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Kanonisko tiesību pārskats post-sociālisma valstu telpā
1. Daļa

Anotācija. Tēmas galvenais uzsvars tiek likts vienlaikus uz vēsturiskā Kanonisko tiesību likuma filozofijas un tvēruma izpratni, bet tajā pašā laikā autors cenšas parādīt daudzās nianses, kas attiecas arī uz mūsdienu un pēdējo 20 gadu tiesību telpu šajā nozarē.

Abas tiesību politikas - gan tiesību filozofijas, gan Kanoniskās tiesības, un post-sociālisma valstu stāvoklis pārveidošanas procesā uz demokrātisku sabiedrību un šķietami tālejošas reliģijas politikas šajās post-sociālisma valstīs, gan tās loma, gan ietekme regulatīvajā sistēmā tiek vērtēta kopīgi, un tiek piedāvāts aplūkot pēdējo Romas tiesību dzīvo atspulgu – Kanoniskās tiesības šo laikmetu transformācijas procesā.

Apskatot un izpētot pašu Kanonisko tiesību formu un saturu, to, kādus transformācijas procesus tā sevī ietver arī reliģijas un tiesību jomā, kā sader un darbojas līdzās tiesību vēstures piemineklim - Romiešu likumiem, un kā tas ietekmē mūsdienu tiesisko domu, tai pat laikā tiek atzīts, ka gadsimtiem ilgi apgūstot Romiešu tiesības to recepciju un pieredzi, tā ir viena no būtiskām tiesību un sabiedrības individualizācijas daļām, vēl jo vairāk, kad runa ir par joprojām aktuālās post-sociālisma valstu sabiedrisko kārtību un raksturu.

Tās ir tieši šīs Kanoniskās tiesības, kuras atklāj to pārpasaulīgo, garīgo tiesību vērtību, tiesību principu, tiesiskuma, kā arī starptautisko tiesību, gan valsts, gan privāto tiesību struktūru un interpolāru apvērsumu post-sociālisma tiesību politikas gaisotnē.

Saprotams, ka tā kā valsts politiskais režīms mainās kopā ar vispārējo tiesisko domu un uzskatiem, tiek izveidoti, izpētīti un meklēti jauni post-sociālistisko sabiedrību modeļi, kā arī to avoti, kurus bieži sauc par vēsturisko attīstības periodu un, ja tā, tad šī pētījuma mērķis un rezultāts arī cenšas noskaidrot post-sociālistisko valstu attiecības ar reliģiskajām organizācijām uz Kanonisko tiesību fundamentālās bāzes, kā vienu no pārmaiņu tiesību filozofiskās vadīšanas dibinātājiem. Šajā situācijā darbs tiek virzīts un koncentrēts uz pētījumu klāstu, proti, kanonisko elementu rašanos un deviņdesmito gadu ietekmi uz ekonomiskajām, sociālajām un, protams, tiesiskajām reformām.

Atslēgas vārdi: post-sociālisma valstis, kanoniskās tiesības, reliģiskas organizācijas, Latīņu baznīca, Codex Iuris Canonici, Praeter ius, I integro.

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Overview of canon law in the Post-Soviet Space
Part 1

Abstract. Dealing with the subject of this paper, the main emphasis is placed concurrently on the philosophy and the scope of historical canonic law, while the author attempts, by means of this study, to illustrate those many nuances that could also be relevant to contemporary scholars of law in the above field for the recent 20 years. The study provides a joint assessment of both the policy of law and the position adopted by post-socialist states in respect of their national law in the process of transformation into a democratic society, and also the seemingly distant religious policy of those post-socialist countries, including its role in and influence on the regulatory framework, and it also proposes to take a look at canon law – the last living reflection of Roman law.

The form and content of canon law itself can be the subject of study and discussion of how it is subordinated to, consistent with and functions alongside Roman law, this monument of history of law, and of its effect on modern legal thought; at the same time, it may also be concluded that, if we look at those provisions of Roman law which still remain in force, the experience accumulated in the studies of Roman Law over hundreds of years is only a facet of the body of law. Specifically, those are the provisions of canon law which reveal themselves through the values, principles and customs of law which are subjected to it transcendentally and structurally, also through the inter-polar aspect of international law, in the domain of both public and the private rights.

It is naturally understood that as the national political regime changes, the general legal thought and beliefs change as well, new models and also sources of formation of post-socialist societies are formed, studied and sought for; specifically the historical period of development of law is often invoked, and if so, then the aim and result of this study is to try to clarify the relationship of post-socialist countries with religious organizations as the creator of the chief philosophical motives of law during the times of change. In this situation, this paper is also aimed at the study of a range of specific questions, namely, the genesis of elements of Canon Law and its impact on economic, social and, naturally, on legal reform in the 1990s.

Keywords: post-socialist states, canon law, religious organizations, Latin Church, Codex Iuris Canonici, Praeter ius, I integro.

Characteristics of the national legislative policy in post-socialist countries in the field of Canon law

The novelty of the subject discussed in this paper has originated in relatively stable countries with a developed democratic system where the existing principles of cooperation between religious organizations and the State turned into a sufficiently complex system of historical evolution in the process of looking for compromises in respect of other countries of Eastern Europe. This in itself points towards a number of former observations expressed in mass media countless times since post-socialist countries (often referred to in the literature as *post-communist countries*) are in a situation characterized by specific socio-economic and socio-political conditions for which, it seems, no historical analogies can be found (the term 'post-communist' is in itself somewhat conditional and debatable) [1]. Moreover, the differences between the countries, which are in the process of dismantling the totalitarian regime ,or, looking from a different perspective, the socialist system, or have already dismantled it, are rather serious and complicated, too. In this respect this applies to the range of problems that arise in the field of canon law. First of all, aside from what is being said about the freedom of religious rights and religion, it is not necessary for the former socialist countries to use their dogmas; it is important to know that the situations in these countries, as far as religious organizations are concerned, were not and currently are not identical [2].

Comparatively, in Albania in 1967, churches, monasteries and mosques were closed by virtue of laws and regulations, with any and all religious activities prohibited and the development of '*jurisdiction over atheistic national churches*' proclaimed; at the same time, in Poland, the Roman Catholic Church not only used the enormous support shown by the people, but also retained solid positions in several areas of public cultural life, forcing the Government to take into account the opinion expressed by it actively in respect of all sorts of internal social affairs [3].

It cannot be denied that the policy pursued in respect of religion and church in Slovakia, Czech Republic, and Bulgaria and in a few other former socialist countries, where religion was treated well and where this system of law was recognized, was more liberal than it was supposed to be for countries of the bloc of socialist countries. In these countries, the level of prevalence of religious culture and law, the nature of the tolerance of rights and the popular support for religious institutes was and continues to be quite different from other countries both in terms of internal and external structures and in terms of legal regulation. According to established survey data (*European Value Program*, 1991–2016) [4], during this period of time 96 per cent of the respondents polled in Poland consider themselves to be religious; in Eastern Germany, Czech Republic and Latvia the number of religious persons range from 32 to 38 per cent, while the figure in Estonia is merely about 20 per cent. More precise data were also collected which show that liturgical events were attended no less than once a month by 83 per cent of the Polish population, as opposed to 42 per cent in Slovakia, 35 per cent in Slovenia, 28 per cent in Lithuania, 23 per cent in Hungary, 17 per cent in Eastern Germany, 13 per cent in the Czech Republic and 12 per cent in Latvia, which too has left an impact on the transformation of provisions of canon law in these processes [5].

The observation of religious social processes in post-communist countries of the Central and Eastern Europe, however, allows identifying a sufficiently large number of indicators common for the whole region and for each area of rights following in the wake of religion. Obviously, here the pressure exerted on the expression of religious feelings at different levels created a new situation for the recognition of social and existential values in religion as well as in church services and ceremonial events. Although the changes are much more focused on the social level rather than on the individual level, with time, religion and the resulting policy of rights start playing a greater and more important role in the socio-political area, and the restoration of the religious institutional structure mainly applies in the form of personal attitude, including compliance with the ordinances laid down by certain canons. Social disappointment, the inability of these countries of the Eastern Bloc and of their governments to handle a number of exacerbated problems, led to the emergence of the hope of setting up *informal* research institutes of law not related to the former regimes: in some countries, in the former socialist countries in the first place, where there even existed local centers for the studies of law until the late 1990s, and at some places even until the beginning of this century; in spite of

this, it was the Church with the *new old* Codex Iuris Canonici which turned out to be more structured and mobile among such institutes [6].

The internal indicator of the level of confidence in the Church among the population was higher than for other albeit totally different institutes, therefore an environment favorable for the existence and recognition of these ecclesiastical canons was created.

At the same time, there were certain problems that the post-socialist system brought along with it, not to mention all the other negative opportunities, and the most serious problem in the field of religion and canon law, which turned out to be many times more difficult than it could be foreseen at the time of the collapse of the totalitarian regime, was not so much the implacable anti-communists but also the advocates of the old state regime who followed suit and advocated the creation of ecclesiastical administrative units by laying them down not only in the form of law but mainly putting them into a constitutional outfit [7].

This dead-end for social psychology or ethical consciousness that was clearly established by the state community itself; this non-standardized process eliminated in the society the basic ideas about the surrounding legal environment as a centralized apparatus. The potential of law in the field of religion as a powerful factor for political and ethnic mobilization proved to be capable of being implemented at its highest level and added a confessional tinge to conflicts of war which, however, cannot be regarded as essentially religious (in the former Yugoslavia, Trans-Caucasian regions) [8], but rather acts of collision of political power. New independent states emerged along with the changes on the European political map which brought along with them an ever increasing inclination towards sovereignty or at least demanded changes to the existing legislation, dragging church organizations into these processes which despite their restraint were forced to join the public quest marked by uncertainty due to the fear related to the legitimate recognition of these new State structures at least from within before the foreign policy barometer did not start showing a climate favorable for those countries. An individual fitting into this situation must be recognized as prominent, however, although the winds of the past formed an indisputable gap between Western and Eastern Europe. Further on, this aspiration was met on its way by strong resistance from religious administrative centers, on the part of planning the doctrine of law; the conflict between the church metropolis and provinces, the ethnic character of which is fully identifiable, determines in a meaningful way the nature of situations occurring in post-communist law by incorporating them in ecclesiastical law [9].

This situation is made more dramatic by large-scale conflicts between the Orthodox Churches in the aspect of their internal rights and the Catholic Church as a whole, and between the Eastern Catholic Church, which has regained its freedom after an interruption for half a century, or the so-called unionists of Catholic law [10]. However, a characteristic finding should be noted here, viz. that no parallels may be drawn with the Church Union made in Brest in 1596. In this case parts of the Orthodox Church and the Catholic Church subordinated to the authority of the Pope of Rome were united; as it is known, according to this Union, the Catholic Church of Poland was united with the Orthodox Church of Ukraine and Belarus, which at that time was under the control of Polish feudal lords. Incidentally, the unionists were now found in Ukraine and their manifestations were seen less often in Romania and Eastern Slovakia [11].

Besides this, Central and Eastern Europe became an object of strong pressure exerted by various structures of law institutes represented by missionaries as well as from new religious movements, their structural forms, which got a new lease of life in these regions after a decline in various activities, which could be explained by a change of generations and by the passing away of a number of charismatic leaders [12].

According to individual data, the number of persons involved in the processes of transformation of law in Eastern European has grown from 150 people in 1982 to 6,750 today, studying the structure and nature of the ancient Canon Law actively [13]. Church hierarchy had grave concerns which came as a backlash to the quantity of activity of these researchers; resistance to activities from abroad in essence was and became the main direction of activity of Church administrations, which characterizes the necessity of compiling the sources of their laws. As a result, another aspect of controversy appeared in an environment already overloaded by problems. In the course of restructuring post-communist ideas, followed closely by political struggles in all their forms - from those on the level of political parties and the Parliament to nationwide debates, the Church could not remain

outside these processes and as a spiritual leader in these regions it also had to take up a certain stance, which also forced to reconsider the sources of law subordinated to it. In some cases, the supreme ecclesiastical leadership tried to prevent riots or at least called for solving the aggravated problems by diplomatic means (initiatives of the religious leaders of the former Yugoslavia, activities of the Head of the Armenian Apostolic Church and the Azerbaijani Muslim religious leadership during the Nagorno-Karabakh war, attempts by the Georgian and Russian Orthodox Churches, respectively, to prevent a civil war and the armed conflict in October 1993 in Moscow and elsewhere) [14]. However, in several cases religious organizations, in the cases referred to here and in general, bear responsibility for various instances of escalation of the situation and for tension; it is not for nothing that the use of religious slogans and rhetoric in cases of trans-national conflict should be mentioned here, but the perception of their laws and the impact of canons on them, the implicit effect left by the laws on these socially active masses of people is something that is discussed less often or nearly never. In addition to this, in a number of post-socialist societies, religious law institutes with their multi-national character, in each specific case having a deeply echeloned structure, in an authoritarian position in the eyes of the population, with a developed method of systematic transplantation of sufficiently complex ideas into a conventional thread of understanding chose to stand on the side of undeveloped parties and public organizations, becoming particularly attractive to forces seeking to achieve or maintain a position of political power. This generally created complications in understanding the developments in the sphere of law because these seemingly eternal canonical provisions suddenly had to change or, quite the opposite, eventually to start functioning after spending asleep hundreds of years [15].

Finally, a large number of domestic law problems, which had been 'removed from the agenda' demonstratively to a certain extent earlier and tormented under various regimes, were dramatically highlighted after the collapse of the regimes and led to a whole series of regulatory conflicts and occurrence of schisms between churches (in Ukraine, Bulgaria) which, however, has to be separated off from the assessment of Canon Law in general [16]. On several occasions, the internal tension of ecclesiastical law directed both inwards and outwards, is more or less equal to the reflection and heterogeneity of the political and socio-cultural problems that exist in post-socialist communities; this situation is particularly emphasized as peculiarities of historical development due to the unchanging nature of Canon Law. In this case, unlike stable democracies, the so-called 'transitory state' of rights in post-socialist countries creates a 'domino effect' where a particular problem of law sophistry lures into finding another problem in its wake and exacerbating it; new problems then arise, one by one, which are not always localized, there is also no need at all times for a complex solution, which is not something that the structure of Canon Law offers by its very nature [17].

Thus the issues of legal regulation in the mutual relationship between religious institutions of Church law and the State in post-communist systems appear in a range of sufficiently extensive and complex legislative problems the solution for which cannot be confined to legal instruments only.

Canon law of the United States and Western Europe

In the models of national law and canon law of the United States and Western Europe, there exists a philosophical notion about the cooperation of these forms of law based on values that are acceptable for all, are clearly recognized, and respect the view of the majority in post-communist societies. This is seen less often in the case of Central and Eastern European countries [18]. These values, such as the freedom of conscience and religion, the right to practice not only any religion but also to express oneself freely (either independently or by forming a public group) about one's religious feelings, to act in accordance with one's religious beliefs or to prefer not to belong to any religious organization, describe the sphere of law which has to be faced today by the notionally ancient yet centuries-old layer of canonical provisions. Every member of the society - not just a national of one country or another, is equal before law irrespective of their religious belief; the limits of religious freedom are also determined precisely by law only, and only insofar it is in the interests of protecting one's health and life as well as maintaining the public order [19].

The State undertakes to respect the structure of internally religious organizations, guarantees non-interference on their part into the internal

affairs in the overwhelming majority of cases, as well as provides for respecting religious minorities and their different rules of law which differ fundamentally and doctrinally. In a number of cases this systemic relationship between the State and the Church is based on a philosophy that recognizes the idea of the primacy of personality over the State and on the fact that the stronger a country is, the greater the well-being of its citizens is too, and as a consequence of this, the rights and freedoms of citizens have been preserved, which upon closer study do not overtly contradict the ancient prescriptions of Canon Law at all [20].

If we take into account the fact that according to several polls, the majority of the population in post-socialist countries is of this opinion, with or without reservations, one may also talk about the appropriateness (acceptance) of the Western model of law in the relationship between the Church and the State in the Eastern reality as well. Attention should be paid increasingly to the fact that, even considering the transparency of this basic relationship, the application of the presented examples in practice demonstrates the differences among members of the society in understanding these issues and how ineffective the legislation of post-socialist countries can turn out to be in dealing with specific issues arising in the field of religion and in the subsequent review of canon law.

As the majority of countries, first of all post-soviet countries, adopted legislation on the freedom of conscience and religion in the late 1980s under the influence of the romantic wave of the 1990s when the liberation of the Church from dependence on the State and from the yoke of the totalitarian regime was seen as primary tasks which was more important than creating individual jurisdiction, the Church as a whole should react to the complex range of issues relating to relationship with the State as well as against various religious organizations [21]. The topicality of this age also illustrates the drag which opened the chest of old canon law to apply the provisions of canon law, re-assess them in a new light, and adapt them to the needs of the society. However, without re-declaration of the existing laws, without developing a mechanism to ensure their functioning, the legal problems that arise in harmonizing the relationship between the State and the Church require developing different areas of public and private rights, improving the court system and increasing the efficiency of the executive body.

However, in this context, instead of talking about certain sections, we need to talk about the basic principles, about the utilitarian views in respect of the further creation of canonical rights. One must make sure, for example, that the understanding of the principle of separating Church from the State in the West and in many Eastern European countries, mainly in post-communist countries, is fundamentally different. While Western European countries only discuss separation of the Church from the State, this has already been laid down in the Constitution elsewhere, for example, of the Russian Federation, Ukraine [22].

Obviously, in the first case it is the equality in the relationship between the State and the Church as subjects that is highlighted rather than the nature of co-existence of subject – object, which also touches upon the structure of the very Canon Law code, the division of its sections and chapters. The content turns out to be even more serious as it serves as the principle of separating the State and the Church. In the majority of State systems represented, such a separation means non-identification of the State with any religions and religious organizations, its neutrality with regard to religious institutes, and the autonomy of the State and the Church as spheres falling within the competence of its rights [23]. This separation does not necessarily mean that there is no mutual assistance and support in the relationship between the State and the Church and in their various conditions in which these two institutes of canon law have nothing in common in respect of each other.

In most cases, the State either directly finances the Church by allocating funds to keep some creative institutions, for the construction of prisons or for the keeping of (military) chaplains, hospitals, boarding schools as well as for the construction and restoration of sacred buildings. In other words, the State occupies the position of favorable neutrality: not only does it highly appreciate the role of the ecclesiastical social services and the historical significance of the Church in the formation and development of the nation but it also appreciates the importance of religion in national morality and in the development of culture which, among other things, is also based on the recognition of their rights [24].

However, it is not always the case that the signs of an antagonistic influence on the separation of the Church from the State are seen in post-socialist societies and in the distribution

of their legislation which denies the existence of what seems to be a partnership between these institutes. Sometimes the relationship between them is viewed as a unilateral process in which the State has the influence of its rights on the Church, its use for the implementation of various political projects which excludes the possibility of constructive assistance to the Church by the State - it is unlikely that the resultant pushing away of the rivals from the scene could be regarded as assistance to the dominant churches from the State. Moreover, as a result of the back-pressure from the socialist regime the Church became very weak in its fields of activity and generally its administrative control over the districts handed over to it for control, became incomplete, inconsistent in law and unconvincing in terms of the postulates of power. The Church, with its volumes of canonical rights, simply was unable to develop '*post-totalitarian theology*' of its kind [25] and to put it into practice in the pressing absence of time, which is why it requires general support from the public and the State in the area of jurisdiction as well. The latter needs assistance from the Church in its own way, due to the continuity and persistence of its canonical rights, which are the only ones that can play an important role in coping with difficult social pathologies in a post-communist society. It is believed that Western European countries have precisely this experience in regulating the processes of the State and the Church which would allow for the use of more productive approaches to prevent a whole range of problems from arising here where the post-soviet space still exists or is apparent.

Another series of problems that also requires immediate regulation of rights in the area of Church law relates to the historical peculiarities of the countries of Central and Eastern Europe. Most of these countries turn out to have a Christian culture dating back a thousand years or even more, in which the political nation has formed around a particular ethnic group and where a church, or, less often, two churches, has played a special role in the historical processes in these countries [26]. Now, after the prohibition of regimes, after the majority of the churches have endured countless limitations of their rights and deliberate spiritual selection of the policy of legislative power as well as the censorship of speech, beliefs and rights, dioceses -the church centers, are objectively unable to give adequate responses to the challenge of time and to compete with religious institutes with a strong corpus of State support, safe funding, charity experience, modern communications and flexible approach to law.

Such a situation requires carefulness not only in the hierarchy of law defined by the Church and monism but also in the general public in respect of possible changes in culture and in respect of the confessional configuration of the State. Without looking deeply into the question of how reasonable such concerns of carefulness are, let us note an important detail in this context: the concerns of the society and of the Church are often stimulated by prohibitory activities of the legislative and executive bodies [27].

Such a vectorial legislative regulation for the preservation and development of the spiritual and cultural traditions of individuals is ineffective, or, at least its efficiency can be debated, can be hardly approved by any other traditions, and this seems to be rather unconvincing in the light of the existing documents in the field of international rights to which the countries that regained independence in the 1990s, current Member States of the European Union, acceded [28].

Obviously, the Western European system may turn out to be rather useless, due to the continuity of the ages which mark the stability of the religious law bloc, for addressing this issue in a constructive way. Countries can also get involved rather actively in the process of cultural preservation, which is a direct canonical formation, by taking on the major concerns in the field of public morality (ethics), by preserving sacred art and architecture in the secular aspect, as well as by establishing appropriate educational institutions and improving professional skills acquired therein etc., without prejudice to non-autochthonous religions which have a distinct and specific legal environment of their own [29]. Concrete mechanisms providing for the presence of religious law institutes in the army, at hospitals, schools, in the penitentiary system, and in mass media may turn out to be no less interesting. A situation where the Church, whose followers form a major part of the population of one or another country if not the majority of the population, seems to have to emphasize the importance of its historical traditions and the vital succession in matters of jurisdiction can hardly be regarded as normal [30].

To be continued in the BJL issue 2017- 4 (47)

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