



Damián NĚMEC:
*Standards konkordátní smlouvy o majetkových
otázkách na vzoru plánované smlouvy mezi
Slovenskem a Svatým stolcem
ve světle současných konkordátních úmluv*
[Standards for a Concordat Agreement
on Property Issues, Based on the Model
of the Planned Agreement
between Slovakia and the Holy See
in the Light of the Current Concordat
Conventions]
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The author of the book, Professor Damián Němec is a Czech Dominican priest who teaches canon law at the Faculty of Theology in Olomouc (Czech Republic). Concordat law has been one of his long-standing interests: he has published numerous scholarly articles on the issue and, in particular, a comprehensive study entitled *Konkordátní smlouvy Svatého stolce s postkomunistickými zeměmi (1990—2008)*, published in Bratislava in 2010 by the recently dissolved, state-supported think tank known as Ústav pre vzťahy štátu a cirkví (Institute for State-Church Relations). In 2012, it came out in an English edition as *Concordat Agreements between the Holy See and the Post-Communist Countries (1990—2010)* in

the Law and Religion Studies edition, No. 8, published by Peeters Publishers based in Leuven, Belgium.

The reviewed publication is one of the outputs of the VEGA grant project 1/0170/21 “Medzinárodnoprávne záväzky Slovenskej republiky v oblasti financovania Katolíckej cirkvi / International legal obligations of the Slovak Republic in the field of financing the Catholic Church.” The grant was awarded to the Institute for the Legal Issues of Religious Freedom [Ústav pre právne otázky náboženskej slobody] at the Faculty of Law, University of Trnava (Slovak Republic). The institute, founded in 2012, can be seen as a continuation of the institute originally funded by the Slovak Ministry of Culture. By now, however, it has been turned into an academic institution. The continuity of the scholarly focus is also represented by the director of both institutes, Michaela Moravčíková, Th.D. Looking at Němec’s two books, one can indicate a continuum regarding the issues and themes for which these institutes were established. Nevertheless, while his first book focused on concordats in general and themetized those agreements mainly from the viewpoint of a certain type of countries, the publication in question, which has been released at the end of 2024, only handles those aspects of the treaties — as is suggested by the thematic focus of the grant — which deal, at least in part, with financial and property issues.

The author deemed it appropriate to discuss first the interplay between canon law and secular law. This seems well justified for the very reason that concordat law itself, that is, the law on treaties concluded by the Holy See as a subject of international law with states and other subjects of international law, represents the most eloquent manifestation of their interpenetration. Indeed, the treaties thus concluded by the Catholic Church are the sources of three legal systems: first, they are sources of public international law in the sense of the Vienna Convention on the Law of Treaties and other international agreements; furthermore, a source of the law of the Catholic Church, as evidenced by their publication in the official journal *Acta Apostolicae Sedis*; and, finally, treaties which are subject to ratification by national parliaments also become sources of national law. In view of the application of the principle of *pacta sunt servanda*, they enjoy greater legal force than national legislation.

In the first chapter of the book dealing with the mutual interpenetration of the mentioned legal systems, we encounter citations of the basic canons from the Code of Canon Law that provide for these mutual interpenetrations. What is striking here is that the author cites the Code of Canons of the Eastern Catholic Churches in the Slovak language (adding his own translation into the Czech language), the reason for that probably

being the absence of the official approved translation of the “Eastern” Code into Czech.

In the second chapter, the author provides the necessary distinctions on the nature of the contracts: in one way or another, they concern the economic autonomy of the Church. He makes a vital distinction between general regulations, found in more generally formulated basic contracts or shorter general contracts, and detailed regulations, more narrowly specialized in economic and property relations, whether they are found in detailed concordats or in completely specialized contracts dealing only with property issues.

The third chapter introduces the reader to eight sub-contracts of the concordats dealing with property issues. The first of these is the treaty with Austria: in fact, its original form was concluded before Vatican II (1960). Further supplements (*Zusatzverträge*) to it were later negotiated, the list of which is given with expert precision by the author. For readers from a post-Communist background, it is probably no surprise that property injustices in Austria were caused not only by the Nazi regime, but also by the state power of the Soviet occupation zone between 1945 and 1955.

The 1979 treaty with Spain also radiates a sense of reconciliation in the relationship of the Catholic Church after the fall of the authoritarian regime of General Franco. Together with Italy, Spain is a model for the introduction of tax assignation, that is, the designation of a part of the tax to support the Church at the will of the taxpayer. There is also a provision for a transitional period: its purpose is to ensure that the introduction of a new system of church funding does not immediately cause an unwanted reaction. One can assume an analogy of this requirement, together with the promise to introduce a new model of Church financing as soon as possible, hugely contributed to the failure of the ratification process of the Treaty between the Czech Republic and the Holy See on the regulation of mutual relations (*Smlouva mezi Českou republikou a Svatým stolcem o úpravě vzájemných vztahů*), signed in 2002. Indeed, the tax assignation system itself was introduced in Spain only in 1988.

Further, the book handles a series of treaties with Italy, especially the 1984 Concordat Treaty, known as the *Accordo di Villa Madama* after the place where it was entered into. This was, practically, a revision of the Concordat between the Holy See and Mussolini, concluded in 1929. It is also followed by partial treaties addressing economic matters, the need for which was also determined by the existence of the Vatican City State, which represents a certain rarity compared to the situation in other countries.

Once the author familiarizes the reader with the content of the property treaty concluded with Malta, the book goes on to deal with the first treaty with a former Eastern Bloc country, namely Hungary (signed 1997). In fact, Hungary was the first former satellite state of the Soviet Union to attempt to address this issue in the form of a concordat treaty. It came at a time when negotiations on the issue of ecclesiastical restitution in the Czech Republic were seriously stalled. In the collection called *Texty ke studiu konfesního práva* (Texts for the Study of Confessional Law), the late Professor Ignác Antonín Hrdina remarked that the Hungarian treaty “prove[d] that issues of the relationship between church and state, even in such a delicate area as property, can even today be solved to the satisfaction of both parties, as long as there is the political will behind it.” Němec points out, however, that in this treaty Hungary refers to and develops the provisions of the restitution law already approved in 1991; indeed, the introduction of tax assignation presents another an important innovation of the treaty.

Croatia, whose 1998 property treaty is presented as the one logically and chronologically following Hungary, experienced a relatively freer development within the Socialist Federal Republic of Yugoslavia, but also a difficult period of war in the early 1990s. Nevertheless, the restitution clause of the Concordat makes clear that even the relatively liberal regime of General Tito did not hesitate to illegally take hold of the property of the Church.

Finally, the author takes the reader to the state as remote as the Philippines, with its 2007 Cultural Heritage Treaty, and last but not least, to Albania, where the Catholic Church and other religious organizations and societies lived under extreme conditions under the consistently atheistic Hoxha regime. For each of these treaties, the author reflects — following the grant brief — on what might inspire the Slovak property treaty project.

The fourth chapter deals with treaty arrangements that do not only concern economic matters, but still contain provisions in this area. Excerpts of the treaties the Holy See concluded with African states that formerly used to be French or Belgian or Portuguese colonies are also presented. On the other hand, the fourth chapter also touches upon the treaties with the German *Länder*, that is, the federal states of the present-day Germany. Indeed, in the reunified Germany, new detailed regulations were needed, especially in the case of the so-called new federal states, that is, the *Länder* of the former German Democratic Republic, which used to pursue an official anti-religious policy with all its consequences, including the ones dealing with financial and property issues. Beyond the undoubtedly sophisticated legal framework of the contractual arrangements presented in the book, however, it must be acknowledged that the obligation

of the faithful to pay church tax as a surcharge on personal income tax has become a catalyst for the ongoing crisis of the German churches, both the Catholic Church as well as the Protestant Land Churches. The annual withdrawal of many hundreds of thousands of taxpayers from the church (*Kirchenaustritte*) indicates the practice of religion, hitherto expressed in Germany as the fulfilment of a certain civic duty, is being irreversibly and massively abandoned. In terms of expenditure, the financially demanding system implemented in the weakened Catholic Church in the former German Democratic Republic led the Archdiocese of Berlin to accumulate an astronomical debt of 148 million euros in 2003.

In the fifth chapter, the author examines how the various foreign concordat treaties affect the legal order of the Slovak Republic, and the actual concordats that have already been concluded between the Holy See and Slovakia. Of the national regulations, the most significant for the position of the Catholic Church remains Act No. 308/1991 Coll., on Freedom of Religious Belief and the Status of Churches and Religious Societies (Zákon č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností), already amended several times. Slovakia has also adopted restitution legislation since 1993 and at the same time overcame the communist Act on the Economic Security of Churches and Religious Societies (Zákon o hospodárskom zabezpečení cirkví a náboženských spoločností štátom) by adopting the modern Act No. 370/2019 Coll. on Financial Support for the Activities of Churches and Religious Societies (Zákon o finančnej podpore činnosti cirkví a náboženských spoločností). Since 1999, Slovakia has also allowed tax assignation for churches.

The author goes through the individual segments concerning material support of the Catholic Church as regulated by foreign concordat treaties and compares them with Slovak regulations in the areas of the freedom to acquire, own and transfer property, possible expropriation of church property, restitution of church property, church financing and tax assignation, financing of public benefit activities of the church, heritage care and archives, fiscal concessions, inviolability, modifications and construction of sacred places. As a culmination of his synoptic comparisons, the author presents in Chapter 6 his own, in his own words “academic,” proposal for a partial concordat between Slovakia and the Holy See on property matters, the future negotiation of which has been referred to in the Slovak Basic Treaty. The draft is written in Slovak and the author discusses various options depending on the circumstances that would arise, for example: “This paragraph of the preamble would have its justification in the event of a political decision not to address the restitution of formerly ecclesiastical property further...” The author’s proposed treaty would contain a preamble and seven articles: Article 1. Guarantee of

Property Autonomy (*Garance majetkové autonomie*); Article 2. Revenues of the Catholic Church (*Příjmy katolické církve*); Article 3. Financing of Catholic Church Activities in the Public Interest (*Financování činností katolické církve ve veřejném zájmu*); Article 4. Places of Worship and Ministry (*Místa pro bohoslužbu a duchovní službu*); Article 5. Care of Cultural Monuments (*Péče o kulturní památky*); Article 6. Tax Relief (*Daňové úlevy*); Article 7. Final Provisions (*Závěrečná ujednání*). The second part of the book, practically a half of it, consists of the complete texts of the various treaties which the author has discussed in the course of his exposition. The texts are given in three languages, namely in the bilingual original, for example in Italian and in the respective national language (variants differ, English is also common), in the third column, in addition, there is also the translation into Czech.

In its general concept and scope, this work by Damián Němec exceeds the immediate dimension of the task given by the grant project. Contractual law with the Catholic Church has also become an independent discipline, as documented, for example, by the Italian term *Diritto concordatario*, denoting not only the relevant contractual regulations but also an academic discipline. Němec's book thus becomes an important contribution to the development of this scholarly field. The Czech Republic is still awaiting ratification of the new concordat, but it is not expected to contain provisions on church financing. Even if that is the case, it is desirable to look at the property situation of the Catholic Church in the neighbouring Slovakia and in many other countries for comparison.

© Stanislav Příbyl

<https://orcid.org/0000-0002-2470-1405>