CANONICAL, INTERNATIONAL, EUROPEAN AND CONSTITUTIONAL LAW: RECALLING THEIR INTERACTIONS FOR INTERNATIONAL LEGISLATION

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Abstract: The autonomy and independence of civil law in relation to canon law, especially in those countries where these legal systems meet in the drafting and application of international agreements of the concordat type, are not entirely simple questions maintaining both - national and international dimensions. The first level question seems to be the reception of canon law by civil law in the view of the principle of independence and autonomy of state legal systems. The second level question is the validity and effectiveness of international bilateral human rights rules agreed with the Holy See. Many multilateral international treaties of universal and regional nature on human rights, especially in the areas of protection of freedom of religion and freedom of conscience, generally regulate the legal relations, but specific regulation of concordats is also appropriate, sometimes complementary, and sometimes primary.

Keywords: Autonomy of law. Canon Law. Constitutional Law. International Law. Concordat Law. Relationship of legal systems. Reception of law. protection of freedom of religion and conscience. Conscientious objections

1 Introduction

In recent years, the debate regarding the autonomy and independence of civil law, which has a national and international dimension, is closely related to the position of the Holy See in the international field and especially to the phenomenon of concordats. Two issues used to be discussed primarily.

The first is the question of the reception of canon law and norms from the teaching of the Catholic Church into civil law in view of the principle of independence and autonomy of state legal systems.

The second is the question of the validity and effectiveness of international bilateral human rights rules agreed with the Holy See in concordats, taking into consideration the existence of constitutional rules in this area, as well as multilateral international treaties on human rights, especially in the areas of protection of freedom of religion and freedom of conscience. In this context, I also want to touch on a specific application outcome of the theoretical conclusions of this lecture, namely the possible concept of protecting freedom of conscience in Slovakia through a bilateral agreement with the Holy See..

2 Canonical, international, european and constitutional law: recalling their interactions for international legislation

The 1983 Code of Canon Law in Canon 22, as well as the 1990 Code of Canons of the Eastern Churches in Canon 1504, established that the reception of civil law into the canon law order and the obligation to observe it, requires the conformity of civil law with Divine law. At the same time, the condition that canon law does not establish different rules must be met. Civil or state law is a subsidiary source of canon law in those cases in which canon law explicitly refers to civil law.

On the part of the state, similarly, the Constitution of the Slovak Republic establishes the exclusivity of its legal order on the territory of the Slovak Republic, including the most important issue, which is the binding of a judge only by civil law.

A certain agreement on respecting the norms of canon law based on the Basic Treaty between the Slovak Republic and the Holy See sparked a discussion about the permissibility of the intrusion of canon law into Slovak law. As can be seen, there is indeed a certain degree of unilateral penetration. In my opinion, however, it is always an expression of the constitutional principle of the autonomy of the Church in its own affairs, as shown by the direct references to respect for canon law by the Slovak Republic in the Basic Treaty.

From the point of view of the content of the norms of canon law, constitutional law, as well as concordat law, it can be concluded that the civil legal system, as well as the canonical system, are in principle highly autonomous and independent, which is confirmed by both the norms of canon law and civil law. From the point of view of civil law, this of course also applies to the position of the teaching of the Catholic Church in the field of civil legal regulation. These conclusions must be respected, for example, in the creation of concordats and in general with all legal norms regulating the status of churches or freedom of religion and freedom of conscience.

The principle of autonomy and independence of civil law also raises another question: the justification of human rights regulations in concordats as bilateral treaties between states and the Holy See. The existence of multilateral international treaties on human rights, especially in the areas of protection of freedom of religion and freedom of conscience, as well as constitutional or European legal protection of this type of fundamental rights in the constitutions of individual states, concerning all residents regardless of their religion and with regard to the growing attention dedicated to the principle of equality and non-discrimination, might reinforce the opinion that the regulation of human rights in bilateral treaties concluded between states and the Holy See is redundant and non-standard. I have the opposite opinion.

The principle of freedom in contractual relations must be considered - the parties can agree on anything that does not contradict basic legal norms or their obligations. Furthermore, individual concordat regulations can respond better to the conditions in each country and thus better specify the legal regulation. The bilateral contract with the church, which is part of the legal system of the state and does not contradict the mentioned norms, is a confirmation of the observance of human rights. Moreover, it turns out that the general trend of suppressing freedom of conscience and leaning towards a relativistic view of values in law requires such an adjustment, while this can stabilize and refine it, and specify its application in the conditions of a local church operating in a certain state.

Both conclusions, i.e., the requirement to be based on the long-accepted principle of autonomy and independence of legal systems of civil law and canon law, as well as the validity of bilateral treaties with the Holy See that regulate the field of human rights, are not theoretical considerations that should fill the free time of legal scientists. I will allow myself to demonstrate this on the last consideration during this lecture: on a possible concept of protecting freedom of conscience in Slovakia through a bilateral agreement with the Holy See.

The idea to regulate bilaterally, contractually, and specifically with the Holy See in Slovakia the possibility of applying conscientious objections is due to those arguments without a doubt correct and very necessary. In the first place, it could be seen a few serious examples and tendencies that shift and change the traditional Christian view of the world and moral principles in Europe. The essence of the matter is that Slovakia is a living part of this Europe and will not influence it other than by what we have in ourselves as people living here, and hand on heart - are we not far enough from understanding Christian reality today?

And in addition, the principle applies, certainly already in the decisions of the European courts, that if a certain opinion prevails in most of the states of the Union, even in the moral area, it will also be applied to a state that might not identify itself with it.

The only possible guarantee of sound law remains an international treaty as an external agent of Slovak law operating

and based on the well-known principle of pacta sunt servanda. I note in this context that even if everything important does not create a law in our lives, the law significantly shifts human evaluation and thus affects the conscience of a person, the first of his values.

I will return to the application of the conclusions to a specific Slovak example of conscientious objections. It mainly concerns the issue of a respecting the principle of independence and autonomy of civil law, which has been somewhat forgotten.
It is well remembered the discussion held in Slovakia and in the European Union about the draft agreement on conscientious objections a few years ago… It was perhaps a good attempt, but it concealed at least two fragile and unsustainable legal conceptual constructions related to the autonomy of legal systems.

First, the agreement had the ambition to be directly enforceable. This means that the civil state judge should have relied directly on it in his decision. Anyone who wanted to raise a conscientious objection could therefore (though of course not an obligation, but still, everyone's right) draw only from the spectrum of the Church's moral principles, regardless of their beliefs. This objection was heard many times in the form of whether an unbelieving person also has a conscience in a reality and, therefore, as a strong request to regulate these matters with a law valid for all.

Second, the agreement referred to the magisterium of the Catholic Church and its religious and moral principles. This would mean that the judge would have to proceed from these principles, knowing them, interpreting them and be bound by them, which is in direct contradiction to the constitutional law of the Slovak Republic and does not respect the autonomy of the civil system of law and the canonical system of law.

With a more precise construction, perhaps the first of these objections could be explained, but it would remain sensitive. However, the second of the mentioned objections is, in my opinion, correct, because the autonomy of the legal systems of civil law and canon law is neither possible nor appropriate to violate, or to break this principle legislatively; it is a double-edged sword.

However, even this matter has a solution. The future agreement on conscientious objections could respect the idea of the autonomy and independence of civil law and the norms of the Church, including canon law, which is too strongly rooted in consciousness. It would not have to refer to another normative system in this way but could contain the agreement of both parties on the inviolability of specific, mutually agreed principles, on defined elements of the Church's religious and moral principles. Examples of principles protected by treaties could be:

a) the principle of inviolability of human life from conception to natural death. It would mainly concern employees in the healthcare sector, healthcare institutions and patients. It would be recommending, prescribing, distributing and administering pharmaceuticals, performing or cooperating in activities whose primary purpose is to cause artificial termination of pregnancy at any stage or unnatural death.
b) the principle of respect for human life and for its transmission in its natural distinctiveness and uniqueness. It would mainly concern employees in the healthcare sector, scientific workers, institutions, but also the entire public. It would be participation in an artificial or so-called assisted fertilization, genetic manipulations, eugenics, embryonic human cloning, sterilization and all activities serving contraception.
c) the principle of freedom in the educational and educational process, in counseling and educational activities. It would mainly concern teachers, parents, children, schools and the wider public. It would be teaching, recommending and preparing activities contrary to the moral principles of the Catholic Church in the area of sexual morality, as well as the teachings of the Catholic Church in the theological area.
d) the principle of protection of marriage as a union between a man and a woman, which aims to create a permanent living community, ensuring the proper upbringing of children. It would mainly concern lawyers, clergy, adoption and other institutions, but also the wider public. This would be the performance of advocacy, judicial, guardianship and tutoring activities.
e) the principle of protection of the confessional secret and the entrusted secret, which was entrusted orally or in writing under the condition of confidentiality to the person entrusted with pastoral care. It would mainly concern clergy and persons performing similar activities. It would be an obligation to testify before criminal authorities or civil courts.
f) the principle of respecting the freedom of religious acts and the use of religious symbols. It would mainly concern the public, shops, the military, schools, and other institutions. This would be the use of religious acts and symbols in public in a negative sense and as an exception to the prohibitions established by law.

The future agreement could stabilise that the Slovak side will respect these principles and guarantee them in its domestic legal order and laws. The State should therefore have the obligation arising from the international agreement legislatively, through national law, laws, to ensure now and in the future and regardless of changing political opinions, to legally enforce, or not sanction, the fulfilment of legal obligations by people who in their conscience have a reservation against the violation of such principles. A judge who will resolve such a dispute would once again calmly rely on the law of the state, by which he is constitutionally bound, on civil law and not on the teachings of the Church or canon law, which according to our constitution does not bind him in any way.

It should be noted that such legislation does not apply to the merits of the case, simply for example whether abortion is allowed or not, but will clearly address the possibility of refusing to participate in it

3 Conclusion

The requirement to be based on the long-accepted principle of autonomy and independence of legal systems of civil law and canon law, as well as the validity of bilateral treaties with the Holy See that regulate the field of human rights, are not theoretical considerations only but it is an increasingly important support and symbol of distinction in the Slovak, and not only Slovak, legal order.

The Basic Treaty with the Holy See, and in general also international, European, and national legal norms protecting freedom of conscience and freedom of religion, establish the obligation of the state to guarantee the possibility of the believer's behaviour in accordance with the moral and religious principles of the Church.

However, the principle of autonomy of the legal systems of civil law and canon law, generally accepted in the minds of experts and laymen, leads to the conclusion that such complex matters as rights related to conscience, for example in the areas of genetics, or any interference with the inviolability of life, must be regulated as clearly and at the level at which specific and clearly sanctionable legal obligations are regulated in the same area.

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