***Kristaps Zariņš**, Mg.iur.,doktora grāda kandidāts*
Rīgas Stradiņa universitāte
Latvijas Evaņģēliski Luteriskās baznīcas
juridiskās darba grupas vadītājs
Rīga, Latvija

Kanonisko tiesību pārskats post-sociālisma valstu telpā 2. 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.*

***Kristaps Zarins**, Mg.iur, Doctoral candidate*
Riga Stradins University
Head of Legal Commission of the Synod
of the Evangelical Lutheran Church of Latvia, former
Riga, Latvia

Overview of canon law in the Post-Soviet Space Part 2

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.

Church and the State, and their relationship

Further, it may be necessary for unstable post-socialist countries to ensure, as adopted in western systems, that control procedures such as religious institutes have to be established to ensure that relevant legislative acts are complied with, and that religious freedoms that could cause harm to personality, society and the State are not abused. The lack of such procedures and the lack of their development are known to be incompatible with both subjects of law, the Church and the State, and their relationship, since in one case interests of the State are clearly undermined, while in the other case power is abused to restrict religious organizations and believers unduly, which is what Canon Law serves for today [31].

It is also seen that problems occur in the area of post-communist countries, in the course of underdeveloped legislative processes and due to the existing extent of imperfections in the development of rights, which are not topical and swamp Western Europe; nevertheless, they need to be addressed from the viewpoint of national law. For most post-socialist countries, the most acute problem might be restitution of church property (not limited to cultural and architectural buildings) that was nationalised at a point in the past (not only cultural and architectural buildings); this caused a heated debate and exacerbation in relationships in such different countries as Russia and Slovenia, Hungary and Lithuania, Ukraine and the Czech Republic, as well as in Latvia [32]. However, the question of how to adapt the bundle of canonical provisions developed over many centuries in these circumstances was considered less intensely or nearly not at all. Undoubtedly, a post-socialist society has a large and independent task to be accoplished in order to improve the relationship between the systems of Church and State by reconciling not only the international experience in matters of jurisprudence and the democratic principles of law but also the personal traditions in the interests of citizens and the State. This process of working towards forming a specific understanding of the procedure of Canon Law, considering that the development of social standards increasingly puts new issues on the agenda, makes one to return to understanding the Codex Iuris Canonici in the light of the 21st century and in the era of modern technology [33].

As a follow-up to the proposed subject of the study, titled Characteristics of the National Legislative Policy in Post-Socialist Countries in the Field of Canon Law, which deals with the Code of Canon Law in the most direct manner, a paper representing direct study of law, using sources in English and Latin, with Latvian used as the third language for purposes of parallel translation, is provided [34]. However, it must be noted at the outset that the original, authentic text is written in Latin, which is also the official version that the churches of several countries, and not only churches but also educational and research institutes, have tried to get rid of during the last century. Two acute needs can be given as the reason for this: the first is that this text would actually have to be used in real life in the Catholic churches in all countries and by all Catholic nations and nationalities of the world; secondly, this code as the successor to the Corpus of 1918 is a unique material for studies of Roman Law [35].

A translation [of Latin texts] into Latvian in a legal discipline is a rarity; a part of the most important sections has been translated (a total of 144 sections), including the Introduction or a part of Book 1. The whole Code consists of 1752 sections in 7 books. A similar law translation with notes in Latvian is not available in the Baltic States. The text is complex enough for the direct attribution of a Justinian proverb: “6 come with a glossary” [36]. In order to have the Code translated as clearly as possible and at the same time more precisely, the Vatican State placed a special order for the 20th century translation of the Code with the American Canon Law Association in Washington which consisted of an expanded group of researchers (eight persons). The translation was completed on 3 October 1983, published in the same year; however, it was published repeatedly due to ambiguities in 1995, with a parallel text in Latin, despite the fact people have already been involved in the process of translation of this Code alone for nearly a century, the translation of various individual parts of the Code has been going on for centuries due to its peculiarities of legal discipline [37].The key importance of the Code is that, besides what has already been noted, each section or canon, as it is called in the Code, carries with it a huge amount of legal baggage, it is like a thread of yarn from a ball dating back more than fifteen hundred years; that is to say, it is here today after surviving, in one way or another, practically all political regimes of our era, therefore all the most prominent law experts of our era have more or less

drawn their information and knowledge from these canons, building more stable or more disputable individual laws afterwards, and finally – developing national constitutional law. This Code would undoubtedly have its effect in the field of education since many present-day lawyers in Latvia, as well as lawyers in other post-communist countries, apparently wishing to express themselves as distinctively as possible, use the word canon in all cases when talking about any legal provisions, in parallel with the word section, article/clause and so on, which has a completely different meaning. The reason why the Code uses the word canon instead of section can be explained only and solely by the fact that canons and Canon Law, which should also be distinguished from ecclesiastical law, contains only and solely provisions for solving issues of the internal ecclesiastical life [38]. If one may say so, from the perspective of a historic age, these canons and volumes of provisions reflect the contemporary live Roman Law in terms of practical application and study in the most direct way.

For this reason the author of this paper highlights what may seem to be the most essential part of the Code, leaving the rest for further studies.

Codex Iuris Canonici Book 1

Canon 1 from Book 1 (General Provisions) of the Codex Iuris Canonici states that the canons of the Code refer to the Latin Church only. Canon 2 in turn states that the Code basically lays down the rules of ceremonies which are observed in liturgical events. In this Code, the present liturgical norms remain in force unless said liturgical norms are not in conflict with canons of the Code [39]. It should be mentioned here right away that studies of Latin concepts and ancient texts show that the words ceremonies "and liturgical norms should be used in a different sense. In the Latin legal system, this would be understood in such a way that the word ceremonies should be replaced by the word process or procedure, while liturgical norms should be replaced with ecclesiastical norms, while preserving the use of norms in the text. In the times of Justinian, ecclesiastical norms were also defined as national (state) norms. The true and live status of Canon Law, including its effect on international law, its continuity and topicality is characterized by the next canon, i.e. Canon 3 which states that canons of the Code do not abrogate or diminish the pacts initiated by the Apostolic Throne with nations or other public organizations. Consequently they are currently in force, notwithstanding any provisions of this Code to the contrary. The aforementioned use and effect of the Code is particularly reinforced by Canon 4 which states that the rights and privileges acquired thus far will be preserved by the Apostolic Throne for physical and legal entities alike, and they remain as complete as they function currently and are not cancelled unless they are specifically abolished by canons of the Code. A direct reflection of Roman Law is found in Canon 5 in the Introduction to the Code, without which the fundamental Roman-German system of law and the nature of law in time within the meaning of praeter ius cannot be imagined, Clause 1 of which stipulates that notwithstanding the provisions of these canons, the existing universal or specific customs which are not recognized by canons of this Code, are completely prohibited, and they will not be restored in the future. Any other customs are also considered to have been prohibited unless the Code stipulates otherwise or they have existed for many centuries since the start of their use, if they cannot be revoked by their very nature due to the circumstances and persons. Clause 2 provides that the existing universal and special customs, which exist contrary to law (praeter ius), will be preserved. Canon 6 determines the chronological succession of the Code and meaning of the formulation es integro as it is used in modern legal systems: Upon the entry into force of this Code, the following will be cancelled: Canon Law, proclaimed in 1917; other universal and special laws, notwithstanding the provisions of this Code, unless specifically provided otherwise by special laws; any other universal or special criminal laws issued by the Apostolic Throne if they are not included in this Code; other universal disciplinary laws which relate to a matter governed by this Code [40].

Conclusion

In terms of the number of followers, the Catholic Church of Latvia is in the second place, while it has a total of one billion followers in the world. Their management is concentrated in the Vatican, occupying a territory of 44 hectares according to the Treaty of 1929. It is a permanent, independent state. Its territory also includes cathedrals, castles and other buildings located

outside the territory of the Vatican in Italy but subject to the Vatican. The most remarkable and largest building of this type is the Castel Gandolfo Palace which is the Pope's headquarters. The Vatican State is recognized by almost all countries of the world belonging to the Christian faith, and it maintains diplomatic contacts with all countries except for Japan. Catholics from all over the world are considered by the Vatican as its citizens [41].

As a subject of international law, the Vatican State is now but a small part of what it used to be in the past. This ecclesiastical state originated from a plot of land given by Pippin the Short to a bishop in Raven as a gift. The great State of Church which covered much of the present-day territory of Italy grew out of this area over centuries. However, in the 19th century, the fate of this State was complicated due to the merger of the Italian nation. The Italian nationalists demanded that the whole territory of Italy be subjected to a single power, and thus there arouse a dispute between the nationalists and the Pope not just for territory, but also for Rome, which was claimed by the nationalists as the capital of Italy. Although the ecclesiastical state received support from outside, the nationalists ultimately won in 1869 and Pope Pius IX locked himself up in the Vatican regarding himself as a prisoner [42].

A peculiar situation had thus occurred between the two powers: although the fights were actually over, no peace was concluded yet. The two powers remained in this situation for a long time. It must be said, however, that it was right that the territory of the ecclesiastical state did not remain in its former size. What would it have done later, during social movements, economic crises and revolutions that affected Europe? These events would have destroyed it and consequently the spiritual power would have lost its brilliance.

Immediately after the unification of Italy, the Government started negotiations in order to reach an agreement with the Pope. They ended without any success, however, since Pope Pius XI demanded the restoration of the territory of the Church in its former boundaries. However, in order to settle the situation, in 1890 the Italian Government passed the so-called Law of Guarantees according to which the Government guaranteed inviolability, extraterritoriality, and gave the Pope the status of the subject of international law, assured compensation of 3.5 million lire a year for the territories that had been taken away. According to this treaty, the Pope was ius legationis, ius tractatumet, ius belli acpacis.This peculiar, unresolved situation continued to exist until 1929 when Mussolini entered into the so-called Lateran Treaty with Pope Pius XI consisting of three parts:

1) the Pope waives the claim for the territory of the supreme ecclesiastical state;

2) the treaty is a concordat between the Government of Italy and the Pope. The Catholic Church acquired the right of the established church in Italy; it is the official church while any other churches are merely permitted to exist;

3) a financial, economic agreement providing for payments and matters of compensation. The Government of Italy agreed to paid 750 million lire in cash and 1 billion lire in securities as compensation for the former territory of the former territory of the ecclesiastical state [43].

There exists a unit between the Vatican Government and the Pope, represented by the Pope, which is even firmly grounded in laws. The Vatican State was also created in 1929 by virtue of a special papacy constitution. Here the Pope is the sovereign, and the administration is handed over to a special board of cardinals managing economic and administrative matters. Spiritual and secular institutions are strictly distinct from each other, and the latter are based on special laws. Spiritual institutions are based on Canon Law divided into ius divinum, ius humanum; the latter includes Codex Iuris Canonici" the provisions of which regarding the sources of ecclesiastical law, but not limited to it, date back to the time when the Church was recognised by the secular power during the reign of Constantine the Great in the 4th century; the beginning of law practices of modern era dates back to that time [44].

Conclusions

Considering the reflections provided above and the conclusions drawn in the study, it may be concluded that the aggregate of the post-socialist countries and the process of legal and political changes in these countries cannot be imagined without the presence of religious organisations and the opinion expressed by them. It is further emphasized in the paper that deeper roots for this can be found directly in the historical dimension, more specifically, in the customary rights which are acquired and developed via the positive rights of Canon Law, with Codex Iuris Canonici considered as the direct source of the latter. The

authority of this Code is linked to and reiterated on several occasions directly in the course of reception, transformation and reflection of Roman Law under Justinian, which is discovered indirectly in Canon Law, with the help of reinforcing basic elements, as a set of laws taken directly from Latin Law and which is also capable of integrating in the field of modern law policy both in the national and international form.

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