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not be obscured, forgotten or ignored, but, on the contrary, they have to be honoured.

We cannot conclude this brief presentation concerning the manner in which the Romanian Orthodox Church asserted or not her right to autonomy in its relationships with the state without emphasizing the fact that, under Law 489/2006,[70] all recognized religious denominations are considered to be "independent from the state" (Art. 29 par. 5). As such, they can organize themselves and function "autonomously, according to their own Statutes and canonical Codes" (Art. 8 par. 1).

Nevertheless, it has been a long way leading from the *sui generis* autonomy of the Orthodox Church in the Habsburg Empire, guided by Metropolitan Andrei Şaguna, to the autonomy of the 18 religious denominations recognized by the Romanian state, provided by Law no. 489/2006. This long process has been marked by transformations actually determined by the party ideology of different time periods.

Over time, the autonomy of the Church or of the religious denominations — in their relationships with the state — was perceived differently, and often the very content of the autonomy principle was affirmed, extended, limited or even abolished by some political rulers, as dictated by the interests of those times and imposed by their party ideology.

This reality is also clearly confirmed by the canonical-juridical status of the Romanian Orthodox Church from Şaguna's epoch, which represents a documentary landmark whenever we tackle the topic concerning the relationships between the state and the religious denominations, and whenever we assess the manner in which "the external autonomy principle" was or was not fully stated.

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things, he also appealed to the Secretary General of the Ecumenical Council of Churches (Geneva) to demand expressly the igh ommunist authorities from Bucharest not to fulfil their criminal intentions.

[70] See N. V. Dură: *The Law no. 489/2006 on Religious Freedom*…, pp. 37—54.

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Nicolae V. Dură

From the Church Autonomy of the Archbishop Andrei Şaguna to the Autonomy of the Religious Denominations in the Romanian State: Ecclesiological-Canonical Considerations

Summary

From the pages of this study, the reader familiar with the canonical organization of a local Orthodox Church could become acquainted with the fact that one of the main canonical fundamental principles of the Eastern Church, that is the principle of (external) autonomy, was affirmed and applied by the Archbishop of Transylvania, Andrei Şaguna, in his Church, in the totality of its content. But, through its forms of manifestation, this principle characterizes not only the relationships between the Church and the state, during Andrei Şaguna's times († 1873), the Metropolitan of the Orthodox Church from "Hungary and Transylvania," but also the contemporary relationships between Romanian state and religious denominations, expressed in the Romanian Constitution and the Law no. 489/2006, although, in its content, this principle was not affirmed and applied in the same manner during these two periods of time.

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Dès l'autonomie de l'Égise à l'époque de l'Archevêque Andrei Şaguna jusqu'à l'autonomie des organisations religieuses en Roumanie Réflexions ecclésiastiques et canoniques

Résumé

L'un des principes fondamentaux de l'Église orientale, c'est-à-dire le principe de l'autonomie (extérieure) a été perpétué et appliqué par Andrei Şaguna, Archevêque de Transylvanie. Ce principe, et les formes sous lesquelles il apparaît réellement, définit non seulement les relations entre l'Église et l'État à l'époque d'Andrei Şaguna (décédé en 1873), Métropolite de l'Église orthodoxe de « Hongrie et Transylvanie », mais aussi les relations contemporaines entre l'État roumain et les organisations religieuses. Ces relations ont été exprimées dans la Constitution roumaine et dans la loi 489/2006 ; notons que dans la dernière, le principe de l'autonomie extérieure n'a pas été confirmé et appliqué de la même manière que précédemment.

Mots clés : relations Église-État, doctrine canonique orthodoxe, liberté religieuse, codes canoniques

Nicolae V. Dură

Dall'autonomia della Chiesa dei tempi dell'Arcivescovo Andrei Şaguna fino all'autonomia delle organizzazioni religiose nel diritto romeno Riflessioni ecclesiologico-canonistiche

Sommario

Uno dei principi canonici fondamentali della Chiesa Orientale, ossia il principio dell'autonomia (esterna), fu consolidato e applicato dall'Arcivescovo di Transilvania Andrei Şaguna. Tale principio definisce, attraverso le forme nelle quali si manifesta effettivamente, non solo i rapporti tra la Chiesa e lo stato ai tempi di Andrei Şaguna († 1873), Metropolita della Chiesa Ortodossa di "Ungheria e Transilvania", ma anche i rapporti contemporanei tra lo stato romeno e le organizzazioni religiose. Tali rapporti sono stati espressi nella costituzione romena e nella legge n. 489/2006 anche se nel contenuto di quest'ultima il principio dell'autonomia esterna non è stato confermato e applicato nello stesso modo in cui ebbe luogo originariamente.

Parole chiave: rapporti Chiesa-stato; dottrina canonica ortodossa; libertà religiosa, codici canonici

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Conscientious Objection in Current Czech Law

Keywords: conscientious objection, constitutional law, penal law, law on health protection, seal of the sacrament, pastoral secrecy

Introduction

The right to assert conscientious objection is not an old and traditional matter of state legislation, but on the contrary a fairly recent legal provision, existing mainly in democratic countries.

Beginning with a description of the legal basis of conscientious objection in the Czech constitutional law (in the first section), three areas of realization of such objections regulated by Czech legislation are presented: the military service (in the second section), the seal of the confessional and pastoral secrecy (in the third section), and healthcare (in the fourth section).

1. The legal basis in Czech constitutional law

This section presents the recent evolution of the legal bases of conscientious objection in constitutional law up until 1992 in Czechoslovakia and as of 1993 in the newly established Czech Republic.

1.1. Former Czechoslovakia: The Charter of Fundamental Rights and Freedoms from 1991

Up until the so-called Velvet Revolution in November 1989, fundamental human rights were guaranteed in the constitution as of 1960[1] and in international treaties as well. In actuality, they were violated by the communist government.

As of 1990, after the victory of the "Velvet Revolution," one of the first and very important social phenomena was the growing respect for human rights guaranteed by the valid communist legislation. It was useful, however, and there was a need to construct the regulations of fundamental human rights in a new way. As part of these efforts, the Federal Parliament of Czechoslovakia introduced the Charter of Fundamental Rights and Basic Freedoms in 1991 as a separate document different from the constitution, but granted it the same legal standing as the constitution itself.[2] The charter took its content above all from international law binding Czechoslovakia, although in certain aspects it developed more the existing stipulation, particularly, its Art. 16 dealt with religious freedom and provided in its section 2 an extremely large guarantee of corporate religious freedom, not only for individuals, as it is provided in international law.

1.2. On the founding of the Czech Republic in 1993

Former Czechoslovakia split in two new countries, the Czech Republic and the Slovak Republic, on 1 January 1993. Shortly before, in November 1992, the new constitution of the Czech Republic was drafted[3] and immediately after the Charter of Fundamental Rights and Freedoms was introduced in its entirety as part of the constitutional system of the new state.[4] There was consequently no legislation regarding human rights in

[1] Constitutional Act of the National Assembly No. 100/1960 Coll., the Constitution of the Czechoslovak Socialist Republic. There is no provision regarding liberty of conscience in the Constitution.

[2] Constitutional Act of the Federal Assembly No. 23/1991 Coll., wherein the Charter of Rights and Freedoms is introduced as a constitutional act.

[3] Constitutional Act of the Czech National Council No. 1/1993 Coll., the Constitution of the Czech Republic.

[4] Resolution of the Presidium of the Czech National Council of 16 December 1992 No. 2/1993 Coll. on the declaration of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.

the Czech Constitution and as a consequence the legal situation remained unchanged.

1.3. Conscientious objection and freedom of conscience in the Charter of Fundamental Rights and Freedoms

The Czech Charter of Fundamental Rights and Freedoms[5] does not contain any general regulations concerning conscientious objection. There is the only one regulation concerning it, namely in Art. 15, section 3:

> No one may be compelled to perform military service if such is contrary to his conscience or religious conviction. Detailed provisions shall be laid down in a law.

There are, however, quite general provisions in Art. 15, section 1 in the first sentence regarding conscience:

> Freedom of thought, conscience and religious conviction is guaranteed.

It is actually extremely difficult, or even impossible, to refer to this general provision without any further (special) regulation by law.

2. Exceptions in the area of military service

In this chapter we want to emphasize the most traditional objection in conscience: in the area of obligatory military service.

Two different periods need to be distinguished: the existence of compulsory military service (known in the Czech legislative as "basic military service") until 2004 and the existence of a professional army since 2005.

[5] See hereinbefore footnotes no. 2 and 4. The English version is available at: http://www.legislationline.org/documents/section/constitutions (accessed 25.08.2016).

2.1. The legal situation until 2004

Up to the end of the communist regime, it was extremely difficult for individuals to avoid compulsory military service. The only "simple" legal possibility was based on a statement of a bad state of health, otherwise it was only possible by working in a mine for several years, or — very exceptionally — by so-called alternative service, usually due to social reasons.[6]

The possibility of fulfilling the military obligation by means of civilian service which lasted 50% longer than the compulsory military service was introduced in 1990, naturally under the condition of keeping the binding proceeding.[7] This provision has been repeated by later legislation up until 2004[8] and found an explicit echo in the Charter of Fundamental Rights and Freedoms.[9] Civilian service played an extremely important part in social work/services in particular (Caritas, Diaconias, hospitals, etc.).

2.2. The legal situation from 2005

Based on the new military act from the end of 2004, the army of the Czech Republic became professional on 1 January 2005. Compulsory military service ceased to exist and, as a result, the alternative in a form of civilian service became inapplicable as well,[10] which caused several practical problems in social services.

A general liability for military service remained, however, but only in extraordinary situations as a state of emergency to the country or as a state of war. This service is referred to in the above-mentioned act as "extraordinary service." One can refuse to carry out the extraordinary service according the § 6 of the above-mentioned act within a limit of 15 days, with the only reason acceptable by law being "because of conscience or of religious conviction." In such cases the duty to fulfil additional social service, practically civilian service, was differently conceived in comparison with the former civilian service existing up until 2004.

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[6] Act No. 92/1949 Coll., Military Act.

[7] Act No. 72/1990 Coll., Amendment of the Military Act and Act No. 73/1990 Coll., on Civilian Service.

[8] Act No. 18/1992 Coll., on Civilian Service and Act No. 218/1999 Coll., Military Act.

[9] See above Section 1.3.

[10] Act No. 585/2004 Coll., Military Act.

2.3. Summary

The refusal of military service due to issues of conscience is also the oldest and traditional case of conscientious objection in the Czech Republic. It is also the only case mentioned *expressis verbis* in the Czech (originally Czechoslovak) Charter of Fundamental Rights and Freedoms, which is a part of the Czech constitutional legal system.

The practical importance of this objection has been radically reduced by the introduction of a professional army in the Czech Republic as of 1 January 2005. The objection could only be used in extraordinary military service which has not occurred in the Czech Republic since 2005.

3. Observance of the seal of confessional and pastoral secrecy

The seal of confessional and pastoral secrecy has varying importance in particular Churches and religious societies.[11] The seal of the confessional is particularly important in the Catholic Church and in the Orthodox Church and considerably less weighty in Protestant Churches, which deny the sacramental character of confession. Pastoral secrecy is extremely important, however, for all Churches and religious communities.

The legal position within Czech law is unequal, however, and it is not entirely clear (particularly after the first reading of legal texts) if the guarantee of confessional secrecy is the same as in the case of pastoral secrecy.

[11] The term "Churches and religious societies" is traditional in the Austrian legal system and has been adopted in the Czech one as well. The legal position of each Church or religious society is identical in principle. The state does not distinguish if the religious congregation should be called a Church or religious society.

3.1. The unequal position of various Churches and religious communities

Since the communist legislation was introduced in October 1949, neither the seal of the confessional nor pastoral secrecy was respected under Czechoslovak law.

The first explicit regulation was with the first law on religious freedom no. 308/1991 Coll. from 1991[12] in its § 6 for all registered Churches and religious societies:

> The State acknowledges the duty of secrecy for persons entrusted with the exercise of the ecclesiastical ministry.

The above-mentioned act, still valid in the Slovak Republic, has been replaced in the Czech Republic with a new act no. 3/2002 Coll.[13] The new act, reducing radically the required number of believers for registration of a new church or religious society (from 10,000 to 300), actually introduced two kinds of Churches and religious societies. Those which are "only" registered and those allowed to exercise "special rights" (§ 7 of the above-mentioned act) referred to by experts as "accredited Churches." One of the "special rights" is

> (e) to observe the obligation to maintain secrecy by the clergymen in connection with the exercise of the seal of the confessional or with the exercise of a right similar to the seal of the confessional, if such an obligation has been a traditional part of the doctrine of the church or of the religious society for at least 50 years; it is not overturned by the obligation to prevent a crime, imposed by a special act.

According to the regulation of this act, it is necessary to present a requirement to reach the acknowledgement of respect for the seal of the confessional or for pastoral secrecy separately. Therefore not all Churches and religious societies with the right to exercise the special rights actually obtained this special right.

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[12] Act No. 308/1991 Coll., on the Freedom of Religion and Churches and Religious Societies. Unofficial English translation available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85177&p_classification=01.05 (accessed 25.08.2016).

[13] Act No. 3/2002 Coll., on the Freedom of Religion and Churches and Religious Societies.

3.2. Extent of legal respect for the seal of the confessional and pastoral secrecy — penal law

The extent of legal respect for the seal of the confessional and pastoral secrecy is specified in Czech penal law.

The regulation is integrated in the Penal Code[14] under the title "Other Forms of Criminal Cooperation" which includes: incitement to criminal offences (§ 364), approval of criminal offences (§ 365), favouritism in criminal offenses (§ 366), non-prevention of criminal offences (§ 367) and non-reporting of criminal offenses (§ 368). Secrecy is only respected in the case of non-reporting of criminal offenses:

> (3) The duty to report according to Sub-section (1) does not apply to an attorney or his/her employee who learns about the committing of a criminal act in relation to performance of his/her legal profession or practice. The duty to report also does not apply to clergymen of a registered church or religious society authorized to exercise special rights when they learn about a criminal offence in connection with hearing confession or in connection with the practice of similar confessional secrets. […]

Consequently, the remainder of the above-mentioned forms of criminal cooperation are not covered by the acknowledgement of secrecy due to religious reasons. The failure of a planned crime is even explicitly mentioned in § 7 of the act no. 3/2002 Coll., on the freedom of religion and Churches and religious societies.

The respective reference to this provision can be found in § 99 of the Code of Criminal Procedure:[15]

> (2) The witness shall not be requested to testify if his testimony could infringe on his non-disclosure obligation imposed by the State, except when the competent body or the person in whose interest he has such obligation waives the non-disclosure obligation.
> (3) The ban on interrogation pursuant to paragraph (2) shall not apply to the testimony given in respect to an offence that the witness has the obligation to report under the Penal Act.

It is also important that both kinds of secrecy are to be respected by the state only in the case of clergymen. The definition of a clergyman is

[14] Act No. 40/2009 Coll., Penal Code. English version is not available, therefore translated by the Author.

[15] Act No. 141/1961 Coll., Code of Criminal Procedure. English version is not available, therefore translated by the Author.

reserved to the internal rules of each Church and religious society, but the definition is to be included in the "basic document" of a registered Church and religious society, registered at the respective department of the Ministry of Culture.[16]

3.3. The distinction between the seal of the confessional and pastoral secrecy?

It is not entirely clear (particularly after the first reading of the legal texts) if the guarantee of confessional secrecy is the same as in the case of pastoral secrecy. Both respective acts, act on Churches and penal code, use the same formula: "in connection with the exercise of the seal of the confessional or with the exercise of a right similar to the seal of the confessional."

This formula would seem to indicate an exclusive interpretation: either the seal of the confessional or pastoral secrecy. A grammatical interpretation of the Czech legal text allows to indicate that the formula "of the seal of the confessional or of a right similar to the seal of confessional" does not have an exclusive meaning but an intercalary one. It can therefore in fact either be granted only with respect to the pastoral secrecy or with respect to the seal of the confessional along with respect of pastoral secrecy.

It can consequently be concluded that the state does not distinguish between these two kinds of secrecy and that it respects both of them in the same way. The majority of Churches exercising this special right try to ensure respect for all persons in pastoral service referring to them as "clergymen." The Catholic Church therefore adopted in its "basic document" extension of the concept of clergy not only to deacons, priests, and bishops, but to non-ordained persons as well.[17]

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[16] The case of the Religious Society of Jehovah's Witnesses from 2013—2015, which originally indicated the lack of clergymen in their religious society, is relatively well known in the Czech Republic. This religious society did not at first obtain acknowledgment of the special right to secrecy. The representatives of the religious society consequently amended the basic document which included also the definition of clergymen, and consequently the society obtained the requested special right.

[17] D. Němec: "Právo na zpovědní a pastorační tajemství v evropském kontextu" (The Right to Protection of the Seal of Confessional and of Pastoral Secrecy in the European Context). In: *Konvergencie a divergencie v slovenských a českých štátno-cirkevnych vzťahoch — dvadsať rokov od vzniku samostatnej Českej republiky a Slovenskej republiky.* Eds. M. Šmid, M. Moravčíková. Trnava 2014, pp. 105—106.

3.4. Summary

Legal respect for the seal of the confessional and pastoral secrecy is in the Czech Republic fairly closely limited to Churches and religious societies with the right to exercise special rights. In fact, this respect in practice is granted to all Christian Churches.

The state actually provides relatively wide respect not only for the seal of the confessional but also for pastoral secrecy. This corresponds to the pastoral needs of Christian Churches.

4. Exceptions in the area of healthcare

The area of healthcare is particularly sensitive and closely linked with important moral questions. It is therefore an extremely typical sphere for the carrying out of conscientious objection.

Two different legal circumstances need to be distinguished in the Czech Republic, the border between which has been demarcated by the extensive and significant legal reform in healthcare adopted in 2011 and in force as of 1 April 2012.

4.1. The vague legal situation up until 2012

Since the communist regime adopted extremely coercive legislation,[18] it was impossible to introduce any exceptions due to conscience until 1989. Extensive reform to the healthcare system and health legislation was therefore necessary.[19] This reform was approved, however, only as late as in 2011. Due to this situation, the act No. 20/1966 Coll. proposed in § 23 a single legal instrument, this being the requirement of informed consent on the part of the patient and the possibility to refuse or recall this consent. The legal position of patients was enforced in 2001 by the

[18] Act No. 20/1966 Coll., on the Care of Health of People.

[19] J. Matějek: *Svědomí v lékařské etice* (Conscience in Medical Ethics). Doctoral thesis. Brno 2006, pp. 59—60. Available online at http://is.muni.cz/th/97853/lf_d/ (accessed 21.10.2015).

ratification of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, signed in Oviedo on 4 April 1997,[20] but without needed state legislation.[21] The above-mentioned convention stipulates:

> Article 9 — Previously expressed wishes
> The previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account.

The healthcare personnel could not find any legal basis for conscientious objection in the laws, although it was provided by the internal rules of professional chambers: the Ethics Code of the Chamber of Physicians from 1995 (§ 2 section 2), the Ethics Code of the Chamber of Stomatologists from 1992 (section 10) and the Ethics Code of the Chamber of Apothecaries from 1992. Other groups of healthcare personnel did not have any legal basis for their conscientious objection.[22]

4.2. Reform to Health Legislation of 2011 in force as of April 2012

4.2.1. Content of the New Health Legislation adopted in 2011

The widespread and extensive legal reform to healthcare adopted in 2011 consisted of four legal acts:
1. Act No. 372/2011 Coll., Healthcare Services Act.
2. Act No. 373/2011 Coll., Specific Healthcare Services Act.

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[20] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Oviedo, 4.IV.1997, available in English at: https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf98 (accessed 25.08.2016).

[21] L. Madleňáková: *Výhrada svědomí jako součást svobody myšlení, svědomí a náboženského vyznání* (Conscientious Objection as Part of Free Thinking, Conscience and Religious Conviction). Praha 2010, pp. 120—121.

[22] D. Němec: "Ochrana svobody svědomí v oblasti zdravotnictví v České republice" (Protection of the Freedom of Conscience in Healthcare in the Czech Republic). In: *Právna ochrana slobody svedomia*. Trnava 2013, pp. 93—97.

3. Act No. 374/2011 Coll., Emergency Medical Services Act.
4. Act No. 375/2011 Coll., Amendments of Acts in Connection with the Reception of the Healthcare Services Act; this act introduced amendments in further 120 (!) legal acts.

Of importance is the first act, the Healthcare Services Act, which defined comprehensively the rules of healthcare for all interested persons.

4.2.2. The problematic path to enforcement of the New Health Legislation in 2011

The legal reform of healthcare was prepared by the right-wing coalition government under the leadership of Petr Nečas, the head of the Civic Democratic Party. The reform met with strong resistance from left-wing parties, particularly from the Czech Social Democratic Party, which had the majority of senators in the Senate of the Parliament of the Czech Republic, the upper chamber of the parliament.

The reform was adopted by the Chamber of Deputies of the Parliament of the Czech Republic, the lower house of the Parliament, on 7 September 2011. The Senate of the Parliament of the Czech Republic expressed its disapproval, however, on 6 October 2011. The chamber of deputies overruled the veto of the Senate on 6 November 2011 and the act could consequently be promulgated on 8 December 2011 and came into force as of 1 April 2012.

The reform was quickly challenged by an appeal against it to the Constitutional Court of the Czech Republic, submitted by a group of 45 senators, primarily members of the Czech Social Democratic Party, on 6 January 2012. The appeal objected to the incompatibility of the reform with basic human rights guaranteed in the Charter of Rights and Freedoms, specifically the right to protection of health. The constitutional court made a decision on 27 November 2012 introducing a small amendment to the healthcare act, rejecting other objections (for details see below).[23] The decision was therefore promulgated in the Collection of Laws of the Czech Republic on 10 December 2012.

[23] Sentence of the Constitutional Tribunal of the Czech Republic Prot. No. Pl ÚS 1/12, available online at: http://nalus.usoud.cz/Search/ResultDetail.aspx?id=77126&pos=1&cnt=3&typ=result (accessed 26.08.2016).

4.3. Legal means for patients

The reform did not bring about any revolution in the legal situation of patients. First, the requirement for informed consent remained unchanged including the possibility to reject or recall the proposed treatment or to retract consent (with certain exceptions, i.e. the inability to express his/her will — cf. §§ 28 and 34).

Second, the act regulates in detail the realization of previously expressed wishes (§ 36). The original text of the act limited the validity of the previously expressed wishes for the term of five years with regard to the evolution of medicine and treatment (§ 36 section 3). The constitutional court abolished this time limitation with reference to illnesses with progressive deterioration, which could cause the inability to renew the former previously expressed wish. It should be acknowledged that the legal regulations did contain certain problematic aspects.[24]

4.4. Legal means for healthcare personnel

In contrast to the situation with patients, the situation for healthcare personnel was profoundly changed by the reform (§ 50) which introduced:

— the possibility to reject the execution of certain treatment because of direct menace to life or due to serious health peril of hygienists;
— the possibility to reject the execution of certain treatment due to reasons of conscience and religious conviction, but under the obligation that the treatment provider offers the realization of the required treatment by another hygienist of the same or of another provider (with the exception of direct menace of life or serious peril of health of the patient where it is not possible to adopt this rejection);
— the extension of the above-mentioned possibilities to all healthcare personnel — this is a truly revolutionary modification;
— the extension of rejection due to of reasons of conscience and religious conviction not only to particular hygienists (physical persons) but also

[24] L. Madleňáková: "'Výhrada' pacienta ve formě dříve projeveného přání a nová úprava v zákoně o zdravotních službách" ("Objections" of Patients in the Form of Previously Expressed Wishes and its New Regulation in the Healthcare Services Act). In: *Aké princípy vládnu zdravotníctvu?* Eds. I. Humeník, Z. Zoláková. Bratilava 2013, pp. 336—340.

to providers (juridical persons) under the duty to provide the realization of the required treatment by another provider.

The above-mentioned possibilities for refusal were challenged in the constitutional court as incompatible with the right to protection of life and of health, which are basic human rights guaranteed in the Charter of Rights and Freedoms. The court stated:

— in the case of refusal because of direct menace to life or because of serious peril to the health of healthcare personnel. It is impossible to solve the conflict of basic rights generally, but only in a judicial way in particular cases with regard to all important circumstances;
— in the case of refusal because of reasons of conscience and religious conviction. The basic right to protection of life and of health does not imply the obligation of every hygienist or of every provider to realize the required treatment, if there does not occur direct menace to life or serious peril to the health of the patient.[25]

4.5. Summary

The reform of healthcare legislation (specifically act no. 372/2011 Coll., Healthcare Services Act) was adopted in 2011 and came into force as of April 2012. It was the object of strong juridical (as well as political and ideological) controversy and caused major changes in the area of conscientious objection.

It regulates not only the rights of patients, including the detailed legal procedure regarding the previously expressed wishes, but in particular the rights of healthcare personnel, including all hygienists (physical persons) and providers (juridical persons) of healthcare.

Conclusion

Czech constitutional law has one specific aspect. The list of human rights and obligations is not included in the constitution of the state, but

[25] D. Němec: "Ochrana svobody svědomí v oblasti zdravotnictví v České republice" (Protection of the Freedom of Conscience in Healthcare in the Czech Republic). In: *Právna ochrana slobody svedomia*..., pp. 106—107, 110—111.

in a separate document distinct from the constitution, which in turn is imbued with the same legal standing as the constitution itself, namely: the Charter of Fundamental Rights and Freedoms. The objection to conscience does not find a broad basis in the Charter, but only one particular provision regarding military service and a very general provision on liberty of conscience.

Special laws regulate only three areas of the realization of the objection.

The objection in the area of military service is the only one which is explicitly mentioned in the Charter of Fundamental Rights and Freedoms. Its former wide use (including the duty of civilian service) lost its importance because of introducing the professional army on 1 January 2005 and was reduced to the occasional situation of extraordinary military service which did not yet occur as of 2005.

The state respect for the seal of the confessional and pastoral secrecy brought with it certain obstacles. On the one hand, this right is not applicable to all registered Churches and religious societies, but only for some of them. On the other hand, the State provides relatively wide respect not only for the seal of the confessional, but also for pastoral secrecy. Based on the special legislation, this right can be realized in the criminal area but only on the part of clergymen.

As for the common population, the possibility of conscientious objection in healthcare is the most important and feasible. It regards not only patients, but after the major reform of healthcare legislation can also be applied to all the healthcare personnel and by providers of healthcare as well.

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Damián Němec

Conscientious Objection in Current Czech Law

Summary

Starting with a short analysis of the basis for conscientious objection in Czech constitutional law the author presents three areas of realization of the objections regulated by Czech legislative: in military service, where it practically lost its originally wide importance, in the guarantee of the seal of the confessional and of pastoral secrecy which can only be realized in the penal law by clergymen of certain (not of all) registered Churches and religious societies, and finally in the area of healthcare where it can be applied not only by patients, but also by the healthcare personnel, even by providers of healthcare. The third area consequently finds the widest application in daily life.

Damián Němec

L'objection de conscience dans le droit tchèque en vigueur

Résumé

Après avoir brièvement analysé les bases constitutionnelles de l'objection de conscience dans la loi tchèque, l'auteur présente trois domaines de la réalisation de l'objection de conscience réglementés par la législature tchèque : dans le service militaire où cette institution perd pratiquement son importance ; dans la garantie du secret de la confession avec le secret pastoral qui ne peut être employée dans le droit pénal que par les ecclésiastiques de certaines Églises et organisations religieuses enregistrées ; et enfin, dans le service de santé publique où l'objection de conscience peut être appliquée non seulement par les patients, mais aussi par le personnel du service de santé publique et même par les établissements du service de santé publique, et c'est bel et bien pour cette raison que le troisième domaine est le plus largement appliqué en pratique.

Mots clés : objection de conscience, droit constitutionnel, droit pénal, droit de santé, secret de confession, secret pastoral

Damián Němec

L'obiezione di coscienza nel diritto ceco vigente

Sommario

Partendo da una breve analisi dei fondamenti costituzionali dell'obiezione di coscienza nel diritto ceco, l'autore presenta tre campi di realizzazione dell'obiezione di coscienza, regolamentati dalla legislazione ceca: nel servizio militare, dove in pratica tale istituzione perde la sua importanza; mediante l'assicurazione del sigillo sacramentale insieme al segreto pastorale, che nel diritto penale possono essere applicati solo dai religiosi di alcune chiese e organizzazioni religiose registrate; e infine nel campo del servizio sanitario, dove può essere invocata non solo da parte dei pazienti, ma anche del personale sanitario, persino dalle stesse aziende sanitarie locali — e per tale ragione questo terzo campo ha l'applicazione più ampia nella pratica.

Parole chiave: obiezione di coscienza, diritto costituzionale, diritto penale, diritto alla tutela della salute, sigillo sacramentale, segreto pastorale