regime.

The aim of the “P” action (‘pravoslaví’ in Czech, meaning ‘Eastern Orthodox’ in English) was the destruction of the Greek Catholic Church, which was active mainly in Slovakia. A canonically unjustifiably staged synod assembly (*sobor*) in the eastern Slovak town of Prešov voted for the ‘voluntary’ conversion of all Greek Catholics to Eastern Orthodoxy.²⁷ The resumption of the Greek Catholic Church in 1968 remained the only significant lasting result of the “Prague Spring” in the area of state-church relations.²⁸

4. AUTHORISATION OF CHURCHES BY THE COMMUNIST REGIME

The Communist regime would not tolerate the existence of free initiatives by citizens; all interest organisations in the society had to be united under a single umbrella institution: “The National Front of Czechs and Slovaks, in which the people’s organizations are associated, is the political expression of the alliance of the working people of town and country, led

²⁵ Penal Code No. 86/1950, § 207; Penal Code No. 140/1961, § 211.

²⁶ Act No. 159/1989 Coll.

²⁷ “Strictly speaking, we cannot speak of an official ban or dissolution of the Greek Catholic Church. However, the takeover of churches, parishes and other property by the Orthodox Church took place under the supervision of the public authorities and with their assistance (which was completely contrary to the law)” [Tretera and Horák 2015, 356].

²⁸ Government Decree No. 70/1968 Coll., on the economic security of the Greek Catholic Church by the State.

by the Communist Party of Czechoslovakia.”²⁹ The churches were completely unclassifiable in the system of the Communist-dominated National Front. Not only were their activities far more thoroughly controlled than those of the pro-regime associations, in fact, the whole religious scene was divided into entities whose leadership was permitted by the regime (even if under surveillance), while other entities were banned and completely suppressed. The latter ones were labelled as ‘sects’: as early as 1948, this was the case of the Jehovah’s Witnesses: for them, the aggravating circumstance was that their organisational and religious centre was located in Brooklyn, New York, i.e., on the territory of the USA.³⁰ The same applied to the Church of Jesus Christ of Latter-day Saints (the Mormons), whose activities were banned in 1950.

On the other hand, other churches were subjugated by the regime by the means of their official authorization. Because the Law on the Economic Security of Churches and Religious Societies abolished all the regulations on churches which had been valid until then,³¹ the recognition of these churches could not be based on the Austrian law which had been in force in Czechoslovakia up to that time.³² These authorizations were thus unlawful both formally, i.e., they lacked any legal basis, but also materially, since these churches deliberately would not ask for state recognition at a time when they were still free to operate. As early as 1951, the regime thus legalized the activities of the Baptist Unity (*Chelčický*), the Church of the Brethren, the Evangelical Methodist Church, and the Seventh-day Adventist Church,³³ although the latter church was soon banned; in 1956, the activities of the Christian Congregations and the New Apostolic Church

²⁹ Constitution No. 100/1960 Coll., Article 6.

³⁰ Official propaganda boasted of its swift action against this religious society: “Even before the issuance of Laws No. 217 and 218/1949, the activities of this sect were explicitly prohibited by specific administrative measures of the Ministry of the Interior. The Society of Jehovah’s Witnesses – International Association of Bible Scholars, Czechoslovak Branch, was dissolved by the decree of the Czechoslovak Ministry of the Interior of the Czechoslovak Republic of 4 April 1948, No. 3111/25-31/12-1948-VB/3, and the Watchtower, Bible and Tract Society, Czechoslovak Branch, was dissolved by the decree of the Czechoslovak Ministry of the Interior of the Czechoslovak Republic No. 3111/6-2/3-1949-VB/3.” In: Sekretariáty pro Věci Církevní při Ministerstvech Kultury ČSR a SSR, *Právní poměry církví a náboženských společností v ČSSR a jejich hospodářské zabezpečení státem*, Praha 1977, p. 21.

³¹ “Section 14 of the Act served to remove all existing legal obstacles to the application of the new ecclesiastical policy, by which all regulations governing the legal relations of churches and religious societies were abolished across the board, without any differentiation or specification” [Jäger 2009, 789].

³² Act No. 68/1874, which concerns the legal recognition of religious societies (*betreffend die gesetzliche Anerkennung von Religionsgesellschaften*).

³³ Decree of the State Office for Ecclesiastical Affairs No. 11847/51-I/2-SÚC of 17 May 1951.

were permitted.³⁴ In the same year the Adventist Church was also restored to legality.³⁵

Some overlapping characteristics can be found in most of these churches, which led the Communist regime to bring them under control. In fact, they are generally classified among the so-called “free” churches (referred to as *Freikirchen* in the German-speaking world), since they gradually separated from some of the established and highly institutionalized churches associated with the state (especially the official Anglican ‘*Established Church*’), and initially found their natural habitat primarily in North America. In the post-1968 ‘normalization’ period, it was characteristic of Jehovah’s Witnesses that some of their believers were imprisoned for resisting military service in arms, while the leadership of this religious society not only pursued activities not permitted by the regime without much difficulty, but even applied for state recognition in 1980.³⁶

The Apostolic Church, which is part of the Charismatic-Pentecostal movement, was authorized soon before the fall of the regime.³⁷ In early 1990, the deliberately created legislative vacuum in the matter of state recognition of churches during the Communist era was exploited by the missionary expansion of the Church of Jesus Christ of Latter-day Saints into Czechoslovakia. The “Mormons” achieved official recognition in the Czech part of the federal (and at that point still “socialist”) Czechoslovak state. It took place in a situation when the social and political attitude towards churches, after forty years of oppression, became friendly and favourable.³⁸

³⁴ Decrees of the State Office for Ecclesiastical Affairs No. 119/56 of 11 February 1956 and No. 248/56 of 29 March 1956.

³⁵ “The activities of this church were *suspended* by swift intervention of the State authorities, namely by an administrative act of the State Office for Ecclesiastical Affairs of 1952, without specifying the period for which they were suspended. The suspension of the Church’s activities was revoked by a governmental resolution in 1956. The property of the church, seized in 1952, was not returned. In atheist training manuals, the ban on Adventists was justified on the grounds that by ordaining the Sabbath, they were allegedly ‘interfering with the edifying efforts of the working people’” [Tretera and Horák 2015, 361].

³⁶ “Nor did the Witnesses create any major problems with their attitude towards military service. They either went to work in the mines instead or (apparently mostly fraudulently) procured ‘blue books’. [These indicated that their holders were excluded from the military service on account of their health...] In 1980, Jehovah’s Witness leaders formally applied for registration, but were refused” [Martinek 2000, 52].

³⁷ Resolution of the Government of the Czech Socialist Republic No. 20/1989.

³⁸ Resolution of the Government of the Czech Socialist Republic No. 51/1990, on the authorization of the activity of the religious society Church of Jesus Christ of Latter-day Saints (Mormon) in the Czechoslovakia, 1 March 1990.

5. CONSTITUTIONAL AND LEGAL REDRESS OF THE STATUS OF RELIGIONS AND CHURCHES AFTER 1989

One of the telling symbols of the changes after 1989 was the abolition of the constitutionally enshrined guiding role of the Communist Party of Czechoslovakia, formulated in what was still the valid 1960 constitution: “The guiding force in society and in the State is the vanguard of the working class, the Communist Party of Czechoslovakia, a voluntary militant alliance of the most active and most politically conscious citizens from the ranks of the workers, farmers and intelligentsia.”³⁹ The ideological monopoly was later explicitly renounced in the constitutional Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*): “Democratic values constitute the foundation of the state, so that it may not be bound either to an exclusive ideology or to a particular religious faith.”⁴⁰ Here the state declares its religious-sectarian neutrality. Against the backdrop of the historical experience of the Czech state, this can also be considered as a significant historical step forward.

The rule of the Habsburg dynasty in Bohemia and Moravia was associated, from the time of the publication of the so-called Renewed Land Restoration (*Obnovené zřízení zemské*) by Ferdinand II (1627), with the application of the principle *cuius regio eius et religio*: the country was to be changed in an exclusively Catholic reign.⁴¹ In the course of further development, the rigid application of this principle was gradually abandoned in favour of non-Catholic religious denominations, the breakthrough being the Toleration Patent (*Toleranční patent*) of Joseph II (1789). The whole process was then completed in the constitution of the first Czechoslovak Republic (1920), which enshrined the equality of all denominations: “All religious denominations are equal before the law.”⁴²

Beginning in 1948, the totalitarian Communist regime replaced the former dominance of religion with atheist ideology. After the fall of Communism,

³⁹ Constitutional Act No. 100/1960 Coll., Article 4.

⁴⁰ Constitutional Act No. 23/1991 Coll., of 9 January 1991, importing the Charter of Fundamental Rights and Freedoms, Article 2(1). The official English translation is available at: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf [accessed: 04.09.2023].

⁴¹ “As early as 1624, Emperor Ferdinand II issued a patent declaring Catholicism the only permitted religion for his subjects in Bohemia and Moravia. Following the restoration of the provincial system (and with reference to Emperor Charles IV), this norm was extended by the so-called Recatholicization Patent (*Rekatolizační patent*) of 31 July 1627 to the estates of the nobility and knights; they could (unlike common subjects) leave the country within six months of the promulgation of the patent, unless they intended to convert to Catholicism. The only other faith tolerated was the Jewish faith” [Hrdina 2007, 283].

⁴² *Constitutional Charter of the Czechoslovak Republic* No. 121/1920 Coll., § 124.

the democratic lawgiver therefore rejected both the idea of a confessional state tied to a particular religious denomination, as well as the model of an ideological state imposing pervasive propaganda and worldview uniformity on the society and individuals alike. Monopolistic ideology, in turn, represses any public expression of a different worldview, including openly manifested religious beliefs.

In contrast to the “socialist constitution” of 1960, the intent of the democratic constitution-maker was to enshrine not merely individual religious freedom in the Charter, but also the free status of churches and religious societies. Freedom of atheistic belief is no longer part of the provision on individual religious freedom: “Everyone has the right freely to manifest his religion or faith, either alone or in community with others, in private or public, through worship, teaching, practice, or observance.”⁴³ In particular, intra-church autonomy is very generously articulated in the Charter: “Churches and religious societies govern their own affairs; in particular, they establish their own bodies and appoint their clergy, as well as found religious orders and other church institutions, independently of state authorities.”⁴⁴ The criticism that the Charter was intended to enshrine only the rights of individuals and the provision on the status of churches as collective associations is thus superfluous and unjustified.⁴⁵ After all, the Charter still takes into account other corporations in which individuals collectively exercise their constitutionally guaranteed rights: private associations and political parties and movements,⁴⁶ trade union associations⁴⁷ and territorial self-governing units.⁴⁸

The tradition of interference in intra-church autonomy on the Czech territory goes back long before the Communist regime in Czechoslovakia was established in 1948. Particularly notorious are the interventions of Emperor Joseph II (1780-1790): the system of state church (*Staatskirchentum*) imposed by this monarch is called ‘Josephinism.’⁴⁹ Some of the measures

⁴³ Charter of Fundamental Rights and Freedoms, Article 16(1).

⁴⁴ *Ibid.*, Article 16(2).

⁴⁵ “The seemingly unconstitutional inclusion of this provision on the relationship between religious associations and the State in the catalogue of rights and freedoms can be understood as an expression of the collective rights of the religiously observant citizens [...]” [Pavliček, et al. 1999, 173].

⁴⁶ Charter of Fundamental Rights and Freedoms, Article 20.

⁴⁷ *Ibid.*, Article 27.

⁴⁸ Constitutional Act No. 1/1993 Coll., *Constitution of the Czech Republic*, Article 8.

⁴⁹ “The radicalism and thoroughness even in tiniest details made him a symbol of the whole era (later called ‘Josephinism’): the emperor personally stood behind hundreds of different measures in the religious sphere and, in addition to purely practical steps, he was also guided by ideological motives influenced by the Enlightenment. It was precisely this uncompromising and insensitive approach disregarding tradition, diplomacy and social ties that provoked a growing wave of resentment among the nobility and ordinary people. As a result, it left the whole reform effort with a certain bitterness” [Suchánek and Drška 2018, 341].

decreed by the emperor were characterised by extraordinary bizarreness and obstinate pedantry; however, even at a time of general stabilisation of the Austrian state-church situation during the 19th century, the state did not relinquish its unilateral efforts to determine what belonged to the external affairs of the Church; it also reserved the right to interfere within such an arbitrarily defined space, especially as regards the personnel policy in the Catholic Church.⁵⁰ In fact, even the 1928 *Modus vivendi* agreement between the Holy See and the Czechoslovak Republic granted the Czechoslovak government the right to exercise “objections of political nature”⁵¹ in relation to the appointment of archbishops, diocesan bishops, coadjutors *cum iure succesionis* or military ordinaries.

The arbitrary and intransigent policy of the Czechoslovak Communist regime gradually vacated the majority of the episcopal sees, and thus – in accordance with the canon law of the time – the dioceses were mostly headed by vicars capitulary,⁵² who tended to succumb to the pressure of the regime. Subsequently, the system of granting and withdrawing state approval for the exercise of clerical activity completely dominated the personnel policy concerning the clergy: this was the case not only in the Catholic Church, but in all the other state-recognised churches, too. The provision on state approval was deleted by an amendment to the Act on the Economic Security of Churches and Religious Societies by the State immediately after the events of 1989.⁵³ All this historical background, and especially the direct experience with the practice of the totalitarian regime, explains why the autonomy of churches is conceived and expressed so openly in the Czechoslovak Charter of Fundamental Rights and Freedoms. In comparison with all other foreign constitutional laws on the status of churches, the specificity of the Charter is the explicit reference to the establishment of religious institutions, which serves as a reminder of the Communist restriction of women’s religious orders and the complete liquidation of the legal activities of men’s religious orders.⁵⁴

⁵⁰ Act No. 50/1874, on the external conditions of the Catholic Church (*wodurch Bestimmungen zur Regelung der äußeren Rechtsverhältnisse der katholischen Kirche erlassen werden*).

⁵¹ Cf. *Modus vivendi inter Sanctam Sedem et Rempubicam Cecoslovachum*, Article IV.

⁵² Cf. CIC/1917, can. 429-444.

⁵³ Act No. 16/1990 Coll.

⁵⁴ “Although the abolition of the internment camps took place by the mid-1950s, classical religious life was not officially permitted throughout the Communist era (except for a small number of women’s religious communities entrusted with the care of the mentally disabled in sparsely populated border areas), and religious orders could only operate underground” [Valeš 2008, 147].

6. THE RIGHTS OF CHURCHES AND RELIGIOUS SOCIETIES UNDER ACT NO. 308/1991 COLL.

The constitutionally guaranteed autonomy of churches was subsequently concretized and elaborated in detail in the first “post-revolutionary” Act on Churches and Religious Societies, issued in 1991, the same year in which the Charter of Fundamental Rights and Freedoms was passed. The very title of the act indicates that the legislator intends to address both individual freedom of religion, i.e., “freedom of religious belief” as well as collective religious freedom in its corporate form, i.e. “the status of churches and religious societies.”⁵⁵ The explanatory memorandum of the law recalls the participation of socialist Czechoslovakia in the Helsinki process in the mid-1970s, when the regime committed itself to respecting human rights, but failed in fulfilling its obligations.⁵⁶ On the contrary, it did not change its previous practice even in the area of the rights of believers and legal relations arising from freedom of religion. This is also confirmed in the explanatory memorandum: “The legal regulation of these relations adopted in 1949, with subsequent amendments, suppressed these rights until November 1989. Many of these relations were solved by regulations of lower legal force or by mere administrative acts, the vast majority of which were not published. The combination of legal norms and additional secret administrative regulations allowed for widespread repression, which was, in fact, the harshest in the countries of the so-called socialist camp.”⁵⁷

Very soon after 1989, the restored rights arising from religious freedom, however, began to be taken for granted, and the attention of the Catholic Church shifted to the need for property settlement with the state. An issue of particular interest was the problem of the restitution of church property. On the part of the Church, expressing gratitude for the coveted opportunity to operate freely became rare,⁵⁸ in fact, one tended to expect such an attitude vice versa.⁵⁹ Religious orders, which were free to resume their activities

⁵⁵ Act No. 308/1991 Coll., on Freedom of Religious Belief and the Status of Churches and Religious Societies (Act on Churches and Religious Societies).

⁵⁶ The State has only admitted to these commitments in the form of a sub-legal norm: Decree No. 120/1976 of the Minister of Foreign Affairs of 10 May 1976, on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

⁵⁷ Available at: <http://spcp.prf.cuni.cz/lex/zp308-91.htm> [accessed: 04.09.2023].

⁵⁸ “The final response was Law No. 308/1991 Coll. in the Czechoslovak Federal Republic, which represents the highest level of religious freedom for churches and religious societies in the history of our state” [Duka 2004, 18].

⁵⁹ “Society’s gratitude to the churches for their indisputable contribution to the destruction of the totalitarian regime gained its normative expression in 1991 in the Charter of Fundamental Rights and Freedoms, [...] this gratitude, however, quickly faded away...”

after forty years of oppression, were helped by the state with two provisional restitution laws.⁶⁰ The Law on Churches and Religious Societies also explicitly affirmed the legitimate existence of intra-church associations, including religious communities: “Churches and religious societies are legal persons; they may associate with each other. They may form communities, orders, societies and similar associations.”⁶¹

Notable is the twelve-item demonstrative list which specifies the content of intra-church autonomy in more detail: “In order to fulfil their mission, churches and religious societies may, in particular: (a) freely determine their religious doctrines and ceremonies; (b) issue internal regulations, insofar as they do not contradict generally binding legislation; (c) provide spiritual and material services; (d) teach religion; (e) teach and educate its clerical and lay staff in its own schools and other establishments as well as in divinity schools and divinity faculties, under the conditions laid down by generally binding legislation; (f) organise its assemblies without notice; (g) own movable and immovable property and to have other property and intangible rights; (h) establish and operate special-purpose establishments; (i) run a press, publishing house or a printing company; (j) establish and operate its own cultural institutions and facilities; (k) establish and operate its own health care and social services facilities and to participate in the provision of these services, including in State institutions, in accordance with generally binding legal regulations; and (l) send their representatives abroad and receive representatives of churches and religious societies from abroad.”⁶²

7. GUARANTEEING THE RIGHTS OF CHURCHES AND RELIGIOUS SOCIETIES AS A RESPONSE TO THE PRACTICE OF TOTALITARIANISM

The mentioned enumeration can be understood as a form of satisfaction for the practice of the Communist regime, which either completely prevented some of the activities listed above, or strictly controlled others. Although the state did not directly interfere in the doctrine and rituals of the churches, it did attempt to enforce loyalty of church leaders, for example, through their participation in various so-called “peace” initiatives. On occasions such as the death of Stalin or the anniversary of the liberation of Czechoslovakia by the Red Army, it demanded the announcement of public prayers. Holding

[Hrdina 2004, 254].

⁶⁰ Act No. 298/1990 Coll., on the regulation of certain property relations of religious orders and congregations and the Archbishopric of Olomouc, amended by Act No. 338/1991 Coll.

⁶¹ Act No 308/1991 Coll., § 4(3).

⁶² *Ibid.*, § 6(1).

public religious gatherings, unless they were regime-organised events, was impossible; the church was “driven into the vestry”.

The internal regulations of the churches, including canon law, were not considered legally relevant by the regime. The totalitarian character of the state made it impossible to recognize or allow any other normative subsystem that would compete with the party and state monopoly. Moreover, e.g., referring to the canon law of the Catholic Church as a real law system would have contradicted the Marxist doctrine about the necessary coexistence of law and the state: it believes that only the state can make law, since it alone possesses the power of coercion.⁶³

Divinity faculties were unilaterally reorganized and subjected to control by the regime.⁶⁴ Teaching of religion in schools was strictly restricted during the entire existence of the Communist regime⁶⁵, although until 1953 religious instruction was still formally compulsory, with the possibility of withdrawing a child from the instruction. Religious education was liquidated soon after the coup d'état in February 1948; in fact, this act was meant to make the impression of a direct implementation of the Constitution: “Schools are state schools.”⁶⁶ Similarly, hospitals and all social facilities were taken away from the churches and nationalized, so the church could not run virtually any public services.

The right of churches to own property, which the Law on Churches and Religious Societies also explicitly lists, has subsequently become the subject of controversy: this was due to the connection with the intended and repeatedly postponed restitution of church property. Since the political changes of 1989, this has become a real burden, especially in the country's relationship with the Catholic Church. One of the evasive manoeuvres used to circumvent

⁶³ “The term ‘history of state and law’ was introduced into academic and scholarly discourse after February 1948. It expressed one of the basic theses of Marxism that law arises in society only when society organizes itself into a state, the essence of which is the domination of one class over another” [Urfus 1998, 144].

⁶⁴ “On the basis of Government Decree No. 112/1950 Coll., only six faculties provided training for clergy. [...] Part of this change included the application of state supervision of the admission procedure, including the limited number of students, and control of the content of teaching, including the introduction of compulsory teaching of Marxism-Leninism” [Kuklík, Jan, et al. 2011, 139].

⁶⁵ “Setting the conditions for teaching religion in schools was in the normative hands of the Ministry of Culture (and Information). The teaching of religion was not a subject of school instruction and concerned pupils in grades 2-7. Written applications signed by both parents were accepted by school principals from 15 to 25 June. In terms of school regulations, the school principals and district school inspectors supervised the teaching of religion. The maximum permissible amount of these classes was an hour a week” [Jäger 2009, 804].

⁶⁶ Constitutional Act No. 150/1948 Coll., § 13(1).

the state's obligation to restitute church property was the controversial theory which claimed the Church *de facto* had no property. According to this idea, the property factually belonged to the state, but it was bound for church purposes, thus it was only nominally property of the Church [Kindl and Mikule 2007]. The real owner of the property was the one who had the right to dispose of it; in fact, this restrictive practice had been established in the Czech lands especially in the reigns of Maria Theresa and Joseph II. However, it is noteworthy, that even the Communist regime itself did not deny the existence of church ownership, as evidenced, for example, by the opinion voiced by the Office of General Prosecutor (*Generální prokuratura*) in 1954: "The ownership of churches or church institutes continues; the state only supervises the property. It cannot therefore be deemed a form of socialist ownership. Nor can it be seen as personal ownership, since the very nature of this type of ownership excludes it. Thus it is private property."⁶⁷

The protracted process of seeking church restitution came to a close only with the 2012 Act on Property Settlement with Churches (*Zákon o majetkovém vyrovnání s církvemi*). In the preamble to this law, the Parliament of the Czech Republic expresses historical and moral satisfaction, as it was "guided in its approval by the desire to alleviate the consequences of certain injustices regarding property and other issues committed by the Communist regime between 1948 and 1989; to settle the property relations between the State and the churches and religious societies as a prerequisite for full religious freedom. Thus, by restoring the property base of the churches and religious societies, the Act enables free and independent status of the churches and religious societies, whose existence and operation is considered an essential element of a democratic society."⁶⁸

At the time of the adoption of the law, the right of churches to send representatives abroad and to receive representatives from abroad, explicitly stated in the Law on Churches and Religious Societies, was applicable mainly to the Catholic Church, although the former Communist regime controlled or prevented other churches from having contacts with their foreign partners. However, the legislator's main aim was to confirm the re-establishment of diplomatic relations with the Holy See. These were definitively cut off in March 1950 with the expulsion of the last diplomat serving at the internment in Prague by a note from the Ministry of Foreign Affairs. This event was, however, preceded by the regime's unscrupulous actions against the freedom of the Church and its faithful, which gave the Vatican diplomacy a justified impression that the state had no intention to respect the *Modus vivendi* concluded in the first Czechoslovak Republic. With the political

⁶⁷ Opinion No. T. 282/54-ZO-33, dated 20 May 1954.

⁶⁸ Act No. 428/2012 Coll., on Property Settlement with Churches and Religious Societies and on Amendments to Certain Acts, which entered into force on 1 January 2013.

liberation of 1968 some of the diocesan sees were taken by bishops, however, the establishment of diplomatic relations with the Apostolic See was only made possible in 1990. In advance, by applying the *rebus sic stantibus* clause, both parties renounced the obligations imposed on them by the former *Modus vivendi*, and the Catholic Church was thus, probably for the first time in the history of the Czech territory, freed from any intervention of state power in its personnel policy.⁶⁹

8. SPECIAL RIGHTS OF CHURCHES AND RELIGIOUS SOCIETIES UNDER ACT NO. 3/2002 COLL.

Among the rights of churches and religious societies contained in the impressive enumeration of the 1991 Church Act, one important item is missing; in fact, a right not exercised by churches at the time of the adoption of the Act. It concerns the civil law effects of church marriages. It was the Communist regime that introduced compulsory civil marriage in Czechoslovakia in 1950: "Marriage is contracted before the local national committee by a consensual declaration of a man and a woman that they are entering into marriage together. If this declaration of the betrothed is not made before the local national committee, the marriage fails to be contracted."⁷⁰ The Family Law Act did allow for "religious marriage ceremonies", but only after a civil marriage had been performed.⁷¹ It was not until mid-1992 that Czechoslovak citizens were again allowed to choose between a civil and a religious marriage.⁷²

The activities of churches in the prison system and in the army were restored shortly after 1989 by partial legal amendments,⁷³ but the Law on churches provided primarily for a contractual solution in the following areas: "Authorised persons carrying out clerical activities have the right of access to public social welfare and health care facilities and children's homes, they also have the right of access to the accommodation facilities of military units, places where detention, imprisonment, protective treatment

⁶⁹ "The confessional legislation of January 1990 was preceded [...] by negotiations between representatives of the federal government and the Apostolic See on 18-20 December 1989. *Modus vivendi* of 1928 was found to be obsolete. By Act No. 16/1990 Coll. of 23 January 1990, *inter alia*, Section 7 of Act No. 218/1949 Coll. was repealed. The state no longer interferes in the internal affairs of churches or in the appointment of any church official" [Tretera 2002, 53].

⁷⁰ Act No. 265/1949 Coll., on Family Law, § 1(1) and (2).

⁷¹ *Ibid.*, § 7.

⁷² Amendment to the Family Act No. 234/1992 Coll.

⁷³ Amendment to the Act on the Execution of Imprisonment, implemented by Act No. 179/1990 Coll., § 9; Act No. 293/1993 Coll., on the Execution of Detention, § 15.

and protective education are carried out. Churches and religious societies shall agree with these establishments and services on the rules for entering their premises and performing religious acts therein, unless the procedure is regulated by other generally binding legal provisions.”⁷⁴ The first of four such agreements contracted successively between the Prison Service of the Czech Republic (*Vězeňská služba České republiky*) on the one hand and the Ecumenical Council of Churches (*Ekumenická rada církví*) and the Czech Episcopal Conference (*Česká biskupská konference*) on the other was concluded as early as 1994.⁷⁵ A set of interconnected agreements in the field of military ministry was then negotiated in 1998 and differs from foreign models by its consistently ecumenically conceived and unified structure.⁷⁶

In the Act on Churches and Religious Societies, the right to work in prisons and the army was originally formulated as the right of clergy to enter and operate in these institutions, whereas the Act on Churches and Religious Societies, which replaced its 1991 predecessor on the territory of the Czech Republic at the beginning of 2002, classifies this work of clergy among the so-called “special right of churches and religious societies,”⁷⁷ together with the right to ecclesiastical marriage (which was still lacking in 1991⁷⁸), and the right to teach religion in state schools, the right to establish church schools and the right of clergy to maintain confidentiality.⁷⁹ Originally, the right to public funding⁸⁰ was also included among the special rights, however, this was derogated by the Act on Property Settlement with

⁷⁴ Act No. 308/1991 Coll., § 9(1) and (2).

⁷⁵ E.g., *Dohoda o duchovní službě ve věznicích*, Sekretariát České biskupské conference, Praha 1994.

⁷⁶ “These confessionally oriented models differ from the (unique!) model applied in the Czech Republic, conceived on the basis of tripartite agreements between the Ministry of Defence, the Czech Bishops’ Conference and the Ecumenical Council of Churches. On this basis, an ecumenical ministry has been built, which is not primarily oriented either toward the ministry within members of one’s own church or religious society, or to religious ministry in general: primarily, its nature is humanitarian and in close cooperation with the psychologists in the military” [Němec 2010, 172, note 204].

⁷⁷ “The main shortcoming of the special rights system stems from its philosophy: special rights are understood as entitlements of churches and religious societies as institutions. Thus, the legislation loses sight of the rights of persons in a particular life situation (detention, imprisonment, service in the armed forces, etc.). Even these persons, in their specific and difficult circumstances, have the right to freedom of religion and other rights arising from it. The authority of an institution (registered church and religious society) to exercise special rights is secondary to this need to exercise a fundamental human right” [Kříž 2011, 94].

⁷⁸ Act No. 3/2002 Coll., on Freedom of Religion and the Status of Churches and Religious Societies and on Amendments to Certain Acts (Act on Churches and Religious Societies), as amended, § 7(1), (b) and (c).

⁷⁹ *Ibid.*, § 7(a), (d), (e).

⁸⁰ *Ibid.*, § 7 (c) of the original version.

Churches.⁸¹ On the whole, the 2002 Act on Churches and Religious Societies has generally lowered the standard of religious freedom in the Czech Republic. Its most important innovation was the reduction of the numerical census of persons claiming to be members of a church applying for state recognition from 10,000⁸² to only 300. These newly registered churches and religious societies, however, are subject to difficult conditions for obtaining authorization to exercise the special rights,⁸³ and none of them has yet reached that benchmark.

CONCLUSION

The sweeping political changes in Czechoslovakia, made possible by the democratization process of the “Prague Spring” in 1968, generated enormous enthusiasm among a significant part of the population in Czechoslovakia at the time. The fact that this process was quickly and consistently suppressed by the subsequent “normalisation” of the Communist regime is not only due to the intervention of the Warsaw Pact troops, but also due to the lack of institutional security and legal anchoring of the positive changes of the “Prague Spring,”⁸⁴ including those concerning the freedom of churches and their believers.

Only in the context of completely transformed foreign policy constellation of 1989 did it become obvious that the transition to a democratic system is no longer at risk: the background of general social euphoria accelerated the fundamental constitutional and other legislative changes, such as the abolition of the “guiding role” of the Communist Party and the dominance of the “scientific world outlook,”⁸⁵ the abolition of repressive criminal laws against religious freedom and the abolition of discriminatory measures against churches.

The 1991 Charter of Fundamental Rights and Freedoms, as well as the Law on Churches and Religious Societies of the same year, represent the *magna charta* for the desired religious freedom in Czechoslovakia after forty years of atheist rule. However, while the same Act on Churches and Religious Societies remained in force in Slovakia⁸⁶ after the dissolu-

⁸¹ Act No. 428/2012 Coll., § 23.

⁸² Act No. 161/1992 Coll., on the Registration of Churches and Religious Societies, § 1.

⁸³ Act No. 3/2002 Coll., § 11.

⁸⁴ “The weakness of the (Communist) Party, which until then had been the dominant institution of power, was the strongest argument for its conditional public support. In terms of power, however, it was anarchy. Anarchic freedom was, among other things, the fruit of the absence of clear laws and unambiguous rules of the game” [Pithart 2019, 509].

⁸⁵ Constitutional Act No. 135/1989 Coll.

⁸⁶ On the amendments that gradually changed Act No. 308/1991 Coll. in Slovakia, cf. Gyuri 2021.

tion of Czechoslovakia, in the Czech part of the former federation certain restrictions on the rights arising from religious freedom have been introduced, especially those based on the new administrative measures adopted in the second Act on Churches and Religious Societies (2002). In contrast to Slovakia, the process of restitution of church property seized by the Communists as well as the overall property settlement between the state and the churches in the Czech Republic was protracted and long. Be as it may, it must be admitted that the churches also often overestimated their real strengths and tended to exaggerate their own capacities or cherish the notion of their own irreplaceability. Given the low state of religiosity in the Czech Republic, it can still be stated that churches have a visible social role, and the believing part of the population enjoys standard rights based on the freedom of religion.

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