

DRI

RELIGIOUS ACTORS

IN PRE-ELECTION CAMPAIGNS

(COMPARING
REGULATIONS
AND REALITIES
OF DIFFERENT
COUNTRIES)

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INTRODUCTION

Monitoring of the 2021 local municipality elections carried out by the Democracy Research Institute made it clear, that despite the involvement of religious organisations in election campaigns is made illegal by the Electoral Code of Georgia as well as by the 2012 resolution of the Holy Synod, the clergymen actively participate in the pre-election campaigns. Reflecting upon this, questions arise like: Is such an exertion of influence problematic or undemocratic? What are international standards regarding the influence of religious organisations and clerics on politics? To make sense of the previous findings, we will now briefly turn to the regulations and realities of religious influence in election campaigns for five analogue countries, namely the Czech Republic, Germany, Lithuania, the United Kingdom, and the United States of America.

The purpose is not to give a full-scale scientific comparison but to contrast the Georgian case with some interesting examples, taking into account the (regional) context. Lithuania and the Czech Republic are also former Soviet or Warsaw Pact states, the former being religious with one dominant church and the latter being mostly irreligious. Germany is of interest insofar as the Georgian legal system and code are closely tied to the German. In the United Kingdom, the issue of religious influence in election campaigns is currently discussed in parliament. It thus offers a very recent debate. The United States of America is often taken to incorporate international standards regarding all kinds of issues. At the same time, it offers an interesting comparison because of the close relationship of religion and politics. To start, we will briefly cover the regulations of Catholic Canon Law.

HOLY SEE/VATICAN

The people in many of the countries below (the Czech Republic, Germany, Lithuania, and the United States of America) are to a significant part Catholic. In addition to the local legal regulations, Catholic clerics must also follow the Canon Law of the Vatican which prohibits them from taking part in political affairs:

Can. 287

§1. Most especially, clerics are always to foster the peace and harmony based on justice which are to be observed among people.

§2. They are *not to have an active part in political parties* and in governing labor unions unless, in the judgment of competent ecclesiastical authority, the protection of the rights of the Church or the promotion of the common good requires it.¹

¹ Code of Canon Law, https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib2-cann208-329_en.html#TITLE_III, last accessed 18 October 2021, emphasis added.

According to the Vatican's interpretation, this prohibits membership in parties as well as the endorsement of candidates or parties in election campaigns.² For example, the Vilnius Archdiocese called on priests not to hold election campaign events on church premises in the context of the 2020 Lithuanian parliamentary elections.³ However, Catholic clerics have not always abided by this (see below). Besides, Canon Law does not prohibit clerics from making statements on Christian values and genuine matters of (political) life. On the contrary: according to a 1965 decree of the Second Vatican Council, clerics are to "enunciate general principles concerning the purpose and use of created things, peace, war, the just distribution of material goods and the 'fraternal coexistence of all peoples.'"⁴

The consensus thus seems to be the prohibition of any active participation in the political institutions including the endorsement of candidates, while any other (political) statement by Catholic clerics is unproblematic or even desirable.

Background: Second Vatican Council and the Modernisation of the Catholic Church

Initiated by Pope John XXIII, the Second Vatican Council (Vatican II) took place between 1962 and 1965 and, through unprecedented reform efforts, reinvented "the church for the modern age."⁵ For decades, the Catholic Church had reacted disapprovingly to the developments in civil society (technology, liberalism, globalisation, etc.). To the surprise of many, the progressive forces in the Church were able to "rejuvenate" the church during Vatican II with the support of Pope John XXIII. The reforms included the end of Latin mass and the relaxation of dietary restrictions, confessional obligations, and service attire for the laity. It opened the Church towards Protestant and other churches and officially renounced its claims to power in relation to nation states.⁶ This process was described as a transformation "from defender of the *ancien régime* into a leading apostle of religious freedom, human rights and democracy."⁷ Vatican II was thus the turning point for Catholic involvement in secular politics, including election campaigns. The 1983 Code of Canon Law, including Canon 287, valid until today, is the implementation of the results of Vatican II.

² Cf. Catholic Civil Rights League, "The Clergy and Politics," 2004, <https://ccrl.ca/publications/the-clergy-and-politics/#11>, last accessed 20 October 2021.

³ Cf. LNK, "Seimo rinkimų agitacija persikėlė į bažnyčias – mišias užpirko Lenkų rinkimų akcija," 2020, <https://www.delfi.lt/news/daily/lithuania/seimo-rinkimu-agitacija-persikele-i-baznycias-misias-uzpirko-lenku-rinkimu-akcija.d?id=85368047>, last accessed 17 October 2021.

⁴ Catholic Civil Rights League, "The Clergy and Politics," 2004, <https://ccrl.ca/publications/the-clergy-and-politics/#11>, last accessed 20 October 2021.

⁵ Brown, Andrew, "How the second Vatican council responded to the modern world" in *The Guardian*, 2012, <https://www.theguardian.com/commentisfree/andrewbrown/2012/oct/11/second-vatical-council-50-years-catholicism>, last accessed 21 October 2021.

⁶ Cf. Wilde, Melissa, „Who Wanted What and Why at the Second Vatican Council?“ in *Sociologica*, 2007, p. 1.

⁷ Barnebeck Andersen, Thomas and Peter Sandholt Jensen, "Preaching Democracy: The Second Vatican Council and the Third Wave" in *Journal of Comparative Economics* 47.3, 2019, p. 525-540, emphasis in original.

CZECH REPUBLIC

The Czech Republic is commonly described as one of the most secular countries in the world.⁸ The largest religious group according to a 2011 population census are Roman Catholics with about 10.4 percent.⁹ After the breakdown of the Soviet Union and the dissolution of Czechoslovakia, it took until 2012 for the state and the churches to agree on a settlement concerning state-church relations on the one hand, and the restitution of church property on the other. In accordance with this settlement, a transition is currently carried out from a system of a state-supported churches to the full separation of churches and state, including full financial independence.¹⁰ Furthermore, much of the churches' property has been restituted or will be compensated for.

The larger dependence on the state meant more state control over churches. The newly gained independence of religious organisations is thus a sign of enhanced religious freedom. On the other hand, it might also be interpreted as the final stage of secularisation of the Czech society. The state however retains some control. According to the 2002 Act on Churches and Religious Societies, churches must publish an annual report on the developments and activities. Furthermore, to be eligible for applying for "special rights" like teaching religion in public schools or granting marriage licences, churches must be registered and have published at least ten annual reports. Under section 5 of the 2002 Act, it is illegal for them to incite hatred, promote violence or seriously violate public order.

Major political parties in the Czech Republic (like the Civic Democratic Party, the Social Democrats or ANO 2011) are wary of religious influence and perceive of churches as "rent-seeking" civic organizations."¹¹ Thus, the populist party ANO 2011, the social democratic and the communist parties opposed the 2012 settlement. They preferred a system of property belonging to the state "to stay preserved for the citizens."¹² And,

[c]ertainly, the [Catholic] Church strives to maintain an equal distance from all the political parties, yet the obvious differences between its own agenda and that of the Czech right – differences which acquire a greater meaning during election periods – continue to give the ODS [the right-wing Civic Democratic Party] numerous opportunities to criticize the Church for political partisanship.¹³

⁸ Nešporová, Olga and Zdeněk R. Nešpor, "Religion: An Unsolved Problem for the Modern Czech Nation," 2009, <https://esreview.soc.cas.cz/pdfs/csr/2009/06/03.pdf>, last accessed 25 October 2021.

⁹ Czech Statistical Office, "2011 Population Census," <https://vdb.czso.cz/vdbvo2/faces/en/index.jsf?page=vystup-objekt&pvo=OTCR111&z=T&f=TABULKA&katalog=30719&v=v122>, last accessed 17 October 2021.

¹⁰ Minarik, Pavol, "Church-State Separation and Church Property Restitution in the Czech Republic" in *Soc* 54, 2017, p. 459–465, <https://doi.org/10.1007/s12115-017-0173-2>, last accessed 22 October 2021.

¹¹ Enyedi, Zsolt and Joan O'Mahony, "Churches and the Consolidation of Democratic Culture: Difference and Convergence in the Czech Republic and Hungary," 2004, <http://publications.ceu.edu/sites/default/files/publications/en13.pdf>, last accessed 17 October 2021, p. 188.

¹² Czech Social Democratic Party, "Vira a reality," 2013, quote taken from: Havlicek, Jakub and Dušan Lužný, "Religion and Politics in the Czech Republic: The Roman Catholic Church and the State," in *International Journal of Social Science Studies*, 2013, p. 190-204.

¹³ Enyedi, Zsolt and Joan O'Mahony, "Churches and the Consolidation of Democratic Culture: Difference and Convergence in the Czech Republic and Hungary," 2004, <http://publications.ceu.edu/sites/default/files/publications/en13.pdf>, last accessed 17 October 2021, p. 178.

This refers to the fact that the Catholic Church regularly issues political statements, for example speaking out against racism.¹⁴ Furthermore, the Czech Bishops Conference endorsed candidates for the Czech Television Supervisory Board elected by the Czech parliament in 2020 and distanced itself from a right-wing candidate for the 2021 parliamentary election who had ties with the church.¹⁵ In the Czech legislation, religious influence in election campaigns is not regulated.

GERMANY

In Germany, religious organisations and clerics are also not legally restricted to take part in pre-election campaigns. However, nowadays there is a consensus among priests and clerics of all churches that church should not directly intervene in election campaigns. This used to be different: Until the Second Vatican Council called for restraint in political involvement in the 1960s, the Catholic German Episcopal Conference regularly issued official calls to vote for the Christian Democratic (or Social) Union. In the 1980 election campaign, the Episcopal Conference again endorsed the Christian Union in their pastoral letter (and 13 Protestant clerics endorsed the Social Democrats), leading to a major political scandal. Social democrat and chancellor Helmut Schmidt heavily criticised the Catholic Church, and politicians of the Christian Union parties were not amused by the Protestants' statements either.¹⁶ From then on, a "modern" understanding of the role of the church in politics has prevailed: churches do not endorse candidates or parties, but religious leaders do comment on political issues in general, highlighting Christian values, especially in the time before elections. This is widely accepted in the German society and therefore, it is not much discussed in either politics or the public. Cases where priests (indirectly) endorse some party during the sermon¹⁷ are the exception.

LITHUANIA

In Lithuania, most of the religious population is Catholic. The involvement of church and religious organisations in election campaigns is not regulated. However, high Lithuanian Catholic clerics have in the past called on the clerics not to endorse candidates or to hold election

¹⁴ Cf. *ibid.*, p. 184-5.

¹⁵ Cf. SB, ČTK, "Czech Bishops Conference distances itself from candidates running with extremists," ROMEA, 2021, <http://www.romea.cz/en/news/czech/czech-bishop-apos-s-conference-distances-itself-from-candidates-running-with-extremists>, last accessed 18 October 2021.

¹⁶ Cf. Der Spiegel, "»Das ist geistliche Nötigung«" in *Der Spiegel*, 39/1980, 1980, <https://www.spiegel.de/politik/das-ist-geistliche-noetigung-a-398e0774-0002-0001-0000-000014331298>, last accessed 20 October 2021.

¹⁷ Cf. Heinrich, Andreas, "Kirche schaltet sich in Wahlkampf ein," in DERWESTEN, FUNKE Digital GmbH, 2014, <https://www.derwesten.de/staedte/muelheim/kirche-schaltet-sich-in-wahlkampf-ein-id9357385.html>, last accessed 8 October 2021.

campaign events on church premises in line with Canon Law.¹⁸ According to the news outlet *15min.lt*, bishops have distributed appeals during election campaigns, reminding Catholic voters of the values and principles which should be the basis for voting but never explicitly endorsed candidates or parties. Individual priests have nonetheless endorsed candidates in the past, for example in the 2019 presidential elections, facing harsh criticism.¹⁹

UNITED KINGDOM

In the United Kingdom, undue influence in the electoral process is regulated in section 115 of the Representation of the People Act of 1983:

115. Undue influence.

- (1) A person shall be guilty of a corrupt practice if he is guilty of undue influence.
- (2) A person shall be guilty of undue influence—
 - (a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or
 - (b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents [F1, or intends to impede or prevent,] the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon [F2, or intends so to compel, induce or prevail upon,] an elector or proxy for an elector either to vote or to refrain from voting.²⁰

As for undue *religious* influence, the case *Erlam and Ors versus Rahman and Anor* recently triggered a debate: in 2015, the mayor of the London borough of Tower Hamlets, Lutfur Rahman, was convicted for having taken “undue spiritual influence” in his election campaign. A letter signed by 101 Muslim leaders had been published in a local newspaper shortly before election day, in which these leaders called upon all Muslims to vote for Rahman. The court found Rahman to be personally guilty because evidence pointed to the fact that the letter was written by himself or an agent of his, and only signed by the Muslim leaders. Furthermore,

¹⁸ Cf. LNK, “Seimo rinkimų agitacija persikėlė į bažnyčias – mišias užpirko Lenkų rinkimų akcija,” 2020, <https://www.delfi.lt/news/daily/lithuania/seimo-rinkimu-agitacija-persikele-i-baznycias-misias-uzpirko-lenku-rinkimu-akcija.d?id=85368047>, last accessed 17 October 2021.

¹⁹ Cf. Tracevičiūtė, Roberta, “Nors Bažnyčia neleidžia politikuoti, kunigai įsitraukė į prezidento rinkimų kampaniją,” 2019, <https://www.15min.lt/naujiena/aktualu/lietuva/nors-baznycia-neleidzia-politikuoti-kunigai-isitrauke-i-prezidento-rinkimu-kampanija-56-1145772>, last accessed 17 October 2021.

²⁰ Representation of the People Act 1983, Section 115, <https://www.legislation.gov.uk/ukpga/1983/2/section/115>, last accessed 8 October 2021.

“Muslim clerics had participated in Lutfur Rahman’s campaign to persuade Muslim voters that it was their religious duty to vote for him.”²¹ In its judgment, the court specified that:

As framed in s 115, the corrupt practice of undue influence includes both undue influence strictly so called, where *the mind of the voter is overborne by moral or religious pressure (or by deception) on the part of someone perceived by the voter to possess authority*, and what may be better characterised as duress, where physical means are used to prevent or impede the voter from exercising a free choice.²²

Under the British legislation, it is therefore illegal for (perceived) religious authorities to exert pressure on voters during election campaigns. However, the court suggested that the legislation needed reconsideration, as it had its origins in the 19th century and was not any more appropriate.²³ As a result, the British parliament is in the present term discussing the Election Bill 2021 (currently in the committee stage of the House of Commons) which suggests a full revision of subsection 2 of section 115. The bill, as proposed in June 2021, includes the explicit prohibition of undue spiritual influence.

The judges trying the Rahman case also pointed to the fact that a balance will always have to be found between the Freedom of Religion (Art. 9 ECHR), the Freedom of Expression (Art. 10 ECHR) and the Right to Free Elections (Art. 3 ECHR Protocol). In this context, they cited a precedent from 1870 in their judgment:

The priest or other religious authority has the right of the ordinary citizen to hold and express political views and the law will protect that right. There is, as has been said, a line beyond which the priest may not go and that line is reached when the priest uses his religious and moral influence to attempt to “appeal to the fears, or terrors, or superstition of those he addresses”, to “hold hopes of reward here or hereafter”, or to “denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter.”²⁴

In general, it must be concluded that the British legislation aims at prohibiting religious leaders from abusing their (perceived) authority to influence voters and thus to prevent voters from voting freely, while leaving the clerics’ civil and human rights untouched.

²¹Law Commission Report on “The Regulation of the Campaign and Electoral Offences”, 2015; quote taken from: David Pocklington, “‘Undue spiritual influence’ – where next?” in *Law & Religion UK*, 2016, <https://lawandreligionuk.com/2016/08/30/undue-spiritual-influence-where-next/>, last accessed 8 October 2021.

²²Judgment [2015] EWHC 1215 (QB), para. 143, emphasis added.

²³Cf. Judgment [2015] EWHC 1215 (QB), para. 148 and 669.

²⁴Judgment [2015] EWHC 1215 (QB), para. 161; citing the judgment of Fitzgerald J in the County of Longford, (1870) 2 O’M & H 6.

UNITED STATES OF AMERICA

In the United States of America, religion and politics are more intertwined than in most European countries. This extends to the religious actors' role in election campaigns. Religious actors have been present at many if not most election events of the recent 2020 presidential elections, and both candidates spoke in churches at various occasions. Furthermore, according to the Catholic magazine *America – A Jesuit Review*, priests of all churches regularly endorse candidates and take part in political activities.²⁵

However, religious influence in election campaigns is legally restricted under the 1954 Johnson Amendment to the United States' Internal Revenue Code (tax code): Churches and religious organisations are in general exempted from paying taxes under section 501(c)(3) U.S. Code. According to section 504(a)(2)(B), they lose this status (and must pay taxes) if they participate in election campaigns: Organisations lose their tax-exempt status "(B) by reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office."²⁶

The Internal Revenue Service (IRS) explains on its website:

Under the Internal Revenue Code, all section 501(c)(3) organizations are *absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign* on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, *certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity*. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, *voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.*²⁷

The regulation thus prohibits any *partisan* activity of 501(c)(3) organisations but not political activity in general. The fact that churches and religious organisations nonetheless play a role

²⁵Cf. Keane, James T., "Explainer: Can a priest or a member of a religious order publicly endorse a political candidate?" in *America – The Jesuit Review*, America Press Inc., 2020, <https://www.americamagazine.org/faith/2020/09/03/priest-religious-endorse-political-candidates-biden-trump-election-2020-republican-democrat-catholic>, last accessed 15 October 2021.

²⁶U.S. Code § 504(a)(2)(B), <https://www.law.cornell.edu/uscode/text/26/504>, last accessed 15 October 2021.

²⁷Internal Revenue Service, "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations," 2021, <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>, last accessed 15 October 2021, emphasis added.

in election campaigns can be explained by at least three reasons. First, candidates and politicians may speak in churches or at gatherings of religious organisations if they are not actively campaigning. If the church makes sure, the event is non-partisan, it is not illegal for candidates to address a parish.²⁸ Second, this regulation applies to the organisations, not individual priests or clerics. Therefore, if a priest endorses a political candidate or party outside official events, this does not fall under the above-mentioned regulation. Third, according to the *America* magazine, the regulation has almost never been enforced.²⁹ On the contrary, the conservative Christian non-profit advocacy group *Alliance Defending Freedom* has organised multiple events where priests were filmed endorsing candidates in their sermons and the videos were then sent to the IRS. The IRS allegedly never responded to this provocation.³⁰

All in all, one must conclude that religious influence in US election campaigns is actually widely unregulated. The only existing limitation stems from tax legislation, with the penalty of losing the tax-exempt status. And even this regulation is much disputed (Donald Trump, for example, proposed to abolish section 504(a)(2)(B) when he was president).³¹ This must be understood against the background of the United States being a very religious *and* liberal country. Freedom of religion is therefore a core value, and the government is very cautious restricting it. In consequence, religious actors have much freedom to influence voting behaviour.

Detail: Obama's 2008 Presidential Campaign and the Church

In his first presidential campaign, Obama explicitly tried to win over devout Christians who tended to vote Republican. To do that, he emphasised the positive role the church can take in public life. However, it was his own religious affiliation that more often became the centre of public focus. First, around 10 percent of voters believed Obama to be a Muslim despite his efforts to show himself as a Christian during the campaign. And second, statements of "Obama's Pastor"³² of his home parish *Trinity United Church of Christ* in Chicago, Reverend Jeremiah Wright, caused some commotion. Wright used strong anti-state rhetoric in his sermons and accused state authorities of being racist. For example, he claimed the government had provoked the 9/11 terrorist attacks, having killed many more people abroad than were killed in 2001. The events led to Obama and his family leaving the church only months before election day. Nonetheless, Obama was able to mobilise significantly more Christians than the democratic candidates before him, as shown in a Pew Forum analysis.³³

²⁸Cf. Grant, Tobin, "Can political candidates speak at churches? Yes, if they follow these five rules" in *Religion News Service*, 2016, <https://religionnews.com/2016/09/15/can-political-candidates-speak-at-churches-yes-if-they-follow-these-five-rules/>, last accessed 15 October 2021.

²⁹Cf. Keane, James T., "Explainer: Can a priest or a member of a religious order publicly endorse a political candidate?" in *America – The Jesuit Review*, America Press Inc., 2020, <https://www.americamagazine.org/faith/2020/09/03/priest-religious-endorse-political-candidates-biden-trump-election-2020-republican-democrat-catholic>, last accessed 15 October 2021.

³⁰Cf. Pattison, Mark, "Should churches be able to endorse politicians? Clergy aren't so certain." in *America – The Jesuit Review*, America Press Inc., 2017, <https://www.americamagazine.org/politics-society/2017/02/07/should-churches-be-able-endorse-politicians-clergy-arent-so-certain>, last accessed 15 October 2021.

³¹Cf. *ibid.*

³²Ross, Brian and Rehab El-Buri, "Obama's Pastor: God Damn America, U.S. to Blame for 9/11," *abcNEWS.go.com*, 2008, <https://abcnews.go.com/Blotter/Story?id=4443788>, last accessed 17 October 2021.

³³Cf. Pew Research Center, "Religion and Politics '08: Barack Obama," 2008, <https://www.pewforum.org/2008/11/04/religion-and-politics-08-barack-obama/>, last accessed 17 October 2021.

CONCLUSION

Georgia can most directly be compared with the United States of America. In both countries, it is prohibited for religious organisations but not for individuals to take part in political campaigns. The only difference is that in the United States, it is regulated in the tax code while in Georgia, it is the electoral code. The only other country under review where religious influence in election campaigns is illegal is the United Kingdom. Here, legislation is currently under review; however, the law seems to be stricter: It is not only the organisation but also the individuals who are prohibited from influencing voters if they act as a (perceived) religious authority. In the other countries, namely the Czech Republic, Germany, and Lithuania, the state does not regulate the involvement of religious organisation and clerics in election campaigns. However, as the dominant churches of these countries have agreed to stay out of politics, direct influence in election campaigns is rare.