



Róbert GYURI: *Zákon o slobode náboženskej viery
a postavení cirkví a náboženských spoločností*
Komentár
[Act on Freedom of Religious Belief and the Status
of Churches and Religious Societies:
Commentary]
Bratislava: Wolter Kluwer SR, 2021

The issues of religious freedom and specifically the constitutional and administrative legal status of churches and religious societies are not often dealt with in Slovak literature and legal science — an exception is the specialised Institute for Legal Issues of Religious Freedom, which has the status of a department at the Faculty of Law of the University of Trnava. Although the author of the reviewed publication teaches at the Department of Public Law at the Faculty of Public Administration of the University of Pavol Jozef Šafárik in Košice, he is one of the permanent collaborators of the above-mentioned specialised institute in Trnava.

His detailed commentary on the Act on Freedom of Religious Belief and the Status of Churches and Religious Societies (Act No. 308/1991 Coll., as amended) fills a significant gap, as until now there has been no comprehensive work dealing with the entire Act, which is the basic special legal regulation of Slovak confessional law — the previous expert publications dealt either with the history of the entire commented Act or with partial areas regulated by it. To understand the commented law, however, it is necessary to take into account that it was adopted at the time of the Czechoslovak federation (which broke up into two separate states,

the Slovak Republic and the Czech Republic, on 1 January 1993) and was based on the Czechoslovak human rights law — the Charter of Fundamental Rights and Freedoms No. 23/1991 Coll., which was incorporated in both successor states of Czechoslovakia as part of their constitutional legal order, but with the difference that the Constitution of the Czech Republic does not contain human rights provisions and refers to this Charter, while the Constitution of the Slovak Republic contains human rights provisions. Therefore, the author refers not only to the aforementioned Charter, but also to the Constitution of the Slovak Republic. These human rights provisions are based on a number of multilateral international treaties and agreements.

Taking into account this common basis from the time of the Czechoslovak federation, it also follows that the author, in addition to the Slovak literature and case law of Slovak courts, also makes extensive use of Czech professional literature and case law of Czech courts, especially of the Supreme Court, the Supreme Administrative Court and the Constitutional Court; in addition, in many cases he refers to the case law of the European Court of Human Rights and foreign courts (especially the Federal Constitutional Court [German *Bundesverfassungsgericht*]).

In addition to these sources, the author often considers the legal regulations in many related provisions of the Slovak legal system, with an emphasis on linking the relevant provisions and reflecting practical problems that have already arisen or may arise in the application of individual legal provisions in practice.

Concordat agreements concluded by the Slovak Republic are also an important source of Slovak confessional law: The Fundamental Agreement of 2000, the Agreement on the Spiritual Service to the Faithful in the Armed Forces and Armed Corps of the Slovak Republic of 2002, and the Agreement on Catholic Education and Training of 2004, as well as very similar national agreements concluded with 11 other churches and religious societies: the Agreement between the Slovak Republic and Registered Churches and Religious Societies of 2002 (counterpart of the basic agreement with the Holy See), the Treaty between the Slovak Republic and Registered Churches and Religious Societies on Religious Education and Training of 2004 and the Treaty between the Slovak Republic and Registered Churches and Religious Societies on the Exercise of Pastoral Service to their Believers in the Armed Forces and Armed Corps of the Slovak Republic of 2005, which are concluded on the basis of the first amendment of the commented upon Act of 2000 (the possibility of concluding such national agreements and treaties is absent from the Czech Constitution).

The publication contains an extensive commentary on individual provisions of the law commented upon in the procedure of its structure, namely, in the following topics:

- general provisions (individual religious freedom and its manifestations, the practice of religion, the celebration of holidays and Sundays, religious education of children);
- churches and religious societies (their descriptive definition, their autonomy, collective or corporate religious freedom, persons exercising clerical activities and respect for their right to confidentiality as well as the right to enter public service facilities);
- registration of churches and religious societies (registering authority — Ministry of Culture of the Slovak Republic, preparatory body of a church and religious society for its registration, required number of members, form of the proposal for registration, basic document of a church and religious society, review of the proposal for registration, changes of registered data, registration of church legal entities, cancellation of registration of a church and religious society, subsidiary application of the Administrative Code);
- the final provisions (the reconstitution of the legally operating churches and religious societies listed in the Annex to this Act, transitional provisions, repeal provisions).

From the point of view of ecumenism and interreligious dialogue, the emphasis on the parity of all registered churches and religious societies is important, as all have the same legal possibilities, especially in the aspect of their activities in the public sphere. However, it is true that the real possibilities and the actual implementation strongly depend on the number of believers and the focus of the individual churches and religious societies.

From the same point of view, the issue of registration of churches and religious societies, that is, the establishment of conditions for registration, is even more important. Very briefly, the negative criteria are listed in § 15: whether the establishment and activities are not contrary to the legal order of the Slovak Republic, to the protection of the safety of citizens and public order, health and morals, or whether they do not infringe upon the rights of other legal persons and citizens. Positive requirements are contained in Section 12, among which the requirement (specifically mentioned in Section 11) for the number of signatures of their members of full legal age holding citizenship of the Slovak Republic and permanent residence in the territory of the Slovak Republic stands out — this number has varied throughout history. Initially, 20,000 signatures of persons supporting the application for registration (not necessarily members) were required, changed by the 2007 amendment to a requirement

of 20,000 members, finally increased by another amendment in 2017 to a requirement of 50,000 members. This requirement is factually and legally questionable. On the factual side, it is true that, according to the results of the 2021 census (the informative value of which is questionable both because of the factuality of the answer to the religious affiliation question and the highly subjective nature of the answer to it), of the 18 churches and religious societies registered to date, the requirement of 50,000 members (without the possibility of ascertaining whether they are adults and citizens of the Slovak Republic with permanent residence on its territory or not) is fulfilled by only 5 Christian churches, and above all, that this requirement effectively excludes the registration of another church and religious society. (For comparison: in the Czech Republic, not only is the minimum condition far fewer for 300 adults, but in addition to citizens of the Czech Republic, it can also include foreigners with permanent residence in the Czech Republic; in the Russian Federation and Hungary, 10 persons, in Poland, 100 persons.) From a legal point of view, it is therefore a serious question whether such a high requirement is adequate (from the viewpoint of the principle of proportionality) and whether it is unfairly discriminatory or even unconstitutional. Such a high number has therefore been heavily criticised not only by the professional community, both domestic and foreign, but has also been the subject of judicial examination. In 2008, the General Prosecutor's Office of the Slovak Republic filed an opinion in which it questioned the constitutional conformity of the required minimum membership (then 20,000 persons) and filed a petition for a declaration of its unconstitutionality by the Constitutional Court of the Slovak Republic. The ruling of the Constitutional Court, rendered by its plenary session on 3 February 2010, did not grant the motion of the General Prosecutor's Office on the grounds, *inter alia*, that religious groups may exercise religious freedom individually without restriction and collectively in the form of a civil association. The dissenting opinion was joined by Judge of the Constitutional Court Lajos Mészáros, who, on the contrary, agreed with the reasoning of the General Prosecutor's Office and argued that the Constitutional Court's ruling lacked a proper distinction between individual and corporate religious freedom. For my part, it should be noted that religious communities in the form of a civil association do not enjoy the specific rights granted to registered churches and religious societies, particularly in the area of marriage, participation in public institutions and fiscal concessions. The author himself does not hide his reservations about the Constitutional Court's opinion in his very extensive commentary on the minimum membership requirement (on Section 11) spanning 33 pages.

It is evident that the current wording of the Act on Freedom of Religious Belief and the Status of Churches and Religious Societies, in force in the Slovak Republic, is evaluated by the author of the commentary mostly positively, albeit with some reservations, which shows that the legal regulation is always part of the way of searching for the correct and adequate regulation of relations between the state and churches. It is certainly a publication worthy of attention from the point of view of both legal scholarship and legal practice.

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