

***SOCIOPOLITICAL DIMENSIONS OF THE NON-ACCEPTANCE OF THE AGREEMENTS ON THE RIGHT TO EXERCISE OBJECTION IN CONSCIENCE IN THE SLOVAK REPUBLIC IN 2006***

In the period following the Mečiar Administration, nothing has probably shaken the Slovak political scene more than the upcoming agreements on the right to exercise objections in conscience. They should be concluded between the Slovak Republic and the Holy See, as well as between the Slovak Republic and the registered churches and religious societies which manifested their interest in contracting a similar intrastate agreement. Especially the Draft Treaty with the Holy See has become a source of tension because of the international legal character of the document, and thus its future supremacy in national legislation. Already in 2003, at the international Conference on Population's Development in Portugal, Slovak representatives heard a criticism on the side of the Members of Parliament of the EU member states. It was related to the situation of the Romany (Gypsy) population and the Treaty between the Slovak Republic and the Holy See on the Right to Exercise Objection in Conscience. Some EU MPs expressed their opinion that adoption of this document would mean a tough intervention into the human rights in the country. The Ministry of Justice of the SR – in co-operation with the Bishops' Conference of Slovakia and 11 registered churches and religious societies – elaborated the Treaty between the Slovak Republic and the Holy See on the Right to Exercise Objections in Conscience and the Agreement between the Slovak Republic and Registered Churches and Religious Societies on the Right to Exercise Objection in Conscience. Their aim is to guarantee the right to free exercise of the objection in conscience, in case of protection of the highest human values. On the basis of these agreements, everyone would be able to refuse an action he or she finds illegal according to the rule of faith and manners, meaning thus the doctrine of the Catholic Church in the case of the Treaty with the Holy See, and the doctrines of individual churches in the case of the Agreement with the eleven registered churches. In case of confrontation, interpretations of rule of faith and manners of the Catholic Church would be provided by the Holy See through the entrusted authority, similarly as through the respective authority in the case of Non-Catholic churches and religious societies. The Slovak Republic would become the world's first country to approve such agreements. According to the draft agreements, the right to exercise objections in conscience should relate to activities in the armed forces and armed corps including the military service; medical services, especially services related to the artificial termination of pregnancy, artificial or assisted fertilization, experimenting and handling with human organs, human embryos and human sex cells, euthanasia, cloning, sterilization and contraception; educational services; judicious and arbitration service and providing of juridical services; labor-law relations and similar labor relations, as well as other legal relations. According to the point made by D. Lipšic, the then Minister of Justice, there was no threat of abusing the objection in conscience on the basis of these draft agreements; namely, it would not represent the collective right of the Church, since only an individual can exercise this objection. He expressed his conviction that nobody should have interest in forcing doctors to do an abortion or judges to divorce married couples, unless these agree with it inwardly. The labor-law sphere should cover issues like e.g. the possibility to refuse to work on Sundays. Liberals – in the former electoral period represented in the Parliament by the political party "Aliancia nového občana" (Alliance of the New Citizen) – and some of then opposition parties refused to adopt the agreements, objecting that particularly the Christian Democratic Movement was trying to introduce a new state ideology. The then Prime Minister Mikuláš Dzurinda's Slovak Democratic and Christian Union also expressed

objections towards the overall conception of the agreements. The Vice Chairman of the Supreme Court expressed a discordant standpoint towards the possibility to exercise objection in conscience by prosecutors and judges in the judiciary. Later on, the Minister of Justice acknowledged this objection as justified. He also admitted that judges have to apply the valid law. The functioning random system of assigning files was also a reason: according to the law, a case cannot be possibly taken away from a judge. Consequently, the sphere of jurisdiction fell out of the Draft Treaty.

In 2005 two petitions were initiated. Christian youth movements organized a petition for accelerated approval of the Treaty between the Slovak Republic and the Holy See on the Right to Exercise Objections in Conscience. The liberal party Alliance of the New Citizen (ANO) set off a petition against its acceptance. At a press conference in January 2006, the petitionary council for the expedited adoption of the Treaty between the Slovak Republic and the Holy See on the Right to Exercise objection in Conscience presented that 103.000 citizens signed the petition.<sup>1</sup> The counter-petition gained a significantly lower support (31.000 signatures). Citizens' interest to sign the petition indicates their decided conviction, even in spite of the fact that the majority of the signatories did not read the text of the Treaty at all. This fact was turned out both in the survey on a sample of citizens and in numerous inquiries in media. In most cases, people relied on commentaries and recommendations of politicians or Church representatives.

At the end of 2005, a group of independent experts at the European Commission elaborated an analysis of the Draft Treaty between the Slovak Republic and the Holy See on the Right to Exercise Objections in Conscience. It states that even though the article 24 of the Constitution of the Slovak Republic guarantees the right to freedom of thought, conscience, and religion to all, the Draft Treaty declares a special role to the Catholic faith. The Article 2 (3) of the Draft defines the objection in conscience as an objection in connection with principles of freedom of thought, according to which anybody can refuse to do what he or she finds non-corresponding with faith and moral teaching principles. According to the Draft Treaty, Article 3 (1), the faith and moral teaching principles are defined as principles pronounced by the Magisterium of the Catholic Church. That is why only those who profess Catholic faith will profit from the generally accessible benefit. At the same time it points to the fact that approximately 70 percent of Slovakia's population is Catholic. That is why it is afraid of the risk that acknowledgement of the right to objection in conscience in the area of reproductive health will cause that for women, especially from the countryside, the access to counseling or particular medical help will be literally impossible or possible with many difficulties.<sup>2</sup> The draft agreements – and especially the Draft Treaty between the Slovak Republic and the Holy See on the Right to Exercise Objections in Conscience, first of all because of its international character (contrary to the “intrastate” Agreement between the Slovak Republic and Registered Churches and Religious Societies on the Right to Exercise Objections in Conscience) – gradually became a main political topic and polarized the society as well as the Government Coalition. The Christian Democratic Movement – part of the Government Coalition – was declaring for a longer time that acceptance of this Treaty by the end of the electoral period was one of their priorities,<sup>3</sup> referring thus to the Program

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<sup>1</sup> After scrutinizing the correctness of the signatures, the scrutinizers finally validated a little less than 100.000 valid signatures. As the number of valid signatures required for the petitions submitted to the Parliament must be at least 100.000 so that to be dealt by the plenum of the National Council, in this case the plenum did not deal with this petition.

<sup>2</sup> <http://www.crlp.org/pdf/CFR-CDFopinion4-2005.pdf>

<sup>3</sup> According to the regular term, parliamentary elections were to be held in September 2006.

Declaration of the Government<sup>4</sup>. They started resolutely to appeal to the Minister of Foreign Affairs for presenting the Draft Treaty for governmental discussion. The then Prime Minister Dzurinda declared his positive attitude towards the issue of signing the Treaty, however, he refused any time limits and preferred to keep the whole process open for the time being. Like the President of the Republic, he also suggested further discussion on the Treaty, explanation of the disputed points and even entering the text and its modification, if necessary. Christian Democrats opposed that the three-years preparation period of the text offered a sufficient space for discussion. During the electoral year, other political subjects also interfered in the dispute, making use of the extremely sensitive topic in wider dimensions. The situation was becoming sharper, probably mainly due to the failure of communication in the Government Coalition. The Prime Minister was talking about the immense complexity of the given issue and tried to transfer the problem into the next electoral period. Christian Democrats expressed themselves that for them it was a principal issue, and threatened to quit for opposition. Finally, they confronted the Prime Minister with an ultimatum: either the draft agreements will be submitted to the Government session, or the CDM quits the Coalition. In February 2006, since their claims had not been met, they stepped out of the Government Coalition. Ministers<sup>5</sup> nominated by the Christian Democratic Movement resigned and the Head of Parliament gave up his function, too. The resigning Minister of the Interior V. Palko commented the situation, inter alia, by a sentence that in Slovakia we were witnesses to the fall of a myth that all politicians without exception have just one aim: to retain power as long as possible. Later on he described the leave of the Christian Democratic Movement from the Government due to the agreements on the right to exercise objections in conscience as an example of the demanding nature of this party which, he said, “was accompanied by unbearable tension within the party [...] as well as by repeated loneliness [...], without chance to find enough understanding of the spiritual leaders who should appreciate the protection of conscience most of all.”<sup>6</sup>

The coalition, administering the country for a longer period in minority position with an ad hoc support of independent MPs, got into a situation, when premature parliament elections appeared to be the only legitimate solution. Finally, the parliament panel agreed upon the premature elections on a June date.<sup>7</sup>

A day before the government break-down, the Evangelical Church of the Augsburg Confession declared through its general bishop, that it would be willing to modify the text of the Treaty on objections in conscience, for the sake of “reaching a higher peace in the society.” Even before, the Prime Minister Dzurinda strived for a possible modification of the Treaty, namely in a dialogue with the Vice Chairman of the Bishops’ Conference of Slovakia. His efforts, naturally,

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<sup>4</sup> The Government Program says that Government will complete the work on the set of agreements with the Holy See and modify the relations of the State with other churches in a balanced way.

<sup>5</sup> Minister of Justice, Minister of the Interior, Minister of Education.

<sup>6</sup> PALKO, V. Cestami KDH, cestami pravého muža. In *Impulz. Revue pre modernú katolícku kultúru*. 2/2007. P. 93.

<sup>7</sup> The Slovak Government ended up in a minority position after the liberal party “Aliancia nového občana” had left the Coalition. The party was shaken by the corruption scandal of its chairman; the then Prime Minister asked the resident to dismiss him from the position of the Minister of Economy, and the Government parties challenged him to leave the Coalition. The party split up, its minority stayed in the Parliament together with the Chairman who went over to the opposition, and the majority of the party, though without affiliation, supported the Government. Thus apparently, the liberally oriented electors had no solid and trustworthy representation, and several political parties would be interested in their voices. This is also why so often, in the case of the Draft Treaty on the right to exercise objections in conscience, expert problems with the text and its possible future interpretations, as well as with the application of this Agreement often faded out and concerns for gaining sympathies of electors came to foreground in the electoral year.

failed, because the contractual party was the Holy See and not the local Catholic Church. In the time of the dissolution of the Government Coalition, the Catholic Church, via its spokesman, turned to the public with an explanatory statement. He emphasized that the right to act according to one's conscience, and not to be forced to act against it, is anchored in the Constitution of the Slovak Republic (Article 24), as well as in the basic international documents. It is a part of the secular legislation. At the same time, with majority of Slovakia's citizens, the conscience is formed by religious beliefs. Two spheres are meeting here. Their relationship needs to be legally defined so that these rights and freedoms can be practically fulfilled. Beside others, the spokesman also stated that the Catholic Church was sorry that the Draft Treaty was becoming a bias of the premature election calculations. Further on, the Church did not want the Treaty to become a cause of political tension and it did not carry responsibility for it.<sup>8</sup> Even before the break-down of the Government Coalition, in the critical situation connected with the negotiations of the Prime Minister with the Vice Chairman of the Bishops' Conference of Slovakia, Bishop Baláž in his response to the question of the reporter, beside other, said: "We do not want to be a Catholic Church with some hegemony. We are just modestly searching for our rights after the difficult system of communism. With all those changes in social life we do not want to fall under the same pressure we already had been. It cost us a lot of sacrifice." First of all, in connection with an attempt on the analysis of the development of state-church relations, revitalization of the religious life as well as advance of the secularization process in Slovakia after 1989, the understanding of such attitude (and its reasons) by the majority of the population declaring their affiliation to churches and religious societies, represents a crucial precondition for the comprehension of the overall social situation.

Except for unsatisfactory communication within the Government Coalition, unsatisfactory social discussion, little interest of the population for the Treaty text itself and its meaning, the Treaty opponents seemed to lack any constructive element in their numerous critiques. The Treaty critics talked about possible preference of Catholics, however, they did not propose anything for gaining analogical rights of non-believers, for example. A plausible solution before concluding the Treaty could have been, e.g. the adoption of national legislation on the possible right to exercise objection in conscience for everybody, without inevitable reference to any religious or non-religious doctrine, even if such process in given spheres is mostly confirmed by some individual legal norms already. It is evident that in the Slovak society, some non-believing doctors have a dissenting attitude to abortions, too; these doctors would also like to take advantage of this right, however, without reference to the Church doctrine. A kind of summarizing legal norm could have been rather a contribution to make the situation more transparent than a technical solution, or even a certain outward gesture pointing out at the opportunity of each person to exercise objection in conscience in the specific discussed areas of social life.

Thus the former Government Coalition did not succeed to achieve consensus, and the supporters of agreements did not manage to fix the possibility to exercise objections in conscience at a higher level – on the basis of an international treaty. Post-electoral development has brought about a kind of a moratorium about this issue which would perhaps be used for a better handling of this issue at an expert level, and subsequently for a discussion in the society in a more peaceful atmosphere. If this could be true for the sphere of politics, political and legal sciences, we can also find relatively little anticipated development in the life of churches in Slovakia.

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<sup>8</sup> <http://www.kbs.sk/>

After the changes in the Administration Board of the Evangelical Church of the Augsburg Confession in Slovakia, the General Presbytery of this church accepted a standpoint to the issue of the agreements on the right to exercise objections in conscience at its session in Zvolen on June 1, 2007, on the basis of comments by the Church Doctrinal Committee. In this standpoint it took a negative position to the conclusion of the Treaty between the Slovak Republic and the Holy See on the Right to Exercise Objections in Conscience, and clearly declares that, for its part it would not request the conclusion of a similar agreement. It reasons by the Doctrine of the Evangelical Church which does not perceive the conscience as a legal notion, and thus it is impossible to express and define it legally. It explains that the conscience of every individual differs due to the impact of various external factors. According to the Evangelical teaching about the imperfection of the human conscience, it is impossible to make it to a legal norm. The Administration Board of the Evangelical Church AC does not consider the provisions in the Draft Agreement as treating objection of conscience in a generally valid sense, but as observation of “moral and doctrinal principles” of the Church which form the conduct of the faithful and get into confrontation with principles generally valid in the contemporary world and “defined” by the state law.<sup>9</sup> A sort of fragmentation of “the matter of expression of the right to exercise objections in conscience” is to be observed here – descending deeper, from the political or social level to the interchurch and church-doctrinal level.

Besides the above mentioned different views on the attempt to create particular guarantees of freedom of conscience and following rights on the exercise of objections in conscience, we seem to stand in front of a new circle of open questions connected with the understanding of the conscience itself, as one of the subjects engaged brings to the table a redefinition of basic terms and the ensuing change of paradigm.

These problems can be perceived in such a manner that “*the Constitution of the Slovak Republic does not stipulate the right to act in compliance with a conscience which has a religious fundament. However, it stipulates the freedom of conscience which means freedom not only to have conscience, but also to use it and to act according to it; otherwise it would be just the matter of constitutional declaration of a fictitious fundamental right without a possibility of its application. Moreover, it would be the matter of repression of a fundamental freedom in the sphere of religion.*”<sup>10</sup> On the other hand, we can find a deviation of the most dominant subject among the Non-Catholic churches from its former involvement in the effort to create the intended particular legal framework for the exercise of objections in conscience that would be defined doctrinally, and its claim to a specific Church care for conscience.<sup>11</sup>

It looks like we have returned to the starting point of our discussion on the Draft Treaty and Draft Agreement on the right to exercise objections in conscience, to the definition of terms, and as if somewhere to the beginning of the efforts to handle this issue. The said regress can be a multilevel impetus for a deeper consideration of the essence of the conscience, one of the fundamental human rights. Its exercise ranks with the elemental preconditions of a standard

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<sup>9</sup> [http://www.ecav.sk/?p=Aktual/stanovisko\\_generalneho\\_presbyterstva\\_ecav\\_na\\_slovensku](http://www.ecav.sk/?p=Aktual/stanovisko_generalneho_presbyterstva_ecav_na_slovensku)

<sup>10</sup> ŠMID, M. *K podstate a zmyslu slobody svedomia a slobody náboženstva pri jej zákonnom obmedzovaní podľa čl. 13 ods. 4 prvá veta Ústavy SR: Zmluva medzi Slovenskou republikou a Svätou stolicou o práve uplatňovať výhrady vo svedomí a Dohoda medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami o práve uplatňovať výhrady vo svedomí.* Inauguration paper held on November 22, 2005 before the Scientific Board of the Faculty of Law, University of Trnava in Trnava.

<sup>11</sup> Cf. the standpoint of the General Presbytery of the Evangelical Church AC in Slovakia  
[http://www.ecav.sk/?p=Aktual/stanovisko\\_generalneho\\_presbyterstva\\_ecav\\_na\\_slovensku](http://www.ecav.sk/?p=Aktual/stanovisko_generalneho_presbyterstva_ecav_na_slovensku)

functioning of the democratic society. Besides the freedom of conscience, also values referring to sense of human life, human dignity and other values, considered by the churches and religious societies as the highest ones, belong to the crucial terms of the draft agreements. It is to be clearly articulated that the neutral attitude, frequently claimed at present, towards the mentioned values, is impossible to be taken, especially when deciding whether to act or not to act. It is therefore a task set to everybody, first of all to those who bear responsibility, to spare no effort so that every individual could enjoy such rights which would enable him to live in compliance with his conscience: and to put the same effort in forming the conscience of the members of the society so that their conscience becomes such an internal authority that it contains the right understanding of the moral nature of their deeds already in the bud.

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