

ESTABLISHMENT AND DISSOLUTION OF THE THIRD INSTANCE TRIBUNAL IN OLOMOUC (1951-1990)*

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Abstract. The article deals with the establishment and demise of the Tribunal of the Third Instance in Olomouc, which operated there from 1951 to 1990. It first presents the case of the nullity of the Smith-Brown marriage and then presents other circumstances of the creation and dissolution of the tribunal.

Keywords: ecclesiastical court; nullity of marriage; third instance; communism; procedural law.

INTRODUCTION

The article is part of the author's forthcoming doctoral thesis on the topic: Tribunal of the Third Instance in Olomouc between 1951 and 1990.¹ The article deals with the question of the establishment and dissolution of this tribunal. It first presents the historical context of the establishment of the tribunal, both general and specific, and then deals with the question of the establishment and dissolution of the Tribunal of the Third Instance in Olomouc.

The first part of the article briefly introduces the general historical context of the period of communist totalitarianism and then the case of the nullity of the Smith-Brown marriage and its resolution. The marriage was declared valid in the first instance and invalid in the second instance. For the sentence to be enforceable, a decision in the third instance was needed, which, given the incipient rigid totalitarianism, made it very difficult to appeal to the Roman Rota, which is the ordinary court of the third instance.

In the second part of the article we will deal with the history of the Tribunal itself. The interned Archbishop Josef Karel Matocha petitioned Rome for the establishment of the Third Instance in Olomouc and was granted.

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¹ The title of the thesis in Czech language is: Tribunál III. instance v Olomouci v letech 1951 až 1990.

The practical establishment entailed many difficulties and pitfalls, which we explain in the article. The question of the dissolution of the tribunal seems to be obscure, as no dissolving decree has been found, the existence of which we have reasonable doubt. The article does not deal with the question of the Tribunal's activities; that subject will be dealt with in the dissertation.

It is an important topic because it shows the efforts of the Apostolic See to secure the exercise of judicial power in the Third Instance in the non-standard conditions of the totalitarian regime in the then Czechoslovakia. The article relies heavily on archival sources, which are cited in the footnotes.

1. THE SITUATION IN CZECHOSLOVAKIA AFTER WORLD WAR II

On 8 May 1945, World War II ended in Europe. On 26 May 1946, elections to the National Assembly were held in Czechoslovakia. The Communist Party of Czechoslovakia won the election with 31.05% of the vote, winning 93 of the 300 seats. In second place was the Czechoslovak National Socialist Party with 18.29 percent of the vote, which meant a gain of 55 seats.² Klement Gottwald, the chairman of the Communist Party of Czechoslovakia, who had been the strategist of the coup d'état in February 1948, became prime minister.³ After February 1948, the key strategy of the communist state power was to cut the hierarchy off from Rome and create a national church over which only the state power would have influence [Balík and Hanuš 2007, 18].

On 23 March 1948, the appointment of Archbishop Joseph Karl Matocha was announced in Olomouc [Charouz 2022, 86], and he was consecrated on Sunday 2 May 1948 [ibid., 91]. Matocha was interned in the archbishop's palace from 1950 [ibid., 224] to his death on 2 November 1961 [ibid., 249].

2. INVALIDITY OF THE SMITH-BROWN MARRIAGE

Mr. Smith born November 16, 1925 and Miss Brown born March 5, 1925 were united in marriage in the church on March 5, 1946. They had not had sexual intercourse with each other prior to their marriage. Mr. Jones, Mr. Smith's uncle, received an anonymous letter the day before the wedding stating that Miss Brown was pregnant by another man. Both men went to see Brown, where Mr. Smith, in front of his uncle and Miss Brown's parents,

² See Československo Státní statistický úřad, *Statistická příručka Československé republiky [na rok] 1948*, Státní úřad statistický, Praha 1948, p. 105.

³ See <https://vlada.gov.cz/cz/clenove-vlady/historie-minulych-vlad/prehled-vlad-cr/1945-1960-csr/klement-gottwald-1/klement-gottwald-28424> [accessed: 20.06.2024].

said: "If you're pregnant by someone else, I can't marry you."⁴ When Miss Brown heard the news she burst into tears and assured Mr. Jones under oath that it was not true. The wedding took place and the marriage was consummated. Two weeks after the wedding, Brown went to her mother in Z. She had a letter and had herself examined by a doctor at the N. M. hospital, where she was accused of having contracted a venereal disease. The doctor at the hospital told Mr. Smith that his wife was three months pregnant. Mrs. Brown remained in the hospital for three weeks Mr. Smith's brother was a religious who had studied theology in Nepomucenum at Rome. Their mother did not want divorce and scandal in the family. Therefore, Smith's mother told the hospital that Brown could return if she had an abortion and brought a doctor's note that she was healthy. Brown returned to her husband but did not have a medical certificate. They were no longer having sexual intercourse at that time. Four days later, Smith took his wife to his parents' house in R.

The problematic point is the description of Mrs Brown's return from hospital. According to the sentence, Brown returned to her husband for a few days and four days later, Mr Smith was to take her to his parents in R. If the newlyweds were living alone, it would be possible for them to go to her husband's parents after four days, which makes no sense. Mrs Brown did not meet the conditions of Mr Smith's mother Had they lived with Mr Smith's parents it is odd that the sentence would again mention that after four days he took her to her parents when Mrs Brown returned from hospital to her husband. However, it is possible that there is a typo in the Latin preposition in the sentence. The text uses the preposition "ad" (to his/her parents), but in the context of our hypothesis, the preposition "ab" (from his/her parents) would make more sense, i.e., that after four days he moved her away from her parents. The above facts are extracted from the sentence of the Second Instance and are corroborated by the examination of the parties and witnesses.⁵

On June 6, 1946, Mr. Smith filed an action in the Brno Ecclesiastical Court to review the validity of his marriage to Brown. On July 7, 1949, the Brno court rendered a sentence declaring the validity of the marriage described above. Mr. Smith's appeal from the first instance sentence was received in Olomouc on August 3, 1949. On 14 June 1950 the Olomouc Ecclesiastical Court delivered a sentence declaring nullity of the marriage.⁶ The defender of the bond, Dr. Tinz, appealed to the third instance to obtain

⁴ "si esses cum alio gravida, ego te non possum uxorem ducere." See Archiv Arcibiskupství Olomouckého. Karton A 218-9 církv. soudní záležitosti 1950. Rozsudek II. instance v kauze Smith – Brown.

⁵ Cf. *ibid.*

⁶ Cf. *ibid.*

two concurring judgments in the case so that the sentence would become enforceable.⁷

Mr. Smith's urgings came to the court on October 2, 1953, and were forwarded to the vice-officials, probably to Dr. Holubníček.⁸ On October 25, 1954, a panel of the Third Instance was appointed, which rendered its sentence on January 8, 1955, and thereafter the parties and the Ecclesiastical Court at Brno were notified, to which the records and sentence of the Second and Third Instances were sent by registered mail. Mr. Smith requested the Latin version of the judgment, which was apparently sent to him with a full translation on 31 January 1955, the last mention in the book.⁹

The whole case dragged on for 8½ years. The First Instance Tribunal delivered its sentence after about 13 months, the Second Instance after about 10.5 months and the Third Instance after about 2.5 months. The case was pending before the courts for a total of 26 months, the rest of the 102 months being downtime due to problems with the establishment of the Third Instance Court in Olomouc. The sentence in the second instance was delivered on 14 June 1950 and on 31 December a faculty was granted for the establishment of the third instance, which was really established until 8 April 1954.

Of the above-mentioned case, only the Latin-written sentence of the second instance has survived in Olomouc. We have not been able to find any materials on the above case in the archives of the Brno Ecclesiastical Court and therefore have little information to draw any clear conclusions. It is not entirely clear from the sentence when and how the marriage ended. We can only surmise that the newlyweds lived with Mr. Smith's parents but cannot state this with certainty. This hypothesis is supported by a note from Mr Smith's mother setting out the conditions under which Brown may return. Also, a letter from the notary Dr. Lantsch to the Archdiocesan Ordinariate regarding the establishment of a third instance mentions that Mr. Smith is dependent on his aged mother and needs a housekeeper.¹⁰

We know from the sentence that the marriage did not last more than three months, but we can assume that the cohabitation lasted for a shorter period. They were married on March 5, 1946. Brown went to the hospital for an examination fourteen days after the wedding and was in the hospital for three weeks. She then returned to her husband for a few days and he

⁷ Cf. Archiv Arcibiskupství Olomouckého. Karton A 218 – 9 cír. soudní záležitosti 1950. Dopis dr. Hudce č. j. 144/50 ze dne 19. srpna 1950.

⁸ Cf. Archiv Interdiecézního církevního soudu Achidioecesanum Forum Judiciae Olomucense 3. inst – Protocollum ab A.D. 1950-1990, p. 1. In the next only Protocollum.

⁹ Cf. *ibid.*, p. 4.

¹⁰ Cf. Archiv Arcibiskupství Olomouckého. Karton A 218 – 9 cír. soudní záležitosti 1950. Dopis dr. Lantsche č. j. 161/50 ze dne 19. října 1950.

then moved her out after four days. From the above information we estimate that the marital cohabitation lasted about six weeks. On 6 June – three months after his marriage to Miss Brown – Mr Smith brought an action in the ecclesiastical court, which presupposes the dissolution of the marriage (cf. CIC/17, can. 1965).

The current legislation – in order for the case to be accepted by the ecclesiastical court – requires that the defendant's marriage be irretrievably broken (cf. CIC/83, can. 1675). The original text of CIC/83, before the *Mitis Iudex Dominus Iesus* and CIC/17, is not so explicit. The current practice of ecclesiastical courts usually requires a civil divorce sentence.

We can see from the above that the court initially faced great difficulties in its establishment, the official Dr Hudec died in 1951 and Archbishop Matocha had been in internment in the Archbishop's Palace since 1950. It is questionable whether he received three requests for delegation to run the court and the subsequent urgencies. We can assume that it is more likely that he did not or was prevented from responding because the letters regarding the establishment of the court make it clear that Matocha, as a good shepherd, was very concerned about a speedy decision in the Smith-Brown case.

3. ESTABLISHMENT OF THE TRIBUNAL

The Olomouc Ecclesiastical Court of Second Instance handed down its judgment in the Smith-Brown case on 14 June 1950. The judicial vicar, Tomáš Hudec, writes to the Ordinariate that an appeal to the Third Instance in this case needs to be dealt with because it has been dragging on for four years and Smith needs a wife as a domestic helper, but for the time being he is bound by his marriage to Brown. The official mentions the faculty¹¹ to hear the same case in two instances in the same court, when a new tribunal is appointed, but he thinks that this does not apply to the second and third instance and asks for the Holy See's permission to decide the case in the third instance in Olomouc, or for the Holy See to designate another court to decide the case in the third instance and suggests Prague or Hradec Králové,¹² which was the court of appeal for Olomouc.¹³ Archbishop Matocha replies to Dr. Hudec's letter that the request to send a telegram to Rome was not granted by the Police headquarters,¹⁴ although he points

¹¹ By a faculty is meant here the permission to exercise a certain power which the Apostolic See has delegated to persons subordinate to itself, either for a definite or indefinite period [Vybiralová 2019, 43].

¹² Cf. Archiv Arcibiskupství Olomouckého. Karton A 218 – 9 církv. soudní záležitosti 1950. Dopis Tomáše Hudece arcibiskupskému ordinariátu č. j. 144/50 ze dne 19. srpna 1950.

¹³ Cf. Annuario Pontificio 1950, p. 285.

¹⁴ As mentioned above, the Communist authorities used all available means to control and

out the urgent need to establish a court of third instance.¹⁵ In the telegram the Archbishop asks for the establishment of a third instance court in Prague, Olomouc and Nitra for urgent cases not expressly reserved.¹⁶ The notary Dr. Lantsch replies to Matocha's letter of 5 September on 19 October and asks on behalf of the judicial vicar for another attempt to establish a court of third instance by a simple request.¹⁷ On 26 October a letter was sent to the Vatican requesting the establishment of a Court of Third Instance only in Olomouc,¹⁸ to which he replied in the name of Pius XII. Domenico Tardini with a letter dated 31 December 1950 with the number 9419/50¹⁹, in which he gives the faculty the establishment of a Court of Third Instance with competence for all cases decided in Czechoslovakia in the First and Second Instances. The faculty shall be in force for the duration of such adverse circumstances. The rights of the moderator of the court were vested in Archbishop Matoch with the right of further subdelegation to any suitable cleric. According to a handwritten note on the letter, he came on 19 January 1951.²⁰ Archbishop by letter dated 20 January 1951 communicated this glad tidings to the Archdiocesan Ecclesial Court and delegated jurisdiction to Tomáš Hudec with the right of further subdelegation. The Archbishop stresses the necessity of beginning the Smith-Brown case as soon as possible and asks for a specific proposal for the staffing of the new court, as well as the establishment of a special book of proceedings where everything is to be extensively and carefully recorded for later reporting to the Holy

restrict the activities of the Church.

¹⁵ Cf. Archiv Arcibiskupství Olomouckého. Karton A 218 – 9 cír. soudní záležitosti 1950. Dopis arcibiskupa Josefa Karla Arcidiecéznímu duchovnímu soudu č. j. 334/50 ze dne 5. září 1950.

¹⁶ Cf. Archiv Arcibiskupství Olomouckého. Karton A 218 – 9 cír. soudní záležitosti 1950. Neodeslaný telegram papeži Piu XII.

¹⁷ Cf. Archiv Arcibiskupství Olomouckého. Karton A 218 – 9 cír. soudní záležitosti 1950. Dopis dr. Lantsche č. j. 161/50 ze dne 19. října 1950.

¹⁸ Cf. Archiv Arcibiskupství Olomouckého. Karton A 218 – 9 cír. soudní záležitosti 1950. Žádost o zřízení soudu III. instance č. j. 385/50 ze dne 26. října 1950.

¹⁹ Here it is important to underline that during the communist totalitarianism many documents were destroyed. Not much archival material from the time of Archbishop Matocha has survived. In 2001, Mr. Link sent the entire file of Archbishop Matocha's correspondence with the Holy See to the diocesan curia. This file included the above mentioned letter. We do not know how Mr. Link came into possession of these documents and, given the time lapse of more than twenty years, we may never know (Karton G9 188 – 7 of the correspondence of Arch. Matocha with the Holy See, Nunciature, dispensation 1949-1952). We have not been able to find this letter in the Vatican archives, even though the protocol numbers indicate that we were in the correct archive box.

²⁰ Cf. Archiv Arcibiskupství Olomouckého Karton G9 188 – 7 korespondence arc. Matochy se Svatým Stolcem, nunciatura, dispens 1949-1952, Dopis Domenica Tardiniho arcibiskupovi Matochovi č. j. 9419/50 ze dne 31. prosince 1950.

See.²¹ On September 5, 1951, the court asks the archbishop for a delegation for Dr. Holubníček, since the official Dr. Hudec had died. This delegation was requested again on 7 November 1951 and 17 March 1952.²² The court began to consider the renewed request for delegation on February 26, 1954, and His Excellency left on March 4, 1954. The delegation was given to the new judicial vicar, Dr. Tinz,²³ on 8 April 1954, with the right of further sub-delegation also for all general cases, which we regard as the date on which the Tribunal of the Third Instance in Olomouc actually began its work.²⁴ At the end of May and in June the nominations of judges and other staff from Slovakia for the cases there were already being dealt with.²⁵

The last entry in the record book is dated 1 February 1990, when the case was accepted on the grounds of defective consent.²⁶ We do not know how the case went, because since the death of Archbishop Matocha the case book is very brief, containing only entries about personnel changes in the court, and for cases the surnames of the parties and information about the appointment of the proposed tribunal are usually written.

František Polášek, who was appointed a judge of the Ecclesiastical Court in 1982, a vice-officiary in 1989 and an official in 1998, which he was until 2013 [Menke 2015, 138], states in his script Procedural Law that the court was established on 18 August 1951 by Decree No. 135/51 [Polášek 2003, 18]. The Book of Proceedings of the Third Instance does indeed contain a record of the establishment of the court by Decree No. 135/51 of 18 August 1951, but the court did not start its activities.²⁷ From 5 September 1951, is a new request to His Excellency for a delegation for Dr. Holubníček left the court because the official Dr. Hudec had died. Subsequently, according to the Book of Proceedings of the Third Instance, four appeals to the Third Instance came to Olomouc in 1952 and 1953. The minute book for two of the cases explicitly states that the files were returned because the Third Instance had not yet been established, and for the first case, which came to the court from Nitra on 10 March 1952, it does not state that the file was returned, but it can be assumed that it was attached to the report to the Nitra tribunal of 4 September 1952 that the Third Instance had not yet been established in Olomouc. The Anderson – Trinity case from Ni-

²¹ Cf. Archiv Arcibiskupství Olomouckého Karton G9 188 – 7 korespondence arc. Matochy se Svätým Stolcem, nunciatura, dispens 1949-1952, Dopis arcibiskupa Josefa Karla Arcidiecéznímu duchovnímu soudu č. j. 5/51 ze dne 20. ledna 1951.

²² Cf. Protocollum, p. 1.

²³ Defender of the bond in case of nullity of the marriage Smith-Brown.

²⁴ Cf. Protocollum, p. 2.

²⁵ Ibid.

²⁶ Ibid., p. 55.

²⁷ Ibid., p. 1.

tra came again to the tribunal on 28 June 1954 and was received under case number III – 12/54, which was after the establishment of the Third Instance and the next entry in the Anderson – Trinity case is the applicant's urging dated 28 March 1956.²⁸

4. DISSOLUTION OF THE TRIBUNAL

According to František Polášek, the tribunal was dissolved by a decree of 30 October 1990 [Polášek 2003, 18]. It is not the usual practice for the Apostolic See to issue dissolving decrees. Faculties are usually given for a certain period of time (e.g., three or five years) and when they expire the permission granted will lapse, unless the faculty is renewed. In the case of the Tribunal of the Third Instance, the time period was specified in the Tardini letter where it states: as long as the adverse circumstances last. The practice of specifying precise conditions into the future is not uncommon. On 28 June 1918, Archbishop Aleksander Kakowski of Warsaw asked the faculty to try matrimonial cases in the Third Instance and to grant dispensations *super rato*, and he asked this faculty for a period of three months after the conclusion of peace.²⁹ A reply has survived in the archives, for which it is not certain that it is not just a draft, as the archbishop's request is written in Latin and typewritten, whereas the reply is handwritten and in Italian. The reply states that a faculty is granted to try matrimonial cases in the third and subsequent instance for the entire ecclesiastical province of Warsaw, and the faculty expires two months after the conclusion of the peace.³⁰

Eva Vybíralová, who focuses her research on the question of extraordinary faculties granted to the Church in Czechoslovakia, argues in her article that all extraordinary faculties ceased to be valid at the moment of the fall of the communist regime, when free communication with the Apostolic See was restored [Vybíralová 2024, 106], and this approach is consistent with Tardini's letter.

Monika Menke, in her monograph on the ecclesiastical courts in the Czech lands, states that she was unable to find the decree mentioned by Polášek in the archives of the Olomouc ecclesiastical court and in November 1990 the court returned the file to the first instance with a note on the necessity of a proper appeal to the Roman Rota [Menke 2015, 150].

²⁸ Ibid., p. 2 and 7.

²⁹ Archivio Storico della Segreteria di Stato – Sezione per i Rapporti con gli Stati e le Organizzazioni Internazionali (ASRS), [fondo] Congregazione degli Affari Ecclesiastici Straordinari (AA.EE.SS.), [pontificato] Benedetto XV, [serie] Polonia, Pos. 62, fasc. 42 ff. 11r-11v.

³⁰ ASRS, AA.EE.SS, Benedetto XV, Polonia, Pos. 62, fasc. 42 ff. 12r.

Our search in the archives of the Apostolic Signatura, which is competent in the matter of the management and supervision of the activities of tribunals (cf. CIC/83, can. 1445 § 3), was also unsuccessful. The decree is not mentioned by Grocholewski in his article on the documents of the Apostolic Signatura concerning the tribunals in the present-day Czech and Slovak Federal Republic, in which there are references to the courts of third instance on the territory of Czechoslovakia, including the Olomouc tribunal [Grocholewski 1992, 542-45].³¹

If the decree is located in the archives of the Section for Relations with States of the State Secretariat, one can only guess when the requested fund will be made available. It is the Pope who decides on the access to the archival fund (Article 37). Our research at the Archives of the Secretariat of State in February 2024 revealed that not all the materials from the pontificate of Pope Pius XII are yet accessible. The archives from this historical period were opened on 2 March 2020, 62 years after his death [Mayaki 2020]. This date marked the 81st anniversary of Eugenio Pacelli's election to the See of Peter [Aquilino 2019].

The Ecclesiastical Court of the Third Instance in Olomouc received a total of 104 cases of nullity of marriage in 36 years of activity [Menke 2015, 150]. The record book shows that in 1955 and 1960 two questions were raised about dispensa *super rato*, in which the tribunal was not competent. In 1966 a complaint about a priest appears in the book of record,³² in which the tribunal was also not competent.

CONCLUSION

It is clear from the above article that the situation in the Church in Czechoslovakia after the Second World War was not at all simple and written contact with the Apostolic See was very limited. It is interesting that the state authorities did not allow a telegram to be sent, but an ordinary letter went out just fine. The question is whether the letter escaped the attention of the state authorities or whether they did not consider it important to withhold ordinary correspondence.

Archbishop Matocha was in a difficult personal situation, he was interned in his palace and the Communist secret police controlled who could visit him. The whole course of the Smith-Brown case shows the genuine pastoral care of Archbishop Matocha, who was very concerned about the establishment of the Third Instance Tribunal and the speedy decision

³¹ Z. Grocholewski was the Secretary of the Supreme Tribunal of the Apostolic Signatura at the time the article was published.

³² Cf. Protocollum, p. 32.

in the above-mentioned case. There is also a very strong emphasis in the case on Mr Smith's mother avoiding scandal and even forcing her daughter-in-law to have an abortion, which was not easy in 1946, but the daughter-in-law resisted the pressure.

The article opens up further questions in our research, which will further explore issues related to this tribunal, not only in the history but also in the jurisprudence of this tribunal, as there are 18 cases of the Third Instance in the archives of the Olomouc Ecclesiastical Court, some of the files seem to be torn and others seem to be complete.

The question of the tribunal's jurisdiction is very crucial. The minute book shows that after the death of Archbishop Matocha only one cleric usually had it, which seems to us very risky. In 1964, the official died a month after the delegation was delivered to other clergyman.³³ If he had not been able to grant it before his death, the whole of the Third Instance would have ended, because there would have been no competent authority to administer it.

We plan to publish the whole dissertation as a monograph, because it is a very interesting topic and unfortunately unknown even among canonists in the Czech Republic.

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