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MODIFICATION OF THE STATUTES
OF THE METROPOLITAN CHAPTER OF OLOMOUC
AND THE APPOINTMENT OF THE VACANT CANONS
IN CONNECTION WITH THE ISSUE
OF THE 1917 CODE OF CANON LAW

The (Arch)Diocese of Olomouc has always played a very important role in Moravia. The bishopric was founded in 1063. The cathedral Chapter was finally confirmed by Bishop Jindřich Zdík (1126-1150) when he transferred it (as well as his episcopal see) from the Church of St. Petrus to the newly built cathedral of St. Václav (1141) [Zlámal 2006, 14-17; Kachník 1931, 3-4].

The Chapter kept its privileges and Statutes strictly guarded, thus successfully preserving the privilege of the free election of the (arch)bishop. The Chapter Statutes were considered to be so secret that the canons were not allowed to own a copy of them. The new canons, therefore, were the only ones who had the Statutes read to them [Zuber 1987, 51]¹. This, however, could have led to disputes over their provisions (especially of the appointment of the canons). To avoid this, Maria Theresa decided to reform the Statutes and declared them invalid (*null und nichtig*) and ordered the Chapter to make them anew [ibidem, 52].

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¹ For other cathedral chapter's statutes, such strict secrecy does not appear.

The Chapter first wanted to obstruct this, but subsequently submitted and, based on the old Statutes, developed a new set of Statutes which did not differ much from the former, and then they were sovereign approved and applied from January 1, 1773. Even in the case of these Statutes, copies could not be freely made; the Statutes were read to the canons twice a year, from an original that was preserved in the Chapter deanery².

But for the Chapter, it was absolutely essential that Maria Theresa confirmed in chapter 2 of the new Statutes the free election of the new bishop by the Chapter. For the appointment of vacant canons, the rules of the so called papal and chapter months were applied. The canonries that were vacated in odd months were appointed by the Holy See, and those in the even months by the Chapter. The exception was the so-called royal canonries, whose appointment was always by the monarch as Czech King. In the appointment of canonries, there was one significant change, which was the necessity of Inkolat, that is, belonging to the domestic nobility³. While the Inkolat was understandable in order to prevent the reception of “aliens” in the Chapter [Brňovják 2015, 279-89], the restriction of aristocratic origin later led to the reception of foreign priests of aristocratic origin because domestic priests were lacking [Zuber 1987, 59-60; Zemek 1945; Navrátil 1909, 7-8].

While in most chapters the demand for an aristocratic origin for canons was gradually abandoned, in Olomouc, on the contrary, the Chapter added this condition to the Statutes⁴. The aristocratic origin, unlike a doctorate in theology, was an indispensable requirement [Jonová 2017c, 67-75].

1. ADJUSTMENTS OF THE STATUTES FROM 1772 AND NEW STATUTES IN 1826

In 1777 the Archbishopric of Olomouc was established, but this change did not affect the Chapter Statutes. The first major change of the Statutes was made by Emperor Joseph II, in 1784. He reserved the appointment of

² Zemský archiv Opava, pobočka Olomouc [later cited as: ZAOpO], fund: Metropolitní kapitula Olomouc [later cited as: MCO], kart. 28. For more see: Zuber 1987, 53.

³ Some canons were also of non-noble origin in the 17th century.

⁴ A similar demand was made also in Brno’s Chapter. On October 30, 1842, Ferdinand V canceled it and opening up the possibility to become canons for all candidates regardless of their origin [Hanáček 1991, 6].

canons of the original papal month for himself as a so-called imperial – until that time, the emperor as a Czech king had the right to appoint so-called “royal canons” (*stricte regii*)⁵.

Archduke and Archbishop Cardinal Rudolph John, brother of Emperor Francis I, adopted the new Statutes of the Chapter in 1826, but in many ways the new Statutes mirrored those from the time of Maria Theresa. It was incorporated into them the change of papal months to royal (or imperial). In addition, the aristocratic privilege was further emphasized, as the demand for Domicelars (a non-residential canon without priestly ordination) of an aristocratic origin was established *nobilitatis gradus saltem status equestris*⁶, which replaced the requirement of Inkolat.

2. EFFORTS TO ABOLISH ARISTOCRATIC PRIVILEGES

The Concordat between Austria and the Holy See from 1855 both advocated the abolition of aristocratic privileges and the obligation of priestly ordination for all the canons, thereby canceling Domicelars (Art. XXII, The Chapter of Olomouc was explicitly referred to in the 4th secret article). The lack of priests from the families of the Czech nobility led to the acceptance of noblemen from abroad, which in the second half of the 19th century met with considerable criticism from the non-noble priests and the public in particular. Non-noble priests from the Olomouc Archdiocese managed to achieve a certain alleviation from the noble privilege until 1880, despite the resistance of Vienna and the noble canons. In the Decree of the Congregation for Extraordinary Church Affairs of June 17, 1880 [Kobliha 1890, 39-40] there was confirmed the abolition of nine Domicelars and their replacement by three non-residential canons, the requirement of priestly ordination for canons, and while the Chapter could still vote only noblemen to canons, the Emperor could name canons from the noble and non-noble priests⁷. Although these Decrees meant an improvement, it was not a definitive solution to this issue. The definitive removal of the noble privilege was unsuccessfully sought by the first archbishop of non-noble

⁵ Österreichische Staatsarchiv, Wien, fund: Allgemeine Verwaltung, Alte Kultus, kart. 201, f. 1-9, Erzbistum Olmütz-Domkapitel 1771-1800.

⁶ ZAOpO, MCO, book 21. C. De electione Canonicorum.

⁷ Cf. *Kronika. Kapitولní otázka Olomúcká*, “Časopis katolického duchovenstva” 18 (1877), p. 14-15; *K otázce kapitulní*, “Našinec” 13 (1881), no. 66, p. 1-2.

origin Theodor Kohn (1845-1915). Although the Holy See acknowledged Kohn's arguments, he was told that it was necessary to wait for a more appropriate time⁸. Despite the requirement of annulment of the noble privilege⁹, the appropriate time came after the establishment of an independent Czechoslovakia and the publication of the Code of Canon Law (1917)¹⁰.

3. THE REQUIREMENT TO AMEND THE STATUTES ACCORDING TO THE 1917 CODE OF CANON LAW

The new Code of Canon Law modified the manner regarding how canons were appointed (*Caput V: De Capitulis canonicorum*). Henceforth, the Holy See or bishop had the right to appoint canons, rather than secular rulers. Shortly after the publication of CIC/17 the priests of the Olomouc Archdiocese, encouraged by Benedict XV's peace note, in particular the demand for a "world order to be based on the Christian principles of justice and law" they decided to demand again the definitive abolition of the noble origin requirement for the canons¹¹.

In August 1918, the Archbishop of Olomouc Cardinal Leo Skrbenský from Hřiště submitted this request of the priests¹². Skrbenský believed that the more appropriate time, as was communicated to Archbishop Kohn, had already taken place. The final solution was urgent, as the current situation was causing suffering among the clergy¹³.

Cardinal Secretary of State Gasparri, in response to Skrbenský's request, told the Nuncio that it would be necessary to examine very sensi-

⁸ The Holy See prepared a decree on abolition (dated May 18, 1897), but subsequently Archbishop Kohn was not permitted to publish it [Jonová 2013, 39-46].

⁹ For example: *Mají šlechtici zvláštní nárok na kanonikát olomoucký?*, "Časopis katolického duchovenstva" 44 (1903), p. 27-33.

¹⁰ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus*, Typis Polyglottis Vaticanis, Romae 1933 [later cited as: CIC/17].

¹¹ ZAOpO, MCO, sign. 23/2, kart. 1164; kart. 1140; fund: Arcibiskupství Olomouc [later cited as: AO], kart. 829, kart. 845; *Kapitální otázka Olomucká*, "Pozorovatel" 15 (1918), no. 30, p. 1-2.

¹² Segreteria di Stato, Sezione per i Rapporti con gli Stati, Archivio Storico, Città del Vaticano, fund: Congregazione per gli Affari Ecclesiastici Straordinari [later cited as: AA.EE.SS.], Austria-Ungheria, pos. 1409, fasc. 506, f. 65rv, 27.08.1918.

¹³ AA.EE.SS., Austria-Ungheria, pos. 1409, fasc. 566, f. 66-71r.

vely the attitude of the Vienna government¹⁴. But the Nuncio later stated that the Austrian government now had more serious problems to solve than the Chapter question of Olomouc and due to the government's traditional slowness (*anche la tradizionale letenza con cui si trattavano*) it was not possible to gain a quick response to this question and it was not a good time to address the issue¹⁵.

3.1. The Question of the Chapter of Olomouc after the establishment of independent Czechoslovakia¹⁶

After the establishment of independent Czechoslovakia in October 1918, the Chapter came into a precarious situation, because by the abolition of the noble titles by the state, the Chapter did not have the possibility of appointing a nobleman and there was not an emperor who could name non-noblemen.

The new Archbishop of Olomouc Antonín Cyril Stojan wanted to appoint vacant canons. At that time the Auxiliary Bishop Karel Wisnar was elected the new Dean of Chapter and the election was confirmed by the Holy See¹⁷.

The canon Mayer-Ahrdorff was elected to the second position of the Chapter and also asked for confirmation¹⁸. In this case, however, there was conflict between the old privilege and the new Code of Canon Law. Wisnar apologized, referring to the old privilege of the Chapter, and asked whether it might be possible, for example, to ask the Holy See to consent to this choice by telegraph. The Nuncio warned him not to keep can. 1435 § 4. In spite of this, the Nuncio asked the Holy See to confirm this election¹⁹, and it was confirmed with the reminder of CIC/17 failure²⁰.

¹⁴ Ibidem, f. 76-77r.

¹⁵ Ibidem, f. 78rv.

¹⁶ For more see: Jonová 2017b, 21-44.

¹⁷ Archivio Segreto Vaticano, Città del Vaticano [later cited as: ASV], Archivio della Nunziatura Apostolica Cecoslovacchia [later cited as: Arch. Nunz. Cecoslovacchia], b. 18, fasc. 81, f. 12r, f. 14rv, f. 15r.

¹⁸ ASV, Arch. Nunz. Cecoslovacchia, b. 18, fasc. 81, f. 17r, 19r.

¹⁹ Ibidem, f. 21-23v.

²⁰ AA.EE.SS., Austria-Ungheria, pos. 1409, fasc. 566, f. 81-82r. ASV, Arch. Nunz. Cecoslovacchia, b. 18, fasc. 81, f. 25rv. This confirmation of non-compliance with CIC/17 regulation was not a matter of course. Later, when he was elected dean of the Chapter in 1926, Rome did not accept the election and appointed him by special Bull.

Similarly, as there was a conflict between the Statutes and the appointment of dignitaries, an even more serious problem arose in the appointment of new canons. The Chapter inquired about the decree from Archbishop Kohn's time (decree of May 17, 1897). Stojan reminded him that without the permission of the Holy See, it is not possible to apply the decree²¹. The Chapter wished to obtain the right to occupy all canons, and to prove its claims²².

The new Czechoslovak state was also interested in the appointment of Olomouc's canons. The government advocated obtaining all the rights of the Habsburg House, including the occupation of the Church's benefices [Pícha 1925, 92].

Pope Benedict XV stated in the allocution of November 21, 1921, expressly referring to the end of the old and the establishment of new states, "the privileges granted by the Apostolic See to treaties to other states have no right to subrogate new states"²³. The idea that the Czechoslovak government was also given the right to appoint bishops and canons was rejected by the Roman Curia on the grounds that it was a privilege granted to the Emperor and that this privilege was also extinguished by the end of the imperial power but the State rejected this and began complex negotiations [ibidem, 91-92]. The requirements of the State and the Chapter's demand of using their old privileges did not respect the provisions of CIC/17 and this made the appointment of canons of Olomouc more difficult.

The government demanded that the empty canons be appointed by Statutes. In the case of the so-called royal (*stricte regius*) canons, the Olomouc ordinariate had to propose the candidates and the government wanted to appoint the imperial canons²⁴.

The Archbishop's Office countered this claim, in that the sovereign's right of appointment was a personal right (*ius personale*) and that the government of the Czechoslovak Republic did not have this. Moreover, the imperial months were originally papal until the time of Joseph II (1784) and Benedict XV reminded them that the new republic cannot assume any rights without agreeing them with the Holy See. The Olomouc ordinariate rejected the decision of the government as erroneous, including an appeal

²¹ ZAOpO, MCO, kart. 1140.

²² Ibidem.

²³ AAS 13 (1921), p. 521-24.

²⁴ AA.EE.SS., Cecoslovacchia, pos. 18 P. O., fasc. 28, f. 50r.

to the laws of May 7, 1874, which granted the government the right of veto against nomination only on grounds of civil law²⁵.

Stojan consulted the problem of Olomouc's Chapter with Vyšehrad's canon František Zapletal. According to Zapletal, the nuncio agreed with Stojan's modifications. Zapletal recommended also appealing to can. 63 § 2²⁶. The Holy See refused to accept the government's argument that it obtained the Habsburg House rights and in that regard it considered the claims of Stojan to be legitimate²⁷.

The Archbishop told the Chapter that with regard to can. 403, the privileges contradictory to CIC/17 should be abolished²⁸. The Chapter asked that, in view of the antiquity of the "chapter months", they would be allowed to appoint the new canons²⁹. However, the Nuncio did not consider it most appropriate to keep the requirement of the Chapter of the appointment of the canons³⁰.

The finding of the Supreme Administrative Court dated January 10, 1923 (No. 315/23) dismissed the complaint of the Archbishop's Ordinariate concerning the appointment to the Olomouc's canons³¹. The State insisted on inheriting the "privileges of the Habsburg House".

3.2. The appointment of canons in the form of "for this time" 1922-1923

In view of the large number of free canonical posts, the Ministry of Education informed the Chapter that new canons should be appointed as soon as possible. This did not change anything in the government's request that it had a nomination right³².

The Secretary of State informed the Congregation of the Council about the Chapter Question of Olomouc, that the Chapter would like to obtain the right to fill positions for itself. With regard to the difficult situation, the Archbishop canonries would now be occupied in conjunction with the

²⁵ Ibidem, f. 51-54; ZAOpO, AO, kart. 845, f. 3-17.

²⁶ ZAOpO, MCO, kart. 1140.

²⁷ AA.EE.SS., Cecoslovacchia, pos. 18 P. O., fasc. 28, f. 57rv.

²⁸ ZAOpO, MCO, kart. 1140.

²⁹ Ibidem.

³⁰ AA.EE.SS., Cecoslovacchia, pos. 18 P. O., fasc. 28, f. 58-59r.

³¹ ZAOpO, MCO, kart. 1140.

³² Ibidem.

Chapter in the corresponding nationality, that is, a compromise solution³³. Given the urgency of the case, it was approved, but the Congregation reserved the right to review the nature of this compromise³⁴.

When announcing the selection process for the freed canons, Archbishop Stojan pointed out that the Chapter would respect can. 404³⁵. The selection process was published. Without any explanation or reaction, the condition to prove aristocratic origin was lost³⁶.

At the beginning of October 1922, Stojan spoke with the Chapter about suitable candidates³⁷, which Stojan subsequently proposed to the Holy See³⁸. Candidates were then notified to the Ministry³⁹.

The Chapter concluded that the occupation of the three canonries, whose nomination belonged to the Chapter according to the Statutes, was left “for this time” by the archbishop, and communicated to the Ministry⁴⁰.

Similarly, the Government agreed to the appointment of the new canons, but that it should not change the fact that Government insisted on its rights to appointed canons of *stricte regius* and in the imperial months⁴¹.

In March 1923, six new canons were appointed (four residential, two non-residential) and the third non-residential position remained vacant⁴². This was later also nominated by the archbishop in consultation with the Chapter⁴³. The government agreed again, with notice that it did not give up its nomination rights⁴⁴.

³³ AA.EE.SS., Cecoslovacchia, pos. 18 P. O., fasc. 28, f. 68-69.

³⁴ Ibidem, f. 71.

³⁵ ZAOpO, MCO, kart. 1140.

³⁶ “Acta Archiepiscopalis Curiae Olomucensis” 7 (1922), p. 61.

³⁷ ZAOpO, AO, kart. 829.

³⁸ Ibidem.

³⁹ Ibidem.

⁴⁰ ZAOpO, MCO, kart. 1140.

⁴¹ ZAOpO, AO, kart. 829. However, the government did not reflect on the fact that what was inconsistent with the CIC/17 could no longer be required.

⁴² ZAOpO, ACO, kart. 2405, 10.03.1923, no. 158; ZAOpO, AO, kart. 829.

⁴³ Ibidem, kart. 829, February – March 1923. ZAOpO, AO, kart. 829. ASV, Arch. Nunz. Cecoslovacchia, b. 18, fasc. 81, f. 154. cf. Zemek 1945.

⁴⁴ ZAOpO, AO, kart. 829.

4. THE CHAPTER'S CLAIMS TO APPOINT CANONS AND PREPARATION OF NEW STATUTES⁴⁵

Prečan, as vicar general, stated to the Chapter what the Holy See wanted, that the Chapter's Statutes were to be redesigned in accordance with the new Code of Canon Law within six months⁴⁶, and asked the Chapter to do this⁴⁷. Prečan, as the new Archbishop, in March 1924 reminded the Chapter of this demand and he informed the Holy See about the difficulties that the Chapter had in dealing with its appointment of new canons⁴⁸.

Canon Jan Kubíček, who was in charge of a reworking of the new Statutes, said he had started the work but suspended it after the Chapter declared that until the Holy See had decided on its privileges, it was not possible to prepare new Statutes⁴⁹.

According to the decision of the Congregation of the Council of March 29, 1924, canon 403 was confirmed, and all that contradicted it, including the old privileges, was considered to be abolished (excepting the provisions *ex lege foundationis* of can. 1435)⁵⁰. According to the Congregation, the exception of can. 1435 did not relate to Olomouc's Chapter⁵¹. Despite this, the Chapter again invoked her old privileges⁵². Their request for the occupation of dignitaries and other papal reservations was handed over to the Congregation of the Council⁵³.

The Congregation recalled an earlier decision (dated March 29 and August 9, 1924) on the Occupation of Dignitaries in Olomouc's Chapter, with explicit reference to the fact that it had to be held in accordance with the valid Codex (1435 § I) and that no further request of the Chapter would not change anything⁵⁴.

In spite of that, the Chapter presented further records⁵⁵. The Prefect of the Congregation of Council Cardinal Sbaretti had submitted the request to the Holy Father, who confirmed the right of the Apostolic See to the ap-

⁴⁵ For more see: Jonová 2017a, 283-302.

⁴⁶ AAS 9 (1923), p. 453.

⁴⁷ ZAOpO, MCO, kart. 1139, sign. 17/1.

⁴⁸ Ibidem.

⁴⁹ Ibidem.

⁵⁰ ZAOpO, AO, kart. 829.

⁵¹ ZAOpO, MCO, kart. 1140.

⁵² Ibidem, 1927-1928.

⁵³ ASV, Arch. Nunz. Cecoslovacchia, b. 60, fasc. 520, f. 3, 4.

⁵⁴ Ibidem, f. 5r.

⁵⁵ Ibidem, f. 6.

pointment of the dignitaries. As for simple canons that have been freed by the occupation of dignity, the Archbishop might appoint them in accordance with can. 403⁵⁶. The next appointment of dignitaries took place in accordance with this Decision⁵⁷.

At the same time, Prečan again reminded the Chapter that in the *ad limina* report to Rome he promised that the new Statutes, soon to be submitted for approval, would be in accordance with CIC/17⁵⁸.

The appointment of dignitaries did not evade the government's attention. The Ministry of Education therefore asked for a detailed statement on the state of the matter of the appointment of vacant canonries of the Chapter of Olomouc⁵⁹.

On the note of Dataria, that every chapter's dignity is tied to papal confirmation⁶⁰, the Chapter replied that in Olomouc there was the ancient custom that the dignitaries were not tied to a particular canon. After the dignitary's death, the candidate for canonries had no claim to obtain this position⁶¹.

In the Olomouc diocese, information was published the Decree of November 11, 1930 on the matter of occupation benefices⁶².

4.1. Appointment of the vacant canonicates after 1930

However, the appointment of the canons was not solved. The Chapter recalled that the appointment according to the Statutes was not solved, also because of the abolition of the nobility, with the fact that "in 1923 the Chapter was filled by the appointment of the new canons but not according to the Statutes"⁶³.

Prečan pointed out to the Chapter again that the Holy See would insist on its reservations laid down by canon law. He also reminded them of the rescript of July 5, 1930, and hence neither the Archbishop as Ordinary,

⁵⁶ Ibidem, f. 14.

⁵⁷ Ibidem, f. 20, 21, 25.

⁵⁸ ZAOpO, MCO, kart. 1139, sign. 17/1.

⁵⁹ Ibidem, kart. 1140.

⁶⁰ ASV, Arch. Nunz. Cecoslovacchia, book 60, fasc. 520, f. 32.

⁶¹ Ibidem, f. 35.

⁶² "Acta Curiae Archiepiscopalis Olomucensis" 12 (1930), p. 145.

⁶³ ZAOpO, MCO, kart. 1140.

nor the Chapter had the right to interfere⁶⁴. He therefore refused to deduce from the Statutes of Chapters whatsoever that which is contrary to canon law, and strongly demanded that the Chapter prepared to approve new Statutes modified according to canon law⁶⁵.

The Chapter thanked him for the information and asked Prečan to confirm that the Statutes should state the current state of the number of canons or whether the number would be in the sense of can. 393, modified to conform to can. 410⁶⁶.

Prečan confirmed to the Chapter, that they had to draw up the Statutes according to the current number of canons. If the number of canons were to be adjusted, a supplementary of the Statutes would be issued in order to avoid any doubts in the future⁶⁷.

Despite the fact that the new Statutes had not yet been finished, a selection procedure was announced for vacant canons. It was explicitly stated that, according to can. 1435 § 1, the occupation of the vacant benefice was reserved for the Holy See (the Decree of November 11, 1930 was recalled)⁶⁸. Prečan proposed suitable candidates from the Applicants, and the Holy See named these candidates the new canons⁶⁹. The next nomination of new canons in March 1938 was without major complications⁷⁰.

4.2. The new Statutes of the Chapter

The nomination of the canons was now done in accordance with CIC/17⁷¹. In the matter of the automatic progressing of the canons, Pope Pius XI granted the privilege to the Olomouc Chapter that a canon could automatically advance to a “higher” canon position that had been vacated (except for dignitaries and other reservations), with the fact that this pro-

⁶⁴ These were the negotiations of the Holy See on the recognition of the patron’s right of the Czechoslovak Republic to appointment of three canons *stricto regius*.

⁶⁵ ZAOpO, MCO, kart. 1140.

⁶⁶ Ibidem.

⁶⁷ Ibidem, kart. 1139.

⁶⁸ “Acta Archiepiscopalis Curiae Olomucensis” 1 (1932), p. 9-10.

⁶⁹ ASV, Arch. Nunz. Cecoslovacchia, b. 60, fasc. 520, f. 83-125. Among the applicants were, for example, Stanislav Zela, who was later appointed a canon and auxiliary bishop.

⁷⁰ “Časopis katolického duchovenstva” 1 (1938), p. 73.

⁷¹ ZAOpO, AO, kart. 829.

cedure had to be announced and the appointment papers had to be made by the Apostolic Datary⁷².

In April 1933, the Chapter submitted new Statutes to the Archbishop for approval, and he commented on them⁷³. The Chapter incorporated the comments and in August 1933 sent back the revised Statutes which were sent subsequently to Rome to comment⁷⁴. The consultant's comments, including the expression of his goodwill, were sent back to Olomouc for the amending of the Statutes⁷⁵. However, the Statutes were not approved.

In December 1941 Prečan sent a draft of the Statutes to be looked over and for comments, and they modified them according to the comments made so far and passed it to the Congregation of the Council. Prečan mentioned that he could not approve the Statutes from 1933⁷⁶. During the following year, the canons provided comments on the Statutes⁷⁷. Canon Tomáš-tík submitted a thorough decomposition to the Chapter Statutes and recalled, *inter alia*, that the Chapter did not have in Rome an "agent" (with whom the existing Statutes counted upon) to represent the Chapter in order to protect its privileges. He therefore recommended that the Archbishop himself take up their affairs. He again asked whether all privileges that were in conflict with CIC/17 should be omitted.

"However, it would be necessary to deal with this matter directly with Holy See. But this time is not appropriate. We have to modify the statutes for ourselves and for the future, and we do not know what tomorrow will bring the chapter! Therefore, it seems to me most appropriate to postpone the adjustment of the statutes to a more peaceful time. I therefore propose: Since in today's nervous and precarious time there is no need for peace to discuss a matter as important as the statutes, the metropolitan chapter met at its meeting on 1942 to postpone this matter to a more peaceful time and ask your Excellency for his gracious consent to this resolution"⁷⁸.

In May 1944 Prečan again reminded the Chapter of the necessity of revising the Statute⁷⁹. However, the war events did not address the solution

⁷² ASV, Arch. Nunz. Cecoslovacchia, b. 60, fasc. 520, f. 144, 192, 194.

⁷³ ZAOpO, MCO, kart. 1139. Draft of the new Statutes: AO, no. 285.

⁷⁴ ZAOpO, AO, kart. 836.

⁷⁵ *Ibidem*. Archiv arcibiskupství olomouckého [later cited as: AAO], fund: depozitář A 3, K 1, kart. 10.

⁷⁶ ZAOpO, AO, kart. 836; AAO, depozitář A 3, K 1, kart. 10.

⁷⁷ *Ibidem*.

⁷⁸ *Ibidem*.

⁷⁹ *Ibidem*.

of the Chapter's Statutes, and so there was no approval. In December 1946, Canon Antonin Klug sent to Prečan the Statutes, revised according to the remarks of all the canons, for him to read⁸⁰. In this version there was reflected not only the implementation of the Codex, but also the proposal to reduce some canonical posts. In spite of the archbishop's efforts, the new Statutes could not be approved until Prečan's death⁸¹.

Prečan's successor Archbishop Josef Karel Matocha soon after his enthronement to the Olomouc Archbishop's See (in 1948) once again called the Chapter on the submission of the new Statutes to Rome. The Nunciature also required this. In addition, no definitive reduction of canon's posts was negotiated, and also the question of the free election of the Archbishop by the Chapter had not been resolved⁸². Matocha was astonished that there was no chapter in the drafting of the new Statutes about *De electione archiepiscopi* and encouraged the canons to put this part in the Statutes and the Chapter acted promptly on the right of the Metropolitan Chapter to the election of the Archbishop of Olomouc (at least in any limited form)⁸³. The Chapter, however, responded that they had come to believe that in this uncertain time, the conditions made it impossible for the issuing of the new Statutes and asked the Archbishop not to call for it⁸⁴.

In the period of communist totalitarianism since 1948, there was no thought of resolving the Chapter's Statutes. The drafting and approval of the new articles of association took place only after November 1989. New Statutes were adopted in 1994⁸⁵. Thus, the Statutes from 1826 were "valid" (with exceptions) for almost 170 years, without being revised under new modifications to canon law (CIC/17 and the 1983 Code of Canon Law).

CONCLUSION

While the Czechoslovak government intervened very strongly in dealing with the Chapter question of Olomouc at the time of the episcopate of

⁸⁰ Ibidem.

⁸¹ ZAOpO, AO, kart. 836.

⁸² This issue was discussed especially after the death of Archbishop Prečan. According to some, the right of the Chapter on the free election of the Archbishop was not abolished, and therefore it lasted [Kop 1947].

⁸³ AAO, depozitář A 2, A 3, kart. 230.

⁸⁴ Ibidem.

⁸⁵ The Statutes of the Metropolitan Chapter of Olomouc from January 18th, 1994.

Archbishop Stojan, from the turn of the twenties and thirties it is obvious that it was perceived primarily as an internal affair of the Church, as a negotiation between the Archbishop of Olomouc and the Chapter and the Holy See. The Chapter could not ignore the provisions of the new Code of Canon Law, but did not want to renounce old privileges, also because the canons “swore to the old statute”. On the other hand, the number of vacant canonical posts had increased and Prečan had managed to achieve their appointment according to CIC/17. The state no longer influenced this appointment. An important question was the nationality of the members in the Chapter.

The issue of the Chapter’s new Statutes remained unresolved. The request of the Holy See from 1923 to have the Statutes redrafted in accordance with the new Code of Canon Law was not achieved even in the next 70 years. The Chapter, in co-operation with the Archbishop, prepared revised Statutes in 1933, but these were not finally approved. During the Second World War, Prečan called for the Chapter to finally submit the revised Statutes, but with regard to the period’s events, the Chapter was not able to do this.

Also, Prečan’s successor, Archbishop Josef Karel Matocha, called for the Chapter to submit new Statutes for approval, but the Chapter again argued it was the improper time. The onset of the Communist regime made it so difficult for Olomouc that the Chapter did not have its new, approved Statutes until 1994 (of course without the *nobilitatis natalium* privilege and the privilege of the free election of the Archbishop).

LITERATURE

- Brňovják, Jiří. 2015. *Šlechticem z moci úřední. Udělování šlechtických titulů v českých zemích 1705-1780*. Ostrava: Ostravská univerzita v Ostravě.
- Hanáček, Jiří. 1991. *Nobilitovaní brněnští kanovníci od vzniku biskupství roku 1777*. Ostrava: Klub genealogů a heraldiků.
- Jonová, Jitka. 2013. “Privilege ‘Nobilitatis Natalium’ Problem. The Exclusion of Non-noblemen from High Positions in the Church at the Turn of the Twentieth Century.” *Acta Universitatis Palackianae Olomucensis, Theologica Olomucensis* 14:39-46.
- Jonová, Jitka. 2017a. “Jednání o obsazení uvolněných kanonikátů olomoucké kapituly ve 30. letech 20. století a úsilí o schválení nových kapitulních stanov.” *Studia Theologica* 19, no. 4:283-302.

- Jonová, Jitka. 2017b. "Otázka obsazování uprázdněných kanonikátů olomoucké kapituly v době episkopátu arcibiskupa Antonína Cyrila Stojana." *Studia Theologica* 19, no. 1:21-44.
- Jonová, Jitka. 2017c. "Reforma stanov olomoucké kapituly (1772)." *Cornova. Revue České společnosti pro výzkum 18. století a Filozofické fakulty Univerzity Karlovy v Praze* 7, no. 2:67-75.
- Kachník, Josef. 1931. *Osm set let dómské kapituly olomoucké*. Praha: Vlastním nákladem.
- Kobliha, Antonín. 1890. *Urkunden-sammlung betreffend die Privilegien und Rechte des Hochwürdigst-getreuen Metropolitankapitels zu Olmütz*. Olomouc: Verlag des Metropolitankapitels.
- Kop, František. 1947. "Trvá dosud právo metropolitní kapituly olomoucké voliti arcibiskupa?" *Časopis katolického duchovenstva* 4:212-24.
- Navrátil, Bohumil. 1909. *Biskupství Olomoucké 1576-1579 a volba Stanislava Pavlovského. Spisů poctěných jubilejní cenou Král. české společnosti nauk číslo XIX*. Praha: Nákladem jubilejního fondu Král. české společnosti nauk.
- Pícha, Mořic. 1925. "Rakouské právo jmenovací nepřešlo na vládu republiky československé." *Časopis katolického duchovenstva* 66:88-104, 186-212, 598-639.
- Zemek, Metoděj. 1945. *Posloupnost prelátů a kanovníků olomoucké kapituly od počátku až po nynější dobu. II. 1658-1944*. Manuscript. Olomouc.
- Zlámal, Bohumil. 2006. *Příručka českých církevních dějin II. Doba románské katalicity (1000-1200)*. Olomouc: Maticе Cyrilometodějská.
- Zuber, Rudolf. 1987. *Osudy moravské církve v 18. století: 1695-1777*. Part 1. Praha: Dějiny olomoucké arcidiecéze.

**Modification of the Statutes of the Metropolitan Chapter of Olomouc
and the Appointment of the Vacant Canons
in Connection with the Issue of the 1917 Code of Canon Law**

S u m m a r y

During the episcopate of Archbishop Stojan the Czechoslovak government very strongly interfered in the resolution of the so-called question of the Olomouc Chapter. Afterwards the issue was perceived primarily as an internal affair of the Church, and negotiations took place between the Archbishop of Olomouc together with the Chapter and the Holy See. The Chapter could not ignore the provisions of the new Code of Canon Law, but did not want to renounce its existing privileges, also because the canons "had sworn by the old statutes". On the other hand, the number of vacant canonical posts had increased and Prečan, the archbishop of Olomouc, managed to effect the appointment of new canons according to the provisions of the Code. The State did not influence those appointment. The nationality of the Chapter members was an important issue.

The issue of new statutes for the Chapter remained unsolved. The requirement of the Holy See from 1923 to review the Statutes in accordance with the new Code was not fulfilled even in the next 70 years. The Chapter, in collaboration with the Archbishop, drafted revised statutes in 1933, but ultimately they were not approved. Also, Archbishop Josef Karel Matocha called the Chapter to submit new statutes for appro-

val after World War II, but yet again the Chapter argued that the time was “inopportune”. The onset of the Communist regime in 1948 made the situation so difficult that the Olomouc Chapter did not have its new approved Statutes until 1994.

Key words: Metropolitan Chapter of Olomouc; chapter statutes; canons; privileges of chapters

**Modyfikacja statutów Ołomunieckiej Kapituły Metropolitalnej
i nominacja kanoników
w związku z Kodeksem Prawa Kanonicznego z 1917 roku**

Streszczenie

W okresie episkopatu arcybiskupa ołomunieckiego Stojana, rząd czechosłowacki bardzo mocno interweniował w rozwiązywaniu tzw. kwestii Kapituły Ołomunieckiej. Następnie kwestia ta była postrzegana przede wszystkim jako wewnętrzna sprawa Kościoła, a negocjacje odbywały się między arcybiskupem ołomunieckim, Kapitułą a Stolicą Apostolską. Kapituła nie mogła zignorować postanowień nowego Kodeksu Prawa Kanonicznego, ale równocześnie nie chciała zrezygnować z dawnych przywilejów, tym więcej z racji faktu, że kanonicy „przysięgali na dawne statuty”. Z drugiej strony liczba pustych kanonikatów wzrosła i następny arcybiskup ołomuniecki Prečan zdołał osiągnąć nominacje nowych kanoników według Kodeksu. Państwo nie wpływało na powyższe nominacje. Ważną sprawą była przynależność narodowa członków Kapituły.

Kwestia nowych statutów Kapituły pozostała nierozwiązana. Wymóg Stolicy Apostolskiej z 1923 r. dotyczący rewizji statutów Kapituły zgodnie z postanowieniami nowego Kodeksu nie został spełniony nawet w ciągu najbliższych 70 lat. Kapituła we współpracy z arcybiskupem przygotowała rewidowane statuty w 1933 r., ale ostatecznie nie zostały one zatwierdzone. Również kolejny arcybiskup Josef Karel Matocha wezwał po II wojnie światowej Kapitułę do przedłożenia statutów do zatwierdzenia, ale Kapituła ponownie prezentowała argument „niewłaściwej pory”. Początek komunistycznego reżimu w 1948 r. utrudnił sytuację w takim stopniu, że Kapituła Ołomuniecka otrzymała nowe zatwierdzone statuty dopiero w 1994 r.

Słowa kluczowe: Ołomuniecka Kapituła Metropolitalna; statuty kapituły; kanonicy; przywileje kapituły

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