

Selected Legal Aspects of the Relations Between the Czechoslovak Republic and the Catholic Church Related to the Negotiation and Implementation of *Modus vivendi*¹

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Abstract:

This article aims to analyze and synthesize the knowledge pertaining to the various aspects of the relationship between the Catholic Church and the Czechoslovak Republic, particularly focusing on their influence on the negotiation, content, and implementation of the *Modus vivendi*. The paper primarily delves into the circles associated with the diplomatic relations between the Czechoslovak Republic and the Holy See. It also addresses the transfer of privileges from the former Monarchy to the newly established Czechoslovak Republic. Additionally, the article explores certain aspects of the confessional legal legislation of the Czechoslovak Republic during the period preceding the negotiation of the *Modus vivendi*, specifically from 1918 to 1928.

Keywords: Holy See; Czechoslovak Republic; diplomatic relations; Modus vivendi; patronage rights

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*I know of no development in the whole field of the legal life of European nations more remarkable and more diverse than that of the relation between the State and the Church. The magnitude of this development, encompassing its enduring nature and the profound disruptions it has engendered in societal structures, is truly awe-inspiring.*²

Introduction

The quoted excerpt by A. Hobza eloquently encapsulates the intricate evolution of the church-state relationship, highlighting its distinct characteristics. Divergence in confessional legislation can be *in concreto* observed in the interference of the Church in public affairs, tracing its historical trajectory from the fusion of state and church to the subsequent separation of church and state in various manifestations.³ The endeavour to re-establish regulation on the aforementioned matter stood out as a critical focal point during the period of the Czechoslovak Republic (1918–1938), which emerged amidst the remnants of the former Habsburg union of states.⁴ *Modus vivendi* brought at least a partial solution.

The present paper is divided into three interrelated chapters. The aim of the paper is to analyze and then synthesize the knowledge about the aspects of the relation between the Catholic Church and the Czechoslovak Republic that influenced the content as well as the process of negotiating and implementing the *Modus vivendi*.⁵ The subject of the first chapter is in this sense the areas concerning the diplomatic relations between the Czechoslovak Republic and the Holy See. The second chapter discusses the issue of the transfer of the privileges of the former Monarchy to the newly established Czechoslovak Republic. The third part of the paper is devoted to some relevant issues of the confessional legislation of the Czechoslovak Republic in the period before the negotiation of the *Modus vivendi*, i.e. between 1918 and 1928.

Diplomatic relations between the Czechoslovak Republic and the Holy See

After the German *Kulturkampf* and the French metamorphoses of the relationship between church and state, the Danube monarchy emerged as one of the few states that maintained a harmonious relationship with the Holy See. Although the concept of the “Union of Throne and Altar” had lost its influence in the early 20th century, no longer reflecting the

² HOBZA, A. *The Relation Between the State and the Church. Its Development and Present State*. 3rd amended and expanded edition. Prague: [At own cost], 1925, p. 178.

³ On this VALEŠ, V. *Confessional Law. A Guide to Study*. Pilsen: Aleš Čeněk, 2008, pp. 14 ff.

⁴ On this see for VRANA, V. Peaceful Coexistence in Central Europe in 1918–1920. In: ŠTENPIEN, E. – PIŠTEJOVÁ, L. – SVATUŠKA, I. (eds.). *World War I and Its Consequences in the State Law. Conference Proceedings of the International Scientific Conference Held on 29–30 September 2022 Organized by the Department of History of State and Law of the Faculty of Law of the Pavol Jozef Šafárik University in Košice*. Košice: Pavol Jozef Šafárik University in Košice, Publishing House ŠafárikPress, 2022, pp. 403 ff.; ŠTENPIEN, E. The Paris Peace Conference and the Establishment of the Borders of Czechoslovakia. In: ŠTENPIEN – PIŠTEJOVÁ – SVATUŠKA, *op. cit.*, pp. 350 ff.; VAŇA, I. The First World War and Its Impact on the Northern Border of Hungary. In: ŠTENPIEN, E. – SVATUŠKA, I. (eds.). *100 Years of the Treaty of Trianon – Diplomacy, State and Law at the Turn of the Millennium. Conference Proceedings of the International Scientific Conference Held on 14 October 2021 – 15 October 2021, Organized by the Department of History of State and Law of the Faculty of Law of the Pavol Jozef Šafárik University in Košice*. Košice: Pavol Jozef Šafárik University in Košice, Publishing House ŠafárikPress, 2021, p. 318.

⁵ On this see also BIRHER, N. Die Rolle der Kirchen in der Politik zur Zeit von Trianon. In: ŠTENPIEN – PIŠTEJOVÁ – SVATUŠKA, *op. cit.*, pp. 30 ff.

era of intentional degradation of Josephism, the Holy See did not possess an *a priori* inclination to dissolve the *Regnum Marianum*. The Holy See looked at the above with some uncertainty and suspicion expressed in the words: “How will fifty nation states stand up to Berlin and Moscow.”⁶ This standpoint was predominantly upheld by the adherents of the Pius circle, while Benedict XV, drawing upon Leo XIII’s principles regarding the state and law, assessed nations not solely based on their form of governance, but rather by their adherence to human dignity and *Libertas Ecclesiae*.⁷ Therefore, it came to pass that Theodor Valfrè di Bonzo, the Vatican’s representative in Vienna, was tasked with the responsibility of initiating diplomatic relations with the recently formed Czechoslovak Republic in early November 1918,⁸ which de facto happened already on November 8, 1918, when he announced to the government delegate Vlastimil Tusar the recognition of the Czechoslovak Republic.⁹ Subsequent to the formal establishment of diplomatic relations, a reciprocal exchange of diplomatic representatives took place. Kamil Krofta assumed the role of the inaugural Czechoslovak envoy to the Holy See, while Clemente Micara became the first Vatican nuncio in Prague. It is worth noting that while both parties were eager to solidify diplomatic ties, the Holy See acknowledged the swift execution of the exchange of diplomatic representatives by the Czechoslovak Republic, particularly with regard to Slovakia.¹⁰

The practical implementation of diplomacy was far from being so (seemingly) smooth. Three neuralgic points can be identified with a certain degree of simplification in the above-mentioned area, namely

- 1) the crisis of the years 1921–1922,
- 2) the Marmaggi affair (1925) and
- 3) the Ciriaci affair (1933).

Ad 1)

The cause of this particular crisis, unlike the other two preceding crises (affairs), cannot be attributed to a singular factor. As noted by E. Hrabovcová, the crisis stemmed from a combination of several interconnected aspects. These included the plans for separation,

⁶ See ŠMÍD, M. *The Vatican and Czechoslovakia in the 20th Century*. Prague: Stanislav Juhaňák – Triton, 2023, p. 11.

⁷ On this HRABOVCOVÁ, E. Slovakia and the Holy See From the Beginning of the 19th Century to the Apostolic Constitution *Ad ecclesiastici regiminis incrementum* of 1937. In: RYDLO, J. M. (ed.). *Renovatio spiritualis. Jubilee Collection on the Occasion of the 70th Birthday of Archbishop Ján Sokol, the First Metropolitan of Slovakia*. Bratislava: Lúč, 2003, p. 86.

⁸ Benedict XV, in what could be seen as a poetic gesture, reciprocated the Monarchy’s past actions through the suffering it endured due to the “dog piece” carried out fifteen years earlier. This act was orchestrated by Cardinal Jan Puzyna de Kosielsko, the Bishop of Cracow, who had targeted Mariano Rampolla del Tindaro, Benedict’s benefactor, during the conclave that followed the death of Leo XIII in 1903. See GELMI, J. *Popes. From St. Peter to John Paul II*. Prague: Mladá fronta, 1994, p. 252 and SUCHÁNEK, D. *Ius exclusivae. The Right of Exclusivity in Papal Elections*. Prague: Faculty of Arts, Charles University in Prague, 2012, p. 106 ff.

⁹ See DEJMEK, J. The Beginnings of Diplomatic Relations Between Czechoslovakia and the Vatican (1920–1921) (Krofta’s Ambassadorial Mission in Rome). *Český časopis historický*, 1993, Vol. 91, No. 2, p. 224.

¹⁰ Cf. HRABOVCOVÁ, E. Andrej Hlinka – Priest and Politician From the Holy See Perspectives. In: LETZ, R. – MULÍK, P. et al. *Perspectives on the Personality of Andrej Hlinka*. Martin: Matica slovenská, 2009, p. 147.

the secularization of Catholic education in Slovakia, and state interference in the affairs of the portion of the Archdiocese of Esztergom situated within Czechoslovak territory. It is important to emphasize that this crisis did not immediately impact the negotiation of the *Modus vivendi* and was comparatively less intense in nature. However, it is equally important to acknowledge that the Vatican's Congregation for Extraordinary Ecclesiastical Affairs, recognizing the pastoral interests of worshippers, made a deliberate decision not to resolve the crisis by severing diplomatic relations.¹¹

Ad 2)

The Marmaggi affair was the most serious crisis, resulting in the interruption of negotiations on the agreement regulating the relationship between Church and State. The aforementioned affair was "named" after Francesco Marmaggi, the second nuncio of Prague. Its origins are to be found in the Act on holidays and commemorative days of the Czechoslovak Republic.¹² This law abolished some holidays (e.g. the feast of Corpus Christi, St. Peter and St. Paul, and the Immaculate Conception) and introduced certain commemorative days (e.g. the feast of Jan Hus). Nuncio Marmaggi reproached the government for not having discussed with the Holy See the question of the abolition of public holidays and the introduction of new ones.¹³ The first celebration of Jan Hus Day was patronized by the President of the Republic, Tomáš Garrigue Masaryk,¹⁴ who, on that day, in violation of the implementing regulation¹⁵ of the Act, laying down provisions on the state flag, the state emblem and the state seal,¹⁶ hoisted a black banner with a red chalice at Prague Castle – instead of the presidential standard.¹⁷ Nuncio Marmaggi, considering this provocation and the personal participation of the President and the Czechoslovak government¹⁸ in Hus's celebrations as an insult to himself, the Holy See and the majority Catholic population of the Czechoslovak Republic, left the Czechoslovak Republic the following day. The retort

¹¹ Cf. HRABOVCOVÁ, *Slovakia and the Holy See From the Beginning of the 19th Century to the Apostolic Constitution Ad ecclesiastici regiminis incrementum*, p. 91.

¹² Act No. 65/1925 Coll. as amended, on holidays and commemorative days of the Czechoslovak Republic.

¹³ ŠMÍD, M. *Mission: Apostolic Nuncio in Prague. Czechoslovakian-Vatican Diplomatic Relations between 1920 and 1950*. Prague: Karolinum Press, 2020, p. 222. On this see also ŠEBEK, J. *Czech Lands and the Vatican After 1918 (1918–2013)*. In: ČERNUŠÁK, T. et al. *The Papacy and the Czech Lands in Millennial History*. Prague: Academia, 2017, p. 362.

¹⁴ The tradition of Jan Hus was revived in the early 1920s, but it intensified especially during WWI. It was Tomáš Garrigue Masaryk who, in 1915 in Geneva, Switzerland, reminded the public of the 500th anniversary of his martyrdom. Therefore, the anniversary of Hus's death (July 6) was commemorated annually after the creation of Czechoslovakia. See ŠMÍD, *Mission: Apostolic Nuncio in Prague. Czechoslovakian-Vatican Diplomatic Relations between 1920 and 1950*, p. 221.

¹⁵ Government Decree No. 512/1920 Coll. as amended for the implementation of the Act of 30 March 1920, No. 252 Coll., as amended, promulgating provisions on the State flag, the State emblem and the State seal.

¹⁶ Act No. 252/1920 Coll., promulgating provisions on the State flag, the State emblem and the State seal.

¹⁷ VALEŠ, *op. cit.*, p. 132.

¹⁸ On this see for EHRENBERGER, T. *Hus's Celebrations in 1925 as the Cause of the Diplomatic Conflict Between Czechoslovakia and the Vatican*. In: *Marginalia Historica. Proceedings of the Department of History and Didactics of History, Faculty of Pedagogy, Charles University 5*. Prague: Scriptorium, 2002, pp. 173–174.

was the recall of the Czechoslovak envoy to the Holy See. Although diplomatic relations were not denounced, the embassies handled only the usual agenda.¹⁹

Views on the attribution of responsibility for the crisis are diametrically opposed in the literature. While the Czech People's Party was inclined towards a purely private responsibility of the representatives of the Czechoslovak executive, the People's Party's position was clearly pro-Marmaggio, i.e. anti-Czechoslovak and anti-government.²⁰ On the opposite end of the political spectrum, there was a demand, at the very least, for the Czechoslovak Republic to sever diplomatic relations with the opposing side. While this outcome may not have been entirely unattainable, the necessity to resolve church-political issues through mutual agreement likely hindered its realization. Even Pope Ratti, who, having previously served as a nuncio in Poland, may have been aware of the lukewarm stance of Czech leaders towards Catholicism, did not advocate for a radical solution to the problem. Following several rounds of diplomacy and concessions from both sides, negotiations regarding an agreement to regulate the church-state relationship resumed around the turn of 1926 and 1927. It is worth noting that the temporary suspension of negotiations could have potentially suited both sides given the forthcoming parliamentary elections.

Ad 3)

The normalization of mutual relations was observed following the conclusion of the *Modus vivendi*. This was evidenced by the appointment of new personnel in two key positions, namely, Pietro Ciriaci²¹ (i) in the Prague nunciature and Vladimír Radimský in the (ii) Vatican embassy. While the crisis at hand did not escalate to the extent of the Marmaggi affair, it shared certain notable similarities with the aforementioned event. Both crises originated from (i) seemingly trivial matters and they both culminated in (ii) the departure of the nuncio. Most significantly, both crises had an impact on (iii) the *Modus vivendi*. The first crisis led to a temporary suspension of negotiations for its conclusion, while the second crisis affected its implementation.

The affair was triggered by two independent facts. The first was the resignation of Archbishop František Kordač of Prague (1931), officially for health reasons.²² However, it was no secret that Kordač's convictions corresponded to the policy of Pius X rather

¹⁹ DEJMEK, J. Czechoslovak-Vatican Negotiations on *Modus vivendi* 1927–1928. *Český časopis historický*, 1994, Vol. 92, No. 2, p. 268.

²⁰ ZMÁTLO, P. The Coverage of the Marmaggi Affair on the Pages of Two Slovak Party Newspapers. In: HANUŠ, J. – MAČALA, P. – MAREK, P. (eds.). *Churches of the 19th and 20th Century in Slovak and Czech Historiography*. Brno: Centre for the Study of Democracy and Culture, 2010, p. 498.

²¹ On this see for ŠMÍD, M. The Ciriaci Affair in 1933. A Conflict That Once Again Threatened to Break Diplomatic Relations Between Czechoslovakia and the Holy See. *Církevní dejiny* 8, 2015, Vol. 8, No. 18, p. 26 ff.; ŠMÍD, M. Pietro Ciriaci – Failure in Czechoslovakia the Key to His Further Rise? *Historica Olomucensia. Collection of historical works*, 2013, No. 32, pp. 55–73.

²² On this more detail ŠEBEK, J. Kordač's Affair in 1931 in the Church-Political Contexts. In ČECHUROVÁ, J. – ANDRŠ, P. – VELEK, L. et al. (eds.). *I Will Send a Historian. Tribute to Prof. Robert Kvaček on His 80th Birthday*. Prague: NLN, 2012, p. 355 ff.

than Pius XI.²³ Kordač's conflicts with the nuncio Ciriaci were also well known.²⁴ The second, much more serious fact was Pribina's celebrations in Nitra (1933). In this regard, Nuncio Ciriaci addressed a letter to Hlinka,²⁵ in which he used the expression "the noble Slovak nation (*generosa gens Slovacca*)", which did not fit the Czechoslovak conception. The response was a request from the government to summon the nuncio *ad verbum audiendum*. This practically indicated a request for recall.²⁶ However, it is worth noting that both parties involved in the affair demonstrated a lack of interest in escalating the conflict; the Czechoslovak envoy to the Holy See was not recalled. It is important to mention that Saverio Ritter²⁷ assumed the role of the last nuncio in Prague. Nevertheless, it is worth mentioning that his departure from the Czechoslovak Republic's territory in 1939 was marked by less than favourable circumstances ...²⁸

Transfer of the privileges of the rulers of the former Monarchy to the Czechoslovak Republic

According to contemporary authors, the greatest obstacle to agreement on the relationship between church and state²⁹ was a dispute over the passage of certain privileges of the rulers of the former monarchy, which gave the Czechoslovak Republic the possibility of interfering in church affairs.

In canon law, there exists a distinction between the right of nomination (*ius nominandi*) and the right of presentation (*ius praesentationis*), which are both components of the right of patronage. The right of presentation refers to the authority to designate a qualified clergyman to the ecclesiastical hierarchy for the purpose of filling a vacant benefice.³⁰ On the other hand, the right of nomination is the exercise of the right of presentation, specifically

²³ To Kordač's political profile see MAREK, P. Zum politischen Profil von František Kordač. *Zeitschrift für Ostmitteleuropa-Forschung*, 2010, Jhrg. 59, Nr. 2, S. 186 ff.; MAREK, P. – ŠMÍD, M. *Arcibishop František Kordač: An Outline of the Life and Work of an Apologist, Pedagogue and Politician*. Olomouc: Palacký University in Olomouc, 2013, 223 p.

²⁴ On this in more detail PITRUN, B. *A Core Memento. A Biographical Sketch of the Czech Jesuit Provincial Leopold Škarek SJ (1874–1968)*. Olomouc: Refugium Velehrad-Roma, 2008, p. 163 ff.; JONOVÁ, J. The Issue of the Appointment and Status of Bishops of German Nationality in Czech Dioceses From the Perspective of the Holy See. Diocese of Prague and Litoměřice at the Turn of the 20s and 30s of the 20th Century. *Studia theologica*, 2014, Vol. 16, No. 3, p. 135.

²⁵ For a Slovak translation of the letter see SIDOR, K. *Six Years at the Vatican*. 2nd edition. Bratislava: Libri historiae, 2013 (1946), pp. 93–94.

²⁶ HALAS, F. X. *The Vatican Phenomenon: Idea, History and Present of the Papacy, Diplomacy of the Holy See, Czech Lands, and the Vatican*. Brno: Centre for the Study of Democracy and Culture, 2013, pp. 599 ff.

²⁷ See ŠMÍD, M. The Dramatic Fate of the Apostolic Nuncio Saverio Ritter During the Period of Non-freedom (1938–1945). In: TAUCHEN, J. – SCHELLE, K. (eds.). *A period of non-freedom*. Ostrava: KEY PUBLISHING, 2014, p. 235.

²⁸ More KAMENEC, I. – PREČAN, V. – ŠKORVÁNEK, S. *Vatican and the Slovak Republic (1939–1945). Documents*. Bratislava: Slovak academic press, 1992, p. 24 ff.

²⁹ KMEŤKO, K. Modus vivendi and its Influence. In: *Slovensko kedysi a teraz*. Prague: Orbis Publishing House, 1931, p. 179.

³⁰ MUNKA, J. *Patronage Burdens and Ecclesiastical Dues*. Dunajská Streda: Rimstein's Printing House in Dunajská Streda, 1937, p. 26.

based on an apostolic privilege rather than the right of patronage.³¹ The most notable distinction between the two rights lies in their respective foundations. The right of nomination is obtained through privilege, indult, or concordat,³² whereas the right of patronage is inherent and stems from its foundational nature. Neither right carries a legal entitlement, but when considering the benefices associated with the Church, the right of patronage may be perceived as having a stronger claim. In contrast, the granting of the right of nomination indicates the ecclesiastical authority's desire for a greater degree of independence. A particular instance of the right of nomination is the royal right of nomination (*nominatio regia*), and the common element between both rights is their shared outcome, namely, the power of designation (*ius designandi et offerendi*)

The case of the former monarchy is not an appropriate example for differentiating the mentioned rights. It is not entirely clear which right was presumed to transfer to the Czechoslovak Republic regarding the appointment of ecclesiastical offices. The foundation from which the Czechoslovak Republic derived its rights is referred to in literature as the supreme patronage right of St. Stephen, while the Concordat of 1855, which applied to Hungary as well, referred to the *ius nominandi*. These discrepancies arise from a lack of information. Stefan Werböczy, in his work *Tripartitum*, mentions four reasons for granting the Pope only the right to confirm the bishop in office in Hungary. The first reason indicates patronage, while the second strongly suggests apostolic privilege. The difference is also present in the consideration of the possibility of succession to the said right on the part of the successors of St. Stephen³³ and its legal basis.³⁴ While, due to incorrect background information, some authors have thought of St. Stephen as a papal legate,³⁵ others vehemently deny the legatus of St. Stephen. Indeed, it should be noted that the purported right encompassed more than just the appointment of ecclesiastical offices.

The Czechoslovak leaders encountered a delicate predicament. On one hand, the government displayed hesitation in appointing bishops due to the undefined circumstances, as it feared that supporters of the separation of church and state might interpret such nominations as an indication of an intimate relationship between the two entities.³⁶ On the other hand, the political lobby representing the opposing end of the political spectrum publicly urged the government to assert its presumed rights of nomination.³⁷ The Czechoslovak government opted for a rather unconventional solution to the issue. While it did not neglect the designation process for lower benefices, such as positions of canons, it demonstrated

³¹ NEMEC, M. Patronage Law and the Development of the Problem of Appointment to Ecclesiastical Offices in the Catholic Church. *Revue církevního práva*, 2002, Vol. 8, No. 1, p. 7; WERNZ, F. X. – VIDAL, P. *Jus canonicum*. Rome: Universitatis Gregorianae, 1923, p. 261.

³² PÍCHA, M. The Austrian Right of Appointment Was Not Transferred to the Government of the Czechoslovak Republic. *Časopis katolického duchovenstva*, 1925, Vol. 66, No. 3, p. 194.

³³ On this see TOMKO, J. *Die Errichtung der Diözesen Zips, Neusohl und Rosenau (1776) und das königliche Patronatsrecht in Ungarn*. Wien: Verlag Herder, 1968, pp. 25–26.

³⁴ *Ibidem*, p. 28.

³⁵ On this MACHÁČEK, P. *Main-Patronage Law in Hungarian History. Historical and Legal Reflection*. Bratislava: Society of St. Vojtech in Trnava, 1930, p. 131. The opposite opinion of the author of the publication *Ibidem*, p. 190.

³⁶ Cf. VAŠEČKA, F. *The Bourgeois State and the Church*. Bratislava: Publishing House of the Slovak Academy of Sciences, 1957, p. 138.

³⁷ HRABOVCOVÁ, *Andrej Hlinka – Priest and politician from the Holy See perspectives*, p. 143.

reluctance in proposing a candidate for significant positions like the archbishop's seat in Olomouc.³⁸

The exercise of the right in question by the Czechoslovak Republic was also supported by a ruling of the Supreme Administrative Court of the Czechoslovak Republic,³⁹ the reasoning of which this court invokes Section 5 of the Catholic Church External Relations Act,⁴⁰ thus state law and not church law. According to the provision in Section 3 of the aforementioned regulation, the process of appointing ecclesiastical offices followed the previous approach, as outlined in Article XXII of the Concordat of 1855. This right was attributed to the ruler, subsequently exercised under the countersignature of the relevant minister since 1868. The Supreme Administrative Court of the Czechoslovak Republic held the view that the Concordat could not have been concluded by the ruler as an individual but only by the ruler as an executive body, which, following the coup d'état, was transferred to the president and the Czechoslovak government. The president's powers in the executive sphere were explicitly and exhaustively enumerated,⁴¹ and the right to appoint canons was not among them, *in contrario*, it fell within the domain of the government. Some jurisprudence from that time also emphasized the secular basis of appointment rights.⁴²

In the article "The Austrian right of appointment did not pass to the government of the Czechoslovak Republic" by M. Pícha, a series of arguments is presented to support the opposite viewpoint, emphasizing the ecclesiastical basis of appointment rights. It challenges the theory of unlimited state sovereignty and highlights the subjectivity of the Holy See as a subject of international law, equal to any other state. It rejects the notion that the right of appointment can be exercised by a legal entity other than a natural person, and firmly dismisses the secular foundation of the appointment right. The article also points out several deficiencies in the exercise of the *ius designandi et offerendi* by the Czechoslovak government, including the failure to submit nominations to the Holy See for confirmation. This critique brings to mind the hypothetical disapproval that Pope Gregory VII might have expressed if he had lived ...

Furthermore, it is worth mentioning Pope Benedict XV's *In hac quidem* document of 21 November 1921.⁴³ This document invoked the clause *rebus sic stantibus*, which stipulates that certain rights and privileges of the Austro-Hungarian monarchs were not automatically transferred to the successor states. As a result, in cases such as the dispute

³⁸ PÍCHA, M. The Austrian Right of Appointment Was Not Transferred to the Government of the Czechoslovak Republic. *Časopis katolického duchovenstva*, 1925, Vol. 66, No. 2, p. 98; on this see JONOVÁ, J. Negotiations on the Occupation of the Archbishop's Chair in Olomouc After the Resignation of Archbishop Lev Cardinal Skrbenský z Hříště From the Perspective of the Holy See. *Studia theologica*, 2013, Vol. 15, No. 3, p. 129 ff.

³⁹ See the ruling of the Supreme Administrative Court of the Czechoslovak Republic, File Ref. No. 315/23 of 10 January 1923.

⁴⁰ Act No. 50/1874 as amended, regulating the external conditions of the Catholic Church (the Catholic Act).

⁴¹ Provision of Sec. 64 of Act No. 121/1920 Coll. as amended, introducing the Constitutional Charter of the Czechoslovak Republic.

⁴² HOBZA, *The Relation Between the State and the Church. Its Development and Present State*, p. 172.

⁴³ On this see PEHR, M. – ŠEBEK, J. *Czechoslovakia and the Holy See. From Hostility to Cooperation (1918–1928)*. Prague: Masaryk Institute and Archive of the Academy of Sciences of the Czech Republic, 2012, p. 65.

over the Catholic status succession of the Romanian king, the Church emerged as the victor.⁴⁴ Although the Czechoslovak Republic eventually renounced its nomination rights and conceded the *collatio libera*, the dispute was not finally resolved until Article IV of *Modus vivendi*. It should be added, however, that some secular authors, rejecting the possibility of modifying national law by diplomatic note, considered the nomination claims of the Czechoslovak government to have been preserved even after 1928.⁴⁵

Selected confessional legislation 1918–1928

In the previous two chapters, selected aspects of the relationship between the Church and the State have been presented as material sources of the *Modus vivendi*. The positive definition of *Modus vivendi* has been the subject of articles I have published in the past,⁴⁶ so at this point I will try to define it in a negative perspective. The aforementioned approach may not provide a comprehensive solution. The *Modus vivendi*, as a framework agreement, did not encompass all the demands and expectations of the parties involved, and even after 1928, several unresolved issues persisted. However, a partial negative definition of the *Modus vivendi* can be derived by excluding the confessional legislation of 1918–1928. In other words, the provisions already regulated prior to 1928 were not addressed by the *Modus vivendi*, despite the fact that they typically form part of similar contractual agreements.⁴⁷ Considerable attention has been devoted in professional literature to the subject matter discussed above. Given the extensive nature of this literature, I will provide only a brief overview of the typical content found in concordats, namely

- 1) the matrimonial amendment
- 2) the small schools act and
- 3) the congruence law.

Ad 1)

A partial unification of matrimonial law, which had undergone a turbulent development since the time of Josephism, was represented by the so-called Matrimonial Amendment.⁴⁸ The primary issue at hand pertained to the divergent understanding of marriage, whereby the Hungarian legislation exhibited a more progressive approach. In Hungary, civil marriage was obligatory, and the dissolution of marriage was permissible irrespective of the religious affiliation of the spouses. In contrast, the Austrian legislature implemented civil marriage as optional, and it established distinct rules for Jews, Protestants, and Catholics

⁴⁴ On the filling of ecclesiastical offices and disputes over the transfer of personal privileges of the former monarchy to successor states in other countries, see also F. A. Unification Tendencies Among Catholics. *Československá republika*, 1932, p. 1.

⁴⁵ See HOBZA, A. *Modus vivendi. The Political Concordat Concluded Between the Czechoslovak Government and the Vatican*. Prague: [At own cost], 1930, p. 17.

⁴⁶ See TOMAŠ, L. Validity of *Modus vivendi*. *Legal Point*, 2018, Vol. 6, No. 1, pp. 7 ff.; TOMAŠ, L. Property Aspects of *Modus vivendi*. *Legal Point*, 2018, Vol. 6, No. 2, pp. 12 ff.; TOMAŠ, L. Changes in the Territorial Arrangement of Dioceses in the Interwar Period of the Czechoslovak Republic. In ŠTENPIEN – PIŠTEJOVÁ – SVATUŠKA, *op. cit.*, pp. 370 ff.

⁴⁷ The reason for the absence of regulation of the matters in question in the *Modus vivendi* undoubtedly lies in the reluctance of Czechoslovak circles.

⁴⁸ Act No. 320/1919 Coll., as amended, amending the provisions of civil law on the ceremonies of the matrimonial contract and separation and on the impediments to marriage.

regarding the dissolution of marriage. As a result, prior to 1919, a Catholic marriage in the Czech lands could only be dissolved through the death of one of the spouses. However, through the provision outlined in Section 13 of the Matrimonial Amendment, the institution of dissolution was harmonized on a non-confessional basis, thereby aligning the national regulations more closely with the previous Hungarian framework.⁴⁹ The institution of *separatio thori mensae et habitationis* was preserved,⁵⁰ though without legal consequences. The provision of Section 12 of the Matrimonial Amendment introduced an optional civil marriage. As a result, the republican regulation diverged from its previous stance and aligned more closely with the former Austrian approach.⁵¹ The institution of matrimonial impediments was also partially secularized, and announcements were also changed.

Ad 2)

The Small Schools Act, which introduced compulsory religion as a subject,⁵² played a significant role in the liberalization of education. The *ratio legis* of this act is perhaps best reflected in its Section 3, which exempts students without a religion or with a non-state-recognized religion from the obligation to attend religious education. Additionally, students of other denominations could also be exempted from religious instruction upon request of their parents or legal representatives, as determined by the competent authority. While the adoption of this provision was not without opposition from the Church, Section 2 of the Act, which made civic education a compulsory subject, *de facto* expanded the scope of religious education in religious schools. The curricula for religious schools were determined by the schools themselves.⁵³

Ad 3)

The revised congruence adjustment proved to be inadequate due to the significant inflation experienced during the wartime period. Another issue was the noticeable disparity in the living standards between the higher and lower clergy. While some improvement had been achieved through the amendment of previous regulations in 1920, it was not until the enactment of the Congruity Act,⁵⁴ and the government regulation on the adjustment of the salaries of the clergy⁵⁵ that can be seen as an expression of a willingness to mend the distorted relations after the Marmaggi affair. The Congruity Act divided churches and religious societies into congregational, endowment and other.⁵⁶ According to Section 1 of the Congruity Law, clergy members of congregational churches were entitled to the

⁴⁹ On this VACEK, J. *Marital Law According to the Views of the Roman Catholic Church in Comparison With the Main Views of Modern Legal Systems. Part One*. Brno: Published by Czechoslovak Academic Association Právnik, 1922, p. 66 ff. and VRANA, V. *History of Ecclesiastical Law*. Košice: University of Pavol Jozef Šafárik in Košice, 2011, p. 124.

⁵⁰ On this see also ŠEBEK, J. *For God, Nation, and Order*. Prague: Academia, 2016, p. 51.

⁵¹ On this, see *Ibidem*, p. 131 ff.

⁵² Act No. 226/1922 Coll., amending and supplementing the Acts on municipal and civic schools.

⁵³ Cf. VAŠEČKA, *op. cit.*, p. 163, p. 185 ff.

⁵⁴ Act No. 122/1926 Coll. on the regulation of the salaries of the clergy of churches and religious societies recognised or reciprocated by the State.

⁵⁵ Government Decree No. 124/1928 Coll. as amended, on the regulation of the salaries of the clergy.

⁵⁶ Cf. VALEŠ, *op. cit.*, p. 134.

minimum annual income, known as *congrua*, of 9,000 Czechoslovak crowns. The *congrua* maintained its nature as a “quasi-payment” as it continued to be reduced by other permanent income received by the clergy from public funds, which was documented based on the *fasse*. Endowment churches received a subsidy after deducting other statutory income, taking into account the number of members of the endowment church. On the other hand, other churches did not have the right to receive *congrua* or endowment. The Congruity Act also included provisions related to the state assuming the cost of clergy training, the elimination of certain feudal dues granted to the church, and the alignment of social security provisions for clergy members of recognized churches with those of other state employees.

Conclusion

In this paper, we have examined selected (various) aspects (contexts) of the relation between the Czechoslovak Republic (1918–1938) and the Catholic Church, particularly in relation to the negotiation, content, and implementation of the individual provisions of the 1928 *Modus vivendi*. The scope of our study encompassed *inter alia* the examination of the transformation of the Czechoslovak governing authorities through diplomatic processes, as well as their enduring, albeit somewhat ambivalent, adherence to the Constantinian bond despite attempts at separation. The given ambivalence in the approach of the Czechoslovak Republic towards the Catholic Church, as evidenced by the confessional legislation enacted after 1918, cannot be simply classified in binary terms. By addressing these issues, we believe that we have achieved the objective stated in the introduction of this paper.