

# FREEDOM OF RELIGION, INSTITUTION OF CONSCIENTIOUS OBJECTION AND POLITICAL PRACTICE IN POST-COMMUNIST SLOVAKIA<sup>1</sup>

JANA PLICHTOVÁ, MAGDA PETRJÁNOŠOVÁ

**Abstract:** The example of Slovakia is used to show how one of the post-socialist countries failed in fulfilling the demanding task of securing freedom of religious belief (including the right to conscientious objection) and, at the same time, securing all other human rights. An analysis of the methods used for changing the policies of pluralism and neutrality of the state into a policy of discrimination (e.g. concerning the registration duty for churches) was carried out, followed by an analysis of a mechanism used for guaranteeing freedom of conscience of the members of the Catholic Church (the so-called Vatican Treaty). The treaty violates the prohibition of discrimination against women, because it makes it more difficult for them to have access to some health care services. Our hypothesis states that the hurriedly introduced right to conscientious objection is misused in this context as a means of regulating the politics of reproduction. In general, the re-Catholisation of the Slovak Republic follows two aims—to help in the fight for votes in the elections (because 70 % of Slovaks declare their religion to be Catholic), and to improve demographic development in the Slovak Republic (declared to be catastrophic by the Catholic Church), through hindering free access to abortions.

**Keywords:** conscientious objection; freedom of religion; state-church relationship; Slovakia, concordat.

## Introductory: Democracy and the Institution of Conscientious Objection

There is no doubt that democracy is by far the most challenging form of government—both for politicians and for people. However, as has been stated repeatedly and in a variety of ways since the time of Franklin, no other form of government has been invented that could regulate public affairs better than democracy. In order to deserve the label *modern democracy*, a country must fulfil some basic requirements—and they need not only be written down in its constitution but must be observed in everyday life by politicians and the authorities:

- guarantee of basic human rights to every individual person vis-à-vis the state and its authorities as well as vis-à-vis any social groups (especially religious institutions) and other persons;
- separation of powers between the institutions of the state: government (executive power), parliament (legislative power) and courts of law (judicial power);

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- freedom of opinion, speech, press and mass media;
- religious liberties;
- general and equal right to vote (one person, one vote);
- good governance (focus on public interest and absence of corruption).

A problem is already emerging at this point, because these basic requirements do not create a coherent system in an absolute sense. For example, if freedom of opinion conflicts with religious liberty, one or both of them should be restricted.

In contemporary multicultural societies with a plurality of values, coping with the uncertainties of democracy is a much more complicated task. Large religious minorities, emerging due to globalisation, are asserting their religious identity by displaying their religious affiliation publicly (e.g. wearing headscarves, turbans) and by claiming conscientious objection as one aspect of their right to live according to their religious beliefs (e.g. the exemption from wearing helmets because of the religious duty to wear turbans). By acknowledging these claims the state exercises its obligation to enable religious individuals and communities to live in compliance with their beliefs. There is no doubt that every democratic society is obliged to protect the religious freedom of its citizens in the private sphere, but it is questionable as to what extent and under what circumstances it is obliged to do it in public life as well.

If we take into consideration that respect for different religious values supports pluralism and that our autonomy is enriched by more rather than fewer options (Bedi 2007), the institution of exemptions from general rules is one of the most important democratic instruments. On the other hand, it weakens the authority of the system of law seen as universal for everybody. Moreover, it requires a post-national ethos of the political elite as well as of the dominant population and an open mind towards different ethnic and religious identities. In its practical application it is important to prevent its misuse. It must not lead to the establishment of privileged status for some categories of citizens and disadvantaged status for others. It must not be used to the detriment of other human rights and each religious community must have the same right to claim conscientious objections.

However, pluralism, honesty, fairness and open deliberation might be at stake in those countries where a dominant church still exercises strong power and colonises discourses on the ground of its unquestionable authority. Authoritative claims on the ultimate truth and unquestionable prescriptions of what to do are rather antithetical to negotiation and dialogue—the means by which mutual understanding and agreement are reached. Democratic values are even more at stake where the church or affiliation to the church represents one of the core notions of national identity. For example, in Ireland the Catholic Church is conceived as the main guardian of the Irish nation and still shapes emerging debates (e.g. on abortion, on assisted reproductive technologies) as a powerful institutional actor (McDonnell, Allison 2006). Its voice is definitely not only one voice in the plurality of other voices. The strong association between the Irish nation and the Catholic Church explains why the conservative norms and morals are still supported by Irish people in spite of the increasing secularisation and privatisation of morality during the last decade (*ibid.*). Similarly, other countries with a strong Catholic influence at institutional levels such as Spain and Italy have experienced problems with the legacy of the social power of the Catholic Church in public debates on issues like family, marriage, contraception, assisted reproductive technologies, embryo research, etc.

We assume that the Slovak Republic with its high religiosity (70% of citizens claim to be Catholic) is facing similar problems. And we suspect that some political parties have been supporting the authority of the Catholic Church following two very pragmatic aims: to

secure their re-election with the help of priests and to use Catholic morals to halt the so-called demographic crisis. With this perspective in mind we shall analyse how the government and other democratic institutions manage the issue of religious freedom, particularly the right to conscientious objection. The aim of this paper is to examine two issues: 1. How the political elites uphold the freedom of religion (concentrating on different religious beliefs and their equal status, and the provisions concerning them, also from the aspect of the law on the registration of churches, and in terms of the dominance/discrimination of specific churches). 2. How the political elites cope with the conflict between human rights (especially reproductive rights) and the institution of conscientious objection.

## **Political and Societal Contexts**

In comparison to the Irish Catholic Church, the Slovak Catholic Church is not only authoritarian and paternalistic but also closed to the pluralistic ideas in Catholicism across the world. It is also weighed down by history, above all its active role in funding and leading the Slovak State during the Second World War in 1939-1945. Constitutionally, the Slovak State was defined as Christian (more precisely, Catholic) and all other churches with the exception of the Evangelical church were abolished<sup>2</sup> (Zavacká 2004 a,b, 2006). President Tiso tried to justify the laws that legalized the deportation of 60,000 Jews through Catholic-motivated anti-Semitism (Nižnanský, Kamenc 2003). Tiso's nationalistic rhetoric (he compared the love of nation to the love of the family, that innermost and most sacred of feelings) won considerable support from the predominantly Catholic population. As a politician, he addressed values and desires which contemporary politicians seek to address—the unity of the nation, state, and church. The assessment of the Slovak State has been the subject of discussions held by historians, political scientists, and laymen in the media; the Catholic Church has not reflected systematically on this discussion so far and has not taken up its official stance on that period in terms of its participation in its administration.<sup>3</sup>

## **Churches and Traditional Values during State Socialism**

One of the main themes in the discourse of the political elites in post-war democratic Czechoslovakia was the relationship between the churches and the state. After the clerofascist experience, new democratic and communist elites wanted the influence of the church over society to be diminished; conversely, the conservative elites defended Catholicism as a source of national identity. After the communist coup d'état of February 1948, there was still freedom of religious belief and the original high status of the churches was written down in the new Constitution. But in the following year, the process of the takeover of the state began, in which the churches gained the financial means to provide for the wages of their ministers

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<sup>2</sup> The clergy represented about one fifth of the members of parliament and President Tiso himself was a priest and doctor of moral theology.

<sup>3</sup> The representatives of the Catholic Church expressed their opinions on this topic, e.g. the current archbishop Sokol defends the Slovak State, pointing out, without mentioning Tiso's failures, that the country was doing very well economically and the Slovaks could enjoy welfare. On the other hand, during his dissent, cardinal Korec signed an appeal of the Slovak intellectuals who apologized to the Jewish people for wrongs caused by the deportations.

and for the everyday costs of undertaking religious duties, at the same time, however, they lost their independence and their influence over education and charity. Later the requirement that churches had to register was introduced and then their property was nationalised through the land reform, which destroyed the economic basis of their autonomy. In 1960, in the new Constitution, the Communists defined the new official (and binding) ideology of the state: Marxism-Leninism, which became the compulsory basis for the sciences and culture as well as education at all school levels. So, religious influence was diminished legislatively, politically, as well as in everyday life. De iure, anybody could follow any faith, but only under the auspices of the state and in loyalty to its ideology. Of course, in this Constitution there was no institution of (religious) conscientious objection, because the first duty of the citizens was to follow the duties anchored in laws, e.g. conscription duty (for details, see Hrdina 2006).

In 1987-88 all the churches unified their resistance in the signing of a petition laying out the 31 demands of religious citizens, with the separation of the church from the state being the most important. This petition was signed by 600 000 citizens, the highest number of petition signatures recorded in Slovakia. From that point on, the churches (including the Catholic Church) became one of the actors of the opposition movement to the Communist state, and joined (rather late, in the last year before the collapse of Communism) the Charta 77 and environmentalist movements<sup>4</sup>.

During the forty year reign of Communism, the official state ideology of Marxism-Leninism was transformed into a form of secular religion (Tížik 2005) exhibiting similar features of authoritarianism and dogmatism as did the Catholic Church. However, the Catholic ethos endorsing strong family and patriarchal domination was eroded substantially. The unquestionable authority of the Catholic Church over sexual and reproductive practices faded away after the 1960s.

This rapid liberalization from Catholic ethics could be documented by the abortion law which has been amended a number of times<sup>5</sup>, but became quite liberal as early as in 1957. From 1983, abortions were made even easier, a woman was allowed to seek authorization for an abortion from a commission during the first 12 weeks of pregnancy for the following reasons: if she was over 40, had at least three living children, if the pregnancy was the result of rape or another crime, if she was in a difficult situation due to an extramarital relationship, if she had lost her husband or he was in bad health, if she had difficult housing or material conditions that impacted upon her family's standard of living, or if documented disintegration of the family had taken place<sup>6</sup>. From these regulations it is clear that abortions became a political tool

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<sup>4</sup> Another form of protest used by conscientious objectors was the refusal to undertake military service, which resulted in prison sentences (Jehovah's Witnesses and others, see Klenovský 2008).

<sup>5</sup> Law No. 86/1950 (the Penal Code, sections 227-229), effective since August 1950, permitted abortion when the pregnant woman's life or health was endangered and in cases of genetic defect. A woman who violated the law was subject to one year's imprisonment, and the person performing the abortion to ten years' imprisonment. In 1957, owing to concern over the negative effects of clandestine abortions on women's health, the Government enacted new legislation, specifying that abortions could be legally performed on the basis of medical or other important reasons (Law No. 68/1957). A commission was required to approve the abortion and it had to be performed in a health care establishment. A woman who obtained an illegal abortion was no longer punished, and the sentence for the person performing the abortion was reduced to a maximum of five years.

<sup>6</sup> Authorization would not be granted if the woman had undergone an abortion in the past year. And abortions up to 24 weeks and exceptionally up to 26 weeks of gestation were allowed only if the life of the pregnant woman was endangered or in the case of known foetal impairment.

in regulating natality with a twofold aim—retaining women in the workplace and limiting the number of families with too many children.

The most recent amendment to the abortion law was passed in October 1986 (Law No. 73/1986 Coll.). It abolished abortion commissions, leaving the decision to be made by the woman and her doctor<sup>7</sup>. Over the years, abortion has remained a frequently used method of birth control in Slovakia, because the use of contraception was low—in general, contraceptives were available, but they were expensive and women were discouraged from using hormonal contraception (Potančoková 2008).

Thus, traditional family values were weakened by state policy, which saw the high participation of women in the labour market as a source of economic development. The state policy was also aimed at balancing the education of men and women. In general, Slovak society underwent a very rapid process of industrialization and urbanisation in the four decades of Marxist ideology. New ways of life influenced by the macro-societal changes brought secularisation and the transference of morality to the private sphere; the values of individualism, consumerism and materialism prevailed over collectivism and common well-being: the declared goals of the socialist society. Because of this shift in values and a change in the aims and goals of the now educated women, birth rates dropped from an average of 3.1 children in 1960 to 2.3 in 1980. When the state tried to enhance the social policy of benefits and subventions for families, natality increased, but divorce and abortion rates continued to climb (there were 7.2 divorces out of 100 marriages in 1960, but by 1980 it had reached 16.8 and 22 by 1990; abortion rates rose from 0.71 in 1960 to 1.22 in 1990<sup>8</sup>).

## Political and Legal Context after 1989

The Bill of Human Rights guaranteeing the “right to profess any religious faith or to be without religious conviction, and to practice religious acts excluding those that contravene the law” was approved unanimously during the first session of the new government after November 1989, even though nearly half of its members were communists. This government also started the process of restitution: returning the confiscated property of the churches (Law No. 289/1990 Coll.).

Immediately after the Velvet Revolution, the political elites discussed the separation of the church from the state once again, but again the political will to do so was lacking for several reasons<sup>9</sup>. The neutrality of the state was defined in minimal terms as the absence of

<sup>7</sup> Under current laws, a woman makes a written request to her gynaecologist, whereby the physician will inform her of the possible consequences of the procedure and of the available methods of birth control. If gestation is under 12 weeks and there are no health contraindications for the procedure, the doctor specifies the health care centre where the procedure is to be performed. If gestation is over 12 weeks or if other contraindications exist, the request is reviewed by a medical committee. Women who have had an abortion within six months are not permitted to undergo the procedure unless they have had two deliveries, are at least 35 years of age or the pregnancy was the result of a rape. Beyond the first trimester, the pregnancy can be terminated only if the woman’s life or health is endangered or in the case of suspected foetal impairment.

<sup>8</sup> Source: Slovstat, a statistics database of the Slovak Statistical Institute and [www.moznostvolby.sk](http://www.moznostvolby.sk).

<sup>9</sup> It seems it has been tempting to conduct politics using the support of the churches, especially the Catholic Church. The churches also profit from this silent agreement, today they are still paid from the taxes of all tax payers, regardless of whether or not they have a religious affiliation.

an ideology bound to a church. No specific religious belief should provide advantages, and freedom of belief and from religious belief should be guaranteed to the same extent. Therefore the principles of neutrality, parity and tolerance were adopted as norms for relations between the state and churches (see Robbers 1995/2001).

In 1991, the Law on the freedom of religious belief and on the position of churches and religious communities (No. 308 /1991 Coll., later amended by law No. 394/2000 Coll.) and Constitution law No. 460/1992 Coll. provided for the legal anchor of the freedom of belief and made full restoration of the autonomy of the churches and religious communities possible (for details, see Moravčíková 2003).

## **From Plurality to Advantages for Traditional Churches**

### *A. Registration duty for the churches in Slovakia*

A new era in the relationship between the churches and the state began in 1992, when the policy of plurality in religious freedom became a policy of defending the traditional churches. It started with a new law (law No. 192/1992) which was a reaction to the growing number of new churches and introduced the threshold of 20 000 adult members and supporters for any new church or religious community that wished to register.

Of the 14 religious groups registered by then, only five (the Roman Catholic Church, the Greek Catholic Church, the Evangelical Church of the Augsburg Confession in Slovakia, the Reformed Christian Church in Slovakia and the Orthodox Church in Slovakia) could claim 20,000 or more members. This contributed to the perception of the law as arbitrary and discriminatory, putting newer or smaller religious communities at a disadvantage and perpetuating the existing hierarchy of religious organizations. Currently (in 2008) sixteen religious groups are registered and therefore eligible for preferential treatment. All of them are Christian.

Although a Muslim community existed and was officially recognized in Czechoslovakia before the Second World War, it later lost its official status and the 1992 law did not recognize it. Today, the estimated number of Muslims living in Slovakia ranges from 500 to 5 000 persons. Despite their current attempts, they do not have a mosque (there are only two chapels at their disposal in the smaller towns of Martin and Košice). The Nazarene community also existed before 1991, but did not receive official status. Jehovah's Witnesses represent one of the churches who, after the adoption of the 1992 law, increased the number of their supporters and met the 20,000 person threshold and registered (Moravčíková 2003).

The 20,000 person threshold is the highest numerical threshold for registration in any of the 55 member states in the Organization for Security and Cooperation in Europe (OSCE). In Slovakia, the registration requirement is especially significant because non-registered religious communities are denied legality as religious organizations. They are prohibited from building places of worship, such as churches or mosques, they are not permitted to teach religion in state schools, they are not allowed to access their co-believers in the armed forces, hospitals, other social or health care facilities or in prisons, they are denied state recognition of marriage ceremonies and of the confidential relationship between priest and prisoner. It is also important that they are not eligible for state subsidies for the wages and education of their clergy and that they are excluded from the exemption from paying taxes and import customs duty.

The current status does not observe the principle of the equality of all religions. From an economic point of view, it is evident that the current state of legislation causes a further

deepening of the economic differences between the churches and religious communities. On the one hand there are large traditional churches which restituted a considerable amount of property with the aim of renewing their economic independence. This, however, is also supported by the state indirectly through exemption from various taxes. Despite this, they claim support from the state. On the other hand, there are religious communities which did not restitute any property and do not claim any benefits from the state nor any rights, either for moral reasons or simply because they cannot and because they did not fulfil the registration conditions (e.g. Jehovah's witnesses, Seventh-day Adventist Church, New Apostolic Church, Christian Unions, etc.)

The number of unregistered religious communities is estimated to be between 30 and 50 groups. Some of them are registered as civic associations, but this status does not allow them to enjoy the afore-mentioned rights and benefits. In addition to the threshold requirement, Muslims and other non-Christian churches cannot fulfil other legislative requirements for registration either, because the requirements were set up following the model of the traditional churches and the non-Christian churches are organized according to a completely different model—e.g. they do not have a hierarchical structure of the clergy, official internal organization regulations, nor special buildings for their rites, etc. In fact, some of the minority Christian churches have similar problems with the registration law, but in spite of this discrimination the number of members is rising steeply (Tížik 2005).

The OSCE critically commented on the system of government subsidies for clergy and office expenses of the recognised churches, bound to the system of registration by the state, because it discriminates against new religious communities as well as requiring non-member taxpayers to finance the religious practices of other faiths. Without a change in this system, there is little hope of liberalizing conditions for the recognition of the new churches and religious communities: by recognizing additional religious groups the financial burden on the state would increase.

However, as was pointed out by OSCE, it would be possible to provide many benefits by recognizing groups that are currently unregistered, with no impact on the state budget. For instance, recognizing marriages of unregistered religious groups or allowing them access to their members in hospital or prisons would not cost anything. In our opinion, another option might be to abolish some churches' privileges—e.g. tax relief and to use the money to support new churches. However, the political will to change the registration law is still lacking.

From the perspective of the protection of freedom from religion it is necessary to direct special attention towards the unjust system of financing the churches whereby the state uses general taxes regardless of the faith and will of tax payers. The OSCE also suggested separating funding concerns from registration duty by allowing tax payers to determine individually whether their tax contributions should support a religious group, and if so, empower them to select a specific recipient community, as is customary in several states. Secular humanist organizations should have equal rights in gaining support as religious groups, as is the case in Germany, for example (Robbers 1995/2001).

#### *B. Politics of favouritism of the Catholic Church*

In November 2000, the Slovak Republic signed the Basic Treaty between the Slovak Republic and the Holy See (hereafter “the Basic Treaty”) regarding the relationship between the Slovak Republic and the Catholic Church in the Slovak Republic. Article 7 of the treaty

introduces the morals and doctrines of the Catholic Church as an important source of conscience for all Slovak citizens and the right to obey this conscience if it conflicts with laws and regulations: “The Slovak Republic recognizes the right of all to obey their conscience according to the doctrinal principles and morals of the Catholic Church” (the text of the treaty is in the collection of Slovak Laws under the name of Notice of the Ministry of Foreign Affairs No. 326/2001). However, it was defined only in general terms and the specific conditions of the application of this right should have been defined in the Special Treaty on the Exercise of Conscientious Objection (more details later in the text). Other articles of the treaty detail a number of duties incumbent upon the Slovak Republic with respect to the Catholic Church, including a number of financial obligations; and rights held by the Catholic Church, primarily in the field of education as a whole and religious education in particular, in all types of schools, in the establishment and administration of its own schools of different stages and in providing space in the public service media (for more details, see Kliment 2001).

Two years after the treaty (also known as a concordat) was signed, the President of the Slovak Republic signed an agreement with eleven churches and religious communities registered in the Slovak Republic (Law No. 250/2002 Coll.). However, the Basic Treaty with the Holy See is treated, according to a government resolution (Resolution of the Slovak Government No. 1130 of 28 November 2001), as an international agreement on human rights and therefore has precedence over Slovak laws, while the Agreement between the Slovak Republic and the Registered Churches and Religious Societies ratified in 2002 is only a domestic agreement within a traditional contractual framework.

The religious freedom of the members of the Catholic Church, (not only) in terms of conscientious objection, is under the protection of the international covenant; however, the religious freedom of the other registered churches is protected by national treaties. Freedom of conscience of those not registered is protected by other legal norms adopted later in Parliament e.g. in the Act 365/2004 on equal treatment in specific areas, on protection against discrimination and on changes and amendments to several Acts of Law (the Non-Discrimination Act) and the new amendment to the Labour Code.

Since freedom of religion in general was sufficiently protected by international documents, it seems perfectly legitimate to question the political sense of the signing of the treaty. In our opinion, its aim was rather to make the politics of Catholic parties more visible; a calculated act that the major church in Slovakia with its hierarchically well organized structure would reward its political allies with their support. Another goal was an attempt to use the pro-life ethos of the Catholic Church to increase the birth rate in Slovakia. These two objectives were attractive enough for the coalition government<sup>10</sup> not to respect Article 1 of Slovak Constitution which says that: “The Slovak Republic is a sovereign, democratic, and law-governed state. It is not linked to any ideology or religious belief” (the text of the Slovak Constitution is available online: [www.zbierka.sk](http://www.zbierka.sk)) and is binding in the sense that politicians cannot discriminate against any church, either positively or negatively.

By signing the Basic Treaty, Slovakia did not follow either the principle of strict neutrality, according to which no religion is allowed to be exercised in the public sphere including education, employment, health care and the army, or the principle of relative neutrality

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<sup>10</sup> The coalition government consisted of the following parties: the Slovak Democratic Coalition, the Christian Democratic Movement, the Hungarian Coalition Party, and ANO. It was established after the 1998 elections.

according to which the public space is open to every church equally; however the political sphere should be separated from religion and vice versa. The Constitutional Court did not protest against this act whatsoever, although it could have challenged the discrepancy between the wording of the treaty and the constitution. Protest and public discussion were launched, but not until after the ratification of the treaty, probably as a consequence of the long-standing and unpublicised treaty preparation and its ratification by Parliament 10 days after the signing of the treaty by the representatives of the Slovak Republic and the Vatican. Only later did the public learn how the treaty would change the character of relations between the state and the church in Slovakia (Zavacká 2000, 2003).

In order to increase their legitimacy, the politicians favouring the Catholic Church promoted themselves as Christians and protectors of Christian values. In reality, however, they did not represent either all the Christian churches nor the plurality inside the Catholic Church itself; they referred exclusively to the validity of papal documents that are not binding upon the whole church and only map the mainstream of current Catholicism (Kocúr 2008).

### *C. Conscientious objection in the draft Special Treaty with the Holy See and plurality in Slovakia*

The situation was completely different when the Slovak Republic was preparing for the signature of the above-mentioned Special Treaty concerning conscientious objection with the Vatican in 2003. There was a major outcry against the Treaty (or at least against its draft) from Slovak and international politicians, organizations and NGOs, in the media heated discussions appeared between its defenders and critics ranging from lay argumentation to analyses by lawyers, and petitions both against and for were organized<sup>11</sup>, etc. The most critical voices were those of Zavacká (2000, 2003) and of several feminist activists (e.g. Pietruchová 2005, Lajčáková 2005). Among the international opponents of the Treaty were 52 members of the European Parliament, 130 representatives of non-governmental organizations from around the world, the EU Network of Independent Experts on Fundamental Rights (in short, the EU Network), the UN Committee on Economic, Social and Cultural Rights and many others.

If this Treaty had been signed, Slovakia would have been the first country in the world to secure the protection of conscientious objection by a specific international treaty with the Holy See to such an extent<sup>12</sup>. According to Article 4(1) of the Treaty, the right to conscientious objection would apply in every area regulated by the law, the following were explicitly mentioned: service in the armed forces or armed corps, including the then obligatory

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<sup>11</sup> A petition against the Treaty initiated in November 2005 by the political party ANO and the secular-humanist organization Prometheus was signed by more than twenty-one thousand people. A petition in support of the Treaty organized by Catholics and Protestants together with the pro-life organization Forum for Life was signed by more than 111,000 people.

<sup>12</sup> In some EU member states a concordat with the Holy See is in force which includes a provision on religious conscientious objection. This is the case in Italy, Latvia and Portugal. In these states, however, the clause on religious conscientious objection only concerns exemption from armed military service. The agreement applicable in Italy only exempted members of the clergy, deacons and religious leaders from compulsory military service, before the abolishment of compulsory military service in 2005. Similarly, in Latvia the only provision relating to conscientious religious objection is that students of the Major Seminary of Riga and novices of religious congregations shall be exempted from military service and may be assigned to community service instead.

conscription; health care, in particular acts related to abortion, artificial or assisted fertilization, experiments with and the handling of human organs, human embryos and sex cells, euthanasia, cloning, sterilization and contraception; activities in the field of education (specifically the right not to teach sexual education or yoga and not to use the proscribed texts); provision of legal services; relationships regulated by the Labour Code (the right not to work on Sundays and Holy days); and, surprisingly, acts concerning genocide, the killing of captives, torture and the persecution of civilians (as if such acts were otherwise allowed by the Slovak laws).

The Treaty also required the Slovak Republic not to impose an obligation on existing and future hospitals and health care facilities established by the Catholic Church to perform abortions, assisted fertilizations and all the health care services mentioned in the Treaty. The Treaty would allow Catholic medical professionals and institutions to refuse to perform procedures which are legal in Slovakia, such as abortion and in vitro fertilization because they contradict their Catholic conscience<sup>13</sup>.

This draft concordat defines “freedom of conscience” as “freedom of Catholic conscience”, by which is meant not the norms of most Catholics, but the formal doctrines of the Catholic Church. The strategy was to declare later the imposition of the Catholic Church doctrine, defined as (Catholic) “conscience”, to be an unrestricted “human right” (Concordat Watch, 2007).

Fifty-two members of the European Parliament raised concerns relating to the fact that the Treaty would be discriminatory against non-Catholics and therefore in conflict with the draft EU Constitution, especially with the draft EU Charter of Fundamental Rights. One hundred and thirty representatives of non-governmental organizations alleged in their letter that the Treaty would make Catholic doctrine the highest principle for exercising the right to conscientious objection. Moreover, the Treaty would violate the principle of the separation of church and state as provided for in the Constitution of the Slovak Republic, as well as existing Slovak commitments following from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Conference on Population and Development Programme of Action (ICPD).

The Centre for Reproductive Rights, Catholics for Free Choice, and the International Planned Parenthood Federation state in their report that

There is a risk that the recognition of a right to exercise objection of conscience in the field of reproductive health care will make it in practice impossible or very difficult for women to receive advice or treatment in this field, especially in the rural areas.

The argumentation in the document was that since seventy percent of the country’s population are Catholic, if a doctor refuses to perform a procedure based on the issues of conscience, there would be limited options for the patient, resulting in discrimination.

The right to religious conscientious objection may be and should be respected, but with safeguards that make it possible for women to seek legal abortion.

Also in the view of the EU Network, the right to conscientious objection “should be regulated in order to ensure that, in circumstances where abortion is legal, no woman shall be deprived of having effective access to the medical service of abortion.” (E.U. Network of

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<sup>13</sup> In the planned joint commission which was to identify changes to be made to the Slovak laws and deal with issues arising in the interpretation or execution of this Treaty, there was no plan to include the most concerned social group—women.

Independent Experts on Fundamental Rights, 2005). However, the Slovak government failed to fulfil such obligations.

#### *D. The (political rather than moral) argument about abortions continued*

Although international public opinion put a stop to the signing of the Special Treaty on conscientious objection, the political struggle for the legality of abortions carried on unabated. It began in 2001, when a group of conservative deputies submitted a petition to the Constitutional Court asking that Abortion Law be declared unconstitutional, because legalized abortion contradicts article 15, section 1 of the Constitution saying “Everyone has the right to life. Human life is worthy of protection prior to birth”. The concerned judgment was delivered only in December 2007 (finding of the Constitutional Court, 4 December 2007, file PL. ÚS 12/01-29) and immediately before the judgement Slovak society was surprised by an aggressive billboard campaign against abortions using emotionally loaded pictures and wording, which re-ignited public discussion once again. During the discussion, Mr. Čarnogurský, one of the founders of the Christian Democratic Movement (in Slovak KDH) reasoned for the need of a ban on abortion very pragmatically, citing demographic developments in Slovakia<sup>14</sup>. Thereby he confirmed our assumption that the institution of conscientious objection is being used for ends entirely different from religious ones. The Catholic Church’s ambition in the past was also to control women’s fertility. The communists showed similar ambitions during the period of socialism, as has been shown above. Such approaches show a lack of respect for women and their free will and are harmful to their health; moreover, they are not generally effective because the birth rate cannot be raised by imposing a ban on abortion<sup>15</sup> (cf. also Filadelfiová 2005).

In its judgement, the Constitutional Court ignored both the widely discussed questions of the beginning of life and of the morality of abortions and concentrated only on the limits the Constitution poses on lawmakers concerning the abortion law. It did not accept the interpretation offered of Article 15, because such an interpretation would be inconsistent with women’s fundamental human rights, dignity and well-being as declared in the Slovak Constitution as well as in the international declarations and conventions ratified by the Slovak Republic (e.g. the Universal Declaration of Human Rights, the European Convention on Human Rights, the Convention on the Rights of the Child, etc.) and also with the jurisprudence of the European human rights system.

As a result of this decision, Slovak women do not have to share the fate of Polish women who are not allowed to have an abortion even if they are entitled to it by law.<sup>16</sup> The Human

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<sup>14</sup> It is only recently (April 2008) that in their statement on the protest meeting against the adoption of the proposal of the National programme of sexual and reproductive health protection, the NGO Fórum Života close to the Catholic Church maintained that the programme supports abortions, which will deepen the demographic crisis [www.forumzivota.sk](http://www.forumzivota.sk).

<sup>15</sup> In countries where abortions are banned, they are performed illegally, e.g. in Poland; entirely different measures are effective in increasing birth rate—chiefly economic and tax benefits related to the state-supported system of child care and support for part-time jobs and home-based employment without their further non-preferential treatment in contrast to full-time jobs as it is evident in northern countries or in France.

<sup>16</sup> Polish abortion law restricted the abortion to 4 conditions a) when pregnancy constitutes a threat to life or to the health of the pregnant woman; b) where pre-natal examination or other medical

Rights Committee reiterates its deep concern about restrictive abortion laws in Poland, which may incite women to seek unsafe illegal abortions, with attendant risks to their life and health. According to the Polish Ministry of Health in 2004, 193 abortions were performed in accordance with the above-mentioned restrictive law, but the Polish Federation for Woman and Family Planning estimates the number of illegal abortions performed in Poland each year to be between 80 000 and 200 000. The Polish authorities explained the difficulties with the legal and practical aspect associated with abortion by moral factors (meaning the high levels of religiosity associated with Poles); political factors (the strong influence of conservative parties linked with the anti-abortion policy propagated by the Catholic Church) and by the conscientious objection clause that results from the code of medical ethics. The fact that the Polish state refused to recognize its duty to ensure effective access to reproductive health services, including abortion, by ensuring the availability of an adequate number of trained specialists able to provide the needed services in time is also problematic.

In Slovakia, the situation is beginning to show some similar features even without a special treaty: many hospitals have stopped carrying out abortions and claim exemption from the duty to perform abortions as an institution or as whole teams, in accordance with the religious beliefs of the chief doctor or the director of the hospital. Another highly problematic aspect is that gynaecologists apply this right without any restrictions—e.g. they are not obliged to inform the patient about medical institutions where such a medical service is available. This is of course a complete misunderstanding of the concept of individual conscientious objection, as vaguely defined in the Basic Treaty with the Holy See. But these doctors or hospitals base their claims on the Basic Treaty, and also on the Labour Code (Law No. 311/2001 and its more recent amendments) and the Anti-discrimination Law (Law No. 365/2004 and its newer amendments). If the state is not bound in any way to avoid delegitimizing abortions *de facto*, it ceased to be neutral and became an agent that enforces a doctrine of the Catholic Church on its female citizens thus violating basic freedom from religion. In general, the situation is not very clear, it is difficult to obtain specific figures concerning access to abortion, and it seems that nobody is interested in documenting the current situation where abortion is legal but not easily accessed (and except for in the case of severe health risks must be paid for by women<sup>17</sup>).

## Conclusion

All the EU member states recognize (to some extent at least) the right to religious conscientious objection, understood as the right not to be obliged to perform certain duties (including abortion, artificial fertilization, euthanasia, etc.) where these would violate the person's religious convictions, unless the refusal to perform these duties were to lead to a

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circumstances indicate a probability of serious, irreversible damage to the embryo or an incurable life-threatening illness ; or c) where there is justified suspicion that the pregnancy is the result of an illegal act. Real accessibility to abortion is problematic because hospitals and medical doctors often refuse to perform lawful abortions by invoking a clause allowing for conscientious objection. Such an option is provided for under Article 4 of the Polish Code of Medical Ethics and a doctor, in performing his tasks, should retain the freedom to carry out professional activities in accordance with his conscience and modern medical knowledge.

<sup>17</sup> In his interview for TASR, František Tóth, head of the gynaecological and obstetric ward of Komárno hospital said that from 1995—when the amendment to the abortion act about the obligation to pay for this operation came into force, the official number of terminations dropped by 60 per cent.

violation of the rights of others. The recommendations of the EU Network for example on the specific case of abortions are very straightforward and understandable. The neutral state must ensure: first, that an effective remedy should be open to challenge any refusal to provide abortion; second, that an obligation be imposed on the health care practitioner exercising his or her right to religious conscientious objection to refer the woman seeking abortion to another qualified health care practitioner who will agree to perform the abortion; third, that another qualified health care practitioner will indeed be available, including in rural areas or in areas geographically remote from the centre (E.U. Network of Independent Experts on Fundamental Rights, 2005). The exercise of the religious right must not lead to others either being deprived of access to certain services in principle available to all in the concerned state, or being treated in a discriminatory fashion. This is a common principle in every EU state (as is documented by many examples<sup>18</sup> in the reports produced by the EU Network) except for Poland.

The draft Special Treaty of the Slovak Republic and Holy See on Conscientious Objection ignored the fact that Slovakia is bound by the European Convention on Human Rights, as well as by the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women and all the international obligations following from these agreements. The government seemed to forget that the right to religious conscientious objection should be seen as one dimension of the right to freedom of thought, conscience and religion recognized both under Article 9 of the European Convention on Human Rights and under Article 18 of the International Covenant on Civil and Political Rights. This article primarily protects the inner faith of the individual (*the forum internum*) and offers a protection to the external manifestations of this inner faith, as it translates into words or acts. However, the right to religious conscientious objection is not unlimited. If this right comes into conflict with other rights, in such circumstances an adequate balance must be struck between these conflicting requirements, which must not lead to one right being sacrificed to another.

To sum up, we can say that the Slovak Republic dealt with the conflict between human rights (especially reproductive rights) and the institution of conscientious objection very poorly. It is similar to the way in which our state deals with the pluralism of different (religious) beliefs in general, in the sense of their equal status and the provisions concerning them—as we clearly showed regarding the consequences of the law on the registration of the churches, and the status and content analysis of the treaties with the Vatican in comparison

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<sup>18</sup> For example, in the United Kingdom, the right to religious conscientious objection is recognized in specific laws adopted in areas where it might be invoked (the same holds true of other member states, such as the Netherlands). The British Abortion Act from 1967 permits doctors and nurses to refuse to participate in terminations but obliges them to provide necessary treatment in an emergency where a woman's life is threatened. Furthermore this exemption has been interpreted as covering only the administration of the treatment, so conscience could not be invoked in order to refuse to give advice or perform various participatory steps, including the signing of the certificate required from a medical practitioner before an abortion can occur (Janaway v. Salford Health Authority, 1988). Government guidance has indicated that the exemption should apply to ancillary staff involved in the handling of foetuses and foetal tissue and that medical students should be able to opt out of witnessing abortions. It should also be noted that the British Medical Association (the body representing doctors) expects doctors with a conscientious objection to the prescription of contraceptive devices to refer the patient to another doctor willing to do so. It also expects doctors with a conscientious objection to the withdrawal of treatment on moral rather than clinical grounds to be moved to other duties without being marginalised but there is no specific legal protection for this.

with the agreements with all the other registered churches and religious communities, there is no real pluralism in Slovakia. Interestingly, the politics of favouritism employed by the Catholic Church does not help in achieving the two pragmatic political aims we focused on—even their image as the defenders of traditional values did not help them gain votes in the elections (KDH received only 8.31% of votes) and the so-called demographic crisis (of course) cannot be mended by such crude attempts as the prohibition of or limited access to abortions. The longitudinal survey shows that Slovakia witnessed the steepest decline in the birth rate after the significant social changes occurring in 1989. Before 1989, the birth rate varied between 83 242 and 100 240 children born per year, the birth rate plummeted after 1990 to the historic minimum in 2002—50 841 children. In the following years the birth rate slightly increased and in 2005 it reached 54 430 children (this is usually explained by the fact that “the baby boomer generation” from the end of the 1970s began to give birth to their own children). Evidently, the low natality has not been adversely influenced by easy access to abortion (by contrast, the number of abortions dropped significantly) but is as a result of several factors: higher socio-economic uncertainty, difficult access to housing for young people, changes in lifestyle and the increased use of contraceptives.

What then should be the strategy of the Slovak political elite in democratizing the situation in the area of the managing freedom of faith and its consequences in our country? There are some important measures that should be put into practice: 1. To adopt a law that would specify the conditions of the exercise of the conscientious objection (chiefly) in the area of medical performances related to reproductive health in agreement with all the above-mentioned treaties binding on the Slovak Republic; 2. To liberalize the law on the registration of the churches; 3. To put the conditions for the running of religious and secular humanist societies on an equal footing.

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Department of Psychology  
 Faculty of Arts  
 Comenius University  
 Gondova 2  
 818 01 Bratislava  
 Slovak Republic  
 E-mails: plichtova@fphil.uniba.sk, petrjanosova@fphil.uniba.sk