

Religious Jurisdictions and Pluralisation of Legal Adjudication The Emergence of Religious Parallel Jurisdictions in Europe

Report Czech Republic

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I. The Resolution of Disputes: The Practices and Norms of Religious Communities

1. Disputes amongst the faithful resolve religious communities themselves, through their superiors or representative bodies. On the basic level it used to be assemblies of faithful of the local congregation (community) or their leading authorities, such as a minister or a lay officer (e.g. an elder), or their boards. On the top level it used to be the assembly of deputies of subordinated bodies (ministers and elders, or only elders), and the central committee, and the chief superior (or several superiors) of the religious community. Some religious communities have similar organs also on the middle level of their administration. The provisions of religious community determine, which organs, either assembly, or leading authorities, on all levels of religious community, are competent for resolution of disputes.

2. Superiors of religious communities or their representative bodies act as mediators, arbitrators or judges, according to own provisions of the religious community. They can, indeed, entrust their discretionary power to special nominated bodies, founded in accordance with provisions of the religious community. Many religious communities have even such internal courts (tribunals) or penal committees established according to their provisions.

Mediators, arbitrators and judges are appointed and removed by the religious community according to its provisions. They are trained at special courses for theology, management and application of provisions, organized by religious communities. Some of them, ministers and lay officers, are trained at the schools and higher schools founded by religious communities, or at public theological faculties recognized by the religious community. All of them train not only ministers or candidates to ministry, but also high number of lay officers.

There are five theological faculties in the Czech Republic. All of them are parts of public universities. Three of them are parts of the Charles University in Prague (Catholic Theological Faculty, Protestant Theological Faculty and its Ecumenical Institute, and Hussite Theological Faculty, and its departments for Judaism and Orthodoxy and a cabinet for Old-Catholic Theology). Two other catholic theological faculties are parts of other universities (Olomouc, České Budějovice). All these faculties have both full-time and combined studies and each of them has more than thousand students from a high number of religious communities. Even faculties for catholic theology admit students without regard to their religious adherence.

Seven religious communities have founded thirteen public higher schools providing theological and other special education for representatives of religious communities. They usually train students who belong to different confessions, so for much more religious communities. Each of them has hundreds of students.

Mediators, arbitrators and judges acting in presence or preparing for such activity in future are by their religious communities study religious sciences and principles of organization of religious communities not only to the inland schools and schooling centres, but they are sent

to study also to foreign universities or other scholar institutions. It concerns both Christian and non-Christian religious communities.

3. Religious institutions have exclusive jurisdiction in the doctrine disputes. The representatives of every registered religious community have duty to notify its teaching and its mission to registering body (Ministry of Culture). Provisions of religious community determine which organ of this community is the highest authority in this matter.

Authorities of religious communities decide also disciplinary cases according to their internal provisions.

The same applies to property disputes. They are decided according to internal provisions of the religious community. In reality such disputes do not occur.

In most religious communities marriage disputes do not exist, because they recognize that all matrimonial matters are the exclusive authority of the state and its organs. Legal provisions on marriage exist only in small group of religious communities. In these communities are marriage disputes decided, but such decisions are relevant only in the inner relations of respective religious community. The marriage disputes with public relevance are admissible only before state courts. Without regard to the fact that marriage with civil affects can be solemnized by twenty one religious communities registered with such a “special right”.

4. The procedures in all above mentioned cases are governed by internal provisions of the relevant religious community. These provisions specify which higher authority of religious community is competent for appeal from the lower authority. In several religious communities are some special cases decided by their tribunals. Decision of supreme authority is final. The appeal to state administrative bodies or courts is not permissible.

II. Religious Disputes: The Approach of the State

1.1 Principles of autonomy of religious communities in the Czech Republic

Principles of autonomy of religious communities to make their own regulations, independent of the state and its bodies, are established in the second part of the Czech Constitution, i. e. in the Charter of Fundamental Rights and Freedoms, published under No. 2/1993 Sb.,¹ namely in Article 16, section 2, which says that religious communities “...govern their own affairs; in particular, they establish their own bodies and appoint their own clergy, as well as found religious orders and other church institutions, independent of state authorities”. Act No. 3/2002 Sb., on religious communities, in its section 4, subsection 3, expands on the said constitutional act:

“Churches and religious societies govern their own affairs; in particular they establish and dissolve their own bodies, appoint and dismiss their own clergy, and set up and dissolve church and other institutions in compliance with their own regulations, independent of state authorities.”

Said Act makes reference to the regulations of religious communities in many other places, and the wording of the law implies that religious communities are regarded as organisations regulated by their own independent legal systems, i.e. autonomous systems.

¹ Sb. = Collection of Laws of the Czech Republic.

The principle of the autonomy of religious communities and their legal systems benefits all religious communities, regardless of whether or not they are registered by the state. The principle of autonomy is not inconsistent with the registration condition which requires that the religious community present, inter alia, a so-called basic document, i.e. a statement of the most fundamental provisions of the legal order of the respective religious community.² A state body is not, as a matter of fact, authorised to interfere with the basic document howsoever, i.e. approve it, reject it, or demand that it be changed. The purpose of the basic document is merely to make the legal system of a religious community and the principles of its organisation available to state bodies and to the general public, i.e. to third persons who come into contact with the religious community. Not only does each religious community present its basic document in the registration proceedings, but it is also entitled to alter and amend this document on its own initiative at any time after the registration.

1.2. Registration of religious communities

Religious community acquires legal personality and some tax advantages by registration as well as the right to create derived legal persons. The Ministry of Culture of the Czech Republic is a competent body of state administration that registers religious communities and unions of religious communities and administers a register of legal persons derived from religious communities. There are thirty six registered religious communities in the Czech Republic to the date of 31 July 2014 (two of them, registered as Roman Catholic Church and Greek Catholic Church, are parts of the Catholic Church). There are two unions of religious communities in the Czech Republic,³ and several thousands of legal persons derived from religious communities.

Application for the registration of the religious community must include: the general characteristics of the religious community, its teaching and its mission; the documentation of the founding of the religious community in the territory of the Czech Republic; the original signatures of 300 adult adherents, who shall be either citizens of the Czech Republic or foreign nationals with permanent residence in the Czech Republic; the basic document, i.e. a statement of the most fundamental provisions of the legal order of the respective religious community.

The state must not make any changes in the documents submitted by religious communities or ask them for changes. Religious community can change or amend its basic document at any time in future. Basic documents of all religious communities are available for the public at the web sites of the Ministry of Culture.

Each of thirty six registered religious communities in the Czech Republic has its own legal system. It consists of provisions, which specify authorities of legislative, executive and judicial power within the religious community.

1.3 The relation of State to the Catholic Church is principally the same as to other religious communities, in spite of the fact that approximately 80% of the members of the religious communities in the Czech Republic belong to this Church. The same state legal provisions apply to all religious communities. The Concordat Agreement between the Czech Republic

² See Act No. 3/2002 Sb., sec. 10.

³ The first one is the Ecumenical Council of Churches in the Czech Republic. It consists of eleven religious communities as ordinary members, one associated member (Roman Catholic Church) and two observers (Federation of Jewish Communities in the Czech Republic and the Seventh-Day Adventists Church). The second one is Military Spiritual Service. It consists of five religious communities.

and the Apostolic See was signed in 2002, but it has not yet been ratified. The Concordat specified that Roman Catholic Church⁴ and Greek Catholic Church⁵ are represented before the State by the Czech Bishops' Conference, even in cases of exempted parts of the Church, e.g. religious orders. In spite of the fact that the Concordat Agreement has not yet been ratified, this requirement is met in practise.

2. The approach of the State to the resolution of religious disputes (e.g. disputes among the faithful within a religious group and complaints or legal action against religious communities) is influenced by the principle of autonomy of religious communities. This principle is formulated by Article 16, section 2 of the Charter of Fundamental Rights and Freedoms, and section 4, subsection 3 of the Act No. 3/2002 Sb., on religious communities. "Duty of the State to omit any direct or indirect interference in the inner matters of religious communities corresponds to the right of self-government (autonomy) of religious communities, because they administer their matters independently of the State. The exemption from this rule must be set by law, and only in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others (Art. 16, section 4 of the Charter of Fundamental Rights and Freedoms). The Constitutional Court concluded in its judicature that the principle of autonomy of religious communities finds expression in maximal possible restriction of interference of the State into their activities so that internal matters of these subjects cannot be in principle matter of judicial review."⁶

3. The religious communities have the right to establish their tribunals or courts and to provide religious mediation or arbitration too. The religious courts decide disputes according to provisions of their own religious law, but the State does not recognize civil effect of those decisions.

4. State courts basically do not intervene in cases involving religious disputes and do not confirm decisions of organs of religious communities. Before all they do not intervene in cases involving doctrinal disputes and disciplinary cases and ritual decisions. As to the disputes concerning property, it is not known, if any such a case has been submitted to an organ of religious community or to an organ of State.

The above mentioned problems are out of centre of public interest in the Czech Republic, because public interest focuses on quite another sphere these days. It is an implementation of Act No. 428/2012 Sb., on Property Settlement with Churches and Religious Societies, which is the centre of attention of the public. This Act regulates partial natural restitution of property that the religious communities were dispossessed of in the period from 25 February 1948 to 1 January 1990. This property shall be returned to the ownership of the religious communities in case they make a claim to certain property with the State property administrators, who administered those assets until 2 January 2014 and adduce evidence of their original ownership. The claims have already been raised by religious communities. Only a small portion of claims has been dealt with. At this time most of claims are dealt with by state administrative bodies. In case of refusal of some of the claims we can expect that religious communities bring an action to state courts.

In addition to this point we can show how the Czech legislator and courts, before all Constitutional Court, solves the problems of competence of courts or organs of religious communities in the disputes originating from the labour relations to religious communities.

⁴ Two ecclesiastical provinces, eight dioceses and some tens of exempt religious orders.

⁵ The Apostolic exarchate of Greek Catholic Church in the Czech Republic.

⁶ Jakub Kříž, *Zákon o církvích a náboženských společnostech, Komentář [The Act on Churches and Religious Societies, Commentary]* (Praha: C. H. Beck, 2011), p. 59.

The state courts decide disputes between religious communities and their employees who work for those communities and their branches as parties to a contractually established employment of a non-pastoral nature. Their legal relation to the religious community is fully regulated by state provision –The Labour Code (Act No. 262/2006 Sb.). Eventual preliminary decision of the authority of religious community is not relevant. The status of persons who have been taken on by religious communities in accordance with their own internal regulations as their ministers or lay pastoral workers is different. It is not based on an employment contract in the sense of the state legal system. It is a service relationship, which is regulated by the internal rules of the religious community.

The service relationship of ministers and other pastoral workers within a religious community has been dealt with in more detail by the Constitutional Court, which has adjudicated on said issue several times. The first one is a decision of the Constitutional Court of 26 March 1997, file no. I ÚS 211/96. It rejected the jurisdiction of secular courts in disputes concerning the termination of a service relationship involving members of the clergy and other pastoral employees of religious communities. The process had been initiated by two former ministers of the Czechoslovak Hussite Church – the married couple Z. Duda and E. Dudová – who were unsatisfied with always the same judgments of Czech general courts. According to the opinion of the Constitutional Court, the persons carrying out pastoral service act on behalf of religious communities, and shall follow their internal rules. Only religious communities can judge the abilities of these persons for pastoral service, and decide on their appointment or dismissal. As a result, state courts do not decide on the appointment of pastoral workers by religious communities, because in such a case they would unduly interfere with the religious communities' internal autonomy and their right to independent decision-making. As for salaries, or rather other civil claims of ministers, state courts are competent⁷ to decide on issues of labour law, where the private character of a religious community comes to the fore as a legal entity. In these civil cases, a judicial proceeding does not interfere with the internal autonomy of religious communities and their decision-making power. On 30 January 2001, the European Court of Human Rights decided against the Czech Republic in the case of Duda & Dudová and upheld the argumentation of the Czech Constitutional Court.⁸ On 31 August 2000 the Constitutional Court ruled with the same result in an analogous case (file no. III. ÚS 136/2000), where plaintiff was a former minister of the Unity of Brethren (Moravian Brethren).⁹

5. European Court of Human Rights decided in regard to the Czech Republic only small number of applications of infringement into right of religious freedom on fair trial. The Court declared all these applications inadmissible.

The Czech Republic operates a system of freedom of religion and self-determination of religious communities. There are three limits of this self-determination:

a. In the process of registration, led by the Ministry of Culture, the religious community can be denied, if its teaching and activities threaten the rights, freedoms and equality of individuals and their associations (including other religious communities), the democratic

⁷ According to Art. 7 of the Act No. 99/1963 Sb., the Code of Civil Procedure.

⁸ *Duda and Dudová v. the Czech Republic (Dec.)*, No. 40224/98, 30 January 2001, ECHR.

⁹ See Jiří Rajmund Tretera, Záboj Horák, *The Application of the Freedom of Religion Principles of the European Convention on Human Rights in the Czech Republic*, in *Religious Freedom in the European Union*, ed. Achilles Emilianides (Leuven: Peeters, 2011), p. 101–102.

grounds of the State, its sovereignty, independence, and territorial integrity or public morals and order, and if they are in any other way contrary to law.¹⁰

b. Dissolution of the registration of religious community, if its activities violate the law.¹¹

c. Prohibition of religious community by Act of the Parliament, in case that religious community breaks seriously human rights.

III. Religious Perspectives on State Approaches to Religious Disputes

1. Religious communities and their authorities in the Czech Republic do not raise objections against the State's approach to religious disputes. They express their satisfaction with the present model of their autonomy. They do it as reaction to bad experience with the state interventions to their inner life during the long lasting period of communist dictatorship (1948–1989).

2. The problems of religious disputes in the Czech Republic are almost not portrayed in the media. On the other hand the Czech media express their interest, in an enormous measure, in all, what is connected with the property restitution in favour of religious communities. They are mostly critical to this process, and strictly follow the legality of restitution of particular items. Their criticism is often motivated by the political interest and election campaign of the left wing political parties.

3. The problems of religious disputes in the Czech Republic are almost not object of the public debate. The academics, before all lawyers and historians, are interested in these issues, but from the longer term perspective. They compare the present situation not only with period of totalitarian regimes (Communism, Nazism), but with heritage of the enlightenment view on state-church relations, typical for previous legal systems valid on the territory of Czech lands (legislative of Austrian Monarchy and the Republic of Czechoslovakia). They usually prefer the present system of autonomy of religious communities to the previous ones.

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¹⁰ Act No. 3/2002 Sb., on religious communities, art. 5.

¹¹ Act No. 3/2002 Sb., on religious communities, art. 22 section 1, letter c.