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The Status of Churches under Public Law in the Czech Republic and their Transition to Financial Self-Sustainability[1]

• **Abstract** •

Determining whether churches and religious societies in the Czech Republic are subjects of public or private law is a challenging question in confessional law. The privileged status under public law by no means implies a uniform legal regime for the various public corporations. In the Czech Republic, churches enter the arena of public law; the state, for example, guarantees the right to teach religion in public schools, co-finances the operation of church schools, recognizes the civil validity of marriage, respects the seal of the confessional, pays the salaries of hospital chaplains, and allows and pays for the activities of military and prison chaplains. However, especially the Catholic Church was long burdened with the struggle for the restitution of church property seized by the communist regime. The issue was settled with the adoption of the Act on Property Settlement with Churches and Religious Societies. Since 2013, the law has no longer funded the operation of church headquarters as well as all clerical salaries. The churches also recovered their lost properties and obtained financial compensation for those properties that could no longer be reclaimed. In addition, churches are still subsidised by decreasing amounts each year to allow for a smooth transition to financial self-sustainability. This, however, has led to a situation in which churches are partially losing their public law character. The article also identifies the challenges the Catholic Church in particular has to overcome in order to stabilise its new system of financing.

Keywords: Churches, Public law, Special rights, Restitution, Church property.

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Introduction: The Ambiguity in Treating the Public Law Status of Churches

In some states, the public law status of churches and the legal entities the churches establish is strongly accentuated. However, even in those countries the stated public law character of churches does not correspond to the definitional framework of public law corporations[1]; in fact, confessional law experts in those countries often turn to our scholars in the field to enquire what status churches have in the Czech Republic, whether private or public law. However, this question has no clear answer, since the status of churches and religious societies in our country has its own specific features *sui generis* when compared to all other corporations established under Czech law. Nevertheless, we have seen some evolution in this field: "As regards the position of churches, no clear prognosis can be put forward as to which direction their position will take; for the time being it can be stated that in some areas registered churches act as subjects of public law, in others as subjects of private law" (Tretera, 2002, p. 72).

Moreover, the link between public law status and the property law of the Catholic Church has been subject of manipulations aimed at denying the very existence of Church property: "In legal literature, in case law, and especially in the media, the term 'public law' is used in connection with the Roman Catholic Church and its property intended for restitution" (Potz et al., 2004, p. 59). Confessional law strictly rejects such a purposive notion: "In the past but even today, one can come across the view that churches did not actually own any property because their property was of public law nature; as a result, the state had the right to freely dispose of it. Thus, demanding the restitution of church property is said to be legally inadequate. However, one forgets that public law is not the same as state law. Moreover, churches have always been somewhat special institutions which cannot be clearly categorised as being either public or private. It would be absurd to tell the members of the different churches who for generations have built up a common church property from their gifts, collections and the work of their own hands that what they have been doing, they have actually been doing for the state" (Tretera, 2002, p. 121).

[1] "Technically speaking, public corporation is 'a state-constituted administrative body endowed with superior power, founded on the principle of membership and at the same time independent of the fluctuation of its members.' Except for the existence of a membership structure, however, this conceptual definition is by no means fitting for churches" (Löffler, 2007, p. 10).

The Scope of the Concept of Secular State

Generally speaking, the more the model of the relationship between state and churches tends towards separation, the more the churches' position becomes subject of private law; besides, the more the state participates in the financing of the churches, the more the churches themselves naturally penetrate the public sphere. The 'pure' separation model is notorious mainly because of the radical separation in France, where the intention was to establish a so-called 'secular state' (*état laïque*): "In 1905, after the electoral victory of the Republicans, a new act on the separation of the Church and the State was adopted in France (which is, with some modifications, still in force today). The law deprived the Church not only of its privileged status under the Concordat, but also of its legal personality and, in consequence, of all its property. The state ceased to finance the needs of churches; in fact, churches could only acquire property through registered private cult associations" (Hrdina, 2006, p. 155). Interestingly enough, although virtually unnoticed by the professional public, the phrase 'secular state' also appeared in a groundbreaking ruling of the Constitutional Court of the Czech Republic. It took the form of a general characterization of the status of churches and religious societies in the country: "The Czech Republic is based on the principle of a secular state. According to Article 2(1) of the Charter, the state is founded on democratic values and 'may not be bound either by and exclusive ideology or by a particular religious faith.' Thus, it is evident that the Czech Republic must accept and tolerate religious pluralism; meaning that, above all, it must not discriminate against or, on the contrary, give unjustified advantage to any particular religious faith. It also follows from the cited article that the state must be separate from specific religions".[2]

The concept of secular state as expressed by the Constitutional Court of the Czech Republic is certainly not as radical as the former secessionist policies in France. Rather, the Constitutional Court judges attempted to pinpoint the Czech state's religious and ideological neutrality and the resulting separation of the organs of state and their activities from any particular religious beliefs,[3] as expressed

[2] Reasoning IV of the Decision of the Constitutional Court of the Czech Republic no. 6/02, 27 November 2002. Published under No. 4/2003 Collection of Laws (Coll.).

[3] The maker of the Czech constitution thus implicitly reacts to the epoch of the totalitarian state led by the Communist Party, which was practically a confessional state *à rebours*, i.e., upside down: "Ensuring the supremacy of Marxist-Leninist ideology in the socialist states of Eastern Europe thirty years ago as the so-called 'scientific world view', of which atheism was an inseparable part, was due not only to the *de facto* dictatorial position of the communist or otherwise known as Marxist political party, but in many cases also to the constitutional enshrinement of its 'leading role' and a number of other provisions forming the legal order of these states" (Tretera, Horák, 2015, p. 121).

in the current law on churches and religious societies: "The state, regions and municipalities cannot carry out religious or anti-religious activities".[4] Indeed, this is another argument in favour of the private legal status of churches and religious societies in the Czech Republic.

Churches Enter the Public Sphere

The 2002 Act on Churches and Religious Societies is the second law in the field passed in the Czech Republic after 1989. The first, issued in 1991 as a federal law for the whole of Czechoslovakia,[5] was a true manifesto of renewed religious freedom and enjoyed the support of both church leaders[6] and academics in the field of confessional law.[7] While in the Slovak part of the former Czechoslovak federation this law still remains in force, albeit in an amended version, the Czech Republic chose its own path with the new law of 2002. A model of two-stage registration of churches and religious societies was created in connection with the introduction of their authorisation to exercise the so-called special rights. In the original version of the law, the list of these rights had six parts: "In order to fulfil its mission, a registered church and religious society under conditions set by this act can acquire authorization to possess these special rights: a) to teach religion in state schools according to a special legal regulation, b) to authorize persons performing clerical activities to perform clerical service in the armed forces of the Czech Republic, in places where detention, imprisonment, protective custody, protective treatment and protective education are carried out, c) to be financed according to a special legal regulation on the financial security of churches and religious societies, d) to perform ceremonies in which church marriages are contracted in accordance with a special legal regulation, e) to establish church schools in accordance with a special legal regulation, f) to observe the obligation of confidentiality by clergy in connection with the exercise of confessional secrecy or the exercise of a right similar to confessional secrecy, if this obligation has been a traditional part of the teachings of

[4] Act No. 3/2002 Coll. on freedom of religious confession and the position of churches and religious societies and on the changes of some legal acts (Law on churches and religious societies), Article 4 (2).

[5] Act No. 308/1991 Coll., on Freedom of Religious Belief and the Status of Churches and Religious Societies.

[6] "The final response in the Czechoslovak Federal Republic was Act No. 308/1991 Coll., which represents the highest level of religious freedom for churches and religious societies in the history of our state" (Duka, 2004, p. 18).

[7] "Act No. 308/1991 Coll. was a satisfactory norm at the time of its drafting, and the good inventiveness of its drafters was evident" (Tretera, 2002, p. 65).

the church and religious society for at least 50 years; however, this does not concern the obligation to prevent a criminal offence imposed by a special law."[8]

According to the law, churches and religious societies already recognized before the act entered into force could exercise these rights to the existing extent,[9] while those that have been newly registered on the basis of this law will only be able to achieve 'accreditation' for special rights under predefined conditions. However, these conditions are so demanding that none of the 23 churches and religious societies newly registered under the law has met them so far, although more than twenty years have passed since the law came into force. It would certainly be possible to comply with the generally established conditions: "An application for granting the authorization to exercise special rights may be submitted by a registered church and religious society that: a) has been registered under this Act continuously for at least 10 years as of the date of submission of the application, b) has published annual reports on its activities for the calendar year for 10 years prior to the submission of the application, c) has duly fulfilled its obligations towards the state and third parties, and d) is legally upstanding".[10] However, the conditions also include a requirement that the entity applying for the authorisation to exercise special rights must, *inter alia*, submit "original signatures of as many adult citizens of the Czech Republic or foreigners with permanent residence in the Czech Republic who are members of the church and religious society as at least 1 per cent of the population of the Czech Republic according to the latest census (…)."[11] Instead of the original 300 signatures for simple registration, one per cent of the population of the Czech Republic would now be required, which in practice represents a return to the much-criticised 10,000-signature census.[12]

Under the previous legislation, the legislator treated the special rights as a tool allowing churches and religious societies to enter the public sphere, and thus not remaining merely institutions "satisfying the religious needs" of their members. It is obvious that the special rights defined by law cannot encompass the entire scope of legal relations that draw church-type corporations into social life and often

[8] Act No. 3/2002 Coll., § 7 (1).

[9] Act No. 3/2002 Coll., § 28 (1).

[10] Act No. 3/2002 Coll., § 11 (1).

[11] Act No 3/2002 Coll., § 11 (4) (a).

[12] It was introduced as a follow-up to the referring provision of Section 23 of Act No. 308/1991 Coll. by a separate Act of the Czech National Council No. 161/1992 Coll., on the registration of churches and religious societies: "This census might have been well-intentioned, but by European standards it aimed too high and was hardly achievable in practice. It became the subject of criticism from the beginning and was one of the reasons for the adoption of the new, now valid Act on Churches and Religious Societies (…)" (Hrdina, 2004, p. 76).

also into the public sphere. After all, even churches that do not have the authority to exercise them can assert themselves outside their internal ecclesiastical structures: "Especially in areas where churches and religious societies, or registered legal persons, carry out activities of general benefit, for example in the field of social welfare, health care, education, crime prevention, etc., they necessarily enter the public sphere, including those churches and religious societies that do not enjoy these special rights" (Chocholáč, 2016, p. 61).

The Concept of the So-Called 'Special Rights'

However, the concept of special rights is also viewed as a closed system of state privileges granted to churches as corporations, i.e., not primarily as a means of exercising individual rights arising from religious freedom enshrined in the Charter of Fundamental Freedoms and international human rights documents. "Special rights are understood as entitlements of churches and religious societies as institutions. The legislation does not take into account the rights of persons in a particular life situation (such as detention, imprisonment, service in the armed forces, etc.). (…) Since the right of persons to freedom of religion is a fundamental right, it is questionable to what extent churches and religious societies can be said to have 'special' rights if some of these special rights serve as a means of exercising a fundamental human right" (Kříž, 2011, p. 94).

In addition, the area of spiritual care in the health care system, for example, is not included among the special rights at all, although the 2011 Health Services Act (*Zákon o zdravotních službách*) provides for a broad right of patients to the services of the clergy of all state-recognized churches without exception, namely, the right to "receive spiritual care and spiritual support in an inpatient or overnight care facility from clergy of churches and religious societies registered in the Czech Republic or from persons entrusted with the exercise of clerical activities in accordance with internal regulations or in a manner that does not violate the rights of other patients, and with regard to their health condition, unless another legal regulation provides otherwise; a visit by a clergyman may not be denied to a patient in cases of danger to his life or serious damage to his health, unless another legal regulation provides otherwise."[13]

As regards the right of churches to receive spiritual care in social institutions, it is applicable directly on the basis of the constitutional rights of believers, as given

[13] Act No 372/2011 Coll., on Health Services and Conditions of their Provision (Health Services Act), Section 28 (3) (j).

by the Charter of Fundamental Rights and Freedoms: "In the case of other institutions where the law has not restricted freedom of access and movement, including the right to manifest religious beliefs (e.g. in retirement homes), the right to receive spiritual care follows directly from Article 16(1) of the Charter and is not limited to registered churches and religious societies" (Chocholáč, 2016, p. 67).

In the case of the special right to marry with civil law effects, it is the clergyman of the relevant church himself who substitutes the public authority of the State for the defined act of marriage: "The competent authority of the church or religious society acts replaces the authority of the State; however, by the same token it does not become the authority of the State, nor does it perform its function. It is and remains an organ of the church, fulfilling the function it has precisely as an organ of the Church (indeed, its competence is determined by ecclesiastical regulations), to which the State has granted a special privilege, namely that it has elevated an official act which would otherwise remain an official act recognized only by the Church to an act recognized by itself" (Radvanová, Zuklínová, 1999, p. 23).

The clerical service in the army is performed by military clerics who, as professional soldiers, are employees of the Ministry of Defence, to whom "all the rights and obligations of a soldier in other service apply, unless they conflict with his status guaranteed to him by international law".[14] Prison chaplains also occupy a position of employment in the service of the State: "Authorised persons, employed by the Prison Service, serve as Prison Service chaplains. The chaplains are methodically directed by the Chief Chaplain in collaboration with the Deputy Chief Chaplain."[15]

It is therefore evident that the state has a direct interest in some of the services provided by the churches, and, in certain cases, their clergy are allowed to enter otherwise inaccessible buildings and to perform specific spiritual activities there, even though these may be seen as pre-evangelization rather than actual acts of cult: "The ministry of the clergy in the army is not missionary or evangelistic in character; it is primarily a ministry of listening and sharing in the professional and personal joys and difficulties of everyone who entrusts himself to a military cleric" (Chocholáč, p. 70).

[14] Agreement on Cooperation Between the Ministry of Defence of the Czech Republic, the Ecumenical Council of Churches in the Czech Republic and the Czech Bishops' Conference, point C – Status of Military Clergy.

[15] Agreement on Pastoral Service in Prisons between the Prison Administration of the Czech Republic, the Ecumenic Council of Churches in the Czech Republic and the Czech Bishops Conference on the establishment of Prison religious services, Article 4 (1).

Two of the special rights concern the activities of churches in education. These are the right to teach religion in state (public) schools, which is even explicitly supported in the Charter as a constitutionally guaranteed right,[16] and the right to establish their own church schools. This special right differs from a similar right granted to churches and religious societies not yet entitled to exercise special rights, namely the right "to teach and educate their clergy and lay workers in their own schools and other institutions as well as in divinity schools and divinity faculties under the conditions provided for in special legislation."[17] While the schools that these 'unaccredited' churches may establish follow the legal regime of private schools in their self-financing, the operation of church education in the sense of exercising a special right also implies the entitlement of these schools to partial financing from public budgets, which distinguishes church education from both private and public education, where the state bears the full cost. The State budget thus finances the operation of "schools and educational establishments established by registered churches or religious societies which have been granted the right to exercise the special right to establish church schools", in accordance with the provisions of the Education Act.[18]

The Churches' Expenses Paid by the State

The state pays the salaries of hospital, military and prison chaplains, and contributes to church education from the state budget. It means that the entry of churches and religious societies into the public sphere also implies financial participation of the state in the activities of the churches concerned. The cases above concern the financing of services in which a public interest is at stake; however, the complex financing of the operation of church headquarters and of all clergy salaries, which the democratic Czechoslovak state inherited from its totalitarian predecessor at the end of 1989,[19] was a completely different matter. The very origins of this system of financing, established in the harshest Stalinist phase of the communist regime, led especially the Catholic Church to seek to change it under the new democratic conditions, because the communist regime deprived the Church of virtually all of its real property, the proceeds of which had previously financed its operations.[20]

[16] Article 16 (3) of the Charter of Fundamental Rights and Freedoms of the Czech Republic.

[17] Act No. 3/2002 Coll., § 6 (3) (a).

[18] Act No. 561/2004 Coll. on Pre-school, Primary, Secondary, Higher Vocational and Other Education (Education Act), Section 160 (1) (b).

[19] Act No. 218/1949 Coll., on the economic security of churches and religious societies.

[20] "In conjunction with the withdrawal of all remaining economic assets from the Catholic

The Church also raised this issue during the negotiations with the Holy See on the Concordat Treaty, which probably led to the result that the Treaty has remained unratified: "(1) The Czech Republic will attempt in the quickest and for both parties acceptable way to resolve questions concerning the properties of the Catholic Church. (2) In the Czech Republic the economic safety of the Catholic Church has been guaranteed by the legal system of the Czech Republic. In case a new model of financing is drawn up, provisions will be made for avoiding economic problems for the Catholic Church in the period of transition before the new model replaces the current one."[21]

The Law on Churches and Religious Societies of 2002 then placed the right to public funding of churches and religious societies within the framework of 'special rights' as the right of a church "to be funded according to a special legal regulation regarding the financial security of churches and religious societies."[22] If, however, state funding of institutions is to be a characteristic feature of their public law character, then the planned abandonment of state funding of church operations and salary costs is more likely to result in churches moving to a private law status, at least in such an important area as their funding.

Restitution and Property Settlements with Churches

In the Czech Republic, the long-awaited and disproportionately delayed comprehensive solution to church restitution took the form of the Act on Property Settlement with Churches and Religious Societies (*Zákon o majetkovém vyrovnání s církvemi a náboženskými společnostmi*), which came into force at the beginning of 2013.[23] It allowed the churches to become financially independent on the state. By far the most significant recipient "The settlement of property relations between the state and churches and religious societies within the meaning of Section 1 of the Act means the achievement of a state in which the state will no longer subsidize churches and religious societies in their purely ecclesiastical activities, i.e. the state of financial separation of churches and religious societies from the state. This, of

Church, it was to be the economic security that would effectively isolate Czech Catholics from communion with the Catholic Church in the world and deprive the Czech Church of any influence of the higher leadership (bishops)" (Jäger, 2009, p. 784).

[21] Treaty Between the Czech Republic and the Holy See Modifying Some Relations, art. 17 (1) and (2). (2002). *Revue církevního práva 22*(2), pp. 163–175.

[22] Act No 3/2002 Coll., § 7 (1) (c) of the original text.

[23] Act No. 428/2012 Coll., on Property Settlement with Churches and Religious Societies and on Amendments to Certain Acts (Act on Property Settlement with Churches and Religious Societies).

course, does not exclude the provision of support for specific activities under the conditions under which the state also provides support to non-church entities (e.g. in the field of health care, social care, protection of cultural monuments, etc.)" (Kříž, Valeš, 2011, p. 92).

To bridge this transitional period, the State still pays a contribution to support the activities of the churches and religious societies concerned: "For a period of 17 years from the date of entry into force of this Act, the State will pay a contribution to support their activities to the churches and religious societies concerned. In the first three years of the transitional period, the amount of the contribution shall be equal to the amount granted to the church and religious society concerned on the basis of Act No 218/1949 Coll., on the economic security of churches and religious societies by the State, as amended, in 2011. The amount of the allowance shall be reduced annually from the fourth year of the transitional period by an amount corresponding to 5 % of the amount paid in the first year of the transitional period."[24]

Since the Law on Property Settlement with Churches and Religious Societies stipulated, among other things, the conditions for restitution in kind of church property, the legislator also required the responsiveness of all relevant authorities and other entities that participate in the restitution processes. Thus, one can speak of "a favour in favour of restitution" (*favor restitutionis*): "In applying this law, its purpose, which is to alleviate the property injustices caused to registered churches and religious societies during the given period, must be respected. The public authorities shall provide assistance to the persons entitled, in particular by providing them, without undue delay and free of charge, with extracts and copies of records and other documents which may contribute to the clarification of their claims."[25]

Unfortunately, this clear will of the legislator has not been heeded, and the Catholic Church in particular has been constantly confronted with obstruction by state authorities, formalistic approach of the courts and the reluctance of the entities obliged to hand over the property: "Thus, since 2013, churches and religious societies could hope that the legislation and the relevant jurisprudence of the Constitutional Court had been on their side in the process of property restitution and that after two decades of waiting for the redress of the injustices of the communist era, the chapter called 'restitution of stolen property' would be closed within the first or at maximum the second year. Very soon, however, they were to see that the reality would be quite different. Almost daily, churches and religious societies were discovering how difficult these processes of requesting, supplementing, appealing

[24] Act No. 428/2012 Coll., § 17 (1–3).
[25] Act No. 428/2012 Coll., § 18 (4).

or even suing for the return of property could be, and how the general climate and political pressures (…) were not conducive to a sympathetic administration" (Čačík, 2019, p. 84).

Churches were offered financial compensation for former church property that could not be restituted[26] for reasons specified by law: "A registered church and religious society that does not refuse to conclude a settlement agreement with the state (…) will receive a lump sum financial compensation. The amount of the financial compensation for the individual church and religious society concerned is: (…) CZK 47.200.000.000 for the Roman Catholic Church."[27] This financial compensation, which, in accordance to the law, is paid in annual instalments over a period of 30 years, plus an annual increase in the rate of inflation, "will not be subject to any tax, charge or other similar pecuniary benefit."[28] Nevertheless, there was a governmental and parliamentary attempt to impose taxation on the financial compensation ('annuity'), which was fortunately prevented successfully and in time, thanks to the intervention of the Constitutional Court of the Czech Republic.[29]

Challenges in the Transition to Self-Financing in the Catholic Church

The Catholic Church, or rather its dioceses and religious communities, are gradually transitioning to a new model of financing with the help of a gradually shrinking state contribution, the temporary payment of financial restitution compensation and the often uncertain proceeds from real estate restitution. However, it should not be overlooked that the principal source of funding for the Church's pastoral work, activities and apostolate should primarily be the collections and donations of the faithful themselves. Therefore, the faithful must be properly motivated to take such responsibility for the running of their church. Catholic dioceses are also moving towards stewardship in their various areas of activity through the creation of special-purpose funds, inspired also by the practice traditionally established in their non-Catholic counterparts.[30]

[26] Act No. 428/2012 Coll., § 8.

[27] Act No. 428/2012 Coll., § 15(1), (2) (g).

[28] Act No. 428/2012 Coll., § 15 (6).

[29] On 1 October 2019, the Plenum of the Constitutional Court issued a constitutional ruling under Pl. 586/1992 Coll., on Income Taxes, as amended, introduced by Act No. 125/2019 Coll., with effect from the date of publication of the ruling in the Collection of Laws. The words read "except for financial compensation."

[30] The raising and distribution of funds for building and similar purposes is taken care of in religious communities by their special institutions, such as the Brotherly Aid Fund (*Fond bratrské*

The annual decline in the state contribution, which is used, among other things, for the purpose of paying clergy salaries, is being addressed, for example, by introducing the 'St. Adalbert Fund' (*Fond svatého Vojtěcha*) in the Archdiocese of Prague. This fund provides salary support (service fees) of clergy and has been established for the purpose of "creating a financial source intended to finance the personal costs of clergy in a service relationship with the Archbishopric of Prague."[31] The proceeds of the church collections are already handed over four times a year for this purpose.

In contrast to the former system of ecclesiastical benefices, whose management was based on a maximum effort to be self-sufficient,[32] the current canon law is more inclined towards massive redistribution and centralization of funding: "Each diocese has a special facility which collects property or donations for the purpose of providing for the maintenance of the clergy who are serving the diocese, unless otherwise provided for. (…) If necessary, a common fund shall be established in each diocese, from which the bishops may discharge their obligations to other persons serving the Church and contribute to the various needs of the diocese, by which also the richer dioceses may assist the poorer ones."[33]

As a result, Catholic parishes are burdened with ever more frequent compulsory collections, the proceeds of which are sent to the dioceses. In addition, the dioceses also tend to tax heavily or sometimes even take away the most lucrative properties acquired by the parishes in the process of restitution in kind. However, the main burden of care for the property remains on the shoulders of the local spiritual administrators. Contrary to the exaggerated expectations, the realistically formulated prediction is more likely to come true: "It is clear to everyone that full restitution of church property is a difficult matter and would probably not provide sufficient economic security for the churches, anyway" (Tretera, p. 133).

Conclusion

The expectations placed on church restitution and self-financing of churches will not be met in many respects. In the Catholic Church, it will depend on how individual dioceses and particular religious orders perform. In a way, self-financ-

pomoci) in the Czechoslovak Hussite Church (*Československá církev husitská*) or the Jerome Unity in the Evangelical Church of Czech Brethren (*Jeronýmova jednota v Českobratrské církvi evangelické*), similar to the Gustav-Adolf-Werke in Germany and Austria" (Tretera, Horák, p. 251).

[31] *Acta curiae archiepiscopalis pragensis*, *4/2021*, p. 3.

[32] Cf. Code of Canon Law, 1917, c. 1409 *et seq*.

[33] Code of Canon Law, 1983, c. 1274 § 1 and § 3.

ing and independence from public budgets means a retreat from the previous position of the churches, which was certainly closer to public law in this respect. The situation in which the state also contributes to the operation of churches can sometimes be seen as a manifestation of its favourable attitude towards religion (*favor religionis*), and at other times as an attempt to gain control over churches and religious societies. In the Czech Republic, which has already done away with state payment of clergy service fees (*služné*), the state-paid services of chaplains, whether military, prison or hospital, remain in the public sphere; moreover, there is privileged funding for church schools over private schools. Other institutions in churches' hands, especially charitable, social or medical institutions, are funded under the same conditions and legislation as similar non-ecclesiastical institutions. The same situation can be seen in the area of ecclesial cultural heritage. Among the special rights of churches and religious societies, however, there are also some others which are not directly related to their funding, namely the right to teach religion in state schools, the right to a marriage with civil effects and the respect for the confidentiality of confession (the seal of confession).[34] Nevertheless, these rights also give churches the opportunity to enter the public sphere where other similar entities independent of the state cannot operate.

References

Arcibiskupství pražské. (2021). *Acta curiae archiepiscopalis pragensis*, *4*.

Čačík, M. B. (2019). In favorem restitutionis – teorie a praxe (In Favorem Restitutionis – – Theory and Practice). *Revue církevního práva, 76*(3), pp. 81–96.

Dohoda o duchovní službě ve vězeňství (Agreement on Prison Ministry). (2014). *Revue církevního práva*, *58*(2), pp. 55–61.

Dohoda o spolupráci mezi Ministerstvem obrany ČR, Ekumenickou radou církví v ČR a Českou biskupskou konferencí (Agreement on Cooperation Between the Ministry of Defence of the Czech Republic, the Ecumenical Council of Churches in the Czech Republic and the Czech Bishops' Conference). (1998). *Revue církevního práva 10*(2), pp. 129–135.

Duka, D. (2004). Přátelská odluka a kooperace jsou si blízké (Friendly separation and co-operation are closely related). In: M. Loužek (ed.). *Vztah církví a státu. Sborník textů*, Praha: Centrum pro ekonomiku a politiku, pp. 17–23.

Hrdina, I. A. (2004). *Náboženská svoboda v právu České republiky* (Religious Freedom in the Law of the Czech Republic). Praha: Eurolex Bohemia.

Hrdina, I. A. (2006). *Texty ke studiu konfesního práva I. – Evropa a USA* (Texts for the Study of Confessional Law I – Europe and the USA). Praha: Eurolex Bohemia.

[34] Cf. Act No 3/2002 Coll., § 7(1)(a), (c), (e) as amended.

Chocholáč, A. (2016). *Zákon o církvích a náboženských společnostech. Komentář* (The Law on Churches and Religious Societies: A Commentary). Praha: Wolters Kluwer.

Jäger, P. (2009). *Svoboda vyznání a právní poměry církví a náboženských společností v letech 1948–1989* (Freedom of Religion and the Legal Status of Churches and Religious Societies from 1948 to 1989). In: M. Bobek, P. Molek, V. Šimíček. *Komunistické právo v Československu. Kapitoly z dějin bezpráví* pp. 769–810. Brno: Mezinárodní politologický ústav.

Kříž, J. (2011). *Zákon o církvích a náboženských společnostech. Komentář* (The Law on Churches and Religious Societies: A Commentary). Praha: C.H. Beck.

Kříž, J., Valeš, V. (2011). *Zákon o majetkovém vyrovnání s církvemi a náboženskými společnostmi. Komentář* (Act on Property Settlement with Churches and Religious Societies: A Commentary). Prague: Wolters Kluwer.

Löffler, R. (2007). *Ungestraft aus der Kirche austreten?* (Leaving the Church Without Penalty?). Würzburg: Echter.

Potz, R., Schinkele, B., Schwarz, K., Synek, E. M. and Wiesheider, W. (2004). *Recht und Religion in Mittel- und Osteuropa, Band 2, Tschechien* (Law and Religion in Central and Eastern Europe, Volume 2, Czech Republic). Wien: WUV Universitätsverlag.

Radvanová, S., Zuklínová, M. (1999). *Kurs občanského práva. Instituty rodinného práva* (Course in Civil Law: Institutes of Family Law). Praha: C.H. Beck.

Smlouva mezi Českou republikou a Svatým stolcem o úpravě vzájemných vztahů (Treaty Between the Czech Republic and the Holy See Modifying Some Relations). (2002). *Revue církevního práva 22(2)*, pp. 163–175.

Tretera, J. R. (2002). *Stát a církve v České republice* (The State and Churches in the Czech Republic). Kostelní Vydří: Karmelitánské.

Tretera, J. R., Horák, Z. (2015). *Konfesní právo* (Ecclesiastical Law). Praha: Leges.