

ABSTRACTS

Mikhail Antonov

Die Religionsfreiheit in Russland

Freedom of Religion in Russia

The article elaborates on the historical and ideological background of religious belief in Russia. It sheds light on the constitutional guarantees of religious equality in the country, and on the forms of collective exercise of religious rights, as well as on questions related to the status of traditional and “non-traditional” religions. It gives an outline of the legislation on the protection of religious sentiments and against (religious) extremism. The article, in particular, shows that the close relation between traditional religions and state authorities, as well as the specific emphasis on traditional values tends to constrict individual freedom of religion as well as the scope of action for “non-traditional” denominations.

Herbert Küpper

Die Religionsfreiheit in Ungarn

Freedom of Religion in Hungary

The freedom of religion in Hungary has to be analysed at two levels. On the level of individual freedom, there are no structural problems in Hungarian law. The irrelevance of the individual’s denomination makes religious conflicts rare. Only Jews have to face a certain traditional and sometimes government-fuelled anti-Semitism. On the level of collective freedom, i.e. of the legal position of the religious communities, the picture is less friendly. After the change of system, a uniform legal status for all religious communities was introduced. Since 2011, the Nationalist-Populist Fidesz government has created a distinction between more privileged and less privileged churches in order to reward political loyalty. The first legislative attempts were annulled by the Constitutional Court which then still consisted of independent personalities. In order to neutralise the Court’s criticism, the government enshrined the differentiation in the Constitution itself. As a result, the less privileged communities lodged complaints with the ECtHR and won their cases. The Strasbourg court established that the Hungarian constitutional and statutory law violated the freedoms of religion and of assembly because it made unproportional differences in the status of the various churches. Furthermore, the court criticised the “politically tainted” parliamentary procedure to award a church the privileged status.

Jan Wintr

Die Religionsfreiheit in Tschechien

Freedom of Religion in the Czech Republic

The Constitution of the Czech Republic guarantees freedom of religion in Articles 15 and 16 of the Charter of Fundamental Rights. Art. 15 of the Charter of Fundamental Rights protects the forum internum without restriction, only the expression of ideas or religion (forum externum) may be restricted by law, but within the framework of Art. 16 of the Charter of Fundamental Rights. The Charter of Fundamental Rights also postulates the secularity and religious neutrality of the state. According to Art. 2 par. 1, the state is founded on democratic values and must not commit itself to an exclusive ideology or religion. This constitutional framework limits the legislation and the courts, especially the Constitutional Court. This article begins with freedom of conscience, then it moves to freedom of religion *stricto sensu*, and finally it returns to the issue of the legal status of churches and religious communities, especially the consequences of the restitution of the Church's property and the financial separation of the churches from the state.

Alexander Brösl, Ludmila Gajdošíková

Die Religionsfreiheit in der Slowakei

Freedom of Religion in the Slovak Republic

This article deals with the freedom of religion and the status of churches and religious communities in the Slovak Republic. In the first part we are focusing on a brief historical summary of the Czechoslovakian constitutions of the 20th century, in particular analysing the constitutional and statutory background concerning the regulation of the freedom of religion after the adoption of the Constitution of the Slovak Republic in 1992. In the following part we are shedding light on the state – church contractual relationship and its legal framework (Basic Treaty between the Slovak Republic and the Holy See from 2000, Treaty between the Slovak Republic and other registered Churches from 2002). In the concluding part we are treating the jurisprudence of the Constitutional Court of the Slovak Republic concerning the respective area by examining both – the attempts of the National Council to regulate the freedom of religion by statutes, which have been challenged in the proceedings on their compliance with the Constitution, and individual complaints objecting violation of the freedom of religion (their outcome in the proceedings of constitutional complaints).

Piotr Kapusta

Die Religionsfreiheit in Polen

Freedom of Religion in Poland

In Poland, a wide legal regulation on the constitutional level was devoted to the issue of the freedom of religion. It refers to the presence of religion in the public life and

numerous guarantees of freedom of religion and faith. Embodiments of constitutional norms take place in a number of statutory regulations. The norms of religious law contain provisions of civil law, administrative law, labor law, or even financial law. The standard of protection of religious freedom and religion in Poland corresponds to the standards set by the provisions of international law.

Tomislav Pintarić

Die Religionsfreiheit in Kroatien

Freedom of Religion in Croatia

Religious freedom is guaranteed in Croatia by the 1990 Constitution. The Constitution has not opted for a strictly secular model of state-religious relations, but for a separation of state and religious communities, with the state's obligation to protect and cooperate with religious communities. The religious communities are free to exercise their religion publicly and to found educational and other institutions. 86% of the population belong to the Catholic Church. The legal status of the Catholic Church is regulated by international treaties with the Holy See. All religious communities enjoy the financial support of the state. In the case of the Catholic Church, whose assets were largely nationalized under socialist rule, arrangements were made for the indemnification of property that cannot be restituted in kind. The State entered into treaties on mutual relations with the Serbian Orthodox Church, other Christian denominations, the Islamic community and Jewish communities as well. All religious communities have the right to offer religious education in public schools, as far as parents wish so, and the religious communities provide the corresponding religious teachers. The Croatian register of religious communities currently contains 54 different religious communities. By virtue of registration, the religious communities acquire legal personality.

Damir Banović, Ehlmana Memišević

Law and Religion in Bosnia and Herzegovina

The article deals with the freedom of religion in the legal system of Bosnia and Herzegovina granted by the Constitution and further regulated by the Law on Freedom of Religion, as well as other statutory provisions. Following the democratization process, the 1990s and the dissolution of the Yugoslav Federation, Bosnia and Herzegovina as well as the others former Yugoslav republics abandoned the socialist understanding of religion as an exclusively private matter, which is manifested in the privacy of the home and religious objects. The constitutional documents, in accordance with international norms, provide general individual and collective guarantees for the freedom of religion and its manifestation in "private or in public" – ceremonies, adherence to religious regulations, cherishing customs and other religious activities. Furthermore, religion in Bosnia and Herzegovina has a specific status given that it is a building block of ethnic identity of the constituent people, e. g. Bosniaks, Serbs and Croats. Having this in mind, the introduction of the collective rights can be indirectly

understood as the protection of religion. This article gives a detailed analysis of relevant constitutional and legal provisions (including the provisions of the European Convention for Human Rights, which is part of Bosnia and Herzegovina's constitutional system) as well as an analysis of the relevant case law developed before the European Court for Human Rights, domestic institutions and the documented violations of the freedom of religion in the county.

Lukas Reiter

Die Verfassungsgerichtsbarkeit der Tschechischen Republik – eine Untersuchung im Vergleich mit dem österreichischen Recht

Constitutional Jurisdiction in the Czech Republic in comparison Austrian Law – A Comparative Constitutional Study

This article analyses the constitutional jurisdiction in the Czech Republic and Austria. Within this comparative law study main focus is being laid on the systematic elements of the constitutional courts, their differences and similarities. After a short introduction, the first part discusses the organisation, the competences, the different types of procedures and procedural aspects as well as the position in the constitutional reality of the Czech Republic's constitutional court – with corresponding references to the Austrian equivalent. The final conclusion analyses particularly interesting aspects from a comparative law point of view. The paper will show that major aspects of the constitutional court systems in Austria and the Czech Republic are similar, though, on closer inspection in detail – especially concerning the organisation as well as the jurisdiction – structural differences are apparent. It remains to be emphasized in particular, that both the Austrian as well as the Czech constitutional court are well established institutions within their constitutional systems.