

Religion and the Secular State in the Czech Republic

I. SOCIAL CONTEXT

The membership of religious communities (denominations) in the Czech Republic is governed by the communities' own statutes, which are set up independently of State authorities. There are no State provisions for registering members of religious bodies. Moreover, there are no official State statistics regarding members of religious communities. The data used in this article were compiled through an anonymous questionnaire – basically, an opinion poll – conducted by the State Statistical Office.

Currently, there are thirty-six religious communities registered in the Czech Republic. By registering with the State, religious communities acquire legal personality and some tax advantages. Among the above mentioned thirty-six religious communities, there are twenty-one with other “special” rights provided by Act No. 3/2002 Sb. on Churches and Religious Societies.¹

Approximately one-third of the inhabitants of the Czech Republic belong to one of the registered religious communities. In spite of that fact, which, in comparison with other countries, can be considered low, the religious communities play quite an important role in Czech society. Membership in religious communities is more or less an expression of personal profession. The main tendency since the time of the communist dictatorship is to be non-confessional.

The Czech non-denominationalism is then mostly agnostic and only partly atheist. The number of real atheists is about 10–20 percent, according to different opinion polls. The relationship between the main religious stream, Roman Catholicism, and the other denomination is approximately 85 to 15.

To illustrate the demographics of the different denominations in the Czech Republic, we can look to the data published by the Czech State Statistical Office in 2001. The table of religious adherence has thus only relative informative value. A survey of 10.5 million inhabitants of the Czech Republic revealed the denominational adherence (affiliation) shown in Table 1.

II. THEORETICAL AND SCHOLARLY CONTEXT

We can differentiate two main streams in the opinions of Czech intellectuals – including lawyers – regarding church-state relations. One line of thinking is based on a tradition of a great personal distance to all things that are connected with religion. This view stems from the forty years of atheist dictatorship by the communist party from 1948–1989. The second line of thinking is open to the idea of supporting the social and cultural importance of religion and is connected with the former opponents of the communist regime. To this second viewpoint subscribe religious believers among intellectuals and their sympathizers.

Both groups hold the conviction that neutrality between the State, religion, and non-religion, is necessary. There is a common consensus regarding the constitutional principles of religious freedom and autonomy of religious communities in relation to the State, as with the constitutional prohibition of propaganda for atheism or some other religion by state institutions.

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1. Sb. = Sbírnka zákonů, Collection of Laws of Czechoslovakia and since 1 January 1993, only the Czech Republic.

Both groups support the idea of a State that is secular but not hostile to religious communities. The idea of severe separation of Church and State is not a living issue. Religious communities enjoy principal autonomy. However, the difference between both groups is the question of how far the autonomy of religious communities should extend concerning things such as charitable, social, and health-related activities. The first group, which is more critical to religious communities, is afraid that religious communities can use these avenues to gain more influence.

The polarization is not extreme because there is a lack of information about real life in religious communities among non-members. This area was taboo for more than forty years, and therefore, even some intellectuals have insufficient knowledge about the history and practical life of religious communities.

Table 1. Religious adherence among 10.5 million inhabitants of the Czech Republic, 2001

Roman Catholic Church	2,740,780
Evangelical Church of Czech Brethren	117,212
Czechoslovak Hussite Church	99,103
Silesian Evangelical Church A. C.	14,020
Lutheran Evangelical Church A. C. in the Czech Republic	5,412
Evangelical Church A. C. in the Czech Republic	14,885
Eastern Orthodox Church in the Czech Lands and Slovakia	22,968
Religious Society of Jehovah's Witnesses	23,162
Church of the Seventh Day Adventists	9,757
Greek Catholics	7,675
Christian Congregations	6,927
Methodist Church	2,694
Church of Brethren (Congregationalists)	9,931
Old Catholic Church	1,605
Union of Baptists	3,622
Unity of Brethren (Moravian Brethren)	3,426
Apostolic Church (Pentecostal Church)	4,565
Federation of Jewish Communities in the Czech Republic	1,515
New Apostolic Church	449
Religious Society of Unitarians	302
Church of Jesus Christ of Latter-day Saints	1,366
Other responses and imprecise responses	196,712

III. CONSTITUTIONAL CONTEXT

A. History of Church and State Relations

The Preamble of the Czech Constitution (1993) begins with the words:

*We, the citizens of the Czech Republic in Bohemia, Moravia and Silesia, at this time of the reconstitution of an independent Czech State, true to all the sound traditions of the ancient statehood of the Lands of the Crown of Bohemia (Czech Crown) as well as of Czechoslovak statehood, resolved to build, protect and advance the Czech Republic in the spirit of the inalienable values of human dignity and freedom as the home of equal and free citizens who are aware of their obligations towards others and of their responsibility to the community, as a free and democratic State*²

2. Constitutional act No. 1/1993 Sb.

The first historical inhabitants of the three Czech lands – i.e., Čechy/Bohemia, Morava/Moravia, and Slezsko/Czech Silesia – were Celtic. The Celtic tribe of Boii gave its name to the Latin expression for Čechy – Bohemia. After the era of the Germanic Markomanns' settlement between the 1st and 5th centuries, the West-Slavonic ethnics penetrated the territory from the North during the 6th century and brought the whole territory of the contemporary Czech lands under their control.

All three original ethnic groups of the contemporary Czech territory (Celtic, Germanic and Slavonic) were pagan, indeed. But during the 9th century, West Slavonic settlements in the territory of the present Czech lands accepted Christianity. Of the territories influenced first were the Irish and Franconian missions, but the largest one was the Greek-Slavonic mission of Sts. Cyril and Methodius since 863. All three missions Christianized the first common state of future Czechs and Slovaks, the Great Moravian Empire, which lasted for about one hundred years.

The later Czech (Bohemian) Principality (10th–12th century) and Kingdom (since 13th century), ruled by Dukes and Kings from the house of Premysl and holders of the St Wenceslaus Crown, entered into a free union with the Holy Roman Empire. There were four dynasties at the Bohemian (Czech) throne: the Premyslides, Luxembourgs, Jagellonians, and since 1526, the Hapsburgs.

From the Hussite Reformation at the beginning of the 15th century, there were two recognized denominations in the Kingdom: the Catholic minority and the Utraquist (Calixtin) majority. During the 16th century, the Utraquist Church came under Lutheran influence. The Unity of Brethren, a small denomination founded in 1457, inclined during the 16th century to Calvinism.

The Czech Rebellion against the Hapsburgs in 1618 founded for a short time the free corporation of Czech Crown Lands led by Estates Parliament. The political power in the State was in the Protestant hands. But the Rebellion caused not only the Thirty Years War, but the defeat of Protestants at the end of the first period of the War, in the Battle of White Mountain by Prague in November 1620. The victorious House of Hapsburg began re-Catholicization of the Czech Kingdom after two hundred years of prevailing Protestantism. Protestantism was forbidden, and the leading groups were sent to exile. Catholicism was enforced by the help of missionaries from Hapsburg countries, before all, from Austria and Spain. Later, since the time of Maria Therese, the unification of the Czech lands with Austria followed. The sovereign of this union appropriated the *iura maiestatica circa sacra*. Consequently, the Catholic Church lost an essential part of its autonomy.

Josef II published his “Letter of Tolerance” for his hereditary lands in 1781. At that time, 2 percent of the inhabitants of the Czech lands professed Protestantism – either the Helvetic Confession (the majority) or the Augsburg Confession.

The process of emancipating the religious communities from the State has been going on since the revolution in Vienna in March 1848. Both Protestant churches acquired the same equal rights as Catholics by the Protestant Act from 1861. In December 1867, a new liberal constitution came into being for the Cisleithan Regions of the reconstituted Austrian Empire, changed at this time to the Austrian-Hungarian monarchy. The basis of this constitution was a secularized State – on the principles of cooperation with religious communities and on their parity. Administrative provisions in the school and army systems conserved, however, the dominance of Catholicism.

The Act on Process of State Recognition of Churches from 1874 gave to other religious communities the freedom to ask for the same rights as the earlier established Churches and Jewish congregations. Now not only Catholics, Protestants of both confessions, the East-Orthodox Church and Jews could join in teaching religion in public schools and performing religious services in the army, but also the newly recognized religious communities – e.g., the Old Catholic Church (1877) and Moravian Brethren-Herrnhut Church (1880). The stipends for priests, pastors, and rabbis were financed partly by the religious communities and partly by the State (*congrua* or subsidies). The

acknowledged religious communities were supported by the State in proportion to the number of official declarations of religious affiliation made to the municipalities.

Some newly constituted religious communities, such as Congregationalists, i.e. today's Church of Brethren (1880) and Baptists (1885) and other religious groups founded under the American influence, used the religious freedom for their organization and activities but did not ask for state recognition.

The Republic of Czechoslovakia, founded in 1918 with the dissolution of the Austrian Hungarian Empire, adopted the legislation of both parts of the Hapsburg monarchy. The Constitution of Czechoslovakia (1920) declared the freedom of religion to individuals. Children who belonged to religious communities were obliged to attend lessons in religious education in public schools.

Because the suffering of the people during World War I was high and the Catholic Church was accused of having too close of a relationship with the Hapsburg dynasty, the position of the Catholic Church became weak in the Czech society during the first years of the free Czechoslovakia. One of the consequences of this social move was, under the motto, "Redress the Battle of White Mountain," that a part of the Czechs renounced their membership in the Catholic Church. Approximately 11 percent of them founded the new Czechoslovak Church, 10 percent became non denominational, 2 percent converted to Protestantism, and a small group converted to East Orthodoxy. In spite of the above mentioned facts, a total of 73 percent of the Czech people stayed in the Roman Catholic Church. Most of the Czech Catholics, adherents of different political parties, supported the new State. The main Czech Catholic political party, the People's Party, even had ministerial posts in almost all the governments of Czechoslovakia. Some Catholic intellectual centers worked for the revival of Catholic life in Czechoslovakia, before all, in the St. Wenceslaus millennium (1929) and the Czechoslovak Catholic Congress in Prague (1935).

On 17 December 1918, the Czech Protestants of the Augsburg and Helvetic confessions unified as the Evangelic Church of Czech Brethren. The legal order of this Church was Presbyterian.

On 8 January 1920, the Czechoslovak Church was founded by 150 Catholic priests, and in September 1920, it was recognized by the Government. This Church united both Catholic and Protestant aspects of worship and teaching and emphasized the spiritual connection with the revived Hussite tradition. In spite of its name, this Church was neither an established nor a state church, but thanks to the great number of members (almost one million), it won considerable influence in society. This Church has used the name, "The Czechoslovak Hussite Church," since 1971.

In 1927, a *modus vivendi* was concluded between the representatives of the Czechoslovak Government and the Apostolic See. It concerned the processes for appointing archbishops and diocesan bishops in Czechoslovakia.

During the Nazi occupation from 1939–45, Catholics in the Czech lands actively participated in the resistance against the Nazis and were persecuted by them. It helped to rehabilitate their reputation in the minds of the Czech public. Approximately 10 percent of Catholic clergy was persecuted, many of them executed. The Czech nation was determined to lose its intellectual classes, change to the only "workers" of the "Third Empire," and later to be partly Germanized and partly transferred to some eastern countries. Therefore, the first step of this aim was the cancelling of all Czech universities on 17 November 1939. Some priests were persecuted because they disobeyed prohibition to teach theology or because their preaching defended Christian and human principles and patriotic feelings. Some of them were accused of helping Jews (they often issued false testimonies about fictive baptisms of their ancestors with the aim of freeing Jews from racial classification according to the Nuremberg Laws and save them from deportation to the camps of death).

The most tragic was the fate of Jews, indeed. There were some 90,000 Jews in Bohemia and Moravia at the beginning of the German occupation. Only about 12,000 survived.

Protestant churches and the Czechoslovak Church participated in the resistance as well. Many of their members took part in resistance organizations, and the pastors were accused of analogical offences as Catholic priests. Many Czech Catholics and Protestants were imprisoned in the same concentration camps and it was their first school of ecumenism.

After the killing of German Reichsprotektor in Prague by the group of Czechoslovak soldiers coming as paratroops from Great Britain in May 1942, the terror of occupants culminated. The Czech East Orthodox Church priests who hid the Czechoslovak soldiers in the crypt of their church were executed, and the Church was forbidden. Several Czech villages were massacred. The Catholic parish priest of the village of Lidice accepted voluntary death with his parishioners.

After World War II, in the time of renewed democracy between 1945 and 1948, religious communities, including the Roman Catholic Church, became popular in Czech society. Almost all State ecclesiastical legal provisions that were in force before 1939 remained in force. Religious freedom was as it had been before 1939.

A radical change came after the Communist coup d'état in February 1948. All spheres of public life had to accept the "scientific" – i.e., the Marxist ideology – which included atheism. During 1948–89, atheism played the role of the state "religion."

Religious communities became the only alternatively thinking institutions whose existence was somewhat tolerated. The ultimate aim of the regime was, of course, the entire liquidation of all religious communities.

New acts establishing State control over the churches came into force on 1 November 1949. That legislation brought obligatory – but very low – stipends for clergy which were paid by the State, regardless of the wishes of the religious communities, as compensation for the nationalization of Church property (1948) and the cancelling of state subsidies (1949). Any religious activity by clergy or lay preachers needed state permission, which was granted only for a geographically limited territory. Moreover, this state permission could be revoked without explanation. Offenses under this Act were punishable with imprisonment according to the provisions of the new Penal Code of 1950 (and later of the Penal Code of 1961).

Obligatory civil marriage was established in January 1950 for the first time in the history of the Czech lands. This provision lasted until July 1992, when the alternative form of marriage (civil or ecclesiastic) was renewed.

During two nights in April 1950, all friars were deported without legal title from their monasteries to centralization camps. Monasteries remained empty and were later used for different civic and military activities. This situation lasted until 1990. During the autumn of 1950, the friars were sent from the centralization camps to forced labor units for three or four years and then dispersed as workers.

From August 1950, whole convents of sisters were sent to camps in the remote border regions; they were not allowed to admit novices and were obliged to work mostly in factories. This state of affairs lasted until 1990. During 1950, all Church basic and secondary schools and seminaries were abolished. Clergy training was provided at only three state theological faculties (one for Catholics, one for Protestants, and one for the Czechoslovak Church) and with a limited number of admissions. Hundreds of activists from religious communities, before all, Roman Catholics, Greek Catholics, Baptists, Seventh-day Adventists, and Jehovah's Witnesses, were sentenced in framed processes to thousands of years of imprisonment in the 1950s. The Catholic bishops were imprisoned or interned.

In spite of the prosecution, religious training in schools remained an obligatory subject for all child members of religious communities until 1953 (about 90 percent of all school children). Perhaps it was caused by regard to the original and new members of the numerous Communist Party. They supported the religious training of their children because they expected that it helped their formation into "good citizens."

But it was changes by "orthodox" Marxists in the Party leadership in 1953. Since that year, religious training has been permitted only as a voluntary subject; there was a move

to have it removed from schools altogether, for lack of interest, which happened in several regions. Children attending religious education lessons were discriminated against more and more. They had problems being accepted into higher education.

Only at the short time of the “Prague Spring liberalization” in 1968, and even some months after the occupation of Czechoslovakia by Soviet and other Warsaw Pact Troops of 21 August 1968, did a more liberal regime rule religious affairs. Religious training ceased to be odious for that time. The number of children attending the voluntary religious education classes increased and their presence there did not attract adverse consequences for them. Religious sisters living in the camps in territories near the State border could admit some hundreds novices. Furthermore, friars renewed their activity. They did so only in the underground.

However, from 1971, the persecution of religious communities was revived. All religious communities, especially the Catholic Church, became symbols of resistance during the communist regime. They created many underground activities, founded secret religious and lay groups, organized unofficial theological trainings (flat seminars) and ordinations, and printed home prepared religious literature (“samizdata”). They were supported by other dissidents, and, on the other hand, many Catholic and Protestant priests and laymen took part in the civic resistance movement, Charter 77.

Both the official and underground Catholics organized a Pilgrimage to Velehrad, a famous east Moravian pilgrimage place and memorial to St. Cyril and Methodius mission, in July 1985. About 250,000 Catholics demonstrated their desire for religious freedom. They did it in the presence of the State Secretary of the Holy See and the Czech Minister of Culture.

In 1988, Mr. Augustin Navrátil, a Moravian railway man, prepared a petition of Religious Liberties in thirty-one articles. With the consent of the Prague Archbishop, it was signed by 650,000 Czechoslovak citizens.

Many protest actions were prepared in the time of the canonization of the Blessed Agnes of Bohemia, the Czech Princess from the 13th Century. It took place in Rome on 12th November 1989. According to the legend, “after the canonization of Blessed Agnes, the Czech nation will reach freedom”. And it helped to encourage citizens, even non believers, in their efforts to reach the renewal of freedom and democracy.

On 17th November 1989, the 50th anniversary of the closure of the Czech universities by the Nazis, communist police brutally interrupted the students’ commemorative procession in Prague. The events, later called “the Velvet Revolution,” were followed by all of Czechoslovakia. The 10th of December, 1989, may be called a day of upheaval. On that day, the last communist president appointed a non-communist government. The following day he resigned. The Government voted for a policy of legal continuity and of value discontinuity between the new and old regimes.

Parliament repealed the legal enactments that were contrary to human rights. The Act of December 13th, 1989, repealed the anti-Church enactments of the Penal Code. In January 1990, the legal provision allowing State interference in the appointment of clergy, preachers, and all Church employees was repealed.³

On 9th January 1991, the Parliament of the Czech and Slovak Federal Republic (CSFR) proclaimed a large Amendment to the Federal Constitution which contained a catalogue of human rights corresponding to those which were guaranteed by international law and agreements. This Czechoslovak catalogue of human rights is known under its inscription, “Charter of Fundamental Rights and Freedoms”.

On 4th July 1991, the same Parliament proclaimed the new Act on Freedom of Religious Belief and Position of Churches and Religious Societies under No. 308/1991 Sb. It remained in force in both successor states after the friendly dissolution of Czechoslovakia on 1st January 1993. It is valid in Slovakia still today. In the Czech Republic, it has been replaced by the new Act No. 3/2002 Sb. of 7 January 2002, on

3. See Jiří Rajmund Tretera, “Die Grundlagen des Verhältnisses von Staat und Religionsgemeinschaften,” in *Recht und Religion in Mittel- und Osteuropa 2. Tschechien*, eds. Richard Potz et al. (Wien: WUV Universitätsverlag, 2004), 36–38.

Freedom of Religious Expressions and the Position of Churches and Religious Societies (Act on Churches and Religious Societies). It is based on the same, unchanged constitutional principles, but it solves some particular problems in a different and more detailed form.

B. Current Constitutional Provisions

The Constitution of the Czech Republic, Act. No. 1/1993 Sb., refers to the earlier federal Charter of Fundamental Rights and Freedoms from 9th January 1991. The Constitution incorporates the Charter in the constitutional order of the Czech Republic to the date of foundation of the Czech Republic as an independent State on 1st January 1993.⁴ The Charter was published again under No. 2/1993 Sb. and has the same legal effect as the Constitution of the Czech Republic. In reality, it has a position as the second part of the Constitution.

The main constitutional provisions in Czech State ecclesiastical law are Articles 15(1) and 16 of the above mentioned Charter of Fundamental Rights and Freedoms.

Article 15 Paragraph 1 reads: "Freedom of thought, conscience and religious conviction is guaranteed. Everybody has the right to change his or her religion or faith, or to have no religious conviction."

Article 16 reads:

"(1) Everyone has the right to profess freely his or her religion or faith either alone or jointly with others, privately or in public, through religious service, instruction, religious acts, or religious ritual.

(2) Churches and religious societies administer their own affairs, in particular, appoint their organs and their priests, and establish religious orders and other church institutions, independently of organs of the State.

(3) The conditions of religious instruction at state schools shall be set by law.

(4) Exercise of the aforesaid rights may be limited by law in the case of measures which are essential in a democratic society for the protection of public security and order, health and morality, or the rights and freedoms of others."

According to Article 10 of the Czech Constitution, promulgated international agreements, the ratification of which has been approved by Parliament, are binding for the Czech Republic and constitute a part of the Czech legal order; additionally, should an international agreement make a provision contrary to Czech law, the international agreement is to be applied. An important international treaty that is a source of Czech State ecclesiastical law is the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights from 19th December 1966, which were ratified by the Czechoslovak Socialist Republic in November of 1975. Further, there is the Convention of the Rights of the Child from November 1989, accepted by CSFR in September 1990, and the European Convention on Human Rights from 1950, accepted by CSFR in 1992.

Starting in 2000, the representatives of the Czech Republic and the Apostolic See prepared an international agreement on mutual relations (in the form of a basic concordat). It was signed in July 2002. However, the House of Deputies of the Parliament did not recommend the agreement for ratification in May 2003 (by 110 votes from 200 members). In our opinion, the main reason for this failure was momentary bitterness among the deputies. Many of them could be angry as a consequence of the decision of the Constitutional Court to strike down provisions of the Act on Churches and Religious Societies No. 3/2002 Sb. several months before. The Act on Churches and Religious Societies was approved by the same House of Deputies so the time for voting about the ratification of concordat was not favorable. The proposal for such a recommendation can

4. See Jiří Rajmund Tretera, "Church and State in the Czech Republic," in *Law and Religion in Post-Communist Europe*, eds. Silvio Ferrari, W. Cole Durham, Jr., and Elizabeth Sewell (Leuven: Peeters, 2003), 82–85.

be repeated at a more favorable time,⁵ or the agreement can be changed.

State cooperation with religion is not specifically mentioned in Czech law, but there is a cooperative model of relations for State-religion in the Czech Republic. The term “separation of Church and State” has never been mentioned in Czech legal sources. Moreover, there is not a preferred or privileged religion or group of religions in the Czech Republic. Nor is there any reference to religion as a foundation or source of state law. The specific principle of State neutrality on religious issues, and of the principle of equality when dealing with religions, is not specifically mentioned, but it can be derived from Articles 15(1) and 16 of the Charter of Fundamental Rights and Freedoms. Article 2(1) of the Charter of Fundamental Rights and Freedoms declares that the Czech State is founded on democratic values and not bound to a particular ideology or religion.

III. LEGAL CONTEXT

The regulatory framework of Czech state ecclesiastical law is based on Act No. 3/2002 Sb., on Churches and Religious Societies, as amended. Some provisions of the original text of the Act were annulled by the Czech Constitutional Court of 2002.⁶

The other specialised act is Act No. 428/2012 Sb. of 8 November 2012 on Property Settlement with Churches and Religious Societies and to Amend Certain Other Laws. The act came into force on 1 January 2013. The Act combines restitution in kind of property appropriated from religious communities from 25 February 1948 until the end of 1989, and financial compensation for non-restored property. It gradually cancels the paying of stipends by the State, thereby introducing the financial independence of religious communities. This act repealed Act No. 218/1949 Sb. on the Economic Assurance of Churches and Religious Societies by the State.

The remaining part of the Czech state ecclesiastical law is dispersed throughout different laws, decrees, and administrative regulations on specialized matters relating to religious communities.

There are several church-state treaties on the internal level in present Czech law:

1. The Agreement on Cooperation between the Ministry of Defense of the Czech Republic, the Ecumenical Council of Churches in Czech Republic, and the Czech Bishops’ Conference, which regulates the choir of chaplains of the Czech Army (1998, amended in 2012).

2. The Agreement on Cooperation between the Czech Radio, the Czech Bishops’ Conference, and the Ecumenical Council of Churches in the Czech Republic (1999).

3. The Agreement on the Participation of Persons Providing Spiritual Service in the System of Post-traumatic Intervention Care between the Ministry of the Interior of the Czech Republic, the Ecumenical Council of Churches and the Czech Bishops’ Conference (2011).

4. The Agreement on Pastoral Service in Prisons between the Prison Administration of the Czech Republic, the Ecumenical Council of Churches in the Czech Republic, and the Czech Bishops’ Conference from 2013, which replaced the older ones from 1994, 1998 and 2008.

The Ministry of Culture of the Czech Republic (its Department for Churches) is a competent body of state administration that deals with religious affairs and religious communities. It registers churches, religious societies,⁷ and unions of churches and religious societies.

A church or a religious society and their unions acquire legal personality and some tax advantages by this registration.⁸

5. See Jiří Rajmund Tretera, “State and Church in the Czech Republic,” in *State and Church in the European Union*, 2nd ed., ed. Gerhard Robbers (Baden Baden: Nomos, 2005), 42.

6. The Constitutional Court struck down as unconstitutional several provisions restricting religious communities’ rights to create charitable organizations and use income in other than strictly religious aims.

7. In fact, there is not a legal difference in Czech law between the word “church” and the term “religious society.”

8. See Act No. Act No. 3/2002 Sb. and Jiří Rajmund Tretera, “Religious Entities as Legal Persons – Czech

A registered church or religious society has the right to create derived legal persons as well.

The Ministry of Culture holds three public registers of religious bodies:

1. The register of churches and religious societies.
2. The register of the unions of churches and religious societies.
3. The register of legal persons derived from registered churches and religious societies, which evidence is taken by the Ministry of Culture.

The third register was created in 1994. Churches and religious societies announce the creation of every derived legal person to the Ministry of Culture. The Ministry has an obligation to enlist such legal persons in the register. Among the derived legal persons, there are “core” religious institutions, like parishes, dioceses, or monasteries. Institutions for providing of charitable services (charities, diaconias) are enlisted in this register, too.

The Ministry of Culture can also grant “special rights” to registered churches and religious societies under fulfilling of legally prescribed conditions. These rights are enlisted in the registry of churches and religious societies. These are the following special rights, according to the Act No. 3/2002 Sb.:

- teaching religious education in public schools;
- founding church schools;
- pastoral care in armed forces, prisons and detention facilities;
- the right to celebrate marriages with civil effects;
- to maintain confessional confidentiality, if the religious community proves that such confidentiality has been practiced for at least fifty years.⁹

There are 21 registered churches and religious societies with special rights, fifteen other registered churches and religious societies, and two unions of churches and religious societies (The Ecumenical Council of Churches in the Czech Republic and the Military Spiritual Service).¹⁰

The Department of Churches of the Ministry of Culture invites ad hoc expert advisory council.

In cases of necessity, the state organs enter into negotiations with representatives of religious communities and their unions. In the case of the Roman Catholic Church, they contact the Czech Bishop’s Conference and the Conference of Superiors of Religious Orders. On the international level, they contact the Apostolic See from the Czech Embassy to the Apostolic See in Rome and the Apostolic nuncio in Prague. The law does not regulate any state duty to a specific form of dialogue with churches and religious societies.

The legally binding instruments for regulating relations between the State and Churches are part of the agreements. For example, according to Article 3 of the Agreement on Pastoral Service in Prisons (2013), the Council for Pastoral Service in Prisons was created. The members of the Council include two deputies of the Czech Bishops’ Conference, two deputies of the Ecumenical Council of Churches, a deputy of the Prison Administration of the Czech Republic, and a Chief Chaplain. The Council for Pastoral Service in Prisons has the right to submit comments and propose conception solutions concerning pastoral service to the Director of Prison Administration of the Czech Republic.

IV. THE STATE AND RELIGIOUS AUTONOMY

The public authorities cannot intervene in the life or organization of religious communities, according to Article 15(1) and Article 16(2) of the Charter of Fundamental Rights and Freedoms. The secular law protects the autonomy of religious communities,

Republic,” in *Churches and Other Religious Organisations as Legal Persons: Proceedings of the 17th Meeting of the European Consortium for Church and State Research, Höör (Sweden), 17–20 November 2005*, ed. Lars Friedner (Leuven: Peeters, 2007), 55–59.

9. Art. 7 of the Act No. 3/2002 Sb.

10. See Jiří Rajmund Tretera and Záboj Horák, “Czech Republic, Legal Status of Religions,” available at *Eurel, Sociological and Legal Data on Religions in Europe*, <http://www.eurel.info/spip.php?rubrique644>.

allowing them to govern themselves and act freely in the secular sphere. There are no legal or political instruments designed to control the religious life or choices of citizens.

V. RELIGION AND THE AUTONOMY OF THE STATE

The autonomy of the State is secured by Article 2(1) of the Charter of Fundamental Rights and Freedoms, which declares that the Czech State is founded on democratic values and not bound to a particular ideology or religion. Therefore, no religious community has a specific role in the secular governance of the country, and no particular religion is given power to control other religious communities under State law. The Czech State is a sovereign on its territory and is bound only by its own legal system and international agreements.

VI. LEGAL REGULATION OF RELIGION AS A SOCIAL PHENOMENON

State law does not exert any pressure on churches and religious societies. It respects individual freedom. Therefore, the State regulates religion specifically in terms that are different from other social phenomena.

There is registration of religious entities.¹¹ There are also special provisions concerning the legal status of church schools, teaching of religion in public schools, faculties of theology at public universities, property, taxation, slaughtering of animals, etc. Compared to other social phenomena, this specific regulation is neither more restrictive nor more cooperative with religion. Only in certain instances is it more favorable for churches and religious societies (e.g., places of worship are exempt from real estate tax). The State does not have any record of individual's religious affiliations. Moreover, an individual's religious affiliation has no legal consequences under state law.

In the Czech legal order, the issue of conscientious objection reflects in the possibility to refuse to serve in the army, which is guaranteed constitutionally. Under Article 14, Section 3 of the Charter of Fundamental Rights and Freedoms, "no one may be compelled to perform military service if such is contrary to his conscience or religious conviction." Detailed provisions are laid down in Act No. 585/2004 Sb., on Compulsory Military Service and its Ensuring, which was adopted with the introduction of the professional Czech Army. Czech nationals over eighteen years of age are still liable for conscription, which includes an obligation to undergo the recruitment process and perform emergency military service in times of emergency or war. Such service may be refused upon conscientious objection within the period of fifteen days of the date of delivery of a decision on fitness for military service to a national, or of the date of declaration of a state of emergency or war. Another conscientious objection recognised by the Czech legal order is the right of medical staff to refuse the rendering of healthcare service if it is inconsistent with their conscience or religious convictions. The application of said objection is regulated by Act No. 372/2011 Sb., on Healthcare Services and Conditions for Providing Them.

VII. STATE FINANCIAL SUPPORT FOR RELIGION

Since 2012, a new model for financing churches and religious societies in the Czech Republic has been developed. Its substantial part is Act No. 428/2012 Sb., on Property Settlement with Churches and Religious Societies and to Amend Certain Other Laws.

The mentioned Act makes possible partial natural restitution and affects financial settlement between the State and churches and religious societies. Further, it introduces an interim provision of allowances to promote the activity of affected churches and religious societies in substitution of State subsidies for salaries of the clergy so far provided by the State. As for the partial natural restitution, certain agricultural and forest estates, as well

11. See *supra* Part IV.

as certain things that the churches and religious societies were dispossessed of in the period from 25 February 1948 to 1 January 1990, shall be returned to the ownership of the churches and religious societies, providing they make a claim thereto with the State property administrators, who will administer those assets until 2 January 2014, and adduce evidence of their original ownership. Claims have already been raised by churches and religious societies. Only a small portion of claims have been dealt with.

A more significant part of property settlement shall consist of financial compensation for damages suffered, which is precisely quantified and allotted to individual, affected churches and religious societies in Act No. 428/2012 Sb. Said compensation shall be paid by the State in thirty consecutive yearly installments.

The third part of the property settlement is the temporary allowance to promote the activity of affected churches and religious societies in substitution of State subsidies for salaries of the clergy so far provided by the State. This allowance shall be paid by the state for the transitional period of seventeen years. In terms of the amount, it shall, for the first three years, correspond to the amount paid to the affected churches and religious societies in 2011. As of the fourth year of the transitional period, the amount of the allowance shall be annually decreased by 5% of the sum paid out in the first year of the transitional period.

Remuneration for spiritual assistance for members of the armed forces and, partly, for prisoners, is provided directly to the spiritual ministers, who are considered State employees, and so not through the headquarters of churches and religious societies. Spiritual assistance for ill persons is not remunerated from the State. The staff of confessional schools are paid from the State budget. Religion teachers at public schools are also paid by the State.

The State subsidizes to some extent maintenance of some religious buildings that have historical or cultural value. Also, municipalities can subsidize religious buildings according to their own measures. They all collaborate with international funds, before all, with the European Union. The State controls or regulations on State funding do not impose constraints on religious autonomy.

VIII. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

Czech secular law recognizes legal effects to marriages that were celebrated before registered churches or religious societies with a “special right” to perform marriage ceremonies under the Civil Code of 2012. This alternative form of marriages has been renewed since 1st July 1992 by the amendment to the Family Act of 1963. “Nowadays, there is free choice between the religious and civil forms of marriage in the Czech Republic. But decisions of the Church courts on nullity are not recognized by the State.”¹² Secular courts do not enforce decisions adopted by religious courts or hierarchical bodies.

IX. RELIGIOUS EDUCATION OF THE YOUTH

There are three categories of Czech primary and secondary schools:

1. Public schools (a majority), established by municipalities and regional authorities or, exceptionally, by the State (e. g. by the Ministry of Education, Ministry of Defense, and Ministry of Interior);
2. Schools established by churches and religious societies that have a “special right” to create church schools;¹³
3. Private schools, which are established by individuals or by private legal entities, or by religious organizations of all types.

The curricula and diplomas of church schools are recognized by secular law. However, church schools are different from private schools. For example, current church school costs are paid by the State, and their church founder normally provides a building

12. See *supra* n. 5 at 50.

13. Art. 7(1), lit. d) of the Act No. 3/2002 Sb.

and appoints a director.

The students are admitted on the results of admission tests, not by reference to their confession. Teachers can be non-denominational or members of another religious community, although a basic loyalty to the Church that founded the school is presumed. This arrangement is considered to be suitable for the deeply secularized Czech people; Church schools enjoy great popularity.¹⁴

There are 137 Church schools in the Czech Republic. 70 % are founded by Catholic authorities, and the rest by authorities of other churches or religious societies.¹⁵

The public schools' curricula include denominational religious instruction as a specific subject.¹⁶ Yet, it is an optional subject. Teachers must be authorized by some church or religious society from among the religious communities that are registered with such a special right. The School Act of 2004 provides the possibility of common authorization of a teacher by two or more registered churches. The teachers are employees by the school, which pays their salary. All students may attend religious classes, even if they are not members of any church or religious society. There are two reasons for this: first, there is no public registration of confession (and a school does not know who among its students is a member of a particular church or religious society or who is non-denominational). Second, religious communities support this practice because of ecumenical cooperation, common need, and their offer to the public. Thus, non-denominational students may also take classes in religious education if they, or their parents, so desire. The reason for this might be the interest in deepening education.

X. RELIGIOUS SYMBOLS IN PUBLIC PLACES

Citizens, and other inhabitants, are free to wear religious symbols in public places. There is no official restriction in this regard, and such a restriction should be considered as a measure contrary to religious freedom, which is secured by the Constitution. On the other hand, it is to be emphasized that inhabitants of the Republic usually do not wear such symbols in extreme ways. There is a tradition to be civil in this regard. Even the Conference of Catholic Bishops recommends that the clergy wear church clothes or collar shirts only to such events when it is socially reasonable (yet, the decision is up to the feeling of a particular clergyman). As to the scarves of Muslim women, there is not legal prohibition to use them. The scarves can be used as the scarves of women in the Czech countryside.

Institutional use of religious symbols in public facilities has been out of practice for so long that perhaps nobody should want to introduce their usage now. The only exception is the use of the crucifix in some spaces of Catholic theological faculties, church schools or charities, and, in a very reserved form, in church hospitals.

XI. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

There is no protection of God's honor – i.e., there is no offense of “blasphemy.” Further, there is no interest in renewing it after the long period of atheist rule.

There is protection of the human dignity of believers and their conviction. This protection is applied equally to all religions and beliefs, including atheism.

Defamation of religion or atheism, religious hate speech, and anti-religious hate speech can be punished, if it is used in an extreme way.

The new Criminal Code Act. No. 40/2009 Sb., in force from 1 January 2010, contains such provisions as Restriction of Freedom of Religion (§ 176); Defamation of Nation, Race, Ethnicity or Another Group of Persons (§ 355); Incitement of Hatred to a Group of Persons or Restriction of their Rights and Liberties (§ 356); Genocide (§ 400); Assault against Humanity (§ 401); Apartheid and Discrimination of a Group of People (§ 402);

14. *Supra* n. 5 at 47.

15. Most of these are Protestant, but there are also Eastern Orthodox, Hussite, and Jewish schools.

16. See art. 16(3) of the Charter of Fundamental Rights and Freedoms.

Founding, Support and Propagation of a Movement Aiming at Oppressing of Human Rights and Liberties (§ 403); Expression of Affection for a Movement Aiming at Oppressing of Human Rights and Liberties (§ 404); Denial, Casting Doubts on, Conniving and Justifying of Genocide (§ 405); and Persecution of Inhabitants (§ 413).