

CHAPTER II

THE LEGAL REGULATION OF RELIGIOUS SYMBOLS IN THE PUBLIC SPHERE IN THE CZECH REPUBLIC



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1. Introduction

The Czech Republic is among the regions that passed into the Soviet sphere of influence after the Second World War. From the Communist Party's seizure of power in February 1948 until the Velvet Revolution of 1989, freedom of conscience and religion were deliberately restricted. At this time, religious symbols were largely pushed out of public life. This study examines relatively recent legislation that stipulates the protection of human rights, and religious freedom in particular.

This study examines the laws and by-laws of Czechoslovakia (until 1992) and the Czech Republic (since 1993), treaties concluded at the national level (tripartite agreements between church representatives and the relevant representative of state power), and national case law (although some cases involved proceedings before the European Court of Human Rights).

Our research mainly employs the analytical method to examine legal solutions in the Czech Republic. Chapters addressing individual countries in this book allow the editors to synthesize the knowledge gained through comparison. We slightly deviate from this scheme by adding a few points that reflect other topics specific to the Czech situation.

Damián Němec (2021) The Legal Regulation of Religious Symbols in the Public Sphere in the Czech Republic. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere*, pp. 39–72. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psr_2

2. Historical, social, cultural, and political context of the presence of religious symbols in public spaces

After the Communist Party gained power in February 1948, the construction of a unified Czechoslovak legal system was established in place of the interwar dual system (with Austrian law in the Czech lands and Hungarian law in Slovakia) by the mid-1950s. This also included the new religion law, which caused legal discontinuity on the one hand,¹ and left many *lacunae legis* on the other, and was filled with administrative arbitrariness until 1989.

Although the right to freedom of conscience and religion was legally enshrined in both the Czechoslovak constitutions of 1948 and 1960,² in practice, state authorities did not respect these rights; on the contrary, they massively violated them.

The so-called Velvet Revolution in November 1989 laid the foundation for the creation of a new legal order, including the new religion law. Thus, after the fragmentation of Czechoslovakia in 1993, the constitutional system of both successor states remained similar.

2.1 Initial transition phase—elimination of the most discriminatory measures

Even after the state system was changed, it was decided to raise legal continuity. Thus, it was necessary in the first (and very hectic) stage to reduce glaring injustices by means of further amendments, which were mostly established by 1990.

Above all, penalties for the abuse of religious functions were abolished from criminal law at the end of 1989,³ and shortly afterwards, the requirement of state approval for clergy activities was also revoked.⁴

In addition, civil service was introduced in place of military service,⁵ church schools re-emerged,⁶ and faculties of theology were reintegrated into universities.⁷

1 Above all, Act no. 218/1949 Sb., on economic indemnity of churches and religious communities by the state (Act on Churches and Religious Communities), of October 14, 1949, § 14: 'All ordinances that regulate the legal relationships of the churches and religious communities are repealed.'

2 Constitutional act no. 150/1948 Sb., Constitution of the Czechoslovak Republic; Constitutional act no. 100/1960 Sb., Constitution of the Czechoslovak Socialist Republic.

3 Act no. 159/1989 Sb., which amends and supplements the Criminal Code, the Act on Offenses and the Criminal Procedure Code.

4 Act no. 16/1990 Sb., amending Act no. 218/1949 Sb., on the economic indemnity of churches and religious communities by the state.

5 Act no. 73/1990 Sb., on civil service.

6 Act no. 171/1990 Sb., amending and supplementing Act no. 29/1984 Sb., School Act.

7 Act no. 163/1990 Sb., on faculties of theology.

2.2 Construction of a new democratic legal basis until 1992

The constitutional foundation was first laid through the Charter of Fundamental Rights and Freedoms.⁸ Article 15 of the Charter enshrines the guarantee of freedom of thought and conscience, scientific research, and the creation of art, as well as the right to refuse military service on grounds of conscience or religion. Article 16 strongly guarantees both individual and corporate religious freedom. This document continued to play a very important role in the case law of the Constitutional Court.

The special act on churches and religious communities (further “CRC”) was adopted in 1991.⁹ The law was rather short and favorable for the activities of the CRCs. The minimum number of signatures necessary for an application to register as a CRC was further regulated (and in different manners) by the national assemblies of the individual parts of the Czechoslovak Federation: in the Czech Republic 10,000 adult members with permanent residence were required, while in the Slovak Republic up to 20,000 people were necessary, which in practice (according to the number of inhabitants) was four-times more demanding.¹⁰ Based on this law, twenty-one CRCs were registered or reciprocated. For the first time, this law legally guaranteed the protection of confessional and similar secrets, especially in criminal proceedings.

The manner in which the right to perform civilian instead of military service was exercised was further regulated at the end of 1991, maintaining respect for individuals’ conscience and religious beliefs.¹¹

Conscience protection developed gradually in the healthcare field. Although the right to informed patient consent has been enshrined since 1966,¹² it was given little respect in practice, though this changed with amendments to the law from 1990 to 1991.¹³ In 1991, professional chambers were established in the medical, dental, and pharmaceutical fields. They gradually developed their codes of ethics, which, to a limited extent, made it possible to exercise conscientious objection, but only for individuals (dental and pharmaceutical chambers in 1992, medical chambers in 1995).¹⁴

8 Constitutional act no. 23/1991 Sb., which introduces the Charter of Fundamental Rights and Freedoms as a constitutional law of the Federal Assembly of the Czech and Slovak Federal Republic.

9 Act no. 308/1991 Sb., Act on Churches and Religious Communities.

10 Act of the Czech National Council no. 161/1992 Sb., on the registration of churches and religious communities; Act of the Slovak National Council no. 192/1992 Zb., on the registration of churches and religious communities.

11 Act no. 18/1992 Sb., on civil service.

12 Act no. 20/1966 Sb., on public health care.

13 Act of the Czech National Council no. 220/1991 Sb., on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Chamber of Pharmacists.

14 NĚmec, 2013a, pp. 92–97.

2.3 Modification of the legal regulation of freedom of conscience since 1993 after the dissolution of Czechoslovakia

The constitutional enshrinement of the freedom of conscience remained unchanged: while the Constitution of the Czech Republic itself does not contain provisions on fundamental rights and freedoms,¹⁵ Article 3 incorporated the current Charter of Fundamental Rights and Freedoms of 1991 into the constitutional order of the Czech Republic.¹⁶

Military service has changed significantly; the Czech army was professionalized in 2005,¹⁷ which is why the civil service was discontinued.¹⁸ The possibility of registering for the civil service due to conscience or religion is only retained for military service in exceptional circumstances: the proclamation of the state of emergency as a state of danger to the state or a state of war, but in fairly limited administrative circumstances and in a very short period.

Even greater changes have taken place regarding the possibility of conscientious objections in the field of healthcare. The new institute respects the previously expressed will of the patient, which is enshrined in the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: the Oviedo Convention on Human Rights and Biomedicine of April 4, 1997, and it was ratified in the Czech Republic in 2001.¹⁹ However, for a long period, this institute was not enshrined in ordinary laws. In 2011, an extensive health care reform that took effect on April 1, 2012, was carried out despite strong opposition from left-wing parties, in particular through the Health Service Act. The Act was challenged by an action before the Constitutional Court, which modified one of the provisions of the Act and presented a constitutionally compliant interpretation of the challenged provisions, which it did not change.²⁰

The new Act on Churches and Religious Communities understood the right to guarantee the confessional and pastoral secrecy for clergy as one of the so-called special rights of the CRCs.²¹ This norm was echoed in the Criminal Code,²² in which § 368 exempts the clergy of the CRCs with this special right from the penalty of not

15 Constitutional act no. 1/1993 Sb., Constitution of the Czech Republic.

16 Resolution of the Presidency of the Czech National Council no. 2/1993 Sb., on the promulgation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.

17 Act no. 585/2004 Sb., Military Service Act.

18 Act no. 587/2004 Sb., on the abolition of civil service.

19 Communication from the Ministry of Foreign Affairs no. 96/2001 Sb.m.s., on the adoption 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.

20 Němec, 2013a, pp. 105–112; Madleňáková, 2010, pp. 102–130.

21 See below 2.4.

22 Act no. 40/2009 Sb., Criminal Code.

reporting some committed crimes, and in the Code of Criminal Procedure,²³ in which § 99 forbids hearing such a clergy as a witness.

2.4 Modification of the legal regulation of freedom of religion since 1993 after the dissolution of Czechoslovakia

The 1991 Act on Churches and Religious Communities guaranteed a legally equal position of the CRCs through the instrument of single-stage registration. However, the executive law established difficult conditions for registration, with a high number of signatures at 10,000 members. As a result, several groups of believers of the same faith had no legal option at that time to be recognized as a religious community.

The newer 2002 Act on Churches and Religious Communities²⁴ distinguishes between simple registration and the recognition of so-called special rights, which allow access to the public sphere. Thus, a two-stage registration has been introduced. For simple registration, one only needs signatures from 300 members, but for the recognition of the so-called special rights, the CRCs must meet other difficult conditions, with the number of signatures equalling of 1 ‰ of the inhabitants of the Czech Republic according to the last census, which currently means slightly over 10,000 members. On the one hand, the equal position of the CRCs is called into question; on the other hand, this regulation could better correspond to the diverse needs of the CRCs than a uniform solution. Based on this law, another twenty-one CRCs were registered before the end of September 2021.²⁵

Part of religious freedom is also the economic autonomy of CRCs. The topic of restitution of the confiscated church property was strongly politicized. Therefore, it was not until 2000 that the law on the restitution of confiscated property of Jewish religious communities was adopted, which has a clear character of restitution.²⁶ The economic indemnity of other CRCs was only addressed by the 2012 Act on Property Settlement,²⁷ which is clearly future-oriented, with the aim of achieving economic separation of the CRCs and the state by allowing the state to restore part of the confiscated property and pay the agreed financial compensation for unissued property. Compensation is not intended primarily to redress past wrongs; to create an economic basis for the future self-financing of CRCs, and therefore non-Catholic CRCs receive a much larger share than would correspond to confiscated assets. This law creates the de-facto impoverishment of CRCs and remains associated with legal and political disputes.²⁸

23 Act no. 141/1961 Sb., Criminal Procedure Code.

24 Act no. 3/2002 Sb., Act on Churches and Religious Communities.

25 Ministerstvo kultury. *Data registrace církví a náboženských společností a svazů církví a náboženských společností.*

26 Act no. 212/2000 Sb., on the alleviation of certain property injuries caused by the Holocaust.

27 Act no. 428/2012 Sb., on property settlement with churches and religious communities.

28 Němec, 2013b, pp. 161–200; Němec, 2019a, pp. 132–143; Příbyl, 2018, pp. 179–191.

3. Axiological and constitutional foundations

3.1 Religious neutrality of the state

The basic definition of the nature of the Czech Republic is expressed in Article 1, paragraph 1 of the Constitution of the Czech Republic of 1992:

(1) The Czech Republic is a sovereign, unitary, democratic state governed by the rule of law founded on respect for the rights and freedoms of man and citizens.

The Czech Republic's religious neutrality is most clearly expressed in Article 2 (1) of the Charter of Fundamental Rights and Freedoms:

(1) Democratic values constitute the foundation of the state, so that it may not be bound either by an exclusive ideology or by a particular religious faith.

The cited provisions of the Czech constitutional order clearly state that the Czech Republic is a material state governed by the rule of law, which is religiously and world-view neutral and therefore secularized (lay). This means that the state both has a postulate of equal (parity) access for all subjects forming civil society, as well as the acceptance of ideological, worldview, and religious plurality. However, this implies that the state should not tolerate a worldview or religion that conflicts with democratic values and values derived from the concept of a material rule of law. Nevertheless, it is obvious that the Judaic-Christian basis of our civilization still operates in Czech society, not strictly normatively, but as a moral and ethical correlate.²⁹

3.2 Protection of the use of religious symbols in constitutional law

The Czech Republic's constitutional law lacks explicit provisions regarding the use and protection of religious symbols. The enshrinement of this right follows directly from Article 16 of the Charter of Fundamental Rights and Freedoms guaranteeing religious freedom,³⁰ the relevant texts of which are as follows:

(1) Everyone has the right to freely manifest their religion or faith, either alone or in community with others, in private or public, through worship, teaching, practice, and observance.

²⁹ Wagnerová, 2012, pp. 84–86.

³⁰ See below 5.2.

(4) The exercise of these rights may be limited by law in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others.

The decisions of the Constitutional Court of the Czech Republic in this regard are still missing.

A representative commentary on the Charter states that in light of the case law of the European Court of Human Rights, the wearing of religious symbols and clothing is understood as a limitable expression of religious beliefs rather than as part of an individual's religious freedom. At the same time, not only the formal aspect is decisive, but also the intention; for example, the headscarf itself is not a religious symbol, but if a Muslim woman wears it specifically in a stable form, it becomes a manifestation of her religious beliefs. In the same way, religious symbols can be a specific arrangement of one's exterior presentation (religious or clerical clothing, clerical collar, hijab, niqab, burkas, beard, yarmulke, uncut hair, kirpan, etc.). However, the specific limits of the application of this fundamental right must be understood in light of the cultural and social contexts of a given state. Although the Czech Republic is a lay state with religious neutrality, it does not share the understanding of French *laïcité*, but rather takes the context of a cooperative model of the relationship between the state and CRCs.³¹

3.3 Religious reservation of the Czech population

The Czech Republic is often considered a highly atheistic and secular country. This characterization is often based on the small number of inhabitants belonging to a religious entity. In the last compiled census in 2011,³² it was optional to respond to questions about religious beliefs and church affiliation. The absence of religious faith was declared by 34.5% of the population, while 44.7% of the population did not answer this question. At the same time, only 1,058 people out of 10,302,215 inhabitants explicitly stated that they subscribed to atheism.³³

The Czech population is predominantly characterized by individualism and there is a strong distance from any form of organized religiosity in Czech society. Therefore, the level of identification of inhabitants with individual CRCs was very low. Czech people are predominantly shaped with practical materialism, but they basically remain believers; however, belief is mostly viewed as highly intimate and is also composed of elements from different religions. Therefore, one can speak more of agnosticism, "aliquidism" (there has to be something), eclecticism, individualism, and superstition.³⁴

31 Jäger, 2012a, p. 380; Jäger, 2012b, pp. 397–398. 416; see below 5.2.

32 In 2021, another census is underway; however, its results will not be known most likely until 2022.

33 Český statistický úřad (2014), pp. 3–6.

34 Tretera, Horák, 2019, pp. 69–71; Němec, 2017, pp. 220–221.

3.4 General attitude of the Czech population towards religious symbols

Religious symbols are therefore conceived in the Czech population from two points of view: immovable traditional Christian symbols are mainly evaluated positively as part of cultural heritage, but similar symbols of other religions and distinctive religious symbols (including striking Christian symbols) used by individuals are evaluated with reserve or negatively.

4. Model of the relationship between the state and the Church

4.1 Basic categories of the system of the relationship between the state and Church in the Czech Republic

The Czech Republic is a secular state in which the principles of non-identification with any religion or ideology (neutrality), parity, religious freedom, and autonomy of religious communities have been legally applied since 1991.

The principle of non-identification (neutrality) can be conceived of as a reaction to the previous Communist regime, in which the Marxist-Leninist ideology played a role of “state religion.” Therefore, the communist regime could be called state religion à rebours. Because of this, no state religion exists in the Czech Republic, nor is there any legal definition of religion. Similarly, a regime of complete (strict) separation of CRCs and the state has never existed in the territory of the Czech Republic. On the contrary, the principle of cooperation between the state and religious entities prevails in the tradition, with the exception of the anti-religious struggle during the communist regime in 1948–1989. The common participation of representatives of state or municipalities and CRCs on national and memorial ceremonies and on important religious ceremonies is acceptable, and is usually organized on an ecumenical basis. All these acts are expressions of peace in society and respect for the religious faith of individual citizens.³⁵

The principles of neutrality and parity are discussed in section 3.1. The principles of religious freedom and autonomy are described below in 5.2. In contrast, the principle of cooperation is not explicitly mentioned either in the Constitution nor in the Charter of Fundamental Rights and Freedoms. However, it is developed in practice, both in ordinary laws and primarily through contracts and agreements, which we will discuss in Section 4.2.

35 Tretera, Horák, 2019, pp. 76–77.

4.2 Contractual entrenchment in international agreements and state treaties

Since the establishment of Czechoslovakia in 1918, negotiations on an international agreement with the Holy See have always been difficult. As a result of these contentious state-church relationships, a special concordat agreement was concluded in Czechoslovakia at the turn of 1927/1928 called *modus vivendi* for the first time.³⁶ After this treaty was flagrantly violated by the so-called socialist legislature of 1949, it fell into oblivion. This is easier to understand because both contracting parties declared in 1990 that *modus vivendi* was no longer considered valid because of the rule *rebus sic stantibus*.³⁷

The minority government of the Czech Socialist Party has tried since 2000 to conclude a new agreement. Finally, a concordat agreement was signed in 2002 (with the nature of a basic agreement), which mostly only petrified the legal *status quo*.³⁸ The House of Deputies refused to approve the ratification of the treaty in 2003, which is why the treaty has never become valid and the signed version is no longer enforceable.³⁹ Over the past few years, the contracting parties have discussed modifications to the text several times, but have so far been unsuccessful.

Although it has not yet been possible to validate a concordat agreement, and although it is not possible under Czech law to conclude a state treaty with other CRCs, another treaty instrument has been used for institutional cooperation concerning tripartite treaties, the contracting parties of which are the Czech Bishops' Conference, the Ecumenical Council of Churches in the Czech Republic, and the competent state body. These treaties regulate cooperation in the fields of the army, prisons, public radio, police, and healthcare. However, a legal problem arises: constitutional law regulating legal sources does not determine the legal status of such treaties.

According to the Act on Churches and Religious Communities of 2002, military chaplaincy is one of the so-called special rights of CRCs. Military chaplaincy was officially founded in 1998 by a tripartite treaty, although the service has existed *ad experimentum* since 1994 in a very unusual way: it is ecumenical, has no missionary activity, is more humanitarian-oriented in close cooperation with psychologists, and is unarmed. Chaplains are sent together by the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic as joint representatives; there are a number of chaplains for individual churches determined by a common consensus. The chaplains are soldiers on active duty, with officers paid by the state. A special church institution was established for the consultation—the military chaplaincy as

36 *Modus vivendi inter Sanctam Sedem et Rempublicam Cechoslovaciae*.

37 Příbyl, 2010, p. 21.

38 *Accordo tra la Santa Sede e la Repubblica Ceca sul regolamento dei rapporti reciproci* (25 luglio 2002).

39 Hůlka, 2004, pp. 46–47.

an association of the CRCs in accordance with the Act on Churches and Religious Communities of 2002.⁴⁰

According to the Act on Churches and Religious Communities of 2002, chaplaincy in prison and detention facilities is also one of the so-called special rights of CRCs. The chaplaincy was established in 1990, but received its institutional form based on the tripartite treaty in 1994.⁴¹ It is significantly different from military chaplaincy; it is a real pastoral service. The individual chaplain is sent by an individual CRC as its representative after consultation with other involved CRCs. The prison chaplain has either an employment relationship or an out-of-employment agreement with the prison or detention facility; in these two cases, he is paid by the state, or he performs this service voluntarily. However, he always has the position of a civilian, not a member of the Prison Service. Two organs are established for coordination: the registered association of Christian physical and legal persons Prison Chaplaincy as a voluntary association, and the Spiritual Prison Service as a special unit of the Prison Service of the Czech Republic, which is subordinate to the Ministry of Justice.⁴²

According to the Act on Churches and Religious Communities of 2002, police chaplaincy is also one of the so-called special rights of CRCs. At first, the chaplaincy was not regular pastoral care, but only regulated participation of specially prepared clergy in the system of providing post-traumatic intervention care; that is, as members of an intervention team in the event of extraordinary events. As a legal basis, a tripartite agreement between the Czech Bishops' Conference, the Ecumenical Council of Churches in the Czech Republic, and the Ministry of the Interior was signed in October 2002 for a period of three years.⁴³ This treaty was extended twice in 2005 and 2008. The second treaty was signed in October 2011, which combined the regulation of participation in post-traumatic interventional care with care for the benefit of the police and fire brigade. This treaty was in force until 2014, and has not been extended.⁴⁴ The third treaty was signed in April 2020 and regulates the provision of spiritual care to all persons working in the police of the Czech Republic, or their family members and relatives. It is a real pastoral service; the individual chaplains are sent by individual CRCs as their representatives after consultation with other involved CRCs. The chaplain must be both a clergyman in his church and a member of the Police of the Czech Republic in the active service. Their service is voluntary and there is no right to remuneration. The Council for Spiritual Care was established in the Police of the Czech Republic and

40 Holub, 2004, pp. 122–124.

41 The official state publication came about by Order of the Director General of the Prison Service no. GR-635/107/94. Three new treaties are then agreed in 1998, 2008 and 2013.

42 Rameš, 2004, pp. 124–128.

43 The treaty was published in the *Věstník Ministerstva vnitra [Bulletin of the Ministry of Interior]* under no. 106/2011.

44 Horák, 2019, pp. 135–137.

other security forces as a coordinating body within the structure of the Ministry of the Interior.⁴⁵

According to the Act on Churches and Religious Communities of 2002, healthcare chaplaincy is not a so-called special right of the CRCs; therefore, it is accessible to all registered CRCs. Since 1990, patients in hospitals have been served by the clergymen of CRCs and volunteers. On a broader, current scale, special healthcare chaplains have only been present since 2000. It has become clear that care needs to be targeted not only at patients, but also to relatives of patients and to the staff of healthcare facilities. The starting points for the necessary ecumenical understanding of this service were the Standards for Health Care Chaplaincy in Europe, elaborated by the European Ecumenical Network of Health Care Chaplaincy in 2002. This service was initially regulated by a treaty between the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic in 2006, which was significantly amended in 2011. Initially, chaplains were paid by their churches. Over time, based on experience with this service, the hospital facilities themselves took over part or all of the financing of their services. It was not until 2017 that their service was legally enshrined in the Czech legal system, albeit very temporarily, by a methodological instruction of the Ministry of Health, which, however, is only of a recommendatory nature. This guideline created the Council for Spiritual Care in Health Care and integrated it into the structure of the Ministry. More stable regulations were established in a tripartite agreement of the mentioned entities from July 2019, which, among other things, recommends that chaplains be employed by a hospital. However, there is still a lack of legal grounding of the position of hospital chaplains in the health legislation itself (in laws and by-laws) and of the regulation of the financing of their service, although it is often taken over voluntarily by hospital facilities. Two associations were established to support the professional organizations. The first is the Association of Healthcare Chaplains on the platform of the Ecumenical Council of Churches in the Czech Republic established in 2011, with the nature of civic (voluntary) association. The second is the Catholic Association of Healthcare Chaplains on the platform of the Czech Bishops' Conference established in 2012, with the nature of a professional chamber for Catholic healthcare chaplains, volunteers, and experts. All of the hospital chaplains commissioned by the Catholic Church are *ipso iure* members.⁴⁶

45 The treaty was published in *Revue církevního práva (Church Law Review)*, no. 79 (2/20), pp. 117–120.

46 Němec, 2019b, pp. 107–118. The Author of the present chapter is member of the Council for Spiritual Care in Health Care at the Ministry of Health (as representative of the Czech Bishops' Conference) and member of the committee of the Catholic Association of Healthcare Chaplains.

5. Constitutional guarantees of freedom of conscience and religion

5.1 *Embedding freedom of conscience in constitutional law, limits and means of protection*

Freedom of conscience is clearly enshrined in Article 15 of the Charter of Fundamental Rights and Freedoms:

- (1) The freedom of thought, conscience, and religious convictions are guaranteed. Everyone has the right to change their religion or faith, or to be non-denominational.
- (2) The freedom of scholarly research and artistic creation is guaranteed.
- (3) No one may be compelled to perform military service if it is contrary to their conscience or religious conviction. Detailed provisions are stipulated in the law.

The provisions of Article 15 guarantee the absolute inviolability of individuals' spiritual and mental autonomy. This follows from the nature of human dignity, especially in ethical, moral, and religious matters. Public authorities must not directly or indirectly interfere with the sphere and restrict or prevent this freedom. This fundamental right is natural law and belongs to the requirements of the rule of law.

Thinking can be understood as a very wide range of mental and cognitive activities undertaken by humans (especially the processing of knowledge about the outside world). Conscience can be understood as the ability to measure human behavior with more general ethical and moral rules and values (not only religious). In the legal literature, however, the concept of conscience is conceived of differently and is therefore not entirely unambiguous.

The first paragraph of this article, especially the first sentence, is a guarantee of the inviolability of the essentially private intellectual, value, and emotional activities of a physical person, referred to as the *forum internum*. The absolute nature of this right follows from the nature of the *forum internum*. Therefore, it cannot be subject to legal restrictions.

In exceptional cases, freedom of conscience manifests in a specific form of conscientious objection that consists of refraining from action and the absence of compulsion for what is perceived to be in conflict with individual conscience. For the legislature, it is imperative to identify alternative solutions that minimize the impact on the individual's moral and ethical sphere. However, a conscientious objection is not as autonomous as freedom of conscience itself; it cannot be linked only to a subjective assessment and a subjective disagreement with a legal obligation. Only the necessary assessment of the amount of good and evil is the essence of the objective significance of this instrument and the basis for its legal grasp (objection *secundum legem*). Typical areas are, for example, military service in arms or military service in general, the field of health care, especially

the bioethical area (artificial abortions, human training, assisted reproduction, birth control, euthanasia, human cloning, human organ management), but also seemingly common medical acts (provision of blood transfusion, compulsory vaccination), the area of function of the public authority (entering into a registered partnership, divorce) and other obligations (swearing on the Bible, refusal to participate in the jury). Only the right to an objection against military service is explicitly mentioned in the Charter. The exercise of the right to conscientious objection was regulated in the Armed Forces Act of 2004.⁴⁷ The possibility of engaging in civil service due to conscience or religion retains its meaning only for military service in exceptional circumstances: the proclamation of the state of emergency or a state of war, but in fairly limited administrative circumstances and in a very short period of 15 days (§ 6).

In the Czech legal system, the application of conscientious objection *secundum legem* is also regulated by the Act on Health Services for the area of healthcare.⁴⁸ Its §§ 28 and 32 protect the rights of patients (informed consent, previously expressed will). Its § 50, with understandable restrictions, also protects the right of all health workers, and even of all health service providers (juridical persons) to refuse individual health services due to conscience or religion on the condition that another person or another provider of the health service is offered by the health staff or by the provider who has entered a conscientious objection.⁴⁹

The prohibition of illegitimate discrimination is also a significant means of protecting conscience. Its legal instrument is the Anti-Discrimination Act.⁵⁰ In § 2 (3), direct discrimination is defined thus:

(3) Direct discrimination means such conduct, including the omission of one person being treated less favorably than another, has been or would be treated in a comparable situation, on grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief, or worldview, as well as in legal relations in which the directly applicable regulation of the European Union in the field of free movement of workers applies, also on the grounds of nationality.

In § 3 (1) it defines indirect discrimination:

(1) Indirect discrimination refers to an act or omission where, based on a seemingly neutral provision, criterion, or practice, a person is disadvantaged compared to others for one of the reasons stated in § 2 (3). It is not indirect discrimination if that provision, criterion, or practice is objectively justified by a legitimate aim, and the means of achieving it are proportionate and necessary.

47 Act no. 585/2004 Sb., Military Service Act.

48 Act no. 372/2011 Sb., Health Services Act.

49 Němec, 2013a, pp. 100–104.

50 Act no. 198/2009 Sb., Anti-Discrimination Act.

However, the law stipulates that there is no discrimination, although there is a difference in treatment between individuals. The area of freedom of conscience is covered by the provisions in § 6 (3):

(3) Discrimination is not a difference in treatment in matters of the right to employment, access to employment or occupation, in matters of employment, service, or other dependent activity, if there is a factual reason to do so due to the nature of the work or activity and the requirements applied. Discrimination on the grounds of sex does not consist of a difference in treatment with regard to access to or training for employment or occupation, provided that the factual reason for doing so is the nature of the work or activity performed and the requirements applied are proportionate to that nature.

Most of the Constitutional Court's findings on freedom of conscience concerned a conscientious objection to refusal to engage in military service: findings of the Constitutional Court's plenary Pl. ÚS 18/98 and Pl. ÚS 6/02, and also the judgment of the Senate of the Constitutional Court I. ÚS 671/01. These findings confirmed and specified the right to refuse military service because of the superiority of a responsible dignified human being over the state. In all of these cases, the plaintiffs were members of Jehovah's Witnesses who refused military service because of their religious beliefs. In the other two cases (III. ÚS 449/06 and I. ÚS 1253/14), the object was the refusal of compulsory vaccination of minors by their parents, in the first case for religious reasons, in the second one because of secular reasons (adherents of homeopathy). The court emphasized that the autonomy of parents in deciding on medical interventions for their children is not absolute, but on the contrary may be limited, even if parents do not consent to medical interventions for religious reasons and that the Czech constitutional order does not recognize any fundamental right not to be vaccinated. On the other hand, the Supreme Administrative Court did not take into account all the relevant circumstances of the case, in particular the urgency of the person's alleged reasons, their constitutional relevance, and the danger to society that the person's actions may pose, and therefore annulled the decision of the Supreme Administrative Court to impose a fine. It is therefore clear that all these cases of conscientious objection were based mainly on religious beliefs. The final reasoning of the Constitutional Court in the second case draws attention to an important feature of conscientious objection: it is socially acceptable if only a minority applies it.⁵¹

5.2 Embedding of freedom of religion in constitutional law, limits and means of protection

The principles of religious freedom, autonomy, and cooperation are logical consequences of the principle of religious and worldview neutrality of the state discussed in section 3.1.

51 Jäger, 2012a, pp. 389–390; Molek, 2019, 298–301.

The basis for the constitutional anchoring of religious freedom can be found in the Charter of Fundamental Rights and Freedoms.

Article 15 (1) enshrines, among others, the individual dimension of religious freedom (*forum internum*) as an absolute right:

(1) The freedom of thought, conscience, and religious convictions are guaranteed. Everyone has the right to change their religion or faith or to be non-denominational.

This provision reproduces Article 18 of the Universal Declaration of Human Rights in 1948. It explicitly adds the right to non-confessionalism, which is a *superfluum* from a legislative-technical point of view.⁵²

Article 16 of the Charter regulates the exercise of freedom of religion (*forum externum*) very broadly, but not absolutely:

(1) Everyone has the right to freely manifest their religion or faith, either alone or in community with others, in private or public, through worship, teaching, practice, and observance.

(2) Churches and religious societies govern their own affairs; in particular, they establish their own bodies and appoint their clergy, as well as found religious orders and other church institutions, independent of state authorities.

(3) The conditions under which religious instruction may be provided at state schools should be set by law.

(4) The exercise of these rights may be limited by law in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others.

The provisions of this article are based on several international conventions, particularly Article 18 of the Universal Declaration of Human Rights and Values of 1948 and Article 18 of the International Covenant on Civil and Political Rights of 1966. However, it guarantees a higher legal standard, particularly in corporate areas, especially in (2), where the autonomy of the CRC is strongly entrenched in an illustrative list of areas of its application. Therefore, this regulation is preferentially used in the Czech Republic, especially in court proceedings.⁵³ This was particularly evident in the case law of the Constitutional Court, which often refers to this article. However, Article 16, Paragraph 4, clearly mentions the limit to the exercise of religious freedom. The restriction of a fundamental right is not an end in itself, but must always be applied to the protection and realization of all other rights and freedoms contained in the constitutional order. If the aim of the legislature was to restrict the fundamental right itself and not to protect the values referred to in the mentioned paragraph, it would *per se* be an unconstitutional act.

⁵² Hrdina, 2004, p. 102.

⁵³ Jäger, 2012b, pp. 394. 403.

In the case of freedom of religion, the prohibition of illegitimate discrimination is also a significant means of protecting religious beliefs. Its legal instrument is the Anti-discrimination Act (see Section 5.1). Special consideration for the internal law of CRCs contains one of the provisions that do not constitute discrimination, namely § 6 (4):

(4) Discrimination is not a difference in treatment in matters of the right to employment, access to employment or occupation, in the case of dependent work performed in churches or religious communities, if due to the nature of these activities, the context in which they are performed, or the person's worldview, a substantial, legitimate, and justified request for employment with regard to the ethics of the church or religious community.

A relatively large group of constitutional court findings concerns the autonomy of CRCs. The question of the extent of autonomy in the establishment of legal entities is of fundamental importance. The original wording of the Act on Churches and Religious Societies of 2002 in § 6 (2) presupposed the establishment of legal entities only for the purpose of organizing, professing, and spreading religious faith. The Constitutional Court annulled this provision by finding Pl. ÚS 6/02, stated that this restrictively defined concept is in clear conflict with the very purpose and goal of churches and religious persons and testifies to their fundamental misunderstanding.⁵⁴

Other findings concern sub-areas: the validity of the proceeding or decision of the member assembly of the religious community (I. ÚS 1244/07, I. ÚS 611/06, I. ÚS 1037/11), the dissolution of the church legal entity by the church (I. ÚS 137/05), granting of certain intra-church rights by a church body (I. ÚS 1217/08), interpretation of internal regulations of CRCs (I. ÚS 1240/09).

The question of the church staff is always very important, especially the position of the clergy. State power is completely incompetent in filling church offices and appointing clergy, and their relationship to the church and religious community is referred to as service (I. ÚS 211/96, III. ÚS 136/2000), the state power is competent only in accompanying issues of labor law, such as compensation of wages and length of leave.⁵⁵

The Constitutional Court also addressed the specific issue of refusing blood transfusions for an oncological minor patient by his parents, who were Jehovah's Witnesses. In this case, it stated that in the conflict of constitutionally guaranteed rights, the protection of the child's health is a value that allows legal disrespect of the parents' religious decisions (III. ÚS 459/03).

⁵⁴ Jäger, 2012b, p. 406; Němec, 2013c, pp. 219–228; Madleňáková, 2014, pp. 159–181.

⁵⁵ Jäger, 2012b, p. 407; Kříž, 2017, pp. 115–132.

6. Guarantees according to other sources of universally binding law

To understand the Czech legal situation, it is necessary to consider the very limited use of religious symbols in the public during the communist regime (1948–1989). Due to this history, Czech legislation since 1990 has been very modest in setting restrictions on religious symbols. This reticence is also reflected in actual practice, which, in some cases, goes beyond the legal definition.

6.1 The subjective extent of the expression of religious faith through religious symbols

The subjective aspect of human rights is usually understood primarily as the area of individual-state relations, especially the negative claims of the individual (the duty of public authorities to refrain from encroachment), but also positive claims (the duty of public authorities to act). This concept applies primarily to first-generation rights, including the right to religious freedom.⁵⁶ This area is completely illimitable.⁵⁷

With the legal recognition of human rights by the state, they have become public, subjective rights. They either ensure the autonomous sphere of the individual, protected from the interference of public power (freedom), or the ability of individuals to behave in a certain way (rights). The consequence is the possibility for the individual to enforce fundamental rights in public authorities through the courts. Thus, the constitutional judiciary plays an important role within the state as the last national means of protecting human rights. Most errors in this area should be remedied earlier, in proceedings before other public authorities, typically before ordinary courts.⁵⁸

Thus, the state does not have the right to determine for individuals (neither religious groups, i.e., legal entities) what external manifestations of religious beliefs should and should not be. That is why this right has somewhat vague contours—motivation must be taken into account when assessing it. The assessment of the right to use religious symbols as religious includes the assessment of the envy of such conduct. Again, simply stated: when two people do the same thing, it does not have to be the same thing.⁵⁹

56 Bartoň, 2016a, pp. 44–49; Moravčíková, 2014, pp. 87–89.

57 Molek, 2019, pp. 267–268.

58 Bartoň, 2016a, pp. 50–51.

59 Bartoň, 2016b, p. 339.

6.2 The objective extent of the expression of religious faith through religious symbols, legal restrictions

Objective law is understood as the material entrenchment of rights as part of the legal order. However, not every determination of an objective right necessarily implies a subjective claim. In terms of content, these are both negative and positive.⁶⁰

Freedom of expression of religion or belief is a relative, limitable right. In the Czech legal order, the restrictive clause is enshrined in Article 16 (4) of the Charter of Fundamental Rights and Freedoms: (i) restrictions by law, (ii) legitimate purpose, and (iii) necessity in a democratic society. The state must therefore ensure an institutional legal environment for the exercise of the right (e.g., sufficient freedom of association) and sufficient protection of this right in horizontal relations against attacks (e.g., through criminal law). Here, too, the scope of these commitments is not generally clear: it is still being discussed and clarified, typically through case law.⁶¹

The Czech Republic usually does not regulate the presence of religious symbols in public legislation based on the above-mentioned constitutional principles, especially of religious freedom, and introduces mainly negative regulations consisting of the restriction of religious symbols to the public only in narrowly specified areas.

7. Limits of religious expression through religious symbols

7.1 Public offices

No Czech legal act prohibits the wearing of religious symbols and clothing in public offices, whereas, for work reasons, higher demands may be placed on employees (see below 7.4).

The only legal exception concerns official identity documents. The decree of the Ministry of Interior,⁶² implementing the act on identity cards⁶³ and the act on travel documents,⁶⁴ allows in § (3) an official photograph with a head covering to be used in an identity document for medical or religious reasons. However, this headgear shall not cover the facial part in a way that makes it impossible to identify the citizen.

The current wording of the above-mentioned decree stipulates in § 19 that the official digital photograph is taken by the relevant officials at the office itself and is sent to a specially established data box of the Ministry of Interior.

60 Bartoň, 2016a, pp. 48–50.

61 Bartoň, 2016b, pp. 338–339; Mlek, 2019, p. 328.

62 Decree of the Ministry of Interior no. 281/2021 Sb., on the implementation of the Act on Identity Cards and of certain provisions of the Act on Travel Documents and of the Act on Basic Registers.

63 Act no. 269/2021 Sb., Act on Identity Cards.

64 Act no. 329/1999 Sb., Act on Travel Documents.

The website of the Ministry of Interior contains a file showing the model photos as permissible and prohibited execution of the official photo. In this set, the hijab is given as an example of permissible headgear, but the niqab is an example of an inadmissible one (as is the burqa).

7.2 Schools and universities

During the communist regime (until 1989), the placement of religious symbols was banned in unified public schools in Czechoslovakia. The only exception was the tolerance of religious symbols in faculties of theology, which, however, were legally excluded from the school network and subordinated to a state body competent for the management (or rather controllership) of religious affairs. In the years 1949–1956 this was the State Office for Ecclesiastical Affairs, and since 1956 until now, it has been the Ministry of Culture. The renewal of the possibility of establishing private and church schools since 1990 has diversified the situation.

The classification of school type varies in the Czech Republic. The Education Act, which regulates non-university schools (from kindergartens to higher vocational schools), distinguishes between public, private, and church schools. In contrast, the Higher Education Act distinguishes between state schools (e.g., military and police academies) and public and private schools (the last category includes universities established by CRCs—such schools do not currently exist in the Czech Republic).

In public schools, the tradition of tolerance to stably placed religious symbols persists only in the faculties of theology (crosses and photos of the relevant Church authority, e.g., of the actual Pope and eventually of the diocesan bishop at the Catholic faculties) and similarly in church schools. For all types of schools, there is a lack of general regulations of the wearing of religious symbols in the case of pupils and students; the rules of employment apply to teachers (see below 7.4).

The way pupils and students dress can be regulated by school rules issued by the director of the school after approval by the school council. In response to the Somali student case (see below 8.1), the Ministry of Education issued a communication in 2014 urging school directors to be very careful when including dress codes in school rules, especially head covering, with regard to the right to freely express their religion or belief.⁶⁵ The wording of this communication is general and recommends that in the case of specific guidelines in school rules, the director should be empowered to grant exemptions, primarily for religious reasons. The content of the communication can thus be summarized by the popular saying: “less often means more.”

⁶⁵ Ministry of Education. Communication “The right to freely express one’s religion or belief in the context of the rules of theoretical and practical teaching in schools and school facilities,” File no. ČŠIG-3601/14-G21, of October 6, 2014.

7.3 Hospitals

In hospitals and medical facilities in general, depending on the nature of the activity, health professionals and other workers are obliged to comply with prescribed hygiene measures, which also include regulations regarding clothing and clothing accessories. For individual-type situations, general measures are issued by the Ministry of Health through decrees that have the nature of by-laws.

Due to the protection of health guaranteed in Article 31 of the Charter of Fundamental Rights and Freedoms, these regulations take precedence over the exercise of a range of constitutionally guaranteed rights. In several places, the Charter itself explicitly provides for the possibility of restricting the exercise of fundamental human rights for reasons of health protection, including the right to express religious beliefs, as provided for in Article 16 (4) of the Charter.

This is why Catholic nuns working in health care, in relevant situations, do not wear their religious veils or even their religious robes. The same requirements apply to other people with specific clothing or clothing accessories, such as Muslim women.

However, the principle of maximum respect for the religious and worldview of patients applies, which leads to the professional treatment of the necessary situations; in the Czech Republic, this increasingly concerns Muslim patients.⁶⁶

7.4 Workplaces and business activities

For many workers, it is necessary to use significant means of protection at work for safety. This applies especially to technical professions and many areas of natural sciences, especially in laboratory conditions. Details are usually established by the by-laws of relevant ministries. These prescribed means generally preclude the use of religious symbols.

The situation is different in the sphere of trade and services. Marketing interests play a far greater role, to which some employers (especially large retail chains) also routinely subordinate the clothes of their employees. On the contrary, other employers, especially small companies, give their employees considerable freedom.

Workers in public institutions are bound by the principle of the religious neutrality of the state, which here acts as a lay state. Therefore, in these professions, the use of strong religious symbols is not desirable; sometimes, it is restricted or prohibited by internal rules, especially regarding dress code. This situation is particularly pronounced in the case of public-school teachers, as their individual freedoms to express their religion in public are met by three other roles: the role of employees, the role of teachers in shaping pupils, and the role of *de facto* representatives of a religiously neutral public institution. The exception is the position of teachers of religion.⁶⁷

66 Hájek, Bahbouch, 2016, pp. 9–10.

67 Molek, 2019, pp. 357–359; Jäger, 2012b, pp. 400–401.

7.5 Media, the Internet, and social networks

A significant positive component of legal regulations is the law governing public service media. The Act on Czech Television⁶⁸ and the Act on Czech Radio⁶⁹ stipulate in § 2 (2) litt. c) with the same wording that one of the tasks of public service broadcasting is to “provide a balanced range of programs for all sections of the population, taking into account their freedom of religion or belief, culture, ethnic or national origin, national identity, social origin, age, or gender so that the programs reflect the diversity of views and political, religious, philosophical, and artistic orientations, with a view to strengthening mutual understanding and tolerance and promoting the cohesion of a pluralistic society.”

There are no other similar regulations regarding private media.

Negative definitions apply to advertisements that appear in all media discussed in this section. The act on the regulation of advertisements⁷⁰ is intended according to § 1 (3) to cover a very wide range of communication media: the “means of transmitting advertisements, in particular periodicals and non-periodical publications, radio and television broadcasting, on-demand audio-visual media services, audio-visual production, computer networks, audio-visual media, posters, and leaflets.” The basic text is § 2 (3):

Advertisements must not be contrary to good morals; in particular, they must not discriminate on the grounds of race, sex, or nationality or attack religious or national feelings, endanger morality in a generally unacceptable manner, reduce human dignity, or contain elements of pornography, violence, or elements of fear. Advertisements must not challenge political persuasion.

Based on this Act, the permission of advertisement was regulated in the Act on the Operation of Radio and Television Broadcasting: advertisements may not interrupt, among other things, religious programs. The currently valid Act on the Operation of Radio and Television Broadcasting⁷¹ stipulates in § 48 (1) litt. (d) that broadcasters may not include religious and atheistic commercial communications in their broadcasts. In § 48 (1), its litt. (k) prohibits commercial communications attacking faith, religion, political or other purpose, and its litt. (l) prohibits commercial communications containing discrimination based on sex, race, color, language, religion or belief, political or other opinions, national or social origin, membership of a national or ethnic minority, property, gender, disability, age, sexual orientation, or other status.

68 Act of the Czech National Council no. 483/1991 Sb., on Czech Television.

69 Act of the Czech National Council no. 484/1991 Sb., on Czech Radio.

70 Act no. 40/1995 Sb., on the regulation of advertisement and on the amendment of Act No. 468/1991 Sb., on the operation of radio and television broadcasting.

71 Act no. 231/2001 Sb., on the operation of radio and television broadcasting.

A specific body in the field of advertisement is the Advertising Council, which has the nature of a non-governmental and non-profit civic association, was established to promote self-regulation of advertisements.⁷² The main goal of the Advertising Council is to ensure and promote honest, legal, truthful, and decent advertisements in the Czech Republic. The Advertising Council assesses complaints about advertisements in the press, billboards, mail order services, audio-visual production, cinemas, radio and television broadcasting, and on the Internet. The basis for the assessment is the Advertising Code developed by this council. In the event of a breach of the Code, the Council submits an initiative to the relevant Regional Trades Licensing Office for further resolution; this office has the statutory power to impose sanctions. In addition, it provides an expert assessment of the advertisement on request, usually during the preparation phase. The advantage of this advice as a non-governmental organization is the possibility of a more flexible response to factual changes, including the necessary amendments to the Advertising Code.

Czech legislation does not contain any provisions that specifically regulates communication on the Internet and social networks. It leaves them to their own regulation (operator's right) or self-regulation, with some excesses being included as criminal offenses in the Criminal Code.

7.6 Public religious assembly

The right to peaceful assembly is one of the fundamental rights guaranteed by Article 19 of the Charter of Fundamental Rights and Freedoms:

- (1) The right to a peaceful assembly is guaranteed.
- (2) This right may be restricted by law in cases of assembly in public places, if it is a measure in a democratic society necessary for the protection of the rights and freedoms of others, protection of public order, health, morality, property, or security of the state. However, the assembly may not be subject to the permission of a public authority.

The exercise of this right is regulated in detail by the Act on the Right of Assembly, adopted before the Charter.⁷³ In principle, all assemblies in public places are subject to the notification of obligation toward the municipality pursuant to § 4 (1), with the exception of assemblies organized by churches or religious societies in a church or other places of worship, processions, pilgrimages, and other processions and assemblies used to express religion. The provision of § 10 (1) has a negative character, giving the authorities the power to prohibit an assembly that would aim to deny or restrict the rights of persons or to incite hatred and intolerance, inter alia,

⁷² Rada pro reklamu, Profil: <https://www.rpr.cz/cz/profil.php> (Accessed: 26.05.2021).

⁷³ Act no. 84/1990 Sb., on the right of assembly.

due to religion. These provisions provide a great rate of freedom in the expression of religious beliefs externally, including the use of religious symbols.⁷⁴

All participants of any assembly, without exception, are obliged according to the provisions of § 7 (4), to “not have their faces covered in such a way as to make it difficult or impossible to identify them,”⁷⁵ if the authority or the police of the Czech Republic issues such an instruction, in case the peaceful course of the assembly is disrupted or endangered. The ban on covering the face during an assembly is therefore very limited.

8. The system of legal protection

8.1 Student of secondary medical school against the school—wearing of hijab

The wearing of religious symbols in the Czech Republic was strongly affected by the court case of a student at a secondary medical school against this school.

In September 2013, two girls wanted to attend a secondary medical school in Prague 10, both of whom received asylum in the Czech Republic. Both girls were Muslim, one from Somalia, and the other from Afghanistan. Their attempts to study ended in conflict. The Somali girl signed a declaration of dropping out of school on the day she started after a conflict with the schoolmistress, the Afghan girl started school but left after two months. Both argued that their religious rights had been violated because according to the school rules, they were not allowed to cover their heads by wearing the hijab during class, including theoretical subjects, which the schoolmistress required that they take. It should be noted that both students should have agreed to postpone wearing the hijab during practical classes in healthcare facilities.

In November 2013, the Somali girl lodged a complaint with the ombudswoman, who in July 2014 issued an opinion stating that the school’s conduct was discriminatory.⁷⁶ The same girl filed a lawsuit against the school in February 2016, in which she demanded an apology for the discriminatory conduct and a payment of 60,000 Czech crowns (approximately 2,400 euros) as non-pecuniary damage. The court proceedings lasted many years, and the individual court instances commented quite differently on the merits of the case.

74 Religious meetings in public places may be associated with, among other things, worship. Therefore, they were held in several places in the Czech Republic at a time of severe restrictions on services in churches and places of worship.

75 The very recent novelisation has been made by the Act no. 94/2021 Sb., on emergency measures in the event of an epidemic of COVID-19 and amending some related acts. This law makes it possible to take certain epidemiological measures without declaring a state of emergency.

76 Public Defender of Rights. Inquiry report on the ban on wearing headgear in a secondary medical school, file number 173/2013/DIS/EN, of 2 July 2014.

First, in January 2017, the court of the first instance, the district court for Prague 10, accepted the opinion of the schoolmistress that there could be no discrimination against the student. Even by the first day of school, the student had not delivered the legally required documents: a permit to stay in the Czech Republic, together with a hand-signed enrollment form for studying at the school. The schoolmistress therefore claimed that the applicant had not become a student at the school at all and that, consequently, the non-entry of studies was not discriminatory on the part of the school. Therefore, the court did not address the question of whether the school rules showed signs of direct or indirect discrimination.⁷⁷

The applicant then appealed to the court of the second instance, the Municipal Court in Prague. On the one hand, the judgment of the Court of Appeal of September 19, 2017 upheld the judgment of the Court of First Instance dismissing the action. On the other hand, it addressed the issue of possible indirect discrimination against the applicant by the school based on school rules. The court stated that no discrimination had occurred because the provisions of the school regulations were uniform for all students and fully corresponded to the secular nature of public education in the Czech Republic. The court described the Ombudswoman's report as contradictory and untrue in the context of other facts. At the same time, however, it also stated that there are no unanimous views on the wearing of religious symbols, especially in European Union countries.⁷⁸

The plaintiff then lodged an extraordinary appeal for cassation to the Supreme Court of the Czech Republic. In its judgment on November 27, 2019, the Supreme Court reversed the current development of the case. Unlike previous courts, it declared it to be irrelevant whether the plaintiff became a school student or not. In particular, it addressed the issue of possible discrimination by the school and concluded that the school had indirectly discriminated against the applicant because the school rules prevented the legitimate expression of religious freedom, which is the wearing of the hijab for Muslim women. The court thus agreed with the Ombudswoman's opinion in 2014, overturned both previous judgments, and returned the case to the Court of First Instance with the fact that the lower courts are bound by the legal opinion of the Supreme Court.⁷⁹

However, the Court of First Instance, the District Court for Prague 10, did not begin to hear the merits of the case itself, as the applicant withdrew its action on April 24, 2020. She argued that almost seven years have elapsed since the events in question and, with a view to further years of litigation, the required apology or symbolic compensation could not give her reasonable satisfaction, considering the Supreme Court's decision as satisfactory in the given situation. As a

77 Judgment of the District Court for Prague 10, file number 17 C 61/2016-172, of 27 January 2017.

78 Judgment of the Municipal Court in Prague, file number 12 Co 130/2017—228, of 19 September 2017.

79 Judgment of the Supreme Court of the Czech Republic, file number 25 Cdo 348/2019-311, of 27 November 2019.

consequence of this action, the applicant had been exposed to further troubles (threats, disgraceful claims in the media, difficulties in finding housing and employment), and hoped to find peace of mind at work and to lead a normal life without having to deal with a seven-year-old event. Therefore, the court decided to stop the proceedings.⁸⁰

However, the school did not agree with the withdrawal of the proceedings and demanded that a decision be made on the merits of the case. It therefore lodged an appeal due to its serious moral interest in the decision on the merits of the case (including the impact on the school's reputation and the personal rights of the schoolmistress), suggesting that the Court of Appeal declared the ineffectiveness of the withdrawal of the action. In addition, the school stated that it "absolutely does not agree with the judgment of the Supreme Court; it considers it to be factually and legally incorrect and argumentatively erroneous." The Municipal Court upheld the appeal and finally stopped the proceedings on January 27, 2021. An appeal to the Supreme Court as an extraordinary remedy in this case can only be raised if the procedure of the court of appeal would be contrary to legal norms.⁸¹ The school wants to continue a lawsuit with a student over the hijab. It therefore appealed to the Supreme Court in April 2021,⁸² but the outcome of the proceedings is uncertain.

It is obvious that the case law of the Czech courts on discrimination against Muslim women due to the ban on wearing the hijab in theoretical classes is extremely inconsistent. The only legally binding case law is the judgment of the Supreme Court, which is, however, still factually unique in such cases, in clear contradiction with the judgments of lower general courts. Regarding the school's opposition to the withdrawal of proceedings, the context indicates that its aim could have been to reach a different legal opinion of the Supreme Court, or even to present the whole case to proceedings before the Constitutional Court of the Czech Republic, which is competent to the final intrastate sentences regarding the constitutionality, including human rights. The possibility of submitting the whole matter to the European Court of Human Rights for a decision, which could correct the statements of the Czech courts, cannot be ruled out.

In addition, it must be noted that the whole matter was strongly politicized. First, it concerns the very significant media coverage of the entire case. Second, all court proceedings were accompanied by petitions and demonstrations, which in the majority supported the position of the school and its schoolmistress. Third, the President of the Czech Republic, Miloš Zeman, entered the case, awarding the state award "Medal for Merit of the First Degree to the schoolmistress [name] of the

80 Judgment of the District Court for Prague 10, file number 17 C 61/2016-350, of 20 July 2020.

81 Judgment of the Municipal Court in Prague, file number 12 Co 304/2020—375, of 27 January 2021.

82 *Škola chce pokračovat v soudním sporu se studentkou o hidžáb. Obrátila se na Nejvyšší soud [The school wants to continue a lawsuit with a student over the hijab. It turned to the Supreme Court]*. Available at: <https://zpravy.aktualne.cz/domaci/hidzab-rozsudek-soud/r~115932d67b4211eb99faac1f6b220ee8/> (Accessed: 26.08.2021).

secondary medical school and a brave woman in the fight against intolerant ideology, for merit for the State” in October 2018.⁸³ According to my modest opinion, this was inappropriate, in the situation of the ongoing proceedings before the Supreme Court, which finally reversed the legal qualification of the conduct of the school and of its schoolmistress. Fourth, the schoolmistress politicized the case herself, accepting in 2020 candidature for the Senate of the Parliament of the Czech Republic, that is, for its upper chamber. As part of the election campaign, she emphasized her consistent position that immigrants must clearly adapt to the legal and cultural customs of the host country. However, the schoolmistress in her constituency in the first round of the election finished only in ninth place out of eleven candidates, winning only 3.64% of votes.⁸⁴

8.2 Cardinal Duka and his attorney against the theater—protection of religious symbols against profanation

The issue of the use or alleged profanation of religious symbols was sparked by a lawsuit in which two plaintiffs as natural persons (then President of the Czech Bishops’ Conference Cardinal Dominik Duka and his lawyer) sued two legal entities (Center for Experimental Theater in Brno and National Theater Brno). The subject of the dispute was the holding of two theatrical performances written by the Croatian playwright Oliver Frljić, *The Malediction* (May 24, 2018) and *Our Violence, Your Violence* (May 26, 2018) by the ensemble Slovensko Mladisko Gledališče (Slovenian Youth Theater) as part of the Brno Theater World Festival.

Both performances included controversial scenes with religious undertones. In the first performance, a statue depicted in a manner similar to John Paul II, depicts fellatio. At the end of the second performance, the figure of a young man with signs of the crucified Jesus Christ descends from the cross and, signifying violence, depicts coitus with a young Muslim woman (who had previously pulled the national flag of the Czech Republic out of her vagina).

On July 11, 2018, the above-mentioned individuals filed a lawsuit objecting to the inequality of rights (easy profanation of Christian symbols versus difficult profanation of Islamic symbols, usually associated with violent protests), support for hatred of one group of people against another (almost all of the actors were Muslim), interference with freedom of religion and its expressions, protection of the rights and dignity of specific persons (the plaintiffs), and public denigration of the state symbol.

83 Pražský hrad, Prezident ČR. *Prezident republiky udělil státní vyznamenání, 28. října 2018*. Available at: <https://www.hrad.cz/cs/pro-media/tiskove-zpravy/aktualni-tiskove-zpravy/prezident-republiky-udelil-statni-vyznamenani-8-14366> (Accessed: 25.05.2021).

84 volby.cz. *Volby do Senátu Parlamentu ČR konané dne 2.10.—3.10.2020*. Available at: <https://www.czso.cz/csu/czso/volby-do-senatu-parlamentu-cr-2020> (Accessed: 25.05.2021).

The lawsuit was heard in the first instance by the Municipal Court in Brno⁸⁵ and in the second instance by the Regional Court in Brno.⁸⁶ The plaintiffs appealed against their decisions to the Supreme Court of the Czech Republic as a third instance.⁸⁷

In addition to the defendants' statements, the courts relied on performance annotations. The first performance was stated to ask questions such as "to what extent our decisions are influenced by Catholic morality, how the church influences the behavior of atheists or to what extent contemporary art is within the limits of censorship and avoiding accusations of insulting the faith." The second performance was intended to present the question, "Are we aware that our wealth depends on the thousands of dead in the Middle East, whether we have the same approach to the dead after the terrorist attacks in Europe as those from Baghdad? When were we to convince ourselves of the greater power of our God than of the other Gods?"

This time, the case law of all courts was in agreement; all instances found that the applicants lacked active legitimacy because they had not seen the performances in person, that the prevailing freedom of artistic expression (which takes the form of a metaphor using art forms that may be critical, offensive, and shocking or disturbing, even if they are addressed to specific individuals) collided with the protection of religious symbols as manifestations of religious freedom and protection of human dignity, and the reciprocity of indications of violence in the second performance (also from the Muslim side). Moreover, the protection of a state symbol falls within the scope of public law, not within the private sphere of the protection of personality. All three ordinary courts therefore dismissed the action in the same manner. The question remains whether the plaintiffs will file a constitutional complaint with the Constitutional Court, or perhaps even the European Court of Human Rights, or whether the case will end in this legal failure.

8.3 Supplement: Disputes concerning mosques

While Christian and Jewish symbols, especially buildings, are understood as a typical expression and part of the Czech cultural heritage, the relationship to cult buildings of other religions is highly problematic. This is especially true for Muslim mosques. Proposals for their construction have always been associated with significant resistance in a large part of the local population.

The application for the construction of a mosque in the spa town of Teplice in 1995 was finally rejected in 1996 by the town vestry. The repeated attempt in 2003 was responded to with a heavily publicized petition that received about 4,500 signatures. The building was officially rejected for urban and architectural reasons.

85 Judgment of the Municipal Court in Brno, file number 112 C 88 / 2018-190, of March 18, 2019.

86 Judgment of the Regional Court in Brno, file number 70 Co 170/2019-243, of November 20, 2019.

87 Judgment of the Supreme Court of the Czech Republic, file number 25 Cdo 1081/2020-282, of April 28, 2021.

A similar 1995 application for the construction of a mosque in Brno was first rejected in December of that year, but was finally allowed in an appeal procedure in 1996 under the conditions of compliance with the city's zoning plan (i.e., the absence of a minaret and other conspicuous features). The inconspicuous two-floor building was completed and inaugurated in 1998, and currently stands between high-rise buildings.

In 1997, the Islamic Foundation in Prague bought a plot of land with an unused industrial building and a family house on the outskirts of the city that was accessible only by car. The building was converted into a mosque, but was publicly called an Islamic center. The building was opened in 1999 without public attention.

The project of the Islamic Center and Mosque in the Moravian town of Orlová in 2003 also met with resistance from the local population. After finding that the project did not have sufficient financial coverage, the city council in 2004 suspended all steps in favor of the construction.

Resistance against mosques has intensified as a result of the wave of migration to Europe, mainly from Muslim countries, which was particularly strong in 2015 and 2016. This fact was also politicized, especially during the campaign before the 2018 presidential election.⁸⁸

It is clear that conflicts over mosques are inherently conflicts over religious symbols. If typically Muslim symbols are not highlighted, as is the case in Brno, or if the buildings are located outside the common interest of the public as in Prague, the problems with their construction do not occur or can be overcome.

9. Conclusions

Freedom of conscience and religion was constitutionally guaranteed in Czechoslovakia throughout the communist regime in 1948–1989, but in practice, it was strongly and purposefully violated. Therefore, not until the end of 1989 was building a political and legal regime that protects human rights truly in focus. First, the most significant injustices were corrected by amending the laws by the end of 1990. This was followed by a period of positive construction of the new legal system, especially until the end of 1992, that is, until the dissolution of Czechoslovakia on January 1, 1993. The most important foundations were laid during this period, especially at the human rights level with the adoption of the Charter of Fundamental Rights and Freedoms in 1991, which remained part of the Czech Republic's constitutional order.

⁸⁸ In this context, it is possible to better understand the awarding of the state award by President Zeman, which is discussed above in 8.1.

The democratization process continued in the era of the independent Czech Republic. Gradually, laws were adopted that fixed the exercise of human rights, in particular the Anti-Discrimination Act, as well as the possibility of enforcing conscientious objections, in particular laws related to civil service and health care. Although the Concordat Treaty with the Holy See, signed in 2002, has not yet been ratified, the model of tripartite agreements between representatives of the Catholic Church and the Evangelical Churches on the one hand and the competent state authority on the other has proven successful at the national level. Its legal disadvantage is that such agreements do not have a defined position in the hierarchy of the sources of law. Of great importance is the adoption of laws confirming the autonomy of churches and religious communities: the Church Acts of 1991 and 2002 and the Property Settlement Act of 2012. Thus, a model of a religiously neutral (lay) state was created, characterized by extensive cooperation between the state and churches.

On this basis, the legal regulation of the use of religious symbols is developing, even in the public sphere. The Czech Republic typically does not regulate the presence of religious symbols in public in its legislation. The country's constitutional principles, especially regarding religious freedom, mainly support negative regulations consisting of the restriction of religious symbols to the public only in narrowly specified areas, and only occasionally contain positive norms, such as in the area of conscientious objection and the public service mission of the media.

It follows from this approach taken by the state that the legislative regulation of religious symbols in the public sphere has been and will continue to be poor and fragmentary. In addition, case law has been sporadic. Due to the targeted avoidance of interventionism, it is not possible to expect the creation of extensive normative regulations in the near future, but rather to follow the path of case law.

Therefore, it is also not possible to design solutions in the area of *de lege ferenda*. The content and focus of the new legislation must first be shown through legal practice, which is still underdeveloped in this area.

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