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STATE-CHURCH RELATIONS IN THE FIRST CZECHOSLOVAK REPUBLIC: SPECIFIC FEATURES OF LEGAL REGULATION

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Annotation. It is indicated that the relationship between the Church and the state went through various stages in its formation both in Ukraine and in the world as a whole. In addition, the state's relations with religious organizations in various countries still have their own specifics. Models of these relationships are usually built depending on the political, religious, cultural and other traditions of each region. Therefore, today in Europe, despite the presence of a number of common trends, there is still no unity of approaches in building a system of state-church relations.

It is quite obvious that in order to solve this problem, it is necessary to study the existing historical experience of Czechoslovakia. Regarding this, the confessional policy of the Czechoslovak state in the 20th century has a special value. Back in the interwar twentieth century (1918–1938), an attempt was made here to build such a model of the relationship between the state and religious organizations, which, on the one hand, provided for the secular nature of the state and the maximum limitation of the role of the church in public life, and on the other hand, the preservation of the main elements of the system of state -church relations that developed in Austria-Hungary. We can say that in a slightly modified form this model continued to exist in Czechoslovakia and in the second half of the 20th century. Even during the years of state atheism, the church here was not separated from the state. Thus, in the 20th century, Czechoslovakia accumulated rich experience in adapting traditional elements of the state church to new historical conditions.

Based on the study of domestic and foreign sources, the article analyzes the legal regulation of state-church relations in the First Czechoslovak Republic.

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The study attempted to analyze the country's relationship with the Vatican, which consisted primarily of the need to conclude a concordat agreement. The legal nature of *Modus vivendi* is analyzed.

It was determined that the model of state-church relations in the first Czechoslovak Republic became an organic development of the model that existed in Austria-Hungary. It can be said that the process of equalizing the rights of all state-recognized denominations came to a certain logical conclusion in the first Czechoslovak Republic. At the same time, one of the fundamental principles of Austrian religious policy was preserved in the Czechoslovak Republic – the desire to limit the ties of local denominations with foreign administrative centers as much as possible.

Key words: church, state-church relations, concordat, confession, *Modus Vivendi*.

Statement of the problem and relevance of the research topic.

In the public sphere, there is an interaction between the public interests of citizens and the public policy of the state, which depends on the readiness of the population to form modern structures of civil society. The degree of their influence on state bodies for the purpose of realizing public interests depends on the activity of various kinds of organizations, unions, and movements.

The relationship between the church and the state in all periods of the development of society was and still is an extremely relevant subject of scientific research by religious scholars, lawyers, historians, and political scientists. One of the forms of this interaction is the concordat model, which is aimed at concluding a public-legal contract in the person of two main subjects: the church and the state. At the same time, among a significant number of various associations, organizations, public structures in the state, the church should be singled out.

It should be noted that the relationship between the Church and the state went through various stages in its formation both in Ukraine and in the world as a whole. In addition, the state's relations with religious organizations in various countries still have their own specifics. Models of these relationships are usually built depending on the political, religious, cultural and other traditions of each region. Therefore, today in Europe, despite the presence of a number of common trends, there is still no unity of approaches in building a system of state-church relations.

That is why, in our opinion, the experience of state-church relations in the First Czechoslovak Republic is worthy of attention, which is the **purpose** of this publication.

It is quite obvious that in order to achieve this goal, it is necessary to study the available historical experience. Regarding this, the confessional policy of the Czechoslovak state in the 20th century has a special value.

Analysis of the latest publications and research on this issue. The issue of concordats concluded between the church and the state from the standpoint of canon law in Ukraine was studied in detail by Sofron the Wise, ChSVV [1]. V. Semenova analyzed concordat agreements between the Catholic Church

and the state based on historical experience [2]. O. Bratislava considered the legal nature of concordats as a form of public contract [3]. M. Palinchak, investigating the issue of state-church relations in the post-socialist society, also draws attention to the concordats that were adopted [19; 16; 15; 5]. The concordat model of state-church relations is also devoted to the works of S. Onishchuk [4].

Presentation of the research material. Summarizing the experience of post-communist transformations, some researchers identify regional models, namely: «Balkan», «Central European» and «post-Soviet» (V. Yelenskyi). The first provides constitutional preferences for traditional churches; the second is based on the concordat and is widespread mostly in countries with a predominantly Catholic religion; the third model provides for a strict legislative separation of the spheres of influence of the state and the church, the equality of religious denominations before the law, and the absence of any financial support for religious organizations and the state budget [5, p. 91].

It is indisputable that after the end of the First World War, the geopolitical landscape of Europe changed significantly, as a result of which a new era of concordats began. From 1922 to 1939, Pope Pius XI was the head of the Catholic Church. His pontificate falls on one of the most difficult periods of European history. The papal proposal was sent to states, especially to new ones, born or transformed by war, inviting them to stabilize and concretize their relations with the Catholic Church. As a result, during 15 years from 1922-1937, 14 important concordats were concluded: Latvia (1922), Bavaria (1924), Poland (1925), Romania (1927), Czechoslovakia (1927), Lithuania (1927), Italy (1929), Prussia (1929), Baden (1932), Austria (1933), Yugoslavia (1935) and Ecuador (1937) [1, p. 121-122]

As we can see, among the listed countries is Czechoslovakia, which had to resolve the issue of its new relationship with the papal curia. The only mutual cooperation could be established in the agreement regarding the establishment of the borders of the state borders with the borders of the diocese, which played an important role for the sovereignty of the Czechoslovak Republic.

Actions in this direction were initiated very quickly. The official establishment of diplomatic relations with the Vatican in 1920 allowed for negotiations between the government and the Holy See, which greatly contributed to the organization of relations between the state and the church. The Czechoslovak authorities wanted to simultaneously resolve the issue of the delimitation of dioceses and the issue of church property, without connecting them with the delimitation of dioceses. However, due to the unequal attitude to the urgency of individual problems, the process took place quite slowly. Another of the barriers that affected the complication of relations with the Vatican were the events related to the official celebration in 1925 of the burning of Ya.Gus [6, p. 142].

This unfavorable domestic political climate made it impossible to solve mutual problems in the form of a concordat. Only a form that would leave a free path for possible separation was acceptable. As a result of diplomatic negotiations, the *Modus vivendi* was adopted, by initialing its text on December 17, 1927 in Rome. The first conversation took place between Ambassador Croft

and Cardinal Gaspari Mons. The parties agreed that if the negotiations are successful, the result will not be in the form of a concordat, but as «Modus vivendi» [7, p. 678.]. In our opinion, it would be appropriate to pay attention to the fact that some authors interpret «Modus vivendi» as a concordat. Thus, from a legal point of view, A. Hobza evaluated this agreement as a concordat, which means the direct opposite of the principle of separation of church and state. Since, according to this agreement, together with the issues of demarcation of dioceses, conformity of diocesan and state boundaries, management of church property, the issues of appointment of high-ranking church officials and their oath of loyalty to the Czechoslovak Republic were also resolved [8]. Minister E. Benes held a completely opposite opinion, arguing that «Modus vivendi» is a preliminary agreement, which, with mutual adjustment and agreement of the parties, can serve as the basis of the concordat [9, p. 279].

In the traditional legal system, the concordat was considered primarily a privileged form of agreement and compromise between the two highest subjects of international law. Despite the diversity and heterogeneity of agreements, which were sometimes called consent, unanimity, conciliatory laws, peace, the term «concordat» was generally used to indicate a certain type of relationship between the church and the state [4, p.1].

In these agreements, the state recognizes the church as a legal entity and co-partner in social activities. The Church, on the one hand, is guaranteed freedom in the practice of spiritual life, and on the other hand, cooperation in social and cultural spheres is emphasized, bearing in mind that believers are also citizens of this state. An example of a common position in the social sphere of the church and the state can be their bilateral recognition of the right of parents to choose the method of upbringing [10, p. 20-21].

According to the terminological meaning, the term «concordat» comes from the Latin Concordatum, which means «agreement». According to the definitions found in religious literature, a concordat is an agreement between the Pope as the head of the Roman Catholic Church and another Catholic state, which regulates the legal status of the Roman Catholic Church in a certain state, as well as the relations of this state with the Holy See [11, p. 163]. That is, the main function of the Holy See in the context of diplomatic representation is given to the status of the Catholic Church in the state and its regulatory and legal consolidation, which is expressed in providing citizens with the right to religious freedom.

In this connection, the main goal that the apostolic nuncios strive for is the conclusion of a concordat between the Holy See and the state of their stay, on the basis of which the state grants special privileges to the Catholic Church and determines its position and rights within the state, while the church undertakes to provide support in general government and not to interfere in political affairs [12, p. 141].

The opinion of S. Onishchuk, who notes that at the current stage of the development of state-church relations, the concordat is an international agreement of a normative nature, is quite correct, but it is not the only means of regulating relations between the church and the state [4, p. 4].

In a concordat, as in international treaties, there are two fundamental types of concordat conditions: contractual and normative. Contractual conditions create a legal obligation for the parties to comply with what was agreed with the corresponding subjective right to demand performance, and normative conditions are those conditions that stabilize some objective norms of law, valid and applicable to the legal institutions of the two parties that agree. A concordat as an international treaty defines obligations for two parties and establishes the corresponding subjective rights to demand their fulfillment. The procedure for creating a concordat is complex and involves three stages. At the first stage, negotiations are conducted between the parties. Representatives of the parties prepare materials, check the veracity of all data and, based on this, proceed to the discussion and editing of the text of the future concordat. The pontiff and the head of state appoint authorized persons who monitor the correct observance of the procedure. Having reached an agreement at the first stage, the parties proceed to signing the document. This is the second stage of creating a concordat. Previously, the concordat, which was sealed with the signatures of both parties, immediately acquired legal force [1, p. 108]. Given this, it becomes clear what is the difference between the understanding of the agreement and its interpretation by some authors as a «concordat». We, in turn, adhere to the point of view, according to which we consider the «Modus vivendi» to be a preliminary agreement, which is the basis for the adoption of the concordat.

At today's stage, the concordat becomes an official international document after ratification. Ratification is the last stage, and it belongs to the competence of the Pontiff and the head of state. In order to put the concordat into effect, which, accordingly, through ratification, gains full legal force, the exchange of instruments of ratification is required, which is carried out by authorized persons at the stipulated place and time. At the same time, the concordat becomes a ratified international treaty and binding for the parties that signed it [1, p. 108].

Continuing consideration of the issues that were resolved by concluding the «Modus vivendi», attention should be paid to the provision that referred to the unification of the Czechoslovak state borders with the borders of individual dioceses. Since, when establishing state borders at the conference in Paris, the borders of ecclesiastical regions were not taken into account, especially in Slovakia and Subcarpathian Rus. This led to the fact that a number of dioceses had their residence abroad, and vice versa.

Therefore, Art. And it determined that no part of the Czechoslovak Republic would be subject to an ecclesiastical ordinary whose seat and rule is outside the borders of the Czechoslovak Republic. Likewise, the Czechoslovak diocese will not exceed its powers in the Czechoslovak Republic.

The following problems arose as a result of the fact that some functionaries (bishops of Rozhnyavskiy, Košice, Spišskiy) died, others left their institutions (bishops of Bansko-Bystritskiy, Nitranskiy). The state was forced to provide temporary management of this church property. Similarly, it had to, through the introduction of temporary management (sequestration), ensure the

management of the property of those monastic bodies, church institutions and foundations whose centers were located abroad, as well as stop the flow of income outside the Czechoslovak Republic. Article II «Modus vivendi», by mutual agreement of the parties, provided for the return of this property to the church [13, p. 279].

The issue of the above-mentioned rights in relation to higher church dignitaries arose in connection with the change of the sovereign. In the Pre-Litovsk part of Austria-Hungary, the emperor had the right, according to Law No. 50 of 1874, to appoint dignitaries to the positions of archbishop, bishop, canon, and vicar general (the exception was the Olomouc Archdiocese, where they were elected by the chapter), and in Hungary a similar right of the emperor arose from the patronage rights of the Hungarian king. The right to appoint was an attribute of the ruler's state power. Pope Benedict XV announced in an allocation on November 21, 1921 that the privileges that the papal capital, through the conclusion of treaties and agreements, granted in the past to some states, cannot be used by new states, in any case, the personal privileges of the rulers do not transfer to the power of successor states. The practical consequence of this situation was that the papal curia appointed apostolic administrators in the cities of Brno, Rozhnev, Košice, and Uzhhorod, that is, it took over the right which, according to the law No. 11 of 1918 in force at the time, belonged to the Czechoslovak government. Although this appointment was not recognized by the state, the government was forced to recognize the ecclesiastical measures carried out by the appointed church persons [14, p. 4].

Modus Vivendi in Art. IV, declared that authorized bishops and priests in wartime should not act against the integrity of the state and the inviolability of state borders. Before appointing Czech priests, the Holy See had to offer their candidacies for consideration to the Czechoslovak government, to make sure that it had no «objections of a political nature». It was this part of the article that was considered a failure in the process of negotiations with the Vatican. The departure of the authorities from the monopoly right of appointment to the simple possibility of political objections was noted. Although «political objections» were narrowly defined, this right of approval continued into Communist rule, giving the government the right to revoke appointments to a priest for political reasons. Candidates for the post of the church diocese had to be appointed from among the citizens of the Czechoslovak Republic [15, p. 107]. After their nomination by the Holy See, they take an oath of loyalty to the Czechoslovak state, namely: «I swear and promise, as befits a bishop, to serve for the loyalty of the Czechoslovak Republic, and that I will not carry out any act that may harm the well-being, security and the integrity of the Republic». Therefore, thanks to the signing of the «Modus vivendi» all contradictions between the secular and church authorities were removed.

According to the agreement of March 29, 1928, the Holy See and the government of the Czechoslovak Republic had to create two committees within two months, independently of each other: the first of them was created by the Holy See with delegates from all dioceses under the chairmanship of a representative from the See in Prague, the second - by the Czechoslovak

government from the delegates of the participating dioceses and experts. Meetings on *Modus Vivendi*, primarily regarding the new limitation of dioceses, began in June 1928 and continued until 1933 [16, c. 19].

The preparatory work of the joint commission was very large and complex, requiring the solution of a significant volume of issues, which included branch problems of the law of Czechoslovakia, Hungary and the Vatican (of a political, economic and financial nature). A document called the «Delimitation and Subsidy Plan» was sent at the end of 1933 for consideration by the Vatican.

In November 1936, Prague received a message that it was not possible to implement all the projects immediately, and that the Vatican advocated the gradual implementation of these projects in two stages. The first stage would include the external delimitation of dioceses, that is, their alignment with state borders. The second stage would mean internal demarcation, i.e. a new delimitation of some dioceses within the state territory, combined with a new distribution of church grants between these dioceses.

In accordance with the aspirations of the Holy See, at the first stage of the implementation of this agreement, the papal bull was to announce the creation of an independent Roman Catholic church province in Slovakia headed by a metropolitan, and a second Greek Catholic province for the entire republic with its seat in Subcarpathian Rus. However, after the emergence of the Czechoslovak Republic, Slovak church farms were to be sequestered, freed from imposed management and transferred to the management of a spiritual dignitary authorized by the Vatican. In addition, the Vatican wanted to withdraw the Hungarian claims, which had been submitted to the Czech-Hungarian Arbitration Court in The Hague, regarding church estates, if the Czechoslovak authorities agreed to have the Hungarian claims discussed by a special Vatican dicastery.

The Czechoslovak authorities agreed with this proposal. In the summer of 1935, the sequestered church estate was transferred to the management of the papal commissioner - the administrator of Trnava, Mons Jantaush. A formal cancellation of the sequestration was also prepared in the form of a government decree, which could be announced at any time (government decree No. 204). On September 2, 1937, the papal bull «*Ad ecclesiastici regiminis incrementum*» was issued on the external delimitation of the Czechoslovak dioceses. In this way, the issues of border delimitation regarding Austria, Hungary and Romania were agreed upon. Regarding the transfer of the borders of the Archdiocese of Prague and Olomouc to Prussian Silesia, the bull limited itself to a promise to resolve this issue in the appropriate period, as well as the issue of the authority of the Rzeszów Diocese in the Czech Republic and the Bratislava Archdiocese in Moravian Silesia. On October 1, 1937, the Czechoslovak authorities took note of the content of the papal bull and expressed their consent to it. The Ministry of Foreign Affairs was informed that the papal nuncio Msgr. Kh. Ritter began to implement the resolution of the delimitation bull. On November 11, 1937, the Minister of Foreign Affairs, K. Croft, in a speech before the Foreign Policy Committee of the Chamber of Deputies, noted the issuance of the bull as a significant step towards the implementation of the most essential resolution

Modus vivendi (Article I). However, at the request of the Vatican, only the first stage was implemented, and the Czechoslovak authorities tried to implement the next one as soon as possible.

To date, the Czech Republic is one of the few post-communist countries that does not yet have an agreement with the Vatican, although negotiations on its conclusion began back in April 2000. As a result of

In 2002, the Czech Republic and the Vatican signed an agreement that regulates bilateral relations and defines the position of the Roman Catholic Church in the republic as an independent entity. In accordance with this agreement, the Catholic Church was given the opportunity to create educational institutions, the documents on which graduation is equal to the graduation documents of state educational institutions. The state undertook to recognize church marriage, to create optimal conditions for the pastoral activity of clergymen in hospitals, the army, and prisons. The Czech Republic and the Vatican undertook to cooperate in the protection of monuments of Christian history and culture [17]. However, the Vatican, for its part, signed and ratified the treaty, and the Czech Parliament refused.

In May 2008, the government promised to return property worth 35 billion kroner to the church and gradually, over 60 years, to pay another 86 billion kroner in compensation. Together with the interest for 60 years, the amount would be approximately €12 billion. However, the left opposition in the parliament strongly opposed it, and the ruling right, in turn, did not insist. Vaclav Klaus, who had already become president at that time, said that even if this agreement had been approved by the Diet, he still would not have signed it. Even the authority of the Pope, who came to the country, could not force the Czech government to make concessions to the church, at least in relation to the most important for Czech Catholics, the Cathedral of St. Welcome to Prague. At a meeting with Vatican Secretary of State Tarcisio Bertone, Czech Prime Minister Jan Fischer bluntly said that «the crisis is not the best time to resolve property disputes between the church and the state. It is better for Czech Catholics to wait for better times» [18].

Discussions are taking place regarding the different positions of the political elite of the parliament, since the rightists say that first we need to deal with church property, and then the issue of the concordat should be resolved, the leftists say that the agreement should be reworked, otherwise it is too profitable for the Catholic Church [18]. The Vatican, in turn, demands the restitution of the property of the Catholic Church, confiscated by the communists and returned since the «velvet revolution» [19, p. 292].

The issue of returning church property remains open. According to the Restitution Law of 1994, property confiscated by the communist regime after 1948 must be returned to its former owners. However, this law did not apply to all religious organizations in full. To date, forests and agricultural lands that previously belonged to Catholic communities, churches and monasteries have not yet been returned to the Catholic Church, as required by the Vatican. Leased buildings, some land and other property nationalized by the Communists were also not returned to the Protestant churches. According

to information released at the Czech bishops' conference, about 3,000 objects remain in state ownership: schools, farms, hospitals, architectural and historical monuments. After 1998, 175 buildings were returned. The government of the Czech Republic considers it impossible to compensate for all the damages caused to churches in the period 1948–1989. According to the management, during this period not only denominations suffered, but also other organizations and citizens. And the new division of real estate may lead to infringement of the interests of other legal entities and individuals. The former Prime Minister - Minister Vaclav Klaus said on this occasion: «The Church must come to terms with the fact that the past cannot be brought back» [19, p. 293].

Conclusions. So, we can say that the model of state-church relations in the first Czechoslovak republic became an organic development of the model that existed in Austria-Hungary. It can be said that the process of equalizing the rights of all state-recognized denominations came to a certain logical conclusion in the first Czechoslovak Republic. At the same time, one of the fundamental principles of Austrian religious policy was preserved in the Czechoslovak Republic – the desire to limit the ties of local denominations with foreign administrative centers as much as possible.

At the moment, only some provisions of the above-mentioned Modus Vivendi agreement are in force in the Czech Republic, in particular, the provision according to which the government can express its proposal regarding candidates for the post of bishop remains in force. In all other positions, this agreement has no legal force.

Adoption of the concordat would testify to the recognition of the Holy See by the state and at the same time would allow the opening of church schools, regulate missionary service in the army, in hospitals and prisons, and would also give the right to state recognition of church marriages.

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