Religious assistance in public institutions

Assistance spirituelle dans les services publics

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(Eds.)

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En hommage à Jean DUFFAR *pour sa fidélité*
et son engagement aux activités et aux travaux du Consortium.

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THEMATIC OVERVIEW

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS: COMMON BACKGROUND AND COMMON CHALLENGES

Záboj Horák

1. Introduction

State legal orders recognizing religious freedom contain special provisions which protect the practice of religion by persons placed in institutions legally restricting their freedom of movement. Those are the armed forced, prisons and similar institutions, hospitals, institutions providing residential care, young offenders' institutions, and institutions for the temporary stay of immigrants and asylum seekers[1]. Religious assistance is provided also in police and fire rescue services. It is connected with the care of victims of disasters, terrorist attacks, and other crimes, individual or mass accidents and post-penitentiary care.

We also speak of **chaplaincy**, which can be understood as «a position held by a minister of religion within an organization or institution in order to provide spiritual services to its members or inmates»[2]. Chaplaincy is also provided in schools, at airports and also in some private companies.

The legal systems of all EU member states make chaplaincy possible. The differences are in the variety of institutions in which chaplaincy is provided and in the type of norms regulating this issue.

2. Reasons for Chaplaincy

The question could be posed, **why** should the state allow for providing religious assistance (chaplaincy) in public institutions? I think there are several reasons for that.

[1] Tretera, Jiří Rajmund, Horák, Záboj, *Religion and Law in the Czech Republic*, Wolters Kluwer, Alphen aan den Rijn, 2014, p. 42.

[2] Doe, Norman, Cranmer, Frank, *Chaplaincy and the Law in the United Kingdom*, published in this volume on pages 357-372.

1. *The first reason* is connected to **religious freedom**. According to Article 9 section 1 of the European Convention on Human Rights «[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance».

Freedom of religion is connected to chaplaincy in two ways. *Individual freedom of religion* means that the person has the right to *obtain* religious assistance as well as to *provide* religious assistance.

Let me quote the Gospel according to St. Matthew in this regard: «Then the King will say to those on his right, "Come, you who are blessed by my Father, inherit the kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, *I was sick and you visited me, I was in prison and you came to me" [emphasis added]»*[3]. I think that this text explains why chaplaincy has been a part of European culture and legal systems for centuries.

According to Article 9 section 1, religious freedom also has a *collective* dimension. The report from the United Kingdom characterises the individual and collective dimensions of chaplaincies as follows: «As a matter of individual religious right they are required by the need of the individual to access spiritual advice and assistance even when confined or constrained in some way», […] «as a matter of collective right they are required by the need for religious communities to sustain their collective identity between members unable to meet and participate in their collective life under normal circumstances»[4].

The Cyprian report outlines the obligations of the state: «The State should […] be considered as having positive obligations to ensure that all people have access to religious services so as to exercise their beliefs in a meaningful manner»[5].

2. The *second reason* for chaplaincy is its **utility**, which is precisely formulated in the Hungarian report: «From the perspective of the secular state, religious practice in penitentiaries, in the armed forces and at hospitals has a special value for the tranquillity and proper functioning of these institutions. Not only respect for religious freedom, but also the «side effects» of religion encourage the state to facilitate the

[3] *The Holy Bible*, English Standard Version, Matthew 25, 34-36.

[4] Doe, Norman, Cranmer, Frank, *Chaplaincy and the Law in the United Kingdom*, published in this volume, footnote 3, quoting Julian Rivers, *The Law of Organized Religions: Between Establishment and Secularism*, Oxford University Press, Oxford, 2011, Chapter 7, p. 207; see also Christopher Swift, *Hospital Chaplaincy in the Twenty-First Century: The Crisis of Spiritual Care on the National Health Service*, Ashgate, Farnham, 2009, 154.

[5] Emilianides, Achilles, *Chaplaincy and the Law in Cyprus*, published in this volume on pages 75-82.

free exercise of religion»[6]. In this regard it should be mentioned that in the medical profession, giving care involves looking after the whole person, not just the body[7].

3. Securing **human dignity**, protected by international law and states' constitutional laws could be regarded as the *third reason* for the chaplaincy.

3. The Absence of Chaplaincy

Let me turn my attention to another aspect, which seems to me to be an important one in general remarks on chaplaincy. It is the absence of chaplaincy.

1. The French report cites a historical example: «With the French Revolution, all official religious structures are destroyed, and the chaplaincy as it had existed under the Old regime [Ancien Régime] disappears»[8]. However, under the rule of Napoleon, who intended to make religion «the cement of social order»[9], the situation changed.

The education system was completely reorganized in 1802 and as a result a chaplain was present in each lyceum[10].

2. The second example concerns abolishing the Corps of Chaplains in public charity houses and the army during certain time periods in Spain. «These Corps were abolished during the First and the Second Republic (1873-1874, 1931-1939). The Republican Governments thought that the existence of a Roman Catholic chaplaincy enforced by special Corps within public institutions was against the State's *laicité* and the right of religious freedom of non-Catholic minorities»[11].

3. The third system with a strongly negative relationship with chaplaincy was communist totalitarian regimes. In communism all spheres of public life had to accept the so called «scientific world view» (the Marxist-Leninist ideology), which included atheism. Atheism played the role of the state «religion» in Eastern European countries from 1945 to 1990 and in Russia, Ukraine and White Russia from 1917 on. Only in Czechoslovakia did this regime begin a little later: after a three-year from 1945-1948, i.e. between the Nazi and communist totalitarian regimes, when democracy was restored.

The ultimate aim of the communist regime was, of course, to entirely liquidate all religious communities[12].

[6] Schanda, Balázs, *Chaplaincies in Hungary*, published in this volume on p. 00.

[7] Doe, Norman, Cranmer, Frank, *Chaplaincy and the Law in the United Kingdom*, published in this volume on p. 00.

[8] Assistance spirituelle en milieu clos - France 2016, published in this volume on p. 00.

[9] Ibidem.

[10] Ibidem.

[11] Motilla, Agustín, *Religious Chaplaincy in Spain*, published in this volume on p. 00.

[12] Tretera, Jiří Rajmund, Horák Záboj, *Religion and Law in the Czech Republic*, Wolters Kluwer, Alphen aan den Rijn, 2014, pp. 27-29.

Chaplaincy in the army and prisons was totally abolished in most communist countries (with some exceptions during the beginning and end phases of the communist dictatorship in Poland). The situation in hospitals and retirement homes was a little better, because ministers could visit patients with family members and bring consolation (often secretly) to clients during visiting hours; but strong atheist pressure was exercised there as well from the side of leading officers and doctors.

4. Legal Regulation of Chaplaincy

The regulation of chaplaincy in EU member states varies from one country to the other, but some general comments can be made.

4.1. Constitutional Law

The provisions of constitutional law usually do not contain specific rules on chaplaincy. However, the existence of chaplaincy can be derived from constitutional provisions protecting religious freedom in general.

4.2. Agreements

Chaplaincy is often regulated by agreements. They are made between the State or other public or private entities on one side and religious communities or legal persons derived thereof on the other side.

Agreements are the «normal legal base» in Sweden[13], and they are common in the Netherlands, too. In the Czech Republic there is a detailed system of agreements in the army, prisons, police and fire rescue services. A typical country where agreements have been made with Protestant churches is Germany.

In some member states, concordats were signed with the Apostolic See. Special concordats on chaplaincy in the armed forces were agreed to in Spain and Lithuania. A concordat on the armed forces and border police was agreed to in Hungary, as was a concordat on the armed forces and police forces in Croatia and Slovakia. There are other concordats, of a general nature, which contain provisions on other branches of chaplaincy. They were signed with Austria, Germany, Italy, Poland, Latvia, Estonia, Slovenia and Portugal.

4.3. Laws

Member states' legal systems contain particular regulations on chaplaincy in laws, which can be of a general nature (for example the Spanish Religious Liberty

[13] Friedner, Lars, *Chaplaincy - Sweden*, published in this volume on p. 00.

Act, adopted in 1980), or which may consist of special acts concerning the army, prisons or medical care.

4.4. **Ministerial Decrees, Circulars**

The organisation of chaplaincy is often set out in ministerial decrees and circulars from the appropriate governmental body.

4.5. **Law of Religious Communities**

The legal status of chaplaincies is also regulated by the laws of religious communities. These state the rights of religious communities concerning the appointment or dismissal of a person who serves as a chaplain.

5. **Conclusion**

It seems that two particular features are present while providing chaplaincy in some countries. The first is ecumenism between the churches, which is the case of the Czech Republic, Sweden and Cyprus. State institutions, especially the armed forces, are very often interested in cooperation with religious communities (Czech Republic).

The questions for discussion concern the financing of some chaplaincies.

Another question concerns providing chaplaincy to Muslims. This issue is first connected with the personal question: who is a religious minister in Islam and who in Islamic society has the right to authorise said individual for pastoral service in public institutions. The second is the question of the reciprocity of regulations on public chaplaincy in Islamic countries, not only in relation to Christian minorities but also to Muslims themselves.

PRISON CHAPLAINCY IN THE EUROPEAN UNION: FACILITATING FREEDOM OF RELIGION FOR THE INCARCERATED

Mark Hill QC*

Global and European laws recognise the right of prisoners to the free exercise of religion without discrimination;[1] so far as practicable, this includes access to religious care, literature, and services[2]. At national level, the states of the European Union facilitate spiritual assistance in prisons in various ways by means of laws, regulations and guidelines which address issues such as the right to spiritual care, the process of appointing ministers of religion to provide it, their status, salaries and supervision, and the religious activities which may be undertaken by prisoners during their incarceration.

1. The provision of spiritual assistance

The entitlement of religious organisations to provide for the spiritual needs of prisoners transcends the classical religion-state models to be found in Europe[3]. But the facility is usually reserved to prescribed religions. In state-church systems, the principal provider of prison chaplaincy is the national church, as is the case in Finland and the United Kingdom. In co-operation systems, the right is confined to recognised

* I am indebted to Professor Norman Doe for his assistance in researching and writing this chapter, and am grateful to him for allowing me to incorporate material from N Doe, *Law and Religion in the European Union* (Oxford University Press, Oxford, 2001) particularly chapter 8, pp. 203-213.

1 International Covenant on Civil and Political Rights (ICCPR), art. 10(1), Appendix: «There shall be no discrimination on the grounds of…religion… It is…desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require».

2 United Nations Standard Minimum Rules for the Treatment of Prisoners 1955, Rule 41-2; see *Boodoo v Trinidad and Tobago* (2002) prohibiting without explanation a prisoner from access to Muslim prayer services and confiscation of his prayer books violated ICCPR, art. 18.

3 The same is true for the provision of chaplaincy services in hospitals and for the armed forces: for a discussion of the related provision of spiritual services in these institutions, see the chapters in this volume by Piotr Stanisz and Emanuel Tavala, at pp. 19-30 and 31-38 respectively.

religious communities, as in Austria, Germany, and Belgium. Catholic chaplains have a covenantal right of access to Italian prisons, hospitals and the armed forces, as do ministers of the denominations with *intese*, though ministers of religious organisations without an agreement have access for those who request it[4]. Much the same applies in Spain for covenantal religious organisations, in Poland for its statutory religious entities, in Romania for registered religious associations, and in Bulgaria for its traditional religions.

Whilst these arrangements generate an implicit right in the members of religious organisations to such ministry[5], some States recognise a formal right to spiritual assistance vested in the individual[6]. For instance, the doctrine of *laïcité positive* is the basis in France upon which a person unable to practise religion freely and privately may access spiritual care in prisons, hospitals and asylums; and in Portugal the State must provide «adequate conditions» for the individual to have spiritual care from their faith communities in hospitals, prisons and the armed forces. A right in the individual is particularly well developed in the countries of central and east Europe. Estonia is typical: «Persons staying in … custodial institutions … have the right to perform religious rites according to their faith unless this violates public order, health, morals, the rules established by these institutions or the rights of others staying or serving in these institutions»[7]. This approach is echoed in Hungary, Slovakia, Slovenia, Latvia, and Lithuania.

Many States confer on the individual the right not to disclose their religious identity. However, some States require the religious affiliation of a prisoner to be recorded on admission to prison. This is the case in the United Kingdom[8]. The requirement has been held by Strasbourg to be consistent with the ECHR[9]. But prisoners may not «invent» a religion in order to gain privileges to which they would not otherwise be lawfully entitled[10]. Nevertheless, the Austrian Constitutional Court has held that the right to spiritual care from a religious group specified by a prisoner does not depend on proof adduced by the prisoner of formal membership of that group. Prisoners have a right to such care from a minister of their «own religious belief» - these words refer

4 Italy: Concordat with the Holy See, art. 11.

5 The exercise of such a right would of course depend on the terms of religious law.

6 There may be such a right in any event under ECHR art. 9.

7 Estonia: Churches and Congregations Act 2002, art. 9.1.

8 UK: England & Wales: Prison Act 1952, s.10(5).

9 Strasbourg: *X v. UK*, Appl. No. 7291/75, 11 Eur. Comm. HR D&R 55 (1977): there was no evidence that a prison refusing to register the prisoner as of the Wicca religion violated his right to manifest religion; registration was merely an administrative act on the part of the prison.

10 *McFeeley & Ors v. UK*, App. No. 8317/78, 20 Eur. Comm. HR D&R, 44 (1980).

to the outward expression of inner values and not to formal religious membership (here in relation to a Jehovah's Witness)[11].

2. Ministers of religion in prisons

Ministers of religion (lay or ordained) who serve in prisons are commonly styled chaplains. Their appointment is a collaborative process between the State and religion: a religious organisation nominates and a public body appoints. For example, hospital and prison chaplains are nominated by the religious entity and appointed by the State in Italy, Spain, and Austria. In view of the issues of security which can arise, the appointment of prisons chaplains may involve central (and local) government. Under the French separation system, prison chaplains are appointed by the Ministry of Justice after consultation with the relevant and competent religious authority. Central government is also involved in the state-church regimes of Denmark, Finland[12], and the United Kingdom. In England and Wales there must be a Church of England chaplain (or in Wales, Church in Wales chaplain) appointed by the Secretary of State and acting under licence from the diocesan bishop. The Secretary of State may also appoint a prison minister of other denominations if the number of prisoners requires this[13]. In the cooperation system of Estonia, prison chaplaincy is coordinated jointly by the prison service and the Lutheran Church but only clergy from churches of the Estonian Council of Churches may serve[14]. In Latvia, the Prison Board and the Board of Religious Affairs collaborate on the matter[15]. The appointment of prison chaplains is sometimes the subject of judicial proceedings; this has occurred in Ireland[16].

Legal rules concerning the status, salaries and supervision of public sector chaplains may vary depending on the institution involved. In some States (such as Bulgaria) prison chaplains are employed by the prison authorities and paid on that

[11] Austria: Law on Execution of Imprisonment s. 85.

[12] Denmark: the Ministry of Ecclesiastical Affairs appoints prison and hospital chaplains; Finland: the church licenses chaplains; the Swedish Christian Council organises chaplaincy for the national prison service - it has close links with Jewish and Islamic organisations; every prison must have two chaplains, one from the Church of Sweden.

[13] England & Wales: Prison Act 1992, s.7, 9, 53 (chaplains) and s.10 (ministers); Prison Service Chaplaincy: Prison Service Standing Order 7A.

[14] Estonia: Code of Enforcement Procedure, art. 171; ministers from the other denominations may serve on request by prisoners; Czech Rep: Agreement between the Prison Administration and the Ecumenical Council of Churches, and with the Bishops' Conference.

[15] Latvia: Council of Ministers, Regulations on the Chaplaincy Service 2 July 2002.

[16] *Irish Prison Service v Morris* ADE/06/10, Determination No. 074, 28 Feb. 2007, FTC/06/10, Determination No. 073, 2 March 2007; *Mr A v A State Authority 95*: the court rejected a claim of religious discrimination by a prison chaplain under the Employment Equality Acts (alleging less favourable treatment as to promotion); the difference in treatment was grounded on the office or position which the complainant held rather than the religion he professed or practised.

basis[17]; but in others (such as in England and Wales) they are public officials or civil servants remunerated by the State[18]. However, in France ministers of religion who serve in prisons do not have contracts but are subject to special rules as non-established public officials and they are paid by the State as such. In Italy too Catholic clergy serving in prisons are not classified as regular State employees even if paid by the State. Occasionally, the chaplains of some religious organisations are paid by the State, whilst those of other faiths are not. In Spain for instance the expenses of Catholic ministry in prisons are met by the State whereas those of the three religious federations which have agreements with the State are funded by those organisations themselves. In turn, Latvian prison chaplains are jointly funded by the State and the denomination; in Poland hospital and prison chaplains (unlike military) are not paid by the state.

3. The accommodation of religious activities

The countries of the European Union seek to accommodate a range of religious activities for prisoners: permissible religious activities in prisons are spelt out in some detail in the laws of central and east Europe. Latvia, Bulgaria and Lithuania are typical. Latvian prison chaplains may provide pastoral support, spiritual advice, and moral education; and all prisoners may see a cleric once a month[19]. Bulgarian prisoners have the right to engage in «religious practices» (and chaplains may assist them to do so)[20]. Estonian prisoners are entitled to participate in «religious rites», unless these violate public order, health, and morals and the rights of others. In one case, prison authorities confiscated candles from a Buddhist prisoner on grounds of security; the prisoner claimed the use of candles was required by his religion and that confiscation violated his constitutional right to religious freedom. The court held that there had been no violation - it recognised that candles are an important aspect of Buddhist ritual but that Buddhism did not require the prisoner to burn them in his cell. Estonian prisoners may also subscribe at their own expense to religious publica-

[17] Bulgaria: Penalty Performance Act 1998, s. 70; only ministers of the traditional religions may be employed at a prison; Czech Rep: prison chaplains have been paid by the State since 2002; Finland: in 1999, there were 17 full-time Lutheran clergy in prisons and one Orthodox.

[18] UK: Prison Act 1952; Estonia: Code of Enforcement Procedure; in Finland, Denmark, Greece ministers of the national churches are in any event classified as civil servants, as are ministers of religion in Luxembourg.

[19] Latvia: Law on Religious Organisations, art. 1(8); Council of Ministers, Regulations on Chaplaincy Service, 2 July 2002.

[20] Bulgaria: Penalty Performance Act 1998, s. 70; Austria: StrafvollzugsG 1969, s.85; Slovakia: Act 308/1991 Zb, art. 9; Slovenia: Military Service Act 2002, art. 1 and Military Service Rules.

tions[21]. Lithuania has similar rules[22]: here, a claim that a prison catered inadequately for religious diet was rejected on the basis that provision for it was impractical[23].

Extensive provision is also made in English and Welsh prisons regarding clerical visits, services, holy days, books, and religious diet[24], and aspects of these arrangements have generated recourse to Strasbourg[25]. The European Commission on Human Rights has decided that a prison rule which applied generally to all prisoners to clean their cells was justified when a high-caste Sikh prisoner complained that it was against his religion to clean the floor of his cell. The claim was rejected but the Commission accepted that the belief was genuinely held[26]. The Commission has also accepted as justified on grounds of security or practicality (i) a refusal by a prison to allow a high-risk prisoner to attend Sunday worship for fear that he would cause disorder at the event[27], (ii) confiscation of a religious book on the basis that it contained a chapter on martial arts[28], (iii) a refusal to allow a prisoner to wear religious clothes[29], and (iv) the supply of what was claimed to an inadequate kosher diet (on the basis that the prisoner had failed to exhaust domestic remedies)[30]. Similarly, Strasbourg has rejected the petition of a Swiss prisoner, who claimed to be a light worshipper, not to be held in a dark cell (on the basis that this was not a genuinely held belief)[31], the request of a Buddhist prisoner in Austria to use a prayer chain (on the basis that this

[21] Estonia: Code of Enforcement Procedure, art. 98.

[22] Lithuania: Penitentiary Code, art. 60 (Minister of Justice, No. 172, 16 August 2000).

[23] Lithuania: in 1999 the ombudsman examined a discrimination complaint of inadequate provision for the religious diets of prisoners, patients and military personnel; the Ministries of Health and of National Defence argued the diet was based on physiological, age and health factors, not on religion; also, only 0.16% of prisoners had special dietary needs so it was not practical to change the relevant regulations.

[24] England & Wales: Prison Rules 1999, r. 14-1; they are expected to wear prison clothing but must be allowed to wear obligatory religious dress as agreed between the religious body and the prison service headquarters: ibid, r. 23; Prison Service Order 4550: Religion Manual.

[25] It may be noted that the litigation pre-dates changes effected by the instruments cited above.

[26] *X v UK*, App. 8231/78 (1982) 28 D&R 5: the prisoner claimed unsuccessfully that imposing prison clothing was degrading as he recognised no authority between himself and his god.

[27] *X v UK* (1983) 5 EHRR 289; *Childs v UK*, App. No. 9813/82, Eur. Comm. HR, 1 Mar. 1983.

[28] *X v UK*, App. 6886/75 (1976) 5 D&R 100; *X v UK*, App. No. 5442/72 (1975) 1 D&R 41 at 42: a Buddhist prisoner who had been refused permission to publish in a Buddhist magazine failed «to prove that it was a necessary part of this practice that he should publish articles in a religious magazine».

[29] *McFeeley v UK* (1980) 3 EHRR 161.

[30] *DS and ES v UK*, App. 13669/88 (1990) 65 D&R 245; see also *Jakóbski v Poland* [2010] ECtHR, App. No. 18429/06 (7 Dec. 2010): failure to meet Buddhist dietary needs violated art. 9 ECHR.

[31] *Omkarananda and Divine Light Zentrum v Switzerland*, App. 8118/77 (1981) D&R 105: it was held that this was not a genuinely held belief.

was not a core element of his religion)[32], and the complaint by a German prisoner that the prison provided inadequate access to Anglican clergy[33].

4. Discussion

As with all comparative studies conducted by the European Consortium for Church and State Research, the national reports evidence commonalities and diversities in concept and practice in facilitating freedom of religion for the incarcerated - those who have been deprived of their liberty by due process of law in consequence of criminal conduct. Drawing on the scientific data of my colleagues, I venture some brief remarks.

First, and perhaps obviously, the provision of prison chaplaincy reflects the differing church/state constitutional settlements amongst member states of the European Union. Countries with an established church, or with concordatarian relations with a particular denomination, tend to afford a preferred status (and in some instances funding) to a particular majority faith community, but differ in the extent to which this is extended to minority religions. Curiously the effect of the progressively more expansive Equal Treatment Directives, together with the anti-discrimination provisions Article 13 of the ECHR, may save to compel states to ensure that all religious organisations benefit from the same privileges as are enjoyed by the preferred religion.

Secondly, is the right of access to the ministrations of his or her church a right which vests in the individual or in he church? In his incisive analysis, «Religious Assistance in Public Institutions: Common Background and Common Challenges»[34], Professor Záboj Horák draws attention to the two components of freedom of religion, namely the right of the prisoner to *obtain* religious assistance as well as the right of religious community (howsoever defined) to *provide* the ministrations of the church. There is a delicate tri-partite balance to be achieved between the prisoner, the prison authorities and institutional churches. The focus of academic debate has tended to concentrate on the linear relationship of prisoner and prison, which is informed by the language of civil and human rights jurisprudence, rather that the more nuanced three-way dialogue with a variety of legitimate stakeholders who need to be involved.

[32] *X v Austria*, Appl. No. 1753/63, 8 YB (1965) 174: the Commission accepted only «necessary expressions» of religion and questioned whether the prisoner's use of a prayer chain (and growing a beard) was «an indispensable element in the proper exercise of the Buddhist religion»; refusal was justified on the basis of the prisoner's health and discipline, and as to growing a beard, because of difficulties in identifying him (even though he would have been the only one with a beard).

[33] *X v Germany*, App. No. 2413/65 (1966) 23 CD 1 at 8: the Commission held there was no evidence to support the prisoner's claim under art. 9, that there were inadequate facilities for both pastoral care by an Anglican priest and Anglican worship even though Protestant facilities were provided.

[34] See chapter 1 of this volume.

A third issue concerns the purpose of imprisonment. It takes the offender out of circulation and prevents him or her committing further offences, but is the rationale of incarceration merely to punish or are concepts of rehabilitation also engaged? Are religious organisations partners with the state in the reforming criminals? The national reports in this survey suggest that active collaboration in rehabilitation is rare. Containment is a difficult and costly exercise. It is said that prison authorities tolerate drug use in prisons, as it serves to keep prisoners subdued and easier to handle. Karl Marx famously remarked that religion is the opium of the masses: it could be argued by extension that prison authorities tolerate a spiritual presence within prisons simply in order that overcrowded and under-resourced institutions can function without unrest and rioting. The term «Offender Management Service» is now used in Britain for the prison service which gives an idea of its role and function.

A less cynical approach would regard prison authorities, churches and others working together to promote welfare. The very architecture of the prison chapel tells an evocative story of the attitude of the Victorians towards prisoners and the terms upon which they were permitted to engage with the Almighty, as is illustrated in this photograph:

The chapel of Lincoln Prison in England dates from 1847. It is now a museum.

The tough regime of Lincoln Prison is recorded as follows in the museum guide:

> The Chapel has tiers of coffin-like cubicles for the prisoners that allowed them only to see the pulpit and shows that the authorities spared no expense when they introduced the Separate System. This permitted no social inter-action between prisoners who wore masks to prevent them seeing one another. Each weekday at 9.30 am the prisoners filed silently into their places. As each row was filled a warder turned a lever in the aisle to swing panels into place that kept each prisoner in isolation. Only when all prisoners were locked into their cubicles were they allowed to remove their masks. The seats were constructed at a slight angle so that it was impossible to relax, even though the course of a Sunday sermon lasted two or three hours.
>
> The women prisoners were kept apart from the men and the debtors sat on the open benches. The psalms sung in the daily service offered the only opportunity for prisoners to open their lungs and make as much noise as possible. The Chaplain was the only person who faced the congregation. The Governor and his family were shielded from view using a curtain suspended from the ceiling and the wardens stood on the stairs throughout the service. Anyone suspected of conversing with his neighbour was severely punished.

The situation is very different today, but there is no clear correlation between crime (in the eyes of the state) and sin (in the eyes of the church); nor the extent to which repentance and forgiveness mediated through God relates to reform and rehabilitation as facilitated and assessed by governmental authorities. Is the nature of religious assistance purely sacramental and confessional, or does it extend to promoting the general welfare of prisoners and, perhaps, acting as a conduit mediating between the prisoners and prison authorities on matters concerning their well-being.

Fourthly, there is a significant difference arising from the national reports regarding the level at which religion in prisons is regulated by state governments. For some it is by means of primary legislation, whereas elsewhere it operates at a sub-constitutional level through lower order regulation. Further study is needed to understand the role of quasi-legislation in this field, in the form of ministerial and other circulars, codes of practice and guidance, as well as how these, alongside the national laws and the principles outlined above, are actually implemented in the day-to-day administration of religion laws in these public sectors.

A fifth topic for further exploration is the subject of possible collusion between prison chaplains and inmates. There have been suggestions in the media that certain Imams collude with prisoners promoting radicalism in prisons, and helping to foster organised crime. What precautions can be taken to guard against abuse by those who enjoy privileged access to prisons?

Sixthly, there would be value in assessing the relationship between chaplains engaged in the prison service and the parochial clergy in the area where the prison is situated. Anecdotal evidence suggests the relationship is often fractured or non-existent. Each could learn from the other, informing the wider church in relation to moral and social justice, and helping to re-integrate prisoners on their release. A more

holistic approach is worth considering, so that the work of prison chaplains is less detached from that of the mainstream church.

5. Conclusion

National laws on religion in prisons reveal a high level of cooperation between the countries of the European Union and faith communities. There is a broad consonance between national standards and those of international law in this field, and a range of discernible principles common to all countries irrespective of their particular church-state settlement. Certain shared principles can be identified. Individuals have a right to the free practice of religion whilst deprived of their liberty, and religious organisations are entitled to assist in this. The appointment of chaplains and other ministers of religion to provide religious assistance in prisons is a collaborative exercise between the State and religious organisations. The State should so far as is practicable contribute financially to the provision of spiritual care for prisoners. The State in partnership with religious organisations should facilitate and supervise adequate public sector chaplaincy. Spiritual assistance should accommodate pastoral care and religious practices in prisons. Religion has a distinctive part to play in the public institutions of the State. Dostoevsky famously remarked that, «The degree of civilisation in a society can by judged by entering its prisons»[35]. Winston Churchill put it very well:

> We must not forget that when every material improvement has been effected in prisons, when the temperature has been rightly adjusted, when the proper food to maintain health and strength has been given, when the doctors, chaplains and prison visitors have come and gone, the convict stands deprived of everything that a free man calls life. We must not forget that all these improvements, which are sometimes salves to our consciences, do not change that position.
>
> The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm and dispassionate recognition of the rights of the accused against the state and even of convicted criminals against the state, a constant heart-searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry of all those who have paid their dues in the hard coinage of punishment, tireless efforts towards the discovery of curative and regenerating processes and an unfaltering faith that there is a treasure, if only you can find it in the heart of every person - these are the symbols which in the treatment of crime and criminals mark and measure the stored up strength of a nation, and are the sign and proof of the living virtue in it[36].

[35] Fyodor Dostoevsky, *The House of the Dead* (1860).

[36] Winston Churchill, House of Commons speech given as Home Secretary, 20 July 1910. I am grateful to Judge Vincent de Gaetano for reminding me of this quotation.

The national reports published in this volume provide a critical analysis of the manner in which governments enable and facilitate chaplaincy services within prisons, to a class of society which has been deprived of its liberty but not its humanity. Through this comparative analysis we are able to mark and measure the «stored up strength» of the European Union as a whole in an analysis that is both informative and challenging.

RELIGIOUS ASSISTANCE IN PUBLIC HOSPITALS IN THE STATES OF THE EUROPEAN UNION

Piotr Stanisz

When dealing with the issue of religious assistance in hospitals it is necessary, first of all, to justify the presence of such assistance. The discussion of this question will constitute the subject of the first part of the present paper. The diversification of the organization of hospital chaplaincy and the status of hospital chaplains will be discussed respectively in part 2 and 3. In the last part we will talk through problems connected with the need to protect the negative religious freedom of patients.

The paper was prepared on the basis of national reports, which (sometimes in elaborated versions) are also published in the present monograph. Thus, references to their contents will only have a general character, without repeating exact descriptions of normative acts, courts' judgments and other documents.

1. Justification of the right to religious services in hospitals

1.1. Religious freedom of patients and personnel

When reading the national reports one has no doubt that the basis for the presence of religious assistance in hospitals (just as, for example, in the army or prisons) should first of all be seen in religious freedom enjoyed by every person. As is widely known, this freedom is guaranteed not only in the legal orders of every democratic state (especially in every member state of the European Union), but also ensured by different international agreements.

A theoretical reflection on the structure of freedom of thought, conscience and religion leads to the conclusion that the right to religious assistance constitutes an integral part of that freedom. However, in the constitutions of some states the right to religious assistance is expressly enshrined. For example, in the Polish Constitution of 1997 it is clearly stated that "freedom of religion shall also include […] the right of individuals, wherever they may be, to benefit from religious services". The right to religious services of persons remaining in such institutions as hospitals is moreover quite often explicitly guaranteed on the statutory level (in acts regarding both law

on religion and health care system) and by state-church agreements. For example, the Portuguese Act on Religious Freedom of 2001 states that internment in hospitals or similar institutions does not prevent the exercise of religious freedom, and in particular the right to religious care and practice of acts of worship; some separate guarantees were also included in the Concordat of 2004. The situation is similar for instance in Slovenia.

Under normal circumstances, the right in question only requires the state to refrain from attempts to restrict the possibility of exercising this right. In democratic states – excluding extraordinary circumstances – such attempts actually do not happen. It is however not the case that European states have never made endeavours to arbitrarily restrict the right to religious assistance, also in reference to hospitals. Such restrictions were imposed especially in the states belonging to the communist bloc in the past.

There are nevertheless situations when the real guarantee of the possibility of exercising the right to religious services by an individual requires involvement by the state, which creates the state's positive obligations. As is rightly emphasized in the Portuguese report, "the State not only has to refrain from violating this right, but it also has positive obligations to create the normative, institutional and regulatory conditions for this right to be protected and enjoyed, especially in those situations in which a negative obligation is not enough to guarantee the right". Such a situation arises in the case of hospitals. A similar opinion was also expressed for example by the Madrid Superior Court, who stated that "only in situations of individual need or difficulty – those in which citizens cannot satisfy their religious necessities by themselves – must the State provide for them by any of the models enforced" (the Spanish report).

The British report quotes a catalogue of reasons for the existence of chaplaincies, which was formulated in the literature. It can be considered a condensed version of what is also expressed in other reports. Let us remember that the first reason is some kind of closing of a particular community, resulting in restricting access to religious services offered by religious organizations on a normal basis. The second is group specificity, requiring a specific type of spiritual ministry. As for the third reason, it consists in facilitating internal communication by an independent and constructive presence in different, often hierarchical contexts. There is no doubt that all these reasons are present in the case of hospitals. Thus, the guarantees of the right of clergymen to enter the premises of hospitals at the request of patient should be considered the absolute minimum. As follows from the reports, this minimum is guaranteed in every state.

1.2. **Religious freedom in a collective and institutional dimension**

When discussing the right of religious organizations to realize religious assistance in hospitals, one should first refer to self-understanding of religious communities. The conviction of the necessity to assist people who are in an especially difficult situation

in life constitutes the core element of identity of many religious organizations. It especially – though not exclusively – pertains to Christian denominations on the one hand, and to the sick on the other. It is enough to remember the words of the Gospel According to Matthew (Chapter 25). The level of sensitivity to the needs of the sick is considered there one of the criteria of the Final Judgment.

Several reports point out that the first hospitals in European states were established and run by religious institutions (not only Christian, but also Jewish for example). It is clear that in such situations care of the sick was not limited to the bodily dimension. What is especially meaningful in this context is the wording of the Scandinavian church documents from XIII-XV centuries, which emphasized the priestly obligation to care for the sick and dying, even introducing penalties for clergymen who did not fulfill that obligation properly (the Finnish report). Similar overtones can be found in the later regulations obliging pastors to regularly visit the sick in hospitals (the Swedish report). Thus, as is rightly emphasized in the German report, "religious assistance in hospitals or retired homes is a classical task of the Christian denominations according to their biblical mission".

The right of religious organizations to realize spiritual assistance in such institutions as hospitals is in some states guaranteed already by the Constitution, as for instance in the (still being in force) Art. 141 of the Weimar Constitution, which states that in the case of demand for pastoral ministry and spiritual solace for example in hospitals, religious organizations should be permitted to organize religious activities, excluding any form of coercion. Similar regulations can be found for instance in Art. 29(5) of the Constitution of Romania of 1991, according to which "religious denominations are autonomous from the State and enjoy support from it, including the facilitation of religious assistance" in hospitals.

1.3. **Spiritual care as an integral part of health care**

The reports make it possible to identify yet another justification for religious care in hospitals. It needs to be emphasized that religious assistance is part and parcel of holistic care of patients. It was for example stated in the report *Government, religion and life convictions*, which was prepared by a special commission appointed by the Dutch government in 1988: "The Commission concluded that spiritual care should be part of the insured basic package of health care". Earlier, already in 1972, the National Council of Hospitals declared that "spiritual care was an integral part of the hospital care" (the Dutch report).

1.4. **The right to religious services in hospitals as a European standard**

Summarizing this part of the report we can concur with Norman Doe, who, formulating the principles of law on religion common to the States of Europe points out, among other things, that "a person has the right to the free practice of religion

in hospitals" and "ministers of religion may minister to patients"[1]. It ought to be acknowledged that ensuring this right to every person constitutes a recognized European standard, and the guarantee of this right cannot depend on the adopted model of state-church relations, although the way it is realized may be dependent on it, as is clearly attested by the judgment of the Slovenian Constitutional Court of 2010, in which it was stated that "the employment of priests or religious assistants, serving as chaplains, by public hospitals […] as public servants, […] violated the constitutional principle of separation". In consequence, "religious personnel may not be employed in hospitals as public servants, but they may receive remuneration for their work" (the Slovenian report).

2. Organization of hospital chaplaincy

2.1. The subjects and circumstances deciding the shape of hospital chaplaincy

The shape of hospital chaplaincy varies from state to state. In the *Standards for Health Care Chaplaincy in Europe*, elaborated by the European Network of Health Care Chaplaincy during its Consultation in Finland in 2002, it was stated that the organization of the chaplaincy is shaped by:

> "a. religious faith group administration,
> b. health care institutions,
> c. state health care regulations and policies,
> d. chaplaincy associations"[2].

The reports generally confirm these statements, although it should be emphasized already at this point that if these issues are regulated by state authorities or by the administration of a health care institution, it is usually done in agreement with the competent representatives of religious groups.

In some states (such as Belgium and Portugal) these issues are rather exhaustively regulated by state normative acts (not only on the statutory level or alternatively by a concordat, but also executive acts). Rather frequently, however, state law regulations guarantee only the right of patients to religious services and the associated right of religious organizations to provide such services. As for the way these rights are realized, it is to be defined by local authorities or even hospital management (who are often required to act in agreement with the authorities of religious organizations, as is for example the case in Italy). In Sweden and Finland, for their part, the organization of chaplaincy in hospitals is left to religious organizations, while in Latvia a major role is played not only by religious organizations, but also by the Association of Latvian Professional Health Care Chaplains.

[1] N. Doe, *Law and Religion in Europe: A Comparative Introduction*, Oxford 2011, p. 264.
[2] www.enhcc.eu (last access: 30. 12. 2016).

The classification of subjects influencing the organization of hospital chaplaincy presented above requires however emphasizing the role of the state as the guarantor of the proper protection of the rights of individuals. It seems that a certain minimum of regulation can be expected from the state, depending on current social awareness. Some consequences of the lack of such regulations can be seen for example in Latvia, where the organization of hospital chaplaincy "depends upon understanding and goodwill of the heads of some state institutions and establishments". As indicated in the Latvian report, in the case of this state we can distinguish three kinds of hospitals. In the first group we have hospitals with equipped chapels and chaplains on the staff, in the second hospitals with equipped chapels, but without chaplains and in the third hospitals without chapels and without chaplains.

As for the circumstances that decide the organization of hospital chaplaincy, one ought to enumerate four most important factors: the religious structure of the society, established traditions, applied model of state-church relations and diversification of forms of regulating the legal situation of religious organizations. The shape of this chaplaincy (in a similar way to chaplaincies in the armed forces and prisons) at least to some extent depends on the way it has evolved throughout history. In the very nature of things, in states that are relatively uniform religiously (Malta, Poland, Italy, Cyprus, Finland, Lithuania, Romania, etc.), the pastoral structures of the majority church are dominant. The state legislator is focused on them, and they are typically the only structures to receive financial support. This effect is additionally enhanced by the potential existence of a state church. An analogous situation arises in the system of recognized religions. In Belgium, in reference to recognized religions (and secular humanism that is put on an equal footing with these religions), the state-supported hospital chaplaincy is organized on the basis of equal treatment. However, the remaining religions and religious organizations (including the numerous ones) remain entirely outside the system of chaplaincies supported by the state. A special situation exists in Spain, where one can speak of three different forms of organization of hospital chaplaincy, depending on the form of regulating the legal situation of a religious organization. The most extended and financed structures are those of the Catholic chaplaincy. Religious federations that have concluded cooperation agreements with the state also possess permanent structures, but without funding. As for religious organizations that are included in the register, they have the right to take pastoral care of their members, but have neither remuneration nor stable structures.

2.2. **The legal basis**

When turning attention to the way the organization of hospital chaplaincy is regulated, one should first of all focus on the wide use of various kinds of state-church agreements. The state legislator relatively rarely decides to regulate this issue in a detailed way without reference to bilateral instruments. On the statutory level, the provisions often encompass only the right of the patient to receive religious services

and the respective right of religious organizations to realize these services. The detailed issues are frequently regulated in agreements.

Such agreements are often concluded on the national level, while agreements with the Holy See typically include only general guarantees of rights of patients and ecclesiastical subjects. This is for example the case of Lithuania. In the agreement with the Holy See it was stated that the details of realizing the right of the Catholic Church to services in hospitals were to be determined by means of an agreement between the Lithuanian authorities and the competent ecclesiastical authorities. On that basis, in 2002 an agreement was concluded between the Bishops' Conference and the Ministry of Health Care. A similar agreement was subsequently entered into by the Evangelical Reformed Church of Lithuania. State-church agreements concluded on chaplaincy service in hospitals and other health institutions on the national level are in force also for example in Croatia, Romania and Spain. The content of such agreements then influences (though sometimes with some delay) state-law regulations applied *erga omnes*.

In Italy, in turn, it was decided that the Catholic hospital chaplaincy was to be regulated by internal rules of hospitals, elaborated in agreement with the Bishop of a proper diocese. On that basis, a number of agreements between regional bishops' conferences and authorities of individual regions on the Catholic pastoral care in hospitals have been concluded.

Finally, there are states where hospital chaplaincy is regulated by means of contracts concerning religious assistance in a particular institution and concluded by state and church authorities. According to the Maltese report, religious assistance in two important health care institutions is regulated by agreements concluded by the Government respectively with the Capuchin Order and the Archdiocese of Malta. These issues are resolved in a similar way also in the Czech Republic, where a specimen agreement prepared by the Czech Bishops' Conference and the Ecumenical Council of Churches is used. Alternatively, some arrangements are made *ad hoc* depending on the needs (Cyprus).

An interesting situation exists in England, where the obligation to organize pastoral care is provided for in contracts pertaining to realizing health services, which is supplemented by governmental guidelines. The instrument of governmental guidelines also determines the shape of religious assistance in Scotland. Lower-order regulations play a decisive role also for example in Slovenia (*Rules on the organization and implementation of spiritual care in hospitals and other health care providers* of 2008) and in Portugal (*Regulation of Spiritual and Religious Care in the National Health Service* of 2009).

2.3. **The essence of the chaplaincy**

It follows from the reports that the essence of hospital chaplaincy is generally still viewed in a traditional way, as a form of securing the religious needs of patients and personnel of an institution, especially by enabling them to participate in religious

ceremonies and be provided with religious services according to the rules of their religion. Classic hospital chaplains are therefore clergymen, that is persons who have exclusive rights to perform some sacred activities. In this perspective, psychological support is – one can say – a side effect; important, but not predominant. More and more often, however, providing psychological support in the difficult situation of an illness, or an impending death, is given separate emphasis as an objective that is equivalent to performing religious services. According to the Italian Act of 1988 (no. 833) establishing the National Health Service, the scope of a service of religious assistance is wide, it "provides personal and social psychological support to the sick; […] organises pastoral and cultural activities, other than, obviously, worship and administration of the sacraments". This tendency is connected with an increase in the number of lay hospital chaplains providing psychological support rather than spiritual assistance understood in a traditional way. Such a situation – as can be supposed – exists in Belgium, where besides chaplains there are humanist counsellors. Also the Latvian report expresses the view that "the network of psychologists and social workers, widespread throughout the country and maintained from public resources, can be considered as being, to a certain extent, a competitor for chaplaincy". Some initiatives aimed at organizing systemic psychological support for agnostics and atheists are also mentioned in the Italian report.

Discussing this issue one first of all needs to emphasize without any doubt that sensitivity to the psychological and spiritual needs of every person, irrespective of their outlook on the world, deserves the highest recognition. The question that remains, however, is whether in the case of the right to religious assistance and the right to psychological support we deal with homogenous issues that should be regulated in a homogeneous way, or with diversified issues that can be regulated in diverse ways. And consequently, should the organization of both kinds of support for patients be seen as alternative or rather complementary?

A rather special type of hospital chaplaincy is realized in the Netherlands, where health care institutions are obliged to make "spiritual care available in the institution, in a form that is as far as possible congenial to the religion or existential convictions of the patient or client". This care thus does not have to match the patient's convictions exactly. The Author of the Dutch report points out that at present a spiritual caregiver does not necessarily have to be associated with a specific religion and often does not have any approval of a church or other religious denomination. In my opinion, this solution is rightly criticized.

2.4. **The shape of hospital chaplaincy structures**

The organization of hospital chaplaincy differs from country to country. Diversification can also be seen within individual states: there are different ways religious services are organized, depending on a religious organization providing these services.

Let us first take a look at the diversification between various states. The first form – requiring the least involvement of the state – actually consists only in guaranteeing that religious communities are free to provide spiritual assistance to patients and members of hospital staff (e.g., in Hungary and Estonia). The chaplaincy is not founded by the state. In such a situation the organization of hospital chaplaincy is left to religious communities, which may appoint special hospital chaplains, but may also decide that all clergymen participate in services provided to the sick.

It needs to be pointed out that hospital chaplaincy is not organized formally more often than army or prison chaplaincy. It is also more frequent that it is not financed by the state. For example, in Estonia there are detailed regulations concerning army or prison chaplaincies, and in both institutions chaplains are funded by the state, while none of these things are present in the case of hospital chaplaincy.

The second model consists in funding the service of clergymen (of one or several religious organizations) realizing religious assistance in hospitals from public funds, provided they have been appointed by specific religious organizations and accepted by the management of a particular institution or other proper authorities (Malta, Italy, Poland, Belgium, etc.).

Finally, it needs to be mentioned that within a given state the organization of hospital chaplaincy may differ depending on a religious organization. State funding, even in states where it is provided, never concerns clergymen from all religious organizations. Thus, besides structured chaplaincy that is financed by the state there is also a solution that pertains to the remaining religious organizations and consists only in the right to enter the premises of hospitals at the request of the patient. There can even be differences between various hospitals. For example, in Lithuania chaplains can, but do not have to be, employed by hospital management; as a result, besides hospitals with permanent Catholic chaplains there are hospitals in which local priests provide ministry without any remuneration.

2.5. **Hospital chapels**

When it comes to the presence of chapels in hospitals, the situation is varied. In states in which we can speak of the social predominance of one religion, there are chapels of this religion (e.g., in Poland). In Portugal, a permanent Catholic chapel is generally obligatory in hospitals, and it can be, as a last resort, shared with other Christian denominations. In some states there are only multi-faith prayer rooms or ecumenical chapels (e.g., in the Czech Republic), and in other cases such prayer rooms are established besides chapels of the majority religion (e.g., in Malta). In Germany, for its part, there is no legal obligation to establish hospital chapels, but in some hospitals there are not only Christian chapels, but also Muslim and Jewish prayer rooms. At the same time, it is a general rule that chapels are owned by the host institution (hospital), and their functioning is financed from the funds of this institution. Exceptions to this rule are not frequent.

3. Status of hospital chaplains

3.1. The principles of appointing and dismissing hospital chaplains and the requirements they have to fulfill

In the *Standards for Health Care Chaplaincy in Europe*, already cited above, it is indicated that the work as a chaplain requires professional training, which encompasses "theological and pastoral education and reflection, awareness of health care issues, practical/clinical supervision, spiritual guidance". In accordance with these standards, it is clearly required in some states that hospital chaplains complete a specialization program and pass an aptitude test (Finland). Special clinical pastoral formation is also required from chaplains in the public hospitals of Ireland, although it can be replaced with some other equivalent preparation (which is probably seminary preparation). Anybody who wishes to work as a Roman Catholic chaplain must be certified by the Healthcare Chaplaincy Board, which is responsible before the Irish Bishops' Conference and Conference of Religious. According to the decision of the Church of Ireland, the same requirements as Catholic chaplains (that is, clinical pastoral education) have to be met by full-time lay chaplains of this Church. In Latvia, there is an initiative being realized in one of the university hospitals that aims at introducing the necessity to gain strictly defined qualifications by candidates for chaplains. The hospital has prepared a professional clinical pastoral training programme for the present and future providers of spiritual care (the Latvian report). However, in the majority of states, in order to take up the post of a hospital chaplain, it is in principle enough to have church appointment, which results in – if a chaplain is to be bound with a given health care institution by some specific legal relationship – a formal appointment of a chaplain by this institution. When evaluating this fact one has to remember that in a number of religious communities (such as for example the Catholic Church) the kind of formation required from priests practically encompasses all elements defined in the *Standards* (perhaps with the exception of proper practical/clinical supervision).

In situations where a chaplain is not in any formal relationship with a health care institution, and his rights are only limited to free access to patients, the management of this institution (or any other state authorities) usually do not participate in the procedure of appointing a chaplain and this is the exclusive prerogative of a religious organization (or just a simple consequence of the initiative undertaken by a clergyman acting in a voluntary capacity). Only in some states (such as, in particular, in Portugal or Spain), some formal "authorization" is also required from chaplains who do not receive any remuneration and are not employees (in Portugal they are given, just as their collaborators, credentials and identification cards).

In line with the constructs presented, withdrawing a given clergyman's (or some other person's) appointment as a hospital chaplain by the authorities of a religious organization should result in dissolving a legal relationship between this person and

a health care institution. However, it is usually not guaranteed formally (with the exception of for example Spain and Lithuania).

There are nevertheless also situations when the state and hospital management have a minor influence on appointing or dismissing chaplains despite the fact that hospital chaplaincy is funded by the state. This is for example the case in Malta. Chaplains are appointed directly by ecclesiastical subjects that have agreed to secure spiritual assistance. Remuneration is paid not to chaplains, but to ecclesiastical subjects (an order or a diocese) that appoint chaplains.

A very special situation exists in the Netherlands, where a spiritual caregiver does not have to have "an approval of a church or other denomination" and "is appointed by the healthcare provider on an individual basis". As pointed out in the Dutch report, "this creates a quality problem", as it is only the healthcare provider that decides about employing a spiritual caregiver.

3.2. The nature of a legal relationship between chaplains and hospitals and the principles of remuneration

Significant diversification can also be observed in the status of chaplains and the principles of remuneration. The strongest connection between chaplains and hospitals exists in the case of contracts of employment. According to the rules of labour law, they are administratively subordinate to hospital management and obliged to perform the services defined in the contract, for which they receive remuneration. Such a solution is generally applied when the level of involvement required from a chaplain is high owing to the big number of patients expecting his ministry. For instance, according to the Lithuanian Order of the Minister of Health of 2009, "chaplains can be employed by the hospitals if the hospital judges there is need for permanent chaplaincy service". It thus usually concerns clergymen (and sometimes also lay persons) from sociologically dominant religious organizations, although it can also be applied to representatives of religious organizations that are numerous only in a particular region. The solution consisting in employing chaplains on the basis of a contract of employment is used for example also in the Czech Republic, Portugal, Spain, Romania, Ireland (in reference to Catholic chaplains) and Poland. In some states (such as for example Poland), civil law contracts (such as a contract of mandate) are also sometimes used besides contracts of employment. It is evident at the same time that also in this group of states, a number of clergymen and lay people performing religious services in hospitals do not receive any remuneration. It concerns not only spiritual caregivers from minority religious groups, but also those who belong to sociologically dominant religious organizations and who act as volunteers besides chaplains who are formally employed in hospitals.

However, there are also states in which chaplains are not employed by hospitals at all. In such situations the degree of formal connection between them and hospi-

tals is very low and is actually limited to the obligation to obey the rules of a given institution on the part of chaplain. Neither do they receive any remuneration for the services performed. They are instead supported by their religious organization in line with its internal rules.

A special situation can be observed in states where hospitals conclude contracts not with chaplains, but with the organizational units of religious organizations (e.g., in Malta). Despite the fact that hospital chaplaincy is funded from public funds, the degree of formal connection between chaplains and hospitals remains very low. A similar situation occurs in the case of the Anglican Church in Ireland. This Church receives a block grant each year (c. 220,000 euro) "to ensure that Church of Ireland clergy are available and to be on-call for hospitals around the country" (the Irish report). Until recently, a certain small sum from this grant was paid to parish rectors, who *ex officio* took care of hospitals located in their area. At present, the Church of Ireland has started to give full employment to lay chaplains, entrusting them with two or three hospitals. In other cases ministry is also provided by parish rectors, only they no longer receive any remuneration.

4. Hospital chaplaincy and the negative religious freedom of patients

The analysis of the reports leads to the conclusion that one of the most serious problems connected with the functioning of hospital chaplaincies is the due respect of the negative religious freedom of patients who do not confess any religion, have an individual outlook on religion or belong to religious minorities. According to Vincent De Gaetano, "the main challenge for the chaplains here is how to be visible and minister to the needs of patients without upsetting the increasing number of people (…) who profess no religious belief". This conclusion is confirmed by the judgment of the Polish Supreme Court of 2013, in which it was ruled that administering the Sacrament of Anointing the Sick by a Catholic hospital chaplain to a non-believer without his consent and knowledge during an induced coma constitutes a violation of freedom of conscience, understood as personal interest and protected pursuant to the Civil Code.

Undoubtedly, "the individual right to religious liberty also entails an individual's right to remain free from religious or spiritual care". Given that, the state is not only obliged to refrain from imposing a particular religious ideology, but also to "protect individuals against unwanted proselytism engaged in by other (private) individuals" (the Belgian report).

Awareness of these issues has made some states introduce detailed regulations which are supposed to protect patients against unwanted services. Besides Belgium, such regulations were also prepared in Portugal. They were included in the *Regulation of Spiritual and Religious Care in the National Health Service* of 2009. It was stated that "the spiritual and religious care is to be explicitly requested by the patient or his/

her relatives or friends, at any moment". Such declarations are however preferably submitted at the moment of admission to hospital. Nevertheless, it is also clearly provided that spiritual care "can be initiated by the religious minister of the community to which the patient belongs, as long as consent is given", and at the same time it is emphasized that "no patient can be in any way pressured to receive spiritual care". The same objective is fulfilled by the detailed enumeration of rights of the patient and obligations of the chaplain in the same document. The former include not only the right to "access to the spiritual and religious care service" or to participate in "spiritual and religious acts of worship", but also the right to be informed about the content of the rules on assistance, to "reject the unsolicited assistance" and "have [one's] religious beliefs respected". As for the latter, they not only concern "providing individual spiritual assistance, organizing collective worship, ensuring confidentiality", but also e.g. "respecting and not disturbing patients who have not solicited religious care" (the Portuguese report).

Referring, *mutatis mutandis,* to the judgment of the European Court of Human Rights in the case of *Kokkinakis v. Greece* we can state that – from the perspective of religious organizations and chaplains – what is essential is distinguishing between "bearing Christian witness" (that is "true evangelism") and "improper proselytism". We can agree with Balazs Schanda's opinion that in light of a special psychological situation of patients, hospitals should generally not be "regarded as a space for missionary activities" and lack of the patient's consent constitutes the boundary that the chaplain should not cross. However, there remain situations where unambiguous solutions are difficult to find, as in the case of patients whose will is unknown (because were they for example taken to hospital unconscious, and the will of their family cannot be determined within a short period of time).

Conclusions

Ensuring the right of every patient to religious assistance constitutes a recognized European standard, independently of the adopted model of state-church relations. Detailed guarantees of this right differ from state to state. The diversification characterizes both the organization of hospital chaplaincy and the status of chaplains. The relevant solutions are dependent on such circumstances as the religious structure of the society, established traditions, applied model of state-church relations and diversification of forms of regulating the legal situation of religious organizations. Among the problems which still need to be solved in a satisfactory way in a considerable number of European states one can mention the question of full protection of rights of religious minorities and persons without religious affiliation. However, looking for the guarantees of such protection should be fairly balanced with protecting the rights of believers belonging to sociologically dominant religions.

CHAPLAINCY IN THE ARMED FORCES - INTRODUCTORY REPORT

Emanuel Tăvală

The chaplaincy situation in the armed forces seems to be best regulated form of chaplaincy for the countries presented here at the national level. It also seems to be the oldest form compared to other sectors in the social sphere. One commonality across the countries presented here is that their armed forces offer military chaplaincy. Religious freedom for soldiers who have enlisted or are drafted into an organisation that is not always capable of providing sufficient private space for such religious exercise is the main argument made in state-church regimes. In the military, religious freedom is mostly defined as a set of rights to practice one's religion, including the right to access spiritual care.

1. History

After reading the national reports it is clear that the institution of military chaplaincy is a venerable one which has very deep roots in the history of each state and especially of each nation. Along these lines, a Romanian bishop said at the end of the 19th century that *we have a nation, because we had an Altar.*

In one form or another, depending on the national situation of each country, the military chaplaincy has existed in a recognizable form for more than 1600 years[1]. This fact is easy to observe by reading the national reports, where the army chaplaincy is founded very early in the national history of each European country. Currently, the religious element *extra murros ecclesiae*, in the form of chaplaincy in the armed forces, is present all over Europe in different forms. Army chaplaincy has a long history; we can identify special army priests in 742 when the first German council[2]

[1] Doris Bergen, The Sword of the Lord, (2004).

[2] Now it is forbidden for military chaplains to take weapons while accompanying troops to the battlefield.

took place; in 1424, in Romania; and in the 17th century in Poland. The first English military-oriented chaplains, for instance, were priests on board proto-naval vessels during the eighth century A.D. Land-based chaplains appeared during the reign of King Edward I.

As a term, ***chaplaincy*** may not be found *per se* even nowadays in some European societies, as is the case of the Balkan countries, but the spirit of this word is present in the institution of the military priest. The etymology of the world *chaplain* refers, according to some writers, to the Chapel of St. Martin whose relic the kings of France used to carry in their camp and from which the priest who was responsible for it obtained their name[3]. While in Western Europe the word chaplain had different meanings at first (for example, it could refer to a cleric who attended to a king, prince, bishop or other dignitary) and having a chaplain was often a mark of social distinction, in Eastern Europe, the presence of a high-ranked cleric close to the ruler was a condition for political recognition. The close connection between state and church was always highlighted by ecclesiastical representatives, especially after the proliferation of humanist ideas and the separation between state and church began to be evident.

2. Legal Framework

In an event, at the national level, European states today facilitate spiritual assistance in the armed forces. Military chaplaincy takes place within a legal framework; but much of that framework is permissive rather than prescriptive, as can be seen in the UK report[4].

The regulation in this field is as follows; it is evident that the legal basis for chaplaincy is a complex mix:

2.1. In special acts which regulate the status of army chaplains

In the **UK** this status was set out in the Army Chaplains Act of 1868. Military chaplaincy is a matter of military law.

Romania has Law 195/2000 on the organisation and establishment of chaplaincy.

2.2. In acts which regulate chaplaincy in general in all its forms: army, hospitals, prisons etc.

In **Latvia** the activities of chaplains are regulated by the Law on Religious Organisations, whose section 1 par. 8 deals with the organisation of chaplaincies, as does

[3] The Gentleman's Magazine and Historical Chronicle, Volume 101, Part 1, p. 632.

[4] The book by Norman Doe, *Law and Religion in Europe. A Comparative Introduction,* OUP, 2011, pp. 203-213, was the starting point for the categories presented here.

part 5 of Section 14 of the same law. The Cabinet Regulation on Chaplaincy Services (15 February 2011) stipulated the basic principles for chaplaincy activities in Latvia.

In **Estonia** the provisions on religious assistance in public institutions are found in the Act on Churches and Congregations (2002), article 9, par. 1 and 2.

In **Lithuania** chaplaincy is not addressed in the Constitution, nor in the Law on Religious Communities and Associations (1995), but article four of the Temporary Law on Military Command, adopted on the 15 July 1993, establishes the senior Chaplain of the Lithuanian Army. The Law on the Organisation of the Country's Defence (1998) also touches on military chaplains. There is also an Agreement that was signed with the Holy See on 5 May 2000 which addresses care for Catholics in institutions run by the State. This agreement could move the position of the country from this second type to the third one.

In **Slovenia** religious assistance in the army is regulated by article 22 of the Religious Freedom Act (2007, revised in 2010), in coordination with the Defence Act and the Law on Military Service.

In the **Czech Republic** participation in chaplaincy is basically open to all registered religious communities. However, since 2002, this freedom has been restricted in two areas: army and prisons through Act no. 3/2002 Sb which gives this right only to those religious communities which obtain *special permission* to exercise religious care.

3. Through agreements signed between the state and religious organisations

In **Hungary** such an agreement was signed with the Holy See regarding the Catholic military Ordinariate. Similar agreements were signed with other denominations as well.

In **Spain** the Roman Catholic chaplaincy in the armed forces is governed by the Agreement between the state and the Holy See from 1979, implemented by Royal Decree 1145/7 September 1990 on Religious Chaplaincy. There are also chaplaincies organised for Evangelical, Muslim and Jewish persons and they are governed by Article 8 of the three Agreements with the Federations signed in 1992.

In **Poland** the military Ordinariate was reinstated in 1991 and this fact was subsequently included in the Concordat with the Holy See starting in 1993. There are also structures for the Orthodox and Evangelical Churches as well.

In **Croatia,** in 1996, the Agreement on Chaplaincies for Catholic Believers and Worshipers who are Members of the Military Units and Police Forces was signed.

Portugal has a Concordat that was signed in 2004; its article 17 states that Catholics in the Armed Forces have the right to religious care. The next article addresses spiritual care in other institutions; therefore this country could also fit into the second category presented here.

4. No Special Regulations

In the other countries *the spiritual care for the armed forces follows the spirit of the times*[5]*,* as is shown in the report for the **Netherlands**, where there is no strict legal foundation for said care and it exists (organised by six denominations) simply as a result of the historical practice. In **Finland**, for example, the authorities have not sought to organise chaplaincy and there is no single word for the phenomenon, but the Finnish Defence Forces employ Lutheran and Orthodox chaplains to fulfil their mission inside the military corps.

In **Malta** there is no law which defines or regulates chaplaincy. With regard to the armed forces, it exists and is based on a variety of ad hoc arrangements established with particular religious orders, with dioceses or even personal arrangements between individuals.

5. Status of the Chaplains, Appointment and Revocation

When we speak about the status of the army chaplains, we are referring first of all to their position in the military forces, either as officers or as army civil servants assimilated into military ranks.

The activity of military chaplains is supervised by a general chaplain (who may be a bishop, a vicar or one of the priests). Usually this person has a rank equivalent to general (there may be some terminological particularities in each country). In the appointment process, the general chaplain may be identified through a close collaboration between state and church, a revived Byzantine *symphonia.* This is the case in **Spain**: to nominate the Archbishop who is the head of the Service, a special commission chosen by the Foreign Ministry and the Spanish Nuncio makes a list of three names to be proposed. The Holy See approves the names; the Spanish King appoints one of them, who is then named by the Pope. In **Austria** there is also a collaboration process between state and Roman Catholic or Protestant Church for the appointment of chaplains or of the Bishop/Military Superintendent.

6. The Form of Organisation

The institution of the chaplaincy is usually organised as a Department for Religious and Moral Affairs (Belgium), Religious Chaplaincy Service (Spain), Directorate of Religious Affairs (Cyprus), Section for Religious Assistance (Romania), etc. The name may vary.

[5] J. Thuling (1983), *Militairepastoraal,* apud. Netherlands' Report.

7. Conditions for Acceptance

Those clerics who do intend to become chaplains must fulfil several requirements for theological studies and degrees, have experience, pass an exam and then take special training sessions organised by the Army. For example, in the United Kingdom, the Ministry of Defence employs chaplains but their authority comes from their sending church. Royal Navy chaplains undertake a 16 week bespoke induction and training course, including a short course at Britannia Royal Naval College and specialist fleet time at sea alongside a more experienced chaplain.

The chaplains in the Swedish Armed forces are trained for their special task through a shorter training programme arranged by the armed forces.

8. Specificities

In the context of the secularisation of society, **Belgium** permitted secular humanist counsellors to act as military chaplains, even while in other countries, humanist chaplains are described as *contradictions in terms or as abominations against the Christian establishment.* The same is true in in the **Netherlands**.

Against the establishment of the army as a Christian entity through the presence of the chaplains, is the case of Daniel Sarriedine, a Muslim from **Cyprus**, who refused to serve in the National Guard because of its Orthodox nature. In fact, the Council of Ministers decided that Turkish Cypriots would no longer have the obligation to serve in the National Guard. Furthermore, military service became voluntary for people who belonged to the Roman Catholic, Maronite and Armenian religious groups. Clearly it was a violation of the principle of equal treatment and there was discrimination on religious grounds.

9. Chaplains and Labour Law

Military chaplains may be hired on a temporary basis or on a permanent basis. This possibility exists in Romania (art. 12 of Law 195/2000). The same is true in **Spain**, where *permanent priests* must make up at least 50% of all chaplains. They have to pass an examination and be named by the Defence Minister. They enjoy the status of civil servants under the command of the Military Administration. They can be dismissed if they breach their duties, or if the *missiocanonica* is withdrawn. Non-permanent priests are bound by a contractual relationship with the Military Administration, from which they receive a salary. This contract cannot last more than eight years.

In Ireland, chaplains are appointed by the local bishop, in consultation with the Head Chaplain of the Defence Forces, with the approval of the Minister of Defence, but the Defence Forces «*may be able to remove a chaplain or to request another from the bishop»* (Irish National Report). And like in the history lessons about the old Byzantine Empire, «in 2014 the Defence Forces Head Chaplain criticised the atheist President of Ireland for failing to mention the Nativity in his Christmas Message. The

Chaplain was removed by the Archbishop of Dublin. He publically denied that any political pressure had led to his removal, and suggested he was being moved due to diocesan reorganisation». (Irish National Report)

The **German** case is interesting because chaplains were integrated in the social education program of the *Bundeswehr* by appointing the chaplains as teachers for *Lebenskundlicher Unterricht (professional ethics)*. This ensures their independence from the military and civil hierarchy. In **Estonia** they are civil servants paid from the State budget, supervised by the State and their religious organisation, which gives approval for their appointment.

In the **UK,** chaplains are appointed by the Secretary of State for Defence on the recommendation of the appropriate Chaplain General after being nominated by an accredited representative of the religious organisation concerned.

In **Lithuania,** chaplains are part of the military structure and they may receive military ranks. Military statutes apply to them, even if they are subordinated to the Ordinariate. The Ordinariate in Lithuania is not part of the army, even if it is mostly financed from the Defence Ministry budget.

The status of military chaplains, as equivalent to the officers, has implications on their private lives as well, in the acceptance of the **Romanian** Law 195/2000 which, in its article 18, states that Romanian military chaplains cannot be accepted in the army corps if they are married with stateless persons or persons who are not exclusively Romanian citizens, they cannot be part or take part to trade unions or political party assemblies or they cannot speak during their service in the army about their political thoughts or opinions.

The length of the stay in the military chaplaincy may differ and in this way we are speaking about full careers or of only a number of years for some of the countries.

10. The Uniform

With regard to the **uniforms** used by military chaplains, they may wear the clerical uniform during their activity (liturgical and civil) or during their civil activity. There are countries where they use the military uniform and the clerical one only during mass or other liturgical services. In **Finland** they use the uniform during military service and the liturgical uniform during mass. In **Romania** the clerical uniform is worn all the time. In **Latvia,** chaplains are uniformed soldiers with the appropriate service ranks; they believe that wearing this uniform helps the chaplain to better integrate into the military environment.

11. Funding

As noted before, military chaplains may have the rank of officers or they may have a status equivalent to officers. This has an impact on the chaplains' remuneration and on their retirement age.

In most of the countries, military chaplains are paid by the State through the Defence Ministry budget (State): **Finland**, **Hungary**, **UK**, **Romania**, **Czech Republic**, **Italy**, **and France**. In the aforementioned countries where the relationship between church and state is governed by a Concordat with the Holy See, the chaplains are also state funded. This is the case for **Poland**, **Portugal** and **Spain** (for the Catholic chaplains).

In Sweden, since 1996, the financial responsibility for the field dean has belonged to the Church of Sweden.

Latvia has an interesting way of funding the chaplaincy: apart from state and local government institutions, which support the chaplaincy through the public budget, material provisions may also be provided by capital companies with which a chaplain has a legal employment relationship.

The case of **secular humanist counsellors** in Belgium (here the chaplains are paid by the state) is interesting. Here, the introduction of secular humanist counsellors within the system, based on specific legislation, resulted in two divergent salary schemes, in which the new humanist corps enjoyed a significantly more advantageous salary than their Catholic, Protestant and Jewish colleagues. The Council of State decided in 2010 that all military chaplains should be granted the same (equally beneficial) financial status (see the Belgian Report).

12. Conclusions

One unique feature of the military is that in all these countries the religious rights of soldiers can be limited if the military is deployed.

If there is a right to access spiritual care, this spiritual care may not necessarily be denomination-specific, even though the countries presented here offer at least two different chaplaincies.

Another commonality of the military chaplaincy relates to the tasks that military chaplains fulfil. They are focused on helping soldiers cope with difficult situations in their daily professional and private lives. Because they play the role of confidants and because they represent a second organisation besides the military that governs their involvement, military chaplains are not fully integrated into the military hierarchy. Differences across countries exist: the German military chaplaincy defines itself and is often said to be the most distanced from the military organisation itself, whereas the Balkan countries' and the Catholic-oriented countries' military chaplaincy can be said to be well-integrated into the military organisation.

Clear cross-national differences exist with regard to the question of military ranks: no ranks for German chaplains, French chaplains may present themselves with a rank, and in other countries they are given a status equivalent to military ranks or they even obtain military ranks with all the benefits that entails.

Each military has a fixed amount of military chaplaincy positions. If any change has occurred over the past years, the number of these positions has been reduced

rather than increased as a result of military budgetary restrictions. At the heart of the organisation of military chaplaincies is the argument of representativeness. The state is very invested in selecting and recognising religious groups so that only those groups which are explicitly invited by the state to provide military chaplains can participate in discussions over the distribution of chaplaincy positions. The countries differ with regard to how many chaplains they employ in total. Even though it is not easy to identify the exact manpower of a country's armed forces, obvious differences in the ratios of soldiers per chaplain exist.

It is important to mention that in the military, women may occupy military chaplain positions. However, they are the exception rather than the rule.

The military chaplains in the countries presented here are organised into denomination-specific military chaplaincies which have more organisational weight. This may be one reason why European countries exercise much more control and restrict the possibilities for immigrant religious minorities to send chaplains to the military.

Instead of final conclusions, here are some starting points for debate:

- The emotionally and spiritually intense relationships developed between chaplains and the men and women they serve.
- How have military chaplains dealt with the enormous responsibility of ministering to soldiers about killing or possibly being killed?
- Chaplains' often precarious position between military and religious authorities, or, if not precarious, a dual legal position. An example is the aforementioned case of Ireland.
- Migration as a reality with a possible impact on European chaplaincy…

At the same time, I think we should take into account the activity of chaplains on the battlefield today in Iraq or Afghanistan because they are the ones who have experienced in the 21st century what we have just read and written, from different sources, about the historical aspects of military chaplaincy.

NATIONAL REPORTS

LES AUMÔNERIES DANS LES ÉTABLISSEMENTS PUBLICS AUTRICHIENS*

Wolfgang Wieshaider

La restriction de la liberté de mouvement de l'individu entraîne une restriction des possibilités de ce dernier d'exercer sa religion. Pour compenser ce manque, l'aumônerie a été institutionnalisée dans les hôpitaux, les prisons, et l'armée. Par analogie, et à cause des sollicitations soutenues des agents de la force publique[1], l'aumônerie fut étendue à la police.

L'institution de l'aumônerie peut alors être perçue comme une conséquence de la liberté religieuse, de la responsabilité étatique de faciliter activement l'exercice de la religion[2].

Cela constitue une différence importante par rapport à d'autres formes d'aumôneries, comme l'aumônerie universitaire[3]. Par conséquent, elles ne seront pas prises en considération ci-après.

Compte tenu du fait que le droit autrichien reconnaît deux formes de communautés religieuses institutionnalisées comme telles – les sociétés religieuses reconnues ayant une personnalité juridique de droit public et les communautés religieuses confessionnelles enregistrées ayant une personnalité juridique de droit privé –[4], il faut noter que l'État a considéré seulement les premières, en réglant les aspects institutionnels de l'aumônerie. Ainsi, il tient compte du caractère public des établissements concernés et du statut public des sociétés religieuses. Par contre, la liberté religieuse revendique une interprétation de ces dispositions qui considère les aspects individu-

* L'auteur remercie à Anne Fornerod pour sa lecture critique du texte.

1 Cf. Raoul Kneucker. ‹ Verträge mit Kirchenleitungen ›. *Österreichisches Archiv für Recht & Religion 58* (2011) pp. 293-327 (pp. 304 sq.).

2 Voir p.ex. Herbert Kalb, Richard Potz, Brigitte Schinkele. *Religionsrecht.* Facultas WUV, Wien 2003, p. 265.

3 Cf. p. ex. <http://www.kategoriale-seelsorge.at/> [18 août 2016].

4 Voir p.ex. Kalb, Potz, Schinkele. *Op. cit.* (note 2) pp. 93-126.

els, c'est-à-dire la position des adeptes d'une religion vis-à-vis de l'établissement public, sans distinguer entre les statuts des communautés pertinentes, comme la Cour constitutionnelle l'a souligné[5].

Dans ce champ de coopération entre l'État et les communautés religieuses, l'État se tient bien à sa neutralité religieuse[6], même si les aumôniers sont directement employés par l'institution étatique. Des prescriptions plus récentes – comme l'alinéa 8(2) de la loi sur la Société religieuse israélite[7] et les alinéas 11(2) et 18(2) de la loi sur l'islam de 2015[8] – suivent le modèle de l'article XVI du Concordat[9] et des paragraphes 17 à 19 de la loi sur l'Église protestante[10], en précisant alors que les aumôniers relèvent de leurs communautés religieuses quant aux affaires religieuses et de la direction de l'établissement pour toutes les autres questions.

Vu les besoins et la pratique différente de l'assistance spirituelle, l'alinéa 8(1) de la loi sur la Société religieuse israélite et les alinéas 11(1) et 18(1) de la loi sur l'islam de 2015 ont substitué le terme de *‹ Seelsorge ›* (soutien pastoral) au terme de *‹ religiöse Betreuung ›* (assistance religieuse) eu égard au judaïsme, à l'islam et à l'alévisme[11] – le terme français de l'aumônerie ayant une autre étymologie.

La confession religieuse[12] fait partie de la catégorie des données particulières au sens de l'article 9 du Règlament général sur la protection des données (UE) 2016/679[13]. Selon le sous-alinéa 9(2)a *leg. cit.*, leur traitement par les établissements correspondants n'est autorisé que si la personne concernée y a donné son consentement explicite. Les autres exceptions à l'interdiction du traitement des données sen-

[5] Verfassungsgerichtshof 6 octobre 1999. B 15/99. *Österreichisches Archiv für Recht & Religion* 47 (2000) pp. 260-266, commenté par Stefan Schima, *ibidem,* p. 266-268 ; voir Richard Potz. ‹ Recht auf seelsorgliche Betreuung aus der Sicht der Patienten und der Religionsgemeinschaften ›. In Ulrich H. J. Körtner, Sigrid Müller, Maria Kletečka-Pulker, Julia Inthorn (éd.). *Spiritualität, Religion und Kultur am Krankenbett* (Ethik und Recht in der Medizin 3). Springer, Wien, New York 2009, pp. 108-118 (pp. 111 sq.).

[6] Kalb, Potz, Schinkele. *Op. cit.* (note 2) pp. 42 sq.

[7] *Gesetz betreffend die Regelung der äußeren Rechtsverhältnisse der israelitischen Religionsgesellschaft*, Reichsgesetzblatt n.º 57/1890, modifiée en dernier lieu par Bundesgesetzblatt I n.º 48/2012.

[8] *Bundesgesetz über die äußeren Rechtsverhältnisse islamischer Religionsgesellschaften*, Bundesgesetzblatt I n.º 39/2015.

[9] Bundesgesetzblatt 1934 II 2 ; voir Kalb, Potz, Schinkele. *Op. cit.* (note 2) p. 532.

[10] *Bundesgesetz über äußere Rechtsverhältnisse der Evangelischen Kirche,* Bundesgesetzblatt n.º 182/1961 modifiée en dernier lieu par Bundesgesetzblatt I n.º 92/2009 ; voir Kalb, Potz, Schinkele. *Op. cit.* (note 2) pp. 561 sq.

[11] Le législateur a employé ces concepts pour la première fois en 2012 dans l'alinéa 8(1) de la loi sur la Société religieuse israélite.

[12] Cf. Eike Michael Frenzel in Boris P. Paal, Daniel A. Pauly (éd.), *Datenschutz-Grundverordnung* C.H.Beck, München 2017, art. 9 DS-GVO, n.º 13.

[13] JO L 119/2016, pp. 1-88. Cela correspond à la réglementation antérieure, cf. Frenzel. *Op. cit*. (note 12) art. 9 DS-GVO, n.º 2.

sibles ne s'appliquent pas dans ce cas. La législation sur les hôpitaux en tient compte d'une façon appropriée[14].

Il semble tout de même douteux que ces principes soient suivis de la même façon dans l'armée, vu que le surintendant militaire protestant considère que ‹ le droit à l'aumônerie › dépasse la protection des données[15]. Une telle argumentation ne prend pas en considération le fait que l'autorisation accordée aux sociétés religieuses de proposer l'aumônerie dans des établissements publics ne leur permet pas de se référer à certaines personnes individuellement, et qu'il faut toujours évaluer la proportionnalité d'une atteinte au droit fondamental de protection des données, garanti dans le paragraphe 1 *leg. cit.* En outre, une comparaison avec l'enseignement religieux n'est pas possible parce que seul ce dernier est ancré dans la Constitution et dans la loi[16].

Au-delà de ces observations générales, les conditions de mise en œuvre de l'assistance spirituelle dans les établissements publics pertinents ici sont différentes. C'est pourquoi la réglementation de l'aumônerie sera traitée en fonction de chacune de ces institutions.

1. L'aumônerie dans les prisons

La compétence pour réglementer le régime pénitentiaire et le mettre en œuvre revient à l'État fédéré selon le sous-alinéa 10(1)6 de la Constitution fédérale[17].

L'institution de l'aumônerie est ancrée dans le paragraphe 85 de la loi concernant le régime pénitentiaire[18]. Selon l'alinéa 85(1) *leg. cit.* chaque détenu a le droit de participer aux offices religieux communs et aux autres activités religieuses communes dans leur établissement et de recevoir des ‹ moyens de salut › et du ‹ réconfort › d'un aumônier désigné ou admis pour cette prison ; la loi employant une terminologie

[14] Voir ci-dessous.

[15] Karl-Reinhart Trauner. ‹ Wandel von Staat und Kirche am Fallbeispiel Militärseelsorge ›. *Österreichisches Archiv für Recht & Religion* 59 (2012) pp. 174-198 (p. 193) : « Anlässlich der Diskussion um die Erfassung des Religionsbekenntnisses von Soldaten stellte der Oberkirchenrat fest, ‹ dass auch nach dem neuen Datenschutzgesetz Beschränkungen des Grundrechts auf Datenschutz dann zulässig sind, wenn diese aufgrund von Gesetzen normiert sind, die zur Gewährleistung von Rechten notwendig sind, die durch die Europäische Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet werden ›. […] Auf die Praxis der Seelsorge bezogen, darf durch den Datenschutz das Recht auf seelsorgliche Begleitung nicht verunmöglicht werden. In diesem Fall zählt das Recht auf Seelsorge mehr als der Datenschutz. Noch dazu, wo Seelsorge durch Organisationen, die die Rechte einer Körperschaft öffentlichen Rechts haben, ausgeübt wird. ».

[16] Pour l'enseignement religieux voir Kalb, Potz, Schinkele. *Op. cit.* (note 2) pp. 351-362.

[17] *Bundes-Verfassungsgesetz,* Bundesgesetzblatt n.º 1/1930, modifiée en dernier lieu par Bundesgesetzblatt I n.º 138/2017.

[18] *Strafvollzugsgesetz,* Bundesgesetzblatt n.º 144/1969, modifiée en dernier lieu par Bundesgesetzblatt I n.º 26/2016.

inspirée par le droit canonique[19]. La Cour administrative suprême a précisé que l'alinéa 85(1) *leg. cit.* n'autorise pas le détenu à apporter des documents non liés à l'exercice de la religion lors de la rencontre avec l'aumônier[20]. Quoi qu'il en soit, le directeur de ce dernier ne peut exclure des détenus de la participation aux offices et aux autres activités que pour des raisons d'ordre et de sécurité, après avoir entendu l'aumônier. Ces restrictions sont justifiées et ne violent pas la liberté religieuse[21]. Compte tenu du fait que l'infrastructure pastorale correspond souvent aux besoins des religions majoritaires, les détenus qui adhèrent aux religions minoritaires devraient, analogiquement, avoir le droit d'être conduits à une prison qui offre les offices pertinents[22]. Des questions pratiques, souvent relevées, tournent autour de l'offre moindre pour les femmes détenues, de problèmes linguistiques et de la mauvaise acceptation de la religion par des détenus non religieux[23].

L'alinéa 85(2) *leg. cit.* accorde au directeur la possibilité de permettre au détenu de recevoir du réconfort d'un aumônier de sa propre confession qui n'est pas désigné ou admis pour cette prison. Selon la Cour constitutionnelle, une adhésion formelle n'est pas requise[24]. Si aucun aumônier n'est désigné ni admis pour la prison, le détenu peut demander que l'on en nomme un.

L'alinéa 85(3) *leg. cit.* exige que cet aumônier aura le droit de visiter ce détenu et de s'en occuper de façon pastorale. En outre, il faut permettre aux détenus de recevoir un aumônier hors des heures de visite mais dans les horaires de bureau. L'alinéa 85(4) *leg. cit.* garantit que l'on ne surveille pas les conversations entre le détenu et l'aumônier.

Il y a des aumôniers employés sur la base d'un contrat de travail qui sont payés par l'État. De tels aumôniers agissent toutefois sous le double contrôle des autorités étatiques et religieuses compétentes[25]. Par conséquent, l'alinéa 19(2) de la loi sur l'Église protestante limite la désignation des aumôniers de prison aux ministres du culte que l'Église protestante a dûment mandatés par écrit. Les

[19] Cf. can. 1234 CIC 1983.

[20] Verwaltungsgerichtshof 24 juin 1999, 98/20/0239, 98/20/240 ; Kalb, Potz, Schinkele. *Op. cit.* (note 2) p. 267.

[21] Verfassungsgerichtshof 11 october 1999, B 1487/98, VfSlg. 15 614.

[22] Wolfgang Wieshaider in *Österreichisches Archiv für Recht & Religion* 52 (2005) pp. 144-148, répondant de façon critique à Verwaltungsgerichtshof 23. 5. 2005, 2005/06/0030. *Ibidem,* pp. 141-144, qui a tenu à une interprétation stricte impliquant que la liberté religieuse se réduit à la propre prison du détenu en dépit de sa confession et de l'infrastructure concrète de cet établissement.

[23] Voir Ursula Unterberger. *Religion – die letzte Freiheit, Religion im Strafvollzug* (Anwendungsorientierte Religionswissenschaft 2). Tectum, Marburg 2013, passim ; cf. aussi Leszek Urbanowicz. *Gemeinde hinter Gittern.* Thèse de doctorat, Universität Wien 2006, pp. 13-55.

[24] Verfassungsgerichtshof 6. 10. 1999, B 15/99. *Österreichisches Archiv für Recht & Religion* 47 (2000) pp. 260-266, commenté par Stefan Schima. *Ibidem,* pp. 266-268; Kalb, Potz, Schinkele. *Op. cit.* (note 2) pp. 266 sq.; Potz. *Op. cit.* (note 5) p. 112.

[25] Kalb, Potz, Schinkele. *Op. cit.* (note 2) p. 265.

aumôniers auxquels leur mandat est retiré par écrit doivent être immédiatement destitués de leur poste.

Au-delà, l'article XVI du Concordat garantit à l'aumônier local l'accès libre aux prisons sans aumônerie institutionnalisée. Cela correspond aux stipulations ancrées dans certaines lois concernant les rapports juridiques extérieurs de sociétés religieuses reconnues correspondantes garantissant l'aumônerie de prison aux sociétés religieuses, comme l'alinéa 19(1) de la loi sur l'Église protestante, le sous-alinéa 8(1)2 de la loi sur la Société religieuse israélite, les sous-alinéas 11(1)2 et 18(1)2 de la loi sur l'islam de 2015. L'alinéa 7(1) de la loi sur l'Église grecque-orientale[26] et l'alinéa 3(1) de la loi sur l'Église orientale-orthodoxe[27] requièrent une application analogue du paragraphe 19 de la loi sur l'Église protestante.

Mis à part les aumôniers catholiques[28], les aumôniers de prison sont des aumôniers auxiliaires qui exercent leur ministère sur la base d'un contrat entre le ministère de la justice et l'autorité religieuse compétente[29], comme la convention entre la République d'Autriche et l'Église protestante concernant la sauvegarde du soutien pastoral des prisonniers protestants datant de l'année 2004[30]. Cette convention est une convention de droit privé, envisageant l'indemnité des frais de l'aumônerie protestante. Les obligations de droit public mentionnées dans cette convention reprennent seulement les obligations déjà contenues dans les lois pertinentes, notamment du droit pénal, du régime pénitentiaire et de la protection des données. Au-delà de l'indemnité, la convention était alors interprétée comme fondement des obligations des deux côtés[31].

Une convention analogue a été conclue avec la Communauté islamique en 2010[32].

2. L'aumônerie dans les hôpitaux

Le statut des hôpitaux est réglementé par le sous-alinéa 12(1)2 de la Constitution fédérale à deux niveaux : la législation principale fédérale et la législation d'exécution provinciale.

[26] *Bundesgesetz über äußere Rechtsverhältnisse der griechisch-orientalischen Kirche in Österreich,* Bundesgesetzblatt n.º 229/1967, modifiée en dernier lieu par Bundesgesetzblatt I n.º 68/2011 ; pour l'aumônerie orthodoxe de prison voir Eva Maria Synek. ‹ Die „österreichische" Orthodoxie: rechtliche Entwicklungen seit der Errichtung der Bischofskonferenz ›. *Österreichisches Archiv für Recht & Religion* 61 (2014) pp. 310-338 (pp. 326).

[27] *Bundesgesetz über äußere Rechtsverhältnisse der orientalisch-orthodoxen Kirchen in Österreich*, Bundesgesetzblatt I n.º 20/2003.

[28] Kalb, Potz, Schinkele. *Op. cit.* (note 2) p. 532.

[29] Kalb, Potz, Schinkele. *Op. cit.* (note 2) p. 265; Trauner. *Op. cit.* (note 15) pp. 188 sq.

[30] Voir Kneucker. *Op. cit.* (note 1) pp. 310-313.

[31] *Ibidem,* pp. 302 sq.

[32] Trauner. *Op. cit.* (note 15) p. 189.

Dans ce sens, le sous-alinéa 5a(1)5 de la loi fédérale sur les centres hospitaliers et de soin[33] oblige la législation provinciale à prévoir que – en considérant les buts et les offres de prestations – les institutions hospitalières devront permettre un soutien pastoral aux hospitalisés à la demande de ces derniers. Les länder ont transmis cette prescription dans leur législation correspondante[34]. L'article 12 de la charte des patients, convention de l'État fédéré avec les länder selon l'article 15a de la Constitution fédérale[35] contient une disposition analogue. De surcroît, le sous-alinéa 10(3)3 de la loi haute-autrichienne exige des hôpitaux de reprendre explicitement cette obligation dans le règlement de l'établissement. Le paragraphe 13 de la loi tyrolienne oblige les hôpitaux à faciliter le soutien pastoral de n'importe quelle confession aux aumôniers en charge.

En outre, un de ces aumôniers aura un siège dans le comité consultatif d'éthique qui doit être établi dans chaque hôpital selon le sous-alinéa 8c(4)9 de la loi fédérale sur les centres hospitaliers et de soin et la législation correspondante des länder[36].

[33] *Bundesgesetz über Krankenanstalten und Kuranstalten,* Bundesgesetzblatt n.º 1/1957, modifiée en dernier lieu par Bundesgesetzblatt I n.º 131/2017.

[34] Voir le sous-alinéa 35(1)5 de la loi burgenlandaise *(Burgenländisches Krankenanstaltengesetz 2000,* Landesgesetzblatt n.º 52, modifiée en dernier lieu par Landesgesetzblatt n.º 64/2017), le sous-alinéa 23(1)h de la loi carinthienne *(Kärntner Krankenanstaltenordnung 1999,* Landesgesetzblatt n.º 26, modifiée en dernier lieu par Landesgesetzblatt n.º 46/2015), le sous-alinéa 16b(1)5 de la loi basse-autrichienne *(Niederösterreichisches Krankenanstaltengesetz,* Landesgesetzblatt n.º 9440-0, modifiée en dernier lieu par Landesgesetzblatt 93/2017), le sous-alinéa 28(2)5 de la loi haute-autrichienne *(Oberösterreichisches Krankenanstaltengesetz 1997,* Landesgesetzblatt n.º 132, modifiée en dernier lieu par Landesgesetzblatt n.º 97/2017), le sous-alinéa 21(1)5 de la loi salzbourgeoise *(Salzburger Krankenanstaltengesetz 2000,* Landesgesetzblatt n.º 24, modifiée en dernier lieu par Landesgesetzblatt n.º 51/2017), le sous-alinéa 19(2)8 de la loi styrienne *(Steiermärkisches Krankenanstaltengesetz 2012,* Landesgesetzblatt n.º 111, modifiée en dernier lieu par Landesgesetzblatt n.º 51/2016, le sous-alinéa 9a(1)5 de la loi tyrolienne *(Tiroler Krankenanstaltengesetz,* Landesgesetzblatt n.º 5/1958, modifiée en dernier lieu par Landesgesetzblatt n.º 32/2017), le sous-alinéa 30(2)i de la loi vorarlbergeoise *(Gesetz über Krankenanstalten,* Landesgesetzblatt n.º 54/2005, modifiée en dernier lieu par Landesgesetzblatt n.º 10/2015) et le sous-alinéa 17a(2)l de la loi viennoise *(Wiener Krankenanstaltengesetz 1987,* Landesgesetzblatt n.º 19/1988, modifiée en dernier lieu par Landesgesetzblatt n.º 33/2014).

[35] *Patientencharta,* Bundesgesetzblatt I n.º 89/2001 (Burgenland), Bundesgesetzblatt I n.º 195/1999 (Carinthie), Bundesgesetzblatt I n.º 36/2002 (Basse Autriche), Bundesgesetzblatt I n.º 116/2001 (Haute Autriche), Bundesgesetzblatt I n.º 140/2006 (Salzbourg), Bundesgesetzblatt I n.º 153/2002 (Styrie), Bundesgesetzblatt I n.º 88/2003 (Tyrol), Bundesgesetzblatt I n.º 127/2003 (Vorarlberg), Bundesgesetzblatt I n.º 42/2006 (Vienne), cf. Potz. *Op. cit.* (note 5) p. 113.

[36] Voir le sous-alinéa 24(4)9 de la loi burgenlandaise, le sous-alinéa 30(2)h de la loi carinthienne, le sous-alinéa 19e(4)12 de la loi basse-autrichienne, le sous-alinéa 18(4)10 de la loi haute-autrichienne, le sous-alinéa 30(2)10 de la loi salzbourgeoise, le sous-alinéa 29(1)9 de la loi styrienne, le sous-alinéa 12a(7)k de la loi tyrolienne, le sous-alinéa 12(3)j de la loi vorarlbergeoise et le sous-alinéa 15a(4)10 de la loi viennoise (pour les détails cf. *supra,* note 34).

L'offre concrète varie d'une région à l'autre et d'un hôpital à l'autre, reflétant la diversité de l'aumônerie hospitalière[37]. Cela n'est pas seulement dû à l'appartenance sociale des patients, mais aussi aux besoins spécifiques des différentes approches religieuses[38].

Les dispositions relatives aux rapports entre l'État et les sociétés religieuses garantissent que ces dernières puissent offrir une aumônerie ; ce sont l'article XVI du Concordat[39], le paragraphe 18 de la loi sur l'Église protestante[40] avec l'alinéa 7(1) de la loi sur l'Église grecque-orientale et l'alinéa 3(1) de la loi sur l'Église orientale-orthodoxe[41], le sous-alinéa 8(1)3 de la loi sur la Société religieuse israélite et les sous-alinéas 11(1)3 et 18(1)3 de la loi sur l'islam de 2015.

Au-delà de la législation étatique, ce sont les dispositions internes qui décrivent, de façon plus détaillée, les conditions et les obligations de l'aumônerie. La directive pour le groupe de travail pour l'aumônerie protestante hospitalière[42], dont l'organisation connaît deux niveaux – diocésain et national – sert d'exemple ; l'aumônerie dispose de deux catégories de collaborateurs : des professionnels, y compris des pasteurs, et des bénévoles. Ils ne se différencient pas eu égard à la qualification requise qui comprend des conditions personnelles, une formation théologique et une formation d'aumônier spécifique. Les aumôniers sont obligés de suivre des cours de formation continue et de se soumettre à une supervision. Les tâches s'étendent des conversations pastorales, de l'accomplissement des rites et des offices religieux jusqu'à la collaboration dans des groupes de travail de l'hôpital et à la coopération avec la paroisse et les autres sociétés religieuses reconnues en Autriche.

Contrairement à l'aumônerie de prison, une indemnité des frais de l'aumônerie hospitalière n'est pas prévue par la loi. Les communautés religieuses supportent les

[37] Cf. par ex. <http://www.akh-seelsorge.at/; http://www.salk.at/5615.html>; <http://klinikseelsorge.tirol-kliniken.at/> [tous 18 août 2016].

[38] Voir Walter Burri. ‹ Seelsorge im Spital ›. In Rudolf Albisser, Adrian Loretan (éd.). *Spitalseelsorge im Wandel* (ReligionsRecht im Dialog 5). Lit, Zürich, Wien, Berlin 2007, pp. 57-59 ; Rudolf Albisser, Nicole Mösli, Ruth Rieser, Charles Beuret, Michèle Beuret. ‹ Spitalsseelsorge – Wie sehen sie Patientinnen und Patienten ? › *Ibidem,* pp. 81-86 ; Franz Vock. ‹ Die interreligiöse und interdisziplinäre Seelsorgearbeit am AKH Wien – ein multikultureller Dialog ›. In Körtner, Müller, Kletečka-Pulker, Inthorn (éd.). *Op. cit.* (note 5) pp. 18-29 ; Willy Weisz. ‹ Zum Wohle des jüdischen Patienten im AKH Wien ›. *Ibidem,* pp. 36-40 ; Mona Elsabagh, Faragh Elgendy. ‹ Spiritualität im Krankenhaus aus der Sicht der islamischen Seelsorge ›. *Ibidem,* pp. 41-45; Gerson Kern. ‹ Der Zeuge Jehova als Patient ›. *Ibidem,* pp. 187-199 ; Potz. *Op. cit.* (note 5) p. 115.

[39] Voir Kalb, Potz, Schinkele. *Op. cit.* (note 2) p. 532 ; Potz. *Op. cit.* (note 5) pp. 113 sq.

[40] Voir Kalb, Potz, Schinkele. *Op. cit.* (note 2) pp. 561 sq. ; Potz. *Op. cit.* (note 5) p. 114.

[41] Potz. *Op. cit.* (note 5) p. 114.

[42] *Richtlinie für die Arbeitsgemeinschaft Evangelische Krankenhausseelsorge der Evangelischen Kirche A. u. H. B. in Österreich*, Amtsblatt für die Evangelische Kirche in Österreich n.º 66/2005.

frais, sachant qu'occasionnellement elles reçoivent des subventions publiques ou l'infrastructure nécessaire est mise à leur disposition par les hôpitaux[43].

3. L'aumônerie dans l'Armée

La compétence en matière de législation militaire et sa mise en œuvre revient à l'État fédéré selon le sous-alinéa 10(1)15 de la Constitution fédérale. À part des dispositions particulières – comme les paragraphes 10, 38 et 38a de la loi sur la défense nationale[44] qui classent les aumôniers parmi le personnel spécialisé dont les obligations militaires ne finissent qu'à l'âge de 65 ans au lieu de 50 ans – les détails de l'aumônerie militaire sont surtout réglés au niveau des décrets du ministre de la défense[45]. Au-delà du soutien pastoral individuel, les aumôniers s'occupent de l'instruction éthique des soldats[46]. Par analogie avec l'enseignement de la religion dans les écoles publiques, les aumôniers enseignent aux adeptes de leur propre religion[47]. L'enseignement est obligatoire pour les soldats qui font leurs classes. Ces soldats peuvent être dispensés au plus tard le jour ouvrable qui précède le commencement de l'enseignement[48].

Actuellement, l'armée autrichienne a créé les aumôneries suivantes[49] :

— catholique (depuis 1955),
— protestante (depuis 1955),
— orthodoxe (depuis 2011),
— musulmane (depuis 2015),
— alévie (depuis 2016) et
— juive (depuis 2017).

Les aumôneries catholique et protestante étaient institutionnalisées dès le rétablissement de l'armée autrichienne en 1955, leurs aumôniers étant incorporés dans la hiérarchie militaire selon la hiérarchie ecclésiastique[50]. Les aumôniers professionnels sont rétribués par l'État. Selon les paragraphes VIII (1 à 3) du Concordat et l'alinéa

43 Potz. *Op. cit.* (note 5) p. 117.

44 *Wehrgesetz* 2001, Bundesgesetzblatt I n.º 146, modifiée en dernier lieu par Bundesgesetzblatt I n.º 65/2015.

45 Wolfgang Wessely. ‹ Die Militärdiözese – eine Grenzgängerin ›. *Spektrum der Rechtswissenschaft* 2012 VuV A, pp. 79-111 (p. 86).

46 Voir par ex. le décret du ministre de la défense n.º 90595/6-Präs/2003, Verordnungsblatt I des BMLV n.º 29/2003 ; cf. Paul G. Nitsche. ‹ Evangelischer Lebenskundlicher Unterricht ›. *Militär & Seelsorge* 10 (2005) passim ; Trauner. *Op. cit.* (note 15) p. 184.

47 Eu égard à l'Église orthodoxe voir Trauner. *Op. cit.* (note 15) p. 192; Synek. *Op. cit.* (note 26) 326.

48 Kalb, Potz, Schinkele. *Op. cit.* (note 2) p. 268 ; Wessely. *Op. cit.* (note 45) pp. 86 sq.;

49 Cf. <http://www.bundesheer.at/organisation/beitraege/mil_seelsorge/start.shtml> [18 août 2016].

50 Cf. Kalb, Potz, Schinkele. *Op. cit.* (note 2) pp. 498 sq. et 561 ; Wessely. *Op. cit.* (note 45) pp. 79-111.

17(3) de la loi sur l'Église protestante, ces derniers ne sont désignés qu'après leur désignation respectivement leur autorisation ecclésiastique[51].

Les aumôniers orthodoxes, musulmans, alévis et juifs[52] n'appartiennent pas à l'armée. Cette différenciation se reflète dans l'ordonnance du ministre de la défense sur l'échelon hiérarchique, qui ne comprend des grades que pour des aumôniers catholiques et protestants[53].

L'aumônerie orthodoxe ayant commencé pour une durée limitée à un an et demi en 2011, a été établie de façon permanente début 2013[54]. Elle trouve sa base légale dans l'alinéa 7(1) de la loi sur l'Église grecque-orientale qui renvoie au paragraphe 17 de la loi sur l'Église protestante. Néanmoins, l'aumônier orthodoxe n'appartient pas à l'armée comme l'aumônier protestant, mais il reçoit une carte d'identité militaire qui lui permet l'accès aux casernes[55]. L'Église orthodoxe n'est indemnisée que par un forfait assez bas par rapport à la situation de l'Église protestante[56].

On peut constater une situation analogue pour les aumôneries musulmane, alévie et juive en dépit des alinéas 11(3) et 18(3) de la loi sur l'islam de 2015 et de l'alinéa 8(3) de la loi sur la Société religieuse israélite, selon lesquels il incombe à l'État fédéré de supporter les dépenses de fonctionnement et les charges salariales. Même avant l'adoption de la nouvelle loi sur l'islam de 2015 et à défaut d'une base légale appropriée, le ministre de la défense a offert deux contrats de prestation de services à la Communauté islamique en 2006[57]. Le premier aumônier imam n'a commencé à exercer qu'en 2015[58].

4. L'aumônerie dans la Police

Longtemps, les règlements sur l'aumônerie ne concernaient pas l'exécutif. Ni le Concordat de 1933, ni la loi sur l'Église protestante n'en tenaient compte[59].

[51] Trauner. *Op. cit.* (note 15) pp. 182 sq.

[52] Voir <http://betreuung.bundesheer.at/pages/viewpage.action?pageId=7930160> [2 janvier 2018].

[53] *Verordnung des Bundesministers für Landesverteidigung über die Dienstgrade der Militärseelsorger*, Bundesgesetzblatt. II n.º 300/2003, modifiée par Bundesgesetzblatt II n.º 194/2006.

[54] Décret du ministre de la défense n.º 590597/6-Präs/2012; Trauner. *Op. cit.* (note 15) p. 192 ; Synek. *Op. cit.* (note 26) pp. 325 sq.; voir <http://www.orthodoxe-kirche.at/site/orthodoxesleben/militaerseelsorge> [18 août 2016].

[55] Trauner. *Op. cit.* (note 15) p. 192.

[56] Trauner. *Op. cit.* (note 15) pp. 191 sq. ; Synek. *Op. cit.* (note 26) p. 326.

[57] Mouddar Khouja. ‹ Europäische Militärseelsorge zwischen Christentum, Islam und Säkularisierung aus der Sicht der Islamischen Glaubensgemeinschaft in Österreich ›. *Militär & Seelsorge* 23 (2008) 31-34; Trauner. *Op. cit.* (note 15) pp. 185 sq.

[58] <http://www.bundesheer.at/cms/artikel.php?ID=7774> [18 août 2016].

[59] Karl W. Schwarz. ‹ Polizeiseelsorge - berufsfeldbezogene Supervision vor dem Hintergrund der Religionsfreiheit Kultusrechtliche Anmerkungen aus österreichischer Perpektive ›, *Österreichisches Archiv für Recht & Religion* 55 (2008) pp. 30-46 (p. 30).

Depuis 1996, l'Église catholique dirige une aumônerie pour la police[60]. Le 12 décembre 2002, le président de la Conférence catholique des évêques a conclu une convention avec le ministre de l'Intérieur sur l'aumônerie pour les organes exécutifs[61]. De façon analogue, le président du Conseil suprême de l'Église protestante a signé une convention le 26 septembre 2006[62]. Mises à part les conventions concordataires, elle était conçue comme le premier contrat entre l'État et une société religieuse[63], inspiré par les propositions de la Convention constitutionnelle de 2004 selon lesquelles les sociétés religieuses reconnues peuvent conclure des contrats sur leurs rapports extérieurs avec l'État[64]. Mais à défaut de délégation légale pour conclure des contrats du droit public[65], le ministre des affaires intérieures a réglé les aspects de puissance publique – par exemple l'accès aux locaux, l'uniforme – dans des décrets. Les conventions ont alors un caractère privé, et non de droit public[66].

À l'opposé des autres aumôneries précitées, l'établissement d'une aumônerie de l'exécutif n'était pas argumenté par la restriction de la liberté de mouvement du personnel[67]. Les contrats ont plutôt donné des raisons différentes, comme la charge spécifique des agents de police, la violence omniprésente et les complications pour la vie familiale et les relations sociales[68]. Les aumôniers ne sont pas des fonctionnaires du ministère[69], les Églises ne sont pas indemnisées non plus[70].

Eu égard au personnel, l'aumônerie de la police est liée à l'aumônerie militaire. Dans l'Église catholique, c'est l'évêque militaire qui est compétent pour l'aumônerie de la police[71] ; dans l'Église protestante, plusieurs aumôniers de police sont en même temps aumôniers militaires[72].

[60] Voir le décret du ministre des affaires intérieures n.º 50.890/3-II/3/95 du 17 novembre 1995 ; Schwarz. *Op. cit.* (note 59) p. 42.

[61] Schwarz. *Op. cit.* (note 59) pp. 34 sq.

[62] Schwarz. *Op. cit.* (note 59) pp. 35 et 40 sq ; Kneucker. *Op. cit.* (note 1) pp. 323 sq.

[63] Schwarz. *Op. cit.* (note 59) pp. 33 sq.

[64] Herbert Kalb, Richard Potz, Brigitte Schinkele. ‹ Religions- und Weltanschauungsfreiheit im aktuellen österreichischen Verfassungsdiskurs ›, *Österreichisches Archiv für Recht & Religion* 52 (2005) pp. 1-21 (pp. 12 sq.).

[65] De même avis Kneucker. *Op. cit.* (note 1) pp. 306.

[66] Cf. Trauner. *Op. cit.* (note 15) pp. 189 sq. ; avis contraire Schwarz. *Op. cit.* (note 59) pp. 34 ; Kneucker. *Op. cit.* (note 1) pp. 304 sq.

[67] Schwarz. *Op. cit.* (note 59) pp. 35 sq.

[68] Schwarz. *Op. cit.* (note 59) p. 36 ; Kneucker. *Op. cit.* (note 1) pp. 304.

[69] Trauner. *Op. cit.* (note 15) pp. 190 sq.

[70] Trauner. *Op. cit.* (note 15) p. 191.

[71] Cf. <http://www.bischofskonferenz.at/ueberuns/zustaendigkeiten> [18 août 2016].

[72] Trauner. *Op. cit.* (note 15) pp. 187 sq. ; voir <http://www.polizeiseelsorge.at/>, <http://www.erzdioezese-wien.at/polizei>, <https://evang.at/adressen/evangelische-polizeiseelsorge/> [tous 18 août 2016].

5. La formation du personnel

La formation et la qualification nécessaire des aumôniers sont peu réglementées. On peut en trouver des dispositions dans la loi sur l'islam de 2015. L'alinéa 11(2) *leg. cit.* exige des aumôniers appartenant à la Communauté religieuse islamique[73] une aptitude professionnelle et personnelle. L'aptitude professionnelle requiert un diplôme d'études de théologie musulmane universitaire ou une qualification analogue. L'aptitude personnelle requiert que la personne vive essentiellement en Autriche, ait travaillé dans un métier s'y rapportant pendant au moins trois ans et parle allemand au niveau du baccalauréat. En outre, il faut toujours une autorisation de la société religieuse.

L'alinéa 18(2) *leg. cit.* prévoit des dispositions analogues pour les aumôniers de la Communauté religieuse alévie[74] en soulignant que ce soient des *dedes*[75], des *babas*[76] et des *anas* qui soient considérés comme qualifiés en particulier.

Ces dispositions s'appliquent à toutes les catégories d'aumônier précitées.

D'autres règlements concernant la formation des aumôniers ont un caractère interne, comme la directive précitée pour le groupe de travail pour l'aumônerie protestante d'hôpital.

[73] *Islamische Glaubensgemeinschaft in Österreich.*

[74] *Islamische Alevitische Glaubensgemeinschaft in Österreich.*

[75] Cf. Markus Dressler, ‹ Dede ›, in Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson (éd.), *Encyclopaedia of Islam,* Brill, Leiden ³2012, <http://dx.doi.org/10.1163/1573-3912_ei3_COM_25960> [21 décembre 2016].

[76] Michael R.Hess, ‹ Baba ›, in Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson (éd.), *Encyclopaedia of Islam,* Brill, Leiden ³2014 <http://dx.doi.org/10.1163/1573-3912_ei3_COM_25077> [21 décembre 2016].

RELIGIOUS ASSISTANCE IN INSTITUTIONS: BELGIUM

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General[1]

Belgium is a federal state, which - aside from the federal level - comprises three communities (the Flemish Community, the French-speaking Community, and the German-speaking Community), three regions (the Brussels-Capital Region (Brussels), the Flemish Region (Flanders), and the Walloon Region (Wallonia)), and four language areas (the Dutch language area, the French language area, the German language area, and the bilingual Brussels-Capital area). All these different federated entities are competent, in one way or another, for matters pertaining to «religion and belief». Chaplaincy issues, however, are predominantly federal and community matters.

Furthermore, Belgium has a system of recognised religions. Presently, Belgium recognises and subsidises six religions and one non-religious belief: Roman Ca-

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[1] On the Belgian system in general, see: R. Torfs & J. Vrielink, «Law and religion in Belgium», in G. Robbers & W.C. Durham (eds.), *Encyclopedia of Law and Religion*, Brill, 2016, 1-25 (forthcoming); L.-L. Christians & A. Overbeeke, «Religious Rules and Principles in Belgian Law» in R. Bottoni, R. Cristofori & S. Ferrari (eds.), *Religious Rules, State Law, and Normative Pluralism - A Comparative Overview*, (Ius Comparatum - Global Studies in Comparative Law; 18), Berlin, Springer, 2016, 91-115; P. Loobuyck & R. Torfs, «Religion in Belgium», in *World and Its Peoples - Europe - Volume 4 Belgium, Luxembourg, Netherlands*, Cavendish, New York, 2009; J. Velaers & M.-C. Foblets, «Religion and the State in Belgian Law», J. Martínez-Torron & C. Durham (eds.), *Religion and the Secular State. La religion et l'Etat laïque*, Washington/Madrid, Brigham Young University/Complutense University of Madrid (Fac. of Law), 2014, 99-122.

tholicism, Protestantism, Judaism, Anglicanism, Islam, Orthodoxy and the secular humanist movement (or organised *laïcité*)[2].

1. Historical and Sociological Approach

To a large extent, the development of the chaplaincy in Belgium mirrors the religious development that the country as a whole has undergone, from a predominantly Roman Catholic country[3] to one characterised by diversity in religions and non-religious beliefs.

Ever since the 1960s, the combined forces of secularisation and immigration have drastically altered the country's initial Catholic predominance: the number of Catholics has steadily decreased, and church attendance has entered into a free-fall, while the number of non-believers has increased, as has the presence of «new» religions due to migration patterns.

These broader religious developments in terms of demographics have (passively) affected the populations relevant for chaplaincies. Relatedly, developments in the chaplaincies are also reflective of more active emancipation processes of both religious minorities and secular humanists[4]: virtually all present-day regulations have been marked by the struggle for equal treatment for non-Catholic communities.

With one exception (i.e. the migrant chaplaincy)[5] all chaplaincies are firmly embedded within the Belgian model of recognised religions and beliefs (*supra* «general»). This causes a host of problems for adherents of «unrecognised» religions and beliefs[6], often resulting in them being unable to invoke state-funded religious or spiritual assistance in many contexts. In other words, despite the increasing pluralisation and drive for equality *among* recognised religions and beliefs vis-à-vis chaplaincies, sizeable religious groups amongst which a demand for religious assistance

[2] Since the turn of the century, a union of Buddhist organisations has been seeking recognition as well. Though this request has not resulted in formal recognition yet, things are progressing in that direction. The Belgian state is already providing funding to the Buddhist applicants in order to enable them to fulfil the structural requirements for recognition.

[3] In the National Census of 1846, for instance, no less than 99% of the population registered their religious adherence as Roman Catholic (P. Loobuyck & R. Torfs, «Religion in Belgium», in *World and Its Peoples - Europe - Volume 4 Belgium, Luxembourg, Netherlands*, Tarrytown (NY), Marshall Cavendish, 2010).

[4] See J-F. Husson & J. Mahiels, «Le financement des cultes reconnus et des organisations laïques en Belgique», in B. Basdevant-Gaudemet & S. Berlingò (eds.), *The Financing of Religious Communities in the European Union*, Leuven, Peeters, 2009, 97-110.

[5] See § 4.4.

[6] On religion rights of «unrecognised» religion: A. Overbeeke, «Godsdienstrechten van aanhangers van niet-erkende erediensten» in E. Brems & R. Stokx (eds.), *Recht en minderheden. De ene diversiteit is de andere niet*, Bruges, die Keure, 2006, 135-149.

exists in many contexts[7] remain excluded from the system altogether (e.g. Buddhists; Hindus; Sikhs and Jehovah's Witnesses).

The latter is partially compensated by voluntary forms of spiritual assistance, outside of the financed chaplaincy system(s) (e.g. in prisons and in hospitals). However, for reasons of space and coherence, this chapter mainly focuses on the chaplaincies that are set up or actively facilitated by government(s)[8].

2. National Regulation of the Chaplaincy and Definition of Chaplaincy Services

The Belgian system provides space and opportunities for (government-funded) chaplaincies, even though the Constitution does not contain specific provisions that address the issue. The Constitution establishes freedom of (and from) religion and religious autonomy (articles 19, 20 and 21 Belgian Constitution), while also guaranteeing government-funded religious assistance in a general sense (article 181 Constitution).

The latter article provides for government funding of ministers of religion and representatives of non-denominational beliefs. The provision thereby renders spiritual care for the population a subject of governmental concern; at least under «normal» circumstances. Also providing care in «extraordinary» circumstances is seen to be in line with this starting point, especially in cases where the extraordinary circumstances are brought about by the agency of government authorities themselves. That the relationship between the general financing of ministers of religion on the one hand and that of the chaplaincy on the other hand is a close one, was demonstrated in the period 1881-1889. During that time the army chaplaincy was (temporarily) included in the general financing system for ministers of religion, based on article 181 of the Constitution[9].

Generally speaking, there is currently a wide variety of regulatory systems covering chaplaincies in different contexts, and historically these came about in a multitude of ways. Despite the lack of a single definition, let alone consistent legal arrangements for all chaplaincies (see below), it is nonetheless possible to discern a general, underlying pattern.

[7] Conversely, it is sometimes striking that recognised religious communities «automatically» obtain several chaplains, even in contexts in which there is a lack of demand (based on empirical needs assessments), e.g. the Anglican Church, Judaism and secular humanism in prisons: *infra* § 4.3.

[8] Which is not to say that private or (other) non-governmental chaplaincies are not interesting from a research point of view: see *infra* § 6.

[9] In 1881 army chaplains became subsumed under the department of religious services within the Ministry of Justice, a situation that was discontinued only in 1889. See Royal Decree 9 April 1881, *Moniteur belge* 19 November 1881. On the parallels between «regular» ministers of religions and army chaplains, see also: Supreme Court (*Cour de Cassation*) 23 november 1957.

When it comes to individuals that are entrusted (or involuntarily subjected) to its care, the government has a duty to provide facilities for spiritual care. This principle governs all forms of chaplaincies in closed institutions (prison, youth care, and psychiatric institutions). This duty is moreover seen to imply that adherents of all religions and beliefs (that is to say: including non-recognised ones) have equivalent claims to spiritual care in these circumstances. In other words, providing religious assistance in the form of chaplaincies is, under certain circumstances, regarded as an integral part of the state's positive obligations in relation to the freedom of religion; that of inmates in particular[10].

Additionally, the *negative* dimension of the freedom of religion merits attention as well, especially in the context of closed institutions. The individual right to religious liberty also entails an individual's right to remain free from religious or spiritual care. This aspect used to be of paramount importance in the 19th century for religious minorities, in order to be protected against Roman Catholic (numerical and institutional) dominance at the time[11]. Presently, it is once again becoming salient, with the government's active involvement in countering religious (that is: Islamic) radicalism. Two risks relevant to the negative dimension of the freedom of religion can be discerned in this regard:

1. the risk that the government itself (over)actively associates with and starts «enforcing» a particular religious ideology (that it deems acceptable or desirable);
2. the risk that the government does too little in order to protect individuals against unwanted proselytising engaged in by other (private) individuals[12].

Finally, internal Belgian regulations concerning chaplaincies are affected by the minimum obligations arising from article 9 of the European Convention on Human Rights (ECHR), as elaborated by case law from the Strasbourg Court. One can - in certain contexts - also discern influences from non-binding international commitments (soft law)[13], or even from agreements made as part of bilateral treaties (*infra* § 4.3)[14].

[10] See G. Smaers, *Gedetineerden en mensenrechten*, Antwerp, Maklu, 279.

[11] At the time, spiritual aid in prisons was generally the exclusive domain of Roman Catholic chaplains.

[12] See *infra* § 4.3.

[13] See e.g., where it concerns the prison chaplaincy, the *European Prison Rules 2006*

[14] See the 2009 convention between the Netherlands and Belgium on Belgian prisoners whose sentence is carried out in the Netherlands, due to a decision by the Belgian government to contract out a prison in Tilburg: *Convention 31 octobre 2009 entre le Royaume des Pays-Bas et le Royaume de Belgique sur la mise à disposition d'un établissement pénitentiaire aux Pays-Bas en vue de l'exécution de peines privatives de liberté infligées en vertu de condamnations belges* (Tilburg), *Tractatenblad* 2009, no. 202.

3. Organisation of Chaplaincies by the State

When organising chaplaincies, the Belgian State respects (or tries to respect) the constitutional principle of the separation of church and state. Traditionally, ever since the country's founding in 1830, this principle has been construed to imply that the government may not (pre)select religious ministers: the autonomous choice by the religious communities themselves is considered decisive (article 21 Constitution)[15].

However, with regard to chaplains the picture that emerges is somewhat more complicated. While organisational autonomy must be respected vis-à-vis selection of chaplains as well, this principle is supplemented with the competing assumption that the State can place its own, additional requirements on supporting or providing chaplaincies in government institutions wherein specific conditions may apply that have repercussions for the (un)desired profile of staff members. This is especially salient for chaplaincies in the sphere of the armed forces and in prisons. In those contexts one can speak of a double or cumulative authorisation[16]. A chaplain wishing to work (or keep working) in those institutions must obtain a «green light» twice: first from his religious community and secondly from the relevant State authorities. Case law accepts that a chaplain's failure to comply with (reasonable) conditions and obligations imposed by the State constitutes grounds for dismissal (or non-recruitment)[17]. Chaplains in the armed forces and in prisons are, as such, subjected to a dual supervision, within which each of the supervising authorities ought to respect the purview of the other one's decision.

The training of chaplains is first and foremost the responsibility of the religious authorities (or representative bodies); at least where it concerns pastoral-psychological and theological/doctrinal issues. Generally speaking there are no legal obligations or requirements in place, in this regard. However, it is worth noting that government intervention, specifically vis-à-vis Islamic prison chaplaincy, has significantly increased since 2015/2016, and this includes interference with the training of Islamic

[15] Council of State 16 February 2011, no. 211.300, *Toubali*: «due to the constitutional principle of the separation of Church and State and due to article 21 of the Constitution [concerning organisational autonomy of religions], neither the Minister of Justice nor the Council of State is authorised to assess the reasons why a religious institution revokes its confidence in one of its representatives» (transl. of: «*dat het ten aanzien van het grondwettelijk beginsel van de scheiding van Kerk en Staat en van artikel 21 van de Grondwet, noch de minister van Justitie noch de Raad van State toekomt de redenen te toetsen waarom een religieus orgaan zijn vertrouwen in een van zijn vertegenwoordigers opzegt*»).

[16] Compare: Council of State 10 May 2004, no. 131175, *Debree*, 3.3.5.2.

[17] *Ibid*., 3.3.5.4.

prison chaplains (only)[18]. This exceptional position is associated with anti-radicalisation policies developed by the Belgian government[19].

4. Chaplaincy in Public Institutions

This section firstly deals with the three main chaplaincies in public institutions, i.e. those in the military (§ 4.1), in health care institutions (§ 4.2) and in prison facilities (§ 4.3). These three chaplaincies have in common that they either concern institutions in which individuals stay involuntarily (prison and hospitals) or in which they have no or restricted access to regular spiritual care (the armed forces). In those cases, the aforementioned positive obligations are especially salient (supra § 2)[20]. Afterwards, chaplaincies in other public institutions are addressed (§ 4.4).

4.1. Chaplaincy in the Armed Forces

A military chaplaincy has existed within the Belgian army since the country's founding[21]. Until 1914 its corps consisted exclusively of Roman Catholic clerics. The First World War (and the effects of the accompanying mass-drafting) ensured that the religious diversity that had started to characterise the country in the meantime was also reflected in the army. This quickly led to the admission of spiritual care workers for Protestant and Jewish soldiers and, ultimately, to the establishment of a religiously pluralistic model of spiritual care[22]. This broadened «supply» was not only a solution for the need for spiritual care of non-Catholic soldiers, but it was also

[18] Royal Decree 9 December 2015 (tot toekenning van een subsidie van 96.000 euro voor de opleiding van de imams en de islamitische consulenten in de gevangenissen), *Moniteur belge* 21 December 2015. The government did, previously, in close collaboration with the Interfaith council of competent authorities for religious and non-denominational moral assistance in prisons (Interlevensbeschouwelijke Raad van Bevoegde Instanties inzake de religieuze en niet-confessionele morele bijstand in de gevangenissen or ILRG: see infra § 7), develop a short four-day course aimed at all chaplaincies. See Annual Report 2014 of the Directorate General of correctional facilities (Jaarverslag 2014 Directoraat-generaal Penitentiaire Inrichtingen), Brussels, Federal Department of Justice 2015, 31.

[19] Cf. the federal government's action plan against radicalisation in prisons: *Plan d'action contre la radicalisation dans les prisons*, 2015, 16-17.

[20] This is most pronounced in the case of institutions or situations in which the adherent's freedom of movement is most limited (respectively: in prisons or vis-à-vis certain individuals in hospitals or on military assignments abroad).

[21] Additionally, the state police (*Rijkswacht*), a militarised national police corps, had its own chaplaincy up until 1 January 1997. Eventually its chaplaincy was integrated into the army chaplaincy. See *Parliamentary Documents*, Senate 1996-97, 28 November 1996, 2029.

[22] See inter alia Ministerial Decree 7 August (waarbij aan de bedienaars der verschillende erkende eerediensten vrije toegang tot de zieken en gekwetsten verleend wordt), *Moniteur belge* 8 August 1914; Royal Decree 17 August 1927 (réglant l'état et la position des aumôniers militaires), *Moniteur belge* 1 September 1927.

experienced as a special form of recognition (integration) for the minority religions involved. In that respect, it can be seen as a step towards the emancipation of these minorities that went beyond the «mere» financing of their regular ministers (based on article 181 Constitution).

The fact that participation in the spiritual assistance system of the military apparatus is considered an important (symbolic) step towards equal treatment of religious groups and non-denominational communities was also illustrated at the end of the 20th century by the Belgian secular humanist movement. Only after much prolonged insistence - with the first legislative proposals dating back to 1980 - was space created within the army chaplaincy for secular humanist spiritual care in 1991[23].

With few exceptions[24] important questions pertaining to legal status have not presented themselves within the context of the Belgian chaplaincies, and such had long been the case for the army chaplaincy as well. However, the introduction of secular humanist counsellors within the system, based on specific legislation, resulted in two divergent salary schemes, in which the new humanist corps enjoyed a significantly more advantageous salary than their Catholic, Protestant and Jewish colleagues. This state of affairs was ruled to be discriminatory by the highest administrative court (Council of State)[25], which in 2010 resulted in all military chaplains being granted the same (equally beneficial) financial status[26].

The size of the military chaplaincy is closely linked to the actual need or demand for spiritual care. This means, for instance, that the number of military chaplains has shrunk significantly since the end of the Cold War and after the abolition of conscription[27]. In 2015, 16 chaplains remained, who are organised into a Department of Religious and Moral Assistance. Of these 16 chaplains, 13 are Catholic, two are Protestant and one is Jewish. In addition the military employs six secular humanist counsellors[28].

[23] Act of 18 February 1991 (betreffende de morele consulenten bij de Krijgsmacht, die tot de niet-confessionele Gemeenschap van België behoren), *Moniteur belge* 7 March 1991.

[24] The transfer, in 1881, of the (at the time still homogeneously Roman Catholic) military chaplaincy (*supra*) to the Ministry of Justice had long been the sole exception.

[25] Council of State, 15 March 2010, nr. 201.858, *Castelein.*

[26] Art. 7 and 8 Royal Decree of 18 April 2010 (tot wijziging van verschillende koninklijke besluiten van toepassing op de militaire aalmoezeniers en de morele consulenten bij de Krijgsmacht), *Moniteur belge* 20 May 2010. The central body of the secular humanist movement filed an annulment request against the new arrangement, but eventually withdrew from the proceedings: Council of State, 14 March 2011, no. 211.791, Centrale raad der niet-confessionele levensbeschouwelijke gemeenschapppen van België (deed of waiver).

[27] In 1994 conscription was suspended. In 2004 it was formally abolished.

[28] *Parliamentary Documents* Chamber 2014-2015, Chamber commission for national defence, 27 May 2015, no. COM 182, 13 (Defence Minister Vandeput).

Islamic or Orthodox spiritual care is not provided within the armed forces. Plans for introducing a Muslim chaplain have been around since 2008, but so far without result[29]. The government attributes this to the lack of a valid Islamic interlocutor, able to legitimately nominate a chaplain[30].

4.2. **Chaplaincy in Hospitals**

Since Belgian independence the government has, in one way or another, supported and enabled chaplaincies in hospitals (for private nursing homes, see *infra* § 6).

Spiritual and moral assistance in general hospitals is presently governed by a Royal Decree from 1964[31]. The decree obliged hospitals to grant access to ministers of religion at the patient's request. In 1970 the decree was amended to provide the same access rights to secular humanist counsellors[32]. Presently, the relevant provision reads as follows:

> «Ministers of religion and lay counsellors [*secular humanist counsellors*] will be granted unrestricted access to the facilities; they must be met with the appropriate atmosphere and facilities for the performance of their duties. Full freedom of belief, religion, and political conviction must be guaranteed to everyone» (annex B, III, 5 Royal Decree 7 November 1964).

A circular from 1973 (amended and reaffirmed in 1997) served to further clarify and elaborate this provision[33]. The document specifies that the individual freedom of the patient must be respected as much as possible, and that moral, religious or philosophical assistance under the best conditions by an expert of his choice ought to be facilitated. In practice, patients are informed of their rights after checking into a hospital, and they are presented with the (non-obligatory) option of filling out a form specifying their wishes in this regard[34]. They may also express (or change)

[29] *Ibid*., 13.

[30] Ibid. The government moreover denies that its ambition for religious expansion is driven by a fear of radicalisation: «La mission de l'assistance religieuse et morale consiste à assurer les cultes et à fournir l'assistance morale et religieuse nécessaire au personnel qui le demande. La Défense dispose d'autres services chargés de la sécurité et de la lutte contre la radicalisation» (compare, in this regard, the situation in penitentiaries: § 4.3).

[31] Royal Decree of 23 October 1964 (tot bepaling van de normen die door de ziekenhuizen en hun diensten moeten worden nageleefd), *Moniteur belge* 7 November 1964 (latest amendment: 8 August 2014).

[32] Royal Decree 12 January 1970, *Moniteur belge* 7 January 1972.

[33] Circular of 5 April 1973. In 1971 an earlier circular had already been issued, but the arrangement established therein encountered fierce resistance in Catholic institutions in particular, and it was abrogated on 13 March 1972. See also the circulars of 5 April 1974, 12 February 1987 and 13 March 1997, elaborating on and/or amending the one from 1973.

[34] Point 1 Circular of 5 April 1973. See also *Parliamentary questions and answers*, Senate, 2000-2001, 5 December 2000, 1127 (question no. 864 De Schamphelaere).

their wishes at any given time, later on, and the hospital must inform the religious or spiritual representatives of these wishes as soon as possible[35]. All requests and information must be treated confidentially[36].

The persons providing (subsidised) religious and moral support in this context are appointed by the recognised religions and beliefs; patients may in no way be charged for their services. For the Roman Catholic religion not only do priests fulfil these tasks, but mandated laypersons as well (with the exception of administering sacraments)[37]. Patients may also request representatives from non-recognised religions, although they do not receive government remuneration[38].

The religious and moral representatives may visit the patients at any desired time and without being subject to time limits[39]. However, they are obliged to abstain from visiting patients that have opted for religious or spiritual assistance from another denomination or patients that have expressed their wish not to receive any assistance whatsoever[40]. The representatives are also bound to professional secrecy.

With regard to psychiatric hospitals, the same arrangements are applicable. In that context additional norms also apply, however, due to the specific nature and conditions of psychiatric patients, which may require added caution. Accordingly, and under threat of criminal sanctions[41], the Act of 1990 concerning the protection of the mentally ill states that «every mentally ill person must be treated with full respect for his freedom of opinion, his religious and philosophical beliefs, in such a manner that his physical and mental health, his social and familial contacts as well as his cultural development are encouraged» (art. 31 § 1)[42].

[35] Point 6 Circular of 5 April 1973. A number of shortcomings both in the circular itself and in its implementation can be identified. See *inter alia*: Proposition of resolution concerning religious, philosophical and moral assistance within hospital care, *Parliamentary Documents* 2006-2007, no. 51-2709/1, 4-6.

[36] Point 1 (*in fine*) Circular of 5 April 1973. Due to privacy considerations the circular also expressly prohibits asking patients (either using a form or in person) about their religious adherence. See *inter alia* Circular 5 April 1974 (addressing the fact that a number of hospitals were not respecting this principle).

[37] These individuals are granted the same rights as (other) representatives by point 2 of the Circular of 5 April 1973.

[38] Implicitly: point 7 Circular of 5 April 1973. See also *Parliamentary questions and answers*, Chamber, 1972-1973, 26 June 1973, 1732 (question no. 150 Van Damme). See P. De Pooter, *De rechtspositie van erkende erediensten en levensbeschouwingen in Staat en maatschappij*, Brussels, Larcier, 2003, 467.

[39] Point 4 Circular of 5 April 1973.

[40] Ibid.

[41] Art. 37 Act of 26 June 1990 concerning the protection of the mentally ill person, *Moniteur belge* 27 July 1990 (latest amendment 9 July 2014).

[42] Transl. of: «Iedere geesteszieke wordt behandeld met eerbiediging van zijn vrijheid van mening, van zijn godsdienstige en filosofische overtuiging en op zulke wijze dat zijn lichamelijke en

Finally, in the context of nursing and rest homes, similar principles hold concerning the freedom of choice for inhabitants and the right of entry for religious and moral representatives[43]. An important difference is that the relevant regulations do not provide for government funding to pay for chaplains and moral counsellors in this context[44].

4.3. **Chaplaincy in Penitentiaries**

Much like the previously discussed chaplaincies, the prison chaplaincy has a long tradition and it has long been the exclusive domain of the Roman Catholic Church. Until the beginning of the 21st century virtually the entire staff consisted of Roman Catholic chaplains, with the exception of one single Protestant chaplain. Other religions and beliefs provided services on a voluntary basis, which took on an ever-increasing scale. Partly for this reason, the system was a controversial one: it was widely considered discriminatory by virtue of its clinging to historical (and outdated) proportions. The arrangement was fundamentally revised in 2005[45]. At the time the government attempted, for the first time ever, to base staff allocation on an empirical needs assessment.

Since 2005, the size and composition of the prison chaplaincy has been *somewhat* more proportionate to actual needs and demands, with Anglican, Islamic[46], Orthodox, Jewish and secular humanist spiritual care being introduced. However, the relative numbers of prison chaplains are still by no means proportionate to the contextual needs assessment within the context of prison facilities (see table 1). The secular

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geestelijke gezondheid, zijn sociale en gezinscontacten alsmede zijn culturele ontplooiing in de hand worden gewerkt». On a side-note, the Act also contains this noteworthy provision (art. 2, section 2 Act of 26 June 1990): «Maladjustment to moral, social, religious, political or other values may not in itself be considered a mental illness» (transl. of: «De onaangepastheid aan de zedelijke, maatschappelijke, religieuze, politieke of andere waarden mag op zichzelf niet als een geestesziekte worden beschouwd»).

43 See art. N1, 4, e; art. N1 (Walloon region), 4, e; art. N1 (Brussels capital region), 4, e; art. N1, 4, e (Flemish region) Royal Decree of 21 September 2004 (*houdende vaststelling van de normen voor de bijzondere erkenning als rust- en verzorgingstehuis, als centrum voor dagverzorging of als centrum voor niet aangeboren hersenletsels*), *Moniteur belge* 10 April 2014 (latest amendment 12 January 2016). Similar requirements were previously set out in the Royal Decree of 2 December 1982 (abrogated by art. 7 of the aforementioned Royal Decree of 2004). See also, specifically for the Walloon region, the Decree of 5 June 1997 (*betreffende de rustoorden, de serviceflats en de dagcentra voor bejaarden (...)*), *Moniteur belge* 26 June 1997 (art. 5 § 2, 9º, a and c).

44 See «Wettelijk kader», *Pastoralezorg.be*.

45 See A. Overbeeke, «God achter de tralies. Vrijheid van godsdienst en levensovertuiging in detentiesituaties» in E. Brems *et al.* (eds.), *Vrijheden en vrijheidsbeneming. Mensenrechten van gedetineerden*, Antwerp, Intersentia, 2005, 125-150.

46 See J. Debeer, P. Loobuyck & P. Meier, *Imams en islamconsulenten in Vlaanderen: Hoe zijn ze georganiseerd?* (report), Antwerp, Steunpunt Gelijkekansenbeleid, 2011, 75 p.

humanists, for instance, would have had only a limited presence in this sector (1.6%) based on the assessment. Still, in 2005 they were granted 9 representatives out of total of 65 positions at the time, which roughly amounts to 14% of the corps[47].

Since 2005, the number of personnel has steadily increased, rendering this form of spiritual care in public institutions the most important one, numerically speaking.

In 2015 it was estimated that over 35% of detainees were Muslim[48]. This numerical development coupled with the fear that Muslims in detention situations are liable to radicalise[49], led to an important (or historic, even) change in the corps' composition: in 2016 the Islamic prison chaplaincy became larger than the previously dominant Roman Catholic chaplaincy (see table 1)[50].

Table 1: Prison Chaplaincies

Prison chaplaincies	*Until 2005*	*2005*	*2016*	*Needs assessment (2001)*
Catholic	40	25	25	53.8%
Protestant	1	6	9.4	9.2%
Anglican	—	1	2	0.1%
Orthodox	—	4	5	3.5%
Jewish	—	2	2	0.3%
Islamic	—	18	27	31.4%
Humanist	—	9	9	1.6%
Total	41	65	78.4	100% (99.9%)

Spiritual care for inmates is also taken up by others than the chaplains from recognised religions: non-recognised religions and beliefs may also provide some form of spiritual guidance in prisons (albeit unpaid and under restrictive conditions). The legislation that was enacted in 2005 even contained a specific provision guaranteeing their rights, but it was removed again in 2006. This significantly weakened the position of *inter alia* Buddhists, Hindus and Jehovah's Witnesses[51].

[47] See Royal Decree 25 October 2005 (houdende vaststelling van het kader van de aalmoezeniers en de islamconsulenten van de erkende erediensten en van de moreel consulenten van de Centrale Vrijzinnige Raad der niet confessionele levensbeschouwing bij de Strafinrichtingen, zomede tot vaststelling van hun weddeschalen), *Moniteur belge* 10 November 2005.

[48] Minister of Justice, K. Geens in: A. Erkul, «Radicalisering is een soort ziekte», *De Morgen* 14 March 2015.

[49] On this issue see J. Vrielink, «Radicalisme en de rechtsstaat. Strafrechtelijke en penitentiaire bestrijding van terrorisme en (moslim)extremisme in België na de aanslag op Charlie Hebdo», RIMO, *Jihad, islam en recht. Jihadisme en reacties vanuit het Nederlandse en Belgische recht*, Den Haag, BJU, 2016.

[50] Royal Decree 10 April 2016 (tot wijziging van het koninklijk besluit van 25 oktober 2005), *Moniteur belge* 19 April 2016.

[51] See A. Overbeeke, «Veiligheid voor alles? Inperking van het recht op geestelijke verzorging van gedetineerde aanhangers van niet-erkende levensovertuigingen», *Panopticon* 2007, 28(4), 23-40.

Oddly enough the latter (deteriorated) state of affairs applies much less to Belgian prisoners who have been placed in a prison in the Netherlands, due to a decision by the Belgian government to contract out a prison in Tilburg (because of overcrowding in Belgian prisons). On the basis of bilateral treaty agreements between Belgium and the Netherlands[52], the Dutch system for spiritual aid is applied to these prisoners, and this includes Buddhist and Hindu spiritual care provided by chaplains.

4.4. **Chaplaincy in Other Public Institutions**

The post-World War II arrival of migrant workers soon led to the establishment of state-funded «migrant chaplaincies»[53]. In retrospect these chaplaincies can be regarded as early harbingers of the formal recognition of the religions of these newly-arrived migrants under the system of article 181 of the Constitution, in 1974 (Islam) and 1985 (Orthodoxy), respectively.

The migrant chaplaincies differed from other forms of chaplaincies in that they were explicitly open to (at the time and/or still) unrecognised religions[54]. The system was even characterised by a form of positive discrimination vis-à-vis un-recognised religions: in order to receive funding, chaplains of unrecognised religions had to meet lower requirements concerning the numbers of adherents they had to reach than did chaplains of recognised religions (i.e. 1000 versus 5000)[55]. Since the competence for this issue was transferred, due to devolution, to the communities (cf. *supra* «general») the situation in Flanders has legally remained as it previously was; however, since the year 2000 the government no longer provides a budget for migrant chaplains (resulting in a *de facto* abolishment)[56]. The French community replaced the former arrangement in 1983 (and 1984); since then only recognised religions and beliefs could receive funding[57].

[52] *Supra*, footnote 15.

[53] Royal Decree 10 July 1952 (tot vaststelling van de vergoeding verleend aan de aalmoezeniers van de in België werkende vreemde arbeiders), *Moniteur belge* 14-15 July 1952. By Royal Decree of 11 May 1971 (*Moniteur belge* 22 May 1971) the aforementioned Decree was supplemented with an arrangement concerning secular humanist counsellors.

[54] Art. 3 Royal Decree 10 July 1952.

[55] *Ibid*.

[56] *Parliamentary questions and answers*, 1999-2000, 2 June 2000 (question no. 132, Ludwig Caluwé), 1397. The considerations that the government referred to for cutting the budget were as follows: 1. the changed legal and policy context: «current legislation is aimed at participation, emancipation, reception of newcomers, refugees and travelling people»; 2. the fact that self-run organisations of migrants and ethnic minorities are recognised and subsidised; 3. The (operational) recognition of Islam, and its associated funding on the basis of art. 181 Constitution.

[57] Executive Decision of 11 March 1983 (*Moniteur belge*, 7 May 1984), amended by the decision of 5 March 1984 (*Moniteur belge*, 22 June 1984). The French community subsequently transferred this

A Belgian peculiarity was the phenomenon of the chaplaincy for offshore fishermen[58]. Formally instituted in 1886, it long remained the only chaplaincy (with one chaplain) reserved for a single religion: Roman Catholicism. Eventually a second secular humanist counsellor was added. This expansion took place *ad hoc*, without being based on objective distribution criteria. In October of 2014 the Roman Catholic chaplain was forced to retire[59], without being replaced[60]; he did remain active on a voluntary basis after his pension.

Finally, we can refer to the airport chaplaincy (Zaventem), which was originally organised under the Authority of the Airways (*Regie der Luchtwegen*), a central government agency[61]. This chaplaincy was developed prior to the privatisation of the national airport. Presently it consists of a corps of four chaplains (Roman Catholic, Protestant, Orthodox and Jewish) and one humanist counsellor[62]. An Islamic airport chaplain was never introduced. Following the privatisation of the airport, public funding disappeared, though the religious communities themselves still provide religious assistance in this context.

5. State Chaplaincy and Islam and Other «New» Religions

It can already be concluded from the preceding sections that the presence (and perception) of Islam plays a central role in maintaining or even expanding certain chaplaincies. For instance, due to the numerically significant presence of Muslims in prisons - and since this presence is regarded as problematic due to (perceived) risks of radicalisation - since 2016 the Islamic chaplaincy has even outgrown the historically dominant Roman Catholic chaplaincy in that context (*supra* § 4.3).

Attention for other «new» religions is almost negligible, due to the strongly «problem-driven» nature of contemporary Belgian chaplaincy policies: religions that are not perceived as a problem and/or that are not associated with a potential threat

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matter to the Walloon region and the French Community Commission (COCOF). The latter abolished the French Community's decisions by decree of 13 May 2004 (*Moniteur belge* 23 March 2005).

58 Royal Decree 28 November 2002 (tot vaststelling van het statuut en de bezoldigingsregeling van de aalmoezenier en de morele consulent bij de Dienst Zeevisserij van het Ministerie van Middenstand en Landbouw), *Moniteur belge* 19 December 2002.

59 M. Vanhinsberg, «Aalmoezenier Dirk Demaeght (65) gaat vandaag met pensioen», *Het Laatste Nieuws*, 1 October 2014.

60 It had already been decided in 2005 that the government was no longer under the obligation to appoint and pay for a chaplain in this context, but the agreement also entailed that the serving chaplain could remain in place until his retirement.

61 The current «Belgocontrol».

62 Remuneration was established by Royal Decree of 27 March 1998. The staff formation was determined by the Royal Decrees of 17 June 1997 and 26 May 1998. See: *Parliamentary questions and answers*, Senate 2000-2001, 9 January 2001, 1301 (question no. 849 De Schamphelaere). Answer provided by the Minister of Telecommunication and Public Enterprises.

will lack policy attention, and will thereby (paradoxically) be in a weaker position when it comes to (state-funded) spiritual care[63]. From a perspective of the religious freedom of the individual prisoner this seems problematic.

The developments within the prison chaplaincy are also indicative of another (related) development. Whereas the initial aim of the chaplaincy consisted of accommodating the religious needs of detainees[64], the 21st century policy perspective is fundamentally different: presently, the chaplaincy is viewed through the prism of the security agenda and, as such, it serves an entirely different purpose than that of ensuring individual religious liberty. This development is liable to present interesting clashes in the foreseeable future, e.g. in cases in which tension occurs between the religious viewpoints of individual detainees and those of the government-sanctioned Islamic authorities[65]. Furthermore, with ever-increasing involvement at the «theological» level, the government risks overstepping the boundaries of the separation between church and state in this context.

6. Private Chaplaincies or Similar Activities Organised by the Churches in Other Institutions

«Chaplaincies» or similar services are also provided in a number of private or semi-private contexts and organisations, either by the organisations themselves or by religious groups.

In healthcare, for instance, Belgium's traditionally «pillarised» care system means that many private nursing homes also provide services that are similar to chaplaincies. In this context of what are in essence expressive associations (*Tendenzbetriebe*), equal treatment across religions is not strictly required[66]: the denominational identity of each institution is reflected in the provision of (only) certain types of «chaplaincies».

[63] To be clear, this is not to say that the overload of policy attention for Islam in general amounts to a positive thing for (adherents of) this faith. Generally, the contrary tends to be the case. However, specifically in the context of the chaplaincy, policy attention has had the effect of ensuring increased (financing for) spiritual support in certain contexts (albeit coupled with a greater interference with organisational autonomy: *infra* § 5, *in fine*).

[64] At the outset exclusively for Catholic detainees, and extended - much later - to adherents of other recognised religions (*supra* § 4.3).

[65] A first illustration of a potential conflict (i.e. over diverging views on (permissible) prayer habits) can already be found in Council of State, 24 February 2016, nr. 233.909, *Rachid*. In this case, a prisoner was subjected to disciplinary sanctions by the correctional authorities for praying during group activities. The Islamic counsellors supported the authorities' decision, as they considered it also amounted to an infraction of their «religious guidelines» (calling the prisoner's behaviour «a gross abuse of Islam»). The Council of State eventually concluded that the restriction on the prisoner's freedom of religion had been proportionate, without relying on the theological views of the Islamic counsellors.

[66] Though there are minimum requirements, in light of the general duty to respect religious freedom, for clients to be able to access spiritual care by other religions or beliefs.

Most frequently this will concern Roman Catholic spiritual support, due to the Catholic religion's enduring institutional dominance in this context.

Regulations[67] covering closed detention centres in which foreign nationals are held, detained or placed at the disposal of the government explicitly state that individuals in these centres «shall receive at their request»[68] moral or religious assistance of the religion/belief of their choice, regardless of whether it concerns a recognised[69] or unrecognised religion or belief[70]. Due to the close similarity of these institutions to prisons - for the purposes of religious assistance, at least - this also stands to reason. However, in practice no budget is reserved or provided to achieve these lofty principles[71]. The recognised religions and beliefs do, nonetheless, provide non-subsidised spiritual assistance to the (illegal) immigrants in these detention centres[72].

Furthermore, one could point to chaplaincies at universities, amongst which the University of Antwerp constitutes a particularly interesting example. In 2003 three universities in Antwerp (two secular ones and a Roman Catholic one) fused into the single University of Antwerp, an «actively pluralistic» institution. Following the fusion, the Roman Catholic chaplaincy, which had been part of the prior Catholic university, was supplemented with a secular humanist one, and both remained funded by the university[73].

On a side-note: the latter situation can be regarded as an example of providing spiritual care on the basis of old (internal) political oppositions and equilibriums (i.e. Catholics versus secular humanists), rather than on the basis of an inventory of the actual spiritual needs of students and/or faculty. Striking, in this respect, is the absence of spiritual caregivers for the university's significant number of Muslim students[74].

[67] Royal Decree of 2 August 2002 (houdende vaststelling van het regime en de werkingsmaatregelen, toepasbaar op de plaatsen gelegen op het Belgisch grondgebied, beheerd door de Dienst Vreemdelingenzaken, waar een vreemdeling wordt opgesloten, ter beschikking gesteld van de regering of vastgehouden, overeenkomstig de bepalingen vermeld in artikel 74/8, § 1, van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen), *Moniteur belge,* 12 September 2002. Prior to this, essentially the same principles were contained in the Royal Decree of 4 May 1999 (*Moniteur belge* 3 June 1999 & 5 October 1999).

[68] The negative freedom of religion (cf. *supra* § 2) is also provided for, as article 49 of the Royal Decree of 2 August 2002 provides that only those individuals who have explicitly opted into the arrangement can be visited by the religious representatives.

[69] Art. 46 Royal Decree of 2 August 2002.

[70] Art. 47 Royal Decree of 2 August 2002.

[71] J.-F. Husson, «Le financement public des cultes, de la laïcité et des cours philosophiques», *C.H. Crisp* 2000, 30.

[72] See P. De Pooter, De rechtspositie van erkende erediensten en levensbeschouwingen in Staat en maatschappij, Brussels, Larcier, 2003, 479.

[73] And thus indirectly by the government.

[74] Although the Roman Catholic chaplaincy at the university did internally and voluntarily free up one of its own chaplaincy positions for the spiritual guidance of Muslim students.

7. Chaplaincy Unions

There are no national chaplaincy unions, *stricto sensu*, in Belgium, but there are several interest groups for chaplains.

The prison chaplaincy can serve as an example in this regard. In 1953 an «Association of the Chaplains of Penitentiary Facilities» (*Verbond van de Aalmoezeniers van de Strafinrichtingen*) was established in Roman Catholic circles. The aim of this organisation was twofold: both strengthening the chaplaincy's own functioning as well as defending the rights and legal status of the chaplains were on the agenda[75]. Similar aims can be discerned among the so-called «Interfaith council of competent authorities for religious and non-denominational moral assistance in prisons» (*Interlevensbeschouwelijke Raad van Bevoegde Instanties inzake de religieuze en niet-confessionele morele bijstand in de gevangenissen* or *ILRG*), which was established by an inter-religious group at the end of the 20th century. The organisation seeks to safeguard its own interests[76] and those of detainees[77].

The lack of unions in a strict sense is likely due in part to the minimum staffing levels (the extreme example of this having been the offshore fishing chaplaincy: *supra* § 4.4), but also to the historical-political context. The chaplaincy itself and developments therein have, in Belgium, traditionally been closely tied with the country's political makeup and its party politics. In that context, «advocacy» for chaplaincies (of one kind or another) has primarily been a matter for political parties, and it is by and large left to them.

This is best illustrated by the evolution that the secular humanist movement underwent in the second half of the 20th century, which elevated it to a virtually identical position to that of the recognised religions: this initially happened in the context of the chaplaincies (and comparable fields), and eventually in the field of financing the wider movement as such (under article 181 of the Constitution). Notably, however, for religions and beliefs that do not (as) easily fit into this political playing field (e.g. Islam and Buddhism), the integration process encounters much more difficulties.

[75] Source: «Organisatie en huidige samenstelling van de aalmoezeniersdienst», *Vrijplaats.net* 1998.

[76] See e.g. the report issued by this group in 2002 criticising government's (perceived) patronising treatment of religious and moral support in prison: «Religieuze en morele bijstand aan gevangenen: ILRG, «quantité négligable» voor het paarsgroene kabinet», in: *Metanoia* December 2002, 124-136.

[77] The focus on detainees is apparent, *inter alia*, in the organisation's call - during prolonged strikes in 2016 by prison personnel - to safeguard the basic rights and dignity of prisoners: ILRG, «Humaniteit in gevangenissen in gevaar», *Vrijplaats.net*, 16 May 2016.

REPORT ON CHAPLAINCIES IN CROATIA: LEGAL AND HISTORICAL OVERVIEW

Vanja-Ivan Savić*

Introduction

Croatia is not new democracy any more: 25 years has passed since this former Yugoslav republic proclaimed independence and 20 years after the end of the war which it was dragged into. Today Croatia is the youngest member state of the European Union and member of the NATO Alliance. However, not so long ago human rights and the religious freedoms of citizens were suppressed, maybe not to the extent that they were in the former Soviet Bloc (religion was visible and lived), but it was clear that the communist regime wanted to eliminate and diminish the role of religion, particularly the role of Catholic Church in the Socialist Republic of Croatia, which was one of the federative Yugoslav units. Despite the fact that socialist and communist regimes did their best to reduce religious life in Croatia, what happened was just the opposite: religious life has flourished. It is a kind of paradox that Eastern and Central European nations have remained quite religious contrary to the situation in Western Europe, where freedom «made» religion pale and, to some extent, caused it to be abandoned. In that respect, Catholicism in Croatia was a gateway to freedom and religion was perceived as not only a spiritual practice and need, but existential and necessary for keeping that connection with the liberty of the mind. As a result, the Catholic Church became even more firmly rooted in the Croatian psyche and society as a whole. Croatia is quite a homogenous country: 87.9% of the population declares themselves to be Catholics (both of Roman and Eastern Rite). Orthodox Christians are 4.5% of the population, Muslims 1.3% and all others fall under 1%, except agnostics and non-religious individuals, who make up 5.2% of the population.

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Consequently, the Catholic Church in Croatia is the most highly organised, the most present and the most influential religious organisation in the country, which can also be seen through the presence of Catholic chaplaincies in the military, schools, health institutions and prisons. On the other hand there are agreements with numerous religious institutions with provisions which secure the presence of other religious clergy in those institutions. The Catholic Church has the most detailed framework agreement for its activities in Croatia: an agreement with the Holy See. For that reason this report will concentrate primarily on the role of the Catholic Church in Croatia, with an emphasis on the chaplaincies in the military and other public institutions, except schools, as that will be covered with a special report on religion and education.

1. Historical Context

It is important to stress that Croatian society, historically, developed within the frameworks of the countries and empires that ruled over Croatian lands and regions. Although the Croatian nation is an old European nation with distinctive characteristics, Croatia had not been an independent and self-ruling country since the Middle Ages. To make a long list short and more practical, Croatia has historically been part of complex systems of countries and nations like the Austro-Hungarian Empire, Venetian Republic, Napoleon's Illyria, the Kingdom of Serbs, Croats and Slovenes, the Kingdom of Yugoslavia and finally the Socialist Federative Republic of Yugoslavia. The chaplaincies in Croatia in those respective periods followed the organisational structure of the particular country of which Croatia was a part. For this report it is important to mention that military chaplaincies, to a peculiar extent, also existed during periods of the Yugoslav monarchy (1918-1941) and also during the so-called «Independent State of Croatia,» which was proclaimed by the Ustashe regime and was an ally to Nazi Germany. It should also be mentioned that the vast majority of Croatians did not support the Nazi regime and Croatia had the first anti-fascist resistant movement in this part of Europe; Croatia also had more members in the resistance movement than France did in the first years of WWII.

During the pre-WWII Yugoslav period the Catholic Church, although present and fairly active, did not enjoy equal rights in a multi-ethnic and multi-confessional state. Croatian and Slovene bishops insisted on stipulating a concordat with the Holy See. It was a paradox that «smaller» religious communities had agreements with the Kingdom (dominated by Serbs) whilst the Catholic Church did not. The concordat was signed in 1935, but it was never ratified. In Paragraph 31 of the Concordat it was stipulated that a military chaplaincy for the RC Church would be established and a military bishop would be appointed in accordance with an agreement between the Holy See and the Yugoslav Government. Only after the formation of Croatian Banovina within Yugoslavia in 1939 was the Yugoslav government forced to accept Bl. Aloysius Stepinac as *vicarious castrensis sine titulo (militarii)*. In that period a num-

ber of military priests were appointed, but without a clear organisation and structure within the military system of Yugoslavia. When WWII started and the «Independent state of Croatia» was formed, there started to be an organised chaplaincy system. Two priests were appointed as military vicars, but without the prior consent of the Bishop of Zagreb, who had been given the title *vicarious castrensis sine titulo* by the Holy See in 1942. A special office for Military Priests and Religious Assistance existed in the Military Administrative Unit in Zagreb. The fact that Bl. Aloysius Stepinac was vicar during Pavelić's regime was one of the accusations made by Yugoslavian Socialist prosecutors in the trial against Croatia's beloved Cardinal who saved numerous Serbs, Jews and others, and who, under extremely severe consequences, managed to resist the regime and Pavelić himself. American historian Michael Phayer has said that no one in the European Catholic Clergy spoke so clearly against Nazi crimes as Bl. Stepinac and the Dutch Catholic Cardinal Johannes de Jong did. St. John Paul II beatified him in 1998 during his papal visit to Croatia and the St. Mary of Bistrica Shrine and Pilgrimage. Until 1966 there weren't any agreements between the Holy See and the Socialist Federative Republic of Yugoslavia, of which the Socialist Republic of Croatia was an integral part. In 1996, the Protocol on Relationships between SFRY and the Vatican was signed, but it did not include any mention of chaplaincy. Only after 1991, in the new Croatian Republic, did a new era begin for relationships between the State and the Catholic Church and other recognised religious communities, including in the field of chaplaincy.

2. Chaplaincies in Modern-Day Croatia

At this point, I will discuss the legal framework which regulates state and religious organisations regarding chaplaincies. Only after the Homeland War in 1995 was there an atmosphere in which the regulation of religious life in Croatia could be approached in a way which would respect democratic principles and the needs of its citizens. The Croatian Constitution guarantees freedom of religious life in Croatia through its paragraphs 40 and 41.

> «Freedom of conscience and religion and the freedom to demonstrate religious or other convictions shall be guaranteed (art. 40).
>
> All religious communities shall be equal before the law and clearly separate from the state. Religious communities shall be free, in compliance with law, to publicly conduct religious services, open schools, academies or other institutions, and welfare and charitable organisations and to manage them, and they shall enjoy the protection and assistance of the state in their activities (art. 41)».

Also, the Croatian State has four Agreements signed with the Catholic Church (Holy See), namely:

1) Agreement on legal affairs, which covers administrative issues related to the registration of Church entities and organisations

2) Agreement on cooperation in the field of education and culture and Catholic education in public schools and religious Catholic education in pre-school institutions
3) Agreement on chaplaincies for Catholic believers and worshipers who are members of military units and police forces
4) Agreement on economic issues (originally this agreement was about retuning confiscated property).

All of these basic agreements with the Catholic Church were signed in 1996. However, in 2002 another Agreement was signed which covered priesthood assistance for Catholic believers in prisons and penitentiaries; and in 2005 another Agreement was approved, regulating chaplaincy services in hospitals and other health institutions. On 25 April 1997, Military Chaplaincy in Croatia was founded by the Decision of Pope St. John Paul II and the first Military Bishop was appointed: Msgr. Juraj Jezerinac. This was a prerequisite for passing the Statute of Military Chaplaincy, which entered into force on 22 September 1998. This was followed by the creation of bylaws on the organisation and operation of the Military Chaplaincy of Croatia, approved by the Holy See. It is important to stress that the Croatian Chaplaincy is competent for both military and police units, which is not the case for many other states which have similar regulations on this issue. Also, there is a document called «Internal Organisation of Military Chaplaincy Service», which is not publicised as it is classified as a «military secret». Today there are 22 chaplaincies within the Croatian Military Structure, which includes the Army (Ground Forces), Navy and Air Force. Also, there are 22 police chaplaincies spread around the country. The head of every chaplaincy is a priest who is an employee of the Armed forces and has a rank equal to major. The Bishop has a rank of Major General; his deputy is a Brigadier General and the Bishopric Vicar and Chancellor hold the rank of Colonel. Subsequently, they receive payments according to their respective rank. It is important to note that the only religion which has a chaplaincy that is completely integrated within the Official Military System is the Catholic Church. However, there are numerous Agreements which have been signed with many other religious communities and there are provisions which regulate spiritual assistance to Croatian soldiers and officers, both in the military and in the police.

Here is a list of some other major religious organisations in Croatia which have signed a General Agreement with the Croatian Government:

— Serbian Orthodox Church (2002)
— Islamic Community in the Republic of Croatia (2002)
— Evangelical Church in the Republic of Croatia and Reformed Church in the Republic of Croatia (2003)
— Evangelical (Pentecostal) Church in the Republic of Croatia, Christian Adventist Church in the Republic of Croatia and the Union of Baptist Churches in Croatia (2003)

— Bulgarian Orthodox Church in Croatia, Croatian Old Catholic Church and Macedonian Orthodox Church in the Republic of Croatia (2003)
— Coordination of Jewish Communities of Croatia (2012).

It is clear that all these agreements are providing for the access of their respective religious figures (priests, muftis and rabbis) to the military infrastructure and believers of denominations other than Catholic, but it is also clear that they are not organised within the official military structure, nor are those religious servants an integral part of the military or police. Religious servants have full access to hospitals, prisons and schools and the state guarantees religion education in public schools according to the needs of particular groups. There is also the right to open and maintain religious schools and provide religious education, which many religious communities in Croatia use.

3. Conclusion

It is clear that the Catholic Church is the only religious community in Croatia which has an institutionalised military chaplaincy. Catholics make up almost 90% of the Croatian population (Croatian Bureau for Statistics); also there are international agreements with the Holy See which guarantee this kind of activity. All this makes access easier for Catholics; however all other registered religious communities which have signed an agreement with the Republic have the right to be present and operate by the provisions of the particular documents which they have signed. In that respect, it would be fair to say that the rights of registered religious communities in Croatia are on quite a high level.

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Military Chaplaincy of the Republic of Croatia website at: www.vojni-ordinarijat.hr

CHAPLAINCY AND THE LAW IN CYPRUS

Achilles C. Emilianides

Introduction

Cyprus adopts a system of co-ordination between the State and the various religions, in accordance to which the State is non-confessional and there is no state or official religion[1]. The model prevailing in Cyprus aims to be a pluralistic model, which recognises and embraces the public dimension of religion, while at the same time attempting to achieve cooperation with all religions. The significance of faith in people's lives is considered to be worthy of protection by the state and where the function of the state overlaps with religious concerns, the state seeks to accommodate religious views, insofar as they are not inconsistent with the state's interests. Consequently, pluralism is achieved through the recognition that the state and the various religions occupy, in principle, different societal structures; religious neutrality is not, however, achieved simply because there is religious autonomy, but also through positive measures on behalf of the state, which aim to protect religions[2].

The State recognises that chaplaincy serves an important cause, namely to serve the needs of the members of communities who are otherwise unable to access the services offered by religious bodies to the general public, such as the army, prisons or hospitals. Moreover, chaplaincy is essential in order to ensure that those members can properly exercise their fundamental right to individual religious freedom, despite the constraints otherwise imposed. Accordingly, chaplaincy is considered to be worthy of protection, since it promotes the exercise of religious freedom and it is consistent with the recognition of faith in the lives of people who are otherwise unable to exercise

[1] A. Emilianides, *Law and Religion in Cyprus*, 2nd Ed, (The Hague: Kluwer, 2014).

[2] A. Emilianides, «Secularism, Law and Religion within the Cypriot Legal Order» in *Religion, Rights and Secular Society. European Perspectives*, ed. P. Cumper and T. Lewis (Cheltenham: Edward Elgar Publishing, 2012): 169-188.

their collective religious freedom. The State should therefore be considered as having positive obligations to ensure that all people have access to religious services so as to exercise their beliefs in a meaningful manner.

The legal regulation of chaplaincy has not been an issue of particular significance in Cyprus. In light of the fact that the vast majority of the population are members of the Christian Orthodox religion, the Orthodox Church had traditionally enjoyed a leading role in ensuring that chaplaincy services were offered near hospitals or prisons, without the State regulating chaplaincy. Other religions, such as the Armenian Church, the Maronite Church, the Roman Catholic Church and Islam, also offer chaplaincy services whenever needed. The increase in the number of Cypriot residents who belong to other religions meant that the State had to undertake some positive obligations to provide for chaplaincy for members of different religions to the extent possible. This seems to be dealt with, however, on an *ad hoc* basis, rather than being regulated by specific legal provisions, with the Orthodox Church sometimes acting as a facilitator for the State's contact with other religions. The latter practice is hardly a welcome one, however, for the State, since there should be a governmental service with the responsibility of communicating with the representatives of religions and facilitating access to chaplaincy for members of other faiths.

1. National Regulation of Chaplaincy by the State

Article 18 of the Constitution of Cyprus safeguards the right to religious freedom, including the freedom of religious conscience and freedom of worship[3]. The aforementioned article corresponds in many ways to Article 9 of the European Convention on Human Rights, but it is more detailed, and its provisions cover sectors which are not mentioned in Article 9. Article 18 provides that every person has the right to freedom of thought, conscience and religion. Article 18 §4 guarantees more particular manifestations of an individual's religious freedom, stipulating that every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief. Freedom to manifest one's religion entails the right to exercise religious activities, even if otherwise he faces some constraints, which implies that the State has a positive obligation to safeguard access to religious services to a reasonable degree. The right also includes the negative obligations of the State; thus, individuals have the right to deny receiving

[3] See A. Emilianides, «State and Church in Cyprus», in *State and Church in the European Union*, ed. G. Robbers, 2nd edn (Baden-Baden: Nomos Verlagsgesellschaft, 2005), 231 ff.; Idem, (ed), *Religious Freedom in the European Union* (Leuven: Peeters, 2011): 89-98; C. Tornaritis, *The State Law of the Republic of Cyprus* (Nicosia: Cyprus Research Centre, 1982, in Greek), 145-148.

any chaplaincy services and the State has the obligation to safeguard the right of any person not to receive chaplaincy services.

Constitutional framework aside, the legal basis for chaplaincy may be found in some cases in secondary legislation, mostly administrative acts, or even informal arrangements or codes of practice. The framework for chaplaincy is mainly permissive, in the sense that to the extent that the law contains no prohibitions for the exercise of the right, administrative bodies should attempt to safeguard compliance with the unimpeded exercise of the right.

2. Organisation of Chaplaincies by the State

In general the State does not organise chaplaincy services itself, but accommodates the exercise of chaplaincy services by the various religious organisations. There are, however, cases where chaplaincy services might be offered by the State itself, such as in the National Guard. In most cases, the State aims to cooperate with the religious organisation to which the member of the armed forces, prison, hospital, etc. belongs, in order to ensure that access to chaplaincy is not unduly restricted. Accommodation of chaplaincies is naturally a simpler task whenever the person wishing to manifest his religious beliefs is a member of a major religion, since religious ministers of that religion may be easily found; however, State officials should, in principle, strive to accommodate access to chaplaincy for minor religions and new religious movements.

3. Chaplaincy in Public Institutions

3.1. Chaplaincy in the Armed Forces

In the case of *Daniel Sarieddine*, the petitioner, a member of a Muslim sect, argued that he should not have an obligation to serve in the National Guard, i.e. the armed forces of the Republic, since the National Guard is Christian Orthodox in nature[4]. The Supreme Court rejected the petitioner's arguments and held that the obligation to serve in the National Guard refers to the citizens of the Republic and not to the adherents of any particular religion or creed; the National Guard is not considered to be Christian Orthodox, or any other religion, in nature. Indeed, the Ministry of Defence had provided that non-Christians should be allowed to exercise their religious beliefs. In light of the above, it was held that there was no violation of Article 18 of the Constitution, or of Article 9 of the Convention.

According to a Decision of the Council of Ministers, Turkish Cypriots were excluded from the obligation to serve in the National Guard in light of the abnormal

[4] Daniel Sarieddine v. The Republic [2004] 3 CLR 572 (in Greek).

situation prevailing on the island. Furthermore, the military service of those belonging to the three constitutionally recognised religious groups was voluntary and such persons were exempted from the obligation to serve in the National Guard[5]. In 2006 the Cypriot Ombudsman held that the decision of the Council of Ministers to exclude the members of the three minority religious groups of the Republic, namely the Maronites, the Roman Catholics and the Armenians, from the obligation to serve in the National Guard, violated the principle of equal treatment and constituted discrimination on grounds of religion. Following the Ombudsman's decision, the Council of Ministers decided that members of the three religious groups now have an obligation to serve in the National Guard[6].

There are no specific legislative rules governing chaplaincy in the National Guard of the Republic; the issue is governed by administrative ordinances issued by the Minister of Defence, or the Commander-in-Chief of the National Guard. The General Headquarters of the National Guard (GEEF) have established a Director for Religious Affairs, who is an Archimandrite of the Orthodox Church. The office of the Director for Religious Affairs has existed since the establishment of the National Guard in 1964. It was initially part of the seventh headquarters office of the National Guard and subsequently became an autonomous office for religious affairs. In 2007 it was elevated to a Directorate for Religious Affairs, with the Director being appointed by the Archbishop of Cyprus. The Director then appoints a secretariat, whereas the Metropolitans of the Orthodox Church appoint priests as associates of the Director in order to cover the needs of the military camps of specific geographical areas which fall within the limits of their corresponding Metropolis.

The priests of the Orthodox Church provide full chaplaincy services to members of the National Guard, whether professional army officers or soldiers. The Orthodox Church thus coordinates with the General Headquarters of the National Guard, through the Director, in order to deliver its services in all military units and in a timely and comprehensive manner[7]. The salaries of religious ministers temporarily seconded to the National Guard in order to work as chaplains are provided by the government. In practice, only religious ministers of the Orthodox Church of Cyprus are seconded to the Army, since the great majority of the members of the armed forces are Orthodox Christians.

[5] Council of Ministers Decision 41/296 of 29 Jun. 1994 (in Greek).

[6] Council of Ministers Decision 65.732 of 19 Jun. 2007 (in Greek).

[7] For a detailed description of the duties of the Directorate for Religious Affairs see the speech by the Director for Religious Affairs Ioannis Ioannou in the event «The Work of the Church of Cyprus in the Armed Forces», 26/5/2012, (in Greek), available at http://www.churchofcyprus.org.cy/documents/HAIRETISMOS_TOY_DIEYThYNTI_ThRISKEYTIKOY_GEEF.doc.

In light of the positive obligation of the Republic to safeguard access to chaplaincy for adherents of other faiths or creeds, the Minister of Defence has ordered that members of other religions ought to be facilitated in the exercise of their religious beliefs and therefore army personnel is required to ensure that chaplaincy is provided for all soldiers and army officers who are not Orthodox Christians. In order to achieve this goal, the National Guard coordinates with the various religions of the island on an *ad hoc* basis; there is a differentiation of the treatment of the Orthodox Church compared to other religions in this area, which is due to the fact that the vast majority of army personnel and soldiers are members of the Orthodox Christian faith. In practice, the Directorate for Religious Affairs would assist in communication with clergy from other faiths when this is needed. Whereas, however, co-ordination is simpler with major religions, such as the Armenian, Roman Catholic, Maronite and Anglican Churches, there are significant difficulties when it comes to minor religions or new religious movements.

3.2. **Chaplaincy in Hospitals**

There are no specific legislative rules governing religious assistance in hospitals. Religious assistance is generally provided on an *ad hoc* basis and so long as there is a need. However, the Ministry of Health has temporarily seconded religious ministers from the Orthodox Church in some hospitals in coordination with the Orthodox Church. The Orthodox Church coordinates with the Ministry of Health in order to ensure that there are chapels near major hospitals, in a manner which enables priests to provide chaplaincy services in a timely and comprehensive manner. Furthermore, the Ministry of Health aims to facilitate the exercise of religious beliefs by adherents of other faiths and thus aims to contact religious ministers of other religions, often with the assistance of the priests of the Orthodox Church, in order to secure chaplaincy services for patients. For instance, there are two Orthodox priests located in the Nicosia General Hospital, which is the main state hospital of the capital of the Republic; the priests perform services at the holy church of Agioi Anargyroi, which is near the Hospital and offer full chaplaincy services whenever needed. Furthermore, the priests undertake to bring patients who are adherents of other religions into contact with clerics or religious ministers of their religion in order to receive chaplaincy services[8].

3.3. **Chaplaincy in Prisons**

Regulation 109 of the General Prison Regulations 121/97, enacted in accordance with the Prison Law 62(I)/96, provide that prisoners have a right, to the extent possible, to satisfy their religious needs. In this respect prisoners have an optional right

[8] http://www.moh.gov.cy/moh/ngh/ngh.nsf/ngh14_en/ngh14_en?OpenDocument.

to manifest and exercise their religious duties and to communicate with recognised representatives of their religion or creed. Proselytising of any kind is prohibited. In accordance with the Regulations, prison authorities facilitate chaplaincy services by religious authorities. As in other cases, the Orthodox Church enjoys a dominant role since an Orthodox priest is temporarily seconded in the Central Jail of Nicosia, which is the only correctional facility in Cyprus; the priest performs the Divine Liturgy on Sundays and carries out confessions. The prisoners have the opportunity to attend religious services, and additional priests occasionally visit the prisons for chaplaincy services if they are needed[9]. Furthermore, an Islamic imam has been designated by the Embassy of Libya as an official representative of the Islamic religion and visits the prisons every Friday; other religious ministers from Islam, Christianity or other religions may visit the prisons pursuant to a request by the individual prisoners themselves[10].

There have been complaints that the practice of the prison authorities does not fully facilitate the exercise of religious beliefs and discriminates amongst religions. The Evangelical Church in particular has complained that the assembly of the prisoners of the Church is limited to twice a month, contrary to what is the case for Orthodox Christians and Muslims. The Evangelicals further argued that whereas the prison authorities inform all prisoners that Orthodox priests are visiting the prison, when priests from the Evangelical Church visit this is not announced to all prisoners, but rather the priests are asked to declare the names of the prisoners they are visiting[11].

3.4. **Chaplaincy in Schools**

Religious lessons given in primary and secondary schools follow the doctrine of the Orthodox Church and attendance is compulsory for Orthodox pupils. Atheists or members of other religions may, however, be excused. Whereas the schools do not provide for chaplaincy for Orthodox pupils, the students might occasionally participate in collective worship or prayer. Furthermore, the wishes of students who opt to confess to a religious minister would be facilitated by the school authorities. In practice there are chapels of the Orthodox Church near most schools, so that students would have the opportunity to have access to chaplaincy if their parents so wished. The school authorities would normally provide services for pupils who are members

[9] See the speech of priest Christoforos Demetriou, «The Pastoral Action of the Church of Cyprus in the Central Jail» (2010), (in Greek), available at http://www.immorfou.org.cy/newsvarious-articles/305-the-pastoral-activity-of-the-church-of-cyprus-to-the-central-prison.html

[10] «The Evangelical Clerics in Prisons» *Simerini* 23/1/2015 (in Greek), available at http://www.sigmalive.com/simerini/news/200037/oi-evaggelikoi-klirikoi-stis-fylakes

[11] M. Demetriou, «Discrimination for Evangelicals in Prisons» *Simerini*, 22/1/2015 (in Greek), available at http://www.sigmalive.com/simerini/news/199637/diakriseis-gia-evaggelikous-stis-fylakes

of the Islamic, Roman Catholic, Maronite or Armenian religions, whenever parents requested that chaplaincy services of their corresponding religion be offered to their children. However, the school authorities would not, in practice, be as eager to facilitate the provision of chaplaincy services for other religions, primarily because there is no central authority overseeing such a task, and each school unit would be responsible for implementing its own policy on the issue.

In 2003, the Metropolitan of Limassol, Athanasios, proposed to the Ministry of Education and Culture that it establish confessionals in public schools located in the district of Limassol. According to the Metropolitans' proposal, such confessionals would function on a purely optional basis and would only serve the needs of those pupils who wanted to confess to a religious minister of the Orthodox Church. The Metropolitan of Limassol's proposal enjoyed the support of a unanimous Holy Synod, but was rejected by the Ministry of Education and Culture, which considered that a reform of the current system was not necessary. Currently, the decision as to whether there is a need for a confessional in a school is a matter which should be decided by each particular school, following a consultation with parents, teachers and governmental authorities.

The Metropolitan of Limassol's proposal was harshly criticised by certain politicians and educators who argued that it would promote the establishment of the Orthodox Christian religion in public schools and would be contrary to the principle of religious freedom. The Metropolitan of Limassol clarified that he would not insist on the implementation of his proposal, although he believed the reactions were unjustified, since confessions have always taken place in schools in a non-uniform manner; he further clarified that his proposal was only aimed at achieving a uniform approach with respect to confessions, in order to facilitate said services to those students who wanted to confess to a religious minister.

3.5. **Chaplaincy in Other Public Institutions**

Chaplaincy would not normally occur as a matter of practice in other public institutions, such as the House of Representatives, the police or the courts. However, chaplaincy might potentially be arranged if needed on an *ad hoc* basis.

4. State Chaplaincy, Islam and New Religions

As explained above, chaplaincy for the Islamic religion is normally provided on an *ad hoc* basis in the armed forces, hospitals and schools[12]. However, a more regularised chaplaincy has been arranged in the Central Jail of Nicosia. *Ad hoc* arrangements are the norm with regards to new religious movements.

[12] A. Emilianides, *Annotated Legal Documents on Islam in Europe: Cyprus* (Leiden: Brill, 2014).

5. Private Chaplaincies

Chaplaincy work in private industry is not uncommon, but it remains largely unregulated. The Charter of the Orthodox Church does not contain specific provisions for chaplaincy; any priest authorised by the corresponding Metropolitan or the Archbishop to provide chaplaincy services may provide such services. In view of the relatively small number of religious ministers from other religions in Cyprus, any further categorisation of who would be an appropriate religious minister for providing chaplaincy services would seem redundant.

Pursuant to the decision of the Supreme Court in the case of *Sideras*[13], religious ministers are considered to be employees of their respective religious organisation, and thus, the general provisions of employment law are applicable with respect to their status as employees. However, in light of the peculiar and unique characteristics of being a religious minister, certain exceptions from the general provisions of employment law might be recognised in the appropriate cases; the extent to which the principle of organisational religious freedom may circumvent the application of the general provisions of employment law has not yet been settled, and has to be examined on a case by case basis and in light of all relevant considerations. Priests of the Orthodox Church temporarily seconded to the government for chaplaincy in the armed forces or hospitals, while under an employment relationship with the State, remain bound by the ecclesiastical law of the Orthodox Church.

6. Chaplaincy Unions

Since chaplains are considered to be employees of their respective religious organisation, they could potentially join a union under the rules of general employment law. There are currently no specific chaplaincy unions in Cyprus; however, priests of the Orthodox Church seconded to the Republic may join one of the existing trade unions relevant to their field of employment.

[13] Nicolas Sideras v. The Minister of Labour and Social Securities [1989] 3 CLR (in Greek).

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS: CZECH REPUBLIC

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1. Historical and Sociological Background

The Republic of Czechoslovakia, founded in 1918 upon the dissolution of the Austro-Hungarian Empire, adopted the legislation of the Habsburg monarchy, including legal provisions concerning chaplaincy in public institutions. The state authorities nominated the chaplains in the Army and prisons at the proposal of the Catholic and Protestant authorities in relation to the religious makeup of citizens (Catholic majority and Protestant minority in all parts of the state).

During World War II, after the occupation of Czech lands by the Germans, many Czech chaplains served in the armies of Western Allies. General Mons. Methodius Kubáň, who had been the head of the Catholic chaplains at the Czechoslovak Ministry of National Defence since 1934, stayed at home and joined the anti-Nazi resistance. He was prosecuted and died in the Dachau concentration camp in 1942.

In 1945 democracy was restored in Czechoslovakia according to the doctrine of continuity of the legal order which was in force in Czechoslovakia until 1938. The chaplaincy was renewed.

A radical change came after the communist coup d'état on 25 February 1948. All spheres of public life had to accept the so called «scientific world view» (Marxist-Leninist ideology), which included atheism. Between 1948 and 1989, atheism played the role of the state «religion» in Czechoslovakia. Religious communities became the only institutions of alternative thought whose existence was somewhat tolerated. The ultimate aim of the regime was, of course, to entirely liquidate all religious communities[1].

[1] Tretera, Jiří Rajmund, Horák Záboj, *Religion and Law in the Czech Republic*, Alphen aan den Rijn, 2014, pp. 27-29. See this publication for details concerning all parts of this paper.

During a two to three year period after the coup d'état beginning in 1948 army chaplains were individually dismissed without appointing new ones. A similar process took place in case of prison chaplains. The last chaplains accompanied the victims of the communist show-trials to their place of execution by hanging up until the year 1950, but no later.

The situation radically changed after the Velvet Revolution beginning on 17 November 1989, which ended with the appointment of the first non-communist government on 10 December 1989 (by chance on Human Rights Day). Constitutional changes made the renewal of religious freedom possible. But it was a long way to the renewal of the chaplaincy in spiritually destroyed Czechoslovak society. In both parts of the Czech and Slovak Federal Republic the chaplaincy has been restored step by step and was implemented by state legislation and domestic agreements in both states some years after the quiet dissolution of Czechoslovakia on 1 January 1993.

2. National Regulation of Chaplaincy and Definition of Chaplaincy Services

2.1. Constitutional Law

Provisions of Czech constitutional law are contained in the Constitution of the Czech Republic (Act No. 1/1993 Sb.)[2], and in the Charter of Fundamental Rights and Freedoms (Charter)[3], which is, according to the Constitution, a part of the constitutional order of the Czech Republic.

The Charter includes freedom of religion in the catalogue of fundamental human rights and freedoms (Articles 5 to 16). The enjoyment of these rights is guaranteed to all. Religious freedom is expressly protected by Articles 15 and 16. The chaplaincy in public institutions is not mentioned, but its necessity is derived from Article 16, section 1 of the Charter, which reads: «Everyone has the right to freely manifest his or her religion or faith, either alone or in community with others, in private or public, through teaching, practice, or observance…».

2.2. International Agreements

The second main regulation of chaplaincy is included in international agreements, which bind the Czech Republic. «Promulgated international treaties […] shall constitute a part of the legal order; should an international treaty make provisions contrary to a law, the treaty shall prevail»[4].

[2] Sb. = Collection of Laws of the Czech Republic (before 1993 Collection of Laws of the Czech and Slovak Federal Republic).

[3] Published under No. 23/1991 Sb. and again under No. 2/1993 Sb.

[4] Constitutional Act No. 1/1993 Sb., Constitution of the Czech Republic, art. 10.

At the top of the list of international treaties binding the Czech Republic are:

- The European Convention on Human Rights (1950),
- The International Covenant on Civil and Political Rights (1966), and
- The International Covenant on Economic, Social and Cultural Rights (1966).

2.3. **Laws**

The Czech legislature takes into account not only its duty to secure the religious freedom of persons living in a normal environment, but also the religious freedom of persons placed in institutions that legally restrict their freedom of movement. Therefore it makes it possible to provide chaplaincy services for such people, in cooperation with religious communities. The legislation does not define chaplaincy, but realizes it.

Chaplaincy is carried out in following spheres of life:

- The armed forces
- Prisons and similar institutions
- Hospitals (including psychiatric and infectious departments), hospitals for long term sickness, sanitary facilities for the disabled
- Retirement homes and other social facilities

This group also includes care for victims of natural disasters (floods, fires); post-traumatic intervention care for members of the police, firemen and victims of criminal and terrorism offences; and post-penitentiary care.

Participation in chaplaincy is basically open to all religious communities registered in the Czech Republic by decision of the Ministry of Culture. Since 2002 this freedom has been slightly restricted in two areas: the armed forces and prisons. Act No. 3/2002 Sb., on Religious Communities, expressly confirms the rights of religious communities to send chaplains to the armed forces and prisons. It does not entrust, however, these rights to all registered religious communities, as was the case before, but only to those which obtain «a special right» to do so. Religious communities which exercised these rights on the start date of the Act were enrolled in the register as religious communities with said special right; others can obtain these rights after complying with some complicated conditions.

2.4. **Domestic Agreements**

Domestic agreements signed by public authorities and the authorities of religious communities contain the detailed regulations on chaplaincy in public institutions. On the side of religious communities there are: the Czech Bishops' Conference[5], representing the Roman Catholic and Greek Catholic Churches, and the Ecumeni-

[5] Currently the Czech Bishops' Conference consists of 15 bishops. Four other bishops are emeriti.

cal Council of Churches in the Czech Republic, representing eleven churches as its ordinary members. Separate agreements with particular religious communities (also observers or non-members of the Ecumenical Council of Churches in the Czech Republic) are not ruled out.

The domestic agreements concerning chaplaincy signed between the Ecumenical Council of Churches in the Czech Republic, the Czech Bishops' Conference and the respective public authority of the Czech Republic are as follows:

- An agreement on chaplaincy in the Armed Forces of the Czech Republic, which was signed in 1998, as amended in 2012
- Agreements on prison chaplaincy: the first one was signed in 1994, a second one in 1999, a third one in 2008 and a fourth one, which is in force now, in 2013
- An agreement on the participation of religious communities in post-traumatic intervention care for the members of the Police of the Czech Republic, victims of disasters, terrorist attacks and individual or mass accidents was signed in 2002; a similar agreement on cooperation with Fire Rescue Services was signed in 2003; in 2011 a new compound agreement was signed for both institutions and other institutions that are part of the Ministry of Interior as well as members of the general public who are victims of emergencies or crimes
- Agreements on spiritual care in hospitals between interested religious communities (or their local parishes) and owners of hospitals (from 2011).

Court decisions

The Constitutional Court Decision published under No. 4/2003 Sb., providing legal interpretation for Act No. 3/2002 Sb., on Religious Communities, emphasises the right of religious communities to act in the public sphere, including activities in social, health and educational fields.

3. Organisation of Chaplaincies by State and Other Public Institutions

Religious assistance in public institutions in the Czech Republic is organised partially by the state and partially by other public institutions.

3.1. Organisation of Chaplaincies by the State

The state organises chaplaincy in the armed forces, prison chaplaincy, police chaplaincy and fire rescue chaplaincy. In all of these institutions, chaplains are appointed and dismissed by state authorities at the recommendation of their religious community and with the subsequent authorisation by the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic, according to the domestic agreements.

Chaplain candidates must have a university degree, usually a masters' degree in theology, and at least two years' experience in pastoral work in their respective religious community. They must attend other special education and training during their chaplaincy service.

The personal and civic integrity of the candidates for chaplaincy and of the chaplains is supervised by the proper state body (police, intelligence service, etc.). Their professional activities are controlled by their direct supervisors (and in the case of the armed forces and prisons, also by the Chaplains General).

Chaplains are employed according to the secular provisions of Czech law. Chaplains in the armed forces are professional soldiers. They are members of the armed forces, subject to military legislation and they are paid by the state. Prison chaplains are employees of the Prison Service of the Czech Republic and they are paid by the state, too. Police chaplains and fire rescue chaplains work free of charge and they only have the right to free transport to their place of service.

Chaplaincy service is independent of the existence of a chapel. Chaplains serve for the benefit of their clients anywhere, in the military or prison spaces or outside of them. Many chapels have been built recently, especially in prisons, as well as some in military barracks. They are usually owned by the state. They are, of course, consecrated, usually during the ecumenical ceremony. In exceptional cases they are owned by a religious community (above all the traditionally garrisoned churches in some cities).

3.2. **Organisation of Chaplaincies by Other Public Institutions**

Other public institutions organise hospital chaplaincy, social facilities' chaplaincy and school chaplaincy.

Hospital chaplaincy is organised by the management of a particular hospital. Chaplains are appointed and dismissed by the management, according to a particular agreement with representatives from the local bodies of religious communities. Hospital chaplains are members of multidisciplinary health care teams and employees of a respective hospital. Their legal status in the hospital is regulated by state labour law. Hospital chapels are owned by the hospital or a specific religious community. Their usage is ecumenical.

Chaplaincy in social facilities is similar, but it is still relatively new. Spiritual care is often secured only by the parishes of religious communities in the area. In this case it is free of charge. The chapels in social facilities are usually owned by said facility. Their usage is also ecumenical.

School chaplaincy at some schools of theology at public universities in the Czech Republic is organised and funded by the religious communities. There is no school chaplaincy at the other public schools in the Czech Republic. School chaplaincy at Church schools (a special type of schools, which are neither fully public nor private),

is organised and funded by the religious communities, which are the founders of such schools. The chapels are owned by the school.

4. Chaplaincy in Public Institutions

4.1. Chaplaincy in the Armed Forces of the Czech Republic

4.1.1. *Religious Freedom in the Armed Forces of the Czech Republic in General*

The Armed Forces of the Czech Republic consist of the Army of the Czech Republic, the Military Office of the President of the Czech Republic and the Castle Guard. They are formed by professional soldiers and reservists called to exercises by the draft. During emergencies and war, the number of soldiers would increase by those who have been mobilised.

In the armed forces, no one's freedom of religion may be restricted and no one shall be coerced into accepting a religion or renouncing it. No one shall be prevented from the exercise of religious activity and everyone is entitled to have his or her own religious literature and prayer aids. As for church service and other religious ceremonies, a soldier may attend them, provided it does not hamper an important interest of the military service. Soldiers can attend religious services in their free time outside the military area; however, they may attend them in the military area as well.

Religious services, spiritual and other personal care in the military area are conducted by military chaplains, i.e., soldiers by profession[6].

4.1.2. *Remarks on Recent History*

On the basis of an informal agreement between the representatives of the Czech Bishops' Conference and the Ministry of Defence of the Czech Republic, the first two (and later three) Catholic priests began to serve as military chaplains in the Armed Forces of the Czech Republic in 1996-1997, participating in the international peace missions IFOR and SFOR, operating in the former Yugoslavia. Their presence and activity was successful.

Following this, the agreement on cooperation between the Ministry of Defence of the Czech Republic, the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic was signed on 3 June 1998. The agreement was implemented by the Command of the Minister of Defence on the establishment of a pastoral service, which came into force on 22 June 1998[7].

[6] Tretera, Jiří Rajmund, Horák Záboj, *Religion and Law in the Czech Republic*, Alphen aan den Rijn, 2014, p. 42.

[7] Tretera, Jiří Rajmund, Horák Záboj, *Religion and Law in the Czech Republic*, Alphen aan den Rijn, 2014, pp. 63-64.

Since the Czech Republic jointed NATO on 12 March 1999, the Armed Forces of the Czech Republic have used a similar standard of military chaplaincy. Czech military chaplains have since then organised international meetings of chaplains of NATO member states several times.

The experience with the service of military chaplains has proven to be a very good one. They have effectively helped during rescue work after natural disasters (e.g. floods in 2002) and military missions of the Armed Forces of the Czech Republic abroad (in Kosovo, in the Middle East and Afghanistan), during military training, exercises and at military schools, and all of that even after becoming a fully professional army (as of 2005). Therefore, the Ministry of Defence requested that the above-mentioned agreement be amended, which happened on 26 January 2012, and that the number of military chaplains be increased to forty-three:

- Twenty from the Catholic Church
- Seven from the Czechoslovak Hussite Church
- Five from the Evangelical Church of Czech Brethren
- Two from the Church of Brethren
- One each from the Seventh-Day Adventists Church, Orthodox Church, Silesian Evangelical Church A. C., Unity of the Brethren, Old Catholic Church, the Evangelical Church A. C., Evangelical Methodist Church, Apostolic Church and Unity of Baptists.

4.1.3. *Appointment and Revocation of Military Chaplains*

Military chaplains are officers, usually from the rank of captain to colonel. They are appointed and dismissed by the armed forces at the recommendation of their religious community and with the subsequent authorisation of the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic. Canonical subordination of military chaplains in the organisational structure of their religious community is not affected. The Czech Bishops' Conference deputed the archbishop of Prague to carry out external control of Catholic military chaplains in the sense of canon law.

Conditions for the appointment of a military chaplain are set out in the above-mentioned domestic agreements from 1998 and 2012, respectively. To qualify for the position of a military chaplain, the following prerequisites must be fulfilled:

- A university degree (typically in theology)
- At least two years of active participation in the religious administration of a religious community in the post of a religious minister
- Willingness to create friendly ecumenical relationships among military chaplains
- Medical fitness and physical preparedness corresponding to the standards for joining the Armed Forces of the Czech Republic

- Appropriate psychological profile and family background

Military chaplains undergo military training, except for the use of weapons. Upon the end of the term the chaplains have been appointed for, they usually return to pastoral service in their religious communities.

4.1.4. *Organisation of Military Chaplains*

Every military chaplain is directly subordinated to commanding officer (usually at the level of a regiment or even a higher military unit).

All military chaplains are methodically coordinated by the Chaplain General of the Army of the Czech Republic, who is appointed for four years, and whose term is renewable one time. He is appointed by the Minister of Defence of the Czech Republic upon the common recommendation of the Ecumenical Council of Churches in the Czech Republic and the Czech Bishops' Conference. The Chaplain General reports to the Chief of the General Staff.

The Minister of Defence of the Czech Republic also appoints his external advisor in the civil section of the Ministry, who acts regarding matters of military chaplaincy. He is recommended jointly by the Ecumenical Council of Churches in the Czech Republic and the Czech Bishops' Conference.

The agreement stipulates that one of the above-mentioned highest positions must be filled by the Ecumenical Council of Churches in the Czech Republic, and the other by the Czech Bishops' Conference.

4.1.5. *The Work of Military Chaplaincy and its Funding*

Military chaplaincy work abides by the following principles:

- Ecumenicity
- Time limitation (usually for a period of four years with the possibility of renewal),
- Being primarily non-missionary
- Cooperation with the psychologists of the Armed Forces of the Czech Republic

Spiritual services and talks are provided to soldiers who show an interest therein, regardless of denomination, as well as to those without any religious affiliation. A military chaplain is assigned to the unit whose commanding officer expressly desires so.

In 2005 the Ministry of Culture registered a union of religious communities under the name Military Spiritual Service. It consists of five religious communities: the Catholic Church, Czechoslovak Hussite Church, Evangelical Church of Czech Brethren, Church of Brethren and Seventh-Day Adventists Church. It cooperates with the Armed Forces of the Czech Republic and it carries out pastoral service for soldiers and their families in its own education centre in Luleč in Southern Moravia.

Military chaplains and their work are funded from the state budget.

4.2. **Chaplaincy in Penitentiaries**

4.2.1. ***Religious Freedom in Penitentiaries in General***

People in prisons, remand prisons and detention facilities have the right to religious freedom and its practice, as other people. Inmates have the right to attend services and religious meetings, the right to be visited by religious ministers according to their own choice and to keep religious literature. No one shall be arbitrarily denied contact with a religious minister and no one shall be forced into talking to one.

4.2.2. ***Remarks on Recent History***

The activities of religious communities in prisons, which ensure that inmates can exercise their religious freedom, in addition to aiding their social rehabilitation, has a long tradition in the Czech lands, interrupted only during the period of communist rule.

In spite of this interruption, religious communities were in a good position to swiftly restore this activity as early as 1990. The reason is obvious: members of religious communities had vast personal experience in prisons from the time of the totalitarian regime. Many of them were themselves held in prisons even in the late 1980s! They were familiar with the mentality and problems of people convicted of various crimes, as well as with most of the prison personnel.

The renewal of the activities of religious communities in prisons was enabled by Act No. 179/1990 Sb. From the beginning, ministers from different religious communities, in whose parishes the prisons are located, have visited the inmates with the permission of the prison administration. They have visited inmates according to their desire, without regard to their professed religion.

Over time, the need arose for the permanent presence of some religious ministers in prison facilities, who would provide chaplaincy and coordinate spiritual assistance for all inmates who are interested.

In 1994, an agreement between the Prison Service of the Czech Republic, the Ecumenical Council of Churches in the Czech Republic and the Czech Bishops' Conference was signed on the establishment of a Spiritual Prison Service. In accordance with new experiences, the original agreement was soon replaced by new ones in 1999, 2008, and 2013. Detailed regulations are contained in several legislative acts, e.g. Act No. 169/1999 Sb., on Execution of Punishment, and the Command of the Director General of the Prison Service of the Czech Republic No. 28/2015, on Organisation of Spiritual Service. According to Act No. 3/2002 Sb., on Religious Communities, only representatives of religious communities registered with special rights may provide professional chaplaincy in prisons.

The activity of the Prison Chaplaincy has gradually spread to almost all prisons. Nowadays it is performed by thirty-five chaplains of both genders from ten registered religious communities, working in the majority of prisons in the Czech Republic.

4.2.3. *Appointment and Revocation of Prison Chaplains and Their Funding*

The Director General of the Prison Service of the Czech Republic appoints and dismisses the Chaplain General and his deputy. Other chaplains are appointed and dismissed by the directors of prisons. A recommendation from their religious community and authorisation by the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic and a clean criminal record are required. Prison chaplains and their activities are funded from the state budget.

4.2.4. *Cooperation with Prison Spiritual Care*

The prison chaplaincy cooperates with Prison Spiritual Care, a volunteer association registered under civil law, which also sends its representatives to prisons, with the consent of the prison's administration. This group carries out tasks of spiritual care, including interviews with inmates, and they do so without getting paid, alongside their regular jobs. Any person assigned to the task by Prison Spiritual Care is obliged to visit a prison facility at least twice a month. The association is a volunteer association made up of Christians of various denominations.

4.3. **Chaplaincy in the Hospitals**

Act No. 372/2011 Sb., on Health Care Services, stipulates that an inpatient is entitled to spiritual care from any registered religious community. The patient may not be denied a visit by a religious minister should his life be in danger or if he is facing a serious health issue.

Given that hospitals and similar health and social facilities are owned by public or private corporations, the agreements on hospital chaplaincy are negotiated between religious communities and the respective owners.

Guidelines for these negotiations has been provided by the Agreement on Spiritual Care in Health Services of 2006, which was signed between the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic, as amended in 2011. This document regulates the appointment of hospital chaplains and volunteers to health care facilities and serves as a model for agreements between a particular facility and interested religious communities, represented by their local parishes.

In 2011 an Association of Hospital Chaplains was set up. In 2012, an Association of Catholic Hospital Chaplains was registered. Some religious communities have appointed hospital chaplains for individual hospitals.

4.4. **Chaplaincy in Other Public Institutions: Police, Airports, Parliament, Municipalities, etc.**

4.4.1. *Police and Fire Rescue Chaplaincy*

The legal status of the police and fire rescue services chaplaincy has been described in Chapter 2. It should be emphasised that this chaplaincy is related to the

care of victims of disasters, terrorist attacks, other crimes, and individual or mass accidents, and post-penitentiary care. As concerns experience and expectations, this type of care by chaplains consists not only of a solely religious dimension, but also a common human dimension. Some documents designate it as a «service of presence».

Police and fire rescue chaplains are usually ministers in their religious communities, paid by them, and are nominated by the respective police or fire rescue commander with the consent of the religious community.

4.4.2. *Airport and Motorway Spiritual Chaplaincy*

Since 1 February 2015 the Václav Havel International Airport in Prague has employed a chaplain according to its agreement with the Czech Bishops' Conference.

The private association Via Carolina opened a Chapel of Reconciliation by Šlovice at the motorway from Prague to Nuremberg in 2008. It is administered from the Catholic parish in Plzeň-Litice.

4.4.3. *Parliament Chaplaincy*

In 2016 the Ecumenical Chapel in the House of Deputies of the Parliament was opened to meet the needs of members and employees of the Parliament. The use of this chapel is not connected to the service of a chaplain.

4.4.4. *Municipalities and Chaplaincy*

From time to time, ministers from various religious communities participate in public celebrations organised by municipalities, if the municipal counsel invites them. Municipal chaplaincy has not been founded thus far.

4.4.5. *The Czech Olympic Team*

Upon the request of Czech Olympic Committee, a chaplain accompanied the Czech Olympic Team to the Summer Olympic Games in Rio de Janeiro 2016.

5. State Chaplaincy and Islam

The number of Muslims in the Czech Republic is relatively low, perhaps not more than 10,000 people. The Centre of Muslim Communities was registered as a religious community (without special rights) in 2004. In spite of this fact the prison in Prague-Ruzyně opened a Muslim chapel and appointed an imam as a voluntary minister.

6. Chaplaincies in Private Institutions

Chaplaincy in church schools and private schools has been described in Chapter 3; chaplaincy in private hospitals in Chapter 4.3.

7. Chaplaincy Unions

The following chaplaincy unions operate in the Czech Republic: the Association of Hospital Chaplains and the Association of Catholic Hospital Chaplains (see Chapter 4.3).

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS: ESTONIA

Merilin Kiviorg*

Introduction

The chaplaincy service in Estonia has had a broken history. The chaplaincy service in the Republic of Estonia emerged and developed with the independent state from 1918 to 1940. However, half a century of Soviet occupation destroyed the service and its traditions. For the purposes of this article the following will focus on the present-day chaplaincy service.

The re-establishment of the chaplaincy service in different institutions after the collapse of the Soviet Union was not without problems and controversies. The service was formally re-established in the armed forces in 1995. Prison chaplaincy started to emerge gradually as early as 1989 when the Soviet Union government permitted clerics and volunteers to visit prisoners upon their request. The official restart of the service was in 1997. The chaplaincy in the police and border guard force was established in 2007. There is also a sailors' mission (*Eesti Meremeeste Misjon*) that was established in 1991. There are chaplains in some hospitals, care homes and private schools, but there is no state-funded, regulated service in these institutions. Recently, the University of Tartu created a post for a university chaplain.

The need for the chaplaincy service has been occasionally debated in light of the low religious affiliation in Estonia. According to the last population census, only 29% considered themselves to adhere to any creed. Of this figure about 10% declared themselves to be Lutheran. The largest religious tradition in Estonia currently is the

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Orthodox Church, with 16% of the population considering themselves as Orthodox[1]. Since the census in 2000 the Orthodox community has grown in numbers and has become bigger than the historically dominant Lutheran Church.

All other Christian and non-Christian religious communities comprise approximately 3% of the adult population (aged 15 and above). The largest religious communities among those are Roman Catholics, Old Believers, the Baptists, Pentecostals and Jehovah's Witnesses[2]. There is a small Muslim community. Muslims have lived on Estonian territory since approximately the eighteenth century and are well integrated into society. There are not many new arrivals, even with the recent increase of immigration to Europe[3].

Surveys indicate that there is a high degree of individualisation of religion. More than half of the people questioned in one of the 2014 surveys said they have their individual beliefs, which are not dependent upon a specific religion or church (58%), and a little less than a half (48%) said that although they do not consider themselves believers they have a great interest in religions and spiritual practices (New Age). Only 10% of people questioned identified themselves as atheists[4].

To some degree the legal acts discussed below indicate that religious assistance in public institutions has been called to existence mainly keeping in mind individual religious freedom and the spiritual needs of people in these institutions. Considering the abovementioned low affiliation with religious organisations and the individualisation of belief, the chaplaincy service operates in a challenging environment. The main driving force behind the chaplaincy service is the Estonian Council of Churches (discussed in more detail below). By definition (discerned from different documents and legal acts) the service is ecumenical, with chaplains serving both the State (and specific public institution) and their religious organisation. The following will discuss the legal framework in more detail and point out some of the challenges faced regarding the service.

1. National Regulation of the Chaplaincy and Definition of Chaplaincy Services (the Constitution, agreements, law, court decisions and other legal sources)

The regulation of the chaplaincy service in Estonia is fragmented. The Constitution does not mention the chaplaincy service. However, the provisions providing for individual freedom of (and from) religion or belief (Art 40) and those that establish

[1] Population and Housing Census 2011, < http://www.stat.ee/phc2011>, 1 Aug. 2013.

[2] Ibid.

[3] For more details see Merilin Kiviorg, *Law and Religion in Estonia,* 2nd edition (Kluwer Law International, 2016).

[4] Uuring: eestlastel on oma usk' («Estonians have Their own Belief»), *Äripäev*, 22. Apr. 2014.

the relationship between the State and religions («there is no State Church») determine the framework in which the service should operate. One needs to add to the above other constitutional principles such as autonomy of religious organisations, equality and neutrality.

Other laws mention religious assistance in public institutions in a piecemeal fashion. However, one more general provision can be found in the 2002 Churches and Congregations Act (§ 9). This provision is located in the chapter that deals with the specifics of individual freedom and provides that:

1) Persons staying in medical institutions, educational institutions, social welfare institutions and custodial institutions and members of the Defence Forces have the right to perform religious rites according to their religion unless this violates public order, health, morals, the rules established in these institutions or the rights of others staying or serving in these institutions.
2) A religious association shall conduct religious services and religious rites in a medical institution, educational institution or social welfare institution with the permission of the owner or the head of the institution, in a custodial institution with the permission of the director of the prison, in the Defence Forces with the permission of the commander of the structural unit and in the National Defence League with the permission of the chief of the unit. [RT I 2008, 35, 213 - entry into force 01.01.2009][5].

Analogous provisions had previously been included in the 1993 Churches and Congregations Act, the predecessor of the 2002 Act[6].

Laws covering specific public institutions (prisons, police, army, etc.) contain only very minimal regulations. The provisions regulating the chaplaincy service in specific public institutions will be discussed below under separate headings.

There have been no court cases related to the chaplaincy service yet. However, freedom of religion or belief in the armed forces and prisons has been an object of public discussion. Concern has been raised about the freedom of religion of non-Christians and non-believers (e.g. forced attendance at services in the armed forces)[7]. These concerns have not been specifically related to the chaplaincy service as such, but rather to the respect for constitutional freedoms in these institutions in general. In addition to that, at the end of the 1980s and beginning of the 1990s many eager volunteers without adequate qualifications were rushing to offer their services in prisons and detention facilities. Concerns at the time were two-fold. There was

[5] RT I 2002, 24, 135.

[6] Churches and Congregations Act, RT I 1993, 30, 510.

[7] Kaarel Tarand, «Põhiseadus ja Palvehelmed» *Sirp,* 19.02.2010; Auli Kytt, «Internetis kogutakse allkirju ilmaliku ühiskonnakorra poolt ja riigikiriku vastu» *Virumaa Nädalaleht* <http://www.vnl.ee/print.php?id=5403&src=1> 20 July 2016.

a general phobia about new religious movements[8] but also genuine concern about inmates' freedom of conscience. These previous experiences have influenced the development of religious assistance in these public institutions.

In addition to the aforementioned general provisions setting the framework for the chaplaincy service and minimal regulation in specific laws, religious assistance in public institutions is mainly based on the cooperation agreement between the Estonian Council of Churches and the State (17 October 2002, Protocol of Common Concerns). This agreement provides a broad basis for specific contracts and cooperation in fields of common interest (education, preservation of culturally important objects, financing, international relations, chaplaincy, etc.). Reliance on this protocol is somewhat problematic considering the above-mentioned constitutional provisions, especially the ones on equality and neutrality. Many problematic areas are unregulated. Some relief was provided by a project that resulted in creating a general qualification standard for chaplains in different institutions. Previously, standards were created in different ministries in charge of specific institutions. The general standard was needed to unify requirements for chaplains across public institutions, facilitate the mobility of chaplains between the institutions and ensure that the training and qualifications of individual chaplains under one ministry would be recognised in the other[9].

The abovementioned standard was created in cooperation between the Estonian Council of Churches, the Estonian Evangelical Lutheran Church (EELC) and the Estonian Qualifications Authority. The Estonian Qualifications Authority (*Kutsekoda*) is a private legal entity (foundation) that was established in August 2001[10]. The qualification standard for chaplains (service level 6 and 7) specifies that the chaplain has to belong to a member church of the Estonian Council of Churches or to a registered religious association and that he or she must have authority/permission from the respective religious organisation to work as a chaplain. Any activity of chaplains from outside of these two groups must be by agreement with the Estonian Council of Churches[11]. Although the qualification standard seemed to have broadened chaplaincy service outside the circle of the Estonian Council of Churches, many institutional job descriptions include the requirement that the chaplain be from a member church of the council[12]. The head chaplains employed by the Defence, Justice, and Internal Affairs Ministries are all from the Estonian Council of Churches. Moreover, the Estonian

[8] Although no serious anti-cult movements appeared in Estonia there were negative responses to activities of NRMs similar to reactions in some other Western and Eastern European states.

[9] «Eesti Evangeelse Luterliku Kiriku Diakooniatöö», < http://www.eelk.ee/diakoonia/y_kaplanaat.php>, 20 July 2016.

[10] «KUTSEKODA» available at <http://www.kutsekoda.ee/et/ > 20 July 2016.

[11] Kutsestandard, Kaplan tase 7, A.1 (töö kirjeldus); Kutsestandard, Kaplan tase 6, A.1 (töö kirjeldus).

[12] E.g. Viru Vangla, spetsialist-kaplani ametijuhend, käskirjaga 1.1 - 1/17, 14.01. 2011.

Association of Chaplains issues the qualification certificate. The Estonian Council of Churches is one of the founding members of this association and also a member of the qualification committee[13]. The qualification committee sets up an evaluation committee for individual applications. Members of the evaluation committee must belong to a member church of the Estonian Council of Churches[14].

There are more than 500 different registered religious associations in Estonia. Most of them belong to churches or associations of congregations[15]. The Estonian Council of Churches decides according to its own statutes which churches it admits. The members of the Council are as follows: (1) the EELC; (2) the Roman Catholic Church; (3) the Estonian Apostolic Orthodox Church; (4) the Estonian Orthodox Church of Moscow Patriarchate; (5) the Estonian Christian Pentecostal Church; (6) the Estonian Methodist Church; (7) the Estonian Union of Evangelical Christian and Baptist Congregations; (8) the Seventh-day Adventist Church; (9) the Charismatic Episcopal Church of Estonia; and (10) the Estonian Congregation of St. Gregory of the Armenian Apostolic Church. The Estonian Council of Churches is a rather unusual ecumenical organisation (registered as a non-profit organisation), which has members who normally are not interested in ecumenical cooperation. It also includes churches with a relatively short history. The Council of Churches represents the majority of believers in Estonia and has definitely contributed to conflict avoidance between different communities. This organisation was established in 1989. However, relying on the council as a filter organisation for the entire chaplaincy service in different institutions can be seen as problematic. That being said, no major conflicts of interest specifically regarding chaplains have been reported in actual practice so far. As indicated in the qualification standard and also in published guidelines, by definition, chaplains must serve the religious needs of all people in public institutions, regardless of their religious affiliation or individual beliefs. In that regard, their task is also to coordinate the visits of clerics from religious organisations not belonging to the Estonian Council of Churches. Non-Christian organisations have access to the institutions. There has been a Muslim chaplain in the defence forces since 2005. His main task is to advise defence force personnel sent to missions in the Middle East, but also to take care of the few Muslims who are serving in the forces[16].

On 21 January 2015, another agreement was signed between the Ministry of Internal Affairs and the Estonian Council of Churches. The agreement reinforces and

[13] Kutsete andmise kord kaplani ja hingehoidja kutsetele, Sotsiaalhoolekande kutsenõukogu, 14.04.2016, http://www.kutsekoda.ee/et/kutseregister/kutseandjad/10523770/dokumendid 20.07.2016.

[14] Kutsete andmise kord kaplani ja hingehoidja kutsetele, Sotsiaalhoolekande kutsenõukogu, 14.04.2016, http://www.kutsekoda.ee/et/kutseregister/kutseandjad/10523770/dokumendid 20.07.2016.

[15] «Usuühendused Eestis», <https://www.siseministeerium.ee/et/tegevusvaldkonnad/usuuhendused>, 20 July 2016.

[16] Andris Feldmanis, «Eesti kaitseväes esimene islamikaplan», *Eesti Päevaleht* 16 September 2005.

implements the abovementioned protocol[17]. It also provides grounds for continuous financing for the activities of the Estonian Council of Churches.

Other institutions have also tried to produce guidelines for the chaplaincy service. There are new 2016 guidelines under preparation in the Ministry of Justice covering chaplaincy in prisons and detention institutions (the guidelines were first produced in 2012). They deal with a broad range of issues, ranging from a description of the chaplaincy service to privacy protection for inmates. The police chaplaincy acquired a handbook in 2008[18]. The guidelines for the chaplaincy service used in the armed forces cover only some aspects of the service.

Whether guidelines, standards and even the above mentioned protocol are an adequate way of regulating the chaplaincy service has been debated. Proposals have been made by scholars and representatives of the religious communities themselves to create a proper legal basis for the service[19].

2. Organisation of Chaplaincies by the State (nomination, education, State supervising, status according to labour law, status of the chapel, etc.)

As pointed out in the introduction, the chaplaincy service is ecumenical, with chaplains serving both the State and their religious organisation. They are supervised both by the State (ministry and relevant institution) and their religious organisation. However, as pointed out by one of the founders of the chaplaincy service: «in the defence forces, chaplains are, above all, members of the defence forces»[20]. The same can be said to apply to other chaplaincy services as well[21].

Chaplains are civil servants and are paid in full by the State budget. The prison chaplaincy is coordinated by the Ministry of Justice, the defence forces chaplaincy by the Ministry of Defence, and the police and border guard chaplaincy falls under the Ministry of Internal Affairs. Thus, all three existing chaplaincy services are part of different institutional structures. From the side of the religious organisations the main coordinating body is the Estonian Council of Churches. Chaplains are also required to have approval from their religious organisation to work as chaplains. In some cases they need approval from the Estonian Council of Churches, which, as noted before, can be seen as problematic.

[17] Koostöökokkulepe, nr. 1-10/42-1; 22.01.2016.

[18] Toomas Nigola *et al*, *Eesti politseikaplani käsiraamat* (Tallinn, Eesti Politsei Kaplaniteenistus, 2008).

[19] Merilin Kiviorg, *Religiooni puudutavate õigusaktide analüüs* (Siseministeerium, 2012).

[20] Tõnis Nõmmik, Vaimulikud kaitseväes. Eesti kaitseväe kaplaniteenistus ja selle eellugu (Kaitseväe Ühendatud Õppeasutused, 2005).

[21] Ringo Ringvee, *Riik ja religioon nõukogudejärgses Eestis 1991-2008* (Dissertationes Theologiae Universitatis Tartuensis, Tartu Ülikooli kirjastus, 2011).

The training of chaplains is carried out by the relevant public institutions and ministries. Academic institutions provide some training. For example, the Institute of Theology of the EELC not only trains its clergy but also trains teachers of religious education in public schools, as well as military, prison and hospital chaplains and people who are to work in the mass media.

According to the qualification standard, level 7 chaplains generally have to have a higher theological education (master's degree), must be ordained and have finished appropriate training under relevant public institutions. Level 6 chaplains need to have at least a BA degree, must be ordained and appropriately trained.

As Estonian laws are very laconic, if not to say unclear, about many aspects of the service, only a very minimum can be reported here as well. It can be discerned from different laws regulating the service that since chaplains are civil servants, the appointment and revocation of their position must comply with the general rules established for the civil service and with specific rules established for people serving in defence forces, the police or prisons. In addition, they need to have approval from their respective religious organisation (not *expressis verbis* mentioned in law, but in the aforementioned qualification standard). As noted above, the qualification certificate is issued by the Estonian Association of Chaplains on the basis of the decisions made by a qualification committee and an evaluation committee. The certificate is issued for five years[22].

4. Chaplaincy in Public Institutions

4.1. Chaplaincy in the Armed Forces (historically, status, appointment, revocation, funding, etc.)

As mentioned above, the service was re-established in the armed forces in 1995. Chaplains are members of the armed forces and fully funded by the state. The law does not say much about the service. The law is more specific about the rights of people serving in the armed forces, which frame the chaplaincy service. Article 124 (2) of the Constitution sets forth the general requirements. Persons serving in the Defence Forces and those performing alternative service enjoy all rights and freedoms provided in the Constitution and are subject to all duties emanating from the same unless otherwise prescribed by law due to the special interests of the service. The rights and freedoms enshrined in paragraph 40 of the Constitution that deal with freedom of religion or belief may not be circumscribed[23]. Controversially, Article

[22] Kutsete andmise kord kaplani ja hingehoidja kutsetele, Sotsiaalhoolekande kutsenõukogu, 14.04.2016, http://www.kutsekoda.ee/et/kutseregister/kutseandjad/10523770/dokumendid 20.07.2016.

[23] RT 1992, 26, 349.

64 (7) of the Military Service Act stipulates that people in alternative service are not allowed to disseminate their religious views while in their place of service[24].

4.2. Chaplaincy in Penitentiaries (historically, status, appointment, revocation, funding, etc.)

Prison chaplaincy was re-established officially in 1997. Religious assistance in prisons has sparse coverage in relevant laws. Article 62 of the Imprisonment Act states that «The prison service shall ensure that prisoners are provided with an opportunity to satisfy their religious needs»[25]. Article 26 (1) of the same act indicates, among other things, that a prisoner has the unrestricted right to receive visits from his or her religious minister. The visits should be uninterrupted. Article 95 (1) specifies the rights of people in custody. A person in custody also has the unrestricted right to receive visits from his or her religious minister. The visit must be uninterrupted. Visits shall be within sight but not within hearing distance from prison service officers[26]. Unlike other chaplaincies (defence forces and police), chaplaincy in prison and detention facilities is for inmates, not for the personnel who work at those facilities. As mentioned above, the prison chaplaincy is under the coordination of the Ministry of Justice. There are also guidelines for prison chaplains.

4.3. Chaplaincy in Other Public Institutions: Police, Airports, Parliament, Municipalities (historically, status, appointment, revocation, funding, etc.)

The police and border guard chaplaincy was re-established in 2007. There are hardly any regulations in law on the matter. Article 27 (7) of the bylaw of the police and border guard service states that the bureau of personnel must coordinate the activity of chaplains, providing spiritual care, advice on moral, ethical or religious issues to members of the force and their families[27].

5. State Chaplaincy and Islam and Other New Religions

As noted above, although the chaplaincy service is coordinated by the Estonian Council of Churches, other religious organisations, including Islamic and new religious movements have access to the service. There have been no major problems reported yet. However, as a rule, volunteers are not part of the state-funded chaplaincy service.

[24] RT I, 10.07.2012, 1.
[25] RT I 2000, 58, 376.
[26] Ibid.
[27] RT I, 29.12.2011, 70.

6. Private Chaplaincies or Similar Activities Organised by the Churches in Other Institutions

As mentioned above, there are chaplains in some hospitals and private schools and now in some public universities. Spiritual assistance is also provided in some care homes. There is also a Sailors' Mission (*Eesti Meremeeste Misjon* - a non-profit organisation).

7. Chaplaincy Unions

As discussed previously, there is an Estonian Association of Chaplains. There is also an Association of Prison Chaplains. Especially in the defence forces, the chaplaincy also cooperates internationally.

Conclusion

The chaplaincy service in Estonia lacks an adequate legal basis and needs further development. Many aspects of the service are not reflected in laws, but in guidelines, standards and cooperation agreements between the State and the Estonian Council of Churches, which do not provide a fully standardised legal framework for the service.

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS: FINLAND

Matti Kotiranta

1. Chaplaincy in Finland – Historical and Sociological Approach

Historically the Finnish State has not sought to organise chaplaincy. The model of chaplaincy in public institutions in Finland has never really been planned. No attempts have been made on the constitutional or governmental level to make any proposals or comprehensive decisions on chaplaincy. Instead, the State has left it to the major churches to organise chaplaincy in public institutions.

There is no single Finnish word for the phenomenon[1]. The Finnish words «sairaalasielunhoito» (Hospital Chaplaincy – literally Pastoral Care at Hospital), or «sotilassielunhoito» (Military Chaplaincy – literally Pastoral Care/Work at defence forces) or «vankilapappi» (Prison Chaplain) have been translated to English as chaplaincy, but they don't cover the whole meaning of chaplaincy, that is, in the sense it is understood, for example, in the Anglican world[2].

Nevertheless, there are - in Finland as well as in other countries – chaplains within public institutions, in the defence forces, in hospitals, in prisons and so on.

[1] It is the very same with the Swedish word «institutionssjälavård» – literally «soul cure at institutions». See Lars Friedner' report Chaplaincy – Sweden.

[2] See the online edition of the Oxford English Dictionary, www.oed.com, ***Chaplain n.*** a1100: **1.** *gen.* The priest, clergyman or minister of a chapel *n.*; in Middle English a chantry priest. 2. *spec.* A clergyman who conducts religious service in the private chapel of a sovereign, lord, or high official, of a castle, garrison, embassy, college, school, workhouse, prison, cemetery, or other institution, or in the household of a person of rank or quality, in a legislative chamber, regiment, ship, etc. The OED adds: «Thirty-six clergymen of the Church of England, and six of the Church of Scotland have the office and title of *Chaplain in Ordinary to her* (or *his*) *Majesty*; there are also several *Honorary Chaplains*; and among other official positions are those of *Chaplain to the Forces*, *Chaplain of the Fleet*, *Army Chaplains*, *Navy Chaplains*, etc., etc.».

Chaplaincy, *n.* a1745*:* **Etymology:** < chaplain *n.* + -cy *suffix*: a modern term, which probably began in the Army; compare *captaincy*, etc. The office or position of a chaplain; = the earlier **chaplainship** ***n***.

To a large extent, «the development of chaplaincy» in Finland mirrors the religious development that the country as whole has undergone, from a predominantly Evangelical Lutheran country to a modern society characterised by diversity in religions and non-religious beliefs[3]. This development parallels the nation's transformation from a principally agrarian and traditional society to a post-industrial service industry society during the past 150 years.

The Finnish State (founded in 1917) is neither nondenominational nor denominational. There has been complete freedom of religion in Finland since 1923, and the Finnish State is neutral in matters of religion.

Today most people in Finland are, at least nominally, members of Christian churches, but since the 1980s there has been a significant increase in the number of people without religious affiliation (24.3 percent in 2015). As of 2015 about 73% of the population were members of the Evangelical Lutheran Church of Finland, with just over 1.1% belonging to Finland's Orthodox Church. There are also Catholic, Jewish and Islamic congregations as well as numerous smaller religious communities (together they make up 1.6 percent of the whole population in 2015). The number of Muslims in Finland is currently estimated at around 60,000 – and rapidly growing[4].

Unlike the general European ecclesiastical context, the status of the Evangelical Lutheran Church of Finland under public law is still ensured in the new constitution that entered into force on 1 March 2000 (731/1999)[5]. The Lutheran Church is legally

[3] See K. Kääriäinen, K. Niemelä & K. Ketola, «Religion in Finland. Decline, Change and Transformation of Finnish Religiosity». *Publications of the Church Research Institute*, no.54, 2005.

[4] See more closely *Statistical Yearbook of Finland 2015* http://www.stat.fi/til/vaerek_2015_2016-04-01_tie_001_fi.html

[5] The Constitution of Finland 11 June 1999 (731/1999, amendments up to 1112 / 2011 included), see http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf

The historical roots of Church-State relations in Finland lie in the great social, religious and ecclesiastical change caused by the Reformation in Sweden (including Finland) in the 1520s. With the coronation of Gustav Vasa in 1523 and the Diet of Västerås in 1527, Sweden broke with Rome. The connection with the supranational Papacy, with its independence from the State and its legal system, was now severed, and in its place a national church was born. Its position was regulated by new ecclesiastical regulations and social legislation. While in Sweden the mediaeval Catholic Church was affected by both internal canon law and the external ecclesiastical code contained in contemporary provincial laws, with the Reformation canon law did not entirely disappear but its scope was considerably reduced. In practice the Reformation was introduced by state decisions. At the Synod of Uppsala in 1536 the Church of Sweden became a national evangelical church. At the Diet of Västerås in 1544 Sweden declared itself an evangelical kingdom. The important church constitution of *Laurentius Petri* (1561) was published with the approval of the king in 1571. With the Reformation in Sweden (including Finland), as in other Lutheran countries, the Church became an integral part of the State. From the legal point of view, the change was very considerable.

Finland's centuries-long state connections with Sweden were severed in 1809, and Finland was incorporated into the Russian Empire as an autonomous Grand Duchy. The 1686 church law was still in force and thus became part of the legislation of the Grand Duchy of Finland.

and administratively independent in relation to the State. However, there are close institutional and legislative links between the State and the Lutheran Church, and the public school system, which is run primarily by the municipalities and partly financed by the State, makes nondenominational religious instruction on the majority religion a part of the curriculum[6]. The Church Act of the Lutheran Church is an Act of Parliament despite the fact that neither the President nor Parliament is allowed to change the wording agreed upon by the General Assembly of the Lutheran Church. The Church Act includes provisions with a clear denominational character.

The new law concerning the Orthodox Church came into force at the beginning of 2007[7]. *In the new law the Orthodox Church remained essentially as before, with a special status under public law*. The special status of these two folk churches under public law is the main reason why the Finnish State has had a strong willingness to leave it to the major churches to organise chaplaincy in public institutions.

The Constitution and secular laws secure the freedom of religion and the rights of religious and non-religious minorities.

Members of minority religions and persons not belonging to any religious community have a constitutional right to be exempt from participation in religion[8].

The church law of 1869 meant that once again the Church became a community under public law, separate from the State. The new church law was also a significant step towards freedom of religion. In the church law of 1869 freedom of religion meant primarily freedom of religious observance. A religiously neutral state was still an unknown concept in the 1869 church law.

Finland's connection with Russia during the Period of Autonomy created, paradoxically enough, the basis for independence for the Church, too. When the Lutheran Church emphasised the Western ecclesiastical tradition in its Nordic form alongside the different church of the Czar, holding that it was the representative of Western Christianity in Finland, it was successful in ensuring for itself a new, legally guaranteed status of non-interference. *Before the increasing integration of the European Union the Finnish church and the associated cooperation with the State had no need to open this preserve to outsiders in any significant way.* On the Finnish system in general, see Matti Kotiranta, «Law and Religion in Finland», in G. Robbers & W.C. Durham (eds.), *Encyclopedia of Law and Religion*, Brill, 2016; Matti Kotiranta, «Religion and the Secular State in Finland» J. Martinez-Torron & C. Durham (eds.), *Religion and the Secular State. La religion et l'Etat laïque*, Washington/Madrid, Brigham Young University/ Complutense University of Madrid (Fac. Of Law), 2015, 262-291. See also M. Heikkilä, J. Knuutila, M. Scheinin, «State and Church in Finland», in G. Robbers (ed.) *State and Church in the European Union*, 1996.

[6] The formulation used in the relevant laws is neutral: it speaks of the denomination of the majority of the pupils in any particular school. In practice, all Finnish schools have a Lutheran majority, except for some separate religious schools.

[7] The Orthodox Church was affected until 2006 by the Orthodox Church Act (521/1969) and its supplementary statute (179/1970), as well as the Freedom of Religion Act, and other general administrative legislation.

[8] Within the school system this means separate education in the minority religion concerned, or education on ethics, or total exemption.

In Finland no particular religion is given some power to control other religious communities under the State law[9]. In this context, it is noteworthy to add that it is not only the law, but also historical reasons, which have, throughout the course of history, given the Lutheran Church and Orthodox Church a special position in terms of pastoral care in hospitals (Hospital Chaplaincy) and pastoral work in the defence forces (Military Chaplaincy).

2. National Regulation of the Chaplaincy and Definition of Chaplaincy Services (The Constitution, agreements, law, court decisions and other legal sources)

As mentioned above, Finland has no comprehensive legal or factual view on chaplaincy or priesthood. The Constitution of Finland and the Statutes from the Government do not contain any specific provisions addressing the issue. Also, there is no national recognition of or regulations concerning the various forms of chaplaincy of the major churches and religious communities mentioned in the Freedom of Religion Act (453/2003). The Constitution establishes only the freedom of religion and conscience as stated in § 11. Nor does the Freedom of Religion Act does specify the nature of chaplaincy in any way.

In Finland as well as in other countries, there is significant variation concerning forms of chaplaincy among Churches and religious communities. Therefore, an overarching view of chaplaincy in Finland cannot be given in this paper. In this context, suffice to say, that the traditional Churches, i.e. the Finnish Orthodox Church and the Catholic Church in Finland, have interpreted chaplaincy under the regulatory level

[9] Also, the Freedom of Religion Act (453/200) establishes, exhaustively and in detail, the legal status and foundation, rights and obligations of churches and registered religious associations. In the Finnish context three different types of legal persons can be found among religious associations: (1) The status of the Evangelical Lutheran Church under public law is ensured in the constitution. (2) In the new constitution there is no direct provision for the Finnish Orthodox Church to regulate its position in society.

In this respect the legislative status of the Orthodox Church differs from that of the Lutheran Church. The Orthodox Church is, as mentioned above, the subject of the new law concerning the Orthodox Church, 2007 (HE 985/2006). (3) In Finland a registered religious association is, however, a special type of community. Its foundation and legal status are regulated in subsection 2 of the Freedom of Religion Act. Such a religious body gains the status of a legal person, that is, it can acquire property, enter into commitments and be a litigant in court and with other authorities once it is entered in the register of religious associations.

The new Freedom of Religion Act came into effect in August 2003. It replaced the previous Freedom of Religion Act of 1923. Freedom of religion is a constitutional right. It entails the right to profess and practise religion, the right to express a conviction and the right to belong or not to belong to a religious community.

of the Church Acts (Canon Law) and Church Orders (§ 2 of Orth. Church) within the traditional threefold structure of bishops, priests, and deacons.

In turn, the **Church Act** (Chapter 5, Part II, § 1 & 1a) and the **Church Order** (Chapter 5, Part III, § 1 & 2) of the Evangelical Lutheran Church of Finland do not use the term chaplaincy, but rather prefer those of «ministry» or «minister's office». In addition, when discussing the positions in the ELCF, a distinction is made between a «religious office» (papinvirka) and a «minister's office» (pappisvirka). A religious office (with its full responsibilities and rights) is received upon being ordained, and is governed by church law and statutes concerning the rights of the office. A minister's office refers to employment for which one receives a salary, and is in some ways comparable to the position of a civil servant.

In Finland there are no court decisions or other legal sources which regulate the various forms of chaplaincy of the major churches or religious communities. The only thing that may touch upon the issue is that if an office holder (including a minister/chaplain) refuses to carry out certain obligations, this has been interpreted in Finland purely on the grounds of administrative law as neglect of duty. In Finnish Supreme Court praxis a person (chaplain) who is employed by a church or other religious community and finds himself in conflict with that church or community on an issue of belief or conviction is deemed to have exercised his individual religious freedom in the act of taking up such employment. Once he has done so, he cannot thereafter appeal to the freedom of religion in order to depart from the tenets of that religious community[10].

3. Organisation of Chaplaincies by the State (Nomination, education, State supervision, status according to labour law, status of the chapel, etc.)

In Finland, no chaplaincies are organised by the state.

[10] This is also suggested in the statement made by the Parliamentary Constitutional Committee to the Parliamentary Administrative Committee (PeVL 22/1997) on the bill for alterations to § 16c of the law on the Orthodox Church in Finland:

« –Every person enjoys the fundamental right of the freedom of speech, although more precise regulations regarding this are given in law. It is in the nature of the offices mentioned in the bill that their holders should teach in accordance with the precepts of the Orthodox Church and that they should be aware of this fact when taking up such an office».

It is similarly noted in the statement on disciplinary proceedings that

« –It should also be said that matters concerned with the right to remain in public office have been demonstrated in the practises of the Human Rights Commission to lie beyond the scope of article 6 of the European Convention on Human Rights».

4. Chaplaincy in Public Institutions

4.1. Chaplaincy in the Armed Forces (History, status, appointment, revocation, funding, etc.)

Ever since the 16th century, there have been chaplains serving Finnish soldiers in the armed forces, which at that time meant within the Swedish armed forces. During the Era of Autonomy (as part of the Russian Empire), the formation of the field chaplain office and its duties in the Finnish army were established based on Finnish laws, especially ecclesiastical law (Schauman's Church Law of 1869), and based on the heritage of the long period of Swedish rule. For example, the custom of granting the honorary title of war dean (sotarovasti) originates from the time of Swedish rule. The Russian field chaplain system only had a minor influence on the field chaplain's office. The only significant Russian influence was that Lutheran chaplains were exempted from military service.

The grounds for the duties of the field chaplain during the Era of Autonomy can be found in the war articles. The war articles also required a Christian education. Both field chaplains and parish priests were obliged to teach the Christian Doctrine to military tenure battalions. Cooperation between the Lutherans and the Orthodox Church was smooth. As part of the Russian military establishment, the Finnish army represented a small Lutheran minority that was not in complete unison with the Russian establishment. Furthermore, the supreme military command was in Russian hands. Cooperation nevertheless created confidence between the Czar and the Lutheran Church. For its part the Finnish army and its priests consolidated the union between the throne and the altar[11].

Following Finnish independence chaplaincy work started officially in 1918, when the assessor *Hjamar Svanberg* presented a plan to *General Mannerheim* for pastoral work in the defence forces.

Today, chaplaincy work in the Finnish Defence Forces (FDF) is mainly done by the Lutheran and Orthodox Churches and their chaplains. Services are available for all conscripts regardless of denomination or conviction. *The FDF employ Lutheran and Orthodox chaplains. The Evangelical Church of Finland and Orthodox Church have taken financial responsibility for the costs of military deacons.*

[11] For more on the Finnish chaplaincy during the Period of Autonomy, see K. Vappula »Sotilaspapin virka Suomen ruotujakoisessa sotaväessä 1812–1880» (The Office of Field Chaplain in the Finnish Military Tenure Establisment from 1812 to 1880). Diss. Publications of SKS, no 123; K. Vappula, »Sotilaspapin virka Suomen asevelvollisessa sotaväessä 1881-1905» (The Office of Field Chaplain in the Finnish Conscript Army 1881 to 1905), Publications of SKS, no. 146.

The purpose of the work is to mentally and spiritually support those serving in the Defence Forces and Border Guard and to maintain their ethical ability to function in all circumstances.

There is also co-operation with other churches and Christian organisations and with civil defence organisations. In 2015 there were 28 members of the Lutheran and Orthodox clergy in the service of the military, and a further 15 serving on a part-time or fee-paying basis; four of these are Orthodox. There are also Church sector conscripts and reserve military chaplains and military deaconesses used in military refresher courses and crisis management troops[12].

Religious assistance in the armed forces is subordinated to the general chaplain (military bishop), who is comparable in rank to a general. In the organisation of the FDF military, chaplains have the status of officers. During military service chaplains wear uniforms, but at masses and services they are dressed in liturgical attire.

In the Finnish Defence Forces, for international missions there is always a chaplain(s) working among the UN peace-keeping forces. Finnish peacekeepers have served in Kosovo, Afghanistan, Bosnia-Herzegovina, Chad, Ethiopia and Eritrea, Lebanon, Macedonia and Somalia[13].

4.2. **Chaplaincy in Hospitals (History, status, appointment, revocation, funding, etc.)**

The first hospitals in Finland were established in the Middle Ages (especially for people suffering from leprosy). The Hospital of St. George in Turku (Turun Pyhän Yrjänän hospitaali), which was first mentioned in records in 1355 had a capacity for some 50 patients to be treated, while at St. Magdalena's hospital in Viborg (Viipurin Maria Magdaleenan hospitaali), which was founded in 1475, the capacity was a little higher. Both cities also had alms-houses (vaivaistupa), i.e. the Houses of the Holy Spirit, which took care of the poor and sick. In Helsinki a small hospital was established shortly after the foundation of the city (by Gustav Vasa in 1550), which was first mentioned in records in 1555[14]. Hospitals were run by the Church, which at that time meant the Roman Catholic Church. Finland, falling under Swedish rule, shared the same Church Ordinances (1571, Kyrko-Ordning) and Church Acts (1686) as Sweden. In this system every hospital had a chaplain. The system remained after the Reformation, up until 1809, when Finland was incorporated into the Russian Empire as an autonomous Grand Duchy.

[12] About Pastoral work of the Defence Forces, see more detail http://www.sakasti.evl.fi/sakasti.nsf/0/4D9073DDB9C38745C22576F20030A70E/$FILE/16.%20services.pdf, 188-190.

[13] Ibid.

[14] Arno Forsius, «Descriptions of the History of Medicine», Leprosy, see http://www.saunalahti.fi/arnoldus/haklaa.html.

The Church Ordinance of 1571 stated that vicars should make weekly visits to the hospitals of their parishes. In the Church Act of 1686, this duty was changed into a visit every fortnight. Hospitals had to celebrate worship on Sundays, annual holidays and intercession days, while administering the weekly Thursday sermon was compulsory for vicars.

Pastoral care was considered to be one of the clergy's most important responsibilities, as was the administration of the sacraments – especially the sacraments of baptism, communion, confession, and the last rites. Of particular importance regarding the idea of eternal life were baptism and the last rites. A sudden death without any preparation was the most miserable possibility that a person could imagine. The priest came to the hospital in particular to support people who were on their deathbed. The importance of preparing for death is described in 1200 as a part of the late regulations from Uppland county law «For the Holy Communion given to the sick»:

> «If the peasant lying sick asks the priest to join him, but the priest decides other things are more important and a man dies without receiving the Holy Communion, the priest has to pay a fine of three marks to the person's heirs. If the priest at the same time receives an invitation to baptize a child and to give to the sick [peasant] the Holy Communion, he must first help the peasant and after that baptize the child».

In Finland, Bishop *Maunu Särkilahti* (about 1435–1500) assigned the following Regulation to priests:

> «A priest should, when he is called to the sick, leave aside all other concerns, without delay, and leave. - But if anyone, as stated above, unhurried, transfers departure because of his own horse and the sick [person] dies without the sacraments, they shall without any pity be punished by a fine of 40 marks. If the sick does not die, the priest shall anyway be punished for dilatory with a fine of three marks»[15].

«Lasaretit» (that is, general hospitals) were established in Sweden and Finland beginning in the 1750s as part of a slow process of development, first in provinces and then administrative cities. It is likely that in the very early stages, a preacher was appointed who was also possibly the counsellor for the local hospitals and the prison. The Lääninlasaretti of Turku (General hospital of the County Turku) was the first general hospital opened in Finland in 1759.

The first Church Law of Finland, which was issued when Finland had become an autonomous Grand Duchy of the Russian Empire, was enacted in 1869. The law was in force for almost a hundred years, up to 1964. It contained 8 provisions (§62, §92, §95, §96, §97, §154, §159, §249) covering the treatment of the sick.

[15] Juusten, Paavali: Suomen Piispain kronikka, *Chronicon Episcoporum Finlandensium*. According to Henrik Gabriel Porthanin in Finnish Helmer Winter. Otava. Helsinki 1956.

In the 19th century, the number of hospitals grew rapidly. Following Finland's independence, pastoral care was organised by Evangelical Lutheran parishes as early as 1925, when the first hospital preacher, pastor *R. Ilmonen*, started his work. The second hospital chaplain was hired in 1938, when the parishes hired pastor *Niilo Syvänne* as the priest at the General Hospital of Helsinki. However, modern pastoral care in hospitals and other medical institutions was not organised in Finland until the 1940s.

Training in pastoral care and counselling has been offered since 1952, when the first training course for parish pastors in giving marital counselling was offered. *Matti Joensuu,* famous for initiating marriage and family counselling in Finland, played a major role in the development of the first training courses[16].

The training of hospital chaplains was developed at the same time as the training of family counsellors. *Pirjo Hakala* has pointed out in her dissertation that

> «In the late 1950s, hospital work in Helsinki included some elements of training in their meetings. However, the first training program for hospital chaplains was initiated in 1960, eight years after the first training course for family counsellors. It was modelled on the American CPE (Clinical Pastoral Education) but was also influenced by German, Dutch, and Norwegian models»[17].

Nowadays, the hospital chaplaincy is maintained by the Evangelical Lutheran Church of Finland and works hand in hand with the healthcare system[18]. The aim of health care is the promotion of health, the prevention and treatment of disease, and the alleviation of suffering. The objective of pastoral care is to address the religious, spiritual, and life-view questions of the sick and those who are suffering. A pastoral caregiver respects the human dignity, beliefs, and integrity of the patient regardless of his/her background or view of life[19]. In order to work as a hospital chaplain, one must pass an aptitude test and complete a specialisation programme approved by the Church. Self-determination is clearly stated in the Constitution of Finland and in the Act on the Status and Rights of Patients.

The Evangelical Lutheran Church of Finland today has 120 full-time and 17 part-time hospital chaplains, more than half of whom are women. In addition, more than half of hospital chaplains also act as supervisors.

The Unit of Diaconia and Pastoral Counselling (Kirkon diakonian ja sielunhoidon yksikkö, KDS) is an expert and cooperative body that plans and carries out

[16] Pirjo Hakala, «Learning by Caring. A Follow-Up Study of Participants in a Specialized Training Program in Pastoral Care and Counseling». *Diss*, Helsinki, 2000, 11.

[17] Ibid., 12.

[18] The latest stage in the detailed specialization of hospital chaplaincy is represented by the document *Hospital Chaplaincy Specialisation Program,* and it was accepted by The Bishops' Council on 13 September 2011.

[19] *Principles for Hospital Chaplaincy* were accepted by the National Church Council, in its plenary session on 17 August, 2011.

pastoral care in hospitals, institutions and outpatient care. It maintains contact with the health care field. It belongs to the Department for Parish Services at the Office of the National Church Council in the Evangelical Lutheran Church of Finland, and it is a member of the *European Network of Healthcare Chaplaincy*.

4.3. **Chaplaincy in the Penitentiaries (History, status, appointment, revocation, funding, etc.)**

During Swedish rule, the work of chaplains in Finnish prisons was based on Swedish legislation. The connection between Finland and Sweden has been exceptionally close. For centuries, the same laws were in force in both Finland and Sweden, as Finland was part of Sweden up to 1809.

The earliest references to pastoral care in Finnish prisons can be found in Finnish reformer Mikael Agricola's manual (1500), which describes in detail how the priest should prepare people sentenced to death. A later document is the Church ordinance of 1571, which ordered priests to take care of persons in prison. The Church Act of 1686 further stated that prison chaplains should be well-qualified for their special duties. The chaplains' work with those who had been sentenced to life imprisonment or capital punishment was emphasised[20].

Finland's centuries-long state ties to Sweden were severed in 1809, and Finland was incorporated into the Russian Empire (though still maintaining its own laws). The Grand Duchy of Finland inherited the Swedish prison network structure, which was supplemented during the period of Autonomy. Several new prisons were built. The Helsinki County Prison («Helsingin lääninvankila» in Finnish) in the Katajanokka part of Helsinki functioned as a prison from 1837 to 2002. It was established in 1837 by Tsar Nikolai I to function alongside the Helsinki Crown Prison, which had operated since 1749[21].

After Finnish independence, wartime (the 1918 Civil War and the two wars against the Soviet Union between 1939 and 1944) and post-war conditions also left their mark on Finnish criminal policy. *Tapio Lappi-Seppälä* has pointed out that in the 1960s the Nordic countries experienced heated social debate on the results of and justifications for involuntary treatment in institutions, both penal and otherwise (such as in health care and in the treatment of alcoholics). At that time in Finland,

[20] Forsback & Nordström in Svärd (ed), Jag var i fängelse – en studiebok om den andliga vården vid fångvårdsanstalterna. (Klippan 1970), p. 57. See Lars Friedner's report, Chaplaincy – Sweden.

[21] The prison museum in the town of Hämeenlinna operates on the former premises of the provincial prison of Häme. When the building was finished in 1871, it was the first prison in Finland with cells, and it was used until 1993. The museum was opened to the public in June 1997. The building was designed by the architect L. I. Lindqvist. See http://www.visithameenlinna.fi/en/services/prison-museum/

> «the criticism of the treatment ideology was merged with another reform ideology that was directed against an overly severe Criminal Code and the excessive use of custodial sentences. The resulting criminal political ideology was labelled as «humane neo-classicism». It stressed both legal safeguards against coercive care and the goal of less repressive measures in general. In sentencing, the principles of proportionality and predictability became the central values. Individualised sentencing, as well as sentencing for general preventive reasons or perceived dangerousness were put in the background. Between 1970 and 1990 all the main parts of Finnish criminal legislation were reformed from these starting points. The common denominator in several legal reforms was the reduction in the use of custodial sentences. A tangible result of this policy was the long-term systematic reduction of incarceration»[22].

In 1925, the Evangelical Lutheran Church of Finland integrated prison chaplaincy into its regular organisation. The very first prison chaplaincies were founded in the 1820s, in the Era of Autonomy. In a statute from 1925 concerning the prison administration, the old title «a prison preacher» was changed to «a prison chaplain»[23]. The position of pastoral care in prisons was strengthened in the 1970s and 1980s.

The State funds the salaries of the prison chaplains, and the Evangelical Lutheran Church funds the prison deacons. In 2012, the Correctional Services Department proposed transferring the hiring of prison chaplains from the state to the Church. However, the Ministry of Justice decided to continue hiring prison chaplains as employees of the Correctional Services Department.

In 2015 there were 14 full-time prison chaplains and three deaconesses in the largest prisons in Finland. All full-time prison chaplains are ministers of the Evangelical Lutheran Church. In prisons, the pastors are employees of the Correctional Services Institution and are part of the prison's rehabilitation activities. Prison deaconesses hold offices in the dioceses. Additionally, there were three part-time chaplains and one deacon who maintained contact with the prison in addition to the duties of their own parishes. Free churches and different religious organisations also have their own widespread network for doing prison work. Each year they organise in prisons an average of more than 100 sessions, 50-80 group meetings, as well as more than 100 individual meetings for prisoners[24].

[22] Tapio Lappi-Seppälä: «Imprisonment and Penal Policy in Finland». Scandinavian Studies In Law 1999–2012, 334.

[23] See closer Publications of the Correctional Services Department, http://www.rikosseuraamus.fi/material/attachments/rise/julkaisut-monisteetjaraportit/6XRN2xbYF/1-2006_Oikeus_uskontoon.pdf, pp. 12-16.

[24] Sami Puumala, «The study of pastoral care and ecclesiastical work in prisons 2011–2012» (Selvitys vankilasielunhoidosta ja kirkollisesta vankilatyöstä 2011–2012), see in electronic form: http://sakasti.evl.fi/julkaisut.nsf/05892BAE40E8902DC2257E2E0012D529/$FILE/S%20Puumala%20-%20Selvitys%20vankilasielunhoidosta%20ja%20kirkollisesta%20vankilatyöstä%202011-2012.pdf.

According to the report *Church in Change* (2005), «Work for those with criminal convictions was also done elsewhere than in prisons. Those released from prison and those serving their sentences in the community or who had conditional sentences need support». The report strongly underlined that aftercare is one of the most important aspects of the Church's work with criminals. The church is expected to provide support especially in regard to prisoners' families, couple relationships, substance abuse problems, and housing[25].

4.4. **Chaplaincy in Other Public Institutions - Police, Airports, Parliament, Municipalities (History, status, appointment, revocation, funding, etc.)**

Finland has examples of chaplaincies in public institutions other than those already mentioned. They include chaplaincies within universities, business centres, the police force and airports.

There are chaplains at Finnish universities and at universities of applied sciences. Most are priests who belong to the Evangelical Lutheran Church of Finland. At some of the bigger universities – such as the University of Eastern Finland – priests from the Lutheran Church are full-time university chaplains and are normally paid by local parishes. There is also a formal association for university chaplains, *Kirkon oppilaitostyöntekijät ry*, which has been operating for 20 years. Helsinki University's chaplain *Ms Leena Huovinen* participated in the recent Rio Olympic Games as the Finnish Olympic team counsellor.

In the Helsinki metropolitan area (Helsinki, Espoo and Vantaa) there have also been chaplains working at large shopping centres and with the police, who are paid by local parishes. There has also been a long and lively discussion for more than ten years about having pastoral activities at Helsinki-Vantaa airport.

5. State Chaplaincy and Islam and Other Religions

There is no State Chaplaincy in Finland.

Finnish Muslims do not yet have Islamic chaplains. Finnish Muslims have, in several contexts, expressed their concern for securing trained imams in so that the communities may continue their spiritual life and remain a community of faith. That means guaranteeing that an imam and spiritual workers have the proper knowledge of the Islamic sciences. It should be noted that according to a survey on *Imams in*

[25] See K. Kääriäinen, M Hytönen, K. Niemelä & K. Salonen, «Church in Change. The Evangelical Lutheran Church of Finland from 2000 to 2003». *Publications of the Church Research Institute*, no. 545, 2005.

Finland, the need for this type of formal education arises from within the Islamic communities in Finland and from imams themselves[26].

6. Private Chaplaincies or Similar Activities Organised by the Churches in Other Institutions

The Anglican Chaplaincy of St Nicholas, Helsinki, was founded by those who fled from Saint Petersburg during the Russian Revolution. Today, the Chaplaincy is part of the Church of England's Diocese of Gibraltar in Europe and works closely with the Evangelical Lutheran Church of Finland under the auspices of the *Porvoo Agreement*.

Since there are now three independent Anglican congregations in Finland, the Chaplaincy has moved from using the name the Anglican Church in Finland and is using its official name under the Church of England. The Chaplaincy serves Anglicans living in the greater Helsinki area and is an inclusive community of word and sacrament[27].

7. Chaplaincy Unions

There are no chaplaincy unions in Finland.

[26] The study is written in Finnish with an English summary. Open access document available at the address: http://www.kulttuurifoorumi.fi/fin/julkaisut/?id=125.

[27] See https://www.achurchnearyou.com/helsinki-st-nicholas-church/

ASSISTANCE SPIRITUELLE EN MILIEU CLOS - FRANCE

B. Basdevant-Gaudemet
F. Messner
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Le régime français de l'aumônerie des services publics sera présenté selon l'ordre de la grille thématique proposée. Cette grille thématique sera complétée par deux paragraphes. Le premier (§8) sera consacré à la réforme, actuellement en cours, de la formation des aumôniers, imposée par la volonté des pouvoirs publics d'intégrer l'islam dans le cadre républicain laïc. Le second (§9) sera consacré à la présentation des spécificités du droit local alsacien-mosellan.

1. Approches historiques et sociologiques

L'aumônerie est une institution sociale et ecclésiale très ancienne, elle est dérivée de l'*«aumône»*, mot lui-même issu du latin d'Eglise (*alemonisa*). Avec la Révolution française, toutes les structures religieuses officielles sont anéanties, et l'aumônerie telle qu'elle pouvait exister sous l'Ancien régime disparaît. Mais c'est pour mieux renaître une dizaine d'années plus tard, sous l'autorité de Napoléon qui entend faire de la religion le ciment de l'ordre social. A titre d'exemple, le système d'enseignement est complètement réorganisé en 1802, et il est alors prévu expressément qu' *« il y aura un aumônier dans chaque lycée »* nouvellement créé (arrêté du 19 frimaire an XI-10 décembre 1802). Même si l'aumônerie n'est pas organisée par le Concordat et les articles organiques de 1802, elle est au 19e siècle un rouage essentiel du système de la reconnaissance, où le culte est compris comme un authentique service public.

Avec la séparation des Eglises et de l'Etat, c'est la présence religieuse au sein des services publics qui se trouve remise en cause. L'aumônerie ne va pas disparaître pour autant, mais elle va se trouver bouleversée dans ses fondements. La nouvelle aumônerie, qualifiée désormais de *«républicaine»*, n'a plus pour fonction d'assurer la présence des cultes dans les institutions publiques, mais seulement de garantir ponctuellement la liberté religieuse de tous ceux, usagers ou agents publics, qui en sont écartés du fait de leur état (malades, prisonniers, élèves en internat) ou de leur statut (militaires). C'est ce basculement d'une logique coopérative à une logique

séparatiste qu'entérine formellement l'article 2 de la loi de 1905 qui, évoquant les aumôneries, souligne qu'elles sont *«destinées à assurer le libre exercice des cultes dans les établissements publics…»*.

2. Statut des aumôneries et définition des activités d'aumônerie par le droit national (normes constitutionnelles, droit conventionnel, loi, jurisprudence et autres sources juridiques)

Statut constitutionnel : C'est le principe de la liberté de religion qui constitue le fondement constitutionnel implicite de l'existence des aumôneries. Il s'agit de permettre aux malades, aux prisonniers, aux militaires écartés de la vie civile de pratiquer leur culte librement. En ce sens, l'existence de l'aumônerie résulte incontestablement d'une exigence constitutionnelle puisque sans elle le libre exercice des cultes ne serait pas garanti.

Statut législatif : Quant au fondement législatif de l'aumônerie, il est minimaliste. Les auteurs de la loi concernant la séparation des Eglises et de l'Etat ne souhaitaient pas consolider pour l'avenir l'existence des services d'aumônerie [1], et c'est pourquoi leur projet n'en parlait pas. C'est finalement un amendement parlementaire à l'article 2 de la loi de 1905, voté par 287 voix contre 281, qui vient faire exception à l'interdiction de financer les cultes, au profit des services d'aumônerie dont l'existence se trouve ainsi consacrée. Ainsi que l'énonce cet article 2, «La République ne reconnaît, ne salarie ni ne subventionne aucun culte… Pourront toutefois être inscrites (au budget de l'Etat, des départements et des communes) les dépenses relatives à des services d'aumônerie et destinées à assurer le libre exercice des cultes dans les établissements publics, tels que lycées, collèges, écoles, hospices, asiles et prisons».

Si la loi de 1905 est fondamentale en ce qu'elle consacre le droit au maintien des services d'aumônerie en régime de séparation, en revanche elle n'est en rien un texte organique, et ce sont des textes spéciaux, de nature généralement infralégislative (décrets, arrêtés et même parfois une simple circulaire), qui viennent aménager les services d'aumônerie là où ils existent, c'est-à-dire dans les hôpitaux (circulaire du 20 décembre 2006), dans les établissements pénitentiaires (décret du 23 décembre 2010), dans les armées (décrets du 16 mars 2005 et du 30 décembre 2008), ou encore dans les collèges et lycées (décret du 22 avril 1960). Outre que cette réglementation est parcellaire, elle ne présente aucun caractère systématique. Il existe ainsi traditionnellement une aumônerie dans certaines universités, sans que le Code de l'éducation n'en fasse expressément la mention.

[1] La volonté du gouvernement n'était pas de supprimer du jour au lendemain les services d'aumônerie, mais d'en rendre l'existence facultative, comme c'était déjà le cas dans l'enseignement secondaire. Le fait de mentionner les aumôneries aurait eu pour effet d'imposer ainsi que l'indique le ministre des cultes «un mode d'organisation spécial» : JO, Chambre des députés, débats, 12 avril 1905.

Jurisprudence : la jurisprudence est peu abondante sur cette question des aumôneries, mais elle existe néanmoins. Cette jurisprudence consacre un certain nombre de principes essentiels.

— L'existence d'une aumônerie est en principe facultative, sauf lorsque son existence est indispensable pour garantir le libre exercice des cultes. Ainsi qu'a pu le dire le Conseil d'Etat[2], avec l'article 2 de la loi de 1905, *«le législateur a reconnu que, dans certains établissements publics, le libre exercice des cultes ne peut être sauvegardé que par la célébration des cérémonies religieuses à l'intérieur des établissements»*.

— La loi n'impose aux services publics aucune obligation positive d'organiser matériellement un service d'aumônerie. Leur obligation est purement négative, elles sont simplement tenues de ne pas faire obstacle aux *«exercices religieux»*[3]. Concrètement toutefois, les exigences du bon fonctionnement du service public imposent une certaine institutionnalisation des services d'aumônerie.

— L'autorité publique est tenue de respecter l'autonomie des services d'aumônerie en matière religieuse, notamment en ce qui concerne la désignation et/ou la révocation des aumôniers[4].

3. Organisation de l'assistance spirituelle par l'Etat (nomination, révocation, rémunération, et formation des aumôniers, statut des aumôniers au regard du droit du travail ou du droit administratif, contrôle des pouvoirs publics relatif à la fixation du cahier de charges, statut des édifices du culte des aumôneries : chapelle)

Ainsi qu'on l'a dit en évoquant les sources juridiques, le régime des aumôneries relève de textes et de pratiques variables selon les services concernés. Tout au plus la jurisprudence élaborée sur le fondement de l'article 2 de la loi de 1905 impose-t-elle un certain nombre de principes communs, qui seront exposés dans ce (3.). Les dispositions spécifiques aux différentes aumôneries seront précisées ensuite (4.).

— **Le choix des aumôniers** : les aumôniers, quel que soit le lieu où ils interviennent, relèvent des autorités religieuses qui les choisissent. Concrètement, ils sont nommés par l'autorité en charge du service public[5], sur la proposition des autorités religieuses. L'exercice du pouvoir de nomination doit permettre

[2] CE Ass. 6 juin 1947, Union catholique des hommes du diocèse de Versailles: Rec. CE 1947, p. 250.

[3] CE 28 janvier 1955, Aubrun et Villechenoux: Rec. CE, 1955, p. 50.

[4] CE 17 oct. 1980 Pont.- CE 27 mai 1994 *Bourges*.

[5] Dans l'enseignement public (collèges et lycées), les textes ne prévoient pas une nomination par l'autorité publique mais seulement une procédure d'agrément rectoral.

de s'assurer que la présence de l'aumônier n'est pas de nature à porter préjudice au bon fonctionnement du service public où il intervient. Le service qui procède à la nomination n'est jamais complètement indifférent au profil religieux des aumôniers, c'est le cas en particulier en milieu carcéral où les risques de radicalisation sont réels. Toutefois, à l'heure actuelle, l'autorité publique n'exerce qu'un contrôle très limité des qualifications de l'aumônier, qui sont appréciées par les seules autorités religieuses. Mais la réalité du prosélytisme religieux en particulier islamiste a conduit le gouvernement à préparer un décret imposant aux aumôniers une formation et l'obtention d'une qualification particulière (voir infra 8.).

Il est courant de parler, à propos de la procédure de nomination des aumôniers, d'une règle de double investiture. Cette règle signifie qu'un aumônier ne peut intervenir dans un service public qu'en vertu de l'accord conjoint des autorités religieuses (agrément) et des responsables de ce service (nomination). Dès lors que cet accord n'existe plus, son maintien ne peut être imposé par l'une des parties. Un aumônier destitué par les autorités religieuses ne peut être maintenu en fonctions (CE 17 oct. 1980 Pont). La volonté des autorités religieuses de mettre fin aux fonctions d'un aumônier ou de modifier son affectation lie l'autorité en charge du service public, qui est tenue d'y faire droit[6]. Inversement, les autorités religieuses ne peuvent imposer le maintien d'un aumônier qui aurait été révoqué par l'administration de façon régulière et pour des motifs légitimes, c'est-à-dire hors de toute entrave à la liberté religieuse. Les aumôniers militaires peuvent être privés de leur emploi par mesure de discipline (décret du 15 décembre 2008, article 15). Les aumôniers hospitaliers peuvent également être révoqués (circulaire du 20 décembre 2006).

— **Les locaux d'aumônerie** : L'organisation des services d'aumônerie repose, en l'abence de textes spécifiques, sur les seules dispositions de l'article 2 de la loi de 1905. Pour le Conseil d'Etat, cet article n'impose pas au service public de tenir à disposition permanente des cultes un local permanent et aménagé[7]. Les autorités responsables du service public doivent simplement s'abstenir de faire obstacle aux *«exercices religieux»* individuels et collectifs, ce qui suppose la possibilité pour les aumôniers d'accéder aux établissements et pour les personnes recluses *«de vaquer, dans l'enceinte même de l'établissement, aux pratiques de leur culte»*[8]. Autrement dit les autorités en charge du service public peuvent se contenter de fournir ponctuellement, pour la

6 CE 17 mai 1994 Bourges.

7 CE 28 janv. 1955, Aubrun et Villechenoux : Rec. CE, 1955, p. 50.

8 Ibid.

célébration du culte, un local banalisé qui retrouvera ensuite sa destination usuelle[9].

Mais les autorités publiques peuvent ne pas s'en tenir à ces règles minimales définies par le Conseil d'Etat. C'est le cas notamment dans les bâtiments antérieurs à la séparation des Eglises et de l'Etat, dans lesquels il existe des locaux dédiés à l'aumônerie ainsi que parfois des chapelles, qui sont restés affectés après la séparation aux services d'aumônerie. D'une manière générale, il est souvent préférable de mettre en place des locaux permanents d'aumônerie, éventuellement interconfessionnels, plutôt que de laisser s'organiser à la marge et de façon plus ou moins contrôlée les pratiques religieuses à l'intérieur des bâtiments publics. De fait, l'institutionnalisation des services d'aumônerie, à travers l'aménagement de locaux spécifiques, est une nécessité dans les lieux clos tels que la prison, la caserne ou l'hôpital, afin de concilier la pratique religieuse avec les nécessités sécuritaires, disciplinaires ou sanitaires qui caractérisent ces services. Le local permet un certain regroupement communautaire pour les pratiques collectives, et il protège de ces pratiques ceux qui ne veulent pas y être exposés. Les locaux d'aumônerie sont placés sous l'entière responsabilité des aumôniers, mais il s'agit de locaux publics et non de locaux privatifs appartenant aux Eglises.

4.1. **L'aumônerie des armées (statut, nomination, révocation et rémunération des aumôniers)**

L'énumération qui figure à l'article 2 de la loi de 1905 ne mentionne pas l'aumônerie militaire. En effet, une loi du 8 juillet 1880 avait supprimé l'aumônerie militaire en temps de paix, sauf dans les hôpitaux et campements trop isolés pour permettre la pratique religieuse à l'extérieur. Elle n'était maintenue pour le reste qu'en temps de guerre. Mais une aumônerie militaire permanente pour les cultes catholique, protestant et juif a été réinstallée après le second conflit mondial.

Aujourd'hui, le régime de l'aumônerie militaire est fixé par un décret du 1er juin 1964, modifié par deux décrets du 16 mars 2005 et du 30 décembre 2008. Cette réforme de 2005-2008 est liée à la création d'une aumônerie musulmane[10]. Il existe donc depuis 2005 quatre aumôneries militaires, une catholique, une protestante, une israélite et une musulmane.

Les aumôniers militaires ont pour fonction d'assurer *«le soutien religieux du personnel de la défense qui le souhaite»*. Ils sont admis à servir par contrat, avec le

[9] CE Ass. 6 juin 1947, Union catholique des hommes du diocèse de Versailles, Rec. CE 1947, p. 250.

[10] Voir l'arrêté du 16 mars 2005 portant création de l'aumônerie musulmane.

grade unique d'aumônier militaire qui les assimile à des officiers. C'est le ministre de la défense qui attribue, en fonction des responsabilités exercées, le titre d'aumônier en chef, d'aumônier en chef adjoint, ou d'aumônier régional. Le décret de 2008 fixe les conditions pour devenir aumônier, au nombre desquelles figure la possession du baccalauréat ou d'un titre équivalent. Les aumôniers en chef sont nommés *«parmi les candidats proposés par chaque culte, conformément à ses règles d'organisation».* Autrement dit le ministre de la défense se voit reconnaître à défaut d'une liberté de choix un pouvoir de récusation. Les autres aumôniers sont également nommés par le ministre de la défense, sur proposition de l'aumônier en chef de leur culte.

Les aumôniers ont un statut contractuel, au titre du service de santé des armées. Le contrat initial, d'une durée de deux ans, ne devient définitif qu'à l'issue d'une période probatoire de six mois, qui peut être renouvelée une fois par l'administration pour raison de santé ou adaptation insuffisante aux fonctions. La dénonciation du contrat pendant la période probatoire doit être motivée. Les contrats ultérieurs, d'une durée de 2 à 8 ans, sont renouvelés jusqu'à la limite d'âge. La résiliation du contrat peut intervenir soit d'office, soit à la demande écrite de l'intéressé, soit enfin à la demande écrite de l'autorité religieuse militaire dont relève l'intéressé. Dans l'exercice de leurs fonctions, les aumôniers relèvent conjointement de l'aumônier militaire en chef de leur culte, pour ce qui concerne les questions d'ordre religieux, et de l'autorité militaire pour ce qui concerne les modalités d'exercice de leurs missions au sein des formations de la défense. Ils ne s'inscrivent pas dans la hiérarchie militaire, et donc ne peuvent donner des ordres ou infliger des punitions.

On notera enfin qu'il existe un conseil de coordination des aumôneries, présidé par le chef d'état major des armées, qui assure la coordination entre les aumôneries et les forces armées.

4.2. **L'aumônerie des établissements hospitaliers (statut, nomination, révocation et rémunération des aumôniers)**

Dans les établissements hospitaliers ainsi que, d'une manière générale, dans les établissements de soin accueillant des personnes handicapées ou âgées, l'organisation d'un service d'aumônerie incombe au chef d'établissement. Le régime de l'aumônerie hospitalière est fixé par une circulaire du 20 décembre 2006. La circulaire rappelle que l'organisation d'un service d'aumônerie est une obligation de caractère législatif, et qu' «un patient doit pouvoir, dans la mesure du possible, suivre les préceptes de sa religion (recueillement, présence d'un ministre du culte de sa religion, nourriture, liberté d'action et d'expression…)». La circulaire rappelle également que «ce sont les aumôniers qui ont la charge d'assurer, dans ces établissements, le service du culte auquel ils appartiennent et d'assister les patients qui en font la demande par eux-mêmes ou par l'intermédiaire de leur famille, ou ceux qui, lors de leur admission, ont déclaré appartenir à tel ou tel culte». En application de la circulaire, les effectifs

des aumôniers sont fixés par les conseils d'administration, compte tenu notamment de la taille des établissements. La fonction d'aumônier est assurée soit par des aumôniers rémunérés en qualité de contractuels, soit par des aumôniers bénévoles. Les aumôniers à temps plein peuvent éventuellement être logés par l'établissement par nécessité absolue de service. Ils doivent disposer d'un local de permanence pour recevoir à proximité du lieu réservé à la prière. Le culte est célébré dans la chapelle lorsqu'il y en a une dans l'établissement, soit dans une salle rendue disponible à cet effet. Il est possible de prévoir une salle polyvalente interconfessionnelle dès lors qu'il y a accord entre les différents cultes. La circulaire précise également que «les directions veilleront particulièrement à la bonne signalisation de ces locaux et à ce que les personnes hospitalisées ou les résidents disposent d'une information claire sur les différents services d'aumônerie de l'établissement».

Les aumôniers, qui doivent remplir les conditions générales exigées pour l'accès à la fonction publique hospitalière, «sont recrutés ou autorisés par les chefs d'établissement sur proposition des autorités cultuelles dont ils relèvent en fonction de leur organisation interne…». Le texte ajoute qu'«en l'absence d'autorité cultuelle clairement identifiée, il ne peut être donné droit à une demande de mise en place d'un service d'aumônerie». Les aumôniers musulmans sont désignés par le Conseil français ou par les Conseils régionaux du culte musulman.

Les aumôniers ont la qualité d'agents publics non titulaires. Leur contrat d'une durée minimale de 3 ans est renouvelable par reconduction expresse ou tacite. Il doit préciser le temps hebdomadaire consacré à l'établissement. La résiliation du contrat peut intervenir à l'initiative des autorités religieuses, et alors l'administration est tenue d'y mettre fin, soit pour faute grave à l'initiative de l'administration hospitalière. La rémunération est fixée en référence à la grille indiciaire de l'échelle 5 de rémunération des agents de catégorie C, et elle est calculée au prorata du nombre d'heures effectuées.

4.3 **L'aumônerie des établissements pénitentiaires (statut, nomination, révocation et rémunération des aumôniers)**

L'article 26 de la loi pénitentiaire du 24 novembre 1989 énonce que *«les personnes détenues ont droit à la liberté d'opinion, de conscience et de religion. Elles peuvent exercer le culte de leur choix, selon les conditions adaptées à l'organisation des lieux, sans autres limites que celles imposées par la sécurité et le bon ordre de l'établissement».* Un décret du 23 décembre 2010, pris en application de ces dispositions, précise les dispositions relatives à l'«*assistance spirituelle»* ainsi que l'on appelle l'aumônerie des prisons. Ces dispositions figurent dans le Code de procédure pénale.

A son arrivée dans l'établissement, la personne détenue est avisée de son droit de recevoir la visite d'un ministre du culte et d'assister aux offices religieux et aux

réunions cultuelles organisées par les personnes agréées à cet effet (R 57-9-7 C Pr P). Le nom des personnes détenues qui ont manifesté leur intention de pratiquer leur religion est communiqué à l'aumônier dans les meilleurs délais. Les personnes détenues peuvent s'entretenir à leur demande aussi souvent que nécessaire avec les aumôniers de leur confession, sans qu'aucune sanction puisse entraver cette faculté. L'entretien a lieu hors la présence d'un surveillant dans un parloir, dans un local prévu à cet effet, dans la cellule de la personne détenue ou, si elle se trouve dans un quartier disciplinaire, dans un local déterminé par le chef d'établissement. Quant aux offices et aux réunions cultuelles, ils sont assurés par les aumôniers agréés aux horaires fixés en accord avec le chef d'établissement et dans des locaux qu'il détermine.

Les aumôniers font l'objet d'un agrément délivré par le directeur interrégional des services pénitentiaires après avis du préfet, sur proposition de l'aumônier national du culte concerné. Ils peuvent être assistés dans leur mission par des auxiliaires bénévoles d'aumônerie également agréés dans les mêmes conditions, pour une période de deux ans renouvelables. Ces derniers peuvent animer des groupes de personnes détenues en vue de la réflexion, de la prière et de l'étude, mais ils ne peuvent pas avoir d'entretiens individuels avec les détenus. Les aumoniers, titulaires ou auxiliaires, ne doivent exercer qu'un rôle spirituel et moral, à l'exclusion de toute autre activité.

Les aumôniers sont rémunérés par l'administration pénitentiaire selon un barème fixé par voie réglementaire[11]. L'aumônerie est organisée à trois niveaux, à savoir qu'il existe pour chaque culte un aumônier national, des aumôniers régionaux et un des aumôniers dits locaux. La mise en place du conseil français du culte musulman a permis la désignation d'un aumônier national des prisons musulmans et facilité la désignation des aumôniers régionaux et locaux par les conseils régionaux du culte musulman. On notera que s'il existe une aumônerie pour les cultes catholique, protestant, juif, musulman et bouddhiste, le droit de recevoir l'assistance d'un aumônier est ouvert aux prisonniers de tous les cultes. Le tribunal administratif de Paris a annulé en 2007 le refus d'agrément d'un aumônier Témoin de Jéhovah, fondé sur le fait que les Témoins de Jéhovah ne figurent pas sur la liste des six cultes «reconnus» établie par le ministère de l'Intérieur[12].

4.4. **L'aumônerie dans les autres institutions publiques : police, aéroport, Parlement, municipalités**

Comme on l'a dit la liste des aumôneries qui figure à l'article 2 de la loi de 1905 présente un caractère indicatif (*tels que lycées, collèges, écoles, hospices, asiles et prisons*), et l'aumônerie militaire n'y figure pas. Autrement dit, des aumôneries

[11] Décret et arrêté du 8 décembre 2005.

[12] TA Paris 6 juillet 2007, n.º 0613450, Association cultuelle des Témoins de Jéhovah de France.

peuvent être créées en principe dans d'autres services publics. Mais telle n'est pas la logique qui prévaut. En effet, les aumôneries doivent avoir pour objet «d'assurer le libre exercice des cultes», et ce libre exercice des cultes n'est susceptible d'être entravé que dans des lieux fermés où les agents et/ou les usagers sont écartés de la vie civile. Il n'y a donc pas d'aumônerie dans la police, ni dans les municipalités, ni d'une manière générale dans les autres services publics. Il existe dans certains aéroports des salles de prière et de recueillement, généralement interconfessionnelles, mais elles ne sont pas prises en charge par l'autorité publique et relèvent de la gestion des services en charge de l'aéroport. Quant au Parlement, il n'existe pas de structure d'aûmonerie institutionnalisée. Les prières publiques qui figuraient dans la loi constitutionnelle du 16 juillet 1875 (3e République) ont été supprimées en 1884. On notera toutefois qu'il existe dans l'Eglise catholique un prêtre désigné comme *«aumônier des parlementaires»*, mais il ne jouit d'aucun statut officiel dans les assemblées.

5. Les aumôneries publiques et les religions d'implantation récente : Islam, religions orientales, nouvelles religions

L'aumônerie républicaine telle qu'elle s'est mise en place après la séparation a été conçue à l'intention des cultes anciennement reconnus et, pour des raisons culturelles et sociologiques, c'est surtout l'Eglise catholique qui en a bénéficié. La sédentarisation d'une importante population immigrée musulmane a conduit, à partir des années 1980, à poser la question de la création d'aumôneries musulmanes dans les services publics. Cette demande a généré un mouvement contradictoire. Dans les écoles et les lycées, où la question du port du foulard par les jeunes musulmanes est posée depuis la fin des années 1980, les autorités académiques ont été réticentes à autoriser la création d'aumôneries musulmanes. Plus encore, alors même que les demandes émanées des parents d'élèves catholiques étaient généralement accueillies favorablement, les autorités académiques ont refusé de plus en plus la création de nouvelles aumôneries de la part des autres cultes, afin de ne pas susciter d'initiatives chez les musulmans.

Dans les autres services publics au contraire, où l'aumônerie bénéficie d'une institutionnalisation plus forte (armées, prisons, hôpitaux), c'est le choix inverse qui a été opéré, et une aumônerie musulmane a été mise en place à côté des aumôneries des anciens cultes reconnus. L'un des objets de la création, en 2005, du Conseil français et des Conseils régionaux du culte musulman, était précisément de permettre la nomination d'aumôniers par les autorités religieuses musulmanes.

En ce qui concerne les autres religions (bouddhisme, hindouisme, protestantisme évangélique…) la question se pose de manière différente, dans la mesure où les adeptes sont moins nombreux et que les cas où la mise en place d'une aumônerie institutionnalisée se justifie sont peu fréquents. Les aumôneries des autres cultes sont donc l'exception. Mais comme on l'a souligné, le juge a eu l'occasion de censurer

le refus par l'administration de mettre en place un service d'aumônerie pour des prisonniers Témoins de Jéhovah [13].

6. Les aumôneries dans les établissements privés

La notion même d'aumônerie est associée en France aux services publics, qui sont la plupart du temps pris en charge par des personnes publiques. La question peut toutefois se poser pour les cliniques privées, associées par convention au service public. Les cliniques sont tenues comme les hôpitaux de respecter la liberté religieuse des personnes malades. Mais d'un point de vue organisationnel, la circulaire de 2006 s'applique de façon exclusive aux structures publiques, en sorte que l'organisation de services d'aumônerie dans les structures privées relève de leur liberté organisationnelle. On notera qu'un certain nombre des structures privées sont confessionnelles, la plupart catholiques, mais que les patients y sont admis quelle que soit leur confession.

En France, les écoles privées sont généralement confessionnelles. Certaines de ces écoles sont liées à l'Etat par un contrat d'association au service public de l'enseignement. Ces écoles sont tenues par la loi d'accueillir les enfants de toutes confessions, et ne peuvent imposer aux enfants une instruction ou une pratique religieuse autre que la leur. Elles ont la possibilité de proposer une instruction religieuse spécifique pour les enfants des autres religions, mais c'est rarement le cas. Dans les écoles catholiques il est même souvent difficile d'organiser la catéchèse pour les élèves catholiques.

La loi de 1881 souligne par ailleurs que l'instruction religieuse ne peut être imposée aux enfants dans les écoles privées. Cette règle s'impose également dans les écoles hors-contrat.

7. Les fédérations d'aumôneries

Il existe une certaine structuration nationale et régionale de l'aumônerie militaire et de l'aumônerie des prisons (voir supra). Pour le reste, l'organisation des services d'aumônerie est décentralisée, et relève des seuls services publics où elles sont établies.

8. La réforme de la formation des aumôniers

— Histoire et développement

L'instauration d'une formation obligatoire à la laïcité et au fait religieux, appelée formation civile et civique pour les aumôniers de l'armée, des prisons et des hôpitaux, trouve son origine dans une réflexion plus large initiée par les pouvoirs publics sur la formation des cadres religieux musulmans en général. En effet, une partie importante

[13] TA Paris 6 juillet 2007, n.º0613450, Association cultuelle des Témoins de Jéhovah de France.

des cadres permanents de cette religion sont soit formés à l'étranger, soit préparés à leurs fonctions de manière sommaire. Certains d'entre eux, peu sensibles aux réalités socioculturelles de la France, sont mal armés pour répondre aux attentes des communautés religieuses concernées alors que les ministres du culte sont des acteurs susceptibles de tisser du lien social et de créer du consensus social. Ce constat d'un déficit de formation « religieuse » et d'un décrochage culturel des communautés et des cadres religieux a été explicité par Oliver Roy[14]. Des prêtres catholiques traditionalistes, des rabbins ultra-orthodoxes et des pasteurs évangéliques font l'objet d'un constat similaire.

Les autorités publiques ont dès les années 1990 engagé une réflexion sur la formation des cadres religieux dont font partie les aumôniers, ce qui a entraîné la création de l'Institut d'études de l'Islam et des sociétés du monde musulman (IISMM/ École des Hautes Études en Sciences Sociales) en 1999 par le Ministère de l'Éducation nationale, de la Recherche et de la Technologie. Cette question a été à nouveau évoquée par le ministre de l'Intérieur le 29 mars 2003. S'exprimant devant le Conseil des imams de France, il soutient que *« les imams doivent être formés en France, connaître notre pays, ses traditions, ses lois… »* tout en soulignant qu'il appartient aux communautés musulmanes de préciser leurs besoins de formation théologique conformément au principe de laïcité. Les pouvoirs publics étudieront ce *« qui relève des établissements publics ou des structures privées ».* La volonté de mettre en œuvre une politique en matière de formation des agents cultuels est réaffirmée le 3 mai de la même année par le Premier ministre. Finalement, le Ministre de l'Éducation nationale demande un rapport à Daniel Rivet, directeur de l'IISMM, aux fins de déterminer quel pourrait être l'apport de l'Université publique à la formation des imams. Une commission interministérielle fut créée (Premier ministre, ministre de l'Intérieur et ministre des Affaires étrangères). Suite à un débat difficile sur le contenu de cette formation, les décideurs ont *in fine* retenu la nécessité de créer une formation à l'intégration des ministres du culte musulman par le biais d'un diplôme universitaire (DU)[15] dont le contenu se focalise sur l'apprentissage de la langue française et la connaissance des lois de la République. Cette solution permettait d'écarter une discussion embarrassante sur la formation théologique des cadres religieux. Ce DU devait, à la demande du Recteur de l'Académie de Paris, être pris en charge par l'Université de Paris IV avec le soutien de l'Université de Paris II pour tout ce qui concerne les enseignements de droit. La demande de création de ce DU a été repoussée par le Conseil des Etudes

[14] La sainte ignorance : Le temps de la religion sans culture, Paris, Seuil, 2008).

[15] Les diplômes universitaires sont créés par l'université sans intervention du ministère de l'enseignement supérieur.

et de la Vie Universitaire (CEVU) de Paris IV [16] qui a jugé que toutes les conditions n'étaient pas réunies pour mettre en place ce type de diplôme dans une université publique. La formation préconisée par la Commission a toutefois été créée et prise en charge par la Faculté de Sciences Sociales et Economiques (FASSE) de l'Institut catholique de Paris qui est un établissement privé d'enseignement supérieur sous la forme d'un diplôme intitulé *« Interculturalité, Laïcité, religion »* en 2008.

Le ministère de l'Intérieur a continué de solliciter les universités publiques en estimant que le refus de Paris IV était conjoncturel. Le second DU, mais le premier dans une université publique, a été mis en place en 2010. Il s'agit du DU « Droit, Société et Pluralité des Religions » qui fait partie des diplômes d'université de la Faculté de droit de l'Université de Strasbourg. L'Université de Strasbourg est un important pôle de compétence en matière de science et de droit des religions. Elle a développé un savoir faire en ce domaine. Le troisième DU créé en 2012 sous l'impulsion du préfet de Région fait l'objet d'un montage complexe qui met en œuvre trois partenaires, l'Université catholique de Lyon, la Faculté de droit de l'Université de Lyon 3 qui délivre un DU « Religion, liberté religieuses et laïcité » à des étudiants fonctionnaires ou agents publics et l'IFCM de la Grande mosquée de Lyon qui remet un certificat « Connaissance de la laïcité » à des imams ou à des responsables d'associations cultuelles ou culturelles musulmanes. La Faculté de droit de l'Université de Montpellier 1 a instauré un DU « Religion et société démocratique » en 2012 et L'IEP d'Aix-en-Provence a ouvert un DU « Pluralité religieuse, Droit, Laïcités et Sociétés » en janvier 2014. En 2014 et 2015, des DU de formation civile et civique ou de « laïcité et fait religieux » ont depuis été instaurés dans les universités de Bordeaux, de Paris I, de Paris XI, de Rennes, de Lille, de Nantes, de Toulouse, de la Réunion et dans le cadre du Centre universitaire de Mayotte. D'autres créations ont suivi en 2017 et se feront encore en 2018. Les universités publiques, conscientes des enjeux sociétaux et de l'apport en matière de formation à l'intégration de ces diplômes, ne s'opposent plus à cette ouverture. Au contraire les demandes de création émanant des universités publiques sont plus importantes que les nouvelles implantations retenues dans le cadre de la politique de développement des DU fixé par le Ministère de l'Intérieur. Un DU sous la forme d'un enseignement à distance est organisé. Il s'adresse à des étudiants trop éloignés d'un site proposant une formation en présentiel. Ces DU sont financés par le Ministère de l'Intérieur en moyenne à hauteur de 15000 euros par diplôme et par année. Les responsables des DU se réunissent au moins une fois par an sur invitation du Ministère de l'Intérieur en vue de structurer et maintenir un cadre commun aux DU : contenu des programmes, volume horaire, coût de la formation,

[16] Les étudiants du syndicat UNEF élus à ce conseil ont fait obstacle à la création de ce diplôme en invoquant le principe de laïcité.

modalités d'équivalence, organisation de l'enseignement à distance et harmonisation des règlements d'examen.

— Contenu de la formation

Les Diplômes d'Université (DU) de « formation civile et civique » ou « de laïcité et fait religieux » ont un triple objectif :

— transmettre un socle commun relatif au contexte socio-historique, au droit et aux institutions de la France, et en particulier au principe de laïcité et à ses applications ;
— fournir des instruments en vue de faciliter la gestion des personnels et des institutions cultuelles et préparer les aumôniers à l'exercice de leurs fonctions dans le cadre d'une administration ou de l'armée ;
— promouvoir la connaissance du fait religieux et des religions implantées sur le territoire français, au regard notamment de leur organisation et de leurs doctrines dans le but de créer un espace de dialogue entre les publics.

Ces formations, d'un volume horaire minimal de 125 heures et maximal de 160 heures et dispensées en France, comprennent au moins les trois unités d'enseignements suivantes :

1. *Institutions de la République et laïcité* : principe de neutralité et liberté de conscience et de culte ; égalité et non discrimination ; politiques en matière d'intégration.
2. *Grands principes du droit des cultes* : droit public et normes régissant l'organisation des cultes (régime des associations cultuelles, des édifices du culte, statut des ministres du culte et fiscalité des cultes), mais également du droit de la famille et de droit du travail.
3. *Sciences humaines et sociales des religions* : analyse sociologique des dynamiques des groupes religieux présents en France dans le contexte de sécularisation. Ces enseignements comprennent également des éléments sur les fondements du dialogue interreligieux.

Les enseignements décrits aux 1 et 2 doivent représenter un minimum de 70 heures.

L'inscription des étudiants aux DU, qui n'est pas soumise à une condition de diplôme, est autorisée à la suite d'une évaluation du dossier d'inscription par le responsable du DU qui peut être assisté par une commission et convoquer les candidats à un entretien complémentaire.

— L'obligation de formation pour les aumôniers rémunérés

Les DU habilités conjointement par le Ministère de l'Intérieur et le Ministère de l'Education nationale, de l'Enseignement supérieur et de la Recherche sont ouverts à tous les étudiants intéressés. Ils s'adressent en priorité à l'ensemble des cadres religieux des différents cultes, aux responsables d'associations cultuelles, aux aumôniers

de l'armée, des établissements hospitaliers et des établissements pénitentiaires ainsi qu'aux ministres du culte arrivés récemment sur le territoire français. Ils concernent également les agents publics et les salariés du privé soucieux d'acquérir une meilleure connaissance du fait religieux et des normes applicables aux institutions et activités religieuses.

Les imams étrangers rémunérés par des Etats étrangers (imams détachés) sont tenus de suivre les enseignements d'un DU habilité[17] et cela conformément aux accords passés entre le gouvernement français et le Maroc, l'Algérie et la Turquie.

Les aumôniers militaires, les aumôniers des établissements hospitaliers et les aumôniers de l'administration pénitentiaire ne pourront plus, à partir de 2017[18], conclure un contrat pour des fonctions d'aumônerie ou être agréés comme aumôniers s'ils ne sont pas titulaires d'un diplôme d'université de formation civile et civique. Cette obligation de détenir un DU pour exercer les fonctions d'aumôniers ne s'applique qu'aux personnels rémunérés par l'administration. Les aumôniers bénévoles qui ne perçoivent aucune rémunération publique ne sont pas concernés[19] par cette obligation. Cette obligation s'applique, pour des raisons d'égalité de traitement, à l'ensemble des aumôniers et cela quelque soit leur religion de rattachement. Cette situation a suscité des protestations de la part de l'Eglise catholique. Selon Oliver Ribadeau-Dumas, il s'agit d' « un problème généré par la religion que l'on n'ose pas nommer de peur de la stigmatiser (qui) rejaillit sur l'Eglise catholique, qui ne posait pas de problème. »[20]. Toutefois, par arrêt du 27 juin 2018, le Conseil d'État a rejeté la requête de l'union des associations diocésaines de France et a reconnu la régularité du décret attaqué.

Les aumôniers rémunérés en fonction à l'armée ou dans un service public sont certes au service des membres d'un culte mais ils participent également au fonctionnement de ces institutions dans lesquelles ils doivent être parfaitement intégrés. Ainsi les aumôniers hospitaliers ne font pas partie des équipes soignantes mais collaborent néanmoins avec elles dans une perspective de prise en charge globale de la personne accompagnée[21]. Une formation aux institutions de la République française et au pluralisme religieux est donc justifiée. Il ne s'agit pas d'une éducation religieuse ou théologique qui est de la compétence des autorités cultuelles, mais d'une formation facilitant l'intégration dans une administration ou dans les services de l'armée. Par

[17] Le financement des DU est subordonné à leur habilitation par les Ministères de l'intérieur et de l'éducation nationale.

[18] Le décret du 3 mai 2017, relatif à la formation civile et civique des aumôniers militaires, hospitaliers et pénitenciers.

[19] Les aumôniers des établissements scolaires ne sont pas mentionnés par le projet de décret.

[20] Un diplôme pour les aumôniers de prison ? Interview de Mgr Oliver Ribadeau-Dumas sur le site de Riposte catholique. La réinformation catholique au quotidien.

[21] JOAN, 2 septembre 2008, p. 7639.

ailleurs, le recrutement de personnels rémunérés par l'Etat est, sauf exception, soumis à une condition de diplôme[22].

9. Droit local alsacien mosellan des aumôneries de l'armée, des hôpitaux et des prisons

En droit local alsacien mosellan, il n'existe pas de textes fixant à l'instar du droit général un statut des aumôneries des établissements d'enseignement[23] secondaire et des internats. Un enseignement religieux confessionnel catholique, protestant et juif est obligatoirement dispensé dans les écoles, les collèges et les lycées. Les professeurs des écoles sont susceptibles de dispenser un cours d'éveil religieux dans les écoles maternelles. Les lycées peuvent cependant, mais uniquement à titre transitoire, organiser des heures d'accueil et d'animation rémunérées[24] lorsque l'enseignement religieux n'est pas organisé et cela aux fins de le faire connaître aux élèves intéressés. Cette possibilité est peu utilisée.

Le droit local ne prévoit pas de statut particulier pour les aumôniers des établissements pénitentiaires qui relèvent du droit général. Les personnels affectés à cette fonction dans les trois départements de l'Est sont, si l'on excepte les bénévoles, des prêtres ou des laïcs placés sur des postes vacants de vicaires et de desservants du culte catholique et des pasteurs et rabbins rémunérés par le Ministère de l'Intérieur. Ils perçoivent en sus de leur traitement de ministre du culte l'indemnité versée par le Ministère de la Justice. Les aumôniers musulmans perçoivent une indemnité.

Des aumôniers militaires de droit local sont nommés et rémunérés par le Ministère de l'Intérieur pour les seuls cultes reconnus. La ligne budgétaire permettant de financer ces supports de poste trouve son origine dans le transfert par la loi de finances de 1930 des crédits relatifs aux traitements des aumôniers fonctionnaires des prisons du budget du Ministère de la Justice au budget d'Alsace et de Lorraine. Sept aumôniers militaires en provenance de la Rhénanie évacuée ont été rémunérés en 1933. Ce chiffre a été ramené progressivement à cinq[25]. Actuellement, le Ministère de l'Intérieur rémunère trois aumôniers catholiques et un aumônier protestant. Le bureau des cultes des départements du Rhin et de la Moselle peut en outre mettre à disposition des forces armées des ministres du culte « recrutés dans le clergé local » c'est-à-dire des personnels du cadre « concordataire » mis à disposition du Ministère de la Défense. Dans les deux cas, la mise à disposition ou la nomination est prononcée par décision du bureau des cultes des départements du Rhin et de la Moselle

[22] Les aumôniers militaires perçoivent des traitements équivalents à ceux de lieutenant, de capitaine et de lieutenant colonel.

[23] Loi 9 décembre 1905 et Code de l'éducation.

[24] Il s'agit en fait d'activités d'aumônerie.

[25] Décret- 23 octobre 1933.

après agrément de la Direction centrale du service de santé des armées. L'agrément est proposé à la DCSSA par l'aumônier régional en zone de défense et après avis de l'aumônier en chef du culte concerné[26]. Les aumôniers militaires de droit local perçoivent un traitement équivalent à celui des curés, pasteurs et rabbins. Les aumôniers musulmans relèvent du droit général.

Les aumôneries des hôpitaux ont été créées conformément à une ordonnance royale du 21 octobre 1821 qui confie notamment au règlement intérieur la détermination du nombre des aumôniers rémunérés. Ce texte n'a plus été appliqué sur l'ensemble du territoire français à partir des années 1880. Ainsi pour la ville de Paris un décret du 20 mars 1883 a approuvé la suppression des crédits de l'aumônerie au budget de l'assistance publique. Les aumôniers sont alors indemnisés en fonction des services ponctuels rendus. L'organisation des aumôneries des hôpitaux a récemment été fixée par une circulaire du 19 janvier 1976 qui ne s'appliquait pas aux départements du Rhin et de la Moselle. La circulaire du 20 décembre 2006 qui abroge celle de 1976 précise au contraire « que, dans les départements du Bas-Rhin, du Haut-Rhin et de la Moselle où le régime «concordataire» est en vigueur, la procédure de recrutement des aumôniers par les établissements prévue par la présente circulaire s'applique de plein droit aux différents cultes, que ceux-ci soient ou non reconnus, même si, jusqu'à présent, les établissements disposaient, pour les cultes reconnus, de bénévoles mis à disposition par des associations cultuelles pouvant recevoir à cette fin des subventions publiques. ». Les différences entre aumônerie de droit local et aumônerie d'hôpitaux de droit général se sont estompées.

[26] Instruction n.º 1260 du 23 janvier 2006 du ministre de la défense relative à la gestion et à l'administration des ministres du cultes des départements du Bas Rhin, du Haut Rhin et de la Moselle.

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS. GERMAN NATIONAL REPORT

Matthias Pulte*

The organisation of religious assistance in public institutions in Germany is based on the idea of cooperation between State and religious communities, namely until now with the two major Christian denominations, the Roman Catholic Church and the Protestant Churches. Art. 4 of German Basic Law (short: Basic Law)[1] guarantees religious freedom for the individual and the community to all people living in Germany. Especially Article 4, section II of the Basic Law guarantees the freedom of religious practice and exercise. According to a decision of the Bundesverfassungsgericht, religious freedom as a basic individual right must be interpreted in a very broad sense so that the individual has the possibility to align his entire life according to the teachings of his religion and his religious conviction[2]. On the other hand, this jurisprudence cannot be interpreted in such a way that individual religious practice must be enabled under all circumstances[3]. Limitations are possible as long as the general norm of Article 4 of the Basic Law is not violated. This guarantee makes it necessary to provide religious assistance in public institutions for those people who serve the state in a special relationship of subordination or who are subject to a particular authority, i.e. as a prisoner or as a patient in a hospital or psychiatric clinic. There is, of course,

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1 Article 4 Basic Law - [Freedom of faith and conscience]

(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed.

(3) No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.

2 Cf. BVerfGE 32 98, 106; 33, 23, 28, 41, 29, 49.

3 Dietrich Pirson, Die Seelsorge in staatlichen Einrichtungen als Gegenstand des Staatskirchenrechts, in: Essener Gespräche zum Thema Staat und Kirche 23 (1989), pp. 4-29, 24 f.

no reduction in the fundamental rights of these individuals. The state itself cannot provide religious assistance because of the constitutionally established neutrality and parity of the German state, as is expressed in art. 137 I of the Weimar Constitution (WRC). Looking at these constitutional cornerstones, it is evident that the state needs partners to fulfil its obligation to the people. Therefore, the early Weimar Constitution stated in art. 141 that religious assistance is in general allowed, namely in the armed forces, hospitals, correctional facilities and other public institutions, but that none of these institutions can be forced to participate in the religious service[4]. Because of these norms, religious assistance in the public sphere in Germany can be divided into four fields of interest. This differentiation is also necessary because of the different natures and goals of the institutions. Furthermore, we must keep in mind that Germany is a federal Republic and that competence in religious affairs is a matter of the individual states. Only if the organisation of religious affairs requires a nationwide regulation does the federal administration have jurisdiction. Therefore, agreements or treaties between the competent state and religious authorities are necessary to ensure religious assistance in the public sphere.

1. Religious Assistance on the Federal Level

On the level of the Federal Republic of Germany only two institutions must ensure religious freedom for their employees: the armed forces and the federal police. Here, the federal administration is the competent authority to negotiate the circumstances of religious service in these institutions with the Apostolic See on the one hand and the EKD (Protestant Church of Germany) on the other. According to Article 73 I 8 of the Basic Law, the federal administration is the sole body that has the competence to regulate the legal relationships of all persons serving for federal institutions[5].

1.1. Military Chaplaincy

The special organisation of the German Military Chaplaincy cannot be understood without a brief overview of its history. Military chaplaincy in Germany (in a broader sense) has a rich tradition dating back to the Middle Ages. The First German National council of 742 forbade military chaplains from taking weapons while

[4] Article 141 WRC - Insofar there is demand for religious service and ministerial work in the army, in hospitals, prisons or other public institutions, religious organisations must be permitted to take care of these, and they must be kept clear of any form of force.

[5] Article 73 Basic Law - [Matters under exclusive legislative power of the Federation] (1) The Federation shall have exclusive legislative power with respect to: 8. the legal relations of persons employed by the Federation and by federal corporations under public law.

accompanying the troops to the battlefield[6]. Charlemagne took over this legislation and decided that military chaplains should regularly provide spiritual support for the troops on the battlefield[7]. Military chaplaincy during the following centuries only remained active during wartime. A significant change in the system occurred in the 16th century, when the emperors established permanent armies in their territories. From this time on military chaplaincy became a permanent institution in the German territories[8]. During the 16th century the office of Vicar General was created for this special pastoral care. The Protestant Reformation resulted in the confessional division of the military chaplaincy into Protestant and Catholic. The common and unique organisation of this chaplaincy in Germany, where some military chaplains are professional and some part-time, also dates back to at least the 19th century. The Prussian legislation from 1870 on was taken over by the emerging German nation. While the Protestant Military Chaplaincy was headed by a full-time «Feldpropst» (Field-Provost), the Catholic Military Chaplaincy had a voluntary Field-Bishop. Traditionally the Princebishop of Breslau took charge of the ecclesiastical jurisdiction over all Roman Catholic (short: RC) members of the German armed forces. This was in fact the practice until the end of the German Empire in 1918. During the short epoch of the Weimar Republic, the military chaplaincy lost its exemption from the «civil» church hierarchy. The Bishop of Paderborn was appointed as Field-Bishop for the «Reichswehr». This very much reduced army had some full-time chaplains and also some voluntary military chaplains. Under these legal circumstances, the military chaplaincy lost its status as a special ecclesiastical institution. The situation then changed with the Reichskonkordat (RK) of 1933. In Article 27 RK we find a new legal basis for the military chaplaincy in Germany. The RK hereby only provided the church and state with the legal basis for the chaplaincy. Detailed legislation had to be established by the competent administration. According to the apostolic breve Decessores nostros[9] the organisation of the German Military Chaplaincy re-established an exempt jurisdiction. The Chaplains should be civil servants. A full-time Military Bishop was appointed. His See and the church administration led by a Vicar General were located in Berlin.

The legal development of the military chaplaincy after WWII was nearly the same for the Protestant and the Catholic Churches. Therefore, it is possible to concentrate on one of the two denominations aside from some special details. One of these is that

[6] Concilium Germanicum 21 April 742; Cf. Arnold Angenendt: Concilium Germanium. In: LThK³ 2 (1996), p. 1289f.

[7] Charlemagne, Regesta Imperii I, 1, ed. Mühlbacher (1908), c. 1, p. 63.

[8] Cf. Angelika Dörfler-Dierken: Zur Entstehung der Militärseelsorge und zur Aufgabe der Militärgeistlichen in der Bundeswehr. Forschungsbericht 83 des Sozialwissenschaftlichen Instituts der Bundeswehr, März 2008.

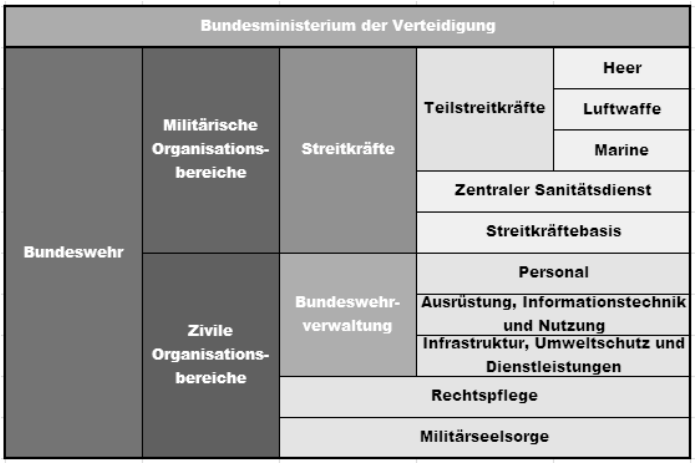
[9] Pope Pius XII, Apostolic Breve Decessores nostros 19. 9.1935, AAS 27 (1935), pp. 367 sqq.

the Protestant chaplaincy doesn't have lay pastoral workers because of their theological teachings about church office and ordination.

After WWII and the Brussels NATO Treaty of 1955, by which Western Germany became a full member of the western armed forces alliance, a new army had to be built up in this country. From the very beginning, it was clear that a military chaplaincy should again be instituted in the new armed forces. Because of the experience during the Third Reich, some things would need to be changed. It was the German bishops who wanted to come back to the Weimar tradition of a volunteer military bishop, a small amount of lifelong military chaplains and a larger number of temporary military chaplains (min. 6 to max. 12 years). In addition, volunteer military chaplains at smaller barracks once again completed the chaplaincy personnel. In these early times lay pastoral workers were not foreseen. The legal basis for the military chaplaincy in Western Germany was, from the very beginning, based on church and state treaties. If necessary, the content of the treaties was subsequently transformed into state and church law.

The idea behind this new and unique organisation was to keep the pastoral work and the organisation of the military chaplaincy as independent as possible from any state influence. The soldiers' claim to religious assistance was implemented in state legislation, thereby affirming the constitutional norms of Article 4 Basic Law and Article 141 WRC. Additionally, the law integrated military chaplaincy into the social education programme of the «Bundeswehr» by appointing chaplains (and today lay pastoral workers as well) as teachers for «Lebenskundlicher Unterricht» (i.e. professional ethics). This legal inclusion of the Military Chaplaincy made it an integral element of the Army by ensuring its independence from the military and civil hierarchy.

Graphic 1: Current organisation of the Military Chaplaincy in the German Armed Forces[10]



[10] Source: Bundesministerium der Verteidigung.

The graphic shows that the organisation of the military chaplaincy in Germany belongs to the civil part of the German defence system (red colours, lower section of the table). Thus the Chaplains are not part of any military hierarchy. They are not bound by the chain of command. Their job is only to give religious assistance equally to members of the «Bundeswehr», whether officers or soldiers.

How is this harmony between Church and state in a secular and religiously neutral state and society possible? Both church and state share the opinion that there is a special need for religious assistance for all persons belonging to the armed forces. The Second Vatican Council in its dogmatic constitution on the Church clearly pointed out: «Since, because of the unique conditions of their way of life, the spiritual care of military personnel requires special consideration, there should be established in every nation, if possible, a military vicariate. Both the military vicar and the chaplains should devote themselves unsparingly to this difficult work in complete cooperation with the diocesan bishops»[11].

This council, based on experience with military chaplaincy in several European countries[12], provides in the next sentence of the same Decree some general observations for the organisation of this religious assistance in accordance with the constitutional principles of the RC Church: «Diocesan bishops should release to the military vicar a sufficient number of priests who are qualified for this serious work. At the same time they should promote all endeavors [sic] which will improve the spiritual welfare of military personnel».

1.2. **Chaplaincy in the Federal Police (Bundespolizei)**

Canon law and Church-state legal literature on religious assistance in the former Bundesgrenzschutz and current «Bundespolizei» (German Federal Police, short: GFP) is very poor[13]. One reason might be that this special religious assistance organisation

[11] Second Vatican Council Christus Dominus 43; cf. Consistorial Congregation's Instruction to Military Ordinariates, April 23, 1951: A.A.S. 43 (1951) pp. 562-565; Formula Regarding the Conferring of the Status of Military Ordinariates, Oct. 20, 1956: A.A.S. 49 (1957) pp. 150-163; Decree on Ad Limina Visits of Military Ordinariates, Feb. 28, 1959: A.A.S. 51 (1959) pp. 272-274; Decree on the Granting of Faculties for Confessions to Military Chaplains, Nov. 27, 1960: A.A.S. 53 (1961) pp. 49-50. Also cf. Congregation of Religious' Instruction on Religious Military Chaplains, Feb. 2, 1955: A.A.S. 47 (1955) pp. 93-97.

[12] cf. Consistorial Congregation's letter to the cardinals, archbishops and bishops of Spanish-speaking nations, June 27, 1951: A.A.S. 43 (1951) p. 566.

[13] Exceptions: Markus Heintzen, Zur Geschichte der Polizeiseelsorge vor Inkrafttreten der Weimarer Reichsverfassung, in: ZEvKR 37 (1992), 58-63. Heribert Schwark, Geschichte und Rechtsgrundlagen der Polizeiseelsorge in den Ländern der Bundesrepublik Deutschland und Berlin (West), Frankfurt a. M. u. a. 1986 (= Europäische Hochschulschriften - Reihe II, Rechtswissenschaft; 559). Wolfgang Wild, Evangelische Seelsorge im Bundesgrenzschutz. Geschichtliches und Änderungen der Rechtsgrundlagen, in: Joachim Heubach, Klaus-Dieter Stephan (ed.), Berufsethik - Glaube -

is very small in number compared to the military chaplaincy or the police chaplaincy. Even the new Handbuch des katholischen Kirchenrechts (3rd ed. 2015) mentions it only marginally.[14] The Chaplaincy in the GFP can be identified as special religious assistance. German legislation therefore uses the legal term «Sonderseelsorge»[15]. The history of religious assistance in the German Federal Police (Bundespolizei) is strongly related to the rise of the Federal Republic of Germany (FRG) and the dire need to protect the borders in times of the so-called Cold War. Therefore, today's GFP was founded in 1949 as the Bundesgrenzschutz (BGS), before a regular army was re-established in Western Germany. The constitutional basis of the work of the BGS is laid out in Basic Law art. 73 I 5 and art. 87 I 2. The BGS served under the authority of the federal Minister of the Interior. Because of the circumstances surrounding the special tasks carried out by the BGS officers in this paramilitary field, it was necessary to bring the chaplaincy to the BGS. The members of the BGS ordinarily weren't able to participate in regular diocesan and parish pastoral care. Because of this situation, religious assistance in the BGS is a type of compensation for the practical loss of religious freedom. So the establishment of a chaplaincy in the Federal Police corresponds to the dominant opinion in state and church law that sees it as enabling the exercise of fundamental rights under the specific circumstances of this particular public service.[16] The legal idea behind this is not an enabling of religious assistance for but in the particular public institution.

Besides the guarantees of Basic Law Article 4, the experience from the Nazi dictatorship could be seen as a strong reason to establish special ethical training for all officers serving in the BGS so that they understand the main issues of serving as a public servant in a democracy.[17] The second constitutional legitimation for religious assistance in the GFP is provided by Basic Law Article 140 together with Article 141 of the WRC. This norm[18] permits religious assistance in the GFP if there is demand from the officers. Because of the difficult nature of the work of the GFP, the demand for this religious assistance can clearly be seen as a guarantee of religious freedom

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Seelsorge. Evangelische Seelsorge im Bundesgrenzschutz Polizei des Bundes. Festschrift für Rolf Sauerzapf, Leipzig 1998, 727-733. Helmut Blanke, Hans-Jochen Jaschke, Karl Hinrich Manzke, Jordanus von Sachsen Brand (ed.), 50 Jahre Seelsorgevereinbarung in Bundesgrenzschutz und Bundespolizei. Religiöses Bekenntnis im neutralen Staat, Göttingen 2015.

[14] Cf. Thomas Meckel, Anstaltsseelsorge, in: Stephan Haering, Wilhelm Rees, Heribert Schmitz (ed.), Handbuch des katholischen Kirchenrechts, Regensburg 32015, pp. 778-787.

[15] Cf. Dietrich Pirson, Fn. 3, 12.

[16] Cf. Christan Waldhoff, Die rechtlichen Grundlagen der Seelsorge in der Bundespolizei, in: Helmut Blanke et al. (ed.), 50 Jahre Seelsorgevereinbarung in Bundesgrenzschutz, pp. 43-53, 45.

[17] Cf. Wolfgang Wild, Evangelische Seelsorge im Bundesgrenzschutz. Geschichtliches und Änderungen der Rechtsgrundlagen, in: Joachim Heubach, Klaus-Dieter Stephan (Hg.) Berufsethik - Glaube - Seelsorge im Bundesgrenzschutz Polizei des Bundes. FS Sauerzapf, Leipzig 1998, pp. 727-733.

[18] Cf. Fn. 2.

according to Basic Law Article 4 II. Furthermore, the church and state agreements in § 7 I[19] delegate the professional ethics education that is part of police training to the GFP chaplaincy. Here, the different religions take responsibility, but of course within the framework of the constitutional principle of the religious neutrality of the state. This neutrality is ensured by the guarantee of individual religious freedom, both in the positive and negative sense (see Basic Law art. 4) and the phrase of art. 141 of the WRC: «… religious organizations must be permitted to take care of these, *and they must be kept clear of any form of force».* Finally, there is ecclesiastical participation in the public relations work of the GFP, i.e. occasionally by acting in public ceremonies or in the religious services surrounding such ceremonies. Both of these depend upon an invitation from GFP authorities and no one is forced to participate in these particular parts of the ceremonies.

It is interesting to mention that religious assistance for the BGS was only established in agreements between the RC and the Protestant Churches and state in 1965[20], nine years after the treaties on the military chaplaincy between the state and the churches had entered into force. The Protestant and the RC agreements each contain 20 paragraphs, almost with the exact same content. The differences are related to the different internal ecclesiastical law and self-conception of the religions. The main issues are the description of the chaplain's office as a denominational public office, the organisation of the chaplaincy, its responsibilities and supervision[21].

These cooperative agreements are still in force, even though the BGS has lost its former function after German reunification and the European unification process. Border guards are no longer a broad public need in the way they were before. New fields of security have been developed, such as federal police at the airports, harbours and railways, as have special police-related security fields on the national level[22]. Because of these developments, the BGS was renamed as the Bundespolizei (Federal Police). The legal framework was issued in the law for the Federal Police (Bundespolizeigesetz)[23].

[19] Cf. Both agreements between the federal administration and the RC and Protestant Churches are published in: J. Listl, Die Konkordate und Kirchenverträge in der Bundesrepublik Deutschland, vol. 1, Berlin 1987, 120 sqq, 85 sqq.

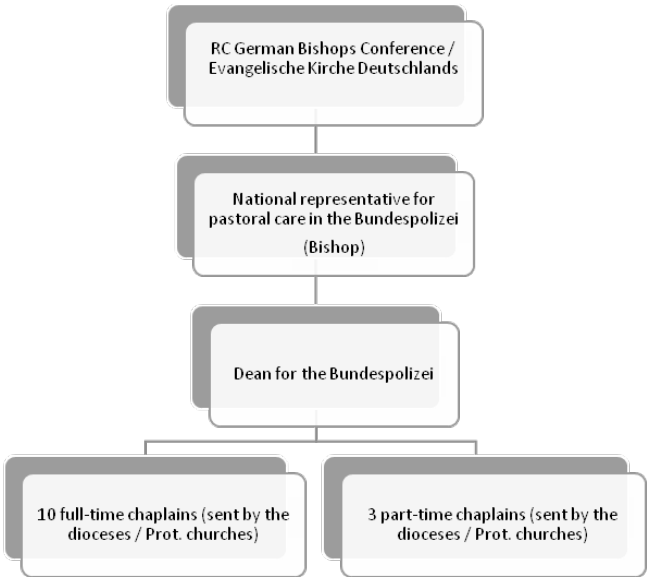
[20] Both agreements are published by Joseph Listl, Die Konkordate und Kirchenverträge in der Bundesrepublik Deutschland, Bd. 1 Berlin 1987, pp. 120 ff.; 85 ff.

[21] Cf. Heribert Schwark, Geschichte und Rechtsgrundlagen der Polizeiseelsorge in den Ländern der Bundesrepublik Deutschland und Berlin (West), Frankfurt a. M., New York 1986 (= Europäische Hochschulschriften - Reihe II, Rechtswissenschaft; 559).

[22] Cf. Matthias Pulte, Seelsorge in der Bundepolizei - Anmerkungen aus der Perspektive des katholischen Kirchenrechts, in: Helmut Blanke et al. (ed.), 50 Jahre Seelsorgevereinbarung in Bundesgrenzschutz, pp. 69-82.

[23] Gesetz über die Bundespolizei vom 19. Oktober 1994, BGBl. I), p. 2978 with later modifications.

Graphic 2: Organisation of pastoral care in the German Federal Police



The organisation chart shows the structure of religious assistance in the German Federal Police for each of the two Christian denominations. Both Churches have built up parallel organisations. This facilitates communication between church and state as well as ecumenical collaboration between the two denominations. According to the constitutional norms this system is open to other religious denominations, too. It is up to them to enter into negotiations with the federal Minister of the Interior if they see a certain need for their believers serving in public office to ensure their rights of religious freedom.

The legal nature of the church and state agreements for the GFP is different from the church and state treaties on the military chaplaincy. While these treaties can be identified as international treaties, the agreements on religious assistance in the GFP must be classified as administrative agreements according to Basic Law Article 59 II. The main reason for this classification is the fact that these agreements haven't been ratified either by the parliament (Bundestag) or the Pope and the EKD, respectively[24]. The parties in these agreements are the FRG administration (Minister of the Interior) and, on the RC side, the German Catholic Bishops, represented by Card.

[24] Cf. Markus Heintzen, Die Vereinbarungen über die Seelsorge in der Bundespolizei, in: 50 Jahre Seelsorgevereinbarung (Fn. 13), pp. 55-67, 57.

Joseph Frings in accordance with the Apostolic See, and, on the Protestant side, the six Protestant Churches[25] where the former BGS had its barracks.

Besides the state-church legal agreements there are also some ecclesiastical norms from the Protestant churches. After German reunification and with the expansion of the BGS' working area to the entirety of Germany, all German Protestant Churches were now affected by need for a national ecclesiastical regulation on BGS chaplaincy.

Therefore the Churches asked the EKD in 1996 to make a special law[26]. There are no canonical provisions, or a specific Catholic[27]. The RC Bishops identified the work of the BGS chaplains as ecclesiastical work, and therefore special church law provisions for them seemed to be unnecessary[28]. Apart from the church and state agreements, the RC chaplaincy is governed by the provisions of the Code of Canon Law, specifically canons 515, 516, and 564 on parishes, parish priests and assistant priests.

2. Religious Assistance on the Individual State Level

Besides these two fields of religious assistance in public institutions, the special chaplaincy in public institutions in Germany, according to Basic Law art. 73, is organised by mutual agreements between the religious communities and the states of the federal republic. In this category in Germany we have four different institutions where religious assistance can be provided. Only the prison chaplaincy and religious assistance in hospitals, due to their nature, can be compared to the two above-mentioned cases because of the special situation of inmates, prison officers, and patients in hospitals. For different reasons, these groups cannot even partially practice their right to religious freedom in the broad sense set out by the German Constitutional Court.

2.1. School and university Chaplaincy

School and university pastoral work are categories of special client pastoral work primary governed by the norms of the religious communities. This field legally is only covered by the general clause of Basic Law Article 140 and Article 141 of the WRC.

[25] Braunschweigische evangelisch-lutherische Landeskirche, Evangelisch-Lutherische Kirche in Bayern, Evangelisch-lutherische Landeskirche Hannovers, Evangelische Landeskirche Kurhessen-Waldeck, Evangelisch-lutherische Kirche in Lübeck, Evangelisch-Lutherische Landeskirche Schleswig-Holsteins.

[26] Cf. Kirchengesetz der Evangelischen Kirche in Deutschland zur Regelung der Evangelischen Seelsorge im Bundesgrenzschutz (Bundesgrenzschutzseelsorgegesetz der EKD - BGSSG.EKD) vom 6. November 2003, ABl. EKD 2003, p. 407.

[27] Cf. Matthias Pulte, (Fn. 19), p. 70 sq.

[28] Cf. Matthias Pulte, (Fn. 19), p. 70 sq.

Practices in the RC dioceses and the Protestant Churches are diverse, depending on the religious situation in each country, diocese or church. There is no coordination between the dioceses or churches either on the national or the country level. Regarding university chaplaincy in general we can state that the churches have set up university parishes under their own authority, outside of the university's property. Some single RC student parishes have been set up as canonical parishes. Parish personnel works under the authority of the bishop or the competent authority of the Church. German constitutional law and the Church and state agreements do not mention this field of religious assistance[29].

2.2. **State Police Chaplaincy**

The legislation on State Police chaplaincy in Germany is rather poor. Only Article 38 of the Constitution of Brandenburg expressly mentions religious assistance in the police. So we have to conclude that this broad field of religious assistance, which in fact exists in each of the 16 states of Germany, is regulated by the general clause of Basic Law Article 140 and Article 141 of the WRC. Pastoral work in the police is legitimated by the fact that policemen are confronted with very special professional experiences in the fringes of society and that they quite often experience psychological stress. Some policemen live in barracks over long time periods[30]. The ministers in this field of pastoral care are ecclesiastical ministers, ordained and non-ordained pastoral workers. Police chaplaincy in Germany is provided by the RC[31] and the Protestant[32] Churches. A minimal structure, with a Dean for each state who is named by the dioceses or churches, coordinates police chaplaincy on the state level with all participating dioceses or churches covering this territory. The RC dioceses nominated an auxiliary bishop as Police bishop for Germany. He has no legislative or administrative authority, but acts solely in a coordinating capacity. Police chaplains and ministers work under the authority of their bishop or equivalent authority.

[29] Cf. Alfred E. Hierold, Schul- und Hochschulseelsorge, § 51, in: Handbuch des katholischen Kirchenrechts (Fn. 15), 776-777.

[30] Cf. Jörg Ennuschat, Clemens Munoz, Seelsorge in Polizei, Militär, Gefängnis, Krankenhaus, in Hans Michael Heinig, Hendrik Musonius, 100 Begriffe aus dem Staatskirchenrecht, Tübingen 2012, pp. 232-235.

[31] Roman Catholic police chaplaincy: http://polizeiseelsorge.org.

[32] Cf. Kurt Grützner u.a. (ed.), Handbuch Polizeiseelsorge, Göttingen 2008. Protestant police chaplaincy: http://www.polizeiseelsorge.de/index2.htm.

Graphic 3: Structure of RC police chaplaincy in Germany

2.3. **Prison Chaplaincy**

Religious assistance in penitentiaries is one of the oldest Christian traditions, dating back to the sermons of Jesus Christ (Mt 25, 35). Even the Apostles had their particular experience with imprisonment and pastoral care for those who were jailed because of their beliefs[33]. The legal basis for religious assistance in prisons is diverse. In addition to the above-mentioned Basic Law Article 4, we find legal norms in the Church-state agreements, especially in Article 28 RK[34], and in administrative agreements between the religions and the state Ministers of Justice. On the level of the Federal Law of Penal Execution (StVollzG) several norms provide the framework for pastoral care for inmates[35]. Looking at the status of prison chaplains in the state prison systems, different models for defining relationships are possible. The closest relationship to the state would be to appoint the religious minister in a civil service or to sign an employment agreement. The third version would be a mutual agreement between the two partners on the supply of staff. The legal sources do not clarify the content and boundaries of professional loyalty of the religious ministers in this public service. §§ 155 II, 157 StVollzG classifies the religious ministers as a professional

[33] Balthasar Garreis, Seelsorge in Justizvollzugsanstalten. Begründung - Situation - Zukunftsperspektiven, in: Essener Gespräche zum Thema Staat und Kirche 23 (1989), pp. 58-86.

[34] Article 28 RK: «In hospitals, prisons, and other public institutions the Church is permitted to make pastoral visits and conduct services of worship, subject to the general rules of the institutions concerned. If regular pastoral care is provided for such institutions, and if pastors must be appointed as state or other public officials, such appointments will be made with the agreement of Church authorities».

[35] Cf. §§ 53, 54, 144, 167 Strafvollzugsgesetz.

group in the prison. § 154 StVollzG obliges prisons to allow chaplains in general to work in the penitentiary system, but only in observance of the independence of the religious community. In the same way the penitentiary must observe the necessary freedom for pastoral care. Here it is up to the religious community to define the framework for this necessary freedom. Penitentiary laws permit not only clerics but also laymen as pastoral workers in this field. Volunteers are only allowed in coordination and with the approval of the penitentiary offices[36]. Because of the nature of religious assistance it is clear that for all religious ministers and their assistants, the seal of secrecy is guaranteed by law (§ 53 StPO). This law is also safeguarded by Article 9 Reichskonkordat (1933)[37]. The protection of the seal of secrecy is not only reserved for ordained religious ministers, but also extends to all of the above-mentioned collaborators in the field of religious assistance. This is clarified in the permanent jurisdiction of the German high courts[38].

Prison chaplaincy in Germany is organised separately for each RC diocese[39] or Protestant Church by mutual agreements between the church and the state. Additionally, pastoral workers from Christian denominations have founded associations for all pastors working in this particular field[40].

2.4. **Religious Assistance in Hospitals**

Traditionally, religious assistance in hospitals or retired homes is a classical task of the Christian denominations according to their biblical mission. The legality of this pastoral work has never been questioned. Therefore, the legal framework on this classical *res mixta* from state to state seems to be lacking. Some constitutions of the German states contain provisions regarding religious assistance in hospitals[41]. In all other states, the general clause of Basic Law Article 140 and Article 141 of the WRC once again sufficiently legitimate special pastoral care for patients in hos-

[36] Cf. Dietrich Pirson, Fn. 3, 31 sq.

[37] Article 9 Reichskonkordat: «The clergy may not be required by judicial and other authorities to give information concerning facts that have been confided to them while exercising their pastoral duties and therefore come under the pastoral obligation to preserve secrecy».

[38] Cf. Matthias Pulte, «Was nützt das Recht zu schweigen, wenn ich abgehört werde?» Zum Schutz des Seelsorgegeheimnisses der Geistlichen und Seelsorger (nicht nur) in Gerichtsverfahren, NomoK@non, online: http://www.nomokanon.de/abhandlungen/021.htm, points 1-26, 2008.

[39] Pars pro toto: Dienstordnung für die katholische Gefängnisseelsorge in Nordrhein-Westfalen 1st October 2010, in: Grundlagen der Gefängnisseelsorge im Erzbistum Köln, Köln 2010, pp. 8-11.

[40] Cf. Katholische Gefängnisseelsorge in Deutschland, online: http://www.kath-gefaengnisseelsorge.de/; Evangelische Konferenz für Gefängnisseelsorge in Deutschland, online: http://www.gefaengnisseelsorge.de/

[41] Art. 148 LV Bayern, art. 38 LV Brandenburg, art. 82 LV Bremen, art. 54 LV Hessen, art. 20 LV NRW, art. 48 LV Rheinland-Pfalz, art. 42 LV Saarland, art. 141 LV Sachsen, art. 141 LV Sachsen-Anhalt.

pitals or comparable institutions. In most of the constitutions, several categories of pastoral care are combined. The reason for this legitimation can again be seen in the special situation of patients and their constitutional right to religious practice under the special conditions of illness. Nowadays Muslim religious assistance in public hospitals is being discussed. Some institutions provide Muslim prayer rooms as well as Christian chapels and Jewish prayer rooms[42]. However, it should be clearly pointed out that there is no legal obligation for the operating company to provide any prayer rooms in the hospital. The national and state constitutions only guarantee access to the hospital according to the institution's general rules for visiting the sick. For the RC Church this provision is also set out in Article 28 RK. The RK expressly mentions this restriction: «*according to the institution's general rules*» to ensure the rights and operational requirements of the institution on the one hand, and the rights of the patients on the other.

[42] Tarik Tabbara, Rechtsfragen der Einführung einer muslimischen Krankenhausseelsorge, ZAR 2009, pp. 254-259.

SPIRITUAL ASSISTANCE IN PUBLIC INSTITUTIONS REPORT: GREECE

Constantinos Papageorgiou*
Lina Papadopoulou**

1. Historical and Sociological Approach

For reasons to do with their distinctive historical development from medieval to modern times, as well as their specific national identity in the form it has acquired since the Revolution of 1821, the Greek people today are predominantly members of the Eastern Orthodox Church. As much as 90% of the entire Greek populace belongs to this Church, in a country whose total population is 10,800,200 people[1].

As a result, the country's religious minorities (accounting for up to 5-7% of the total population at most) include the rest of the Christian Churches and denominations (Roman Catholics, Protestants[2], Old Calendarists or «Genuine Orthodox Christians», Jehovah's Witnesses, etc.) and other religious communities (particularly Muslims, Jews, Sikhs, Buddhists, adherents of various Asian religious traditions, etc.)[3].

As the reader may deduce from the above sociological data, the nation's spiritual and pastoral needs are served principally by the «dominant» (or «prevailing») religion, the Greek Orthodox Church. Of course, given the current acute refugee crisis, the population's pastoral needs have increased dramatically and are much more pressing, compared with those under normal social conditions.

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1 National Statistical Service of Greece, 2013 census.

2 See, for example, a report on the Anglican Chaplaincy in Athens at: http://anglicanchurchathens.gr/2016-annual-general-meeting-of-the-anglican-chaplaincy-in-athens/.

3 Cf. Constantinos Papageorgiou, *Religion and Law in Greece,* Wolters-Kluwer, 2016, Law International, The Netherlands/Alphen aan den Rijn 2015. Lina Papadopoulou, 'Law and Religion in Greece' in: G. Robbers and W.C. Durham, (eds.), *Encyclopedia of Law and Religion*, Leiden, Brill 2014.

2. Definition and Regulation of Chaplaincy Services

2.1. Definition of spiritual/pastoral assistance (chaplaincy)

For the research needs of this paper and in accordance with the outline provided to us, we have defined chaplaincy or pastoral activity as any form of charitable, philanthropic or spiritual activity that is provided by authorised members of ecclesiastical or religious communities mainly to the armed and emergency forces, prisons, hospitals and educational institutions, with the aim, on the one hand, of providing humanitarian services to help individuals or families cope with difficulties of a material nature, for long or short periods of time, and on the other, of providing services of a spiritual nature to believers of the religion concerned or non-believers.

Although collaboration in good faith between the official or unofficial bodies of different ecclesiastical or religious communities in order to serve the same purposes is not a rare phenomenon in Greece, until the recent outbreak of the refugee crisis the relevant services were mainly focused on either the believers/members of these communities or to everyone, regardless of their personal religious beliefs.

These services acquired a special character as a result of the activities of persons authorised by the relevant ecclesiastical authorities. These people may be clerics or lay people, men or women, and may either belong to the salaried staff of a certain ecclesiastical or religious organisation - that is to say, with an employment relationship to said organisation, probably following appointment to a permanent position - or provide their services as simple non-salaried volunteers.

2.2. National regulation of chaplaincy (the constitution, agreements, law, court decisions and other legal sources)

The pastoral and any other social, economic or spiritual activities of religious bodies take place within a regulatory framework consisting of regulations deriving mainly from the Constitution (C.), the European Convention on Human Rights (ECHR), and statutes of common or less formal application. More specifically, the Constitution (Article 13) and the ECHR (Article 9) confirm, among other things, the right of religions to individual self-administration, that is to say, their ability to act freely in the wider social sphere, through legal entities or organisations whose remit includes the above pastoral activities.

The multilevel pastoral activity of religions in the wider Greek social sphere takes place in accordance with regulations that are mainly enacted by the state legislature. This legislation is influenced by the state-governmental system known as *state-law rule* which governs State-Church relations in Greece. In its application, issues concerning the State that relate to the organisation and function of religions are regulated by laws that are voted on by plenary sessions of Parliament (72 § 1 C.).

Moreover, in legislation relating to religion, legislative authorisations are provided to the religious authorities (see 43 § 2 C.) so that they themselves can, at their own free will, issue regulatory acts for the regulation of internal affairs and bodies, such as, for example, the institutions that exist for the implementation and cultivation of their pastoral activities.

The main domestic law regulating the activities of the Church of Greece is L. 590/1977 concerning the «Constitutional Charter of the Church of Greece», which regulates the organisation, administration and institutional functions of this Church. Of all the provisions of L. 590/1977, the following are most worthy of mention here:

- **Article 1 § 4**, which provides, among other things, for the operation of the *Apostoliki Diakonia* (missionary arm) and the *Communication and Education Service* of the Church of Greece
- **Article 2**, according to which the Church of Greece must cooperate with the State on matters of common interest, such as the *Christian education of the youth*, the organisation and operation of the *religious service of the army*, *marriage and family issues*, and *the care and treatment of fellow human beings in need of protection*
- **Article 9**, which decrees that the Holy Synod, as an administrative institution of the Church, should cooperate with the State on issues of *ecclesiastical and general education*
- **Article 10**, which permits the establishment of Synodical Committees to assist the work of the Church. One such committee that has been established is the *Synodical Commission for Social Welfare and Beneficence*
- **Article 36**, which by specifying the general lines of organisation of the thousands of parishes of the Orthodox Church (estimated to number over 10,000 throughout Greece), effectively lays the foundations for a gigantic and multi-networked legal entity, whose more specialised units are able, when systematically activated and coordinated, to deliver an extensive pastoral action plan
- **Article 37**, which designates the chaplain of every district or provincial parish as the central human agency and coordinator of parish pastoral work, responsible for caring for the needs (in a broad sense) of the parishioners
- **Article 39**, which establishes the existence and operation of the monasteries - in parallel with the parishes - as centres of ecclesiastical pastoral activity
- **Article 40**, which refers generally to the administrative organisation of the Apostoliki Diakonia of the Church of Greece, states that the Diakonia is responsible for planning and organising the missionary and educational work of the Church (see also below)
- **Article 42**, which provides a summary of the paid and unpaid staff that the Church utilises to carry out its pastoral work, amongst other things
- **Article 46**, which lays down a general framework for the administration and management of church property, as the main provider of material resources for

the implementation of general pastoral and ecclesiastical activities, particularly amongst financially weaker individuals or groups. The main resources of church property are considered to be the proceeds from immovable or movable church properties, voluntary contributions by members of the Church and state grants.

It should be noted that, in addition to the above basic regulations, the central ecclesiastical authorities, by making use of the multiple legislative authorisations that L. 590/1977 provides for, have issued a series of regulations for the more specialised organisation of ecclesiastical pastoral action. The content of these ecclesiastical regulations is examined in greater detail below.

2.3. **Limitations of chaplaincy**

Pastoral action should not turn into proselytising, which not only continues to be prohibited - for or against any religion - by the Constitution itself (Article 13 § 2 C), but also by criminal regulations (Article 4 § 2 of L. 1363/1938, as replaced by Article 2 of L. 1672/1939).

According to the wording of these regulations, the act of proselytising consists of any direct or indirect attempt to impinge upon the religious beliefs of another person in order to change them, «especially» when this is done *by using any kind of inducement or promise of an inducement* or by fraudulent means or *by taking advantage of that person's inexperience, trust, need, low intellect or naivety*.

This criminalisation of an activity which, as a practised form of «teaching» seems perfectly natural, if not necessary, in any religion, has long been criticised both by legal theory[4] (which refers to it as a «legal fossil») and jurisprudence[5]. However, in the case of the pastoral care of vulnerable individuals or groups (the unemployed, refugees, immigrants, the poor, the homeless, etc.), the protection of such individuals or groups (even in criminal form) might not seem totally unreasonable if it could be reasonably proved that the impetus for providing pastoral care was not based on purely humanitarian and selfless motives.

[4] From the extensive relevant bibliography, see: Nikolaos Androulakis, «Το αξιόποινο του προσηλυτισμού και η συνταγματικότητά του», *Nomiko Vima* 34 (1986) 1031.

[5] ECHR *Kokkinakis v. Greece* (3/1992/348/421/25-5-1993): the criminalisation of unfair proselytising does not violate the ECHR, but the relevant convictions have to clearly identify unfair means that may have been used. Article 9 ECHR is violated if there is no evidence that the conviction for proselytising was a measure necessary in a democratic society for the promotion of the rights and freedoms of others (same ECHR decision, Larisis and Others v. Greece, 140/1996/759/958-960, 24-2-1998).

3. Organisation of chaplaincies by the State (appointment, education, State supervision, status according to labour law, status of chapel, etc.)

The Greek Orthodox Church is a legal entity of public law which is heavily subsidised by the State for several purposes. In this sense, the state apparatus *stricto sensu* does not provide for chaplaincies but rather leaves this task to the Greek Church, which - one could even say - forms part of the State *lato sensu*, as it is a legal entity of public law and its ministers are public servants. The same applies to other religions and denominations, such as Islam, the Catholic Church, Judaism, Armenians, etc.: the State itself does not provide chaplaincy services, although it does give the different denominations freedom to do so themselves.

4. Chaplaincies in Public Institutions

4.1. Chaplaincies in the armed forces (historical background, status, appointment, revocation, funding, etc.)

To meet the various pastoral needs of those who serve in the Greek army, Legislative Decree 90/1973 establishes a special Religious Body of the Armed Forces and regulates its organisation and operation.

This Religious Body has a purely Orthodox Christian character and is staffed by Orthodox military priests[6]. It works under the Headquarters of the Armed Forces and has the task of ensuring the «Christian and moral edification of the troops». For clerics to join this service, they must meet a great number of educational and pastoral qualifications, which are listed in Act 90/1973.

From a critical standpoint, we may observe that the constitutional principle of religious equality requires that the Religious Body of the Armed Forces should be transformed into a more religiously neutral organisation, the ranks of which should include clergymen or pastors of all known religions (under the meaning of Article 13 C.).

[6] L. 199/1975 abolished the position of «Bishop of the Armed Forces», which was originally provided for by Legislative Decree 90/1973. Today military priests are governed by the Directorate of the Religious Service of the Hellenic Army General Staff (HAGS), and, as officers, fall under the directorates of the units they serve, while, as clerics, they fall under the jurisdiction of the local archbishops of the areas in which they are based: see L. 2439/1996 on the «Hierarchy and Development of Armed Forces Officers». Anyone observing the successive legislative provisions that have been passed on the organisation of the Religious Body of the Armed Forces could not help but think that it is excessively overstaffed, which perhaps has the effect of upsetting the order of priority between the means (the service's organisational structure) and the essential aims of pastoral care, which, in terms of principle at least, the former are called to serve.

4.2. **Chaplaincies in hospitals (historical background, status, appointment, revocation, funding, etc.)**

There are no specific legislative regulations concerning Chaplaincy services in hospitals. It is common for there to be a small Church either inside or just outside the yard of each hospital, which a specific priest operates and offers religious assistance to the patients and their relatives on an ad hoc basis. These priests are paid by the State but their action is self -regulated by the Greek Orthodox Church. Other denominations organise their chaplaincy services on an ad hoc basis, with the tolerance of the state hospitals.

4.3. **Chaplaincies in penitentiaries (historical background, status, appointment, revocation, funding etc.)**

Spiritual pastoral assistance in the prisons is a distinctive task of the Churches in Greece. The Greek Orthodox Church especially organises itself in order to offer spiritual assistance to the prisoners (Ποιμαντική διακονία των Φυλακών). In most prisons there is a priest from the Greek Orthodox Church who offers pastoral services to the prisoners, paid by the state under the auspices of the local Metropolis. The Church offers specialised seminars to those serving within the prisons. According to Archbishop Ieronymos, the Greek Orthodox Church also serves the spiritual needs of those not belonging to Orthodox Christianity, while respecting their own religious identity[7]. In some cases there is also an NGO, such as the one called «Association for Assistance to the Prisoners, The Crossed Jesus» Σύλλογος Συμπαραστάσεως Κρατουμένων «Ο Εσταυρωμένος», operated by the Metropolis of Demetriada (Thessaly).

4.4. **Chaplaincies in other public institutions - the police, airports, Parliament, municipalities (historical background, status, appointment, revocation, funding, etc.)**

Chaplaincy services are not normally offered in other public institutions, unless somebody specifically asks for them. They would then be accommodated to the extent that said services do not undermine the functioning of the public service, as a matter of respect for each citizen's right to freedom of religion.

5. State Chaplaincies and Islam and Other New Religions

Recently, because of its geographical position and its open maritime borders in the eastern Aegean Sea, Greece has received hundreds of thousands of refugees

[7] See the website of the Metropolis of Dimitriada and Almyros: *http://imd.gr/site/articles/top/fylakes/82*.

fleeing war in the Middle East, as well as other immigrants, in the form of either individuals or large family groups. The acute problems created by the imperative need to meet the immediate and pressing needs of these people (food, clothing, medical care and housing under sanitary conditions) had the immediate effect of forcing the (normally indolent) emergency social services of the Greek State to mobilise.

However, it also prompted the organisations and services responsible for providing humanitarian aid - primarily those of the Orthodox Church, as well as those of other religions - to assist the State's efforts in any material or moral way possible. As regards the institutional organisation and activity of these religious bodies, more detail will be provided below. Suffice it to say here that thousands of people, including clerics and lay members of the Orthodox Church, dealt with the waves of refugees in a commendable and selfless manner, in spite of the practical problems they faced.

This situation not only tested, in real crisis conditions, the readiness, capabilities and endurance of the Church's services to handle acute humanitarian crises, but also provided these services with invaluable experience to help them manage such situations in the future.

Law 2456/1920[8] provides for the establishment, internal organisation and administrative operation of the Jewish Communities in Greece[9], whose members are Greek Jews. By a legislative authorisation under that law, Royal Decree of 29-3-1949 was issued, by which the Organisation for the Relief and Rehabilitation of Greek Jews was established.

The Jewish Communities are recognised as legal entities of public law (Article 1 L. 2456/1920), with primarily philanthropic, pastoral-religious, charitable and educational aims (art. 4 L. 2456/1920), and they govern themselves in accordance with their respective charters[10].

[8] Supplemented and amended by a series of later legislative acts (L. 4837/1930, Emergency Law 367/1945, Legislative Decree 301/1963, L. 1657/1951, Legislative Decree 301/1969, etc.).

[9] Ch. Papastathis, «Le Statut légal de la religion juive en Grèce contemporaine», *L'Année Canonique* XLV (2003) 243-248· Vlas. Papagregoriou, «Η θρησκευτική ελευθερία όπως τη βιώνει η Ισραηλιτική Κοινότητα στην Ελλάδα», in: K. Beys (ed.), *Η θρησκευτική ελευθερία*, Athens 1997, 255-89; Moyses Aser, «Ζητήματα ανακύπτοντα εκ της εν Ελλάδι εφαρμογής του ιερού ιουδαϊκού δικαίου», *Nomiko Vima* 18 (1970) 381-83.

[10] Three-Member Court of First Instance of Ioannina 8/1984: the city's Jewish Community constitutes a religious body one of whose aims is to assist its members, seeking to perform charitable works for the care of the needy, as well as providing material and moral support for every charitable initiative. Under Article 9 of its Charter, its revenues are available for religious, educational and charitable institutions, as well as for the assistance of its needy members: see Supreme Court (Areios Pagos) 302/1981, Council of State 485/1975.

In order to further their mainly pastoral aims, the Jewish Communities have established many charitable institutions, which are engaged in important social activities[11].

6. Private chaplaincies or similar Activities organised by the churches in other institutions

Private chaplaincies are not legally regulated. The Greek Orthodox Church, through its ministers, or other denominations may organise them in accordance with their own requirements, on the basis of respect for religious freedom and the smooth operation of the relevant institutions.

7. Chaplaincy Unions

There are no specific chaplaincy unions. Priests and other ministers of religion offering spiritual assistance are employees of either the State or the respective denomination and may join the labour unions of public servants or private workers, although this is very unusual.

8. Special legislative framework for chaplaincy activity

8.1. Synodical committees of the Church with chaplaincy pastoral responsibilities

8.1.1. *Apostoliki Diakonia (Mission Division)*

The Apostoliki Diakonia is the official pastoral organisation of the Church, and is mainly responsible for the planning, organisation and execution of the Church's pastoral and educational work.

The Apostoliki Diakonia is a Non-Governmental Organisation (NGO) of the Archdiocese of Athens of the Greek Church which was founded in 2010, with the aim of playing an active role in the fields of humanitarian action, development and education.

[11] Such as, for example, the Jewish charitable foundation «Chaimoutso Covo» in Thessaloniki, which has carried out notable pastoral-charitable work. On this subject see: Anthi Pelleni Papageorgiou, «Ιδρύματα της Ισραηλιτικής Κοινότητας Θεσσαλονίκης», *Nomiko Vima* 48 (2000) 618-20 and Konstantinos Kerameus, «Νομική προσωπικότης και κρατική εποπτεία ισραηλιτικών ιδρυμάτων εν Ελλάδι», *Armenopoulos* 30 (1976) 666-77, and «Ισραηλιτικά κοινωφελή ιδρύματα και η εποπτεία του υπουργού των Οικονομικών», *Armenopoulos* 30 (1976) 674-77.

8.1.2. *Clerical-lay committees for special pastoral issues of the Orthodox Church of Greece*

By activating legislative authorisations under L. 590/1977 (concerning the «Constitutional Charter of the Church of Greece»), the Church has published a number of Regulations through which it has introduced clerical-lay committees for special pastoral issues and organised their mode of operation. Of these Regulations (R.), the following are worth mentioning here:

- **Regulation 172/2006:** *Special Synodical Committee on Immigrants, Refugees and Repatriates*

The purpose of this committee is to provide all possible assistance for the problems created by the steadily increasing presence of large numbers of immigrants and refugees in Greece and the sharp increase in the number of immigrant families and second generation immigrants.

- **Regulation 234/2012:** *Support Centre for Repatriates and Immigrants - Ecumenical Refugee Programme.*

This is a non-profit organisation (NGO) of the Church of Greece, with the following responsibilities (Article 3 of the Charter):

(a) to strive to protect the dignity, just treatment and human rights of immigrants, refugees, asylum-seekers and repatriated Greeks
(b) to monitor and study the phenomenon of migration and asylum in order to prepare, conduct and implement support service programmes (e.g. legal and social counselling and support) to immigrants, refugees and asylum-seekers, helping them to address their needs
(c) to cultivate and promote mutual cross-cultural understanding, acceptance and respect of other people's «otherness» through conducting information and awareness-raising campaigns
(d) to offer counselling to repatriated Greeks from Western European countries

The Support Centre for Repatriates and Immigrants is mainly engaged in the following activities:

- defending and safeguarding the fundamental rights of refugees and asylum-seekers before the authorities
- providing information and counselling services, legal and social support and advocacy for asylum-seekers and refugees
- managing the insurance and pension affairs of repatriated Greeks
- studying aspects of the migration phenomenon, compiling reports and conducting research on immigration and refugee policy and presenting proposals to the Greek and EU authorities on improving the existing legal framework
- carrying out activities to raise public awareness of immigration issues through the production of special documents and the organisation of meetings and events

- **Regulation 136/1999:** *Synodical Committee for Special Pastoral Issues and Situations*

The purpose of this committee is to alleviate the human suffering caused by the conditions of modern society and to search for pastoral solutions in areas of ministry such as hospitals in particular and healing institutions in general, addressing the problems of the spread of drug use, AIDS and other similar situations.

- **Regulation 153/2002:** *Special Synodical Committee on Women's Issues.* The purpose of this committee is to protect women's rights in all areas of society and to undertake policy initiatives on women's issues.

- **Regulation 135/1999:** *Special Synodical Committee on Marriage, the Family, Child Protection and the Demographic Problem*

- **Regulation 101/1998:** *Bioethics Committee*

- **Regulation 134/1999:** *Special Synodical Committee on Human Rights*

The task of this committee is to express the Church's particular concern for the consolidation of individual rights, to prevent their violation, to conduct detailed research into individual rights and to officially express the opinion of the Church in a reliable and constitutionally sound manner.

CHAPLAINCIES IN HUNGARY

Balázs Schanda

Persons who are part of or subjected to special institutions may need special spiritual assistance. On the one hand, their religious freedom may be curtailed by their circumstances; on the other, they may be more in need of religious assistance. Certainly the road to these institutions varies, as does the nature of the institutions. Members of the armed forces pursue service for the state. Prisoners suffer the consequences of their own guilt. We all may spend more or less time at hospitals due to various illnesses. Of course, some spend just a few days at a special institution; others may spend their entire lifetime there. Some institutions may be generally open to the public, whereas others are very closed-off. From the perspective of the secular state, religious practice in penitentiaries, the armed forces and at hospitals has a special value for the tranquillity and the proper functioning of these institutions. Not only respect for religious freedom, but also the «side effects» of religion encourage the state to facilitate the free exercise of religion.

1. Historical and Sociological Approach

Priests have historically accompanied the army in all Christian nations, and Hungary shares this tradition. Crusaders certainly enjoyed spiritual assistance and bishops had their military duties too. When the medieval Hungarian state collapsed at the battle of Mohács (1526) against the Ottoman Empire, almost the entire episcopate fell, as bishops took part actively in the battle. In the following centuries Jesuits played an important role as army pastors, and Protestant pastors also appeared to assist soldiers. Starting in 1773, the army had a vicariate as an organisational unit for Catholic priests serving as army chaplains, as well as Greek Catholic and Orthodox priests. In World War I, 2,400 army chaplains were in service, including pastors from various Christian denominations and rabbis.

After the communist takeover the military chaplaincy was dissolved. The army chaplaincy was reorganised in 1993-94 for the Catholic, Reformed, and Lutheran

denominations as well as for Jewish members of the armed forces. When the national service was abolished in 2004, the number of soldiers dropped and the role of the chaplaincy changed as well. Nowadays chaplains focus on the pastoral care of soldiers and their families, with a special focus on army units serving in missions abroad. The system provides for one pastor per 1,000 soldiers.

Spiritual assistance to inmates of penitentiaries has been carried out in an institutionalised manner as well, and traditionally prisons also had chapels. During communist rule this church activity was not possible, but since the fall of the communist system it has been widely implemented in penitentiaries. Several prison chapels were reopened or built and the chaplaincy service has had an institutional framework since 2000.

Traditionally, hospitals were run by religious entities where spiritual assistance was evident. Religious communities place great emphasis on the pastoral care of their members at hospitals, but generally a hospital is not regarded as a space for missionary activities - contrary to prisons. The respect of individual rights and spiritual needs is crucial at critical stages of life and this right is generally respected.

2. National Regulation of the Chaplaincy and Definition of Chaplaincy Services

Hungary's Basic Law provides for religious freedom and this freedom can also be exercised by people under special circumstances such as soldiers, inmates of prisons or the hospitalised sick. There is no general definition of chaplaincies and there are no general rules on chaplaincy services either. General principles of religious freedom, non-discrimination on the basis of religion, tolerance and respect towards individual rights apply.

To set up the military ordinariate, an agreement was signed with the Holy See and similar agreements have been signed with other denominations. Details are regulated in governmental decrees[1]. The general law on religious freedom only safeguards the rights of religious communities to carry out activities at hospitals, prisons and in the army, as well as the rights of persons in these institutions to practice their religion.

3. Organisation of Chaplaincies by the State

There is no general regulation on the personnel assigned to and the operation of chaplaincies. The general rule is that clergy be in ecclesiastical service. Army chaplains and prison chaplains may have dual affiliation by having a public appointment in addition to their religious one. This, however, does not change the purely ecclesiastical nature of their service. Chaplains must comply with the relevant rules of their

[1] On the Army Chaplaincy: Government Decree 64/1994. (IV. 20.) Korm.; On the prison chaplaincy: 13/2000. (VII. 14.) IM.

denominations in all respects (training, ordination, obedience, etc.). Their public appointment removes part of the financial burden from religious communities on the one hand, and on the other, facilitates cooperation. It should be noted that army and prison facilities are closed institutions that have special rules, whereas healthcare institutions are much more open. Whereas religious services on military premises were unimaginable during communist rule, hospitalised persons have always enjoyed the possibility of spiritual assistance. Consequently, for most army personnel and prisoners, clergy members were alien in the early 1990s and the institutionalisation of the chaplaincies has helped considerably in making religion a visible part of everyday life.

Chapels in public institutions are public property, which are sometimes used for exclusively religious purposes, and sometimes for partly secular use (common space for inmates). Even exclusively religious chapels consecrated by specific denominations would be ecumenical.

Inmates, soldiers, etc. must be able to enjoy full freedom in making use of the services provided by chaplaincies. Wearing the uniform cannot lead to compulsory attendance or any kind of constraints with regard to religious practice.

4. Chaplaincy in Public Institutions

4.1. Chaplaincy in the Armed Forces

Catholic, Calvinist, Lutheran and Jewish army chaplains may receive a military rank upon presentation by the competent ecclesiastical authority. The heads of the services usually receive the rank of general. This way the chaplains are entitled to remuneration according to their rank from the army. Denominations also have the option of sending other clergy to the army (for example, the local parish priest) who do not become part of the army structure.

The chaplaincy was challenged before the Constitutional Court as an institutional entanglement that violated the separation of church and state by suggesting and manifesting discrimination against smaller, less-established churches, in favour of «historical» churches. The Constitutional Court reaffirmed that neither the individual nor the collective practice of religion is institutionalised by the chaplaincy, and that small or non-registered religious communities have the same right to free exercise of religion in the military as do those for whom chaplains are provided. The state had no obligation to set up a chaplaincy to assist in the practice of religion, but it did have the right to do so with the consent of the churches concerned; consent of the churches concerned was necessary in order to avoid a violation of the separation clause. The Constitutional Court stated that «treating the churches equally does not exclude taking the actual social roles of the individual churches into account»[2]. Furthermore,

[2] Constitutional Court Decision 940/B/1994. AB.

the Court also found that the chaplaincy does not infringe upon the free exercise of religions that are not included in the scheme and that there is no unconstitutional entanglement as the chaplaincy has not become an institutional part of the military, but instead works alongside it. For example, chaplains with military ranks and uniforms are not authorised to give commands, and the chaplaincy is not subordinate to the Ministry of Defence. In creating the chaplaincy, the state had the right to single out the four «historical» religions, all of which had a minimum number of adherents. Equality does not require the provision of a chaplain from every congregation, especially if there are no congregation members in the military, either because of the size of the congregation or because of conscientious objection. However, access to military premises is not restricted.

Army chaplains are in a dual legal position as clergymen on the one hand and officers on the other. They must comply with both legal orders. Their dismissal on either side would mean losing their office. Parties are obliged to inform each other of disciplinary measures affecting the service.

Besides personal costs, the material expenses of the army chaplaincy are borne by the army as well, as the chaplaincy's budget is a part of the general budget of the army.

4.2. **Chaplaincy in Hospitals**

At hospitals there is no state-organised chaplaincy service. Religious communities are free to provide assistance to the sick, as well as to the medical staff, and they are widely engaged in that activity. Hospitals are obliged to facilitate the free exercise of religion by also providing space for worship. Religious communities may appoint hospital chaplains, but usually all clergymen and a large number of volunteers take part in services provided to the sick. There is no special funding established for these activities.

4.3. **Chaplaincy in Penitentiaries**

In 2000, a chaplaincy for penitentiaries was established for the Catholic, Reformed, and Lutheran churches, as well as for the Jewish community. This institution is similar to the Army Chaplaincy. All registered religions have the right to pursue religious activities in penitentiaries at the request of the inmates; however, the four largest religions are institutionalised, and their pastors can become public servants, paid by the penitentiaries as their own staff. To qualify, these chaplains must have permission from their churches, and they must comply with the requirements for civil servants. In addition to clergymen being employed by the penitentiary as a prison chaplain, religious communities are free to send any other person (clergy or layperson) to pursue religious activities in prisons. They would not be paid by the penitentiary.

4.4. Chaplaincy in Other Public Institutions: Police, Airports Parliament, Municipalities

The international airport of Budapest has an ecumenical chapel with a Catholic and a Reformed pastor providing spiritual assistance. It serves as a common meeting point for pilgrim groups.

Other public institutions have no organised chaplaincies. Certainly, religious communities have the right to pay special attention to a certain group of people, to a certain profession or a certain institution. They may also set up an organisation for such a purpose, but said organisation could not be connected to a public institution. When, for example, members of parliament are invited to attend a religious service, this is done by a religious entity that has no official ties to the Parliament whatsoever. A pastor inviting MPs to a service would not be regarded as a chaplain of the Parliament, as such an invitation would not mean that he had gained a particular status within the institution.

5. State Chaplaincy and Islam and Other New Religions

Only traditional religious communities have organised chaplaincies; neither Muslim communities nor new religious communities have state-organised chaplaincies. Of course, they also enjoy the right to provide assistance to their members as well as to engage in missionary activities at a prison.

6. Private Chaplaincies or Similar Activities Organised by the Churches in Other Institutions

Historically, major land-holders used to have private chaplains, but nowadays there are no private chaplaincies.

7. Chaplaincy Unions

Chaplains cooperate in carrying out their duties. Especially in terms of prison services, ecumenical groups play an active role.

CHAPLAINCY IN IRELAND

Stephen Farrell

1. Historical and Sociological Approach

The history of Ireland is partly one of tension between two religious communities. Until 1871 the minority Church of Ireland, as part of the United Church of England and Ireland, was the state church. The majority of the population was Roman Catholic, but were prevented from access to certain professions and from public life through the Penal Laws[1]. Occasional violent revolutions and their violent suppression made for a highly divided society. In this context much of the life of citizens was divided according to religious loyalties. Coupled with the fact that there was an inefficient administration in Dublin, concerned largely with security, meant that the state did not make, or did not succeed in making, universal claims to the loyalty or identity of most of the population. Attempts to introduce universal primary education had to be abandoned in favour of denominational schools as both Roman Catholics and Protestants refused to cooperate with the intended integrated schools[2]. Hospitals too were under the control of churches, creating a legacy that remains to this day. Irish independence saw a fledgling state fail to take control of these institutions[3], choosing instead to accept the status quo and fund both denominational healthcare and education. The 1937 Irish Constitution creates an impression of a state that is neutral in all matters pertaining to religion, though that neutrality ought not to be seen as keeping religion at arm's length, but rather seeking to treat all religion equally. Only

[1] Francis Moran, «The Catholics of Ireland Under the Penal Laws in the Eighteenth Century» (2012).

[2] Kenneth Milne, «The Irish Charter Schools 1730- 1830», (1997) Four Courts Press.

[3] See Crowley v Ireland [1980] IR 102. Having regard to the history of education in Ireland, Kenny J noted (at 107) that the enormous power which the control of education gives was denied to the State; there was interposed between the State and the child the manager or the committee or the board of management.

in recent years, with the rise of a stronger secular voice in Ireland, has the issue of the denominational nature of public life and the role of state-sponsored chaplaincy come to the fore.

2. National Regulation of Chaplaincy

The model of chaplaincy in public institutions in Ireland has never really been planned, but has emerged largely unchanged from a different and more clerical age. There is little by way of regulation of the chaplaincy field, outside of the area of healthcare. The Higher Education Authority has just completed a two-year review of the way in which chaplains of colleges and universities are appointed and funded, though this report had not been published at the time of writing.

The 1937 Constitution of Ireland, Article 44.2.2 prohibits State endowment of any religion. In *Campaign to Separate Church and State Ltd v Minister for Education*[4], the plaintiff company challenged the state funding of Roman Catholic and Church of Ireland chaplains in community schools as, insofar as this prevented the denominations in question having to fund the chaplains themselves, they were being given a benefit or endowment by the state. Barrington J reviewed the history of Article 44.2.2, noting that the Constitution was written at a time when the vast majority of schools were denominationally controlled. Further, he also took into account article 42.4 which provides:

> The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, … with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

To the judge this was proof that the Constitution always intended children to receive religious education in schools provided by the state but run in accordance with the religious wishes of parents[5]. He held that the payment of monies to fund chaplains was not endowing religion, insofar as the state had always paid the salaries of teachers in denominational schools, and the framers of the Constitution had not seen this to be an endowment of religion. He concluded by adding the caveat that the system of salaried chaplains had to be available to all community schools of whatever denomination according to their need.

It ought to be noted that there are a very small number of community schools in Ireland, and an even smaller number with state-sponsored chaplains. It has been

[4] [1998] 2 ILRM 81.

[5] Similarly, Keane J. held that even if he was wrong in his view that state payments to chaplains were not even a primae facie endowment of religion, nonetheless such payments were constitutionally sanctioned by Article 42.4. n4 at 88.

suggested that this decision is constitutionally unsound, and that, historical considerations aside, there is no justification for reading Article 44.2.2 as permitting the state to fund religious chaplains in state schools.[6] As Whyte points out:

> It is at least as plausible an interpretation of the Constitution to argue that the non-endowment clause should be used to qualify the principle of State support for denominational education as it is to argue that the principle of State support for denominational education should be used to qualify the non-endowment clause[7].

Further, Art 42.4 is a weak clause, calling on the government to «endeavour to supplement and give reasonable aid», whereas Article 44.2.2 is a much stronger and broader prohibition. The Supreme Court did not seem to recognise this imbalance.

The willingness of the Irish State to fund certain chaplains does not necessary carry with it an element of control in the appointment or regulation of the activities of a chaplain. In *Conroy v Board of Management of Gorey National School*[8] a Roman Catholic Priest was removed by a school Board of Management from his state-funded position as school chaplain. He alleged that his removal was *ultra vires* and in breach of fair procedures, and sought judicial review. The judge noted that though the position was state-funded the appointment was made by the local bishop and was exclusively pastoral, and as such may be governed by canon law exclusively[9]. He held that the Board was only authorised to terminate the appointment if and when necessary and in accordance with the wishes of the religious authority[10]. Moreover, the judge noted that unlike with the appointment of a teacher, the Minister for Education has no role in the selection criteria, appointment or necessary qualifications of a chaplain. The Minister could not seek the removal of a chaplain, and there was no public law element to the appointment[11].

The lack of regulation of paid chaplaincy posts in Irish schools reflects a historical legacy. Recently there have been changes in the law to import greater regulation. Section 30 of the Teaching Council Act 2001 became operative in November 2013[12]. Subsection 5.5 provides that:

> In the case of school chaplains paid by the State, these posts are regarded as teaching posts, and, therefore, those appointed to them should be registered teachers.

[6] «Religion and Education - The Irish Constitution», Gerry Whyte. A paper presented at the Trinity College Dublin/ Irish Human Rights Commission Conference, «Religion and Education: A Human Rights Perspective» 27th November 2010. pp9ff.

[7] n6 at 10.

[8] Unreported. [2015] IEHC 103.

[9] para 27.

[10] para 39.

[11] para 46.

[12] Department of Education and Skills. Departmental Circular 0025/2013 Requirement for Teachers in Recognised Schools to Register with the Teaching Council.

> … Any school chaplain currently in employment who cannot gain registration with the Teaching Council will be permitted to continue in his or her role in pastoral care but will be prohibited from teaching. New appointees to chaplain positions must be registered teachers.

This move to require chaplains to also be qualified teachers could be read as a secularising move, as it reduces the likelihood of ordained clergy being qualified, and may be an attempt to move to a model of lay chaplains, with chaplaincy simply being an extra duty undertaken by one or more teachers. By requiring the chaplains to be registered teachers there is greater scope for regulating their activity and defining the limits of the service they are to provide.

3. Organisation of Chaplaincies by the State

The State has historically not sought to organise chaplaincy, preferring instead to leave it to churches to organise chaplaincy even in public institutions. Recently, the state has sought to better structure hospital and university chaplaincy. Hospital chaplaincy will be addressed below, but the proposed changes in university chaplaincy represent a significant departure from pre-existing arrangements. As mentioned above, the Higher Education Authority review into state funding of university chaplaincies has yet to be published. However, in recent days national newspapers have been able to print what will be the findings of the report[13]. It has been reported that the state pays €2m per year on chaplaincy services to third-level institutions, mostly on Roman Catholic Chaplains. This is to change, with the posts to become open to lay people[14]. Further, all third-level colleges will be required to ensure State-funded chaplains are appointed in accordance with public sector recruitment rules[15]. It has also been reported that many institutions have «legacy» arrangements in place whereby a bishop or church appoints the chaplain to the university. This is to end within twelve months[16].

[13] Atheist Ireland have also produced on their website what they claim are photographs of pages from the report. http://atheist.ie/2016/06/hea-enforce-atheist-ireland-recommendations/ Accessed 12th July, 2016.

[14] http://www.irishtimes.com/news/education/third-level-college-chaplaincies-to-be-open-to-lay-people-1.2704592 Accessed 12th July 2016.

[15] http://www.irishtimes.com/news/education/how-much-do-chaplaincy-services-cost-each-third-level-institution-1.2704626 Accessed 12th July, 2016.

[16] n15.

4. Chaplaincy within Public Institutions

4.1. Chaplaincy in the Armed Forces

Before Irish Independence, Ireland's armed forces were part of the British armed forces, with chaplains appointed according to the rules of the British army. With independence came a new army, Óglaigh na hÉireann (soldiers of Ireland), which had been the Irish language name for the IRA during the War of Independence.

The Irish Defence Forces are small, but are served by a team of twenty chaplains, all but one being Roman Catholic Priests. One is a Church of Ireland (Anglican) Priest. Salaries of the full-time chaplains are equal to those of Commandants (€56,000)[17]. Due to the small number of Anglican Defence Forces personnel the Anglican Chaplain is part-time. Annually, the Defence Forces spend €1,225,000 on the provision of chaplaincy[18].

The job of the team of chaplains is to serve Defence Forces personnel and their families at home and when serving overseas. Their role is to offer pastoral care and spiritual support. Religious ceremonies, sacramental preparation, hospital visitation, prayer services, ethics courses and bereavement support are among the services provided by the chaplains[19].

There is limited information available publically on the appointment of chaplains. It appears that chaplains are appointed to individual barracks by the local bishop, in consultation with the Head Chaplain to the Defence Forces, with the approval of the Minister for Defence[20]. No information is available as to how the Head Chaplain is appointed, but it is possible that he is appointed by the Archbishop of Dublin, in whose diocese he is based. It is not entirely clear on this model how appointments can be revoked. The Defence Forces may be able to remove a chaplain, or to request another from the bishop. In 2014 the Head Chaplain to the Defence Forces criticised the atheist President of Ireland for failing to mention the Nativity in his Christmas Message. The Chaplain was removed by the Archbishop of Dublin[21]. He publically denied that any political pressure had led to his removal, and suggested he was being moved on due to diocesan reorganisation[22].

[17] www.defence.ie/WebSite.nsf/ROP_off1 Accessed 12th July, 2016.

[18] Defence Forces Submission to the Public Expenditure Review 2014. www.per.gov.ie/wp-content/uploads/Defence-CRE-Submission.pdf Accessed 12th July 2016.

[19] Defence Forces Handbook. http://www.military.ie/fileadmin/user_upload/images/Info_Centre/documents/DF_Info_Handbook_layout_low_res.pdf pp58 Accessed 12th July 2016.

[20] http://www.catholicireland.net/head-chaplain-appointed-defence-forces/.

[21] http://www.irishcatholic.ie/article/army-chaplain-denies-political-hand-his-replacement Accessed 12th July.

[22] ibid.

It is apparent that whilst the military has primary responsibility for setting the duties of chaplains and for their remuneration, there is a significant role for bishops and religious orders in appointing chaplains and, where necessary, in removing them.

4.2. **Chaplaincy in Hospitals**

Historically most hospitals in Ireland have been set up and run by religious orders or by denominations. Even as recently as the 1990s, when the government was trying to rationalise the number of small hospitals, it only amalgamated along denominational grounds and allowed for a continuation of ethos[23]. Chaplains to hospitals have historically reflected the religious ethos of the hospital and its patients. In more modern times the Health Service Executive (HSE) has sought to regulate the training and deployment of chaplains in public hospitals.

As recently as 1999, all the HSE required from chaplains is that they were ordained Roman Catholic priests, appointed by the diocesan bishop. Lay people were eligible to be chaplains, but needed to have completed at least one year in the study of theology and three units of Clinical Pastoral Education at an approved centre[24]. By 2006 there was no dispensation for clergy from the three modules of CPE[25], though the Healthcare Chaplaincy Board could recognise the equivalency of another qualification - most likely a means by which to accept seminary training. In 1999 the contract was between the bishop and the HSE to supply a chaplain to a particular hospital at his will and pleasure, but by 2006 chaplains themselves entered a contract of employment with the HSE, only terminable by notice.

The role of chaplains is set out in their contract of employment[26]. Their job description appears under the following headings: Visiting All Patients, Availability 24hrs a day, Provision of 24hr Pastoral Care, Spiritual/Religious Support, Professional Development of Staff, Managerial Accountability, Training and Development, Ethical Issues of Healthcare. The National Association of Healthcare Chaplains defines a chaplain as:

> A person appointed to provide spiritual and religious care to all patients, visitors, staff and volunteers in the healthcare setting regardless of faith or no faith. A chaplain can be ordained or lay (standards for Hospitals and Palliative Care Chaplains, UK 2006). Chaplains are people of faith who have engaged in the Clinical

[23] For example, the Adelaide Hospital, the Meath Hospital and the National Children's Hospital in Dublin, all of which had a Church of Ireland ethos, were merged to form Tallaght Hospital, with reserved membership on the Board for the Church of Ireland. http://www.amnch.ie/About-Us/History%20of%20the%20Hospital/ Accessed 12th July, 2016.

[24] https://www.hse.ie/eng/staff/Resources/HR_Circulars/Hospital% 20Chaplains.pdf.

[25] http://circulars.gov.ie/pdf/circular/hse/2006/13.pdf.

[26] ibid.

> Pastoral Education programme, a hospital based experiential programme founded by Antoin Boisen to work with and minister to «living human documents»[27].

All public hospitals in Ireland will have at least one Roman Catholic priest employed as a full time chaplain, generally supported by other clerical or lay colleagues. In total, 234 people, clergy and laity, are employed as Roman Catholic Hospital Chaplains[28]. Lay chaplains are becoming an increasingly common sight in Irish hospitals, trained at either a third-level college or by the Church itself. Those who wish to work as Roman Catholic Chaplains must be certified by the Healthcare Chaplaincy Board, which is answerable to the Irish Catholic Bishops' Conference and Conference of Religious[29]. The Chaplaincy team in larger hospitals will be headed by a Chaplaincy Co-ordinator, who will also be a working chaplain. The Co-ordinator's role is to ensure that chaplaincy is provided to all patients and staff who wish to avail themselves of it and that the hospital has arrangements in place with appropriate chaplains from other denominations and faiths who may be brought to the hospital as and when required[30]. These arrangements put chaplaincy on a much more structured footing than in the past. Whilst the bishop may nominate to the role, there is a contract of employment between the hospital and the chaplain and their duties are also defined by contract. This is a level of regulation unique to Roman Catholic chaplains.

The vast majority of Irish people are Roman Catholic; the largest minority denomination is Anglicanism. The (Anglican) Church of Ireland is paid a block grant each year (approximately 220,000)[31] to ensure that Church of Ireland clergy are available to act as chaplains and to be on-call for hospitals around the country[32]. This has until recently simply seen the local Rector being *ex-officio* the chaplain to any hospital in their parish, in return for which they received some small remuneration. Increasingly pressure on clergy in their parishes and the growing professionalization of chaplaincy required by the State has put this system under strain. As of 2015 the Church of Ireland has begun hiring full-time lay chaplains to provide chaplaincy services to Church of Ireland patients, with each chaplain covering two or three hospitals. This situation is the exception, rather than the rule, and most hospitals are

[27] National Association of Healthcare Chaplains. Presentation to the Joint Committee on Health and Children - Public Hearings on End of Life Care.

[28] http://www.eapcnet.eu/Portals/0/Clinical/Spiritual%20care/. Publications/EJPC_23_1_Timmins.pdf 12th July 2016.

[29] http://www.catholicbishops.ie/wp-content/uploads/2014/01/Standards-for-Certification-in-Healthcare-Chaplaincy-1-January-2014.pdf. Accessed 12th July 2016.

[30] n21.

[31] https://www.hse.ie/eng/staff/Resources/HR_Circulars/Chaplaincy%20 Services.pdf. Accessed 12th July, 2016.

[32] https://www.hse.ie/eng/services/publications/SocialInclusion/ InterculturalGuide/Anglican/Anglican.pdf. Accessed 12th July 2016.

served by the local Rector as chaplain, albeit now unpaid in order to finance the full-time chaplains. It is difficult to see what relationship, if any, the State has with these *ex-officio* chaplains, who are not appointed to the role, receive no remuneration and have no direction as to their duties or training. Despite this they are recognised by the hospitals as chaplains and are often listed as such on hospital websites and chaplaincy materials. The full-time lay chaplains must meet the standards set for Roman Catholic Chaplains[33], though this is a requirement set down by the Church of Ireland rather than by the HSE[34]. To facilitate this, the Church of Ireland has a training programme in place to provide Clinical Pastoral Education, in which clerical chaplains may participate on a voluntary basis[35].

4.3. **Chaplaincy in Penitentiaries**

There are fourteen prisons in Ireland, consisting of eleven closed prisons and two open centres, housing 3,788 inmates, or 80 per 100,000 of the population, according to the Irish Penal Reform Trust[36]. Prisons range from the modern Dóchas Centre (a prison for women) to the Victorian Mountjoy Prison, a medium security prison for men in Dublin. There is only one high security prison in Ireland, Portlaoise Prison. This prison has a maximum occupancy of 292 inmates, and houses those sentenced for terrorist offences or serious organised crime.[37]

All prisons have Roman Catholic Chaplains, who are generally priests, though may be lay chaplains. Wheatfield Prison, a prison for men in Dublin, has a chaplaincy team comprised entirely of nuns. Chaplains are appointed by the Prison Governor on the recommendation of the local bishop, and it is the bishop who remains responsible for their deployment and redeployment. Their salary is paid by the Irish Prison Service. It has not been possible to ascertain whether or not these chaplains have a contract of employment. Some insight comes from the 2006 Legal Review of the Irish Equality Tribunal, which reports a case brought by a prison chaplain, concerning the details of a complaint he made against the governor of the prison where he worked being released by the head chaplain to his bishop, who subsequently removed the chaplain from his post. The Tribunal noted amongst its findings:

[33] n25.

[34] http://ireland.anglican.org/cmsfiles/pdf/Information/Resources/hob/2014.003.pdf. Accessed 12th July 2016.

[35] For details of the Church of Ireland Chaplaincy Board and its certification of Healthcare Chaplains, see https://beta.ireland.anglican.org/cmsfiles/pdf/Information/Resources/hob/2014.003.pdf Accessed 12th July, 2016.

[36] http://www.iprt.ie/prison-facts-2 Accessed 12th July, 2016.

[37] ibid.

> The salary of chaplains is paid by the Irish Prison Service but they have never been regarded by the prison service as standard prison service employees. Roman Catholic prison chaplains are not recruited directly but are instead appointed on foot of their personal nomination by the local bishop who is responsible in each case for their assignment and reassignment, which was a regular occurrence. The bishop in this instance was therefore regarded by the prison service and its head chaplain as having a quasi «employer» status as regards this chaplain as he held his position at the prison as a priest of the relevant diocese, nominated by his bishop.

Despite the nature of the role, the Tribunal found that the Minister for Justice and the Head of the Irish Prison Service were vicariously liable for the actions of the head chaplain, and had a responsibility to the chaplain also[38]. This case may reflect the wider implications of the Irish unwillingness to see priestly vocation and their pastoral work being governed by the law of contract in the way that other employees have their working life regulated[39].

The Irish Prison service notes that they regard:

> Chaplaincy as an essential service, making a significant contribution as part of the multi-disciplinary team in a prison, addressing the physical, social and spiritual needs of prisoners in a holistic way[40].

The Rules for Prisons (2007)[41] provide that a prisoner may attend religious services organised by prison chaplains, subject to the needs of safe and secure custody[42]. No prisoner shall be compelled to see a chaplain[43]. Requests by prisoners to see a chaplain must be facilitated as soon as possible[44], and such visits may not be in the hearing of prison staff, unless requested by the chaplain or inmate[45].

The duties of prison chaplains are to

(a) Visit prisoners who are recorded as belonging to his or her religious denomination and who are willing to be visited or who request a visit
(b) Minister to prisoners of his or her religious denomination

[38] Reported in the Irish Times, 16th December 2008. http://www.irishtimes.com/news/minister-vicariously-liable-for-information-breach-1.924220 Accessed 12th July, 2016.

[39] Representatives Church Body (The) v David Frazer [2005] 16 ELR 292.

[40] http://www.irishprisons.ie/index.php/prisoner-services/chaplaincy-service/. Accessed 12th July 2016.

[41] http://www.justice.ie/en/JELR/prison%20rules%202007.pdf/Files/. prison%20rules%202007.pdf. Accessed 12th July 2016.

[42] ibid. s34(4).

[43] s34(8).

[44] s34(6). This applies even to requests to see a chaplain of a religious group of which the prisoner is not a member.

[45] s34(9).

(c) Conduct religious services for prisoners of his or her religious denomination at such times as may be arranged
(d) Subject to Rule 117 (Time and place of chaplain visits), visit any prisoner who is under restraint or confined to a cell unless the prisoner is unwilling to receive such a visit[46]

One of the more notable duties placed on prison chaplains is to write an annual report and submit it to the Prison Governor[47]. These reports are often made public and can be used as a means of criticising the Department of Justice or the prison authorities. In 2008, one such report focused not on the individual prison but on the politicising of incarceration generally and on the overcrowding of prisons nationally[48]. This was widely reported in the press[49].

Other religious denominations may appoint chaplains to prisons on a voluntary basis, and both the Church of Ireland[50] and the Methodist Church[51] in Ireland do so, the latter noting that it was a particular concern of their founder, John Wesley. In both cases, local clergy serve as chaplains.

4.4. **Chaplaincy in Other Public Institutions**

An Garda Síochána (Guardians of the Peace) are Ireland's police service. They are served by one full-time Roman Catholic priest who acts as Garda Chaplain. In addition, the Church of Ireland designates one Dublin cleric as Hon. Chaplain to the Gardai[52]. The Garda Training College also has a full-time chaplain, and the Gardai Diversity Strategy notes the need for the appointment of multi-faith chaplains and other Spiritual Advisors to the organisation[53].

The Oireachtas, the Irish Parliament, is not served by a chaplain, nor are sittings of the Dail and Seanad preceded by prayers. Neither the President nor the Taoiseach have chaplains appointed and the old Chapel Royal in Dublin Castle has been deconsecrated and turned into a museum space and concert venue.

Certain institutions in Irish life have honorary chaplains. The Bar of Ireland and the Law Society have both Roman Catholic and Church of Ireland chaplains; though

46 n36, s114 (1).
47 n36, s117.
48 http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco_publications/miscellaneous/prison%20chaplains%20report%20final.pdf. Accessed 12th July 2016.
49 http://www.irishtimes.com/news/chaplains-raise-concerns-over-prison-overcrowding-1.832868. Accessed 12th July 2016.
50 http://dublin.anglican.org/dioceses/chaplancies.php.
51 http://www.irishmethodist.org/prison-chaplains.
52 n45.
53 http://www.garda.ie/Documents/User/DiversityStrat.pdf.

these posts are held *ex-officio* by the clergy in whose churches the service at the beginning of the legal year is held.

As there is no state church, and there is to be no endowment of religion according to the Constitution, it is unsurprising that outside of education, healthcare and prisons, there are few chaplains in Irish society.

5. State Chaplaincy and Islam and Other New Religions

It would appear that there is little done to integrate non-Christian faiths into state-funded chaplaincies. In part, this is a question of demographics. According to the Central Statistics Office, in the 2011 Census there were found to be 18,000 Muslims in Ireland and 35,000 people who marked «Other non-Christian Religion». 173,000 people marked «No religion»[54]. According to the 2015 Quality Review of Chaplaincy at Trinity College Dublin[55], less than 2% of the university population is Muslim[56], but it further noted that the strategic direction of the university implies a much greater diversity of the faith community in the future[57]. The Review did not recommend the appointment of chaplains from other faiths, but did recommend that the University develop a clearer sense of what the University wants from chaplains of any faith community, and embed these values in its policies. Further, it was recommended that the University and Chaplains plan strategically as to how to benefit more fully from the rich diversity of the community[58].

Most institutions welcome the presence of people of non-Christian faiths acting in a chaplaincy capacity amongst students, residents or staff. This is true of the Irish Prison Service[59] and the HSE[60], which publishes guides for staff on how best to organise chaplaincy provision for patients of minority faiths[61].

6. Private Chaplaincies

Churches may organise private chaplaincies in institutions such as private schools, or may privately fund chaplaincies in public institutions, such as in Trinity College Dublin, where all chaplains are paid for by religious denominations, not by

[54] http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/saveselections.asp. Accessed 12th July, 2016.

[55] Quality Review of Trinity College Dublin Chaplaincy Service. Final Report: 26th May 2015.

[56] ibid. at 4.

[57] n50 at 17.

[58] ibid.

[59] n36.

[60] https://www.hse.ie/eng/services/publications/Your_Service,_Your_Say_Consumer_Affairs/Reports/questionoffaith.pdf.

[61] http://www.tusla.ie/uploads/content/Publication_Health_Services_Intercultural_Guide.pdf.

the university. It is very common for secondary schools to have a member of the clergy serving as a chaplain, either full time or in combination with parish work. Some cathedrals in Ireland will appoint lay or clerical chaplains to serve their visitors and pilgrims[62].

7. Chaplaincy Unions

Most full-time chaplains in Ireland are Roman Catholic and may belong to the National Association of Catholic Chaplains. This body is open to chaplains in all public institutions, and advocates for the placement of chaplains in public institutions. School chaplains of all Christian denominations may join the School Chaplains' Association of Ireland, and its aims are to support chaplains and promote the cause of chaplaincy in schools[63].

8. Conclusion

Chaplaincy provision in Ireland is slowly coming under increased regulation, as public bodies have to account for expenditure and as general public service recruitment policies are tightened. Though hospitals, prisons and schools may seek to have some control over the activities of their chaplain and may pay their chaplain, it is notable that generally such chaplains are still nominated by, and can still be removed by, their local bishop - not by the public institution itself. The provision of Protestant chaplains is less widespread, and less expensive, but subject to even less regulation and control. The only justification for the Irish model is historical - wishing to recognise the important part churches have played in the lives of people in a divided society, or a reluctance to challenge their position. Outside impetus for change is not coming from minority faiths, but from atheists, who object to public money being spent on chaplains[64]. For as long as the status quo continues, the state is relying heavily on churches to provide pastoral care in institutions and are saved the expense and work of recruitment, training and management. For the churches, the work of chaplaincy is the work of Jesus. Critics would allege that they are allowed to play a central role in people's lives, often when people are young, impressionable or vulnerable, funded by the state, with little or no accountability.

[62] The Role Description for chaplains at St. Patrick's Cathedral, Dublin, notes the time commitment expected of chaplains, their duties and the training they will be given. https://www.stpatrickscathedral.ie/wp-content/uploads/2016/05/Volunteer-Chaplains.pdf Accessed 15th July, 2016.

[63] http://www.irishchaplains.org.

[64] http://atheist.ie/2016/06/hea-enforce-atheist-ireland-recommendations/.

SPIRITUAL ASSISTANCE IN THE ITALIAN LEGAL SYSTEM

Roberto Mazzola

1. Historical-Sociological Profile

There are situations in which the individual may be forced to ponder existential issues such as death, illness, suffering, loneliness or loss. These matters may or may not be of a religious nature and their subsequent pondering may or may not be a conscious activity. Where the bustle of the everyday routine is put on hold due to the demise of an individual, the solitude of a hospital ward or the fatigue and danger of a military operation, the silence of each existence allows for the emergence of questions that have been left unanswered either on account of indifference, or simply the inability to answer them.

There are also situations when the individual feels the need to continue an uninterrupted personal dialogue with the transcendent or spiritual, regardless of material changes in their living conditions. There are also those that uncover a long-dormant spiritual dimension to their lives, or, more opportunistically, adhere to certain religious beliefs without conviction, to qualify for the relative benefits and privileges.

It is clear that the fulfilment of the need for spiritual assistance changes over time, as do the methods of provision, its forms and its essence. Attention to the human element is central to human dignity and is actually a relatively recent phenomenon, which has not yet been fully developed since its emergence in the mid-seventies. Indeed, the old way of thinking about this service still surfaces, as evidenced by the forms of spiritual assistance that are available in the Armed Forces and prisons. Religion, in particular Catholicism, used political-institutional instruments to enforce the unification role of the Armed Forces for a very long time. This was conducted without regard for the prerequisites and necessary separate nature of the Armed Forces; in the case of prisons, it was used to back up pedagogics and education. In the latter, it is indeed evident that this profile has been strengthened during the last half of the nineteenth century:

> …when the presence of the religious factor in prisons began to be «institutionalised». If the Albertine Statute, in recognising Catholicism as the only religion of the state, already began to view other religions as being merely tolerated, this double-track was eventually applied to penitentiary establishments, determining the use of religion (Catholicism) as a service with which to control and transform detainees[1].

As is consistent with the nineteenth-century legal model, the religious freedom of detainees was not considered pivotal. On the contrary, religion was used as a disciplinary or authoritative means, as demonstrated by obligatory participation in religious practice; the requirement of religious conversion, performed after careful examination with the submission of a written application; or even religious assistance provided to detainees of a different denomination, which was permitted by Catholicism only after express request and where possible. This says nothing of non-Catholic detainees who were allowed to receive assistance from ministers of their faith only at their request and only where it was possible under discretionary prison criteria.

Confirmation of the religious role in prison discipline was further confirmed by the fact that the prison chaplain was present on the disciplinary board, invested with the power to comment on the moral qualities of the detainees in solitary confinement and the methods of social rehabilitation that would be applied to them. Further legal inspiration came with Italy's entry into the First World War, when the military chaplain was established by General Cadorna with a newsletter sent 12 April, 1915. In this case the military chaplain was not employed for spiritual reasons, but rather in order to maintain the morality and psycho-physical health of the troops. The Italian Army General employed religion as a governmental instrument, despite separation of religion principles, to ensure the moral unity and discipline of soldiers at the front, however, «in this regard it must be underlined that the chaplains were not just of the Catholic faith but also from the Waldensian Evangelical Church, the Baptist Church and the Jewish faith»[2].

Following this communication, on 1 June 2015, a decree of the consistorial Congregation was implemented, establishing the figure of the «Field Bishop» with jurisdiction over all the priests in the Italian army, laying the foundations for the Church authorisation of military chaplains.

The origins of the presence of religion in hospitals are different to those mentioned above. In these cases the presence of religion, usually Catholicism through Catholic hospitals or religious support through the use of chaplains, is motivated by more authentic religious reasons. This presence is in the long run marginal and

[1] E. Olivito, «Se la montagna non va viene a Maometto. La libertà religiosa in carcere alla prova del pluralismo e della laicità», in *www.costituzionalismo.it. Fasc. 2 (2015) (I diritti dei detenuti),* p. 3.

[2] P. Cavana, «Cappellani militari e prospettive di riforma», in *Stato, Chiese e pluralismo confessionale. Rivista telematica (www.statoechiese.it)*, no. 9/2016, 7 March 2016, p. 15.

secondary with respect to the other professional competences present in health care institutions. The role of the chaplain is usually limited to the sacramental: the sacrament of reconciliation, distribution of the Holy Communion, presence at deaths or assistance in fulfilling the requests of the family members of dying and unconscious people. We will see in the following pages that this is a role that has changed greatly due to social transformations that have occurred over the last ten years.

1.1. The Slow and Inconclusive Transformation of the Function of Spiritual Assistance

The nineteenth-century model of spiritual assistance was undermined by the personalist option established by the Italian constitution in 1947. This obligated the legislator and judges to undergo the difficult process of adapting to constitutional values and principles. The importance granted to the human factor in the balance of interests between the individual and the institution, as well as the secularisation of the social fabric and the inclusion of the principle of secularism in the constitution of the Italian state[3] brought with it a difficult and not yet conclusive revision of the entire philosophy behind the service of spiritual assistance. This is a profile that is particularly evident in the prison sector, where the deprivation of the freedom of movement cannot justify the suspension of other personal freedoms, such as the religious. Considering the judgment handed down by the European Court of Human rights on 8 January 2013 in *Torreggiani and Others v. Italy*[4], the fact that a detainee is subject to certain limitations on his freedom should not affect other rights guaranteed by the ECHR. Article 3 of the European Convention on Human Rights places the onus on State authorities and consequently on prisons to:

> ensure that every prisoner is held in conditions that are compatible with the respect of human dignity, that the method with which the imprisonment is executed does not subject the person to a state of discomfort nor is the level of suffering that is inherent in detention excessive and that the health and wellbeing of the detainee are adequately cared for[5].

As the Constitutional Court states[6]:

> the extent and the scope of the rights of detainees may be subject to various restrictions only in view of the security concerns relative to custody in prison. In the absence of such requirements, the limitation requires only a punitive additional value compared to the deprivation of liberty, which is not compatible with Article 27, p. 3 of the constitution.

[3] Judgment Const. Court no. 203/1989.
[4] Judgment of the European Court of Human Rights, *Torreggiani and Others v. Italy* 8 January 2013.
[5] F. Viola, «I diritti in carcere», in *Riv. Ass. it. dei costituzionalisti (AIC)*, 2 (2014), p. 4.
[6] Judgment Const. Court no. 135/2013.

This is a legal precedent which had already been confirmed by the same judge in judgment no. 349 of 1993, in which the Court insisted that «those who find themselves in a detained state, despite being stripped of most of his freedoms, retains a residual amount, which is all the more valuable because it is the last area in which individual personality can be exercised»[7].

No less problematic are inconsistencies in matters of spiritual care in the Armed Forces, where the evident religious pluralism of Italian society, together with the structural change of the defence function has forced a re-evaluation of the role, function and spirit of the military chaplain. As Cavana observed:

> …the specific guarantees provided in the Agreements for other religions must be taken into account, as well as the more general ones that are derived from the right to religious liberty (art. 19 of the Constitution) and from the principle of equal freedom for all religious activities (art. 8, comma 1, Constitution) that pushes an adjustment of the spiritual service in the Armed Forces for the needs of those adhering to other religious denominations, creating the conditions for an evolution to a multi-faith system that allows for the possible inclusion of ministers from other faiths into the Armed Forces, to meet the effective needs that are emerging[8].

The same problem occurs in the health sector, where cultural and religious pluralism have increased and the range of religious applications in the health sector are not always ready to respond to the new challenges that are faced by a multi-ethnic society. «Humanisation», «listening» and «relationship»[9] are not just Catholic objectives, they are either guaranteed to all, or we run the risk of legitimising the unjustified differential treatment of patients according to their ethnic or religious roots.

1.2. **The Main Causes for the Transformation of the Nature and Role of Spiritual Assistance in Italy**

Various socio-political phenomena have contributed to the transformation of the nature and role of spiritual assistance. Firstly, the transformation of the religious geography of Italy has had an impact. This phenomenon, as has already been highlighted, has affected all areas where spiritual assistance is provided. However, prison, more so than other areas has experienced the contradictions and the tensions associated

[7] Judgment Const. Court no. 349/1993

[8] P. Cavana, *op. cit.,* p. 3.

[9] «Pastorale della salute», in the notes of the «Consulta Nazionale CEI on Health Pastoral Care»: «Health Pastoral Care in the Italian Church» (1989) it is described with the following terms: «The presence and the action of the Church to bring light and grace to those who suffer and to those who care for them». A Manual of health pastoral theory from 1999 completes the definition: «health pastoral care is the presence and the action of the church, aimed at the evangelisation of the health world through the actualisation of a liberating presence, the healing and saving powers of Christ, in the power of the holy spirit».

with the presence of an increasingly multi-ethnic and multi-religious prison population. According to data provided by the Ministry of Justice, as of 30 April 2016, Italy's prison population is made up of 53,725 people, of which 18,074, or 33.6%, are foreigners. This data have an obvious effect on the interpretation of the function of a prison chaplain. It is clear that the primary function of this figure is of a religious nature, especially considering that the chaplains of Catholic prisons have seen their names removed from the lists of parties on the prison Disciplinary Boards.[10]

Stripped of political power, at least in a formal sense, the role of the chaplain has begun to morph and explore the authentic spiritual and pastoral function of assisting in the development of a proper religious life: celebration of the mass and the provision of the individual sacraments, such as confession. These are obligations and duties that the State confers upon the chaplain, with full respect to the principle of independence and sovereignty of the systems. Regardless, in the face of unbridled and continued growth in the prison population, with an increased number of inmates from the Muslim faith, the Catholic chaplain is made aware that his role no longer represents the entirety of the detainee population. It is inevitable that the figure becomes one of partiality: the secular Italian state «has rightly removed the religious figure from the role of the «judge» over the behaviour of a flock that no longer has one shepherd»,[11] despite the fact that this has had an effect on the internal dynamics of the prison. Indeed, the Catholic prison chaplain continues to form part of the committee that draws up the internal rules and prison treatment and they are often involved in dispute resolution and decisions regarding the treatment of detainees with traditional and alternative measures.[12] It can thus be said that changes within the prison population mean that, in addition to traditional religious services, chaplains, Catholic or not, more often deal with issues and carry out tasks that range from a figure of cultural and social worker to that of a prison operator. Their presence is considered important by prisoners:

> …for the human depth that some of the religious demonstrate, for the personal connection and the trust that can be created with the inmate, for the hope and affection that many receive, including that which is external to the religious moment. A close bond, a constant presence that binds the detained and the chaplain as if the relationship was one of parent-child[13].

[10] E. Semmola, «Tonache nere dietro le sbarre. Il Cappellano Carcerario». *Indagine nei meandri di una missione di vita nell'esperienza delle prigioni di Sollicciano e di Prato*, in www.uaar.it, p. 2. (seen 23 July 2016).

[11] *Ibidem*, p. 7.

[12] *Ibidem*.

[13] *Ibidem*, p. 4.

Even more crucial than these factors is so-called «material assistance». Inmates, especially those who come from situations of poverty, are constantly in need of material possessions. In addition to material goods, in cases such as temporary release the chaplain will assist inmates in finding a job; however these moments are rare. Requests for the chaplain are daily and constant. Most of the time, volunteers who assist the priests and chaplains are themselves unable to keep up with their more basic and fundamental needs, due to a lack of cash and lack of time or help [14]. In addition to the abovementioned roles, the chaplain also provides inmates with legal and administrative assistance. This may be in the form of processing information relative to family situations, or problems related to immigration pensions, temporary release or disability payments [15].

Besides the phenomenon described above, reforms in some Public Administration sectors have also contributed to the process of change within the institution of the chaplaincy. This is particularly evident in the military. The move from a mass army to a professional army has changed the role of the military chaplain. In the past, the very large armies were primarily made up of very young members, without any specific professional or military training. Such individuals were destined for the borders and thus, even in moments of peace, a widespread and common organisation of religious assistance that provided personal and moral support in addition to religious assistance was necessary [16].

In the meantime, Italy joining NATO, the disappearance of the «two blocks» logic and the so called «Tension Strategy» following the dissolution of the Soviet Union, the increasing commitment of military contingents in overseas missions under the United Nations and the disruptive nature of increased immigration and the influx of refugees from conflict zones in the Middle East have all contributed to the change in the nature and function of the Armed Forces.

Devices that were once used only for the defence of national borders have become more and more important for peace missions outside of the national borders (missions of peace-keeping and peace-building) and/or for the support and aid of victims of conflict or natural disasters. This has required the transformation of the Armed Forces to a professional model, resulting in a necessary chaplaincy service, one that is no longer of a sedentary nature, but rather designed to accompany military missions abroad for long periods, with all the problems and difficulties associated. As Cavana stated:

> also, it tends to take on a more challenging and engaging character from the pastoral and human point of view, as their service no longer relates to a generic request

[14] *Ibidem.*
[15] *Ibidem*, p. 5.
[16] P. Cavana, *op. cit.*, p. 5.

> for religious, moral and spiritual guidance or that of a substitute family, as it was for thousands of years, but relates more to a lifestyle that is much more specialised and professional than it has ever been, extending to the needs of military families, who usually accompany the individual[17].

In addition to the current Armed Forces, protection of the human rights of the victims of conflicts is also applicable in contexts where religious factors play an important, if not definitive, role. This involves delving into the reasons for local conflict and options for mediation and/or reconciliation as well as assisting with interreligious dialogue. In this context, the chaplain is no longer a stranger to the operational dynamics of such a task; rather, he is able to provide an important contribution in motivational terms, for human guidance and greater cohesion - with the use of specific initiative and activities - of human values, as well as in terms of planning operational interventions and the dialogue with the civil population to obtain the best outcome for a mission. In other words, for our Armed Forces, whose roles are set out under article 11 of the Constitution and the Charter of the United Nations, collaborations between the state and religious denominations are now defined in terms that differ greatly from the past. The role and the function of the military chaplain, marked by his religious and ministerial profile, are certainly very different from other military personnel who engage in the use of weapons. Chaplaincy is no longer extraneous, but rather converges with the objectives of the Armed Forces, where the objective is to maintain peace and justice among populations. This is confirmed in the *Codice dell'ordinamento militare* (D. Lgs no. 66 from 2010) «which identifies the tasks of the Armed Forces under the priority of «State defence» and as maintaining peace and security, in conformity with international laws and the decisions of the international organisations that Italy is part of (art. 89, comma 1-2)». In essence, the military chaplaincy has moved from a small role within the army to a role of spiritual assistance to members of the faith and moral support for troops (which is essential), work overseas or at military training institutions, and assignments with departments who work with refugees and the local population. This new role is three-fold: human guidance and motivational support for military personnel; support for developing relationships with the local populations and their religious leaders, with the intention of supporting peacekeeping missions, creating contact in the territory and ensuring the conditions for increased safety for initiatives that stem from inter-religious dialogue; and assistance in the operational planning of peacekeeping interventions or aid for affected populations or refugees[18].

A third route has marked the evolution of spiritual assistance from a religious state model, based on the presence of spiritual assistance for the main religion, to a

[17] Cf. *Ibidem*, p. 4.
[18] Cf. *Ibidem*, p. 7.

system that takes inspiration from the more rigorous and severe principles of freedom of religion and denominational pluralism. More democratic states consider the presence of military chaplains from other faiths operating in the country as a rule. The first model was inspired by Italian Law no. 512 of 1961, which provides for spiritual assistance to the state's Armed Forces to «integrate, following the principles of the Catholic Religion, spiritual education into the Armed Forces» (art. 1, comma 1). Legislative decree no. 66 from 2010, which introduced the *Codice dell'ordinamento militare (Military Code of Regulations)*, partially amended this idea of religious integration, assigning the service the task of «integrating Catholic spiritual assistance into the training of military personnel» (art. 17). The reform also provides for voluntary participation in religious functions held on military property (art. 1471, comma 2) and full freedom of worship within the military of any religion, as well as the right to receive spiritual assistance from ministers of the faith (art. 1471, comma 1). This is however, external to the structured and stable service that is provided by the state, which is currently only carried out by Catholic Chaplains[19].

Finally, a trend in the formula of spiritual assistance which should not be underestimated is the inclusion of not just other traditional theistic interpretations of spiritual assistance, but also those of agnostic or atheistic visions. This deals with moral assistance, in use in some hospital structures, and is intended for non-believers or believers of faiths that are not supported by the already-existing structure. It is also intended for those who find themselves in a moment of difficulty within the structure and who wish to speak with a person who is able to better understand. These individuals have the right to benefit from specific assistance from a person who knows how to formulate arguments and comforting language without any reference to religious topics. In this sense, the «Union of Rational Atheists and Agnostics (UAAR)» has recently activated a toll-free line for moral assistance via telephone. This service supports the initiatives that are already in place in some Italian cities. For example, since 2009 the Molinette Hospital in Turin has been home to a group of volunteers who offer comfort and moral support to patients who request it. In 2010, these services were extended to the IEO in Milan and to CTO, in Maria Adelaide in Piedmont, to San Camillo-Forlanini in Rome and, as of 2014, to the Careggi Hospital in Florence. Additionally, in 2013 the Cona Hospital in Ferrara, in its Memorandum on religious and moral assistance for non-Catholics and non-believers, provides for a «room of silence».

2. Spiritual Assistance in the Prison System

In discussing this form of assistance, unilateral sources are the first point to consider. For a long time they were the only source. It is thus necessary to distinguish

[19] Cf. *Ibidem,* p. 6.

between the era before the 1960s and the period after the reform of the penitentiary system. The laws prior to 1975 displayed the clear will of the State to use the prison chaplain as a social disciplinary tool. This logic is demonstrated in Royal Decree no. 413 of 1862 which contained the «General Rules for the Penitentiary Houses of the Kingdom». These rules introduced the figure of the chaplain nominated by the Minister of Grace and Justice on the King's assignment and without the need for prior consent from the ecclesiastic authority. The same holds for Royal Decree no. 787 of 1931. In both cases it is evident that the aim is to control and change detainees. When the Constitution of the Republic entered into force in 1948, these long-unchanged laws were highlighted as being completely incompatible with the new Constitution, as they were unable to combine guaranteed rights with respect for the requirements of prison life. It was not until the penitentiary system reform of 1975 that the prisons were adapted to the Italian constitutional system. While the law of 1975 formally established the opening of the penitentiary system to a more mature recognition of the religious rights of detainees, it was another story attempting to implement a plan for the enjoyment of such rights as per Law no. 354 of 1975 (Penitentiary regulations and the execution of measures that deprive or limit freedom) and the corresponding executive law contained in D.P.R. no. 230 from 2000[20] (Regulation establishing the provisions concerning the penitentiary system and the measures that deprive or limit freedom), which serves to fulfil the amendments implemented by article 11, comma 2 of Law 121 of 1985, in the Villa Madama agreement[21], failing to fully ensure implementation. Indeed, it is true that article 26 of Law 354 of 1975 and article 59 of the D.P.R. no. 230 of 2000, which set the cornerstones for the new relationship between the penitentiary system and religion, strove to ensure genuine spiritual care in prison by setting three specific objectives: i) the right to the protection of spiritual belief; ii) protection of the right to be educated in one's faith; iii) protection of the right to practice one's own faith. However, the pyramidal structure and hierarchy of the system between the state and religious denominations has resulted in a situation in which the Italian State favours, firstly, the Catholic Church, and secondly the religions listed in article 8, paragraph 3 of the Constitution. The distinction between the Catholic faith and other religions is unsurprising «and is confirmed in some provisions of the same law from 1975 and the implementing regulations of 2000 which provide for different rules when they accompany different religious beliefs»[22], specifically, the Catholic faith. It should be considered that the latter is ensured without the detainee requesting

[20] The acronym D.P.R. stands for Presidential Decree.

[21] Si tratta della legge che ha dato esecuzione alla riforma del Concordato fra Chiesa cattolica e Stato italiano abrogando la precedente legge 810 del 1929 esecutiva dei Patti lateranensi.

[22] Sara I. Capasso, «La tutela della libertà religiosa nelle carceri», in *Stato, Chiese e pluralismo confessionale, Rivista telematica (www.statoechiese.it),* no. 19 (2016) (2016), p. 5.

it. Moreover, pursuant to article 58, comma 4 of D.P.R. 230/2000, every institution must be equipped with at least one chapel for the practice of Catholic worship. Celebration of rites is ensured for Catholic detainees, regardless of whether or not it is requested, as per article 26 of Law 354 of 1975. Additionally, only Catholic chaplains are considered part of the so-called permanent staff in penitentiary institutions (art. 1 Law no. 68 of 1982). This regulatory profile thus demonstrates a different type of access to religious freedom: prisoners of the Catholic faith are granted immediate access to assistance, without any effort on their own behalf. Everyone else, especially those who belong to religious denominations that are not recognised in the above-mentioned laws, are permitted access to religious freedom only upon express request by and action of the detainee, who must have a knowledge of the legislation and the official administrative procedures of the prison. Above all, however, access to and exercise of this right is conditional on the discretion of the prison administration. In other words, this is «a condition that in practice has the ability to hamper or impede the establishment of religious assistance for detainees who face language or cultural barriers. Due to the cumbersome administrative procedures, they are less aware of the rights they are able to enjoy and above all, the procedures to follow to obtain them»[23].

The inconsistencies of the unilateral legislative system described above find their origin in the vices and distortions that are inherent in the pyramidal structure of the regulatory system, or in the second block of sources that help to regulate this matter. If, under the profile of access to rights described above, the more fortunate individuals are those who adhere to the Catholic faith, the less fortunate are those who, despite being guaranteed and protected by the laws, belong to a minority religion. They are part of a system that allows them to take advantage of spiritual assistance from their religion, with notification to the Ministry of the Interior. Thanks to this, ministers of these faiths are able to access penitentiary institutions without requiring any particular authorisation; however access to these institutions is only permitted upon the express request of the prisoner or their families. This is despite the fact that the regulations in place provide for the possibility that the initiative be made by the religious structure itself. Additionally, while for the Catholic Church the service of spiritual assistance is integrated into the penitentiary system, with the associated costs borne by the State, for some religious denominations: the Waldensian-Methodists, the Union of Churches of the 7th Day Adventist, Assemblies of God in Italy, the evangelical Lutheran Church in Italy, the Italian Buddhist Union and, lastly, the Italian Hindu Union must bear the costs of spiritual assistance to inmates. The right to an appropriate place of worship, which prison management should respect, is often not fulfilled due to a lack of suitable spaces. It is thus understandable, when examining the practical implementation

[23] E. Olivito, *Se la montagna non va viene a Maometto. La libertà religiosa in carcere alla prova del pluralismo,* cit., p. 10.

of the laws, that the spiritual needs of detainees take second or third place to other factors. Prisons are overcrowded and a bed and a suitable living space is more important than a suitable place to pray[24]; however it should be noted that when compared to these fundamental rights, anything else is not considered as important.

In a different and even more critical situation are followers of religious denominations that are not recognised in Italy. For the faithful, these roads to recognition are even longer. There are two torturous paths: first, use of the ministers indicated by the Ministry of the Interior in accordance with article 58, comma 6 of D.P.R. 230/2000. In this case the presence of a specific request requires authorisation by the central directive of Religious Affairs of the Ministry of the Interior. A check will be carried out on the individual nominated. In reality, the Ministry of the Interior does not have a specific list of ministers that are allowed access to prisons, as D.P.R. no. 230 of 2000 repealed the previous penitentiary regulation contained in D.P.R. no. 431 of 1976, which provided for this list (art. 55, comma 8 D.P.R. 230/2000). Without this list, article 58, comma 6 of the implementing regulation is interpreted in another way, as the Ministry of the Interior is limited to providing authorisation on the basis of the nomination requests made by the Ministry of Justice.

If this method is not possible for the inmate belonging to an unknown religion, the only other option is that set out under article 17 of law no. 354 of 1975, which provides for re-education by private parties, institutions and public or private associations. These subjects will be admitted to prisons with the authorisation and according to the directives of the supervising judge, following a favourable review and under the control of the director of the institution. «And if it is true that, due to less centralised constraints, administration and bureaucracy, religious assistance finds an easier and more flexible way to get through (…) the use of this practice implies, as is seen, a transposition of spiritual care, rendering it only partially placed next to it, (…) with a relative disregard (…) for its specific religious nature»[25].

Of particular note is the position of Muslim detainees. As of today, there is still no list of ministers of the Islamic faith that have received government approval. As per Article 3 of Law no. 1159 of 1929, the nomination of ministers must be reported to the Ministry of the Interior to receive government approval, without which, no civil effect can be recognised for acts performed by them; this applies only to the celebration of marriage and other acts listed under articles 3, 4, 7, and 8 of R.D. no. 28 of 1930, not to the spiritual assistance service carried out within penitentiary institutions. That said, there seems to be some change to this situation. The recent Memorandum of Understanding of 5 November 2015, signed by the Ministry of Justice -Penitentiary Administration Department and the Union of Islamic Communities and Organisations

[24] Sara I. Capasso, *op. cit.*, p. 6.
[25] E. Olivito, *op. cit.*, p. 11.

in Italy (UCOII), where, in its article 2 UCOII agrees to supply on a trial basis (art. 5) «a list of individuals who would be interested in offering their services as volunteers in prisons, as ministers (imams) and Intercultural Mediators as per article 17 O.P. and 35 R.E. The Penitentiary administration will carry out the necessary checks authorising the entry». On account of the limited time given for this experiment[26] an attempt was made to overcome its weaknesses and provide better access to religious freedom for detainees of the Muslim faith through the issuance of two circulars of the Ministry of Justice: no. 5354554 of 6 May 1997 and no. 508110 of 2 January 2002. Under the guise of religious freedom, these circulars outline a cumbersome procedure to obtain an opinion on the authorisation for prisons. It provides that: i) the Directorate General of Detainees and Treatment of the Ministry of Justice be notified of the identity of the minister and the mosque or community to which they belong; b) the same Director must also receive the list of the names of Muslim representatives authorised to enter prisons pursuant to article 17 of Law no. 354 of 1975.

Obviously, the bureaucracy and administrative discretion that underlie the procedure have resulted in the presence of a small number of external staff who are authorised to provide religious assistance to Muslim prisoners, as evidenced by a document produced by the Ministry of Justice. From this document, it is clear that nine ministers holding the title of imam[27] have been accredited with the Ministry of the Interior. Additionally, 14 cultural mediators have been authorised as per article 35 R.E. and 69 volunteers as per articles 17 and 78 O.P. Difficulties in finding ministers have been resolved by a sort of independent taking on of the role of imam by some detainees, with paradoxical consequences: «the use of informal tricks for the exercise of the constitutional right to receive spiritual assistance contradicts needs for safety and advanced prevention by the prison administration to prevent imams from entering the prisons»[28]. This phenomenon brings up several issues. Those who become imams within the community generally lack solid theological preparation and knowledge of Islam. The problem of religious illiteracy in the Islamic community is similar to that found in Western societies, so improvised imams are, more often than not, touting a weak and poor interpretation of the religion:

> In most cases, upon entering the jail, these prisoners are not practising Muslims and have very little knowledge of the theological foundations of their religion as has been shown by the rare research projects carried out in Europe on Islam in jails (…) So it is not entirely surprising to learn that many become practicing Muslims

[26] Article7 of the Memorandum provides that the Understanding will have a duration of two years, renewable with the adoption of a formal decision

[27] Per l' «Associazione Antigone» the imam in 2013 amount to 10.

[28] E. Olivito, *op. cit.*, p. 12.

once again, or undergo a reconversion during their detention, and that sometimes the reconversion only lasts for the period of their incarceration[29].

In a similar context, the figure providing spiritual assistance is more articulate and complex. The guidance is carried out by an «imam of the mosque» or by a «detained imam» or an «accredited imam» or even by a «cultural mediator imam». This last figure testifies to the complexity of the function of spiritual assistance today. Indeed, it requires professionals to manage complex cultural and psychological problems as well as to guarantee a dialogue between the detainees and prison administration, with a background in European Islam that is rooted in Western culture[30].

The role of case law, in particular constitutional case law, in the interpretation of the foundations and correction of the inconsistencies of the current legislation should be considered. In general the Constitutional Court has always approached the subject with great caution, as is evidenced by judgment no. 72 of 1968. In this case, the court of reference raised the question of constitutionality with reference to article 142 of Royal Decree no. 78 of 1931 and the possible breach of Articles 19 and 21 of the Constitution. The Court declared the question inadmissible, as the appeal concerned statutory law and also lacked a primary act as an intermediary to which the violation of the Constitution could be attributed. It is also true that the Court pointed out at this juncture that regulations that are contrary to the Constitution can and should be disregarded by judges according to the provisions of article 5 of Law no. 2248, at. E of 1865.

3. Spiritual Assistance in Other Situations in Which Personal Freedom is Restricted

Different in nature to what is described above, but not dissimilar to incarceration, are cases of administrative detention at immigration reception centres. They fall under the categories of «First Aid and Welcome Centres» (in Italian: CPSA), which are located in the vicinity of entry points and used to house immigrants for only the time needed to transfer them to other centres; «Welcome Centres» (or CDA in Italian) are designed to ensure first aid for irregular foreigners who have entered the country; «Welcome Centres for Asylum Seekers» (or CARA in Italian), where immigrants are sent for a period of 20 to 35 days if they are undocumented or undergoing border control, and which allow for the identification and definition of refugee status (D. Lgs no. 25 of 2008); «Identification and Expulsion Centres» (CIE), as set out in

[29] K. M. Rhazzali, «Religious Care in the Reinvented European Imamate Muslim and Their Guides in Italian Prison», in *Religious Diversity in European Prisons. Challenges and Implications for Rehabilitation, Springer* - University of Lausanne, 2015, p. 214.

[30] *Ibidem*, p. 132.

D.L. no. 92 of 2008 and approved as Law no. 125 of 2008, were formerly known as «Detention Centres» (CPT), and then as «Detention and Assistance Centres», and are validated by the justice of the peace for irregular non-EU foreigners who are to be expelled from the country.

In this case the role of the law and subsequent implementing regulations are central. Law no. 125 of 2008 and D.P.R. no. 394 of 1999, which contains the immigration act, state that detention arrangements must «guarantee, in accordance with the correct conduct of communal life, the fundamental rights of the person» (art. 21, comma 1). They must also guarantee freedom of worship in accordance with the Constitution (art. 21, comma 2). This rule also provides that such structures can have access to religious ministers (art. 21, comma 7), but nothing is said on the procedures that must be followed to put the law into practice. The failure to specify this does not consider the essential condition owed to refugees, namely the freedom of discussion with ministers of one's chosen religion (art. 21, comma 1). This means that to prevent the ineffectiveness of the rule, it is necessary to resort to unilateral and agreed-upon provisions for other forms of spiritual assistance, with the obvious consequence of introducing into CIEs the already noted disparity between the treatment of Catholic refugees and refugees of other faiths that are not well-known. This situation is even more unfair given that the majority of the individuals in these centres are Muslim.

Circular no. 3435/50 of 30 August 2000 from the Ministry of the Interior (General Directive on Temporary Detention and Assistance Centres) has also outlined a «Charter of Rights and Duties» for people housed in these centres, along with article 22, comma 1 of D.P.R. of 31 August 1999, no. 394. Among other things, the Charter also recognises the freedom of worship, spiritual assistance and specific requirements for each religion. In particular, under this rule, authorities are required to ensure that the operators of such facilities:

> …respect the religious customs and practices of all foreigners as compatible with day to day life, with particular reference to methods of religious worship, provision and types of meals as well as other aspects relative to the religion, in addition to the right to contact ministers of the religion and to practice one's religion and have relative spiritual assistance.

4. Spiritual Assistance in the Armed Forces

Spiritual assistance to members of the Armed Forces is found referenced both in active sources and those that have yet to be implemented[31].

As is noted, article 11 of the Villa Madama agreement provided for the «concordatorialism» of the discipline of spiritual assistance to ensure religious freedom and

[31] P. Cavana, *op, cit*., p. 3.

the practice of Catholicism in «segregating institutions». Article 11, comma 2, Law no. 121 of 1985 states that such institutions should be «serviced by an ecclesiastical figure designated by the religious authority and appointed by the competent Italian authorities, in compliance with the legal status, structure and establishment of understanding between such authorities» (art. 11, comma 2, Law no. 121 of 1985).

In the absence of such an agreement, spiritual assistance in the Armed Forces is still regulated by the unilateral legislation of the State, some of which dates back to the Great War. The laws are skewed heavily towards the Catholic Church: first, Law no. 512 of 1 June 1961 on the legal status, proposal and remuneration of military chaplains, which has since been repealed, and then with the current Military Code (D. Lgs of 15 March 2010, no. 66), which updated the provision of spiritual assistance in the Armed Forces.

Obviously the legislation applicable for non-Catholic religious denominations is different. For followers of these faiths, participation in religious activities held on military premises is possible. Where adequate facilities do not exist on military premises, the use of the closest available structure or access for external ministers is permitted. In this case, the figure of the military chaplain does not exist and the cost of the service is borne by the religion.

This model of spiritual assistance is also applied to State Police. However, following the demilitarisation of the police force with Law no. 121 of 1981, the use of military chaplains was excluded. In this case, spiritual assistance is provided by priests who carry out religious activities without being part of the police force, that is, autonomously and without civil employment. Police chaplains are nominated by the religious authority and then commissioned by Ministry of the Interior decree, as per article 3 D.P.R. no. 421 of 1999.

5. Spiritual Assistance in Hospitals and Nursing Homes

In 1968 religious assistance services and the official presence of a chaplain were made obligatory, confirmed by the Constitution of the Italian Republic, recognising human dignity and guaranteeing inviolable rights and freedoms, including those relative to the religious sphere. This result is supported by a complex regulatory framework. Firstly, Law no. 132 of 1968 should be considered. Its article 19, comma 1 declared that «religious assistance services» are a «requirement» for institutions classified as «hospital bodies».

The law also stated, in article 39, last comma, that the Catholic clergy involved in the provision of religious assistance to patients of the Catholic faith are part of the hospital's staff. The implementing regulation is set out in D.P.R. no. 128 of 1969. Article 35 of this decree, in addition to confirming the mandatory nature of the religious services, further characterised the service by providing that the organisation of Catholic religious assistance services was to be regulated by internal rules, approved

by hospital authorities in agreement with the Ordinary Diocesans presiding over the territory, thereby establishing the methods and forms of conduct.

In 1988, again with unilateral legislation, the National Health Service was established by Law no. 833. Article 17, comma 1 of this law confirms that, in addition to the other tasks that must be carried out by the National Health Service, religious assistance must be offered to patients in public health structures.

The scope of such a service is wide. It contributes to the functioning of the National Health Service; provides personal and social psychological support to the sick; contributes to the training of health professionals; organises pastoral and cultural activities in addition to, obviously, worship and administration of the sacraments.

Other agreements and laws are relevant on this topic. The primary example is found in article 11 of Law no. 121 of 1985, which implemented the Villa Madama agreement between the Catholic Church and the Italian government. The law reaffirms the principle of guaranteed spiritual assistance for Catholic patients in the Italian Republic as well as confirming that that the legal status, structure and methods of implementation are established with an understanding between the Italian authorities and the religious body. Regional and local legislation also plays a role here. There are various cases where the Regional Episcopal Conference has entered into agreements with the Regional Administration for the provision of Catholic religious assistance in hospitals and public or private health structures. As the Regional Episcopal Conference is a legally recognised ecclesiastical entity, the «Regional Agreements» are thus acts that have been agreed upon with legal value; similar, in fact, to the memorandum of understanding between the Lombardy Region and the Ecclesiastical Region of Lombardy (CEL), signed on 21 March 2005.

In general, religious assistance, whether provided unilaterally or bilaterally, has the direct objectives of: administering the sacraments, caring for the soul, catechesis and worship. It also includes: support in the care of the sick; the promotion of religious cultural activities; spiritual and human guidance as well as help in a variety of cases; ethical contributions and humanisation in staff training, as well as participation in ethics committees; volunteering, in particular, the humanisation of the volunteer structure, services and interpersonal relationships; attention to inter-denomination and inter-religious dialogue; administrative services for the organisation and the needs of the office (certificates, correspondence, archives, custody of religious buildings, furniture and sacred objects).

The Memorandum also defines the duties of chaplains to perform civil service, as well as the structure and the methods of the role: hours, availability, replacement, facilities and goods provided.

The legislation makes the «rights of the patient» very clear. Consequently, the health authorities have the obligation to independently guarantee these rights, regardless of budgets or financial strain. Caregivers must facilitate these rights, despite their own religious faith or atheism.

At the national level, as on the regional level, religious assistance's direct role is the administration of sacraments, it also includes: support in the care of the sick; the promotion of religious cultural activities; spiritual and human guidance as well as help in a variety of cases; ethical contributions and humanisation in staff training, as well as participation in ethics committees; volunteering, in particular, the humanisation of the volunteer structure, services and interpersonal relationships; attention to inter-denomination and inter-religious dialogue; administrative services for the organisation and the needs of the office (certificates, correspondence, archives, custody of religious buildings, furniture and sacred objects).

6. Spiritual Assistance in the Private Sector

Spiritual Assistance has also become part of the private manufacturing sector. The experience of ONARMO in Genoa is an interesting example. It is a religious, social, health and financial organisation for the workers, founded in 1923 under the patronage of the S. Consistorial Congregation. The organisation was dissolved in 1951 and was reconstituted the year after with a new statute by the Archdioceses of Genoa (ARMO), as the «Religion Foundation for the Religious and Moral Assistance of Workers». It carries out activities for workers from all types of companies and for the poorer classes, providing meals as well as performing religious functions for the work Chaplains. The Statutes of the Foundation in fact state that the Foundation's purpose is to carry out moral and religious activities for so-called «abandoned» religious workers, to be integrated with traditional parish activities. There are currently 10 Parishes, of which only two are full-time. The others hold other offices; generally they are pastors in small parishes, who dedicate a part of their time to this activity.

There are around 60 companies involved, belonging to both the public and private sectors; from the port authority and independent entrepreneurs. The presence of chaplains in the workplace has created a close relationship between the church and civil society. The continuous contact with issues relative to business and the economy, employment and the impact of restructuring has meant that Genoese participants have developed a particular sensitivity to these issues. Additionally, familiarity with these companies has created a favourable path for the relationship between the Archbishop and the city and its institutions. In this sense, the role of the pastor in the workplace often creates a positive connection between the social parties, the institutions and the business owners, which contributes to the common good of the city.

7. Spiritual Assistance in the Armed Forces

Assistance is mainly carried out by Catholic priests as chaplains: they are appointed and managed by ecclesiastical authorities. Administratively they are part of the Armed Forces as confirmed by the TAR (Regional Administrative Court) of Lazio with judgments no. 7350 and 8260 of 2011 and 2012, respectively. This means that

for military chaplains there is a clear distinction between their function and their legal status; they provide an eminently spiritual function subject to ecclesiastical jurisdiction: designation, authorisation, removal of authorisation, etc. Aspects that are not related to spiritual service, such as legal treatment, finance and careers depend on the state authorities.

The Director of the Military Chaplains Service falls under the Military Order of Italy. Under the canonical profile, he is awarded the title of Archbishop. In the State system, this figure is similar in rank to that of an Army Corps General. The Military Order is aided by a team that comprises a Vicar General, similar in rank to a Major General and three «inspectors», similar in rank to a Brigadier General. Their remuneration is similar to that provided to army officers and the costs of their services are borne by the Defence Administration. The nomination of these figures is arranged as per the D.P.R: at the proposal of the President of the Council with the Ministry of the Interior and Defence, following their nomination by the ecclesiastical authority as per article 1534 of the Military Code of the Ecclesiastical Authority. The appointment of the military chaplains to permanent service is, however, adopted by a D.P.R. at the proposal of the Ministry of Defence, upon on the designation of the Military Order; they are then granted the approval or the revocation of their assignment certification.

A military chaplain appointed to permanent service cannot perform any other activities except spiritual assistance services. With this exception, the order recognised the military chaplain as complementary. The requirements to perform this service are: chaplains can be no older than 50 years old; candidates must have at least two years of continuous spiritual service with excellent qualifications; and they must be in possession of all political rights and fit for carrying out military service.

It is a different story for spiritual assistance that must be provided to military personnel that belong to minority religions. For these religions, the understanding is that the officers who belong to such denominations may carry out and participate in religious activities in their place of residence. Where adequate structures do not exist, there is the option to request the assistance of ministers in the structures that have been made available to the military or to obtain permits to visit the closest place of worship. In this case, the figure of the military chaplain does not exist and the cost of the service is borne by the religion.

For those who belong to religions that are not recognised by law, the provisions contained within Royal Decree no. 289 of 1930 establish that, in cases where the Armed Forces are mobilised, religious assistance for non-Catholic military members is provided on the authorisation of the military authority by ministers of the religion provided within the state and under the control of the State authority[32].

[32] Art. 8. In caso di mobilitazione delle forze armate dello Stato, l'assistenza religiosa dei militari acattolici, da esercitarsi da ministri di un culto ammesso nel regno la nomina dei quali sia stata approvata

8. Spiritual Assistance in the Police Force

As has already been highlighted, since the demilitarisation of the police in 1981, the use of military chaplains has been replaced with priests who are not employed in the civil service. A chaplain nominated by an ecclesiastical authority is assigned by the Interior Minister on a provincial basis for the duration of one year, which is automatically renewed at the end of each year. The service is full-time in educational institutions or other institutions with group housing, or where there are over 400 members; in smaller structures the service is part-time.

The position of Police chaplain may be held by ministers who are between the ages of thirty and sixty and who hold full civil and political rights. They maintain equal standing with Police Officers. The roles of police chaplains include the celebration of liturgical rites, catechesis, Christian guidance, as well as the organisation of cultural activities (art. 8 D.P.R. no. 421 of 1999) with the aim of achieving «pastoral ambience», and offering their contribution with regards to religious support for family members, especially in emergency situations.

The coordination of the various police chaplains falls to the national coordinating chaplain, who is recognised as a member of the police force. He is appointed by Interior Minister decree, upon nomination by the CEI in agreement with the Central Directorate of the Department of State Police Affairs for Public Safety[33]. The Police Administration bears the costs associated with the chaplaincy as per the Interior Minister (D.P.R. no. 167 of 2006). For those who do not belong to the Catholic faith or for those whose faiths contain specific rules, the provisions contained within Royal Decree no. 289 of 1930 on Spiritual Assistance for Military Figures from Minority Religions apply.

9. Spiritual Assistance in Prisons

As has already been extensively examined, it is necessary to distinguish between military chaplains, who include only ministers of the Catholic faith, and ministers of minority religious denominations who are authorised to carry out spiritual assistance roles.

Regarding the former, these figures are responsible for their service as per the direction of the Minister of Justice, who issues an opinion on a number of figures: Inspector Chaplains, District Inspectors of Prevention and Penal Institutions and of course, prior authorisation for ordinary diocesans. If the institution is a juvenile

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a termini dell'art. 3 della legge, può essere autorizzata dall'autorità militare cui è stata affidata la suprema direzione delle operazioni belliche. Alla stessa autorità spetta di stabilire le norme e le cautele con le quali tale assistenza può essere esercitata.

[33] See Internal Ministry Circular no. 559/C/9/64 of 2005.

prison, the service assignment is made with the participation of the director of the institution.

The working relationship that is established between the penitentiary administration and the chaplains is that of a public appointment, rather than a permanent one, as was confirmed by the State Council, Sec IV with judgement no. 1307 of 1998 and confirmed by the Lazio Regional Administrative Court with Sec. I, no. 402 of 1995. In this sense, the penitentiary chaplain does not hold the status of a public official, «as they do not carry out tasks that are characterised by the formation and the manifestation of the will of the public administration, that is, they do not have certification or authoritative powers»[34]. On the contrary, the figure should be considered as being hired in the public service, seeing as the service is a function of public interest. By virtue of the nature of the role, the figure is treated in the same way as family members of prisoners, who do not need to request authorisation to visit penitentiary institutions as per article 67 letter i of law 354/1975.

What are the requirements a minister of a religious minority must fulfil to be nominated chaplain? As per the 1982 law, they must hold Italian citizenship, have maintained good conduct and be physically fit. The Chaplaincy ceases when the permit is withdrawn by the ordained diocesan, or when circumstances not attributable to the chaplain make staying in the prison community impossible. In this case, the removal of the chaplain is provided for by Ministerial Decree (art. 12 Law 68/1982). Finally, pursuant to article 6 of law no. 68 of 1982, the economic burden of the chaplaincy is borne by the prison.

Detainees of a different religion also have the right to be assisted spiritually and to receive religious instruction, but this is not an unconditional or full right. The ministers must be those indicated by the Ministry of the Interior (art. 58, comma 6 D.P.R. 230 of 2000) and they can worship provided that this is not expressed in ways that may cause harassment in the community and that it is conducted in the areas made available by the institution, with or without the presence of ministers of the religion. Moreover, while prisoners of the Catholic faith are offered a permanent employee by the prison facility, for the non-Catholic, the presence of a minister can be obtained by request only. Ministers of unauthorised religions, that is, not on the ministerial list, may only be admitted to the prison if authorised and only if, on the indications of the supervisory magistrate, their admittance is approved by the director of the institution, as per article 17, comma 2 of Law 354 of 1975. This is clearly a complex procedure that is characterised by a high level of discretion.

Where minority denominations ensure spiritual assistance from a minister, whether at the request of the detainee or their families, or at the initiative of the minister, the

[34] A. Valsecchi, «L'assistenza spirituale nelle comunità separate», in *Nozioni di Diritto ecclesiastico,* (Ed.) G. Casuscelli, Turin, 2015[5], p. 215.

minister is not a member of the prison staff, nor do they have access to the prisoner without authorisation. The provisions under articles 58 U.C.E. 116 of D. P.R no. 230 of 2000 have been declared illegitimate, as on the one hand, entry into the institution is at the authorisation of the Director, and on the other, it does not take into account free access at the initiative of the ministers themselves.

A problematic area in this sector is the organisation of spiritual assistance for condemned individuals who are subject to alternative measures to detention, such as house arrest or probation with social services in specialised therapeutic communities. Over the last few years, the legislature has implemented a series of regulatory changes that have made access to these institutions easier, following the lead of the Strasbourg Court in *Torreggiani v. Italy* in attempting to reduce the endemic overcrowding that plagues Italian prisons. In this context, specific issues are raised that concern spiritual assistance that have yet to be solved, as the penitentiary system reform of 1975 did not provide for situations existing outside of the prisons themselves. The paradoxical result of this is that the right to religious freedom is more protected in the most restrictive format of detention and is reduced with less severe limitations[35]. Solutions to this legislatively-silent issue were found through legal rulings. That said, the responses to the problem were not uniform. On the one hand, the right of the subject of house arrest to participate in Sunday worship (Catholic Mass) and other masses on religious holidays was recognised. In the comments from the investigating judge of Pisa, it was noted that «the person under house arrest cannot be treated more favourably than the detainees of an ordinary prison»[36]. The Milan court held a different view in its order of 19 August 1986 when it rejected a similar request, stating «given the impossibility of the detainee's attendance at religious functions due to his detained state, the observation of the Catholic Sunday mass can be made equivalently via radio or television services»[37]. This second case raises the question of the right of the Court to criticise the sincerity of religious beliefs of those who are detained and who make requests for religious matters. A more recent Supreme Court hearing should also be noted[38], in which it was determined that «attending a religious service outside of the terms and out of compliance with the procedures established by the judicial authority constitutes escape of the house arrest by the person under it»[39]. This ruling was handed down in the case of a Jehovah's Witness who, while given the right to participate in the liturgical rights at a Kingdom Hall on the first Sunday of

[35] E. Olivito, *Se la montagna non va viene a Maometto. La libertà religiosa in carcere alla prova del pluralismo e della laicità*, cit., p. 18.

[36] Court of Pisa, Ord. 13 of November 1984.

[37] Court of Milan, Ord. 19 of August 1986.

[38] Court of Appeal. Sect. VI, 21of January 2009, n. 2753.

[39] *Ibidem*.

every month with an escort, was found to be away from home on the second Sunday of the month. Similar problems arise with respect to the accused or convicted who are admitted to therapeutic communities for drugs and alcohol. In these cases it is necessary to determine whether the community is of a religious or agnostic nature. In the first case, it is necessary to ensure the effective right to religious freedom. In the second case, it is necessary to ensure the freedom of religion and conscience of those who do not intend to participate in any religious activities or practices.

10. Spiritual Assistance in Hospitals and Nursing Homes

Access to religious ministers is free, with no need for authorisation and without time restrictions. Once again, the availability of the minister is subject to actual availability and is conditional on the express request of the individual.

Some evangelical hospitals of the Waldensian Church and Jewish institutions that engage in the provision of health care are not required to provide religious assistance, as provided for under 35 D.P.R. no. 128 of 1969. However, they do guarantee religious freedom to each user of the service and assistance, without time limits or economic burden, for the provision of a minister. Finally, as mentioned, some hospitals guarantee moral support to agnostic and atheist patients.

Hospital staff is required to communicate requests for assistance from patients of any faith to the health department, which then sources ministers according to the request.

As it was mentioned, the cost of the ministers' service (of the Catholic faith or otherwise) is borne by the hospital, even though the hospitals are providing a public service. That said, some denominations have expressed their desire to assume the financial burden of the service (art. 7 Law 449/1985; art. 4 Law 517/1988; art. 6 Law 116/1995; art. 5 Law 126/2012; art. 11 Law 127/2012; art. 5 Law 245/2012; art. 5 Law 246/2012).

In the case of long-term recovery, healing or rehabilitation, religious assistance services are guaranteed in private institutions and residential nursing homes. In the first case, the following regulations apply: article 25 letter g of D.M. 5 August 1977, I D.P.C.M 27 June 1986 and finally, resolution of the Piedmont Region no. 13-7043 of 2014 concerning the minimum requirements for healing centres and nursing homes. These institutions must guarantee religious assistance for all denominations and suitable places for religious practice.

11. Conclusions

There are three conclusive observations which apply in varying degrees to the different forms of spiritual assistance in segregated communities:

The immigration phenomenon has only increased and further exposed long-known factors of imbalance, mainly in the prison and hospital sectors, and less so in the Armed Forces and police, which is linked to the right of citizenship.

Even today, the literature and legislation reveal a distinctly institutionalised service, where the needs of the religion are considered over those of the individual. Indeed, it seems that the current regulatory system does not consider the fundamental rights of the person, but rather the ability of religions to enter into segregated institutions. This is particularly evident in the prison system, «(…) the focus is not on who is incarcerated, but rather, the churches; it is justified to be suspicious that the churches do not mind this focus»[40]. It is as though the legislators dealing with this problem are more concerned with articles 7 and 8 of the Constitution rather than articles 2, 3 and 19.

The effectiveness of the right to religious freedom is, in some cases, left up to the whim of State officials, whether administrative staff or judges. This inevitably has led to a fundamental constitutional right being undermined. There is a tendency to forget that the protection of a fundamental right must be further strengthened and made compatible with the situation in which the subject resides. In cases where the liberty of the subject is restricted for just cause and for varied periods of time, such constitutional rights, in particular those derived from article 2, must be guaranteed and not incompatible with the necessary limitations on the individual's freedom. Moreover, the Constitutional Court has stressed that it is the «principle of legal culture that the detainee is both recognised as owning active subjective situations and is guaranteed as owning that part of human personality, which the penalty cannot affect»[41]. This is because «those who are in a state of detention, for whom most of their liberty is removed, always retain a residual part of it, which is extremely valuable, as it is the last place one can expand their personality»[42].

[40] E. Olivito, *op. cit*., p. 18.
[41] Judgment Const. Court, no.114/197.
[42] *Ibidem*.

THE REGULATION AND ORGANISATION OF CHAPLAINCIES IN LATVIA

Ringolds Balodis

1. Sociological and Historical Approach

Latvia's current (2015) population is close to 2 million. Of that, nearly 60 % are Latvians, and Russians (approximately 30 %) are the largest minority nationality. Latvia is a multi-confessional country, where the three largest denominations are Protestantism, Catholicism and Orthodoxy. Information about the number of believers that is at the disposal of state institutions[1] is received from registered religious organisations. This information is not verified in any way. Regretfully, the census does not ask about religious beliefs. The relativeness of the data provided to the State is vividly revealed by information about the number of Muslims in Latvia. The registered Muslim congregations, in their report to the Ministry of Justice, quote the number 300, whereas in publicly accessible sources of information the number of Muslims ranges between one thousand and even ten thousand believers. The case of Muslims is also interesting because usually religious organisations try to exaggerate the number of their adherents. The total number of believers in the state, which follows from information collected by religious organisations, is also confusing. It is a million and a half. This means that atheists and religious people who don't claim a particular religion make up only one quarter of the population. Knowing that religion

[1] Pursuant to Section 14(7) of the Law on Religious Organisations, by 1 March every year religious organisations have to submit to the Ministry of Justice a report on their activities, in a procedure established by the Cabinet of Ministers. The procedure through which religious organisations submit reports on their activities is established by Cabinet Regulation of 18 August 2009 No. 930 «Procedure through which religious organisations submit a report on their activities». Some organisations do not submit their data to the Ministry (for example, the Roman Catholic Church); thus, the Ministry's statistics should be regarded as being merely approximate.

has weak impact in Latvia, which can be deduced from the number of marriages performed by priests, the number of children who have chosen religious education, religious activities in public spaces, and also from the demand for chaplains, a million and a half believers looks like a twofold exaggeration. Moreover, the issue of people who have only a formal affiliation to a certain denomination, and those who regularly practice their religion should be examined separately. Thus, information provided by religious organisations states that from two million inhabitants there are: Evangelical Lutherans - 700 000, Roman Catholics - 400 000, Orthodox - 370 000, Old Believers - 40 000, Charismatic Christians - 8 000, Baptists - 6 000, Seventh-Day Adventists - 5 000, Mormons - 900, Latvian pagans (dievturi) - 700, Jehovah's Witnesses - 700, Methodists - 500, Jews - 367, Krishna followers - 145, Hindu - 21, etc. The number of registered religious organisations in Latvia are as follows: Lutheran - 310, Roman Catholic - 258, Orthodox - 134, Baptist - 97, Old Believers - 70, Seventh-Day Adventist - 51, Methodist - 13, Jewish - 13, Muslim - 13, Krishna - 11, Latvian pagan (dievturi) - 11, etc. Information revealed by sociological surveys is more credible, showing the religious affiliations of the population to be: Lutherans 25 %, Roman Catholics 21 %, Orthodox 25 %, Old Believer Orthodox 2.7 %, Adventists 0.4 %, and Jews 0.1 %. About 20 % of the Latvian population does not belong to any religion - part of them consider themselves to be believers without identifying themselves with any particular denomination, while others declare themselves to be atheists. This breakdown in percentages is approximate, because the State does not have at its disposal statistics based upon credible sources of information. It is clear that Latvia lacks statistics on denominational affiliation, which could help align the work of the chaplaincy service in all fields: in prisons, hospitals, the army, and in civil institutions. It would be only logical that the breakdown of society according to denominational affiliation would also be proportionally observed in the work of the chaplaincy service.

Even though Latvia will celebrate the 100th anniversary of its statehood soon (the Republic of Latvia was founded on 18 November 1918), the State is unique, because its history is split into two periods: the First 1918-1940 and the Second, which started in 1990. This is because the normal development of Latvia as a state was violently interrupted by Soviet occupation in 1940. The Republic of Latvia was only able to restore is status as a state in 1990.

When Latvia restored its statehood at the beginning of the 1990s, it reinstated only some of its former laws (for example, the Constitution and the Civil Law), and after dismantling the Soviet legal system it adopted new laws, developing completely new practices, different from the first period of independence. Latvia had to create many things completely anew. Chaplaincy was one of such novelties, because the experience from the first period of independence was not transferable. The chaplaincy service in the 1920s-1930s was only in its initial stage of development. «Ministers

- advisors on issues of upbringing»[2] were active in prisons, and «war» or «military ministers» in the army. Prison chaplains were partially organised, and chaplains were not accessible throughout the army. The name of the vocation, «chaplain», was not widespread either. During the first period of independence the activities carried out by chaplains in Latvia, similar to present-day Latvia, depended upon church enthusiasts or responsive civil servants who were able to see benefits of and support in fulfilling the functions of the State in this profession.

Development of the chaplaincy in the second period of independence has been fragmented, and certain similarities with trends in its pre-war development can be discerned: again, it depends upon the understanding and goodwill of the heads of some state institutions and establishments. There is no national-level support for chaplaincy. The burden of financing chaplains is placed upon the shoulders of the religious denominations themselves; if financing for chaplaincy is requested from state institutions, they always use the excuse of the church being separate from the State. In most cases, the financing for chaplains' activities comes from foreign-funded programmes from non-governmental organisations. Chaplaincy enthusiasts —ecclesiasts— made great efforts to ensure that chaplaincy was enshrined in regulations. Thanks to an ardent supporter of his vocation, Lutheran minister Valdis Baltruks, in 2000 the issue of enshrining chaplaincy in legal regulations was set into motion. Prison chaplains hoped that through legal regulation, material/technical issues would also be solved. The regulation on chaplaincy was drafted and adopted in 2001[3]; however, their initial hopes were not fulfilled. While the regulation was being drafted, consultations with the sectors and religious dominations were held, and the issue of financing chaplaincy turned out to be unsolvable.

It is not only the lack of interest among state institutions that is to blame, but also the inability of the churches to define and lobby for their interest in chaplaincy. As of 2016 neither the State nor the denominations have developed special programmes for the activities of the chaplaincy service, and, except for the army, there are still no financial resources for maintaining the chaplaincy service. The network of psychologists and social workers that is widespread throughout the country and maintained using public resources can be seen, to a certain extent, as a competitor for chaplaincy. There is still no state or church policy to speak of, but rather individual activities by some supporters. The Latvian army is an exception; because it is a NATO member

[2] Balodis R. Baznīcu tiesības [The Church Law]. - Rīga: Reliģijas Brīvības Asociācija, 2002. - 423.lpp.

[3] Latvijas Republikas Ministru kabineta 2002.gada 2.jūlija noteikumi Nr.277 «Noteikumi par kapelānu dienestu». *Latvijas Vēstnesis*, 05.07.2002, Nr.101.

state, it carries out chaplaincy service according to the model of other member states of this military union.

2. National Regulation on the Chaplaincy and Definition of Chaplaincy Services and Organization of Chaplaincies by the State

Article 99 of Latvia's constitution provides a laconic definition of the principles of religious freedom and separation of church and State. The definition of chaplains is included in the Law on Religious Organisations[4] and the Cabinet Regulation issued on the basis of this law.

The Cabinet Regulation provides for the possibility of, but does not establish an obligation for state institutions to introduce a chaplain's office or chaplaincy service. The Regulation lists a specific circle of religious organisations that may propose candidates who have the right to apply for a chaplain's office. Paragraph 5 of the Regulation grants this right to the Orthodox, Evangelical Lutheran, Old Believer, Methodist, Adventist, Baptist, and Pentecostal churches and Latvian pagans (dievturi). Up until now, Muslim leaders have not expressed to the State the wish to participate in the activities of chaplaincy services, but the Jewish denomination has declined this possibility. In both cases this is linked to the small number of believers who would be eligible for chaplain services from these denominations. Furthermore, the right to have priests of their domination represented in chaplaincy service is guaranteed to those belonging to the Roman Catholic Church in the international agreement with the Holy See, while the rights of the six traditional churches of Latvia (Orthodox, Evangelical Lutheran, Old Believer, Methodist, Adventist, Baptist) are guaranteed by special laws.

The circle of churches who may propose candidates for chaplaincy is broader in the Cabinet Regulations that govern the operations of the chaplaincy service, compared to that defined in laws. The explanation for this lies in the fact that, in practice, some religious organisations (for example, the Pentecostal Church) are so active in the field of chaplaincy that the State, which is not financing the chaplaincy services, has to put up with this fact and enshrine it on a regulatory level.

The activities of chaplains are regulated, first, by the Law on Religious Organisations, which in addition to the principles and procedures of registration deals with a number of other issues (chaplains included) that pertain to exercising freedom of belief in Latvia. Paragraph 8 of Section 1 of the Law[5] provides that chaplains are ecclesiastics, who perform official duties in places for the serving of sentences, the

[4] 1995.gada 7.septembra Reliģisko organizāciju likums *Latvijas Vēstnesis*, 26.09.1995., Nr.146.

[5] The most recent Amendments to the Law on Religious Organisations, which include also provisions on the chaplaincy service, were adopted on 15.06.2000.

National Armed Forces units and other places where the pastoral care of a regular clergyman is not available[6]. The fifth part of Section 14 of this Law provides that the activities of chaplains in Latvia are regulated by a separate Cabinet Regulation. While it is not set out in regulation, the opinion prevails that in his everyday work a chaplain, irrespective of his affiliation to a particular church, may not impose his religious beliefs. A chaplain must listen to and encourage soldiers of various religious beliefs, without criticising different opinions. A chaplain must try to help everyone who seeks advice and support. A chaplain helps representatives of other churches within the limits of his competence, but, being unable to provide support, helps get in touch with a clergyman from the respective church[7].

The Cabinet Regulation on Chaplaincy Service, adopted on 15 February 2011, defines the basic principles for the activities of the chaplaincy service in Latvia. Pursuant to this Regulation, a chaplain is a person who, following the procedure established by the respective religious association (church), has obtained religious education and who has been proposed for the office by a religious association referred to in the Regulation. It must be noted that the Regulation of 2011 replaced the Regulation of 2002. The new regulation introduced a number of significant easements in the functioning of the chaplaincy service. The new order is more liberal. For example, the circle of religious associations that may propose candidates for the chaplaincy has been expanded. Latvian citizenship is no longer required. A number of bureaucratic procedures have been eliminated in appointing chaplains and also in the regulation of the employment relationship. Likewise, chaplains are allowed to act outside of State borders[8].

Institutions that wish to introduce a chaplain's office or chaplaincy service have greater discretion with regard to the issues of chaplains, etc.[9] These changes are close-

[6] The Law on Religious Organisations grants religious organisations the right to engage in religious activities in hospitals, social care houses, and penitentiaries if the persons within these institutions desire it, and, secondly, religious organisations must receive approval from the administrations of the respective institutions for the place and time of a scheduled event. The legislature, in discussing Paragraph 8 of Section 1 of the Law on Religious Organisations, intentionally did not want to list all institutions where chaplains were allowed to act, and included in the law the words «and elsewhere».

[7] Here and hereinafter information that has been obtained in correspondence between the Head of the Institute of Legal Research, professor Ringolds Balodis and responsible ministries, local governments and institutions at the end of 2015.

[8] The Regulation of 2002 restricted the chaplaincy service and provided that it can operate only within the Republic of Latvia. The Regulation of 2011 no longer contains such a restriction, which allows the chaplaincy service to also operate outside the Republic of Latvia, for example, during military missions abroad.

[9] Paragraph 8 of the Regulation of 2002 provided that the administration of the respective institution must sign an agreement with a religious association of spiritual care and report it to the Board of Religious Affairs. The Regulation of 2011 does not establish such a procedure - an employment or

ly linked to decreased monitoring by the state in the relationship between the State and religion[10]. Likewise, unlike in the Regulation of 2002, chaplains in the armed forces have been granted more rights: chaplains are not only the spiritual caregivers for the personnel of the National Armed Forces (the soldiers), but are also spiritual advisors to their relatives.

It should also be noted that the rights of those belonging to the Roman Catholic Church have been enshrined in the Agreement with the Holy See[11]. Pursuant to Article 9 of this international agreement, the Roman Catholic Church is guaranteed the right of access to hospitals, prisons, orphanages and all other institutions of social or medical assistance in which the presence of Catholics justifies the occasional or permanent pastoral presence of the authorised representatives of the Catholic Church. Article 25 of the Agreement guarantees to the Catholic members of the National Armed Forces the possibility of receiving adequate catechetical instruction and of participating in Eucharistic Celebrations on Sundays and on Holidays of obligation[12]. The Agreement guarantees that chaplains of the Roman Catholic Church will be canonically subordinate to the Military Ordinariate.

In 2011 amendments were introduced to regulations on the chaplaincy service, which pertain to financial, material and technical provisions for the chaplains' activities. Now, in addition to state and local government institutions, which make payments from state budget resources, material provisions may also be provided by capital companies with which a chaplain has a legal employment relationship. In practice, the chaplaincy service has developed the best in the army; it is much more poorly organised and financed in prisons. It operates in hospitals; however, this operation is not based upon systemic organisation. Many local governments have chapels, but do not employ chaplains. Chaplain activities are financially and materially provided for by the State or local government under the budgetary funds allocated for this purpose.

The weak point in the regulation is the lack of a uniform standard for a chaplain's position. Such a standard could be based upon quality of education, but not current denominational education (because the differences are vast - courses for Adventists

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professional services contract is signed with the chaplain. If the religious association (church) establishes that a chaplain's professional abilities are not sufficient for performing a chaplain's duties of office, it informs the respective institution about this incompatibility. The respective institution has the right, upon examining the notification from the religious association (church), to terminate the legal employment or professional service relationship with the chaplain. Previously the issue of dismissing a chaplain for failing to perform his official duties was not regulated.

[10] The Board of Religious Affairs was reorganised in 2008 and its functions were reallocated - the role of coordinator between the State and the church was assumed by the Ministry of Justice, whereas registration of religious enterprises was assumed by the Enterprise Register.

[11] 2000.gada 8.novembrī parakstītais «Latvijas Republikas un Svētā Krēsla līgums» [Agreement between Republic of Latvia and Holy See] *Latvijas Vēstnesis*, 25.09.2002., Nr.137

[12] Upon the condition that this cannot hinder performing urgent duties of military service.

or Pentecostals, but state-accredited master's degree for Catholics and Lutherans), but rather a uniform, state-accredited denominational education programme, or one offered by state institutions.

There are no court cases linked to the activities of the chaplaincy service.

3. The Chaplaincy in Public Institutions

3.1. The Chaplaincy in the Armed Forces (historically, status, appointment, revocation, funding, etc.)

The Ministry of Defence considers that the origins of the chaplaincy service date back to 1991, when one of the largest Latvian churches - the Evangelical Lutheran church - delegated its first representative to work in the Armed Forces. In 1993 the Ministry of Defence signed an agreement with the Orthodox, Baptist, Catholic and Lutheran churches on creating the Chaplaincy Service of the National Armed Forces. The agreement dealt with cooperation between the State and churches in the field of chaplaincy services. Currently there are 10 chaplains in the Armed Forces, of whom eight belong to the military staff (professional soldiers) and two are private individuals (contract workers). Chaplains are also active in the Latvian Naval Forces. Chaplains - military personnel - are part of the command structure; they are uniformed soldiers with the appropriate service ranks. This helps the chaplain to better integrate into the military environment and allows them to go with soldiers on military missions without obstacles. The Ministry of Defence of the Republic of Latvia holds that a chaplain will always be one of their own and an outsider at the same time. The uniform and being together with soldiers gives him the opportunity to become one of their own, someone is always accessible, listens and is ready to help, whereas the duties of a clergyman are separated from soldiers' daily life. The military chaplain of the Latvian army is like the voice of consciousness of the unit's commander. The deeper the relationship between the commanders and the chaplain, the greater the possibility of improving the soldier's morals. In those military units where chaplains are active, soldiers' morals have improved, instances of hazing decrease, and relationships improve. Thus, the tasks entrusted to the unit are performed to a higher standard. In times of peace the chaplain helps soldiers get used to army life, and usually commanders entrust the chaplain to talk with soldiers who have committed disciplinary violations or about whom there are concerns about possible addictions: gambling, alcohol, etc.

The Cabinet Regulation on Chaplaincy Service (Paragraph 6) provides that:

> a chaplain is employed by the Commander of the National Armed Forces or the Head of the Prison Authority, or the administration of an airport, a port or a station of road transport, or the administration of a medical treatment or social care institution (hereinafter, the respective institution). A chaplain is enrolled in professional service by the Minister for Defence or a commander (head) authorised by him.

The Ministry of Defence states that until now the Chief of Chaplains has cooperated with the bishops of Christian denominations, who have authorised specific clergyman to perform a chaplain's duties. That is, chaplains are authorised by a church, and the church may revoke their mandate. The Chief of Chaplains is an army official, and evaluation of the compliance of the chaplains' activities falls within his competence. Paragraphs 11-15 of the Regulation deal only with the issues of chaplains in the National Armed Forces, establishing that chaplains may be private individuals or members of the military, although they do not bear weapons. In view of the fact that Latvia, by signing an international agreement with the Holy See, recognizes the exclusivity of the Roman Catholic Church in the field of military chaplains, on the issue of chaplains' subordination, the issues of spiritual and military subordination are tactfully separated. Paragraph 15 of the Regulation provides that:

> In administrative issues, Chaplains of the National Armed Forces fall under the authority of the head of the military structural unit (commander of the unit); in issues that are related to chaplains' activities, they shall fall under the authority of the Chief of Chaplains of the National Armed Forces, but in religious issues, they fall under the authority of their respective religious association (church).

In the National Armed Forces the chaplains' activities are managed by the Chief of Chaplains of the National Armed Forces, who falls under the direct administrative authority of the Commander of the National Armed Forces (Paragraph 15). There is very good inter-denominational cooperation in the Latvian Armed Forces, based upon religious tolerance and neutrality, as well as an understanding of shared work for the benefit of the Sate.

Chaplains are required to have a bachelor's-level theological education and practical experience in serving in one of the churches (a clergyman's experience is preferable); recommendation by the head of his church is also essential. Chaplains must undergo military training in the Basic Specialist Officer Course and Senior Specialist Officer Course at the Latvian National Defence Academy. The chaplain's duties are to regularly hold public worship and services in the army, as well as to ensure various memorial events at cemeteries and other memorial sites. The chaplains also regularly make speeches when the units are seen off (to peace keeping missions), at ceremonies for replacing commanders, administering the oath, and discharging into the reserves, and at anniversaries of units and other traditional events.

3.2. **The Chaplaincy in Hospitals (historically, status, appointment, revocation, funding, etc.)**

Thanks to some enthusiasts and the support by the major churches (Roman Catholic, Evangelical Lutheran, Orthodox), the development of chaplaincy service started at the same time Latvia regained independence in 1990-1991. Some hospitals in Latvia were equipped with chapels, where the hospital administrations allowed

clergyman of various denominations and volunteers to work. For example, in Lutheran congregations diaconal employees serve there. In Roman Catholic congregations these are sisters of the Legion of Mary and nuns from nunneries of different orders, and in the Orthodox congregations there are priests and nuns[13]. Ecclesiasts work as volunteers, without receiving remuneration from the budget of social care institutions. In hospitals the duties of chaplains are performed by ordained ministers. The Ministries of Health and of Welfare, which are responsible for national policy, left the chaplaincy service to fend for itself, allowing hospitals and social care institutions to choose pastoral care according to their own views. Also, the Ministries were against the possible consolidation of the chaplaincy service on the regulatory level. This was most obvious in 2001, when in connection with the drafting the Cabinet Regulation, consultations with regard to establishing chaplaincy service were held with the Ministries[14]. The reason for their opposition was lack of financing and serious problems in the functioning of the health and social care system itself. The situation today continues to be similar, and pursuant to Paragraph 20 of the Cabinet Regulation on Chaplaincy Service of 2011, the financial, material and technical provisions for the chaplains' work is ensured by the respective state or local government institution from the budget resources allocated for this purpose or a capital company with which the chaplain has a legal employment relationship. Pursuant to Paragraph 19 of this Regulation, chaplains in professional health care institutions are medical support personnel, who provide spiritual care to the patients and personnel of medical treatment facilities, providing moral support and any necessary advice on religious issues in compliance with regulations on the competence of medical support personnel in medical treatment. Chaplains in social care institutions provide spiritual care to the personnel of social care institutions and to the people residing in these institutions in accordance with their competence, providing moral support and any necessary advice on religious issues.

In the 1990s a clergyman in a hospital was «an outsider», who acted independently, without cooperating with other staff members. Initially clergymen held that their main function was performing religious rituals; however, starting in 2001 the understanding of pastoral care in hospital gradually changed. Performing denomination-oriented rituals was replaced by care offered to all patients, irrespective of

[13] From Danas Kalniņa-Zaķe master's thesis «Klīniskās pastorālās izglītības kursa dalībnieku pieredze Latvijā - kvalitatīvs pētījums» [Experience of Participants in Clinical Pastoral Education Courses in Latvia - a Qualitative Study] (Latvijas Universitāte, 2012).

[14] The Ministry of Welfare, responsible for hospitals and social care institutions, in 2001 declared that the chaplaincy service was unnecessary in this field, since churches that were adjacent to these institutions could fully satisfy the demand for religious services. I.e., «in case of necessity, a minister's care is accessible to persons in social care and medical treatment institutions, and there are no significant obstacles for ensuring it».

their beliefs and world view. These changes were brought about by exchange visits and trainings organised by the USA. In Latvia one of the university hospitals (Pauls Stradiņš Clinical University Hospital) has a well-developed chaplaincy service, which has undertaken to prepare a professional clinical pastoral training programme for the present and future providers of spiritual care for the needs of hospitals, social care institutions and other various institutions.

Even now there are hospitals and social care institutions which refuse to establish a job vacancy for a chaplain, using as a pretext the lack of financing, lack of interest among patients and sufficiently good cooperation with the local clergy. Thus, hospitals in Latvia can be divided into three groups: (1) hospitals equipped with chapels and chaplains on the staff; (2) hospitals equipped with chapels, but without chaplains; (3) hospitals without chapels and without chaplains.

Hospitals which have chapels and chaplains on their staff constitute approximately one third of all hospitals. At the hospitals, chaplains, who come from the Catholic, Lutheran, Orthodox and Baptist churches, not only provide spiritual care to the patients and cooperate with social workers, but also are spiritual caregivers to the medical staff. Pauls Stradiņš Clinical University Hospital must be singled out in particular for its chaplaincy service. At the hospital this service is called the Spiritual Care and Social Work Service. The service is headed by D. Kalniņa-Zaķe, who is also the head of the Association of Latvian Professional Health Care Chaplains, and not only organises the work of hospital chaplains, but also serves as a model for chaplains in other fields. In this particular hospital not all spiritual caregivers or hospital chaplains are ecclesiasts, i.e., ministers, because the Evangelical Lutheran Church, similar to the Roman Catholic Church, accepts people who have not been ordained, but who have theological education as hospital chaplains. The chapel has been functioning at the hospital since 24 November 1991, when it was consecrated by the archbishop of the ELCL [Evangelical Lutheran Church of Latvia], who was, at the time, K. Gailītis. Pursuant to information provided by the Ministry of Health, remuneration for chaplains is 600 euro (before taxes). The intensity of chaplains' work depends upon the number of patients and the mutual agreement between the institutions and chaplains. Thus, for example, at the «Ģintermuiža» Hospital, the chapel is open to any interested person three times per week from 8:00 to 14:00. It should be added that this hospital's chapel (like of many others) was established thanks to private donations.

In the second group, in hospitals that have chapels, but do not have chaplains, worship of God or services are held, though irregularly. The priests from local Evangelical Lutheran, Orthodox and Roman Catholic churches organise these events for hospital patients. Chapels are usually closed, but are accessible to patients upon request.

In some such hospital chapels, volunteer chaplains act, but they are not financed from hospital budgets. This approach, where chapels are set up, but there is no remunerated chaplain, was already outlined in 2000, when hospitals, being unable to ensure a salary for the chaplain, nevertheless were able to maintain a chapel for prayers.

In the third group, i.e., in hospitals that have neither chapels nor chaplains, the hospital administrations mainly explain the absence of chaplains by low interest on the part of patients. State social care centres without chapels and chaplains also must be included in this group.

The development is slow, but there are hospitals that choose chaplaincy service and, upon setting up a chapel, also start developing a chaplaincy service. Thus, for example, at Jēkabpils Regional Hospital, thanks to an initiative by non-governmental organisations, a chapel was set up in 2016 and a chaplain will start working there. In some hospitals, chapels have been set up for the performance of religious functions which are called prayer rooms or denomination rooms. Currently a trend can be observed that, due to the intense workload of doctors and other hospital staff, it is impossible to develop a personal relationship with every patient and provide sufficient support to patients and their relatives in mentally difficult situations; likewise, their spiritual needs cannot be provided for, and therefore the work of a professional chaplain at health care institutions is advisable. Hospital administrations lack the understanding that a priest is not the same as a professional health care chaplain because the functions of a priest belonging to a certain denomination are limited; i.e., he/she visits only those patients/relatives that belong to their denomination or, in the best case, religion/tradition. Moreover, this priest, being an outsider, does not work with the staff and does not act as a member of the team.

3.3. **The Chaplaincy in Penitentiaries (historically, status, appointment, revocation, funding, etc.)**

The work of chaplains in penitentiaries is organised by the ecumenical chaplaincy service of the Prison Administration, which was established in the mid-1990s on the basis of experience adopted from the US Baptists. The Sentence Execution Code of Latvia, adopted in 1994, provides that a chaplaincy service should exist in institutions for the deprivation of liberty[15].

Currently the service is managed by a representative of the Pentecostal congregation, who has a particular rank of service at the Prison Authority. The substantiation and basic principles of the Prison Authority chaplaincy services have been defined in the Sentence Execution Code of Latvia, Law on the Procedures for Holding under Arrest, and the United Nations Minimum Standard Rules for the Treatment of Prisoners (adopted in 1955). Likewise, the regulations established in Cabinet Regulation No. 134, Cabinet Regulation No. 423 of 30 May 2006 «Internal Regulations of an Institution for Deprivation of Liberty», Cabinet Regulation No. 800 of 27 November 2007 «Internal Regulations of a Remand Prison» are also applicable.

[15] Balodis R. Valsts un Baznīca. [State and Church] -Rīga: Nordik, 2000. - 230.lpp.

The activities of the chaplaincy service are also defined in the internal regulatory enactments of the Prison Administration: Regulations on the Chaplaincy Service of the Prison Administration and the Prison Administration Code of Ethics.

Currently spiritual care to inmates of penitentiaries is provided by: five representatives of the Latvian Evangelical Lutheran Church; one Roman Catholic Metropolitan Curia of Riga, four representatives from the Association of Latvian Baptist Congregations, three members of the Association of Latvian Seventh-Day Adventist Congregations, and three representatives of the Latvian Association of Pentecostal Congregations of the International Pentecostal Church of Christ. At present there are 11 penitentiaries in Latvia; according to the law and regulations there is one chaplain per three hundred inmates, whereas elsewhere in the world this proportion is 1:150 or 200. Currently there are approximately 4 800 prison inmates in Latvia, which means that according to the existing proportion there should be 16 chaplains.

Pursuant to the Cabinet Regulation of 2011, the structure of the Prison Administration chaplaincy is determined by the head of the Prison Administration. Every time areligious organisation proposes a new candidate for chaplain vacancies in prisons, the Administration convenes a sitting of the Advisory Council on Religious Affairs (hereinafter, the Council). Representatives of all those religious organisations which, pursuant to Cabinet Regulation No. 134 of 26 February 2011 «On Chaplaincy Service», may propose candidates participate in this Council sitting. The Head of the Administration, in employing new chaplains, also examines the decision adopted by the Council's meeting with regard to each candidate for the position of chaplain. All vacancies for employees of the Prison Administration are classified in accordance with the requirements of Cabinet Regulation No. 1075 of 30 November 2010 «Catalogue of Positions at State and Local Government Institutions» (hereinafter Regulation No. 1075). According to Annex 1 to Regulation No. 1075 and the obligations defined in the description of the position, the position of chaplain is included in the 39th group of positions (Social Work); this group comprises positions that are linked to social care and rehabilitation for particular social groups. The legal employment relationship between a prison chaplain and the respective institution may be terminated on the basis of the provisions of Paragraph 6 of Section 101(1) of the Labour Law, i.e., an employer has the right to terminate an employment contract if the employee lacks sufficient professional abilities to perform the work he has been contracted for.

Chaplains' obligations include providing spiritual care to detained and sentenced persons and to the staff members of penitentiary institutions; providing moral support and any advice needed on religious and ethical issues; as well as organising religious services, concerts, and film screenings followed by discussions, or classes for studying religious literature and other events. Chaplains see to it that prisons have religious literature and facilitate the implementation of programmes that would lead to changes in the inmate's values, behaviour and motivation. Prison chaplains develop contacts with religious and public organisations with the aim of involving them in the spiritual

care and social rehabilitation of sentenced persons. They also ensure that all inmates have access to a priest of a particular denomination, and upon the inmates' request, organise meetings with representatives of Christian denominations registered in the Republic of Latvia. In view of the number and variety of spiritual care events held at penitentiary institutions, as well as the involvement of various religious organisations in inmates' spiritual care, there are grounds to consider that chaplains working in penitentiary institutions ensure the inmates' right to religious freedom in accordance with the provisions of regulations[16]. Since 2011, officials and chaplains of the Prison Administration, in cooperation with the Roman Catholic Church Chaplaincy Service, have prepared sentenced persons for pilgrimage and ensured that the inmates would have the possibility to participate in the Pilgrimage to Aglona. In the period from 2004 to 2015, chaplains working in penitentiary institutions, in cooperation with religious organisations working in Latvia, have organised for inmates services, concerts of sacred music, classes for studying religious literature, individual pastoral discussions and consultations, as well as film screenings followed by discussions. Moreover, chaplains, by involving representatives of various religious organisations, have managed and organised Christian education and upbringing programmes[17].

3.4. **The Chaplaincy in the Other Public Institutions: Police, Airports, Parliament, Municipalities (historically, status, appointment, revocation, funding, etc.)**

Due to the negative attitude of the Ministry of Education and Science[18] towards the chaplaincy service, this service has not been established and is not envisaged in institutions of education. Likewise, the institutions of the Ministry of Interior (border guard and police) have neither chapels nor chaplains, because of the same attitude. It was argued that the staff members of these institutions have access to care provided by regular ministers.

A strong chaplaincy service had been operating at the airport since the beginning of the 1990s; however, with the change of the airport's management a couple of years ago, the institution's view on the expediency of this institution changed as well. Currently there are no chaplains at the airport; only the chapel remains. This particular case is a vivid example, showing that the development of chaplaincy service in Latvia to a large extent depends upon the particular situation and not upon political strategy.

[16] Tieslietu ministrijas valsts sekretāra vietnieka tiesību politikas jautājumos p.i. I.Gratkovskas 2016.gada 14.janvāra vēstule nr. 0 - 11/142 12.Saeimas deputātam Ringoldam Balodim.

[17] Ibid.

[18] Izglītības un zinātnes ministrijas valsts sekretāra vietnieces V.Egles 2001.gada 9.februāra vēstule Nr.1-10/118 Tieslietu ministrijai.

As with some hospitals, a chapel has been set up at the Latvian parliament, but a chaplain is not employed. A scheduled service at the Saeima's chapel is announced on the parliamentary webpage at the beginning of the week, providing information about the religious denomination[19] to which the priest who will conduct the service belongs. This worship conducted by a minister is held on Thursdays, half an hour before the weekly plenary session. Only the members and the employees of the Saeima are invited, since a pass issued by the parliament is required to enter the chapel. The tradition of organising worship started in the fifth Saeima at the initiative of the minister Aida Prēdele, the chairperson of the faction of the Association of Latvian Christian Democrats and a member of the parliament. Since at that time the chapel had not yet been built in the Saeima, upon the request and with the support of the Presidium of the fifth Saeima, worship was held in the Green Hall, at 11 Jēkaba Street. The Green Hall, as the site of worship, was visited by the Pope of the Roman Catholic Church John Paul during his visit in September 1993[20]. The administration of the parliament notes that worship at the Saeima chapel is attended by approximately 10 people[21], but the chapel was established in 1998, «following the practice of the parliaments and institutions of European states»,. They also underscore the Christian meaning of the chapel: «The crucifix, which clearly proves the chapel's belonging to the Holy Trinity, was created by sculptor Jānis Bārda and was donated to the Saeima and consecrated by all Christian denominations''[22].

No chapels have been set up in local governments.

[19] http://taurid.saeima.lv/LIVS/SaeimasNotikumi.nsf/0/C6B1B979C36723EBC2257F1400377649?openDocument&notice=1.

[20] Saeimas ģenerālsekretāres K.Pētersones 2015. gada 4. decembra vēstule Nr. 511.12.-2 - 12/15 Tiesību zinātņu pētniecības institūta valdes priekšsēdētājam R. Balodim.

[21] Worship in the Saeima Chapel is led by the ministers from three largest Christian denominations: Lutheran, Catholic and Baptist, taking turns. During the last decade more than 30 ministers have served in the Saeima Chapel. On average 37 services are held annually. The equipment of the Chapel is not suitable for Orthodox priests to hold services there. Occasionally services are also held by chaplains of the National Armed Forces at the Saeima Chapel (according to their denominations).

[22] In 2013 the administration of the Saeima did not allow a Hindu prayer service to be held at the Saeima Chapel. Hindu Rajan Zed, feeling indignant, addressed a letter to President of the Republic of Latvia Andris Bērziņš, Speaker of the Saeima Solvita Āboltiņa and Prime Minister Valdis Dombrovskis, asking them to be more open to other religions, as well as to support the entering of such religions into the Saeima, thus «expanding the common understanding». The fact that Christianity was the main religion in Latvia and that there were no plans to change the existing order were quoted as the grounds for refusal.

(http://www.delfi.lv/news/national/politics/atteikums-novadit-lugsanu-saeimas-kapela-sadusmo-hinduistu-parstavi.d?id=42957306).

4. Islamic Chaplaincy in Public Institutions

At the moment Muslim clergymen cannot be employed as chaplains, although Muslim clergyman may be allowed to provide spiritual care in the relevant public institution. The Law on Procedures of Holding under Arrest, the Law on the Sentence Execution Code of Latvia and the Regulations of the Cabinet of Ministers entitled «Regulations of Internal Order of Imprisonment Institutions» set out more detailed provisions on the matter[23].

5. Chaplaincy Unions

In 2005, representatives of a number of denominations (Roman Catholic and Evangelical Lutheran), together with the Salvation Army in Latvia, united in the Association of Latvian Professional Health Care Chaplains, which should be considered an informally established inter-denominational movement. This association closely cooperates with hospitals, and the majority of hospital chaplains are members of the Association. Training in this sector is held in close co-operation with the Association[24].

The Association of Prison Chaplains also exists; however, only those chaplains who have an employment contract with a penitentiary institution are admitted to it[25].

[23] Danovskis E. Annotated Legal Documents on Islam in Europe: Latvia. Ed. Jørgen S. Nielsen The Netherlands 2016- p. 52

[24] Paula Stradiņa klīniskā universitātes slimnīcas 2015.gada 22.decembra vēstule Nr. 5.1-1.2/2014 vēstule Latvijas Republikas Veselības ministrijai

[25] Some consider this to be absurd, since a chaplain's status cannot be ensured by an employment contract, but can be obtained through education and a decree by the Church. In view of the fact that currently the representatives of traditional churches are the minority in prisons, they are also a minority in the Association. Thus, representatives of non-traditional churches, who have the power in the Association, are artificially holding on to this and represent only their own point of view, but other chaplains cannot join the association unless they have an employment contract with any of the structural units of the Prison Administration. Moreover, the Catholic chaplains, who do this work as volunteers, because this is their calling and they have been appointed by the Church, are called «self-proclaimed» chaplains.

CHAPLAINCY IN THE REPUBLIC OF LITHUANIA

Donatas Glodenis

1. Historical Overview, Sociological Data

Chaplaincy has had its place in the modern state of Lithuania since its beginnings in 1918. By far the most visible was the chaplaincy in the armed forces, which started together with the beginning of the Lithuanian army in 1918. During the first period of independence (1918-1940) there was a strong chaplaincy institution in the Lithuanian military, with many prominent society and church figures serving as Catholic chaplains. Minority confessions - Evangelical Reformed, Evangelical Lutheran, Old Believers, Orthodox and Jews - each had one chaplain of their own in the military[1]. Historical data shows that chaplaincy was not limited to the military, however: educational institutions and hospitals also had their own chaplains.

Table 1. Lithuanian population according to confessions, data from 2011 Census

Confession	% of population
Roman Catholics	77.25%
Russian Orthodox	4.11%
Old Believers	0.77%
Evangelical Lutherans	0.60%
Evangelical Reformed	0.22%
Neopagans (Old Baltic Faith)	0.17%
Jehovah's Witnesses	0.10%
Sunni Muslims	0.09%
Pentecostals	0.06%
Baptists and Free Church	0.04%
Jews	0.04%
Charismatic protestants	0.06%

[1] «History». Website of Lithuanian Military Ordinariate. http://www.ordinariatas.lt/istorija,1.html.

Seventh Day Adventists	0.03%
Buddhist	0.02%
Churches of Christ	0.02%
Other confessions	0.15%
None	6.14%
Did not specify	10.11%
IN TOTAL	100.00%

The institution of chaplaincy was abolished when the Soviets occupied Lithuania in 1940. Military chaplains were fired at once after the Soviet takeover in Lithuania. This institution was replaced with Soviet political educators.

As an institution, chaplaincy was gradually revived after the restoration of Lithuania's independence in 1990. The first army chaplain was appointed in 1991, right after the creation of the armed forces of the newly-independent Lithuania.

After 1990 Lithuania was no less religiously homogenous than during the first period of independence. The data in Table 1 shows that more than 77% of Lithuania's population are Roman Catholics, with the next biggest confession having only 4% of the population. Unsurprisingly, although believers of all confessions would benefit from chaplains in public institutions, only the Catholic Church was able to cover most of the public institutions with chaplaincy services and was also able to negotiate employment for its chaplains in some institutions. It is also rather surprising that the Evangelical Reformed church was willing to negotiate some agreements regarding chaplains in the police, the military and the hospitals, despite its very small believer base - only 0.22% of the population.

Currently there are 14 military chaplains from the Catholic Church in the armed forces. The Evangelical Reformed Church has one priest overseeing the spiritual needs of the believers of this confession in the army, while other religious communities offer only *ad hoc* spiritual services to the military, if at all.

Hospitals employ 21 Catholic Chaplains. Not every hospital has an appointed chaplain; hospitals without chaplains are overseen by the local parish priests. The same situation occurs in social care houses: pastoral care for residents is offered by the local parish priests. None of the other confessions have permanent pastoral workers assigned to hospitals or spiritual care houses.

The Catholic Church has 12 chaplains working in prisons and penitentiaries, none of whom are employed by state institutions. The Russian Orthodox Church also has appointed priests for every penitentiary institution, and there is an NGO «Prison Chaplain Association», composed of protestant (mainly Pentecostal) ministers, which also has chaplains appointed for all penitentiaries. Other religious communities are also offering religious counselling and preaching in some prisons; for example, the Word of Faith church association has a prison ministry that has been operating continuously since 1992.

The prison system is perhaps the only system that, while it encourages the activities of chaplains of any confession, does not have any employment arrangements with the chaplains.

2. National Regulation of the Chaplaincy and Definition of Chaplaincy Services

The Constitution of the Republic of Lithuania, which came into force on 2 November 1992, is the principal legal act of Lithuania. There are a few provisions dealing with religion in the Constitution. Article 26 of the Constitution guarantees freedom of religion and belief of the individual, including the freedom «alone or with others, in private or in public, to profess his religion, to perform religious ceremonies, as well as to practise and teach his belief». Article 43 declares that there shall be no state religion in Lithuania, and deals with the recognition of religious communities. Article 38 stipulates that the State shall register marriages, births, and deaths, but also that the State shall also recognise the church registration of marriages. Article 40 paragraph 1 stipulates that state and municipal establishments of teaching and education shall be secular, and that, at the request of parents, they shall provide religious instruction.

These provisions led the Constitutional Court to summarise in June 13, 2000, that:

> the principle of the separateness of the state and the church is established in the Constitution. The principle of the separateness of the state and the church is the basis of the secularity of the State of Lithuania, its institutions and their activities. This principle, along with the freedom of convictions, thought, religion and conscience which is established in the Constitution, together with the constitutional principle of equality of all persons and the other constitutional provisions, determine neutrality of the state in matters of world view and religion.
>
> The fact that the State of Lithuania and its institutions are neutral as regards the matters of world view and religion means disconnection of the purpose, functions and activities of the areas of the state and religion, those of the state and the churches and religious organisations. It needs to be noted that the neutrality and secularity of the state may not serve as the grounds to discriminate against believers, to restrict their rights and freedoms. Secularity of the state also presupposes non-interference with the internal life of churches and religious organisations by the state.

Chaplaincy as such is never addressed in the Constitution, and therefore a certain tension is left unaddressed as to the extent the state can organise and institutionalise spiritual care in institutions where people may face various limitations on their regular free religious activities (like the military, prisons, hospitals, etc.).

The main law on religion, the Law on Religious Communities and Associations of the Republic of Lithuania, adopted in 1995 with a few amendments since, does not address chaplaincy either. However, the law guarantees the freedom of individuals and groups to exercise their religion in restricted or public institution environments. Article 8 of the law stipulates that:

> At the request of believers, religious rites shall be performed in hospitals, social care facilities and places of detention. The time of performance of rites and cult ceremonies and other conditions shall be co-ordinated with the authorities of the aforementioned institutions. The authorities of these institutions shall provide opportunities for the performance of religious rites.
>
> At the request of believers, the command of military units shall provide opportunities for the performance of religious rites in accordance with the procedure established by statutes.
>
> At the request of student believes and their parents, the rites of traditional and other state-recognised religious communities and associations, which are not contrary to the concept of secular school, may be performed in state educational and training establishments; participation therein shall be based on free choice.

As one can see, even here the right for free exercise of religion belongs to the person, not a church institution. It certainly does not oblige the state to facilitate such exercise of religion by providing chaplaincy services.

The concept of chaplaincy is first mentioned in the legislation of the re-established Lithuanian state, although in a cursory manner, in the Temporary Law on the Military Command of the Republic of Lithuania, adopted on 15 July 1993. Article 4 of the law barely mentions that the Senior Chaplain of the Army of Lithuania is subject to the Chief Army Commander. More detailed definitions were first set out in the Law on the Organisation of Defence of the Country and the Military Service of the Republic of Lithuania in 1998, and mention military chaplains appointed by «state-recognised traditional churches». Chaplains are explicitly recognised as part of the country's defence system in article 3 of the law; the law also regulates their military ranks. Furthermore, the law limits chaplaincy to members of the traditional churches, excluding non-traditional (whether recognised by the state or not) religious communities.

The agreements signed by the state with the Holy See on 5 May 2000 specifically speak to the pastoral care of Catholics in institutions run by the state or municipalities. The «Agreement between the Holy See and the Republic of Lithuania concerning the pastoral care of Catholics serving in the Army» was established specifically with the aim «to provide continuous pastoral care to Catholics serving in the Army of the Republic of Lithuania». The agreement states that the Holy See shall establish a Military Ordinariate responsible for the pastoral care of the Catholics in the army that shall be headed by a Military Ordinary, freely appointed by the Holy See, and goes on to establish the jurisdiction, rights and duties of the military chaplains. It also establishes, that «the Ministry of Defence shall provide proper material assistance in maintaining the Military Ordinariate and its places of worship, as well as for the other pastoral activities», thus obliging the State to finance the activities of the Ordinariate. Since the agreement provides that the chaplains are appointed by the Church exclusively, it does not offer any definition of a chaplain or formal requirements for chaplaincy.

Another agreement signed on the same date, the «Agreement between the Holy See and the Republic of Lithuania concerning juridical aspects of the relations between the Catholic Church and the State», also, though with much less detail, establishes the rights of the Catholic Church to offer «pastoral care in hospitals, orphanages, and other establishments for health and social care and imprisonment establishments». However, implementation of such pastoral care in State and municipal establishments is left to be regulated «by an agreement between the competent authorities of the Catholic Church and the competent authorities of the Republic of Lithuania» of a future date.

On 9 April 2010 an amendment to the Law on Social Services of the Republic of Lithuania was adopted which introduced a definition of pastoral worker. Article 2, part 4 of the amended law defines a «pastoral worker» as a person working on a labour contract in a social institution. Such a worker should have a commission or the permission of a traditional religious community to perform religious services and provide pastoral help. The law also specifies the labour law status of pastoral workers and the special conditions under which they can be dismissed from work.

Chaplaincy in the hospitals and other institutions of public health is not regulated by a law. However, an agreement between the Bishop's Conference of Lithuania and the Ministry of Health Care was signed on 16 September 2002, «Regarding the pastoral care of the Catholic Church in health care institutions». Thereafter an order of the Minister of Health was signed on 24 July 2009 and amended in 2014, «On Pastoral Care in Health Institutions», which regulates chaplaincy services in the hospitals and other establishments under the Ministry of Health. The order provides that the chaplain can be employed by a hospital, specifies his rights in the institutional setting, etc. This order is actually exceptional in that it refers not only to the Catholic Church or the traditional churches in general, but also mentions the Evangelical Reformed Church of Lithuania as a provider of pastoral care in hospitals (this Church is the only church beside the Catholic Church to sign an agreement with the Ministry of Health on this matter).

3. Organisation of Chaplaincies by the State

The organisation of chaplaincies is not done in a centralised manner. Apart from the military service, state institutions are not obliged to have chaplains in their subordinate institutions, and therefore those arise on ad hoc basis. A lot of Catholic priests serve as pastoral help providers in public institutions on an unpaid basis. The state has no influence over their nomination. However, even in cases where chaplains are pastoral workers they are, as the laws and lower-level legal acts proclaim, fully dependent on their religious community for both nomination and continuation of their services. The Catholic Church both gives commissions for its clergy to perform spiritual services and can withdraw those commissions due to offences specified in Canon Law, which results in the chaplain losing his job.

The State's role in education of future chaplains is significant, although not particular. The Catholic seminaries in Lithuania are financed by the State, so most of the Catholic clergy receives state-financed education. However, there are no specific programmes for future chaplains. The police and the military, however, do offer training for acting chaplains in an attempt to better integrate the chaplains into their structures[2].

There are various arrangements as to the status of chaplains in State institutions. Chaplains in the military become a part of the military structures, receive military ranks and military statutes apply to them, although they also retain their subordination to the Ordinariate and administrative disciplinary action can be applied against them only with consent of the Ordinariate. By contrast, prison chaplains have no formal standing in the system and are not employed by the prisons. Various arrangements exist in health care and social care institutions, ranging from full employment to partial employment to no formal status in a health/social institution. Chaplains in detention institutions have, without exception, no employment relationship with those institutions.

Chapels as such are not an entity in Lithuania and they are usually mentioned in legal acts as a setting where chaplaincy services are delivered or as the material equipment for a chaplain's activities. In all institutions that do have chapels (for example, hospitals, prisons and the military), the chapels are set up and maintained by the institution itself. In some institutions the role of the chapel is performed by other premises.

4. Chaplaincy in Public Institutions

4.1. Chaplaincy in the Armed Forces

The armed forces of the modern state of Lithuania has had chaplains since its establishment in 1918, as described in the introductory chapter. Only the Catholic Church has chaplains in the military currently. The military chaplaincy is by far the most evolved chaplaincy among the institutionalised chaplaincies in Lithuania, as there is an international agreement as the basis for its activities and it has special leadership, the chancellery service (the Ordinariat); it is tightly integrated into the military structures, since the chaplains are not only clergymen, but they also have military ranks.

As specified in the agreement between the Holy See and the Republic of Lithuania concerning the pastoral care of Catholics serving in the Army, signed in 2000, the Military Ordinariate was established on 18 November 2000 by the Holy See.

[2] «Lietuvos policijos mokykloje prasidėjo Lietuvos policijos kapelionų mokymai (papildyta)». Last accessed on 12 July 2016, http://www.policija.lt/index.php?id=28413.

The first Military Ordinary was appointed by the Holy See the same year. According to the abovementioned agreement, the Military Ordinary is freely appointed by the Holy See, with prior notification given to the President of the Republic of Lithuania.

According to the Regulations of the Ordinariate of the Lithuanian Military, the Ordinariate as such is not a part of Lithuanian army, but some of the employees of the Ordinariate are a part of the Army. However, the Ordinariate is mostly financed from the Defence Ministry budget. The Ordinary himself is compensated for the expenses incurred while serving the military structures as well as paid a salary equal to that of a brigadier general in his first year of service.

Permanent chaplains, upon a recommendation from the Ordinary, can be granted status in the military and the befitting officer ranks. The current Chief Chaplain has the rank of colonel; the other chaplains hold the ranks of major and captain. According to Chief Chaplain Rimas Venckus, if the chaplain's appointment is revoked by the Military Ordinary, the Ministry of Defence is informed of the revocation and in turn dismisses the former chaplain from service. The military command can also initiate dismissal of a chaplain but must act in consultation with the Military Ordinary[3].

According to the Agreement between the Holy See and the Republic of Lithuania, Military Chaplains are appointed or dismissed from office by the Military Ordinary in agreement with the local Bishop. According to Article 4 of the agreement, «Military Chaplains shall be subject to the jurisdiction of the Military Ordinary, even when they remain incardinated in their own dioceses. Military Chaplains have the rights and duties of a pastor of a personal parish». Part 3 of Article 4 also allows the Military Ordinary, in coordination with the local Bishop, to temporarily engage other priests in pastoral ministry.

As mentioned before, currently there are 14 military chaplains from the Catholic Church in the armed forces, serving Catholics in all deployment locations. Military Chaplains have also participated in the Lithuanian mission to Afghanistan. The Evangelical Reformed Church has an agreement with the Ministry of Defence regarding the Evangelical Reformed pastoral care service to the Army of the Republic of Lithuania, which was signed on 1 September 2014. The agreement specifically provides that the chaplaincy services would be offered to the Army for free and that the Ministry of Defence would not finance the services. This agreement has not yet been effectively applied, as there is a very limited number of Reformed Church members in the military, and the Church lacks both staff and funding to effectively finance chaplaincy services[4].

[3] Interview with Chief Chaplain Rimas Venckus on 27 July 2016, personal archive of the author.
[4] Interview with Rimas Mikalauskas on 14 July 2016, personal archive of the author.

4.2. **Chaplaincy in Hospitals and Social Care Institutions**

Chaplaincy in the hospitals has been gradually revived in Lithuania after the restoration of independence, and its formalisation began in 2002. Currently the Catholic Church has 21 priests appointed as chaplains in hospitals. Lithuania currently has 134 hospitals of very different sizes and purposes, which means that very few actually have chaplains employed. For example, the largest hospital in Lithuania, Santariškių Clinics, employs two chaplains: one is employed full-time to serve in the oncology clinic and the other is employed part-time to serve all the other clinics[5]. According to the information provided by email by the Bishop's Conference of Lithuania, the other hospitals which do not employ chaplains are taken care of by the local parish priests. Social Care institutions, which fall under the authority of the Ministry of Social Care of Lithuania or under the municipal authorities, do not employ chaplains, and the spiritual needs of the residents are taken care of by the local parish priests.

As mentioned before, chaplaincy in hospitals and other public health institutions is regulated by an order of the Minister of Health signed on 24 July 2009 and amended in 2014, «On Pastoral Care in Health Institutions». The order provides that the chaplain can be employed by a hospital, specifies his rights in the institutional setting, etc. This order is actually exceptional in that it refers not only to the Catholic Church or the traditional churches in general, but also mentions the Evangelical Reformed Church of Lithuania as a provider of pastoral care in the hospitals. The Evangelical Reformed Church also signed an agreement with the Ministry of Health Care regarding its pastoral services in hospitals in 2014. The agreement provides that the Reformed Church can have chaplains in public hospitals if a special agreement is signed between the Church and a particular hospital. The agreement also stipulates that the Evangelical Reformed chaplains shall not be employed by the hospitals. So far this general agreement has not been effectively applied: the Evangelical Reformed Church has not yet appointed a Chief Hospital Chaplain, nor has it established any agreements with particular hospitals regarding pastoral care to be offered by chaplains in those hospitals[6].

As regards active Catholic chaplains, the order of the Minister of Health of 24 July 2009 specifies that they can be employed by the hospitals if the hospital judges that there is need for permanent chaplaincy services. The chaplains must be approved by the local Catholic Bishop. If the approval of the local Bishop is withdrawn and the hospital is notified of such withdrawal of approval, the hospital has to fire the chaplain.

[5] Interview with Santariškių Clinics chaplain Rimgaudas Šiūlys on 28 July 2016, personal archive of the author.

[6] Interview with Rimas Mikalauskas on 14 July 2016, personal archive of the author.

4.3. **Chaplaincy in the Penitentiaries**

The Penitentiary Code of the Republic of Lithuania provides for religious services in places of detention. Article 8 provides that religious communities can participate in the penitentiary and social rehabilitation process of sentenced persons, and Article 106 allows for both the individual and collective right to perform religious rites. Groups of sentenced believers can also ask to invite priests to perform religious rites.

The Internal Regulations of Penitentiary Establishments, approved by order of the Minister of Justice, further specify that each prison should have a facility for the performance of religious rites. Those facilities are to be set up heeding the advice of clergy. It also specifies that inmates can be visited by clergy of all confessions, but that the time should be chosen in coordination with the prison administration.

Penitentiaries are remarkable as regards chaplaincy in several aspects. First of all, the Churches seem to have quite a lot of interest in working in penitentiaries and prisons. The Catholics, the Orthodox and various Protestant groups have prison ministries. On the other hand, penitentiaries do not have paid chaplains. Chaplains of all confessions, without exception, work without state funding and without any official status in the official structures.

Only the Catholic Church has an agreement with the Ministry of Justice, which oversees the prison system in Lithuania, regarding chaplaincy services. The agreement, signed on 23 April 2003, does not provide for the possibility of a paid status for the Catholic Chaplain, but does oblige the prison leadership to care for the facilities in which the Chaplain works.

The other confession which works quite extensively with the prisons is the Orthodox Church, which has appointed its parish priests to visit the nearby penitentiaries offering pastoral care to inmates. It has priests appointed for every penitentiary.

The «Prison Chaplain Association of Lithuania» was established in 2002 by Protestants who wanted to offer a more coordinated ministry to sentenced persons. In the beginning it was called the «Ministry to Prisoners Association» but it changed its name in 2004 to attract chaplains from all confessions, a move which, in the end, was not successful in attracting a more inter-confessional effort. Its chaplains visit most of Lithuania's prisons.

4.4. **Chaplaincy in Other Public Institutions: Police, Airports, Parliament, Municipalities**

Vilnius international airport does have an interfaith chapel, but no chaplains. There has been some public information that some municipalities have rooms being adapted as chapels, but as of yet no municipality has a chaplain.

There are, however, 13 chaplains in state-run universities. Those chaplains are exclusively Catholic and mostly work part-time (for example, the four universities in Kaunas each have employed a part-time chaplain), although some work without

payment. The chaplains are appointed by the local bishop and employed by a university or an educational institution. There is no official agreement between the Catholic Church and the Ministry of Education regarding chaplains in state-run universities and colleges, but the chaplains are hired under the same conditions as chaplains in other institutions, where revocation of «missio canonica» by the church means that the institution has to fire a chaplain. The funding for the activities of chaplains comes from the university budgets.

There are also seven Catholic chaplains appointed in municipality-run schools that aspire to be «Catholic» in profile. As has been mentioned before, the possibility of a public school being Catholic was rejected outright by the Constitutional Court of Lithuania, which said that a public school cannot teach religious content or offer religious upbringing, except for catechesis classes. Yet, some schools, with the consent of local municipalities, persist in calling themselves «Catholic», having explicitly religious events and religious personnel beyond catechesis teachings. It is unclear if these initiatives go back to the leadership of the Catholic Church; they seem to originate from the local communities and municipal authorities. In one such case the Vilnius Region Municipality Council has approved an agreement with a monastic order regarding pastoral care in one of the municipal schools. The school, which has the name of a Catholic saint in its title (St. John Bosk Secondary School of Egliškės), presents itself as a Catholic school, offers many religious activities to its students, and has officially employed a priest as a chaplain since 2011.[7]

The Parliament of Lithuania, Seimas, invites religious figures from all nine traditional religious communities to participate in events on Independence Day and some other national memorial days; some of the leaders are invited to address the Seimas and to lead it in prayer. There has been some talk about establishing a chapel in Seimas recently, but, according to information presented by Vytautas Sinkevičius, Seimas, so far, does not have a chapel, although there is a «quiet room», given the name of the late Pope John Paul II after his passing, which is sometimes referred to as «a chapel». As a private initiative of one of the members of Seimas, a Catholic Priest is invited to Seimas from time to time to pray with the members of Seimas in the «quiet room». This chaplain, however, is completely unofficial; Seimas as a public body does not employ him or even invite him.[8]

The police are one of and perhaps the only State institution that has been actively pursuing chaplaincy services from the Catholic Church, and has recently expressed some interest in chaplaincy services from the Evangelical Reformed Church. The Commissar General of the police first asked for a chaplain to be appointed to the

[7] Beata Nanevič. «Ar Vilniaus rajone atsiras pirmoji katalikiška mokykla?». *http://www.savivaldybes.lt/zinios/index.php?lang=lt&gr=naujienos&id=5836.* Last accessed on 20 July 2016.

[8] Interview with Vytautas Sinkevičius on 15 July 2016, personal archive of the author.

police in 2004, and one chaplain was appointed for the entire police force by the Lithuanian Bishop's Conference. Gradually, more chaplains started to work for the police. In 2014 almost all of the 10 counties in Lithuania had a police chaplain. At first, chaplains worked without being employed, but it meant a hindrance for them, since there was no way the police could cover even their travel expenses incurred while serving the police. Therefore, according to the Chief Chaplain of police, Algirdas Toliatas, the police asked for permission to symbolically employ the chaplains, granting them one-tenth time employment. Currently the police employ 13 chaplains who serve in all the counties (major administration units of Lithuania) and the police schools as quarter-time employees, with the Chief Chaplain, who coordinates the activities of chaplains, serving as full time employee[9]. On 22 June 2016 an agreement was signed between the Ministry of Internal Affairs and the Bishop's Conference of Lithuania regarding pastoral care in all statutory institutions, that is, the possibility of pastoral care was expanded beyond the police to include firefighters, customs institutions, and the public security service. At first these institutions would be served by the same police chaplains, while in the future they might get their own. Also an agreement is being considered with Evangelical Reformed Church to enable it to offer pastoral care for officers belonging to their confession[10].

The chaplains in the police are employees and not statutory officers (a status usually bestowed on policemen, firefighters, customs officers, etc.) or state officials, so the general rules of the Labour Code apply to their employment. As is customary with the Catholic Church, the agreement between the Bishop's Conference and the Ministry of Interior provides that the chaplain has to be dismissed from employment if his «mission cannonica» is withdrawn by a local Bishop.

5. State Chaplaincy and Islam and Other New Religions

Lithuania has a very small traditional Islamic (Tatar) community and immigration has not yet swelled the percentage of the population confessing Islam. Therefore there are no Muslim chaplains in State-run institutions. According to Mufti Ramazanas Jakubauskas, prison institutions had been contacting them regarding various issues like how to feed Muslim prisoners, but there has never been any significant need for chaplaincy. The only way the Muslim community helps the prisoners is by sending books to prisons[11].

[9] Interview with Algirdas Toliatas on 19 July 2016, personal archive of the author.

[10] «Kapelionus turės visos statutinės vidaus reikalų įstaigos». 2016-06-22. Available at http://www.alfa.lt/straipsnis/50042562/kapelionus-tures-visos-statutines-vidaus-reikalu-istaigos, last accessed 2016-07-12.

[11] Interview with Ramazanas Jakubauskas on 15 July 2016, personal archive of the author.

Of all the different spheres where chaplains do operate, new religious movements (using the broad definition of the same to include all «non-traditional» faiths in Lithuania) have been active only in prisons. Of the new religious movements, some spiritual work in the prisons has been done by the Hare Krishna religious community, but currently they are no longer visiting the inmates[12]. However, the most active groups in prisons have been the Protestant organisation the «Association of Prison Chaplains» and the Word of Faith Church. However, as described above, the prison chaplaincy in Lithuania has never gone beyond the initiative of the religious communities; it has been accommodated by state institutions, but never accepted as part of state-sponsored activities.

6. Private Chaplaincies and Chaplaincies in Private Institutions

There are no private chaplaincies and, to the best of my knowledge, no chaplaincies in private institutions, if one excludes the institutions owned by the Catholic Church from the definition. Catholic-run education establishments do have chaplains.

7. Chaplaincy Unions

Lithuania has no chaplaincy unions, and, as of yet, there have been no public discussions about the demand for such an institution. Even if the institution of chaplaincy does grow, chaplaincy unions are unlikely to arise in a Catholic context, governed strictly by canon law.

[12] Interview with Saulius Domarkas on 15 July 2016, personal archive of the author.

ASSISTANCE SPIRITUELLE AU LUXEMBOURG

Philippe Poirier
Konstantinos Papastathis*

1. Situation politique

A la suite des élections législatives d'octobre 2013, une majorité parlementaire s'est constituée sans les chrétiens-sociaux pour la première fois depuis 1979 au Luxembourg[1]. Le nouveau gouvernement, avec deux de voix de majorité au Parlement, présidé désormais par Xavier Bettel, est constitué des libéraux, des socialistes et des écologistes. L'accord de coalition, qui a été signé le 29 novembre 2013 entre les nouveaux partenaires gouvernementaux, annonçait des réformes majeures quant aux relations de l'Etat avec les cultes d'une part, au niveau constitutionnel et d'autre part, en ce qui concerne l'enseignement et la place des religions dans le système scolaire public luxembourgeois. Extrait du programme gouvernemental :

> « Cultes Les réalités sociétales requièrent une remise en cause des relations actuelles entre l'Etat et les cultes. Les partis de la coalition gouvernementale affirment le principe du respect de la liberté de pensée, de la neutralité de l'Etat à l'égard de toutes les confessions religieuses ainsi que de l'autodétermination des citoyens. Le Gouvernement dénoncera les conventions existantes pour entamer des négociations avec les cultes, lancer une discussion sur leur financement et redéfinir les relations entre les communes et les cultes. La législation relative aux fabriques d'église sera remplacée par une réglementation qui garantira la transparence au niveau du patrimoine et des ressources des Eglises. Il sera introduit un cours unique neutre et harmonisé d'éducation aux valeurs pour tous les élèves de l'enseignement fondamental et secondaire, lequel remplacera les cours actuels "Formation/Education morale et sociale" et "Instruction religieuse et morale" dans l'enseignement fondamental et

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[1] Le Parti chrétien social est celui de l'actuel président de la Commission européenne et Premier ministre sortant du Luxembourg en 2013, Jean Claude-Juncker.

> secondaire. Dès 2014, les célébrations officielles de l'Etat pour la Fête nationale connaîtront un acte central à caractère civil »[2].

Les objectifs inscrits dans le programme gouvernemental ont connu une première application avec l'introduction, en juin 2014, à l'occasion de la fête nationale, d'une cérémonie sécularisée à la Philharmonie de la Ville de Luxembourg en présence du Chef de l'Etat, le Grand-Duc, du Gouvernement, des corps constitués et du corps diplomatique, distincte du *Te Deum* qui se tenait traditionnellement à la Cathédrale catholique de Luxembourg, le même jour. Le *Te Deum* est devenu de fait une cérémonie « privatisée » de l'Eglise catholique mais toujours en présence du Chef de l'Etat et des élus sur une base volontaire. En juin 2016, tout en maintenant l'acte sécularisé de célébration, les représentants des institutions, dont le Premier ministre, ont de nouveau assisté au *Te Deum* où des prières publiques de l'Archevêque catholique, de l'Evêque orthodoxe pour le Benelux en charge du Luxembourg, de l'Imam et du Grand Rabbin de Luxembourg ont été professées.

2. Situation constitutionnelle

Les relations entre l'Etat et les communautés cultuelles ont été déterminées pour la première fois dans la Constitution du 23 juin 1848, puis reprises par la Constitution du 17 octobre 1868 et sont toujours en vigueur. Le Luxembourg s'est toutefois engagé dans un processus de réforme constitutionnelle de grande ampleur y compris en matière religieuse. Il est inachevé et d'un point de vue juridique « non sécurisé », du moins pour les conventions et les lois adoptées vis-à-vis de cultes de janvier 2015 à aujourd'hui.

Dans la Constitution toujours en vigueur, l'article 19 proclame le principe de la liberté des cultes en ces termes : « la liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions religieuses, sont garanties, sauf la répression des délits commis à l'occasion de l'usage de ces libertés ». L'article 20 affirme pour sa part que « nul ne peut être contraint de concourir d'une manière quelconque aux actes et aux cérémonies d'un culte ni d'en observer les jours de repos ». L'article 22 dispose que « l'intervention de l'Etat dans la nomination et l'installation des chefs des cultes, le mode de nomination et de révocation des autres ministres des cultes, la faculté pour les uns et les autres de correspondre avec leurs supérieurs et de publier leurs actes, ainsi que les rapports de l'Eglise avec l'Etat, font l'objet de conventions à soumettre à la Chambre des Députés pour les dispositions qui néces-

[2] Gouvernement du Luxembourg, Programme gouvernemental, http://www.gouvernement.lu/3322796/Programme-gouvernemental.pdf, pp. 8-9, 2013. Il prévoyait également des mesures contre les mouvements religieux sectaires au Luxembourg : « Famille (…) Le Gouvernement analysera l'opportunité de créer une législation spécifique relative aux sectes », p. 11, *op. cit.*, 2013.

sitent son intervention ». Sur la base de cette ultime disposition constitutionnelle, des conventions ont été conclues dans le passé avec un certain nombre de cultes, à savoir l'Eglise catholique du Luxembourg, le Consistoire israélite du Luxembourg, l'Eglise protestante réformée du Luxembourg, l'Eglise protestante du Luxembourg, l'Eglise orthodoxe du Luxembourg et l'Eglise anglicane du Luxembourg entre 1998 et 2003. L'article 106 de la Constitution stipule enfin que « les traitements et pensions des ministres des cultes sont à charge de l'Etat et réglés par la loi ». En 1998, la Chambre des Députés a décidé que toute communauté religieuse désireuse d'établir des relations permanentes avec l'Etat sur base de l'article 22 de la Constitution doit répondre à l'avenir à quatre critères[3] :

- Professer une religion qui est reconnue dans le monde ;
- Etre officiellement reconnue dans au moins un Etat membre de l'Union européenne ;
- Etre prêt à se conformer au cadre juridique et la Constitution du Grand-Duché ;
- Être établi au Luxembourg et soutenu par une communauté suffisamment large et représentatif.

Le Gouvernement tripartite a initié, dès son investiture en décembre 2013, des négociations avec les représentants des communautés religieuses conventionnées et ceux de la Choura du Luxembourg et de l'Alliance des humanistes, des agnostiques et des athées, jusqu'alors non reconnues[4].

Il s'est agi en la matière d'élaborer de nouvelles conventions de l'aveu même du Gouvernement tripartite pour prendre comme base des critères statistiques réels ou supposés, à savoir « l'augmentation du nombre de non-croyants, l'évolution de la pondération en ce qui concerne l'appartenance aux différentes religions présentes au Luxembourg, l'augmentation du nombre de personnes pouvant être croyantes mais

[3] Chambre des Députés (1998) A-1998-067-0001, Loi du 10 juillet 1998 portant modification des articles 22, 23 et 26 de la loi modifiée du 10 août 1912 sur l'organisation de l'enseignement primaire, 10 juillet 1998.

[4] Le Gouvernement formé alors des chrétiens sociaux et des socialistes avaient chargé en 2012 un groupe d'experts internationaux d'évaluer si les conventions actuelles telles que régies par l'article 22 de la Constitution répondaient-elles encore aux réalités socio-culturelles du Luxembourg et au principe de l'égalité de traitement et du respect des droits de l'homme préconisé par le Conseil de l'Europe ? Et quelles pouvaient être, le cas échéant, les alternatives éventuelles au développement des relations entre les pouvoirs publics et les communautés religieuses en tenant compte, notamment, des expériences et pratiques dans d'autres Etats membres du Conseil de l'Europe ? Voir à ce sujet, Gouvernement du Luxembourg, Département des Cultes, Rapport du Groupe d'experts chargé de réfléchir sur l'évolution future des relations des relations entre les pouvoirs publics et les communautés religieuses ou philosophiques au Luxembourg, https://www.gouvernement.lu/735392/rapport.PDF, octobre 2012.

ne se sentant pas liées à une communauté et la baisse des taux de pratique »[5]. Cette nouvelle organisation conventionnelle entre l'Etat et les communautés religieuses renforce le principe de la séparation entre l'Etat et l'Eglise déjà inscrit de fait dans la Constitution. Dans les projets de loi qui furent votés en juillet 2016 pour tous les cultes déjà conventionnés, en plus du seul Islam, le Gouvernement tripartite rappela que : « La neutralité de l'Etat en matière religieuse implique en effet la garantie de la liberté de conscience, la liberté positive et négative de religion, mais n'exclut pas la coopération entre les pouvoirs publics et les communautés cultuelles, étant donné qu'elles continuent à occuper une place dans la sphère publique ». Les lois conventionnelles de juillet 2016 reprennent les critères de représentativité définis en 1998 par le Parlement mais comme déjà abordé, elles sont en situation d' « insécurité juridique » du fait qu'elles sont liées à une suppression/modification des articles actuels de la Constitution.

En effet, à côté de cette réforme conventionnelle, le Luxembourg s'est engagé dans un vaste processus de réforme constitutionnelle. En septembre 2014, le Gouvernement tripartite a décidé de convoquer un référendum sur quatre réformes constitutionnelles dont l'une était libellée ainsi : « Le financement des cultes : l'Etat devrait-il continuer à payer les salaires et les pensions de ministres des cultes ? »[6]. Finalement, le Gouvernement a retiré cette question. Le référendum, tenu en juin 2015, portait sur l'ouverture du droit de vote actif aux jeunes à partir de l'âge de 16 ans, l'ouverture du droit de vote actif aux législatives à toute personne non-luxembourgeoise (UE et hors UE) à condition que celle-ci réside au Luxembourg depuis déjà au moins 10 ans et qu'elle ait déjà participé au moins une fois aux élections communales ou européennes au Luxembourg et la limitation des mandats de ministres à 10 ans consécutives. Les trois questions ont été rejetées massivement par les citoyens luxembourgeois (entre 70% et 80% pour le « non »). Un nouveau référendum devrait être organisé avant la fin de la législature, prévue théoriquement pour octobre 2018, sur l'ensemble de la Constitution et nécessitant au préalable un vote à la majorité qualifiée des deux tiers au Parlement, ce qui implique la recherche d'un consensus avec les chrétiens-sociaux.

Dans le projet actuel de réforme constitutionnelle, de nouveaux articles sur l'Etat, les religions et les convictions philosophiques, sont insérés :

[5] Projet de loi réglant les relations entre l'État et l'Église catholique, et portant 1. Modification de la loi modifiée du 30 avril 1873 sur la création de l'évêché 2. Modification de certaines dispositions du Code du Travail 3. Abrogation de la loi du 10 juillet 1998 portant approbation de la Convention du 31 octobre 1997 entre le Gouvernement, d'une part, et l'Archevêché, d'autre part, portant re-fixation des cadres du culte catholique et réglant certaines matières connexes 4. Abrogation de certaines dispositions de la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'État.

[6] Gouvernement du Luxembourg, Point presse du Premier ministre à l'issue du Conseil de gouvernement, http://www.gouvernement.lu/4030316/22-pp-conseil, septembre 2014.

- Art. 14. « Toute personne a le droit à la liberté de pensée, de conscience et de religion ».
- Art. 24. « La liberté de manifester ses convictions philosophiques ou religieuses, celle d'adhérer ou de ne pas adhérer à une religion sont garanties. Nul ne peut être contraint de concourir d'une manière quelconque aux actes et aux cérémonies d'un culte ni d'en observer les jours de repos. La liberté des cultes et celle de leur exercice sont garanties, sauf la répression des infractions commises à l'occasion de l'exercice de ces libertés ».
- Art. 114. « En matière religieuse et idéologique, l'Etat respecte en vertu du principe de séparation, les principes de neutralité et d'impartialité. La loi règle les relations entre l'Etat et les communautés religieuses ainsi que leur reconnaissance. Dans les limites et formes fixées par la loi, des conventions à approuver par la Chambre des Députés peuvent préciser les relations entre l'Etat et les communautés religieuses reconnues ».

Par conséquent, dans la perspective éventuelle de la ratification constitutionnelle, une nouvelle convention a été signée en janvier 2015 avec tous les cultes conventionnés et pour la première fois avec les représentants de l'Islam au Luxembourg[7]. La réforme renforce en effet l'autonomie, la neutralité et l'indépendance réciproques entre l'Etat et les cultes, cela surtout par l'affirmation formelle du principe que « les communautés décident librement de leur organisation territoriale et personnelle et que l'Etat n'intervient pas dans la nomination des collaborateurs des cultes ». L'intervention de l'autorité publique au niveau de la nomination et de la prestation de serment du chef de culte est abandonnée. En contrepartie de cette autonomie renforcée, les cultes ont promis de respecter les valeurs fondamentales de la Constitution. Les nouvelles dispositions conventionnelles entraînent des modifications importantes en termes de personnel rétribué actuellement par l'Etat au titre des conventions anciennes et oblige les cultes, dont l'Eglise catholique, a redéfinir sa politique pastorale en termes de ressources humaines à la fois au niveau des aumôneries militaire, pénitentiaire et hospitalière.

> Chapitre 1er. - Dispositions communes aux communautés religieuses dans la nouvelle Convention
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> Art. 2. La communauté religieuse exerce son culte librement et publiquement dans le cadre des droits et libertés constitutionnels et dans le respect de l'ordre public, des droits de l'homme et de l'égalité de traitement. Elle s'engage à écarter de l'organisation de la communauté tout membre qui agit ou appelle à agir en violation de ces principes.
>
> Art. 3. La communauté religieuse décide librement de son organisation territoriale et personnelle, y compris pour ce qui est des aumôneries.

[7] Gouvernement du Luxembourg, Convention entre l'État du Grand-Duché de Luxembourg et les communautés religieuses établies au Luxembourg, http://www.gouvernement.lu/4369567/Convention.pdf, janvier 2015.

Art. 4. Les communautés religieuses s'engagent à ne plus recruter leurs collaborateurs à charge du budget de l'Etat à partir de la date de l'approbation de la présente convention. À partir de cette date, tous les collaborateurs recrutés par une communauté religieuse seront engagés sous un régime de droit privé.

Art. 5. Le Gouvernement prend les mesures nécessaires afin d'assurer que le personnel engagé par les communautés religieuses avant l'entrée en vigueur de la présente convention continuera à se voir appliquer les dispositions relatives aux traitements et pensions contenus dans les conventions existantes au moment de leur engagement.

Art. 6. Les communautés religieuses s'engagent à inviter les ministres du culte engagés sur base des conventions visées à l'article 34 de faire valoir leurs droits à pension à l'âge de 65 ans au plus tard.

Art. 7. La présente convention fixe pour chaque communauté religieuse un soutien financier annuel qui sera viré pour le 31 janvier au plus tard de l'année en cours. Le montant de ce soutien financier est fixé en fonction de l'importance des communautés religieuses. Il sera adapté aux variations de l'échelle mobile des salaires. Le montant du soutien financier sera viré progressivement au culte concerné dès qu'il dépassera la somme des traitements, charges patronales comprises, des ministres du culte concerné pris en charge en vertu du régime prévu à l'article 5.

3. Situation pénale

Le Code pénal luxembourgeois assure une très grande protection de la Foi et de son expression, à l'exclusion de toute forme de violence.

TITRE II. - Chapitre II. - Des délits relatifs au libre exercice des cultes

Art. 142. Toute personne qui, par des violences ou des menaces, aura contraint ou empêché une ou plusieurs personnes d'exercer un culte, d'assister à l'exercice de ce culte, de célébrer certaines fêtes religieuses, d'observer certains jours de repos, et, en conséquence, d'ouvrir ou de fermer leurs ateliers, boutiques ou magasins, et de faire ou de quitter certains travaux, sera punie d'un emprisonnement de huit jours à deux mois et d'une amende de « 251 à 2.000 euros ».

Art. 143. Ceux qui, par des troubles ou des désordres, auront empêché, retardé, ou interrompu les exercices d'un culte qui se pratiquent dans un lieu destiné ou servant habituellement au culte ou dans les cérémonies publiques de ce culte, seront punis d'un emprisonnement de huit jours à trois mois et d'une amende de « 251 à 5.000 euros ».

Art. 144. Toute personne qui, par faits, paroles, gestes, menaces, écrits ou dessins, aura outragé les objets d'un culte, soit dans les lieux destinés ou servant habituellement à son exercice, soit dans les cérémonies publiques de ce culte, sera punie d'un emprisonnement de quinze jours à six mois et d'une amende de « 251 à 5.000 euros ».

Art. 145. Sera puni des mêmes peines celui qui, par faits, paroles, gestes, menaces, écrits ou dessins, aura outragé le ministre d'un culte, dans l'exercice de son ministère. S'il l'a frappé, il sera puni d'un emprisonnement de deux mois à deux ans et d'une amende de « 500 à 5.000 euros ».

> Art. 146. Si les coups ont été la cause d'effusion de sang, de blessure ou de maladie, le coupable sera puni d'un emprisonnement de six mois à cinq ans et d'une amende de « 500 à 10.000 euros ».

Le Code pénal règlemente fortement la vie du culte dans ses éventuels actes politiques (par exemple prières dans les établissements publics & sermons contre les lois ou le Gouvernement en général).

> TITRE IV. - Chapitre VII. - Des infractions commises par les ministres des cultes dans l'exercice de leur ministère
>
> Art. 267. Sera puni d'une amende de « 500 à 5.000 euros » tout ministre d'un culte qui procédera à la bénédiction nuptiale avant la célébration du mariage civil. En cas de nouvelle infraction de même espèce, il pourra, en outre, être condamné à un emprisonnement de huit jours à trois mois.
>
> Art. 268. Les ministres des cultes qui, dans des discours prononcés ou par des écrits lus, dans l'exercice de leur ministère, et en assemblée publique, ou par un écrit contenant des instructions pastorales, en quelque forme que ce soit, auront attaqué directement le Gouvernement, une loi, un arrêté (royal) grand-ducal ou tout autre acte de l'autorité publique, seront punis d'un emprisonnement de huit jours à trois mois et d'une amende de « 251 à 5.000 euros ».
>
> Si l'instruction pastorale, le discours ou l'écrit contient une provocation directe à la désobéissance aux lois ou aux actes de l'autorité publique, ou s'il tend à soulever ou à armer une partie des citoyens contre les autres, le ministre du culte qui l'aura publié, prononcé ou lu, sera puni d'un emprisonnement de trois mois à deux ans, si la provocation n'a été suivie d'aucun effet, et d'un emprisonnement de dix mois à trois ans, si elle a donné lieu à la désobéissance, autre toutefois que celle qui aurait dégénéré en sédition ou révolte. Le coupable sera, de plus, condamné à une amende de « 500 à 10.000 euros ».

Comme le rappelait le groupe d'experts en 2012, à l'exception de l'aumônerie catholique des armées dirigée par un aumônier général ayant le grade de lieutenant-colonel, « les autres aumôneries (hôpitaux, asiles) ne sont pas organisées statutairement par l'Etat. Les pouvoirs publics prennent cependant toutes les dispositions aux fins de faciliter l'accès des personnels religieux auprès des personnes recluses. Le ministère de la Justice verse une indemnité aux ministres du culte catholique affectés aux établissements pénitentiaires »[8].

4. Aumônerie militaire

C'est en 1945 que sont créés pour la première fois des postes d'aumôniers militaires pour l'Armée luxembourgeoise. Elle est alors une armée de conscription et de métier. Elle le sera jusqu'en 1966. Il s'est agi alors, d'une part, de doter le comman-

[8] Gouvernement du Luxembourg, op.cit., octobre 2012.

dement de l'Armée d'un aumônier militaire et, d'autre part, dans le cadre des officiers de gratifier chaque bataillon d'un aumônier catholique au grade de capitaine, nommé par le Souverain après consultation de l'Evêché catholique[9].

A partir de 1952, la loi concernant l'organisation militaire stipule nommément en son article 38 que l'aumônerie est partie prenante de l'Armée luxembourgeoise au même titre que la Justice militaire. Alors que l'organisation judiciaire dans l'Armée fut l'objet d'une loi spéciale, celle du service de l'aumônerie et les attributions des aumôniers furent fixées par un simple règlement d'administration publique relevant directement du ministre en charge de la Force armée. L'art. 41 de ladite Loi considérait également comme adjoints au corps des officiers de carrière et chargés de fonctions militaires en vertu d'une commission au même titre que les magistrats de l'ordre judiciaire, les médecins militaires, 3 à 4 prêtres catholiques, dont 1 capitaine - ou major-aumônier et 3 capitaines-aumôniers. La première Loi portant sur l'Armée d'après-guerre, reconnaissait le principe de la pluralité religieuse puisque des ministres des cultes protestant et israélite pouvaient être chargés de fonctions d'aumônier en cas de nécessité. Leurs services pouvaient être sollicités sans être considérés comme des militaires de carrière au même titre que les prêtres catholiques. Les commissions de recrutement étaient organisées par le Ministre de la Force armée, les Ministres compétents de la Justice, de la Santé et des Cultes. Il était indiqué que le Chef d'Etat-Major, pour la commission des aumôniers s'adressait au Ministre des Cultes afin que des propositions soient faites par le « Chef du Culte catholique ou au Consistoire intéressé », lesquels étaient consultés une seconde fois avant même la nomination définitive par le Ministre de la Force Armée[10].

A partir de 1954, un nouveau règlement grand-ducal précise en son art. 7 que le Chef d'Etat-Major de l'Armée assure les relations de service avec la Justice et l'aumônerie militaires. Il pouvait prendre « toutes les mesures qu'exige l'action de ces organes dans les corps de troupe et services de l'Armée, conformément aux lois et règlements y relatifs »[11].

De 1958 à 1966, un règlement grand-ducal réserve un statut particulier aux ecclésiastiques titularisés et/ou en formation théologique. Ils sont recrutés directement au titre des officiers de réserve militaire avec l'indication de leur fonction « aumônier de réserve » tout comme les médecins, les médecins-dentistes ou pharmaciens. Les officiers de réserve sont recrutés par voie d'engagement volontaire parmi les volontaires. L'admission à la candidature d'officier de réserve était prononcée par le Ministre de la

[9] Arrêté grand-ducal du 20 février 1945 portant création de postes d'aumôniers militaires près les bataillons de l'armée.

[10] Loi du 23 juillet 1952 concernant l'organisation militaire.

[11] Arrêté Grand-Ducal du 24 avril 1954 fixant la composition et les attributions des organes de direction, de commandement et d'administration de l'Armée.

Force Armée, le chef d'Etat-Major entendu en son avis. S'il s'agissait de l'admission d'un aumônier de réserve, le Ministre prenait en outre l'avis de l'aumônier auprès du commandement de l'Armée. De plus, ces conscrits religieux bénéficiaient d'un statut dérogatoire au titre de l'article 75 de l'arrêté grand-ducal du 14 mai 1955 concernant les modalités de recensement, de recrutement et d'incorporation des Luxembourgeois et apatrides astreints au service militaire : les candidats-aumôniers de réserve qui accomplissaient le service obligatoire actif étaient affectés au service de l'aumônerie et étaient dispensés de certaines formations dont celle de brancardier. Mais ils étaient tous soumis à une instruction militaire de base et devaient en outre suivre un cycle d'études d'un établissement militaire déterminée par le Ministre de la Force Armée et préparant à l'emploi d'officier de réserve auquel ils se destinaient (généralement en Belgique et en France). Le résultat final du cycle d'études, complété par celui du stage pratique, valait pour le classement des candidats. Et, ils devaient *in fine* suivre un stage obligatoire auprès de la seule aumônerie de l'Armée.

En 1963, il est procédé à une nouvelle réforme de l'Armée[12]. Le Chapitre IV.- Organisation et cadres de l'Armée, en son art. 37. I et en son article 38, distingue clairement l'Armée qui comprend officiellement l'Etat-Major ; des unités de combat et de support de combat, d'active et de réserve ; des centres d'instruction et des écoles ; des services techniques et des dépôts, des services administratifs etc., d'institutions qui lui sont rattachés à savoir la Justice militaire et un service de l'aumônerie.

Pour les commissions des aumôniers, le Ministre des Cultes demandait toujours des propositions au Chef du Culte catholique ou au Consistoire intéressé, lesquels étaient toujours sollicités pour la nomination pleine et entière des aumôniers. Pour rendre plus flexible, au regard de la baisse générale des vocations religieuses, la nouvelle loi marquait son accord pour « qu'exceptionnellement des personnes disposant d'une expérience ou de connaissances spéciales pouvaient être adjointes au corps des officiers et sous-officiers tout en continuant à exercer d'autres responsabilités pastorales en dehors de l'Armée ». Ces recrutements partiels passaient toutefois toujours à travers une Commission organisée par le chef de l'Etat-major et c'était *in fine* le Ministre de la Force armée qui acceptait ou non l'intégration de ces prêtres dans le corps d'armée. Les lois qui lui ont succédée n'ont pas modifié cette organisation des choses[13]. Seul, en 1964, un nouveau règlement grand-ducal, en son art. 70, stipulait qu'étaient affectés « d'office », après une période de formation militaire, au service

[12] Loi du 23 juillet 1963 ayant pour objet de remplacer les chapitres I à V de la loi du 23 juillet 1952 concernant l'organisation militaire. Chapitre 1er - Recrutement de l'Armée (art. 2-12) Chapitre 2 - Service militaire (art. 13-17) Chapitre 3 - Mesures sociales (art. 18-36) Chapitre 4 - Organisation et cadres de l'Armée (art. 37-48) Chapitre 5 - Dispositions pénales (art. 49-57).

[13] Loi du 29 juin 1967 portant abolition du service militaire obligatoire et remplaçant les chapitres I à V de la loi du 23 juillet 1952 concernant l'organisation militaire, telle qu'elle a été modifiée par des lois des 23 juillet 1963, 12 mai 1964 et 30 décembre 1965. A-1984-043-0001 Texte coordonné du 10

de santé ou au service de l'aumônerie : les ministres des cultes, les membres déclarés d'une communauté religieuse, les étudiants en théologie fréquentant un établissement reconnu par le chef du culte intéressé[14].

En 1995, le caractère de service aux Armées est renforcé avec la loi modificatrice, notamment pour tenir compte des missions nouvelles de maintien de la paix pour l'Armée luxembourgeoise dans le cadre des missions de l'OTAN, de l'OSCE et de l'ONU où il est indiqué en son article 15 que « peuvent être adjoints au corps des officiers et chargés de fonctions militaires en vertu d'une commission au même titre que des magistrats de l'ordre judiciaire, des juristes des docteurs en médecine, des médecins-dentistes, des psychologues, des kinésithérapeutes, des pharmaciens, des « représentants des cultes religieux reconnus au Luxembourg ». L'effectif total de ces adjoints supplémentaires (aumôniers compris) ne pouvant pas dépasser quinze officiers. Il est ajouté également qu'une commission d'officier pouvait également être délivrée aux fonctionnaires civils de la carrière supérieure incluant de fait notamment le vicaire général de l'Eglise catholique et de toutes les Eglises chrétiennes reconnus à partir de 1997 (réformées, orthodoxes et anglicane)[15]. L'article en question concernant la justice militaire et le service de l'aumônerie reprenait largement les dispositions en vigueur (article 17). Le Conseil d'Etat s'opposa toutefois à voir un règlement ministériel organiser le service de l'aumônerie et déterminer les attributions des aumôniers préférant le maintien d'un règlement grand-ducal en la matière[16]. L'article 5 (ancien article 4) concernait le service de l'aumônerie. De plus, la Commission parlementaire se demanda si la pluralité des confessions était respectée. Selon les explications fournies par le Gouvernement, des ministres d'autres cultes que celui de l'Eglise catholique pouvaient être chargés, dorénavant, de l'assistance des militaires[17].

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mai 1984 de la loi du 23 juillet 1952 concernant l'organisation militaire, telle qu'elle a été modifiée dans la suite.

Texte coordonné du 10 mai 1984. A. Armée B. Gendarmerie C. Police D. Dispositions communes E. Dispositions additionnelles. Texte coordonné du 18 avril 1989 de la loi du 23 juillet 1952 concernant l'organisation militaire, telle qu'elle a été modifiée dans la suite.

[14] Règlement Grand-Ducal du 15 janvier 1964 concernant les modalités de recensement, de recrutement et d'incorporation des Luxembourgeois et apatrides astreints au service militaire ainsi que les conditions de fonctionnement des conseils de révision et du conseil mixte.

[15] Projet de loi portant réorganisation de l'Armée 1. Arrêté grand-ducal de dépôt 2. Texte du projet de loi 3. Exposé des motifs 4. Commentaire des articles

[16] Projet de Loi portant réorganisation de l'Armée Avis du Conseil d'Etat (22.4.1997).

[17] Projet de Loi n.º 4158/08 portant réorganisation de l'Armée et modification de la loi du 27 juillet 1992 relative à la participation du Grand-Duché de Luxembourg à des opérations pour le maintien de la paix (OMP) dans le cadre d'organisations internationales. Rapport de la Commission de la Force publique (25.6.1997).

L'existence même d'un service d'aumônerie militaire a été contestée une seule fois officiellement à la Chambre des Députés en 2000 par le représentant de l'aile gauche et laïque du Parti des Verts. Le ministre libéral de l'époque avait rappelé que le cours d'éducation morale aux officiers était dispensé par l'aumônier général de la Force Publique. Depuis la création de l'aumônerie en 1945, tous les responsables de l'Armée avaient chargé les aumôniers de l'instruction du cours d'éducation morale dans le cadre de l'instruction de base des recrues : « Au regard de la formation de l'aumônier, en particulier ses études dans le domaine des sciences morales, de son intégrité morale et de son engagement exemplaire au service des hommes de troupe ainsi que de son souci permanent à soutenir moralement les militaires .du rang et les jeunes recrues qui l'apprécient pour son engagement, je ne vois aucune raison pour remettre en cause une décision prise, voire une tradition qui remonte aujourd'hui à plus de 50 ans au sein de l'armée luxembourgeoise. Au contraire, les faits avancés ci-dessus me donnent suffisamment de raisons à maintenir le statu quo. L'intéressé, en tant que officier commissionné et membre à part entière de l'Armée luxembourgeoise rend un service précieux à notre armée en assumant le cours d'éducation morale qui est une partie intégrante du programme d'instruction de base des recrues. Je voudrais ajouter pour terminer que pendant les dernières années durant ce fut l'aumônier qui, faute de présence d'un psychologue attitré, a donné suite à toute demande de soutien moral exprimée par des membres de l'armée »[18].

Depuis 1987, c'est le Lieutenant-Colonel Nicolas Wenner qui est l'aumônier général de l'Armée. Comme il est précisé sur le document de présentation aux jeunes recrues, ce dernier est « à la disposition de tous les soldats volontaires, des cadres militaires et personnels civils qui souhaitent le rencontrer pour partager avec lui une difficulté, un problème, pour lui poser une question sur la foi, la religion, pour échanger en toute simplicité et amitié ». Il assume aussi les fonctions d'aumônier général auprès de la Police Grand-Ducale. Sous son égide, par tradition, l'Armée organise une revue pour la fête de la Saint Martin (Mäertesfeier), le 11 novembre. Il est à noter que par la loi du 20 décembre 2002 modifiant la loi modifiée du 23 juillet 1952 concernant l'organisation militaire, des candidats soldats volontaires de nationalité d'un des Etats membres de l'Union européenne peuvent être admis à l'Armée sous condition de résider au Luxembourg depuis au moins trente-six mois. Alors que les militaires étaient principalement de religion chrétienne et/ou sans croyance particulière, la transformation d'un point de vue religieux et philosophique s'opère. Des soldats seraient de confession musulmane et/ou de culte shintoïste selon l'aumônerie militaire.

Dans le cadre de la réforme des relations entre l'Etat et les cultes entamée depuis janvier 2015, le député d'opposition chrétien-social Jean-Marie Halsdorf, ancien

[18] Réponse de Monsieur Charles Gœrens, Ministre de la Défense à la question parlementaire no 1213 de Monsieur le député Jean Huss.

ministre de la Défense, rappela que l'aumônerie militaire avait été introduite pour permettre aux soldats volontaires, cadres militaires et personnels civils de recourir à un appui psychologique ou religieux en cas de problèmes ou difficultés, et que même l'Armée de Terre française a toujours un service d'aumônerie et que les dépenses afférentes étaient prises en charge par l'Etat, alors que ce dernier est laïcisé depuis 1905. Dans le cadre des dispositions transitoires inscrites dans la convention conclue en date du 26 janvier 2015 avec l'Archevêché, le Gouvernement s'est engagé à prendre en charge les traitements du personnel engagé par la communauté religieuse au moment de l'entrée en vigueur de la Convention précitée jusqu'au moment où ils feront valoir leurs droits à la retraite. Cette disposition concerne évidemment également les personnes qui exercent une fonction d'aumônier. Le régime qui sera par la suite mis en place en application des nouvelles conventions prévoit que l'Etat ne prendra plus en charge directement les traitements du personnel qui sera recruté par l'Archevêché sous un régime de droit privé.

Pour l'actuel ministre socialiste de la Défense, Etienne Schneider, le Gouvernement est « soucieux de renforcer l'autonomie et l'indépendance réciproques entre l'Etat et les cultes, les parties à la Convention précitée ont retenu le principe qu'il appartiendra à chaque communauté religieuse de décider de son organisation territoriale et personnelle, y compris pour ce qui est des aumôneries. L'Archevêché continuera dès lors à avoir la possibilité d'organiser des aumôneries. L'Archevêché pourra évidemment recourir à l'enveloppe financière qui lui sera accordé par l'Etat pour assurer ces services d'aumônerie, dont ceux à l'Armée luxembourgeoise (en parallèle, il est prévu en principe de renforcer l'appui psychologique disponible à l'Armée luxembourgeoise pour les soldats volontaires, cadres militaires et personnels civils de l'Armée en quête de soutien laïc) ». De plus, il ajouta qu'il sera possible à l'avenir de prévoir de manière neutre et non-discriminatoire des services d'aumônerie au sein de l'Armée luxembourgeoise pour toutes les communautés religieuses conventionnées intéressées. Il appartiendrait, le cas échéant, aux communautés religieuses intéressées elles-mêmes d'assurer leur propre service d'aumônerie dans le respect du cadre précité, c'est-à-dire avec des collaborateurs recrutés et rémunérés par les communautés religieuses respectives[19].

5. Assistance spirituelle - administration pénitentiaire

A l'image de l'assistance spirituelle à l'Armée, celle pour l'administration pénitentiaire trouve son origine, quoique plus tardivement, après la seconde guerre mondiale. Dans la Loi du 21 mai 1964 portant réorganisation des établissements

[19] Réponse du Ministre de la Défense à question N°1064 de Monsieur Jean-Marie Halsdorf concernant Service de l'aumônerie au sein de l'Armée luxembourgeoise.

pénitentiaires et des maisons d'éducation et création d'un service de défense sociale, il est mentionné pour la première fois dans cadre du personnel des prisons au titre de la carrière moyenne du technicien diplômé et du même niveau que deux infirmières visiteuses, un aumônier (article 5). L'aumônier au titre de l'art. 7 était nommé par le Grand-Duc sur présentation, par le procureur général d'Etat, de deux candidats, et sur avis du ministre de la Justice mais sans l'avis formel de l'Archevêque en l'absence de convention signée avec l'Eglise catholique à l'époque.

A partir de 1970, un nouveau règlement grand-ducal réorganise[20] et redéfinit le rôle de l'administration pénitentiaire. Il était ainsi stipulé en son art. 20 qu'à « l'égard de toutes les personnes dont elle a la charge à quelque titre que ce soit, l'administration assure le respect de la dignité inhérente à la personne humaine et prend toutes les mesures destinées à faciliter leur réintégration dans la société ». Dans les établissements établis pour l'exécution des peines, elle surveille spécialement l'application du régime intérieur qui est institué dans le but de favoriser l'amendement des détenus condamnés et de préparer leur reclassement social (Art 21). Dans les maisons d'éducation, le rôle de l'administration consistait principalement dans la mise en œuvre de tous les moyens susceptibles d'assurer l'éducation ainsi que la formation scolaire et professionnelle des pupilles (art. 22). L'art. 23 affirmait que l'administration des établissements pénitentiaires et des maisons d'éducation dépendait du Ministère de la Justice. Le Règlement grand-ducal plaçait sous l'autorité directe du procureur général d'Etat l'aumônier (catholique) nommé en conformité des articles 5 et 7 de la loi du 21 mai 1964 ainsi que les autres aumôniers et les conseillers moraux agréés par le Ministre de la Justice (nouvellement créés pour tenir compte de la pluralité religieuse et philosophique). De plus, à l'art. 40, il était indiqué que l'aumônerie des établissements comprenait des ministres des trois cultes reconnus par l'Etat (alors que les conventions n'étaient pas signées! Il s'agissait des catholiques, des protestants et des juifs). Des conseillers moraux représentant une pensée non-confessionnelle ou une pensée confessionnelle non reconnue par l'Etat, pouvaient être autorisés par le Ministre de la Justice à donner leur assistance morale aux détenus et aux pupilles qui le demandaient affirmant ne pas professer un culte reconnu par l'Etat. Selon l'art. 41 du Règlement, l'aumônier du culte catholique, attaché aux établissements pénitentiaires de Luxembourg, était fonctionnaire de l'Etat en vertu de l'article 56 de la loi du 21 mai 1964 portant réorganisation des établissements pénitentiaires. Il prenait obligatoirement résidence dans un logement de service de ces établissements. Les aumôniers catholiques des autres établissements ainsi que les ministres des autres cultes étaient simplement agréés par le Ministre de la Justice sur proposition du pro-

[20] Règlement Grand-Ducal du 03 décembre 1970 concernant l'administration et le régime interne des établissements pénitentiaires.

cureur général d'Etat. Selon l'art. 98 du Règlement grand-ducal, outre toutes les actes du culte, l'aumônier catholique était chargé de l'éducation religieuse des pupilles[21].

A partir de la fin des années 70, le poste d'aumônier catholique en tant que poste de fonctionnaire n'était plus occupé. En effet, nommer un ecclésiastique de l'Eglise catholique à ce poste signifiait en vérité le sortir du cadre des ministres du culte catholique et le placer sous l'autorité du pouvoir exécutif à l'instar de tous les autres fonctionnaires nommés auprès de l'administration des établissements pénitentiaires. Or, en pratique, une telle solution n'était guère concevable. D'abord, parce que l'expérience montrait qu'il s'agissait en l'occurrence d'un poste très difficile dont les titulaires changeaient souvent, ensuite, parce que l'aumônier dépendait, du moins pour ce qui en est des missions spirituelles, directement de la hiérarchie ecclésiastique. En conséquence, une nouvelle loi en 1989 ne prévint plus qu'un « détachement officiel d'un ministre du culte catholique » qui restait toutefois dans son cadre normal avec tous les avantages et obligations de sa profession avec, en surplus, un supplément de traitement pour un surcroît d'activités, comme cela était prévu dans de nombreux cas analogues (médecins par exemple). L'indemnité proposée et exprimée en points indiciaires était celle payée jusqu'ici aux titulaires en service[22].

La dernière Loi portant réorganisation de l'administration pénitentiaire, adoptée en 1997, rappelle que la direction générale et la surveillance des établissements pénitentiaires sont exercées par le procureur général d'Etat[23]. Selon l'art. 5, le fonctionnaire chargé de la direction d'un établissement pénitentiaire par délégation du procureur général de l'Etat a sous ses ordres le personnel affecté à cet établissement. Cependant il ne peut pas s'immiscer dans les attributions purement « médicales » ou « spirituelles ». D'après l'art. 7 de la Loi, le service de l'aumônerie est assuré auprès de chaque établissement pénitentiaire par un aumônier désigné par l'Archevêque de Luxembourg et agréé par le ministre de la Justice sur avis du procureur général d'Etat. Après une brève discussion soulevée sur le bien-fondé d'un tel service par certains membres de la Commission juridique de l'époque (notamment des libéraux et des socialistes), ladite Commission décida de maintenir l'article dans la tenue proposée

[21] Règlement Grand-Ducal du 03 décembre 1970 concernant l'administration et le régime interne des établissements pénitentiaires. Chapitre 1Il Administration des établissements pénitentiaires et des maisons d'éducation.

[22] Règlement Grand-Ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires. Titre I - Des établissements pénitentiaires Titre II - Des droits, obligations et attributions du personnel de l'administration des établissements pénitentiaires et des personnes qui apportent leur collaboration à cette administration Titre III - de la sécurité des établissements Titre IV - Régime de détention.

[23] Loi du 27 juillet 1997 portant réorganisation de l'administration pénitentiaire.

par le Conseil d'Etat tout en approuvant le fait que des représentants d'autres religions soient admis à l'intérieur de la prison[24].

D'après l'art. 14 de la Loi, l'aumônier touche une indemnité « non pensionnable de soixante-cinq points indiciaires » équivalente aux fonctionnaires de la carrière supérieure assumant la direction d'un établissement pénitentiaire. Au sein des centres pénitentiaires du Luxembourg. Il est prévu à l'art. 34. un service éducatif comprenant l'aumônerie, les éducateurs, les contremaîtres instructeurs et les moniteurs. Selon l'art. 35 de la Loi, l'aumônerie des établissements comprend des ministres des trois cultes reconnus par l'Etat (catholique, réformé et juif) depuis 1998. Les conseillers moraux ont été maintenus mais seulement pour les personnes majeures. L'aumônier du culte catholique, attaché aux centres pénitentiaires, est toujours fonctionnaire de l'Etat. Toutefois il peut être fait appel au concours d'aumôniers catholiques agréés par le ministre de la justice sur proposition du procureur général d'Etat pour le suppléer et/ou le seconder. Les ministres des autres cultes sont toujours agréés par le ministre de la Justice sur proposition du procureur général d'Etat (art. 36).

L'aumônier a pour mission de célébrer les offices religieux, d'administrer les sacrements et d'apporter régulièrement à ses administrés les secours de leur religion aux jours et heures fixés par le règlement intérieur de l'établissement auquel il est attaché (art. 93). Les ministres des cultes nommés ou agréés auprès de l'établissement peuvent s'entretenir librement et aussi souvent qu'ils l'estiment utile avec leurs administrés et correspondre librement avec eux (art. 94). Les ministres des cultes et les conseillers moraux ne doivent exercer auprès des personnes qu'ils assistent qu'un rôle spirituel et moral en se conformant au règlement intérieur de l'établissement (art. 95). Il est interdit aux ministres des cultes et aux personnes chargées de l'assistance morale dans les établissements sous peine de retrait de l'agrément : 1) de révéler des faits dont ils auraient connaissance en raison de leur fonction ; 2) de recevoir, en raison de leur fonction, des dons, gratifications ou avantages quelconques de la part de leurs administrés, ou de la famille et des amis de ces derniers (art. 96).

Selon la Section VI. - Assistance spirituelle de ladite Loi, chaque détenu est autorisé à satisfaire aux exigences de sa vie religieuse et à participer aux exercices religieux organisés pour les détenus de sa religion. Il peut recevoir, s'il le désire, les visites du ministre du culte de sa communauté religieuse. Si le détenu en fait la demande, il peut aussi participer aux exercices et cérémonies religieuses d'un culte autre que celui auquel il a déclaré appartenir et recevoir les visites du ministre du culte de cette communauté. Dans les mêmes conditions il peut recevoir l'assistance morale et les visites des conseillers moraux visés à l'article 35 s'il affirme ne pas professer un culte reconnu par l'Etat (art. 275).

[24] Projet de Loi n.º 4076/07 portant réorganisation de l'administration pénitentiaire, Rapport de la Commission Juridique (11.6.1997).

Pour les détenus de religion catholique, une messe est dite à la chapelle de l'établissement tous les dimanches et jours de fête aux heures fixées par le directeur sur la proposition de l'aumônier. Les détenus qui ne pratiquent pas ce culte peuvent être autorisés à assister à ces offices. L'assistance aux offices et services spirituels est facultative (art. 276).

Les détenus peuvent être autorisés à recevoir ou à conserver en leur possession les objets de pratique religieuse et les livres d'édification et d'instruction religieuse de leur confession. Ils ont accès à la bibliothèque des ouvrages religieux aménagée par les aumôniers des différents cultes (art. 277)[25].

En parallèle de ces services d'aumônerie pénitentiaire, il existe à proprement dit une Commission de défense sociale (depuis 1964) dont les membres sont des psychologues/psychiatres, le médecin des établissements, des agents d'assistance sociale et des délégués permanents à la protection de la jeunesse. Le psychologue ou psychiatre et l'assistant-psychologue sont désignés par le ministre de la Justice sur proposition du procureur général d'Etat. La commission donne son avis motivé sur les cas et la situation particulière des différents intéressés et sur les problèmes d'un ordre plus général qui lui sont soumis par l'autorité chargée de l'exécution des peines, en tenant compte des dossiers judiciaires et pénitentiaires des condamnés et formule des propositions concernant le traitement pénal tant individuel que général des détenus. La commission propose en outre les mesures d'assistance à prendre à l'égard des détenus libérés. Elle examine l'évolution des pupilles et formule des propositions sur les mesures éducatives à prendre en collaboration ou pas avec les aumôniers nommés ou agréés.

6. Assistance spirituelle - Domaine de la Santé

L'assistance spirituelle dans les établissements de santé/et ou de convalescence ne fait partie, à la différence de l'Armée et de l'administration pénitentiaire, d'aucunes dispositions législatives et/ou règlementaires de l'Etat luxembourgeois. Aucunes références nommément et/ou par description de fonctions ne sont incluses dans le règlement grand-ducal organisant par exemple la convention collective du personnel des établissements hospitaliers publics et/ou privés, qui par ailleurs pour ces derniers sont principalement liés à des congrégations religieuses catholiques[26].

La Loi du 24 juillet 2014 relative aux droits et obligations du patient, en son article 3 « Respect mutuel, dignité et loyauté » prévoit toutefois que « le patient a

[25] Règlement Grand-Ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires.

[26] Règlement grand-ducal du 29 décembre 1998 portant déclaration d'obligation générale de la convention collective de travail pour les employés privés du Secteur d'Aide et de Soins et du Secteur Social.

droit à la protection de sa vie privée, à la confidentialité, à la dignité et au respect de ses convictions religieuses et philosophiques » tout en fournissant « conformément à ses facultés les informations pertinentes pour sa prise en charge, en adhérant et en collaborant à celle-ci, le patient participe à la prestation optimale des soins de santé ». Lors de sa prise en charge, il respecte les droits du prestataire de soins de santé et des autres patients[27]. Au moment de l'adoption de cet article, le Conseil d'Etat s'interrogea sur la portée normative d'une « disposition rappelant des valeurs comportementales, comme le respect mutuel et la loyauté »[28].

Selon l'article 7 de la loi de 2014, le patient possède un droit à l'assistance, c'est-à-dire de se faire aider « dans ses démarches et décisions de santé par une tierce personne, professionnel de santé ou non, qu'il choisit librement ». Les aumôniers de santé, que seules les Eglises chrétiennes délivrent systématiquement et/ou régulièrement (catholique, réformée et orthodoxe), peuvent assumer cette fonction non comme responsables d'un culte mais comme personne du cercle privé du patient. Si l'aumônier de santé et/ou la personne du service de pastorale à la santé des Eglises catholique, réformées et orthodoxes sont choisies par le patient pour le soutenir et l'aider, ils sont appelés « accompagnateur du patient ». Dans la mesure souhaitée par le patient, l'accompagnateur est, pour autant que possible, intégré dans la prise en charge du patient. Dans la mesure où le patient majeur le demande, le secret professionnel visé à l'article 458 du Code pénal est levé à l'égard de l'accompagnateur. L'identité de l'accompagnateur est notée dans le dossier. Le professionnel de santé peut cependant à tout moment décider librement de s'échanger en dehors de la présence de l'accompagnateur. En son article 12, la loi de 2014 indique également que « tout patient majeur disposant de la capacité de consentir peut, pour le cas où il ne serait plus en mesure d'exprimer sa volonté et de recevoir l'information nécessaire à la prise d'une décision relative à sa santé, désigner une personne de confiance. Cette personne peut être toute personne physique, professionnel de santé ou non, désigné par lui ». Cette personne de confiance peut-être au même titre que l' « accompagnateur du patient », un représentant d'un culte et/ou membre du service pastorale de la santé de l'une des Eglises chrétiennes.

L'absence de règlementation publique sur d'éventuelles assistances spirituelles dans les établissements de santé laissent dès lors une grande autonomie aux hôpitaux.

[27] Loi du 24 juillet 2014 relative aux droits et obligations du patient, portant création d'un service national d'information et de médiation dans le domaine de la santé et modifiant: - la loi modifiée du 28 août 1998 sur les établissements hospitaliers; - la loi modifiée du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel; - le Code civil.

[28] Document 6469/0227- Projet de loi relatif aux droits et obligations du patient, portant création d'un service national d'information et de médiation dans le domaine de la santé et modifiant Avis du Conseil d'Etat (26.2.2013).

Parmi les quatre plus grands établissements du Luxembourg, tous ont des « politiques » distinctes en la matière.

Le plus grand hôpital du Grand-Duché, Groupe des Hôpitaux Robert Schuman, hôpitaux et cliniques situés dans la Capitale, propriété notamment de congrégations religieuses catholiques, affiche clairement dans sa charte des valeurs un volet « Religiosité et Spiritualité » œcuménique et respectueux de l'état de croyance et/ou de non croyance : « Nous sommes ouverts à tout être humain, quelles que soient ses convictions idéologiques ou religieuses. Vivre sa foi exprime une dimension existentielle de l'Homme. La foi peut contribuer à libérer énergie et créativité utiles pour le processus de guérison. Elle rend également sensible au fait que l'action humaine a ses limites et que la vie comprend aussi la vulnérabilité et la faiblesse. Dans nos hôpitaux, nous sommes attentifs à ces aspects de la vie »[29]. Chaque hôpital du groupe dispose d'un « Service accompagnement et pastorale » constitué en permanence d'un prêtre, d'une religieuse et d'un théologien laïc sauf pour l'Hôpital du Kirchberg [où il n'existe que des auxiliaires et des coopérateurs pastoraux relavant respectivement du budget de l'hôpital et d'associations privées directement ou indirectement financées par des congrégations religieuses et/ou des mouvements de laïcs catholiques (Association sans but lucratif)]. Il est à noter que les Eglises réformées et orthodoxes du Luxembourg ont confirmé l'existence d'une collaboration active avec la pastorale de l'hôpital catholique romaine, d'une entente entre prêtres chrétiens pour assurer un service continu dans les hôpitaux privés et publics du Luxembourg et d'une stratégie commune de défense de la pastorale envers les directions hôpitaux publics de Luxembourg et du maintien de lieux de cultes spécifiques au sein des établissements publics de santé et/ou de convalescence.

En ce qui concerne les plus grands hôpitaux publics, le Centre hospitalier de Luxembourg (Ville de Luxembourg) ne reconnaît aucunement un service de pastorale particulier à aucun culte. Il agit strictement dans le cadre de la loi de 2014 afin de faire respecter les convictions religieuses et philosophiques des patients. Dans cette configuration, le patient peut demander assistance, accompagnement et/ou désigner une personne de confiance parmi des représentants des cultes et des associations philosophiques conventionnés ou non. Il faut attirer toutefois l'attention sur le fait que dans son comité d'éthique, composé de membres professionnels de santé, médecins et personnel soignant, et de membres experts extérieurs choisis pour leur compétence dans le domaine de l'éthique, siège un représentant de l'Eglise réformée du Luxembourg. Ce comité vise notamment à « fournir sur demande une aide à la décision au patient ou à ses proches si le patient n'est plus en état de s'exprimer, ainsi qu'au médecin traitant hospitalier chaque fois qu'une pluralité de démarches peut être envi-

[29] Groupe des Hôpitaux Robert Schuman, Nos valeurs, http://www.hopitauxschuman.lu/le-groupe-hrs/valeurs, consultation septembre 2016.

sagée du point de vue médical et que le choix, entre elle, donne lieu à des dilemmes éthiques »[30]. De plus, un service religieux catholique est célébré le dimanche soir de manière hebdomadaire dans la chapelle du CHL.

Le Centre Hospitalier Emile Mayrisch (Entente hospitalière des communes du Sud du Luxembourg) et le Centre Hospitalier du Nord du Luxembourg mènent une politique également conforme à la Loi de 2014 mais traitent de manière différente l'assistance spirituelle. Dans le premier cas, il est reconnu un service d'aumônerie, à la charge des cultes (sauf pour les frais administratifs et l'entretien de l'oratoire chrétien), qui dans son fonctionnement serait œcuménique, non seulement entre Eglises chrétiennes mais aussi avec la Synagogue d'Esch-sur-Alzette (la seconde du pays) et certaines associations cultuelles d'identité musulmane. Les aumôniers ont un service d'astreinte et sont placés sous la responsabilité de l'aumônier catholique quant à leurs rapports avec l'administration hospitalière[31].

Dans le second cas, il a été institué un Service de pastoral dont les frais de personnel et coûts administratifs sont pris en charge directement par la direction de l'hôpital. Les personnes de ce service sont déléguées par la Pastorale des malades et personnes âgées de l'Eglise catholique. En contrepartie, ledit service pastoral est dans l'obligation de requérir un représentant d'un autre culte conventionné si un patient ou un membre de l'entourage du patient en fait la demande au titre des dispositions de l'accompagnateur et de la personne de confiance prévus dans la loi de 2014[32].

7. Dispositions spécifiques en vigueur pour l'Eglise catholique- septembre 2016

Selon la Convention adoptée en 1998 et en vigueur jusqu'en septembre 2016, d'après l'Article 2, l'archidiocèse de Luxembourg est subdivisé en régions pastorales, doyennés et paroisses qui constituent des circonscriptions de pastorale territoriale. En dehors des circonscriptions de pastorale territoriale, l'archevêché comprend des aumôneries ainsi que des services de pastorale spécialisée poursuivant des buts répondant aux principes de l'Eglise.

Selon l'Article 3 de la Loi approuvant la Convention de 1998, l'Archevêque organise la formation des ministres du culte. Il nomme et révoque les ministres du culte dans les conditions prévues par les règles de droit canonique. Dans le cadre de la présente Convention, le pouvoir de nomination et de révocation de l'Archevêque

[30] Centre hospitalier de Luxembourg, le Comité d'éthique hospitalier, https://www.chl.lu/fr/le-comite-dethique-hospitalier-ceh, consultation septembre 2016.

[31] Centre Hospitalier Emile Mayrisch, aumônerie, https://www.chem.lu/informations-pratiques-et-contact/services-facilites, consultation septembre 2016.

[32] Centre Hospitalier du Nord du Luxembourg, Service pastoral (Cultes) http://www.chdn.lu/fr/ihr-aufenthalt/dienste/seelsorge.php, consultation septembre 2016.

s'étend à 254 postes répartis aux catégories et fonctions suivantes notamment pour la Pastorale : un curé de la Cathédrale; cinq curés-doyens régionaux; cent-cinq curés; un aumônier général de la force publique; vingt aumôniers; cinquante-huit vicaires/coopérateurs pastoraux; quarante-six auxiliaires pastoraux. Les actes de nomination et de révocation sont notifiés au ministre des Cultes. Par dérogation, il est de convention expresse entre parties que l'archevêque a la faculté de nommer, sous réserve de l'accord préalable du Conseil de Gouvernement, à 23 postes supplémentaires pour des fonctions à déterminer. Les traitements et les pensions des ministres du culte sont à charge du budget des dépenses de l'Etat et fixés par la loi (Article 4). Sans préjudice de l'alinéa qui précède, l'effectif des ministres du culte affectés aux services de pastorale spécialisée ne peut être supérieur à quarante unités au total (Article 5)[33].

Selon la nouvelle Convention signée en janvier 2015 et la Loi adoptée en juillet 2016 pour le culte catholique, c'est l'Archevêque, conformément aux règles de droit canonique de cette église, qui fait fonction de chef du culte et assume la direction et la juridiction de l'Eglise catholique. Dans cette perspective au titre de l'Article 15, l'alinéa 2 précise que l'Eglise catholique peut comprendre des aumôneries. Il est évident que le fonctionnement de ces aumôneries, en dehors des règles de droit canonique internes à l'Eglise, doit fonctionner selon les règles de chaque institution dans laquelle l'aumônerie est censée être active, sachant cependant que le principe de la possibilité d'une aumônerie ancrée dans le présent texte général de base ne peut pas être refusé.

8. Autres présences d'aumôniers et ou de représentants du culte dans des établissements publics et/ou syndicats

Depuis 1991, il est stipulé l'existence d'une aumônerie pour les professions liées à la navigation fluviale bénéficiant d'exemptions fiscales pour ses activités sans que l'aumônier catholique soit fonctionnaire du ministère des Transports[34]. La Fédération Nationale des Corps de Sapeurs-Pompiers du Luxembourg regroupant professionnels

[33] Loi du 10 juillet 1998 portant approbation de la Convention du 31 octobre 1997 entre le Gouvernement, d'une part, et l'Archevêché, d'autre part, portant re-fixation des cadres du culte catholique et réglant certaines matières connexes.

[34] Arrêté Grand-Ducal du 21 décembre 1991portant publication des décisions prises par la Commission de la Moselle au cours de sa session ordinaire du 13 novembre 1991 en matière de péages sur la Moselle. b) A partir du 1er janvier 1992, le numéro 31 (section D, chapitre III - exemption de droits d'éclusage --) du « Tarif des péages sur la Moselle entre Thionville (Diedenhofen) et Koblenz (Coblence) » est nouvellement conçu dans les termes reproduits ci-après: « 31 - les bateaux-pompes, les bateaux-déshuileurs et les bateaux appartenant aux services de surveillance, de sauvetage ou d'aumônerie de la batellerie, lorsque ces bateaux se déplacent pour le service ».

et bénévoles, association sans but lucratif, dispose d'une aumônerie[35] dont les frais de fonctionnement (notamment le traitement de l'aumônier catholique et l'organisation de la fête de Sainte Barbe) sont pris en charge directement par elle sur une base volontaire individuelle, et qu'aucune disposition la prévoit et/ou l'interdit dans la Loi et les règlements grand-ducaux qui organisent les services de secours[36].

Depuis 2010 et 2013, la Loi sur les médias électroniques et celle portant sur la création une autorité audiovisuelle indépendante prévoit la création, en son article 31, d'un Conseil national des programmes [37]. Ledit Conseil national se compose de vingt-cinq membres au maximum, délégués pour cinq ans par les organisations les plus représentatives de la vie sociale et culturelle du pays, y compris les cultes reconnus au titre des conventions de 1998 et de 2015 (s'ajoutent les groupes politiques parlementaires, les syndicats les plus représentatifs sur le plan national et les organisations patronales, etc.).

La « Confédération Luxembourgeoise des Syndicats Chrétiens » (LCGB), second syndicat du Luxembourg aux élections sociales, possède son propre aumônier national qui, selon les derniers statuts adoptés en 2014 en son article 28.12, assure les liens entre le LCGB et les institutions de l'Eglise catholique. II lui incombe le devoir de mettre en accord les « décisions politico-syndicales du LCGB avec la doctrine sociale chrétienne et ceci dans le cadre du programme de principe du LCGB »[38]. Il fait en outre partie du Comité central qui dirige le LCGB conformément aux statuts et décisions du congrès national et du conseil syndical avec, toutefois, une simple voix consultative.

9. Conclusion

*In fine***,** la question de l'assistance spirituelle au Luxembourg se trouve revivifiée par le pluralisme religieux et philosophique qui s'est emparé de la société. Elle oblige les autorités publiques à imaginer un nouveau cadre légal et financier pour assurer

[35] Aumônerie SOS, Saves Our Souls, http://www.aumonerie-sos.lu/ver4/index.php, consultation juillet 2016.

[36] Loi du 12 juin 2004 portant création d'une Administration des services de secours. ##Règlement grand-ducal du 12 février 2015 modifiant le règlement grand-ducal modifié du 6 mai 2010 portant organisation 1. De la Division d'incendie et de sauvetage de l'Administration des services de secours 2. Des services d'incendie et de sauvetage des communes.

[37] Loi du 27 août 2013 portant création de l'établissement public « Autorité luxembourgeoise indépendante de l'audiovisuel » 9 septembre 2013 & Loi du 17 décembre 2010 portant modification de la loi modifiée du 27 juillet 1991 sur les médias électroniques.

[38] Confédération Luxembourgeoise des Syndicats Chrétiens**,** Version consolidée des statuts tenant compte des modifications adoptées lors du Congrès national extraordinaire du LCGB du 23 novembre 2002, et des Congrès statuaires extraordinaires du 21 septembre 2009 et du 15 octobre 2014 à Eischen. http://lcgb.lu/wp-content/uploads/2014/10/Statuts_2014_FR.pdf, 2014.

l'un des droits fondamentaux au titre de Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales qu'est la liberté religieuse et/ou de ne pas croire, indépendamment de sa condition personnelle et/ou professionnelle. Pour autant, contrairement à d'autres manifestations de la relation de la Puissance publique à la Religion et vice-versa, l'assistance spirituelle dans les institutions publiques demeure fragile en raison même de l'absence d'une harmonisation règlementaire et en pratique entre l'Armée, la prison et l'hôpital.

Cette « fragilité » est d'autant plus réelle que l'on assiste aussi à une recrudescence du conflit politique entre les héritiers de la culture judéo-chrétienne **et ceux du** libéralisme culturel au moment d'une refonte constitutionnelle (inachevée) qui, si elle maintient le régime conventionnel entre l'Etat et les cultes (l'ouvrant même à d'autres comme l'Islam), réduit les moyens humains et financiers pour assurer une assistance spirituelle de qualité et sur la longue durée dans les institutions publiques. Le devenir de l'assistance spirituelle ne tient pas seulement à l'état réel ou supposé de sécularisation et/ou de re-confessionnalisation partielle de la société au Luxembourg mais de la préconisation du Politique et de l'existence d'un cadre juridique conséquent et unique entre les différentes institutions publiques. Il est aussi important de distinguer les questions de loyauté à l'Etat dans l'Armée, de sécurité dans la prison et de libre exercice de la médecine, de la question proprement dite de l'assistance spirituelle.

CHAPLAINCY IN PUBLIC INSTITUTIONS. MALTA

Vincent A. De Gaetano

Background

Although Malta, like all member States of the Council of Europe, is a secular State it recognises the role and importance of religion and religious practices in the social life of the people. The Constitution of Malta, originally promulgated by a British legislative instrument[1] and since amended by twenty five Acts of the Maltese Parliament and four Proclamations, provides in Article 2 thereof that «The Religion of Malta is the Roman Catholic Apostolic Religion». The same provision provides that the «authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong» and, moreover, that «religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education». This provision, however, does not in or of itself grant any privileges to the Catholic Church[2], since other provisions of the Constitution and of other legislative enactments[3] guarantee full freedom of religious practice to all religions and their adherents, as well as the right of parents of any minor to opt out of religious instruction in school[4]. Article 2 of the Constitution is only a recognition of a social fact, namely that the overwhelming majority of the population

[1] The Malta Independence Order, 1964.

[2] Indeed recently, by Act XXXVII of 2016, the offences of *Vilification of the Roman Catholic Apostolic Religion* (art. 163 of the Criminal Code, Cap. 9) and *Vilification of other cults tolerated by law* (art. 164) were repealed, leaving only under the Title of «Crimes Against the Religious Sentiment» the crime of *Obstruction of religious services* (art. 165). Even however with regard to this last mentioned provision, the words «…or religious service of the Roman Catholic Apostolic Religion or of any other religion tolerated by law…» have been altered to read «…or religious service of any religion tolerated by law…».

[3] Notably the European Convention Act, Cap. 319 and the Education Act, Cap. 327.

[4] If the minor has attained the age of sixteen but not the age of eighteen, the right to opt out can be exercised by the minor himself or herself.

of Malta professes to be Roman Catholic and that the history of this Church in Malta is inextricably intertwined with the social, political and even the economic history of the Maltese archipelago.

It is against this backdrop that chaplaincy in public institutions in Malta must be viewed. Indeed, in so far as chaplaincy involves providing a specific service to a particular community, this form of religious assistance often goes hand in hand with the development of social rights and the corresponding institutions.

Up to the first quarter of the twentieth century, what «social rights» were accepted by the ruling class in Malta as possible candidates for incorporation into appropriate legislation were largely inspired by the social teaching of the Catholic Church. The Church was also responsible for providing most of the available welfare and charitable institutions. It can safely be said that the spring board for the necessary quantum leap in legislation was provided by the educational system in Malta which, even in the late nineteenth century and by the standards of the time, was good. The Keenan Report[5], published in 1879, noted that Malta at the time had a University[6], 2 lyceums, 2 secondary schools and 79 primary schools, which catered for a total of 8,565 students. There were, besides the government run schools, 125 «private» schools, most of which were run by the Catholic Church or by institutions affiliated thereto, which catered for another 2,710 students[7]. The major impetus for social reform came in 1891 with Leo XIII's encyclical *Rerum Novarum* which, although frowning upon strikes, placed great emphasis on the material well-being of the «working poor», respect for the workers' dignity, the right to appropriate wages and rest and leisure periods for workers, and the formation of «workingmen's unions». The right to private property was also highlighted[8]. Schools, hospitals, poor houses, trade unions - all sought and readily found in the Catholic Church in Malta an abundant supply of diocesan and religious priests to take up the role of chaplains[9].

[5] Keenan, P.J. Report upon the Educational System of Malta (1880), London, H.M.S.O.

[6] Between 1937 and 1974 (when Malta became a Republic), the University petitioned for and obtained regularly the right to the use of the word «Royal» in its title - Royal University of Malta.

[7] See Schiavone, M.J. *B'Imħabba u Solidarjetà* (1991), Malta, PIN Publications, p. 28.

[8] Some of the themes in *Rerum Novarum* were taken up again by Pius XI in 1931 in *Quadragesimo Anno* which however focused more on the principle of subsidiarity as the basis for social organisation.

[9] Today the Archdiocese of Malta has 70 parishes (56 diocesan, 14 religious), 643 priests (295 diocesan [of which 25 reside abroad, and 7 incardinated abroad work in Malta], 345 religious), 881 lay religious (49 brothers, 772 [of which 680 of Pontifical Right, and 92 of Diocesan Right] sisters), 60 members of secular institutes (4 male, 56 female); and 29 seminarians (figures as on 31 December 2015). The Diocese of Gozo has 15 parishes, 5 missions, 167 priests (149 diocesan, 18 religious), 117 lay religious (23 brothers, 94 sisters), 11 seminarians [data for 2014].

Legal position today

There is no law which defines or regulates «chaplaincy» or its work in public institutions other than with regard to the Prisons. In fact, chaplaincy work undertaken in all other public institutions - from the Armed Forces of Malta and the Civil Protection Department to schools and retirement homes - is based on a variety of *ad hoc* arrangements, some undertaken with particular religious orders, some with the archdiocese, and yet others which are in the form of personal arrangements between individuals. In this short report I have tried to collect and present as much relevant information as possible in regard to each particular «chaplaincy». I am indebted to the many people who over the summer vacation provided me with the necessary information on the administrative and practical arrangements in force.

Prisons[10]

The Civil Prison, known today as the Corradino Correctional Facility, is the one institution where chaplaincy work has always been minutely regulated by law. Looking at the Prison Regulations in force, for instance, in 1899, the Prison Chaplain was required to reside in the Prison[11]. He was «entrusted with the instruction to, and attendance upon, prisoners professing the Roman Catholic Religion» and it was specifically laid down that «[t]here shall be free and confidential communication between the Inspector and the Chaplain on all Prison matters, and the Chaplain shall also confer with the Superintendent on any matter connected with the welfare of prisoners». He was particularly enjoined to «be careful that English prisoners belonging to the Roman Catholic Church be not deprived of religious instruction at the Chapel»[12], and was also required to «see and admonish Roman Catholic Prisoners on their admission and discharge» and to «daily, during the day time, visit prisoners in their cells in order to be able to give his advice and instruction with reference to the particular character and state of mind of other prisoners»[13]. At a time when the *Index Librorum Prohibitorum* still had the force of ecclesiastical positive law with the attendant penalties, the Chaplain also had the direction of the Prison library: «[t]he books to be read by Roman Catholic Prisoners shall be issued by him, and books which are proposed for

[10] At the end of August 2016, the prison population in Malta stood at 550 (509 male, 41 female). Of these 232 were foreigners and only 318 were Maltese. Moreover 413 were sentenced prisoners and the remaining 137 were awaiting trial.

[11] Regulation 211.

[12] Regulation 212.

[13] Regulation 214.

the use of prisoners, shall beforehand be approved by him»[14]. Provision was also made for the «instruction» of prisoners of other denominations[15] [16].

The current Prison Regulations[17] provide for two types of «prison chaplain»: the Prison Chaplain properly so called, for prisoners professing the Roman Catholic Religion, and a «qualified representative» for other denominations «if there is in the prison a sufficient number of prisoners of the same religion»[18]. In the case of the former, that is the Prison Chaplain, he «shall be appointed»; in the case of the latter «a qualified representative of that religion shall be appointed or arrangements shall be made with a qualified representative». Every prisoner, upon admission, must declare to the Director [of Prisons] the religion or the religious denomination to which he belongs, which declaration «shall be amended by the Director, if so requested by the prisoner, unless such a request is frivolously made. In such a case the prisoner shall be counselled on the issue»[19]. Regulation 44 provides that arrangements shall be made so as not to require prisoners to do any unnecessary work on their recognised days of religious observance. The «special duties» of the Prison Chaplain, which are

[14] Regulation 218.

[15] The following excerpt from the Government Report for the years 1949-1955 is particularly telling: «The Church of England Services were held regularly throughout the past six financial years on every Sunday by the Right Reverend Canon F. W. Hicks, assisted by Mr J. Downing, M.B.E. A short Service was also held mid-week during which religious instruction was given to Church of England prisoners for whom the Anglican Chaplain also undertakes welfare work. The Right Reverend Canon Hicks reports: «I have visited the Prison on 265 occasions for Services and 220 times for interviews during the years 1949-54. A very considerable part of the work lies in corresponding with the relatives of the prisoners and in sending on their letters. The number of English prisoners during these years was 60. Their discipline and bearing has been uniformly good and work amongst them has been of a very interesting nature. I would like to bear testimony to the unfailing courtesy and help which has been extended to me at all times by the Director and his Staff, and would say that the excellent conditions prevailing in the Prison are, in my opinion, responsible for the high standard of morale amongst the prisoners with whom I had to deal». The Right Reverend Hicks also supplies English prisoners with such amenities as are allowed by the Prison rules. His work has been greatly appreciated. Every facility is also granted to Service Padres and Service Welfare Officers to visit and assist prisoners of the Three Services. Owing to his leaving the Island for Tasmania, the Right Reverend Canon Hicks resigned his part-time employment as Anglican Prison Chaplain with effect from 1st August, 1954, after having served for ten years. Both the Prison Service and the English prisoners have lost a zealous and efficient Padre». (pp. XXXIII-XXXIV).

[16] The author is greatly indebted to Mr Eddie Attard, police and crime historian, for these and many other documents - too many, in fact, to mention them all - which he kindly provided.

[17] *Subsidiary Legislation 260.03*, which came into force on 1 October 1995 by virtue of Legal Notice 118 of 1995.

[18] Regulation 42.

[19] Regulation 41. At the end of August 2016 the declared religious denominations were as follows: Atheist 25, Buddhist 1, Christian 26, Evangelical 1, Hindu 1, Moslem 95, Orthodox 27 and Roman Catholic 374.

applicable *mutatis mutandis* to the qualified representative of other religious denominations, are spelled out in Regulation 45:

> «The Prison Chaplain shall say Holy Mass daily at such time as shall be fixed by the Director, for prisoners belonging to the Roman Catholic Church and shall generally minister to the other religious needs of such prisoners, giving them instruction at such time as shall be fixed by the Director and conferring with the Director on any matter connected with their welfare. He shall also pay special attention to young prisoners and habitual offenders, sick prisoners, prisoners with personal or family difficulties, and prisoners under restraint[20] or undergoing cellular confinement. Whenever the Prison Chaplain is unable to attend to his duties, such duties shall be performed by another priest of the same religious denomination as approved by the Director»[21].

For many years now the post of Prison Chaplain has been occupied by a member of the Capuchin Order (O.F.M.Cap.). By virtue of an agreement entered into between the Maltese Province of the order and the Government, the Provincial designates a member of the order for the post of Prison Chaplain. If approved by the Ministry responsible for the Prison, the designated member of the order is employed on a regular basis as any other civil servant, with the nominal grade of Assistant Manager but in a salary scale well below that[22]. In practice the Prison Chaplain has a very good working relationship with the Prison authorities who appreciate not only his pastoral activities but also and in particular his role in rehabilitation and in the social welfare of the prisoners and their families[23]. He also assists non-Catholic prisoners and facilitates contacts and visits from pastors of other denominations, particularly the imam and Church of England clergy.

[20] In practice this refers to two exceptional situations provided for in Regulation 69: (a) when on medical grounds and by direction and under the supervision of the Medical officer, physical restraint is applied, or (b) by order of the Director, if other methods of control fail, to prevent a prisoner from injuring himself or others, damaging property or creating a disturbance.

[21] The Prison Chaplain is no longer involved in the running of the library, the function having been transferred to the Director acting «in co-operation with public and community library services». (Regulation 47).

[22] The Prison Chaplain is in fact paid according to Salary Scale 16. According to the Collective Agreement for Employees in the Public Service for the years 2011 to 2016, the salary in Grade 16 for the year 2016 ranges from a minimum of €12,431 to a maximum of €14,013 *per annum.* There are in total 20 salary scales. The monthly salary is paid directly to the Order.

[23] The only notable restriction placed on the Prison Chaplin is that he is not allowed, ostensibly for security reasons, to wear the Capuchin habit within the prison precincts. Up to about seventeen years ago, four nuns from the Congregation of the Sisters of Charity of St Jeanne Antide were employed as matrons in the female wing of the Prison. Their place was eventually taken over by female prison wardens.

The Police Force[24]

Neither the Police Act[25] nor the Malta Police Regulations[26] make any reference to the Police Chaplain. However *ad hoc* arrangements for a Police Chaplain have existed since the nineteen twenties. On 11 February 1939, a formal call for applications for the post of Police Chaplain was published in the Malta Government Gazette. In that call, the successful applicant was to receive an honorarium of £30 *per annum*, and it was provided that the post would not be pensionable. Originally the Police Chaplains were diocesan priests, the longest serving among them being the Rev. Fortunato Cachia who served from January 1944 up until his death in May 1984. In 1984 members of the Capuchin Order began fulfilling the role of Police Chaplains. Until 1992 the Minister Provincial *pro tempore* of the Order was in fact the *ex officio* Police Chaplain[27], and it fell to him to assign other Friars to the pastoral care of the three places under his responsibility, namely Police GHQ, The Police Academy and the Ta' Kandja Quarters of the Special Assignment Group. In 1992 the then Provincial proposed that instead of three Capuchin priests working in these places on a part-time basis, there should be one full-time chaplain to serve the entire force. The proposal was accepted and in November 1993 an agreement was signed between the Capuchin Provincial and the Commissioner of Police to this effect[28]. This agreement is still the basis for the current arrangements. The agreement provides, *inter alia*, that it may be terminated by the Commissioner for a valid reason, and further stipulates that the fact that a Chaplain provided by the Provincial ceases to enjoy the confidence of the Commissioner shall be a valid reason for terminating the agreement unless a replacement, acceptable to the Commissioner, is provided by the Provincial. The Provincial, on the other hand, may terminate the agreement without giving any reason provided he gives at least one month's notice to the Commissioner. The agreement also provides for a modest remuneration, payable directly to the Provincial.

In practice, the Police Chaplain performs a wide variety of functions, besides the celebration of the Eucharist on Sundays and major liturgical festivities. He is invariably invited to lecture on ethics and related subjects at the Police Academy; and more recently he has been celebrating a religious service once a week for irregular

[24] The Force has a complement of around 1,900 men and women.

[25] Cap. 164.

[26] *Subsidiary Legislation 164.01*, which came into force on 22 April 1960 by virtue of Legal Notice 14 of 1960.

[27] The designation of the Provincial *pro tempore* as *ex officio* Police Chaplain was approved by letter of 30 July 1984 under the signature of the Administrative Secretary to the Government.

[28] Another priest works on a part-time basis and caters for the needs of the 100 officers stationed on the sister island of Gozo.

immigrants at one of the detention centres managed by the Police. In a recent paper[29], the current Police Chaplain[30] had this to say:

> «At times the Chaplain is present at particular events in the life of the Officers. He is usually invited to officiate the Rite of Marriage or to celebrate baptism. His presence can also be requested at funerals. This depends on the particular situation presented. If an Officer dies in the line of duty, the Force offers an Official Police Funeral to the family of the deceased. Should they accept, the Chaplain has a central role to liaise with the family and the parish where it will take place for the necessary preparations. If the family declines the offer, he would attend to concelebrate at the Holy Mass. Besides, as time permits, the Chaplain also attends the funeral of close relatives, such as spouses or parents. During the bereavement period, a follow-up visit to the Officer concerned is carried out according to the presenting needs».

The Police Chaplain is allowed to wear a uniform with the insignia of a Police Superintendent[31].

Armed Forces of Malta[32]

Throughout the twentieth century and prior to independence in 1964, Malta had two locally raised regiments: the Royal Malta Artillery and an infantry regiment, The King's Own Malta Regiment[33]. The latter became a Territorial[34] regiment in 1951 and was disbanded in 1972. The Royal Malta Artillery continued to serve as part of the British Army for some time even after independence, but was eventually taken over by the Maltese Government in October 1970[35].

During colonial rule, many Maltese clerics, both diocesan and religious, served as chaplains to the British Forces both in Malta and overseas[36]. Since October 1970, the

[29] *Overview of the Police Chaplaincy in Malta* (unpublished) by Fr Raymond Bonnici O.F.M.Cap.

[30] Fr Raymond Bonnici O.F.M.Cap., who has now held the post since 2006.

[31] This practice appears to have been introduced during the tenure of office of Commissioner George Grech (1992-2001) and the first Chaplain to wear such a uniform was Fr Raniero Zammit O.F.M.Cap.

[32] Active personnel: just over 2000; consisting of HQ, three regiments, an air wing and a maritime squadron. The highest ranking officer and Commander of the force has the rank of Brigadier.

[33] Formerly, Kings' Own Royal Malta Regiment of Militia.

[34] i.e. reservist.

[35] The Malta Land Force, as it was then known, consisted at the time of 1st Regt RMA with HQ Bty, 1 Bty LAD, 3 Bty (Infantry), 3/11 LAD Regt RMA (T) and 1st KOMR (T).

[36] A list, not necessarily exhaustive, of Chaplains to the British Forces in Malta from 1800 to 1960 can be found here: http://website.lineone.net/~remosliema/anchaplains.htm The Maltese clerics can only be identified from the surname. For the role of Maltese Dominicans as chaplains to the forces during World War II, see Fsadni, M. *Id-Dumnikani Maltin fi Żmien il-Gwerra 1939-1945* (1977), Malta, Klabb Kotba Maltin, especially chapter 7.

Armed Forces of Malta (AFM) have had four chaplains[37]. The Malta Armed Forces Act[38] makes no reference whatsoever to chaplaincy; however the Appointments and Conditions of Service of the Regular Force Regulations[39] provide that subject to any modifications and exceptions authorised by the Minister responsible for the Armed Forces after consultation with the Commander of the AFM, appointments may be made to the positions of, among others, «Chaplains»[40]:

> «(a) Officiating chaplains shall be nominated by the Minister for such term (renewable at the end thereof) and under such conditions as he may deem appropriate.
>
> «(b) The appointment may be terminated by the Minister at any time or at the request of the chaplain concerned».

No mention is made of any rank or «equivalent rank» that the chaplain is to hold. In any case, the current chaplain to the AFM does not appear to hold «office» by virtue of these regulations, but pursuant to an *ad hoc* (and rather skeletal, if not, indeed, strange) agreement signed in October 2008 between the then Pro-Vicar General of the Archdiocese of Malta and the then Commander of the AFM. According to this agreement, originally signed for a period of three years but automatically renewable unless either party gives prior notice of intended rescission, the Archbishop of Malta, after consultation with the Commander, appoints a priest, either on a full-time or part-time basis to provide «pastoral services» to the AFM. The Archdiocese remains responsible for the remuneration of the appointed Chaplain, but the AFM undertook to pay into the Clergy Fund of the Archdiocese €4,000 annually[41], and further bound themselves to provide «within reasonable limits» the facilities which the Chaplain needs to fulfil his duties, including «liturgical consumables and stationery». In effect this means that the AFM benefit from the services of a full-time Chaplain paid by the Archdiocese. As is the case with most military chaplaincies, the AFM Chaplain not only provides pastoral care at the various locations in Malta and Gozo where officers and men are stationed, but is also actively engaged in the fields of social welfare and in training, particularly of recruits and of personnel volunteering for overseas peace-keeping assignments. In October 2012 the AFM proposed to the ecclesiastical authorities of the Archdiocese the official establishment of a Chaplaincy Service as

[37] Fr Patrick Cachia O.P., Chaplain to the Malta Land Force and then to the Armed forces of Malta, serving between 1 October 1970 until 31 July 1996; Fr Vicgeorge Vassallo, August 1996 to December 2003; Canon Lawrence Zammit, 2004 to August 2009; and Fr Joe M. Meli, from 25 August 2009 to date.

[38] Cap. 220.

[39] *Subsidiary Legislation 220.03*, which came into force on 29 September 1970 by virtue of Legal Notice 91 of 1970.

[40] Regulation 4(7). The other listed positions are: Staff employment, Adjutant, Officer-in Charge Records, Second-in-Command, Commanding Officer, and Other appointments.

[41] The average *monthly* stipend of a diocesan priest from the Clergy Fund is of €1,200.

a properly functioning unit integrated within the AFM organisational structure; and last year plans were also afoot to amend the relevant regulations to allow officiating chaplains to be commissioned in the non-combatant rank of Lieutenant (progressing gradually to that of Major, but without pensionable entitlements). These plans appear to have been shelved after a change of Ministerial portfolios.

State Schools

Chaplaincy, or «religious counselling» - not to be confused with the formal teaching of religion - is regulated by an agreement signed between the Holy See and the Government of Malta in November 1989, with an Additional Protocol signed in February 2003. These agreements have replaced what used to be called «Spiritual Directors» in State schools with «Religious Counsellors». Religious Counsellors are designated by the Ordinary of the diocese where the school or group of schools (called a College) is situated[42]. Such a Counsellor may even be a laymen or a deacon, but in practice the task generally falls upon newly ordained priests, both diocesan and religious. The overall oversight of these Counsellors within the State education system and the co-ordination of their work is in the hands of the Coordinator for Religious Counsellors, who must be an ordained minister of the Catholic Church appointed by the Maltese Episcopal Conference. The remuneration of both the Counsellors and of the Coordinator is the responsibility of the Church Authorities. The number of Counsellors is determined by agreement between the Ordinary and the Director of Education, but in any case is to be «in proportion of one Religious Counsellor for about every 500 students, visiting them at least once a week». The agreement also allows Counsellors to rope in other members of the Catholic clergy to assist them, and in practice parish priests are often delegated by Counsellors with regard to local primary schools. In many State schools «chaplaincy teams» have been set up to assist the Religious Counsellor[43] in his mission.

University of Malta

Chaplaincy work at the University of Malta, which currently has about 11,500 students, is carried out by the Jesuit community situated just outside the campus perimeter and which also provides the Chaplain[44]. The Chaplaincy, regarded by the

[42] That is, designated either by the Archbishop of Malta or the Bishop of Gozo.

[43] It is not clear how the Counselling Profession Act, Cap. 538, will affect, if at all, Religious Counsellors operating in virtue of the agreement between the Holy See and the Government. This Act came into force on 1 May 2015. It is an enabling act. To date no regulations have been made to give effect to many of the provisions of the Act.

[44] The University chapel and the chaplaincy complex belong to the University; the Jesuit house is situated next door to the chaplaincy complex.

University as one of its main «support services» for students, focuses its ministry through distinct areas of action as coordinated by the central Chaplaincy Council, consisting of a core group of priests and laity, representing the staff and the student body of the University, together with the Chaplain[45]. The University Chaplaincy team includes two lay pastoral assistants, one full-time and one-part time, who are paid by the University. Both were required to «be in possession of academic qualification in youth studies, psychology, theology, social work, or a related discipline, and be willing to be engaged in team pastoral work with young people»[46]. In the call for applications there was no requirement that they should be Roman Catholic. As to the Chaplain, he is proposed by the Jesuit Provincial to the Archbishop who, if he approves the candidate, proposes him to the University Council which has the final say as to his approval and appointment. The Chaplain is on the University pay roll.

State Hospitals[47]

The Capuchin Order provides chaplaincy services at the main State hospital in Malta, the Mater Dei General Hospital[48], in line with an agreement obtaining between the Order and the Government. The chaplains, six in number, are allocated by the Provincial and work in shifts which are meant to coincide more or less with those of the nurses in the various wards. They provide a twenty four hour service, with at least two, in most cases three, being present and on all at any one time. The chaplains are not «employed» by the Government, but the latter pays directly to the Order a modest remuneration for the services provided. They are provided with living quarters on the premises. The hospital has a main chapel where Catholic services are conducted, as well as a multi-faith prayer room, which is used mainly by Moslem members of staff and patients. Like in many other institutions, the main challenge for the chaplains here is how to be visible and minister to the needs of patients without upsetting the increasing number of people - staff and patients - who profess no religious belief. This problem arises in particular when conducting services in individual wards.

[45] For the recent history of the University Chaplaincy, see: http://www.um.edu.mt/chaplaincy/about/history.

[46] See the call for applications in the Malta Government Gazette, 7 October 2014.

[47] Apart from local health centres, there are in Malta 5 state hospitals and 1 in Gozo. The information in this section refers to the largest of them, Mater Dei General Hospital, with over 800 beds and 25 operating theatres.

[48] The Capuchin Order is also responsible for 5 of the 33 wards at the St Vincent de Paule (SVD) long term care facility, *infra.*

St Vincent de Paule [SVD] Long Term Care Facility

This sprawling complex is a hybrid between a nursing home for the elderly and a hospital, with a total population of over 1,100 residents. Originally intended as a Poor House and a Hospital for Incurables, building was commenced in 1886 and was finished in September of 1892, but kept expanding over the years. Renamed St Vincent de Paule Hospital in 1940, it is today considered as a state of the art residential home for the elderly who cannot be accommodated, mainly because of health reasons, in the various smaller community homes across the Island. The residence comprises a large church and a smaller chapel.

Current chaplaincy services are provided in 28 of the 33 wards at SVD pursuant to an agreement signed between the Government and the Archdiocese of Malta in 2014. In virtue of this agreement four diocesan priests are assigned by the Ordinary to work at the residence in order to provide, on a roster basis, a 24/7 service. The Government pays the Archdiocese (not the chaplains) the equivalent of a Scale 14 salary[49] for each chaplain, and provides accommodation and other liturgical equipment necessary for the chaplains to perform their duties. The 5 wards of this facility, which form part of the Ružar Briffa Complex[50], are serviced by the Capuchin Order under an agreement similar to that applicable to the Mater Dei General Hospital, above.

Civil Protection Department

The Civil Protection Department was founded in 1996, but only took over the Fire and Rescue Service from the Police Force in 2000. Today it has four fire stations in Malta, one in Gozo, and a marine section. It has a complement of 170 operational full time officers, plus 93 (unpaid) volunteers. Chaplaincy services here are based solely on personal arrangements entered into fifteen years ago between the then Commander of the Department, Lt. Col. Peter Cordina, and Fr Silvio Bezzina of the Missionary Society of St. Paul. After an incident in which some members of the Department were injured, the Commander approached Fr Bezzina (whose brother worked in the Department) and asked him whether he was willing to act as chaplain. The latter accepted and the Chaplaincy was established! The Chaplain receives no remuneration and his work in this respect is part-time since he is also the (full-time) Rector of a secondary school[51] run by the Society in Malta.

[49] Approximately €15,000 *per annum.*

[50] The Complex, originally a wing of the larger home for the elderly, was opened in 1988 as a rehabilitation centre, and was named after Maltese poet and dermatologist Dr Ružar Briffa. For more information, see generally https://vassallohistory.wordpress.com/hospices-for-the-elderly/

[51] St Paul's Missionary College.

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THE SEARCH FOR A WORKABLE BALANCE: SPIRITUAL CARE IN THE NETHERLANDS

Ryan van Eijk

1. Historical and Sociological Approach

Spiritual care[1] has a long history in the Netherlands. Although the Netherlands has been seen since the Reformation as a Protestant nation, the country has always known a rich diversity of religious groups and denominations[2]. In the 16th and 17th centuries, it lacked a strong centralised government and the Reformed church was the privileged church, meaning that this church was the «public» church. This changed in the Napoleonic period, when the Reformed church was disestablished and all churches had an equal status under the law. In the 19th century, the French influence resulted in a liberal dominance in politics, leading to further dismantling of church-state relations and liberalisation regarding the presence of the Catholic Church (return of the Catholic hierarchy in 1853). However, even in this period the most influential voices remained Protestant. The result was the «liberal dominance of a Dutch bourgeoisie who were self-consciously tolerant, committed to social harmony and at the same time showed little inclination to share political power with wider segments of the population»[3]. The reaction of the Protestants and the Catholics (and later the socialists) was to organise themselves in their own institutions to strengthen their identity.[4]

[1] «Spiritual care» is a more or less literal translation of the Dutch «geestelijke verzorging», in many English language countries referred to as chaplaincy. The Dutch adjective «geestelijk» is not exactly synonymous with the adjective form «spiritual». I use spiritual care and chaplaincy as synonyms in this article.

[2] Cf. J. Kennedy & J. Zwemer (2010), Religion in the Modern Netherlands and the Problems of Pluralism. In *BMGN/LCHR.* Vol. 125 no. 2/3, 237-268.

[3] *Ibid*., p. 249.

[4] «With the exception of the liberals, who were on the defensive, the various other groups evolving their own national identity were involved in some form of emancipation struggle». The liberal

They developed so-called «denominational pillars» (pillarisation).[5] This means that each religion or ideology had its own social institutions. Every denominational pillar included institutions with a specific goal or working field in society, like politics (political parties), economics (labour unions and employers' unions), education (schools, universities), healthcare (hospitals), sports, etc. In daily life this meant that a Catholic was a member of the Catholic pillar and joined the Catholic school, hospital, union, voted for the Catholic party, and read a Catholic newspaper or listened to the Catholic broadcasting company. This was also the case for the Protestant, socialist, etc. People lived and gathered almost exclusively in their own pillar or group. If this was not possible, the contacts were restricted to the pillars' elite. The major pillars in terms of influence and number in the 20th century were the Protestant, Catholic, liberal and socialist pillars, where the Protestant pillar was divided into several smaller pillars. In this period one can speak of a (relatively) peaceful co-existence in Dutch society which was based on a kind of system of denominational apartheid. After WW II this «pillar-society» came under pressure: contacts between members of different pillars intensified and a process of erosion started, strengthened by developments like the growth of prosperity, secularisation and individualisation, in which the pillars crumbled (depillarisation).[6] For spiritual care, this meant that it was organised along these pillars. This situation has continued until today, but with important nuances as we will see.

2. Legal Regulation of the Chaplaincy

In the Netherlands there is no state church. Article 6 of the Dutch Constitution describes the freedom of religion:

> Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.
>
> 2. Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorders.

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pillar was the most open. Cf. M. Wintle (2000). Pillarisation, Consociation and Vertical Pluralism in the Netherlands Revisited: A European View. In *West European Politics*, 23:3, 139-152, p. 146.

[5] Cf. Wintle (2000); J.C.H. Blom (2000) «Pillarisation in Perspective». In *West European Politics*, 23:3, 153-164.

[6] Cf. T. Bernts, & J. Berghuis (2016), *God in Nederland 1966-2015*. Utrecht. Ten Have.

This Constitutional article and article 9 of the European Convention of Human Rights[7] protect the religious freedom of everybody in the Netherlands[8]. In practice this means that the law makes it possible for every denomination to have and organise its own chaplaincy service or spiritual care for a domain. But the state does not finance this spiritual care for the denominations and their chaplaincies are financially self-supporting. However, in 1988 the government implemented a commission, the so-called Hirsch Ballin Commission, which published a report titled *Government, religion and life convictions* regarding the question of whether the state could and should pay for spiritual care, and if so, in which situations[9]. This Commission's report saw a basic principle and recommended to fully facilitate spiritual care in situations where people are under state supervision and where they are restricted by the state and their circumstances to make use of regular spiritual care. These situations are undisputedly in the army and in penitentiary institutions. Although education and healthcare institutions are financed by the state, they are in many cases still private institutions and denominational, and so these institutions themselves are responsible for whether and how they organise spiritual care. With regard to healthcare, the Commission concluded that spiritual care should be part of the insured basic package of health care and that its financing requires no separate subsidising by the government. According to the Commission, the legislature should provide a legal foundation that spiritual care must be made available in sufficient quality, especially when a stay in a health institution is longer than 24 hours (see paragraph 3.3). The result is that there are three main categories of state involvement with spiritual care in the Netherlands:

1. Spiritual care in public institutions completely facilitated by the state (like the army and prisons);

[7] Art 9 ECHR states:

«1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others».

[8] Article 94 of the Constitution says that «Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons». And article 1 of the Constitution declares: «All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted».

[9] Commissie Hirsch Ballin (1988), *Overheid, godsdienst en levensovertuiging*, The Hague. (Kamerstukken II 1990/91, 20 868, nr. 3).

2. Spiritual care in public institutions partially facilitated by the state (like the police or airports); and
3. Spiritual care in denominational institutions with a public purpose and not facilitated by the state (like schools).

3. Chaplaincy in Public Institutions

3.1. Chaplaincy in the Armed Forces

Spiritual care for the armed forces followed the spirit of the times.[10] In the early 20th century the military was seen by the churches as a threat to the moral behaviour of men. So the churches started military homes which offered Christian morality and guidance to the soldiers. This was an initiative by the churches. Spiritual care for the armed forces officially started on 28 August 1914 when Catholic and Protestant ministers were appointed following a royal resolution. At this time these appointed ministers were paid by the government. The initiative for chaplaincy in the armed forces was implemented by the churches after the mobilisation, which was announced on 31 July 1914. After WW I the Dutch Parliament agreed to finance Protestant and Catholic ministers in the armed forces. In 1963, together with the humanist and Jewish denominations, the chaplains received a national leader. After WW II, cooperation between the denominations increased enormously. In the 1960s ethical issues on war and peace were discussed fiercely, which led to criticism from the military command: the ministers eroded loyalty and were accused of being not loyal.

Every military chaplain must be approved by his/her denomination before they can be appointed as such. They also need to have a relevant master's degree. Nowadays everybody agrees that military chaplains are active in fields such as moral counselling, moral education on ethical issues, justified violence, and justified warfare. Thuling sees two positions for spiritual caregivers in the armed forces: 1) offering spiritual care to all individual soldiers if the soldier wants it and 2) observing religious rites in the context of the armed forces. He also sees a third task of ensuring the humanity of the organisation, for it is a total institute. So there is a dual task: to the soldier and to the organisation. At this time there are six denominations with military chaplains: Catholic, Hindu, Humanist, Jewish, Muslim, and Protestant. However, spiritual care in the armed forces has no strict legal foundation in Dutch law, but

[10] J. Thuling (1983), «Militaire pastoraal», in: *Handboek Pastoraat. Pastorale perspectieven in een verandernde samenleving*, dl 2, 9.Thu.1/14,; cf. http://www.dgv.nl/rkgv/nieuws/aalmoezeniers-100-jaar-bij-defensie, 1-13, here 9-10.

rather is a result of historical practice and the recommendations made by the Hirsch Ballin Commission[11].

3.2. **Chaplaincy in the Penitentiaries**

After the Reformation, only Protestant ministers were officially allowed in Dutch prisons. This situation changed with the disestablishment between the Reformed Church and state in the 19th century[12]. In 1886, prison chaplaincy was mentioned in the penitentiary law: there were Catholic, Protestant and Jewish chaplains[13]. However, until 1949 spiritual care was decentralised and, in fact, depended upon an agreement between the governor of a prison and local priests and ministers, who were not part of the prison staff. They did not receive a salary, but rather compensation[14]. In many cases their actual involvement was limited to church services and catechesis. In 1949 this changed fundamentally, as prison chaplaincy became organised on the national level[15]. Highly influential to this change were the experiences of WW II and, interestingly, the living conditions and treatment in the internment camps in which collaborators were put after the war. Inter-church talks and dialogue with the government about post-war detention situations resulted in 1949 in the appointment of a Protestant and Catholic head chaplain at the Ministry of Justice. For both parties, the churches and the government, this cooperation was a quest to find a balanced position and cooperation. The new penitentiary law (1951) guaranteed spiritual care offered by the traditional churches and gave modest and more limited opportunities for spiritual care by other denominations. This reluctance was visible in the request by the humanist organisation: they were reluctantly accepted, and it wasn't until 1953 that they were officially allowed and recognised by the Ministry to enter the prisons.

During the following decades the prison population changed because of migration: especially migrants from the former colonies (Indonesia, Suriname and the Dutch Antilles) and Turkish and Moroccan migrant workers. The traditional prison chaplaincy grew in this period with the Ministry of Justice. At the same time, new denominations came with the migrants and the position of the traditional churches in

[11] Cf. C. Smit (2013), «Spiritualiteit in de krijgsmacht. De rol van de geestelijke verzorging bij Defensie», in: *Militaire Spectator*, 182/5, 237-247.

[12] A. Van Iersel (1991), «De voorgeschiedenis van het justitiepastoraat», in *Het justitiepastoraat in Nederland*, Bureau Hoofdaalmoezenier/Hoofdpredikant, Den Haag, 7-16.

[13] Omme A.J. van, «Van roeping naar beroep», in *Het Justitiepastoraat in Nederland*. Ministerie van Justitie, 's Gravenhage 1991, 22.

[14] Cf. E. Schraven (1991), «In kort bestek», in *Het justitiepastoraat in Nederland*, Bureau Hoofdaalmoezenier/Hoofdpredikant, Den Haag, 155-157; Report Overheid, godsdienst en levensovertuiging of Commission Hirsch Ballin.

[15] Cf. A. Van Omme (1991), «Van roeping naar beroep. Naar een geordend pastoraat», in *Het justitiepastoraat in Nederland*, Bureau Hoofdaalmoezenier/Hoofdpredikant, Den Haag, 21-57.

society changed because of secularisation. The economic crisis in the 1980s forced the government to make financial cuts. Financial strains resulted in a political discussion about who had to pay for spiritual care: the government or the denominations? That is where the aforementioned Hirsch Ballin Commission report originated.

Since the publication of the report from the Hirsch Ballin Commission, it has been used by the different governments as the foundation for how spiritual care is organised and financed. In practice this means that spiritual care is, according to national law (based on the ECHR and penitentiary law), a recognised right of every inmate. Freedom of religion must be respected, and so the government has the obligation to make it possible for detainees to express and enjoy this right, including facilitating the right materially (like religious services and literature, halal or kosher food) and financially (the salary of spiritual caregivers). However, there is the separation of church and state, which means that church and state do not interfere in each other's organisation and policy. So there is a shared responsibility for spiritual care: the government facilitates and makes it possible, the denominational organisations decide who can be a spiritual caregiver in their name and who can be appointed as such. Without the approval of the denominational organisation (letter of agreement), the government cannot appoint a person as a spiritual caregiver in prisons, because then the government would have to judge the person's religious conviction, which is not allowed by the separation of church and state. When the spiritual caregiver loses the approval of his denominational organisation, he or she cannot continue to work in the prison as a spiritual caregiver. The government checks only the criteria regarding whether the person can be a civil servant. So this results in a dual system in which the spiritual caregivers in prisons are both civil servants and ecclesial ministers. This also creates a situation where spiritual caregivers are doubly bound,[16] because as civil servants they have to be loyal to government policy, and as spiritual caregivers they have to be loyal to their denominational organisation. However, in practice this rarely creates an insolvable situation.

At this time, the government has cooperation agreements with several organisations which represent the major denominations in the Netherlands: the «traditional» denominations (Catholic, Jewish, Humanist and Protestant) and the «newcomers» (Buddhist, Hindu and Muslim). All spiritual caregivers are members of the prison staff and must have an academic degree in their field. A ratio of 1:90 has been agreed to, which means there is one full-time spiritual caregiver to 90 detainees. When the prison population rises, the number of spiritual caregivers rises, and vice versa. To decide how many spiritual caregivers of a particular denomination are needed, the government uses a regular representative survey (every five years) to find out what kind of spiritual care the detainees want. Thus, the outcome of the survey determines which

[16] Sometimes this creates problems of personal conscience like in the situation of detained asylum seekers.

percentage of the total number of spiritual caregivers in the prison will be Catholic, Muslim, etc. until the next survey. Other denominations can visit their prisoners, but they receive limited facilitation[17] and their spiritual caregivers are not civil servants.

3.3. **Chaplaincy in the Hospitals**

From the start of Christianity, spiritual care has been its core concern and so for centuries spiritual care in health institutions was performed by caregivers from the traditional denominations, especially Protestant and Catholic[18]. This care was organised on a local level and could be provided at the private initiative of the caregiver from the place the institution was built - especially in larger general hospitals - or because the institution was run by a religious group. This situation continued until the mid-twentieth century. The tremendous changes in medical sciences (not only the increase in knowledge but also in specialisation, technology, and scale) increased the influence of these sciences, which meant that health care institutions also underwent rapid changes. These changes came along with the processes of secularisation, depillarisation, etc. and directly involved the work of caregivers in health institutions and the expectations the institution and the patient had of these caregivers. The great diversity of institutions and these significant changes resulted in caregivers feeling the need to organise. Thus, in the early 1960s, Catholic spiritual caregivers in health institutions started to organise themselves[19]. At the same time, an informal ecumenical group started to discuss the issues these caregivers faced in their work. Their work was under pressure because of the secularisation in the medical sector and most caregivers were happy when the National Council of Hospitals (Nationale Ziekenhuisraad) declared in 1972 that spiritual care was an integral part of hospital care. This statement was published and proved to be very influential: it made spiritual care and the caregivers an integral part of the hospital organisation and secured spiritual care in hospitals[20]. However, in 1984, due to the economic crisis, there were discussions about financial cuts and some policymakers suggested asking the churches to pay for the spiritual care offered. The aforementioned Hirsch Ballin Commission gave recommendations on how to organise and finance spiritual care in the health sector.

[17] These are smaller denominations with few members/detainees. Some of them have special agreements with the Ministry, like the Jehovah's Witnesses, and others do not.

[18] N. Goudswaard (2006). «Geestelijke verzorging in het verleden». In J. Doolaard, *Nieuw handboek Geestelijke Verzorging* (pp. 23-59). Kampen: Kok.

[19] W. Snelder (2006). «Beknopte geschiedenis van de Vereniging van Geestelijk Verzorgers in de zorginstellingen tot 2000». In J. Doolaard, *Nieuw handboek geestelijke verzorging* (pp. 84-100). Kampen: Kok.

[20] J. De Vries, (2006). «Van gast tot huisgenoot. Beknopte geschiedenis van de geestelijke verzorging in de algemene ziekenhuizen (1969-1995)». In J. Doolaard, *Nieuw Handboek Geestelijke Verzorging* (pp. 59-69). Kampen: Kok.

This resulted in 1996 in a concrete national law regarding the quality of healthcare institutions (Kwaliteitswet Zorginstellingen: Law on the Quality of Care Institutions). This law made it quite clear that spiritual care must be organised in an institution where it is possible that a patient may have to stay longer than 24 hours:

> In the case that care services require a patient's stay in the institution for the duration of at least 24 hours, then the care provider bears responsibility for making spiritual care available in the institution, in a form that is, to the extent possible, suitable to the religion or existential convictions of the patient or client.

However, this article only guarantees a minimum, as it does not say anything about a rate of how many spiritual caregivers per number of patients and it creates space to offer different denominational spiritual care than what the patient would prefer[21]. There is an informal rate in the health care sector: depending on the kind of institution, between 1:150 and 1:250 (spiritual care providers to patients). The always-present possibility of financial cuts may also negatively influence the availability and accessibility of the spiritual care. This could be dealt with by a patient's complaint, as the law makes it possible for patients to enforce spiritual care by using their legal right to complain[22]. The second remark is that spiritual care should be as consistent as possible with the wishes of the patients or clients, which leaves a lot of room to the provider in terms of what to offer.

As noted before, in the 1960s the need was felt by spiritual caregivers in hospitals to organise themselves. There is great diversity in terms of the types of institutions in the health care sector: some are general (like hospitals) and many are specialised in a certain category of illness (like heart disease or cancer), people (like children or seniors), or state of illness (prevention, treatment or palliative care). Given this diversity, spiritual caregivers have to meet diverse expectations, which consist of providing support and spiritual guidance for a large variety of patients, and supporting and teaching medical staff regarding medic-ethical counselling. «The objectives of spiritual care must arise from and be pointed out by health institutions»[23]. This description of reality makes it clear how vulnerable individual spiritual caregivers are. Thus, the diversity and the many changes in the sector fed the need for cooperation between the spiritual caregivers. This resulted in 1971 in the foundation by Protestant and Catholic caregivers of a national association of spiritual caregivers working in

[21] J. Rebel (2006). «Geestelijke verzorging en wetgeving». In J. Doolaard, *Nieuw handboek geestelijke verzorging* (pp. 105-110). Kampen: Kok.

[22] Law on the Right to Complain of Clients in the Care Sector. There is also «Law on Client Participation in the Care Sector», which determines that the care provider must consult the client council on every proposal on general policy concerning spiritual care.

[23] «De doelstellingen van geestelijke verzorging moeten opkomen uit en aangegeven worden door de zorginstellingen». J. Doolaard (2006). «Geestelijke verzorging anno 2006, een inleiding». In J. Doolaard, *Nieuw handboek Geestelijke Verzorging* (pp. 19-22). Kampen: Kok, 20.

the hospitals, the VGVZ[24]. This professional association has spent a lot of time and effort in professionalising its members and approved the current leading standard definition of spiritual care in the Netherlands:

> «Spiritual care in and from care institutions is:
> • the professional and official guidance of and assistance for people with regard to meaning and spirituality, from and on the basis of faith and life convictions,
> • and professional consultation in ethical and life-view aspects of care provision and policy making»[25].

The law makes healthcare providers responsible for offering and organising spiritual care. This is part of the changes that have resulted in the current system. In former days, spiritual caregivers were always a member of a denominational community and clearly related to a denomination. Their appointment as a spiritual caregiver/chaplain was always with the agreement of that denomination. Nowadays spiritual caregivers are appointed by the healthcare provider on an individual basis. They are an employee like any other and in many cases they do not have the approval of a church or other denomination. This creates a quality problem[26]; in the past, quality was guaranteed by the denominations and most spiritual caregivers had an academic background. Currently the quality is not always clear and guaranteed, as it is the healthcare provider who decides who he will appoint as a spiritual caregiver in his institution. That is the reason that denominations and the VGVZ continue to find ways to supervise appointments and to formulate professional standards[27].

3.4. Chaplaincy in Other Public Institutions: Police, Airports, Parliament, Municipalities (historically, status, appointment, revocation, funding, etc.)

Chaplaincy in other public institutions is organised on a voluntarily basis. This makes it very local and difficult to provide specific details about where and how

[24] Vereniging van Geestelijk Verzorgers in Ziekenhuizen. In 1994 the association was opened up and broadened to spiritual caregivers in all healthcare institutions (its name changed to Vereniging van Geestelijk Verzorgers in Zorginstellingen).

[25] Professional Standard of the Netherlands Association of Spiritual Caregivers in Care Institutions, p. 3. http://www.vgvz.nl/userfiles/files/Over_de_VGVZ/VGVZ_Professional_Standard.pdf

[26] Cf. the discussion J. De Vries (2013/3), De levensbeschouwelijke identiteit van de ongebonden geestelijk verzorger., 6-13; N. Van Zessen & B. Koolen (2013/1), Geestelijke verzorging in de gevangenis. In *Tijdschrift voor Religie, Recht en Beleid*, 29-43; R. Van Eijk (2015/1), Goed geregeld. Geestelijke verzorging bij justitie, in: *Tijdschrift voor Recht, Religie en Beleid*, 69-81; H. Schilderman (2015/2) Van ambt naar vrij beroep. De geestelijke verzorging als voorziening in het publieke domein. In *Tijdschrift voor Religie, Recht en Beleid*, 5-23; S. Gärtner, K. De Groot & J. Körver (2012/1), Zielzorg in het publieke domein. Over de legitimering van geestelijke verzorging. In *Tijdschrift voor Theologie*, 53-72.

[27] Cf. Herkenbaar en betrouwbaar pastoraat. Interim rapport aan de nederlandse bisschoppen conferentie; Regiegroep (2013). Eindnota Toekomstig Bestel Geestelijke verzorging.

things are practically organised. When there is a chaplaincy in a certain area or institution it is most probably a private initiative (appointment, revocation, funding, etc.).

Schiphol Airport, as the largest international airport in the Netherlands, has an ecumenical team of three ministers (one Catholic, one Protestant, and one on behalf of the Old-Catholic and Anglican denominations) who are paid by private denominational foundations in which several churches participate. This ministry was started in 1975 by the Roman Catholic Church; in the 1980s, the Protestants joined and in 2005 the other two partners were added. The ministry runs an office, a chapel and meditation room at the airport. The memorial ceremony after the crash of a Turkish plane at Schiphol Airport in 2009 was criticised by this ministry because they were left out of participating in the ceremony, which was organised by the local authorities[28].

At this time, there is a political discussion regarding offering spiritual care in the police force[29]. Until recently there have been only some small, low-profile initiatives in a few local police districts, which were paid for by those police districts, for example, in Amsterdam.

Denominational schools are free to invest in chaplaincy, but not many do and some do only in a modest way. To my knowledge, chaplaincy is absent in public schools. Universities have chaplaincy which, in most cases, is paid for by the university or a private foundation.

4. Islam and Other New Religions

The new religions arrived in a country where the interests of the traditional denominations were defended by a well-organised pillar system which continued to function even when their influence changed due to secularisation and individualisation. The newcomers were/are not well organised, as their backgrounds and circumstances vary immensely in their reason for coming to the Netherlands (such as refugees, partners or expat employees), in number, in cultural and denominational background, and in economic circumstances. Integration of the newcomers is, for all parties involved, a difficult mutual process. This process is still ongoing.

With regard to chaplaincy, one can see that, until recently, chaplaincy for the «newcomers» could be characterised as a decentralised practical ad hoc policy: if someone noticed that a spiritual caregiver from a «new» denomination was needed, one started to look for a local imam, Hindu pandit, etc. In many cases these caregivers did not receive a salary, and many had no recognised educational background.

[28] See http://www.trouw.nl/tr/nl/4324/nieuws/article/detail/1123493/2009/03/19/God-ontbrak-bij-dienst-na-vliegtuigramp.dhtml, (23-05-2016).

[29] Cf. https://www.rijksoverheid.nl/documenten/kamerstukken/2016/04/18/tk-zingeving-en-geestelijke-verzorging-bij-de-politie.

However, this has been changing fast during the last two decades[30]. Policymakers from institutions who offer spiritual care started to realise in the 1990s that this ad hoc policy was not enough to ensure the continuity and quality of spiritual care, and to recognise that the number of newcomers increased and that they were here to stay. Also, the newcomers have started to organise themselves to promote their interests (the Hindu Council of the Netherlands (HRN), Contact Institute Muslims and Government (CMO) and the Buddhist Union of the Netherlands (BUN)).

In most sectors a master's degree is required to work as a spiritual caregiver. In the past decade, this has led to the start of academic programmes at Dutch universities focusing on Islamic, Buddhist and Hindu chaplaincy.

5. Chaplaincy Unions

The most influential union is the aforementioned Association of Spiritual Caregivers (VGVZ)[31]. There are about 1000 members organised in several working fields (general hospitals, psychiatric institutes, nursing home and elderly homes, rehabilitation centres, youth care, primary care, and institutions for mentally disabled people) and denominational backgrounds (RC, Protestant, Humanist, Jewish, Muslim, Hindu and Non-Aligned). One can become a member when they

a. have a master's degree in theology, religious science or in humanistic science;
b. have a commitment to a church or an ideological society or an authorisation by the Council that verifies their competence and
c. work for a minimum of 8 hours a week.

Most members work in the health care sector; however, caregivers working in the army or prisons can also join. The main objectives of the association are to promote

1. the integration of spiritual care;
2. the quality of said care by training caregivers;
3. mediation in labour conflicts and
4. collective labour conditions.

Beside the VGVZ, there are some denominational organisations which function like a union, such as the Catholic Association of Pastoral Workers (Vereniging van Pastoraal Werkenden, VPW) and the Protestant Association of Reverends (Nederlandse Predikanten Bond, NPB).

[30] This was also initiated by a government report in 1998 on the integration policy regarding ethnic minorities and their spiritual practitioners (*Het integratiebeleid betreffende etnische minderheden in relatie tot hun geestelijke bedienaren.* Cf. *https://zoek.officielebekendmakingen.nl/dossier/25919)*

[31] Cf. http://www.enhcc.eu/members.htm#netherlands.

6. Conclusion

Spiritual care in the Netherlands has a long tradition and great diversity. Each era in its history reflects a search in the religious, societal and political landscape to find a balanced manner to perform chaplaincy. There is a broad acceptance that chaplaincy is a right deriving from the freedom of religion; however, its sources of financing are diverse and under permanent discussion. Because of the decrease in traditional denominations and the arrival of new ones, in addition to the secularisation of Dutch society, the landscape of spiritual care seems to be in a period of transformation. The result of this transformation is still to be determined.

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS IN POLAND

Piotr Stanisz

1. Historical and Sociological Approach

Both the possibilities for conducting specialized pastoral care in public institutions and the degree of development of relevant structures as well as the status of chaplains have undergone some changes in Poland in the last century, strictly depending on the model of relations adopted between the state and religious communities. Also relevant is the current religious composition of Polish society and its level of religiousness. Institutionalised chaplaincies developed dynamically in the period of the 2nd Republic of Poland (1918-1939), whose society - just like the society of the 1st Republic before the partitions - was characterised by religious pluralism[1]. The basis of the legal regulations on religion in that period was the recognition of the social role of religion**,** combined with granting Roman Catholicism «the chief position among religions enjoying equal rights» (art. 114 of the Constitution of the Republic of Poland of 17 March 1921)[2].

During the period of the Polish People's Republic (1945-1989), the conditions were not favourable for the operation of chaplaincies in public institutions. The policy pursued at the time rested on anti-religious Leninist-Marxist assumptions. Also significant was the fact that the Catholic Church (which had come to represent about 95% of Polish society as a result of the redrawing of borders and deportations carried out in line with the agreements between the victorious powers) was recognised in the first

[1] In 1921 Roman Catholics comprised nearly 60% of the population. Other numerous religious groups were Greek Catholics (11.1%), Orthodox (10.5%), Jews (10.5%) and Evangelicals (3.7%). H. Misztal, «Druga Rzeczpospolita (1918-1939)», in H. Misztal and P. Stanisz (eds.), *Prawo wyznaniowe*, Lublin 2003, p. 97.

[2] *Dziennik Ustaw* (Polish Official Journal, further referred to as *Dz. U.*) 1921, No. 44, item 267, as amended.

years of that period as a «class enemy» and became subject to repression[3]. The issue of chaplaincies in hospitals, penitentiaries and the army was repeatedly raised at that time by the representatives of the Polish Episcopate, as reflected in the agreements signed with the representatives of the Government in 1950 and 1956 (both provided for the possibility of conducting pastoral care in such institutions by Catholic priests). The implementation of those commitments from the Government, however, met with difficulties, especially in the initial period[4].

New conditions for the development of chaplaincies in public institutions arose after the democratic transformations of 1989, as a consequence of which Poland joined the ranks of countries implementing the cooperation model of state-church relations, with the clear recognition of equal rights of churches and other religious organisations. However, from a sociological perspective, Poland is relatively religiously uniform. About 33.5 million people (out of the entire population of 38.5 million) belong to the Roman Catholic Church and are characterised by a relatively high level of religiousness. The percentage of Sunday Mass participants is approximately 40% of those identifying as Catholics. The most numerous religious minorities are Orthodox (max. 500,000), Jehovah's Witnesses (124,000-140,000) and Evangelicals of the Augsburg Confession (about 60,000). The vast majority of Poland's population clearly identify themselves with some religious community. In the 2011 National Census only approximately 2.5% of the respondents declared that they had no religious affiliation[5].

The structures of institutionalised chaplaincies generally correspond to sociological data. Among the chaplaincies funded by the state, Catholic chaplaincies are the most numerous. Some state institutions also engage Orthodox and Evangelical chaplains (however, this is not the case for Jehovah's Witnesses). Polish public institutions do not organise any Muslim chaplaincies or chaplaincies connected with new religions. This is tightly connected with sociological data, as well. According to official statistics, the number of Muslims in Poland amounts to approximately 6,000. Only a slightly higher number (tens of thousands) is provided in unofficial

[3] See A. Dudek, Państwo i Kościół w Polsce 1945-1970, Warszawa 1995; J. Żaryn, Kościół a władza w Polsce (1945-1950), Warszawa 1997.

[4] See J. Krukowski, «Porozumienia pomiędzy przedstawicielami Rządu i Episkopatu Polski z 1950 i 1956 r. Znaczenie i realizacja», in A. Mezglewski, P. Stanisz and M. Ordon (eds.), *Prawo i polityka wyznaniowa w Polsce Ludowej. Materiały II Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 26-28 października 2004)*, Lublin 2005, pp. 83-92.

[5] Rocznik statystyczny Rzeczypospolitej Polskiej 2015, Warszawa 2015, pp. 196-197; Ludność. Stan i struktura demograficzno-społeczna. Narodowy Spis Powszechny Ludności i Mieszkań 2011, Warszawa 2013, pp. 99-100; Kościół Katolicki w Polsce 1991-2011. Rocznik statystyczny, Warszawa 2014, pp. 39-193.

estimates[6]. Furthermore, religious organisations from the Far Eastern traditions have a very small membership[7].

3. General Solutions and Definitions

The Constitution of the Republic of Poland of 2 April 1997 clearly states that «freedom of religion shall also include […] the right of individuals, wherever they may be, to benefit from religious services» (art. 53, para. 2 *in fine*)[8]. Prior to that, in the Act of 17 May 1989 on the Guarantees of Freedom of Conscience and Religion[9], the important rights of persons in military service, hospitalised individuals or those residing in penitentiary institutions were acknowledged. They included the right to participate in religious practices and ceremonies, carry out religious duties and celebrate religious holidays, as well as the right to own and use facilities intended for religious worship and religious practices. Religious organisations, for their part, were ensured the right to provide religious services to such persons, to perform rituals and to hold religious gatherings (art. 19, para. 3). More clearly specified guarantees of this right with regard to most churches and other religious organisations with individually regulated legal statuses were also included in the regulatory acts setting out their relations with the state[10].

The nearest Polish equivalent for the English word «chaplaincy» is the term *duszpasterstwo*. It is also used in legal language (e.g. *duszpasterstwo wojskowe* - «military chaplaincy»). According to its etymology, the term does not refer, however, to the position of a chaplain, but to an organised form of religious assistance. The regulations currently in force also include the term «chaplain» (Polish *kapelan*), but this term does not have a legal definition either. In any case, there is practically no controversy about the understanding of the term under discussion. It generally denotes clergymen taking care of a specific group of people, distinguished on the basis of such criteria as a profession or living situation.

According to state law, the status of chaplains can differ to a significant extent. In some cases state authorities only silently accept the fact that religious organisations - fulfilling their mission - provide pastoral care for a specific group of people. In fact, every significant group distinguished on the basis of such criteria as profession

[6] See P. Borecki, «Położenie prawne wyznawców islamu w Polsce», in *Państwo i Prawo* 2008, no. 1, pp. 72-73.

[7] According to official information, the most numerous have only about 2,000 faithful each. See *Rocznik statystyczny Rzeczypospolitej Polskiej 2014*, Warszawa 2014, p. 194.

[8] *Dz. U.* 1997, No. 78, item 483, as amended.

[9] *Dz. U.* 1989, No. 29, item 155, as amended.

[10] See Z. Zarzycki, «Duszpasterstwa specjalne», in: A. Mezglewski (ed.), *Leksykon prawa wyznaniowego. 100 podstawowych pojęć*, Warszawa 2014, pp. 70-71.

or living situation is, in Poland, under the specialised care of the Catholic Church. According to the data published by the Secretariat of the Polish Bishops' Conference, in the church structures there are several dozen national chaplains assigned to chaplaincies in different circles (from teachers and lawyers to drivers and blind people). The number of bishops who are delegates of the Conference to different chaplaincies is similarly high[11].

In duly justified situations, clergymen (not only Catholic) are employed in state structures as chaplains in exchange for payment. This is currently the case in hospitals, penitentiaries and remand centres as well as in the army, the Border Guard, State Fire Service, Customs Service, Government Security Bureau and the Police[12]. The organisation and operation of the chaplaincy services institutionalised in state law are carried out bilaterally by administrative bodies and church authorities (and are sometimes regulated by formal agreements)[13].

Private entities in Poland enjoy full freedom to organise chaplaincies at their own expense. However, cases of using this right are rather rare. A well-known one is the academic chaplaincy of John Paul II Catholic University of Lublin, run by Jesuits on the basis of an agreement with the University. However, university chaplaincies usually do not have developed structures and are run by clerics assigned by a competent diocese bishop without any expenses from the university budget. On the other hand, the pastoral care of pupils in primary and secondary schools is the responsibility of priests employed there as religion teachers.

3. Chaplaincy in the Armed Forces

The traditions of Catholic pastoral care in the Polish army date back to the first decades after baptism was accepted by Mieszko I (966), the first historical ruler of the Polans' state. Towards the end of 17th century the first permanent chaplaincy structures were established in the Polish army (they included 36 Catholic clergymen, one Orthodox and one Muslim at that time). After Poland lost its independence, chaplains accompanied insurrectionist units in 1830 and 1863 as well as Polish military units established during World War I[14].

Directly after Poland regained its independence, the Catholic military bishopric was created. The provisions concerning the implementation of pastoral care in this

[11] See Konferencja Episkopatu Polski. Informator 2015, Warszawa 2015, pp. 159-164.

[12] A. Mezglewski, «Finansowanie nauczania religii w placówkach publicznych oraz wynagrodzeń kapelanów z budżetu państwa», in: D. Walencik and M. Worbs (eds.), *Finansowanie związków wyznaniowych w krajach niemieckojęzycznych i w Polsce*, Opole 2012, p. 114.

[13] Z. Zarzycki, «Duszpasterstwa specjalne», *op. cit.*, pp. 69-77.

[14] B. Ratajczak, «Duszpasterstwo wojskowe», in: H. Misztal and P. Stanisz (eds.), *Prawo wyznaniowe*, Lublin 2003, pp. 316-317.

form were also included in the Concordat between the Holy See and the Republic of Poland of 10 February 1925.[15] Apart from that, during the inter-war period there were also institutionalised structures for Orthodox, Evangelical-Augsburg and Jewish chaplaincies in the Polish army, and up to 1923, there was also a Muslim chaplaincy.[16] In the period preceding the outbreak of World War II, there were about 130 chaplains permanently employed in the army (who were aided in their daily pastoral care by other clergymen). Among them, there were several Greek Catholic clergymen (who fell under the direct authority of the Roman Catholic Military Bishop), 12 Orthodox clergymen, eight Evangelical clergymen and three Jewish rabbis[17].

In the period of the Polish People's Republic, there was no real concern for providing soldiers with religious services, although by the end of World War II the formalised structures of the Catholic military chaplaincy had been created, and its Dean General appointed. Those decisions, however, were taken without any agreement with church authorities, and the military chaplaincy was fully dependent on military authorities (although for pastoral reasons - if there were no arguments to the contrary - bishops granted relevant canon-law rights to individual chaplains)[18].

After the democratic transition, the organisation of the Catholic military chaplaincy was set out in the extensive regulations of the Act of 17 May 1989 on the Relations between the State and the Catholic Church (art. 25-29)[19]. As for the Dean General of the Polish Army, it was decided that he would manage the Catholic military chaplaincy until the Military Ordinariate was established. It was also decided that with regard to the future status of military chaplaincy, chaplains would fall under dual (ecclesiastical and military) authority, and that they would be subject to the regulations on the military service of professional soldiers.

The Military Ordinariate was reinstated in Poland by the decision of the Holy See of 1991, which was approved by state authorities. At the same time, the Polish Bishops' Conference passed the Statute of the Ordinariate, which was announced in the Official Gazette of the Ministry of National Defence. The guarantees of the possibility to carry out pastoral care in the army were subsequently included in the Concordat between the Holy See and the Republic of Poland signed in Warsaw on 28 July 1993 (ratified in 1998)[20]. According to the Concordat, military personnel on

[15] *Dz. U.* 1925, No. 72, item 501.

[16] J. Nikołajew, «Nierzymskokatolickie duszpasterstwo wojskowe w Polsce w latach 1918-1939», in *Przegląd Prawa Wyznaniowego* 2013, vol. 5, pp. 24-39.

[17] *Ibid.*, pp. 25-29.

[18] J. Krajczyński, «Zmiany w polskim prawie wyznaniowym w zakresie katolickiego duszpasterstwa wojskowego w latach 1989-2009», in: D. Walencik (ed.), *Prawo wyznaniowe w Polsce (1989-2009). Analizy - dyskusje - postulaty*, Katowice - Bielsko-Biała 2009, pp. 285-307.

[19] *Dz. U.* 1989, No. 29, item 154, as amended.

[20] *Dz. U.* 1998, No. 51, item 318.

active military service are guaranteed the opportunity to participate in Holy Mass on Sundays and holidays if it does not clash with important professional duties and are to be provided with pastoral care within the Military Ordinariate (art. 16, para. 1-2).

The Military Bishop in Poland is appointed by the Bishop of Rome. Candidates for this position are presented by the Papal Nuncio in Poland after consulting the competent church and state authorities. In issues of a religious nature, the Military Bishop is subordinate only to the Bishop of Rome, and in affairs of a military nature, he reports to the Minister of National Defence. The Military Bishop appoints and dismisses military chaplains. With respect to military chaplains he also exercises disciplinary military power. However, granting them military ranks and honours, remuneration and pensions depends on decisions from the competent military authorities, acting upon the Military Bishop's proposal[21].

Besides the Catholic Military Ordinariate, in the Polish Army there are permanent pastoral structures from the Polish Autocephalous Orthodox Church and the Evangelical Church of the Augsburg Confession. Clergymen who are responsible for those structures (respectively, the Orthodox Military Ordinary and the Chief Military Chaplain) are appointed by the Minister of National Defence, acting in agreement with the competent church authorities. They, in turn, have the right to put forward proposals concerning the appointment of military chaplains and their exemption from military service. According to agreements between the churches involved, the Evangelical Military Chaplaincy also fulfils its functions for people belonging to the Evangelical Reformed Church, the Evangelical Methodist Church, the Church of Christian Baptists and the Seventh-day Adventist Church. Because of this, in the structures of the Evangelical Military Chaplaincy there is also an ecumenical chaplain[22].

All three types of structures of military chaplaincies are financed through the budget of the Ministry of National Defence, which - according to the report prepared by the Catholic News Agency - spent about 0.1% of its budget on them in 2011 (that is, about 25 million zloty, which is equivalent to about 6 million euro). The majority of the expenses (20.5 million zloty) were for the Catholic Military Ordinariate, of which over 10 million was spent on remuneration for about 150 chaplains[23].

4. Chaplaincy in Hospitals

In Polish history hospitals were often run by religious institutions (and especially by Catholic orders). Due to their religious nature, assistance offered in such hospitals

[21] J. Krajczyński, «Zmiany w polskim prawie…», *op. cit.*, pp. 294-307.

[22] See A. Mezglewski, «Działalność związków wyznaniowych w sferze publicznej», in A. Mezglewski, H. Misztal and P. Stanisz, *Prawo wyznaniowe*, Warszawa 2011, pp. 206-207.

[23] Katolicka Agencja Informacyjna, *Finanse Kościoła Katolickiego w Polsce (analiza)*, p. 55; https://ekai.pl/media/szuflada/RAPORT_KAI_01.03.pdf (last access: 13. 07. 2016).

was not limited to concern for a patient's health. In the period of the 2nd Republic of Poland (1918-1939) ecclesiastical health institutions were still an important complement to the network of public hospitals[24]. This state of affairs changed in the period of the Polish People's Republic. Hospitals run by religious orders were nationalised, and hospital employees who were members of those orders were dismissed[25].

The current legal situation has been shaped on the basis of the regulations adopted since 1989. People staying in health institutions have been ensured the right to use pastoral services, and directors of public health institutions have been obliged to designate the proper spaces for the organisation of church services and other religious practices and to employ the necessary chaplains appointed by competent church authorities[26]. The rights guaranteed to patients in this regard were also included in the Act of 6 November 2008 on the Rights of the Patient and the Patients' Rights Advocate[27]. It is clearly stated that in the case of deterioration of a patient's condition or in a life-threatening situation, the health institution is obliged to enable the patient to contact a clergyman of his or her religion. It was furthermore decided that it is the health institution that must cover the expenses arising from the exercise of the above-mentioned rights of patients. The status of hospital chaplains has not, however, been clearly defined. In practice, the issues connected with the legal relationship between a chaplain and a hospital are resolved in a number of diverse ways. It is estimated that about 1,500 Catholic hospital chaplains are employed under paid contracts obliging them to serve in the assigned institutions[28]. However, in many cases clergymen perform pastoral care in hospitals free of charge[29].

A new development regarding the conditions of hospital chaplains' service is the judgment of the Supreme Court of 20 September 2013 (II CSK 1/13)[30]. This judgment ruled that the administration of the Sacrament of Anointing the Sick by a Catholic hospital chaplain to a non-believer without his consent and knowledge during an induced coma constituted a violation of freedom of conscience, understood as personal interest and protected pursuant to article 23 of the Civil Code. At the same time it was stated that hospital personnel (it was the hospital and not the chaplain that was

[24] W. Uruszczak, «Funkcje publiczne Kościoła w Polsce w perspektywie historycznej», in: A. Mezglewski (ed.), Funkcje publiczne związków wyznaniowych. Materiały III Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 16-18 maja 2006), Lublin 2007, p. 22.

[25] H. Misztal, Polskie prawo wyznaniowe. Zagadnienia wstępne. Rys historyczny, Lublin 1996, pp. 193-194.

[26] Z. Zarzycki, «Duszpasterstwo w podmiotach leczniczych», in: A. Mezglewski (ed.), *Leksykon…*, *op. cit.*, pp. 85-86.

[27] *Dz. U.* 2009, No. 52, item 417, as amended.

[28] Katolicka Agencja Informacyjna, *Finanse Kościoła…*, *op. cit.*, pp. 57-58.

[29] A. Mezglewski, «Duszpasterstwo w zakładach opieki zdrowotnej», in: A. Mezglewski, H. Misztal, P. Stanisz, *Prawo wyznaniowe*, Warszawa 2011, pp. 212-213.

[30] In *Przegląd Prawa Wyznaniowego* 2016, vol. 8, pp. 199-211.

the defendant in the case) should obtain information on whether the patient wants to be provided with pastoral service on hospital premises. It is worth emphasising, however, that the Court of Appeals in Szczecin, which, as a result of the judgment under discussion was obliged to hear the case again, did not grant the claimant the compensation demanded (due to the low intensity of guilt on the part of the defendant and lack of moral damages caused). In the doctrine, the position of the Supreme Court was received in different ways. In addition to authors who severely criticised the ruling[31] or underlined its impracticality (despite its theoretical correctness)[32], there were also authors who received it with full understanding[33].

5. Chaplaincy in Penitentiaries

The first penitentiary institutions which clearly acknowledged the right of prisoners to practise religion and the influence of religious factors on the rehabilitation of criminals were established in Poland in the 17th and 18th centuries. For example, in the so-called marshal's prison (Polish *więzienie marszałkowskie*), which existed from 1767 until the loss of independence by Poland in 1795, a permanent Catholic chaplain was introduced and a prison chapel established, and the religious rights of prisoners of other faiths were also acknowledged (for example, Jews were allowed to celebrate the Sabbath with the right to participate in a service administered by an invited rabbi)[34].

For the Polish legislature, the need to ensure religious support for prisoners was already obvious beginning in the period of the 2nd Republic of Poland. In the 1930s the number of prison chaplains permanently assigned to take care of prisoners and who were contract employees of the prison system exceeded 140. A great majority of them were Roman Catholic priests, though the right to provide prisoners with religious services was also given to clergymen of other faiths (in practice, mainly Orthodox and Jewish)[35].

[31] B. Rakoczy, «Glosa do wyroku Sądu Najwyższego z dnia 20 września 2013 r. sygn. akt II CSL 1/13», in *Przegląd Prawa Wyznaniowego* 2016, vol. 8, pp. 213-220; Z. Stus, «Glosa do wyroku Sądu Najwyższego z dnia 20 września 2013 r. w sprawie II CSK 1/13», in *Forum Prawnicze* 2013, no. 5, pp. 35-49.

[32] J. Krzywkowska and A. Bitowt, «Poddanie człowieka nieakceptowanym przez niego praktykom religijnym», in: P. Stanisz, A. Abramowicz, M. Czelny, M. Ordon and M. Zawiślak (eds.), *Aktualne problemy wolności myśli, sumienia i religii*, Lublin 2015, pp. 191-203.

[33] W. Brzozowski, «When anointing becomes annoying: remarks on the Polish Supreme Court's Judgement of 20 September 2013 (II CSK 1/13)», in *Wroclaw Review of Law, Administration and Economics* 2015, vol. 5:2, pp. 70-80.

[34] K. Bedyński, Duszpasterstwo więzienne w Polsce. Zarys historyczny, Warszawa 1994, pp. 13-15.

[35] See J. Migdał, Polski system penitencjarny w latach 1928-1939, Gdańsk 2012, pp. 393-405; A. Szymański, «Kapelani więzienni w II Rzeczypospolitej Polskiej - zarys problematyki», in: J. Nikołajew

Directly after World War II, the authorities decided to close prison chapels and remove (almost) all permanent chaplains from prison personnel. The attempts of Catholic Bishops to reinstate pastoral care in prisons brought about a limited effect. However, the situation began to change more significantly in the 1980s, when the right of the imprisoned to participate in Holy Mass and confession was formally recognised. In the great majority of cases, pastoral care was provided free of charge at the time[36].

The laws of 1989 guaranteed the fulfilment of the religious needs of prisoners. In 1990 the Minister of Justice appointed the chief prison chaplains from the Catholic Church, the Polish Autocephalous Orthodox Church and the Evangelical Church of the Augsburg Confession. In 1997, the Council for Prison Chaplaincy (as an advisory body of the Director General of the Prison Service) was established within the framework of the Central Board of the Prison Service. It is comprised of the chief chaplains, who are employed as civil employees (however, the offices have only been given to the chief chaplain of the Catholic chaplaincy)[37].

In the Executive Penal Code of 6 June 1997[38] convicts were ensured, among other rights connected with religious freedom, the right to benefit from religious services and directly participate in services celebrated in prisons on holy days (art. 106)[39]. Next, in the ordinance of the Minister of Justice of 2 September 2003[40] it was decided that pastoral care should be provided on the basis of a contract signed with a clergyman. The exact nature of this contract, however, was not specified, but it was stated that such a contract can only be signed if a clergyman is appointed by his religious authorities. When performing their functions, chaplains are obliged to obey the regulations pertaining to discipline adopted in a given unit. The unit director must familiarise chaplains with the binding regulations. In practice, many clergymen perform their pastoral functions in prisons without remuneration. Nevertheless, the number of prison chaplains employed on the basis of a paid contract is increasing. When employed, they become civil employees of the prison system. According to the data from 2007, over 70 full-time jobs are financially guaranteed for perform-

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and K. Walczuk (eds.), *Wolność sumienia i religii osób pozbawionych wolności. Aspekty prawne i praktyczne*, Warszawa 2016, pp. 63-78.

[36] J. Nikołajew, Wolność sumienia i religii skazanych i tymczasowo aresztowanych, Lublin 2012, pp. 34-41.

[37] *Ibid.*, pp. 41-43; 198-215.

[38] *Dz. U.* 1997, No. 90, item 557, as amended.

[39] In practice, some problems concern the right to use a religiously motivated diet (which is not listed in the catalogue from art. 106 of the Executive Penal Code). See the judgment of the European Court of Human Rights of 7 December 2010 in the case Jakóbski v. Poland (18429/06); M. Pszczyński, «Prawo osadzonych do wyżywienia przygotowanego według reguł religijnych», in: J. Nikołajew and K. Walczuk (eds.), *Wolność sumienia…*, *op. cit.*, pp. 269-282**.**

[40] *Dz. U.* 2003, No. 159, item 1546.

ing pastoral functions in the imprisoned communities (slightly over 60 for Catholic priests, and the remaining 12 for Orthodox, Evangelical and Pentecostal clergymen). The great majority of penitentiaries already had prison chapels[41]. In 2011, 86 full-time jobs were financially guaranteed, with 184 chaplains employed on the basis of part-time employment contracts[42].

6. Chaplaincy in Other Public Institutions

In 2007 three state-church agreements were signed on the organisation of Catholic chaplaincy in the Border Guard, Customs Service and Police. It was decided, among other things, that chaplains are to be delegated to a particular service by the competent church authorities, who also have the right to put forward a proposal to dismiss a given chaplain from his post. Chaplains are to be civil servants or employees of, respectively, the Border Guard, Customs Service or Police. When it comes to disciplinary responsibility, they both fall under the authority of the authorities of a particular service (within the scope of Polish law), as well as church authorities (within the scope of canon law). Moreover, state authorities declared that chapels and prayer rooms should be established and properly equipped rooms should be allocated for the use of chaplains, where possible[43]. In subsequent years, some other agreements were signed which set out the organisation of chaplaincy in the Border Guard run by the Evangelical Church of the Augsburg Confession (2008) and the Polish Autocephalous Orthodox Church (2009), as well as chaplaincy in the Customs Service managed by the latter religious community (2010)[44].

Today, the Catholic chaplaincy of the Customs Service comprises the dean of this chaplaincy and four chaplains[45]. In 2011 (the data should not have changed significantly since that time), the Border Guard employed 20 chaplains (13 Roman Catholic, two Greek Catholic, two Evangelical and three Orthodox chaplains), and the Catholic chaplaincy of the Police included 16 chaplains (most of whom were employed on the basis of a part-time employment contract). In the same year, the State Fire Service employed 18 chaplains (including 13 civil servants, three civil employees and two

[41] J. Nikołajew, *Wolność sumienia…*, *op. cit.*, pp. 45-47; 198-209.

[42] Katolicka Agencja Informacyjna, *Finanse Kościoła…*, *op. cit.*, p. 57; T. Stanisławski, «Finansowe koszty zapewnienia wolności sumienia i religii osób pozbawionych wolności», in: J. Nikołajew and K. Walczuk (eds.), *Wolność sumienia…*, *op. cit.*, pp. 172-172.

[43] Z. Zarzycki, «Porozumienia władz państwowych z Konferencją Episkopatu Polski w sprawie organizacji i funkcjonowania duszpasterstwa katolickiego w Straży Granicznej, Policji i Służbie Celnej», in: M. Bielecki (ed.), *Bilateralizm w stosunkach państwowo-kościelnych*, Lublin 2011, pp. 243-255.

[44] A reply of the State Secretary, on behalf of the Minister of the Interior, to parliamentary question no. 2557 regarding the legal basis for pastoral care in services provided under the Ministry of the Interior (19 April 2012), www.sejm.gov.pl (last access 13. 07. 2016).

[45] http://www.mf.gov.pl/duszpasterstwo (last access: 13. 07. 2016).

chaplains employed on the basis of a civil-law contract). As for the Government Security Bureau, it had two Catholic chaplains at that time[46].

Furthermore, the Presidents of the Republic of Poland (beginning with Lech Wałęsa) have their own chaplains, and choose the candidates for this function themselves. In the building of the Polish Parliament there is a chapel in which pastoral services are provided by a chaplain appointed by the Warsaw Metropolitan Bishop. At Polish airports there are also chapels which are supposed to serve as places for prayer, not only for Catholics. In some airports (for example, in Warsaw), in addition to a Catholic chapel there is also a prayer room for believers of other religions, and in Krakow there are two such prayer rooms (one for Jews and one for members of other religious organisations).

Conclusions

The public authorities in Poland (and especially the Polish legislature) demonstrate considerable sensitivity to the right of every person to religious assistance and the related right of religious communities to ensure this assistance to their members. The exercise of these rights is formally guaranteed and, in practice, does not raise any serious doubts. Moreover, the special conditions for performing some professions and the awareness of the existence of the state's positive obligations influenced the institutionalisation and public funding of some chaplaincy structures. This is especially the case for the chaplaincy in hospitals, penitentiaries and the army. Today they are well established and generally not questioned, although real guarantees of the rights of religious minorities still appear to be a challenge. Opinions formulated in the legal literature in relation to the public funding of the chaplaincy structures in institutions such as the Border Guard, Customs Service and Police are more varied. Some authors claim that it is an expression of individual but not common good[47] and does not comply with constitutional norms concerning equal rights of churches and other religious organisations and the mutual independence of these organisations and the state[48]. However, more justified is the opinion that it should be perceived as proof of Polish authorities' sensitivity to the religious needs of citizens and an example of

[46] Katolicka Agencja Informacyjna, *Finanse Kościoła…*, *op. cit.*, pp. 56-57.

[47] A. Mezglewski, «Dobro wspólne czy partykularne? Uwagi na temat celów duszpasterstwa w Policji», in: W. Uruszczak, K. Krzysztofek and M. Mikuła (eds.), *Kościoły i inne związki wyznaniowe w służbie dobru wspólnemu*, Kraków 2014, pp. 209-219, Idem, «Finansowanie nauczania religii w placówkach publicznych oraz wynagrodzeń kapelanów z budżetu państwa», in: D. Walencik and M. Worbs (eds.), *Finansowanie związków wyznaniowych w krajach niemieckojęzycznych i w Polsce*, Opole 2012, pp. 114-120.

[48] Por. P. Borecki, «Status prawny duszpasterstwa katolickiego w niektórych instytucjach państwowych», in *Państwo i Prawo* 2009, no. 6, pp. 51-62.

good relations between the state and religious communities, although the relevant regulations should not disregard the rights of religious minorities[49].

[49] Z. ZARZYCKI, «Porozumienia władz państwowych z Konferencją Episkopatu Polski w sprawie organizacji i funkcjonowania duszpasterstwa katolickiego w Straży Granicznej, Policji i Służbie Celnej», in: M. Bielecki (ed.), *Bilateralizm w stosunkach państwowo-kościelnych*, Lublin 2011, p. 255.

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS: THE PORTUGUESE CASE

Jónatas E.M. Machado*

Historical and Sociological Context

Pre-constitutional Origins

Historically, the institution of the chaplaincy in the armed forces draws on different sources. As a country whose nationality and identity was forged in the Iberian Crusades against the Islamic Caliphate, Portugal has the deeply ingrained tradition of an army loyal to the *Respublica Christiana*. This tradition was further developed in the age of the maritime discoveries, when commercial and military interests went hand in hand with a missionary mandate crafted by the Papacy. The Portuguese army was largely a by-product of religious military orders, such as the Templars and the Order of Christ. The presence of the Catholic clergy in the military was seen as needed spiritual encouragement and motivation for the soldiers. Religion and politics were profoundly entangled.

As far as prisons and hospitals are concerned, spiritual care also had a Christian source of inspiration, albeit a different one. According to the teachings of Jesus Christ himself, as reported in the Gospel of Mathew chapter 25, visiting the sick and those imprisoned, that is, caring for the most vulnerable human beings, was the proper way to love God. The New Testament stressed that worshiping God should not be an ideal, abstract and impersonal experience, but a real, concrete and personal experience, accessible not just to the rich and powerful but especially to the poor and destitute. Spiritual care should provide the vulnerable and destitute individual with an intimate, tangible and sensible physical and emotional contact person. The human being was perceived as having an inherent dignity, regardless of his/her physical, social and

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economic condition, requiring special care for basic biological, material, social and spiritual needs. A Christian polity was supposed to care for those in distress, both physically and spiritually. The Catholic clergy thus had an important role to fulfil inside the hospitals and prisons. Because of this, chaplaincies were created in these institutions.

This kind of introduction to the topic makes perfect sense when talking about Portugal. Having been significantly influenced by Christian teachings and traditions since its founding in 1142, Portugal reflects them, to a certain extent, in the way chaplaincies have been justified and organised throughout the centuries. The situation was not very different from the dominant understanding in many European countries, which were also part of the *Respublica Christiana.* Eventually, though, the Protestant Reformation, Enlightened Absolutism and the liberal constitutional revolutions called for a more personal, equal and inclusive right of freedom of conscience and religion, along with an institutional corollary of separation of church and state, both of which led to significant changes in the prevailing paradigm.

Constitutional and Legal Developments

The right to religious care in the armed forces gained an Enlightenment regalist following in 1794. After that, it survived until long after the liberal revolution of 1821 and the proclamation of the republic in 1910. Although the republicans abolished this institution, the participation of Portugal in World War I reinforced the need for it, while stressing that European countries with a Judeo-Christian background could go to war against each other. This underlines the fact that the current justification for the right of religious care in the Armed Forces has little to do with reinforcing Christian identity against real or imagined non-Christian enemies. The right to religious care was re-established in 1937 and confirmed by the Concordat of 1940. This was the case because of the Portuguese sociological reality, in which the large majority of the population has always described itself as Catholic. During the Colonial War in the 1950s and 1960s there was strong cooperation between the Holy See and the Portuguese State in the field of religious care in the Armed Forces.

Contemporary Regulatory Framework

Constitution of 1976

In its article 41, the Portuguese Constitution of 1976 guarantees freedom of conscience, religion and worship.[1] According to the prevailing fundamental rights

[1] Article 41 establishes: «1. The freedom of conscience, of religion and of form of worship is inviolable. 2. No one may be persecuted, deprived of rights or exempted from civic obligations or duties because of his convictions or religious observance. 3. No authority may question anyone in relation to

theory, freedom of conscience and religion is a fundamental right with both negative and positive dimensions. The State not only has to refrain from violating this right, but it also has a positive obligation to create the normative, institutional and regulatory conditions for this right to be protected and enjoyed, especially in those situations in which a negative obligation is not enough to guarantee the right. This is the case when one is dealing with segregated institutions, such as the army, the penitentiary system and public hospitals, in which individuals, for various reasons, find themselves with significant legal and practical restrictions on their religious freedom and thus more dependent on affirmative help.

Religious Freedom Act of 2001

The Religious Freedom Act of 2001 was probably the most significant development in Portuguese history regarding religious freedom and Church and State relations. It was enacted during the XIV Constitutional Government of the then Socialist Party leader and Prime Minister António Guterres. This important legislative instrument affirms the right of religious freedom (article 1), the principle of equality and non-discrimination of individuals and religious communities (article 2), the principle of separation of religious communities from the State along with the collective right of freedom and self-organisation of these communities (article 3). It also enshrines the principle of religious neutrality of the State (article 4). Alongside these principles, the Religious Freedom Act lays down the principle of cooperation (article 5). The State can cooperate with the different religious communities, taking into account their differentiated social presence.

This cooperation is to be based on the principles of freedom, equality, separation and neutrality, extending to matters of mutual concern, such as the promotion of human rights and personal welfare and development, as well as the furthering of the values of peace, liberty, solidarity and tolerance. After enshrining multiple individual and collective religious rights, the Religious Freedom Act lays down the rules concerning the recognition and registration of religious communities with all their different layers, shapes and sizes. Recognition comes through registration in the national registry of collective religious entities. It requires, among other things, the identification of the name, form, doctrines, functions, structure, executive members and property of the requesting religious entity, along with a brief historical description

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his convictions or religious observance, save in order to gather statistical data that cannot be individually identified, nor may anyone be prejudiced in any way for refusing to answer. 4. Churches and other religious communities are separate from the state and are free to organise themselves and to exercise their functions and form of worship. 5. The freedom to teach any religion within the ambit of the religious belief in question and to use the religion's own media for the pursuit of its activities is guaranteed. 6. The right to be a conscientious objector, as laid down by law, is guaranteed».

of its presence in Portugal (articles 33 to 36). This recognition through registration is very important for the accreditation of spiritual and religious assistants.

Without forgetting or rejecting the strong historical, cultural and social connection between the Catholic Church and the origin and identity of Portugal and the Portuguese people, which is the substantive basis for the Concordat of 2004, the Religious Freedom Act recognises the historical and contemporary presence of various and diverse religious minorities in the country, purporting to extend to them, collectively and to their individual members, the fundamental principles of equal liberty and full citizenship. Jews, Muslims, Protestants, Evangelicals, Buddhists, Hindus, Jehovah's Witnesses and Mormons, expressing themselves in different ways, are just some examples of religious minorities that are part of Portuguese civil society. The State can and should positively cooperate with all of them, as long as that promotes human rights and human development. Spiritual care in the armed forces, education facilities, hospitals or prisons is one of the areas in which such cooperation is warranted.

The Religious Freedom Act has a special provision about religious care in special situations. Article 13 reads:

1. The status of member of the armed forces, security forces or police, military service or civilian service, residence in hospitals, nursing homes, colleges, institutes and health, care or educational facilities or the like, detention in prison or other place of detention does not prevent the exercise of religious freedom, and in particular the right to religious care and the practice of acts of worship. 2 - The restrictions deemed essential for functional or safety reasons can only be imposed by prior hearing, whenever possible, the minister of their worship. 3 - The State, with respect for the principle of separation and in accordance with the principle of cooperation, should create the right conditions for the exercise of religious care in public institutions referred to in paragraph 1.

The Concordat of 2004

As the Religious Freedom Act was being drafted and debated, the parties became aware that the old Concordat of 1940 would have to change in order to adapt to the new reality of equal religious freedom. This change materialised by means of Portugal and the Holy See signing a new Concordat on 18 May 2004, during the XV Constitutional Government, in which social democrat José Manuel Durão Barroso served as Prime Minister, before resigning to become President of the Commission of the European Union. This international law treaty purports to balance the acknowledgement of the special role of the Catholic Church in the cultural identity and heritage of Portugal with the principles of equal religious liberty and separation of Church and State which are the hallmarks of a free, open and democratic constitutional order.

Article 17 of the Concordat contains special provisions on the right to religious care in the Armed Forces. It reads:

1. The Portuguese Republic guarantees the free exercise of religious freedom by Catholic religious care to members of the armed and security forces that request it, and as well as through the practice of their acts of worship. 2. The Catholic Church shall, in accordance with Canon Law and by the ecclesiastical jurisdiction of a *headquarters ordinary*[2], provide religious care to members of the armed and security forces that request it. 3. The competent authority of the State and the competent ecclesiastical authority may, by agreement, establish the forms of exercise and organisation of religious care in the cases mentioned in the preceding paragraphs. 4. Church officials can fulfil their military obligations in the form of Catholic religious care to the armed and security forces, without prejudice to the right to conscientious objection.

This provision adopts a rights-based approach, taking into consideration the religious needs of the members of the armed force in general, the rights of the members of the clergy and the institutional rights of the Catholic Church as such. The same is true with article 18 of the Concordat, which is concerned with spiritual care in other segregated institutions. It reads:

The Portuguese Republic guarantees the Catholic Church the free exercise of Catholic religious care to people who, for reasons of residence in health care, care, education or similar facilities, or detention in prison or similar establishments, may not exercise, under normal conditions, the right to religious freedom and who request such care.

Right of Religious Care

Article 13 of the Religious Freedom Act guarantees the right to religious care in special situations. This right is an integral part of the individual right of freedom of conscience and religion, of which it constitutes a positive dimension. On the other hand, it must be seen as an integral part of the institutional right to religious freedom of the various religious communities, many of which perceive themselves as having a special responsibility to care for the physically and mentally vulnerable, regardless of their religious convictions and affiliations.

The principle of separation of religious confessions and the State is not seen as an impediment to any sort of cooperation between public authorities and religious communities. It only purports to prevent the creation of a kind of theological-political coalition that might suggest the existence of an official religious agenda on the part of the State or the attempt by any religious group to capture State power to promote its own ends. Rights-enhancing, welfare promoting, decentralised, equal and non-discriminatory cooperation between the State and religious communities, far from being prohibited, is positively encouraged. The State is expected to engage in the active pro-

[2] Ordinário castrense.

vision of services if that is deemed necessary to guarantee the practical enjoyment of religious freedom rights. Public authorities are expected to create the right conditions for the exercise of religious care in the public institutions mentioned in article 13/1.

The Institutionalised Right of Spiritual Care

General Considerations

The Portuguese people are, by and large, culturally Catholic. This fact has very much influenced the development of the State. For centuries, the right to spiritual care was understood as a Catholic prerogative. Today, the Catholic Church is still a major cultural player in Portugal. The majority of the Portuguese people still define themselves as Catholic. However, the right to spiritual care is structured as an inclusive function, based on the universal values of human dignity, freedom of conscience and belief and separation of Church and State. These values, enshrined in the Portuguese Constitution and in contemporary international law, were also promoted by many thinkers throughout the centuries labouring within the Christian tradition. Historical departures from these values are seen by many as examples of inconsistency between doctrine and conduct.

This explains, to a significant extent, why many Catholic officials openly and actively promote these same values as part of Portuguese spiritual heritage. Although the Catholic Church still plays a pivotal role in the realm of spiritual care in segregated institutions, other actors have started developing a more active role, in many cases working hand in hand with the Catholic Church in what has become a multidenominational service of religious care. Moreover, in its effort to provide the service of spiritual care in hospitals and prisons, the State also relies on various civil society associations. The current regulations on the provision of religious care services in the armed and security forces, in the penitentiary system and in the health system, were enacted in September 2009 by the XVII Constitutional Government led by the then Socialist Party leader and Prime Minister José Socrates. Both the Holy See and the Portuguese Religious Freedom Commission were consulted during the legislative procedure.

Armed and Security Forces

Religious care in the armed forces and in the security forces (i.e. National Republican Guard and Public Security Police) is regulated by legislative decree no. 251/2009[3]. This legislative act of the Cabinet builds on article 13 of the Religious Freedom Act of 2001 and on article 17 of the Concordat of 2004. It guarantees the

[3] Decreto-Lei n.º 251/2009, 23 de setembro.

right of religious care to military, security and civil personnel of the armed and security forces, regardless of religious affiliation.

The religious confessions legally recognised in Portugal are free to provide religious care in the armed and security forces and to practise their own worship rites. This may require the signing of an executive agreement between the religious community and the Cabinet. The aforementioned legislative act institutes a Religious Assistance Service (RAS), in compliance with the principles of the Concordat and the Religious Freedom Act. The RAS is structured on the basis of a Chaplaincy providing spiritual care to the three branches of the armed forces, as well as to the security or police forces.

This Chaplaincy comprises a hierarchy of one chief chaplain and several adjunct chaplains belonging to the different religious communities recognised by the Portuguese State and taking into account their relative number of chaplains. The RAS is helped by an Advisory Council which comprises members of the armed forces and chaplains from the different religious communities. Among other things, this council assesses the needs of the religious care service and gives advisory opinions on the recruitment and allocation of chaplains as well as on other relevant issues. The RAS is structured by different Centres of Religious Assistance (CRA) which organise the provision of spiritual care in the various establishments of the three branches of the armed forces and the security forces, and which fall under the authority of their respective superior hierarchical authorities.

The RAS is an integral part of the structure and hierarchy of the armed and security forces. The chief chaplain and the adjunct chaplains are public servants, and part of the permanent *cadre* of those forces. The chaplains may be volunteers or contractors, with different types of contracts according to the transient or permanent needs of the Chaplaincy. This structure shows a genuine concern for the provision of spiritual care in the armed and police forces according to the constitutional principle of equal religious freedom. It also recognises the collective rights of the different religious communities, notwithstanding the large disparities that exist between them.

Penitentiary System

The existing religious care service in the Portuguese penitentiary system was created by legislative decree no. 252/2009[4]. Articles 13 of the Religious Freedom Act of 2001 and 18 of the Concordat of 2004 provide the substantive basis for this regulation. It purports to align the rights traditionally guaranteed to the Catholic Church with the constitutional imperative of equal religious freedom. Although the religious

[4] Decreto-Lei n.º 252/2009, 23 de setembro.

care service is centred on the spiritual needs of the individual, the central role that this service plays in how religious communities see themselves is not forgotten.

In principle, the provision of religious services depends on the explicit request of the prison inmate or his/her acquaintances. The religious community to which the inmate belongs can also initiate the terms of care provision, although the consent of the inmate is always required (article 4). Preferably, the request for religious care is to be presented at the time of incarceration, although the service can be requested at any time. Spiritual care is provided by a designated assistant outside of visiting hours (articles 5 to 8).

Each correctional facility is to organise the provision of religious care by designating a private space and defining an appropriate timing, and to provide administrative and logistical support (articles 9 and 10).

Article 11 of legislative decree no. 252/2009 specifies the religious rights of inmates. It states:

1. The prisoner, regardless of his/her confession, is entitled to: a) have access to spiritual and religious care; b) be informed in writing at the time of admission in prison of the rights concerning care during incarceration; c) reject unsolicited care; d) have his/her religious beliefs respected; e) be assisted in a reasonable time; f) be assisted with priority in the event of imminent death; g) practise or participate in spiritual acts of religious worship; h) participate in private meetings with the assistant; i) keep in his/her possession publications of spiritual and religious content as well as personal objects of spiritual or religious worship, provided they do not compromise the safety and order of the prison and the wellbeing of other prisoners; j) benefit from food, to be provided by the prison facility, that is consistent with their spiritual and religious beliefs, to the extent possible. 2 - The rights referred to in subparagraphs e) and g) of the previous number can be restricted for disciplinary reasons, or for the order and security of the institution, in accordance with the law, hearing, wherever possible, the respective assistant.

This provision reflects a heightened sensitivity to the complexity and specificity of spiritual care in the penitentiary system. It encompasses an enriched perspective on the diverse spiritual and religious needs of the individual inmate, requiring positive and negative conduct on the part of the prison officials. It also displays the notion that spiritual care must be provided in keeping with the need to maintain the safety of persons, the security of the facility and the requirements of institutional order, activities and operations. Religious care shall be provided by religious ministers, designated according to the internal rules of their respective religious communities, as well as by some collaborators of their choice. The religious ministers must be publicly accredited according to the Religious Freedom Act and registered within the penitentiary system, so as to secure access to the correctional facilities. The religious nature of the assistants must be respected, and they should be given the means to perform their spiritual, religious and worshiping tasks within the prescribed confidentiality, health

and disciplinary prison rules and always respecting the freedom of conscience and belief of the inmates. The assistants must also bear in mind the non-denominational nature of the State. If necessary, they can be called to work as contractors to serve the penitentiary system's more permanent spiritual care needs (articles 12 to 17).

National Health Service

The religious care service in the National Health Service (NHS) is currently regulated by legislative decree no. 253/2009[5]. This legislative act of the executive branch intends to implement the religious rights enshrined in articles 13 and 18 of the Religious Freedom Act and the Concordat of 2004, respectively. It also draws on the National Health Plan 2004-2010, which emphasised the importance of spiritual and religious care within the health care system. Legislative decree no. 253/2009 enacted the Regulation of Spiritual and Religious Care (RSRC) in the NHS. Its purpose is to safeguard the conditions that enable the provision of spiritual and religious care to hospitalised users of NHS health facilities. It states that spiritual and religious assistance in the various NHS units must be provided in a way that respects the freedom of conscience, religion and worship guaranteed by law (article 1).

The RSRC applies to all health facilities where patients are admitted for treatment. Spiritual and religious care is based on the principle of universality, meaning, on the one hand, that all religious communities recognised by the State must be granted the conditions to provide spiritual and religious care in the NHS, and, on the other hand, that all patients, regardless of belief or religious affiliation, are entitled to spiritual and religious care (articles 2 and 3). In general, spiritual and religious care is to be explicitly requested by the patient or his/her relatives or friends, at any moment, or it can be initiated by the religious minister of the community to which the patient belongs, as long as consent is given. Preferably, spiritual and religious care should be requested at the time of admission to the hospital. No patient can be pressured in any way to receive spiritual care (articles 4 to 8).

Each hospital in the NHS must organise and give administrative and logistical support for the provision of spiritual and religious care to its patients. It must provide a room where spiritual assistance and worship can take place in an environment of freedom, comfort, privacy, equality and religious neutrality. Because of its social dominance, the Catholic Church may be given a permanent place of worship in a given hospital that may be shared, if necessary, with other Christian communities. The internal regulation of each NHS unit must include norms on these and other topics concerning spiritual and religious care (articles 9 to 11).

[5] Decreto-Lei n.º 253/2009, 23 de setembro.

Following a discernible pattern, article 12 enumerates the rights of the patients. It states:

Patients, regardless of their confession, are recognised as having the right to: a) access the spiritual and religious care service; b) be informed in writing at the time of admission to the unit or later of the rules relating to assistance during hospitalisation, including the content of the rules on assistance; c) reject unsolicited assistance; d) be assisted in a reasonable time; e) be assisted with priority in the event of imminent death; f) practise spiritual and religious acts of worship; g) participate in private meetings with the assistant; h) possess publications of spiritual and religious content and personal objects of spiritual and religious worship, provided they do not compromise the functionality of the space, hospital order, and the wellbeing and rest of other users; i) have their religious beliefs respected; j) choose a diet that respects their spiritual and religious beliefs, although it has to be provided by the user.

Again, we see evidence of a rich and holistic understanding of spirituality and religion in its diverse dimensions, as well as a strong commitment to equal religious freedom. As far as the spiritual and religious assistants are concerned, they are subject to a set of rules defining their rights and duties. They are to be designated by the recognised religious communities and may choose their own helpers for the exercise of previously specified tasks. Both assistants and helpers have credentials and identification cards. Assistants have the right to access, information, training, and wearing of religious symbols and attire concerning the provision of spiritual and religious care within the NHS. They may also have the right to remuneration if working under a contract.

Their duties, the performance of which may depend on specific circumstances, include, among others, providing individual spiritual assistance, organising collective worship, ensuring confidentiality, respecting and not disturbing patients who have not solicited religious care, coordinating with health personnel, complying with hospital administration rules, keeping the religious neutrality of the State and improving the quality of service. Spiritual assistants are to file an annual report on their activities (articles 13 to 18).

Critical Assessment

The analysis of the basic principles and rules that govern the provision of spiritual and religious assistance within the armed and police forces, the penitentiary system and the public health system demonstrates that both the Constitution of 1976 and especially the Religious Freedom Act of 2001 played a very important role in strengthening and shaping the positive development of equal religious freedom, thus fostering a more inclusive constitutional community. The Catholic Church, the dominant religious force in the country, has accepted the changes with an attitude of good faith, since most of them are practical corollaries of the principles of equal

dignity and freedom, which it also promotes. However, it still supports the fairness of different treatment, something it sees not as a privilege, but as the natural result of the role it plays in the identity and character of the Portuguese people.

By and large, the Religious Freedom Act of 2001 and the Concordat of 2004 were able to strike a reasonable balance between the promotion of equal religious freedom and the acknowledgement of the social and cultural relevance of the Catholic Church. This balance is accepted as wise and prudent by both Catholics, Christians in general, members of other religious communities and secularists. On the one hand it allows for a cooperative relationship between the religious communities and the State in some areas of common concern, while at the same time stressing the values of equal citizenship, sensitivity to the social realities on the ground and State religious neutrality and impartiality. It protects and promotes the individual and collective rights of freedom of conscience, religion and worship.

This reasonable balance was, to a significant extent, the synthetic result of decades of political dialectic between the Portuguese State and the Catholic Church, in which centre-left parties, such as the Socialist Party, tended to challenge the *status quo* and engage in the promotion of equal freedom of religion, while centre-right parties, such as the Social Democrats, tended to do more to appease and tranquilise the Catholic Church. The field of spiritual and religious care in the armed and security forces, the penitentiary system and hospitals reflects this political dialectic along with a rights-sensitive balance between the Catholic Church and the other minority religious communities.

There is still a gap between the law in the books and the law in action, as is the case in many other areas. Some bureaucrats still see spiritual and religious care as a kind of administrative nuisance, especially in its current multidenominational configuration. Most probably, this is not because of secularism or a materialistic insensitivity to the spiritual needs of individuals, nor because of the vestigial traces of a tradition of the exclusivity of Catholic spiritual care. It is probably because of the stress, urgency and administrative pressure that the systems have to endure, which generates several hurdles to those coming from unfamiliar, minority and small religious communities.

As far as the Armed Forces are concerned, the challenge is to provide spiritual care services to all members of the military forces, regardless of religious belief, in a world in which, in spite of the developments in cosmopolitanism, multiculturalism and constitutional patriotism, geopolitical divisions significantly follow traditional religious lines. Particularly, Western armies may find themselves in the challenging situation of confronting radical Islam while at the same time having a constitutional obligation to provide spiritual care to moderate Islamist members of their armed forces. The difficulties that the geopolitical and military implications of religion may generate should be addressed through the principles of human dignity, equal freedom and separation between religious communities and the State.

RELIGIOUS ASSISTANCE IN THE PUBLIC SPHERE. ROMANIAN REPORT

Emanuel Tăvală

1. Historical and Sociological Approach

The social presence of the religious element, *extra murros ecclesiae,* in addition to military, hospital or prison religious assistance, has been in existence ever since organisations of this kind lay grounds. This happened as a result of Church involvement in organising such services *sine qua non,* and the Church being present in one way or another in the life of these institutions ever since they were founded. The position of chaplain was a special honour and attested to a higher social position for families in Western Europe; the State authority came to recognise chaplains in the Romanian Provinces only when there was a bishop in exercise close to the Voivode throne.

The close connection between State power and the church was illustrated in 1868 by a speech by Metropolitan Niphon of Wallachia (1850-1875), who said in the Senate: *We have a homeland because we had an Altar*[1]*,* thus showing Church involvement through its liturgical customs in the fight and military victory of the Romanian army. Although creating a modern Romanian State could be interpreted as «a waiver of civil power to include Christianity among its values and ideals»[2], the presence of the religious institution in the Romanian Army started in 1870, when *the First Regulation of Military Clergy in the Permanent Army* was issued, providing in its Article 1 that *each regiment or battalion forming a special body may have one priest belonging to the dominant religion in Romania*, *and he is to receive a salary from the budget*[3]. The

[1] Cf. Petru Pinca, Istoricul Episcopiei Armatei (The History of the Army Diocese), Ed. Reîntregirea, Alba Iulia, 2013, p.28.

[2] Iuliana Conovici, Ortodoxia în România post-comunistă (Orthodoxy in Post-Communist Romania), vol. II, Eikon P.H., Cluj, 2010, p. 512 and next.

[3] Chiru Costescu, Colecţiune de legi, regulamente, acte, deciziuni, circulări, instrucţiuni, formulare şi programe privitoare la Biserică (Collection of Laws, Regulations, Documents, Decisions,

evolution of this institution, of the chaplain, underwent several changes depending on the political situation of the Romanian State.

Regarding *religious assistance in hospitals,* this was at first provided by hospitals, since hospitals first appeared under the aegis of the Church. Philanthropic work appeared in Romania around monasteries and developed similarly as in other neighbouring countries. The first organisations carrying out social activities were the so-called monastery infirmaries, where ill monks were cared for. In 1704 the noble politician Mihai Cantacuzino founded a monastery and the first hospital in Wallachia, with a capacity of 24 beds.

Nicolae Vătămanu points out that in the second half of the eighteenth century there was a remarkable phenomenon: attached to major monasteries, a new infirmary emerged, similar to a hospital, under the influence of secular institutions of its kind. In 1862, Princess Elena Cuza, together with church staff, contributed to the construction of a foundation for orphaned girls, the «Lady Elena Asylum», located near the Cotroceni Palace in Bucharest, with a capacity of 100[4].

The beginnings of a social security organisation based on law in Romania came in 1831 with the *Organic Regulation*, but social services were set up by the City Hall only in 1881. Beginning in 1923, clear laws on the organisation of social care appeared for the first time in Romania. From 1923 to 1943, social security issues were regulated by the Ministry of Public Health, Labour and Social Care. In 1947 the Ministry of Labour, Health and Social Care split, with the establishment of a separate Ministry of Health and Ministry of Labour, Welfare and Social Security.

After the fall of communism a *Protocol between the Ministry of Health and Romanian Patriarchate* (March 1995) was signed, which regulated religious assistance in hospitals with the help of permanent priests. Moreover, with the first meeting of the Holy Synod of the Romanian Orthodox Church dated 3 to 4 January 1990, *priest access to religious assistance in hospitals, the army, prisons, orphanages and asylums, and the right to organise social security for the clergy and Church believers* was one of the complaints the Church expressed to the new political State leadership.

2. National Regulation of the Chaplaincy and Definition of Chaplaincy Services (the Constitution, agreements, law, court decisions and other legal sources)

Regarding the regulation of religious assistance in the army, hospitals and prisons in Romania, we must begin with the fundamental law, which in article 29,

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Directives, Instructions, Forms and Programmes regarding the Church), Institutul de arte grafice C. Sfetea, Bucharest, 1916, p. 350.

[4] See PhD Rev. Ioan Ciprian Cândea, Misiune şi slujire în instituţiile social-medicale (Mission and Service in Social Medical Institutions), in Revista Teologică (Theological Magazine), no.3/2010, p.64-80, here p. 69.

paragraph 5 clearly states: *Religious denominations are autonomous from the State and enjoy support from it, including the facilitation of religious assistance in the army, hospitals, prisons, asylums and orphanages*. These constitutional provisions are strengthened by the religious denominations law (Law 489/2006), which in Article 10 states that: *(7) The State supports the work of recognised denominations as providers of social services. (8) Public authorities provide any person, on request, the right to be counselled according to religious convictions by facilitating religious assistance.* Similarly, in this sphere, the provisions of Article 36 are relevant: *(1) In orphanages organised by public institutions, private orphanages, or those belonging to denominations, the religious education of children is performed according to their religious membership. (2) In orphanages, irrespective of their financing, the religious education of children of unknown religions is carried out only with the agreement of the persons established by the laws applicable in this area.*

According to the regulatory laws in force, the phrase **military clergy** refers to *a socio-professional category consisting of military priests who work in the structures of the Ministry of Defence in order to meet the spiritual and religious needs of the military staff*. Consequently, military priests contribute through specific means, without proselytising, to cultivating virtues in the military and to providing training in civic responsibility and patriotic feelings among members of the military. The law entitles recognised religious denominations to train priests to assist soldiers in their religion.

The relationship between religious denominations and the administrations of the institutions involved is carried out based on constitutional and legal provisions, following protocols signed with each ministry separately or with the national prison administration. Before these protocols became common, religious support in the institutions concerned was rather informal, and governed on a case-by-case basis.

Regulations of the Ministry of Justice grant recognised denominations and religious associations unrestricted access to any type of detention institution, even if their assistance is not specifically requested. Similarly, regulations prohibit prison management from getting involved in religious programmes and the presence of management representatives at meetings between representatives of religious groups and prisoners. The distribution of religious publications is not restricted.

3. Organisation of Chaplaincies by the State (nomination, education, State supervision, status according to labour law, status of chapels, etc.)

Nomination and Education

Religious assistance in Romania is organised in the following institutions: the military, prisons, hospitals (including residences for the elderly). Priests working in these places must be appointed by the religious group they represent and they must meet all conditions of theological training for a priest. In terms of chaplain recruit-

ment, the aforementioned regulatory document provides that recruitment will be carried out by the Ministry of National Defence, the Religious Assistance Department and the Personnel Directorate of the General Staff and Mobilisation in accordance with the law. The minimum age for recruitment of candidates is 25 years old and the maximum age is 30 years old. For the enrolment of Orthodox priests, the exam takes place at the Romanian Patriarchy, with a committee composed of representatives of the Department of Religious Assistance and the Personnel Directorate of the General Staff and Mobilization and professors from the Faculty of Theology nominated by the Romanian Orthodox Patriarch, The chair of the committee is the Bishop of the Holy Synod. The exam deals with religious assistance in the military environment, and the range of subjects chosen for the exam is approved by the Holy Synod of the Romanian Orthodox Church.

For the other cases, priests are appointed by the religious organisation when a vacancy arises.

Status According to Labour Law

Military priests are *assimilated* into the senior officer corps, with ranks ranging from major to brigadier general. Chaplaincy remuneration is allocated from the funds of the ministry in which they are active (Ministry of Defence or Ministry of the Interior). From an administrative point of view, the military clergy are part of the *Religious Department* and have one of the appropriate military specialisations: weapons, military services and specialties. The Religious Assistance Department has the task of *collaborating with the State Secretariat for Religious Denominations, with the Romanian Orthodox Church and other legally recognised Churches or denominations in order to provide religious assistance to all active military personnel and their families, regardless of denomination.*

Hospital priests are directly subordinate to the eparchial bishop and, in terms of administrative management, report to the hospital unit where they work. Hospital priest salaries are provided in accordance with the protocol signed between the Romanian Patriarchate and the Ministry of Health (1995), and are allocated from budgetary funds.

Prison priests are similar to military chaplains, enjoying all their rights and having similar duties.

Status of Chapels

All places of worship or chapels and churches dedicated to religious assistance in the military space are ensured by construction as part of military facilities, and are built on land administered by the Ministry of Defence. Spaces dedicated to religious services were originally abandoned spaces that subsequently became churches, built according to the canonical Orthodox Church, or were spaces of contemplation that are used for their intended purpose.

In the medical system in Romania, 403 churches and chapels have been built and furnished for the purposes of religious assistance; another 50 are in various stages of construction and planning. They are built on land provided by the hospital administration.

4. Chaplaincy in Public Institutions

4.1. Chaplaincy in the Armed Forces (historically, status, appointment, revocation, funding, etc.)

Collaboration between the Church and the Army has traditionally been very close. As early as the fifteenth century we can find historical moments that testify to the link between the country's Voivode, as head of the army, and Church representatives. In 1415, there was an episode in which where the army did not fight on the battlefield, but rather stood guard over the relics of an Orthodox saint who was martyred and whose relics were brought to Moldavia[5]. This connection between battlefield and divine intervention has a long history in the Byzantine tradition, which relates to Romanian country life.

In addition to these general considerations, «priests of the army» were identified very early, such as *Reverend Iuga* (in 1424), who lived during the time of Alexander the Good, as well as other members of the clergy who fought alongside their monarchs, some of whom would later even become bishops, such as Anastasius Crimca in Moldavia or the Transylvanian Sava Brancovici. Transylvania found itself ruled by different regimes over the centuries, and did not have its own defence force. Army duties were taken up and exercised by some men of the Church (priests or monks), who moved masses of people, raising them for battle.

During the medieval period, during the fighting to defend the territory and the revolutions of 1821 and 1848-1849, there were many priests alongside the soldiers they shepherded. This was the case in 1830, at the creation of the permanent Romanian army as a «national militia» in the Romanian Principalities.

On 2 May 1850 the great noble politician Nicolae Ghica, the Head of the Wallachian army, asked the Holy Metropolitan Church of Bucharest «to seek to appoint one priest attached to each regiment of the army garrisons in Bucharest, Craiova and Braila»[6]. Similarly, Ghica set out the characteristics of the three future priests, who

[5] Cf. Alexandru Diță, 1415. Semnificația politică a unui act religios: Aducerea moaștelor Sfântului Ioan cel Nou la Suceava (1415. The Political Significance of a Religious Act: The Relics Bringing of Saint Ioan cel Nou to Suceava), in Armata și Biserica (The Army and the Church), no. 4, 1996, p. 53.

[6] Gheorghe Vasilescu, Asistența religioasă în oastea Țării Românești în 1850-1870 (Religious Support in the Wallachian Army of 1850-1870), in Armata și Biserica (The Army and the Church), No. 4, 1996, p. 129.

must be: *by their venerable manners in society, by their perfect knowledge of their profession and needful science, able to instil soldier regiments with moral truth, which is the fear of God, obedience to laws and the exact fulfilment of their duties*[7].

Metropolitan Niphon agreed to seek three priests to match the above description and who wished to work in the army for a salary of 250 lei per month[8]. Once they were introduced to the head of the army, Prince Barbu Dimitrie Stirbei, Decree no. 124 was issued on 10 July 1850, appointing the three chaplains.

Shortly thereafter, in October 1850, the Metropolitan Church and the Military Works Ministry drew up the first instructions on *Chaplain Duties.* These consisted of seven points, which were a guide to be followed by the department until 1870. At that time, in Decree no. 603 of April 6, Prince Carol I approved the *Rules for Clergy in the Permanent Army,* according to which each regiment could have its own chaplain. Later, in 1876, by another decree this possibility was extended to all troops and territorial units; in 1877, unit priests were replaced by garrison priests, who provided religious services to all military units in that garrison.

The 1850 regulations represented a true military status for chaplains and established that churches in every regiment[9] should have their own civil registry (*Matriculas*), like all parish churches. Regulations on preparing soldiers mentally for the Great Lent were also provided, and the daily tasks of chaplains and all of their duties were established. Paragraph 7 of the regulation states that the chaplain is responsible for the entire inventory entrusted to him, and *he will answer to the master unit* for anything missing.

These *Instructions* were in place for Romanian chaplains until 1870, when *the Regulation for Chaplains in the Permanent Army* was adopted. This regulation was promulgated by Decree no. 603 in March 1870 and published in Official Gazette no. 79/1870. This regulation provides in Chapter 1, Article 1 that each regiment or battalion may have one chaplain from the dominant religion in Romania, and he will receive a salary provided by the budget. The 1876 *Guidelines* regarding chaplain duties, regulating their activities in times of peace, dealt with the celebration of divine worship, teaching religious sciences in military schools and their imposed duties in wartime.[10]

On 15 May 1915, the Orthodox Church discussed the possibility of appointing a dean to organise the activity of chaplains; a professor from the Faculty of Theology

[7] Ibidem.

[8] Ibidem.

[9] In Romanian «*polc*» - a military unit in Wallachia at the end of Middle Ages, the equivalent of a regiment.

[10] Gabriel RĂŞcanu, «Datoriile preotului în armată (Army Duties of a Priest)», în *BOR (ROC),* year IV, 1877-1878, p. 173-180.

in Bucharest, Constantine Nazarie, was appointed for the job. He issued *Instructions on Chaplain Duties*, which were approved by the Synod of the Romanian Orthodox Church and later by the General Staff of the Army by Order no. 3451 of 28 October 1915. These guidelines were the basis of chaplain work until the Bishopric of the Army was founded.

During World War I, the General Headquarters, *Echelon III,* had a *Religious Department*, with 253 mobilised chaplains. On 9 March 1917 *Directive no. 19001* was approved for chaplains, stating that they were to become officers in the rank of lieutenant and for outstanding merits they could be promoted to the rank of captain.

At the end of the war,, the Law for the Organisation of Chaplaincy was promulgated by *High Royal Decree no. 3378 of 20 July 1921,* and the Army Diocese was founded, with a mainly symbolic headquarters at *the Coronation Cathedral in Alba Iulia*, led by a bishop given the rank of brigadier general. This law was further developed by *the Regulation for Implementation* of 1924 and, subsequently, the *Interim Instructions on Religious Services in Peacetime and in Times of War* (1931) and, finally, a new *Law on Chaplaincy Organisation* (1937).

Legal provisions established that the representatives of all recognised denominations could be military confessors, thus there were Orthodox, Roman Catholic, Greek Catholic, Lutheran, Protestant, Muslim, and Mosaic chaplains.

At the beginning of World War II, there were 108 chaplains; over 200 other priests were subsequently mobilised. After the war, once the communist regime installed itself in Romania, a deliberate campaign began to destroy the military elite and chaplains. Thus, on 8 May 1945, the Superior Directorate of Culture, Education and Propaganda was established; on 2 October of the same year, it was turned into *the General Inspectorate of the Army for Education, Culture and Propaganda,* in which only an *Office for Clergy Relations* operated. This office's task was to coordinate chaplain work with that of «educators» appointed in the military units so that the former became propagandists of «democratic ideals» and «precious partners of the democratic government». After the dissolution of the Army Diocese and Military Clergy Inspectorate in 1948, chaplains were retired from the military. The Diocese worked for 27 years under the guidance of three bishops, Justinian Teculescu (1923-1924), Dr Ion Stroia (1925-1937), and Dr Partenie Ciopron (1937 to 1948). The Diocese was disbanded by Decree Law No. 177/ 4 August 1948 for the general regime of the cults[11] and the military clergy was abolished through *Order no. 946.426* out of the Cluj Military Region on 22 August 22 1948.

[11] Cf A. Pentelescu, Ionuţ Ctin Petcu, *Episcopii Armatei Române (The Bishops of the Romanian Army),* Ed. Militara, Bucureşti, 2016, p. 263.

Evolution since 1990

In accordance with Article 29, paragraph (5) of the Constitution, for the facilitation of religious assistance in the army, considering the «traditions of the Romanian people», in 1995, permanent religious assistance in the army was re-established with the *Protocol on the Organisation and Conduct of Religious Attendants in the Romanian Army,* under no. A.4868/7242 signed by the National Defence Minister Gheorghe Tinca and Patriarch Teoctist. The Protocol repeatedly highlighted the idea that religious assistance in the army was being resumed in order to continue the traditions of the Romanian people: «The Romanian army resumes permanent religious assistance, aiming to meet the requirements of the religious, moral and spiritual needs of the military and contribute to their religious, patriotic, civic and moral education».

The Department of Religious Assistance works as part of the Romanian Army General Staff. Founded on 1 January 1994, the Religious Assistance Department was part of the Directorate of Army Culture. In May 1996, the department was transformed into a spiritual care department, first subordinate to the Defence Policy Department, and then to the General Staff. Since 2007, the department has been directly subordinate to the Head of General Staff.

This *Protocol* regulates the following points:

a) The tasks to be performed by the Department of Army Religious Assistance:
   — Work together with the leaders of denominations other than the Orthodox Church which are recognised by law and have believers in the army; consult with them and establish, by mutual agreement, the way of rendering religious assistance
   — Make proposals on chaplain selection, recruitment and employment principles
   — Develop, with the approval of the Romanian Patriarchy, the methodology and topics of moral and religious education programmes and establish the material support necessary to undertake assistance and moral-religious education activities
b) The rights and duties of chaplains:
   — They are *administrative subordinates to the commanders whose structures they are employed in,* conforming to the rules and duties stipulated by the country's laws and regulations for civilian personnel in the ministry, and spiritually and canonically obeying the local bishop, observing religious rites
   — The priest has the status of *commander counsellor* in religious and spiritual, civic and patriotic, moral and ethical matters and may not have a parish
c) Chaplain enrolment conditions:

— Higher theological studies, permanent degree, at least five years of pastoral activity, prestige in their church and community, in good health
— According to Church criteria, the local bishop recommends chaplains to the Patriarchy for the units/garrisons required by the Ministry. Candidates who pass the selection exam are enrolled and participate in a 60-day special course at the Academy of Military Studies, which is conducted in agreement with programmes drawn up by the General Staff Inspectorate, in partnership with the Romanian Patriarchy. The chaplain is enrolled and given a particular position by the Ministry of National Defence on the recommendation of the Romanian Patriarchate and the respective garrison commander, with the participation of the local Bishopric representative.

d) Remuneration:
— «Chaplains employed under this Protocol shall be employed and remunerated based on the duties of counsellor, expert and specialist inspector (professional degree II-IA, Annex no. 1 of *Law no. 40/1991*) in central units, and based on the duties of counsellor, expert and specialist inspector (professional degree II-IA, Annex no. 10 of *Government Decision no. 281/1993*) in other units»

According to Article 29, paragraph (1) of the *Constitution,* «*No one may be compelled to adopt an opinion or to adhere to a religion contrary to his convictions*»; similarly, in the *Protocol,* it was stated that «military participation in religious services and religious assistance programmes will be freely conducted, according to the soldiers' religious affiliation, and any proselytising activities are prohibited. Military unit commanders will support soldiers of beliefs other than Orthodoxy, at their request, in order to receive religious assistance from the Church or the denomination they belong to».

In fact, the newly-established Department of Religious Assistance included Orthodox priests, general staff officers and representatives from the Roman Catholic Church and the Evangelical Alliance, with the main intention of providing the framework for the elaboration of the necessary draft laws and regulations prior to designing a methodology for religious services conducted in different situations.

Current Legal Framework

Law no. 195/2000 on the organisation and establishment of chaplaincy currently governs this particular category of staff of the Ministry of National Defence. Chaplains are defined as «the servant of a church or of a denomination recognised by law, who is integrated in the armed forces, invested with the right to celebrate worship acts and transmit inherited precepts to his faithful believers». *The main controversy* concerning chaplains is whether they should be classified as *military staff or civilian personnel.*

Laws governing religious assistance in the Romanian army

— Law 195/2000 on the establishment and organisation of military clergy;

— GD 774/2004, approving the Regulation on the Military Uniform Description of Chaplains, on the distinctive and hierarchy signs specific to the military clergy in Ministry of National Defence.

— Order no. M.2 of the Minister of National Defence, approving the Regulation Concerning Religious Assistance in the Romanian Army. This regulation repeals the old Order of the Minister of National Defence no. M.149/2000, on approving the organisation and operation of religious assistance in the army. It was published in the Official Gazette, Part I, no. 43 of 20 January 2014.

In 2015, there were a total of 78 active Orthodox chaplains in the Romanian military units (in the country or in the theatres of operation). In the military units that are part of the Ministry of Defence, there are 84 churches and chapels (39 churches + 45 chapels), plus another 10 in various stages of construction and decoration (seven churches + three chapels).

4.2. Chaplaincy in Hospitals (historically, status, appointment, revocation, funding)

In the Romanian Principalities the first infirmaries[12] (forerunners of hospitals) worked around monasteries, housing the poor and sick. Many infirmaries still stand around monasteries today as a witness. The infirmary became the hospital of all: not only the clergy's, but also the helpless laymen's−the elderly, widows or poor. This medical institution was under the tutelage of the Church until the sixteenth century, when it began to become independent, achieving full independence in the nineteenth century, by introducing State control. Between the fifteenth and eighteenth centuries there was no organised form of medical-social support, according to the model of Western institutions, but rather infirmaries provided this care. Infirmaries were organised in Curtea de Arges, Cozia, Bistriţa, Hurezi, Vochiţa, Neamţ; these infirmaries date back to the 16th century. The seventeenth century was marked by the emergence of several infirmaries in Wallachia which, although small, preceded the independent church hospitals characteristics of the eighteenth century. In 1700, Constantin Brancoveanu built the infirmary at the Brâncoveni Monastery, seeking to restore the old monastery of Matei Basarab. The Hurezi infirmary sheltered Turkish prisoners in 1877, during the War of Independence. Briefly, in 1881, the infirmary was converted into a hospital with 40 beds. Because the canons of monastic life forbade

[12] The word «bolniţă» (infirmary) is of Slavic origin, with the Romanian meaning «a place for ill people». Until the end of the 17th century, the infirmary (Romanian *bolniţa*) was the specific Romanian hospital.

mixed cohabitation, the hospital moved beyond the walls of the monastery. Monk Lawrence left Hurezi and, between 1732 and 1738, established an infirmary outside the Polovragi monastery. The Ţigăneşti Monastery established an infirmary and a church cemetery in Muntenia (1817). In 1867, the infirmary was handed over to the guardianship of civil hospitals. In 1864, the Pasărea Monastery founded a hospital with 12 beds, which was later maintained by the guardianship of civil hospitals. In this century, the infirmaries around monasteries became hospices or nursing homes or were built with this purpose in mind from the very beginning. One such institution is «Sfânta Vineri» in Bucharest. It was built in 1645 by Pan Niculae vel Aga and his wife. Another hospice which lasted a long time is the hospice or the hospital of «Sudu» Church in Craiova, built by Constantin Fotescu vel Clucer and Hagi Gheorghe Ion. It was built for patients who were longing for healing. Crimca Anastasius, Metropolitan of Moldavia (1608-1617; 1619-1629), was the founder of the Dragomirna Monastery and of the first certified hospital of Suceava. In 1619, as evidenced by the donation, he built a hospital in the city of Suceava, adjacent to where the fair was, near the houses of Iealsin Sas.

Since the nineteenth century and especially after the entry into force of the Organic Statutes, state authorities pursued the systematisation and establishment of clear rules and permanent control over such activities. The rulers invested in helping the needy, providing money, goods or personal property for this purpose, then entrusting the people concerned to social or Church care. Under French influence, the State took on several aspects of public space in an attempt to organise and control them. In 1820, the administration of institutions functioning as hospitals, orphanages or asylums passed to State control. Alexandru Ioan Cuza implemented a policy of secularisation of the monastic estates, diverting the property and funds dedicated to monasteries by the Central Church to the state; the Orthodox Church thus lost the main source of funding for its philanthropic activities. Only after the establishment of the monarchy by King Carol I was the philanthropic activity of the Church reactivated. This was thanks to the restoration of better relations between the two entities. Therefore, the involvement of several Orthodox associations and foundations along these lines can be observed, with orphanages, schools for poor children, institutions to help war invalids, pharmacies, etc. being reorganised.

Chaplains' access to public health institutions was regulated and guaranteed by the *Law on the Organisation of the Romanian Orthodox Church* of 1925 and its statute of the same year. Medical institutions that had already built or organised chapels or churches kept them, and religious assistance was assured. Their legal status was governed by the same law of 1925 or by the internal regulations of the institutions in which they operated until 1948.

After the fall of the communist regime, Church activity in the medical field returned to the often-invoked normalcy of before 1948, providing a public service offered by the Church in order to enhance and complement the services offered by

the State[13]. At the same time, reaffirming the desired presence and status of the Orthodox Church in Romania was felt to be necessary in the context of pluralisation in the Romanian religious landscape. At the first meeting of the Holy Synod of the Romanian Orthodox Church from 3 to 4 January 1990, among the complaints the Church expressed to the state's new interim political leadership was *chaplains' access to religious assistance in hospitals, the army, prisons, orphanages and asylums*, and *the right to organise social assistance for the clergy and Church believers*. The *Christiana* Association was immediately founded, made up of a group of doctors and volunteers who wanted to establish hospital chaplaincy personnel to be made up of Orthodox nuns, but the project did not materialise due to administrative issues. However, the presence of chaplains in public hospitals was based on protocols signed directly with the respective hospitals and, as a result of religious activity, the first steps were underway for the planning or construction of the first chapels or churches inside these institutions. Only in 1994 were the first steps to clarify the legal status of chaplains in hospitals taken. By the end of that year (1994), chaplains numbered 169, along with another 65 in asylums and orphanages and a further 106 in other, unspecified specialized institutions[14].

A cooperation protocol between the Romanian Patriarchate and the Ministry of Health was agreed to in 1995; said protocol was signed on 15 March 1995 by the Patriarchate (no. 1968/15 March 1995) and on 23 March 1995 by the Ministry of Health (no. 13702/23 March 1995). This Protocol did not cover the activity of the Church in asylums, orphanages and social institutions that were coordinated by authorities other than the Ministry of Health. According to the protocol, hospital chaplains fall under the authority of the local bishop in terms of the church, and administratively under the authority of the medical unit leadership. The chaplain is appointed by the Orthodox Church dioceses in agreement with the responsible ministry, and there is a chaplain coordinator for these religious assistance activities in hospitals. The chaplain can get involved in assisting patients who do not belong to the Orthodox Church with requests for access to religious assistance in the confession that they profess. Article 4 states that the Ministry undertakes to allow for the planning or construction of chapels and religious practices, but clearly does not undertake to build them.

Pay conditions for clerical staff serving in hospitals is interesting. Thus, initially, the *Protocol* established that remuneration would be provided by the Romanian Patriarchate (unlike the other protocols with the Ministry of the Interior and National Defence). The Ministry then committed to *concede 50 positions funded from its*

[13] Iuliana Conovici, *op. cit.,* p. 548.

[14] Report of the year 1994 of the ROC Holy Synod Office presented January 4th, 1995 in front of the Church National Assembly, in *Biserica Ortodoxă Română (Romanian Orthodox Church),* year CXIII, no. 1-6/1995, p. 289.

budget (art. 8). Even today, remuneration conditions for hospital priests are uneven. At the Romanian Patriarchate level, a total of 364 priests work in hospitals and State or Church places of social protection. Of these, 170 receive their monthly pay through the health insurance system, 54 are paid from their own funds and with a contribution from the State Secretariat for Religious Denominations, 59 receive only the contribution from the State Secretariat for Religious Denominations, 25 priests are remunerated exclusively by the dioceses, while a total of 56 priests are paid from other sources.

There are 236 churches and chapels in operation, with 28 more in various stages of construction or development. However, in many hospitals, services are still officiated in auditoriums, meeting rooms and hallways. Chapels are established by the local bishop, with the assistance of hospital management and employees, or through a hospital-priest endeavour, supported by donors. It should be noted that parish priests support religious assistance in the aforementioned units, responding to requests and organising charitable and philanthropic activities. Social protection units were brought to the attention of student humanitarian and Orthodox women's associations, who have organised spiritual and philanthropic events, also providing religious assistance in these communities by paying missionary priests from the personal funds of their dioceses.

The powers of a hospital chaplain are strictly religious and liturgical. He must work with the medical personnel on the patient's condition.

4.3. **Chaplaincy in Penitentiaries (historically, status, appointment, revocation, funding, etc.)**

In medieval times of Romanian Principalities, only the ruler had the right to judge serious crimes; he was assisted by a council or the noblemen of the Princely Divan, usually at a weekly meeting. If the noblemen were travelling to other cities or countries, judgment was deferred until their arrival. The rulers frequently entrusted the noblemen, the high hierarchs or senior monastery abbots with the right to judge petty facts. In 1472 Ştefan the Great granted the Probota monastery the right to judge the villagers, except for crimes and abductions of girls. Petru Vodă, in 1448, also granted jurisdiction to other monasteries in this regard. Given that few complaints reached the Divan from the areas legally administered by priests, monastic judgment was considered effective, so the rulers granted more and more monasteries the right to judge and also detain those found guilty.

Religious faith greatly influenced the medieval legal system. For example, Sunday was a happy day for the prisoners because they received help (food and clothing) from believers who came to the divine service. In Wallachia, the toughest prison systems were monasteries. Vlad Ţepeş built Snagov monastery in 1457 mainly as a place of exile for noblemen who opposed him. The same monastery had a torture

chamber equipped with sophisticated torture mechanisms. These rooms only closed in the mid-nineteenth century[15]. It should be noted that «special regime» monasteries multiplied in the sixteenth and seventeenth centuries in both Romanian provinces. Noblemen's cellars and dungeons also functioned as prisons, and mines were the most important places of detention.

By the mid-seventeenth century, punishment regimes varied from one prison to another, depending on the noblemen or monks who administered them. Prisons were intended to compel people to perform an obligation and collect the testimonies of those who were to be judged. With the emergence of codices, the Romanian States entered its most repressive legal system ever, with 40,000 convicts executed during the reign of Vasile Lupu alone, a number to which the thousands of others sent to fight in various battles and the thousands executed without trial must be added[16].

Transylvania, under Hungarian jurisdiction, experienced faster development in terms of prisons; cities were built from the start with special places for detention, as well as courts, parliaments and local diets. In the sixteenth and seventeenth centuries, prisons were built in all eight Szekler seats (corresponding to the present-day counties of Mureş, Harghita and Covasna) and in all Hungarian towns. The toughest detention was in the fortresses of large cities, where prisoners were kept in leg chains and handcuffs. They were constantly visited by priests who were involved in their education. Diets and local parliaments developed prison regulations early on, and any detention was based on a written order or an administrative decision.

One of the most important reformers in the Romanian penal system was Nicholas Mavrocordatos. He gave a new meaning to sentences and prisons; he forbade the priests and monks from judging, but gave monastic prison a new meaning, which is still relevant today: «to try and alleviate pain, to clothe the naked, to satisfy the hungry, to care for the sick, to investigate those in prison with pity»[17]. In 1716 Nicholas Mavrocordatos began to build Văcăreşti monastery. This was one of the most modern penitentiary-monasteries in Europe; inmates were taken out for daily divine service and treated the same as crippled beggars. Nicholas Mavrocordatos' grandson, the Wallachian ruler Alexandru Mavrocordatos, resumed monastery punishment, decided that women would be detained separately from men and decided that no one would stay longer than four days in custody without trial. By the late eighteenth century, prisons were maintained either by the detainees (who would pay detention costs),

[15] Grigore I. Dianu, Istoria închisorilor din România. Studiu comparativ. Legi şi obiceiuri (The History of Romanian Prisons. Comparative Study. Laws and Customs), Curtea Regală Printing House, Bucharest, 1901, p. 7

[16] Bruno Ştefan, Mediul penitenciar românesc. Cultură şi civilizaţie carcerală (Romanian Penitentiary Environment. Prison Culture and Civilization), Institutul European P.H., Iaşi, 2006, p. 217

[17] Radu Popescu, Istoriile domnilor Ţării Româneşti (The Stories of Wallachian Rulers), in Cronicari munteni (Wallachian Chroniclers), Albatros P.H., Bucharest, 1973, p. 175.

or by merciful people who brought them money, food and clothing. The charity box from churches gathered donations, divided into predetermined weights, to give to prisoners, beggars and the sick.

The Romanian Principalities maintained monastic prisons for a long time; their alignment with the Western fashion took place in the second half of the nineteenth century [18].

The mines and prisons became centrally organised with the organic regulations from 1831 in Wallachia and 1832 in Moldavia. They received an operating status and were put under the administration of the prison Governor.

The birth of Romanian prisons came amid the continuing secularisation of society, with more and more responsibilities being stripped from the Church, including detainee care. The Law on the organisation of prisons in 1929 brought some significant improvements, such as the emphasis on the moralising and educational aspect (inmates took classes, attended festivals, religious ceremonies, films and had access to the library).

On 24 May 1874 *the General Regulation for Central Prisons* was passed, regulating the sentencing regime which was in effect until 1930, and which spoke for the first time about the institution of the penitentiary confessor (articles 185-191), which was meant to provide spiritual assistance to prisoners whose social improvement could be achieved by reading religious books. On 1 January 1930, *the Law of Prisons and Criminal Prevention Institutions* entered into force, which had been adopted in July 1929 and which kept the *Regulations* of 1874 regarding religious assistance in prisons. The same occurred with the *Regulation for Executing a Sentence*, which came into force on 21 April 1938, and which was one of the most advanced European regulations in this area. After the political regime in Romania changed, all regulations on prisons excluded religious institutions from the penitentiary structure.

After the fall of the communist government, religious assistance in prisons was governed by Law 195 of 6 November 2000, on the establishment and organisation of military clergy, by which the institution of the military chaplain was established in the Ministry of Defence, Ministry of the Interior, Romanian Intelligence Service, the Foreign Intelligence Service, Protection and Guard Service, the Special Telecommunications Service and the Ministry of Justice - the General Directorate of Penitentiaries. Under the law, prison priest activity was coordinated by a priest in charge of the religious assistance activities in prisons.

On 1 August 2005, the position of the priest coordinating the religious assistance activities in prisons was abolished by the Ministry of Justice, without prior consultation with the Romanian Patriarchate and eluding the legal provisions in force (articles

[18] Bruno Ştefan, *op. cit.*, p. 217.

10 and 11 of Law no. 195/2000). The Romanian Patriarchate requested on several occasions for this situation to be resolved. On 17 February 2006, through Order no. 610/C-17 February 2006, the Ministry of Justice drafted and approved a new regulation on religious assistance in detention, repealing the old regulation that entered into force on 15 December 2000. The new regulation was drawn up without consulting the Romanian Patriarchate and made no reference to a prison priest–a servant always present in the institution, who was placed in a similar position as the ministers of other denominations. By Emergency Ordinance no. 47/28 June 2006, amending and supplementing Law no. 293/2004 on the status of civil servants from the National Administration of Penitentiaries, prison priest activity was regulated by introducing Article 80 (1) with these two paragraphs:

a) The provisions of Law no. 195/2000 on the establishment and organisation of military clergy apply to the Clergy of the penitentiary system accordingly,
b) The clergy of the penitentiary system are assimilated into the professional ranks of the civil service, with special status corresponding to the military ranks stipulated in Law no. 195/2000.

Since the Ministry of Justice found no way out in terms of the coordinator position, in 2006, the Romanian Patriarchy addressed the State Secretariat for Religious Affairs, requesting the allocation of a suitable position for the Patriarchal Administration to replace the Chaplain General, to ensure the continuity of religious assistance in prisons. This was an amicable solution for the situation; therefore, priest activity in prisons and rehabilitation centres in Romania would be coordinated by the Patriarchal Administration, performing the same functions as the Prison Chaplain General.

On 3 April 2013, Order no. 1072/C of the Minister of Justice, approving the *Regulation on Religious Assistance for Detainees in the Custody of the National Penitentiary Administration* was published in Official Gazette no. 187, Part I. This legal act regulates religious assistance for detainees in the custody of the National Administration of Penitentiaries, safeguarding their rights and fundamental freedoms, such as the freedom of conscience and religion or of religious pluralism. Its article 2, paragraph 2 states that *the specific activities in the prison environment can be ensured permanently by chaplains employed by the National Penitentiary Administration or by representatives appointed by denominations or religious associations, in compliance with statutes or canonical codes and legal provisions.* In this context, in order to meet inmates' needs for social assistance, the National Administration of Penitentiaries, through its subordinate units, allows representatives from the religious denominations and religious associations recognised by law in the prison environment.

It also establishes that the National Prison Administration is required to provide space in its subordinate units that enable detainees in custody to have freedom of belief in the presence and with the assistance of a religious representative. In this regard, the inmates in the custody of the National Administration of Penitentiaries

may declare, under oath, their religious faith, expressing the option to participate in any religious activity or to request or refuse religious assistance from the religious representative.

In order to diversify educational programmes with religious and moral content and to attract human, material and financial resources for implementing national partnership projects, the National Prison Administration may sign cooperation agreements with certain denominations and religious associations recognised by law under the existing protocol between the Romanian Orthodox Church and the National Administration of Penitentiaries. This collaboration agreement is a way of formalising cooperation relationships between the Romanian Orthodox Church and the National Administration of Penitentiaries; its signing established the general framework within which priests carried out activities in prisons, as well as ways of implementing activities with implicit social, educational and moral-Christian value.

Thirty-nine Orthodox priests are employed in the 39 penitentiaries in Romania; there are 38 churches and chapels located within prisons, with another 2 under construction.

4.5. **Chaplaincy in Other Public Institutions: Police, Airports, Parliament, Municipalities (historically, status, appointment, revocation, funding, etc.)**

Numerous documents attest to the presence of priests in the country's internal services system. Their presence has been recorded since the nineteenth century. Thus, in 1860, Reverend Nicholas from the Ienei church was appointed to the firefighter's brigade in the capital, which had had no priest hitherto. Instead of Reverend Ioanichie, who died in 1863, Reverend Stoian from the Măgureanu Hermitage was appointed at the army hospital in Bucharest, although he was also the spiritual confessor of the capital prison. In the same year (1863), Reverend Costache Mirodat was appointed to the Danube Coast Guards. Protosingle Silvestra was appointed to Lancer Regiment 2 in Iasi, instead of Reverend Basil, who was transferred to the Fire Regiment in the same city.

The 1903 Law on the Organisation of the General State Police provided (art. 29) for «the assistance of a priest» when taking the oath and the Law of 21 July 1929, in its article 78, expressly stated that the oath form must be signed and witnessed by a priest. The same thing was mentioned in the Regulation of the Law and Status of Rural Gendarmerie in March 1931: Article 85 stated that «the gendarme oath is received by the commander of the gendarmerie legion for employees, and by the Inspector General for officers; the oath is given in front of the Gendarmerie priest» and Article 108 specified that «the oath form will also be signed by the priest who witnessed it and will be kept in the record»[19].

[19] Cf. Cristian Muntean, Asistenţa religioasă în Ministerul de Interne, (Religious Assistance in the Ministry of the Interior) in Legea Românească (Romanian Law), no. 2/2002, Oradea, p. 5.

Regulation no. 32 for rural gendarme schools (29 July 1930), for instance, stated that the course called «moral education» was taught by «the company commander and assisting officers whenever there was an opportunity, and the garrison priest must hold moral conferences twice per month».

Although the Police and Gendarmerie were abolished in 1949, the Orthodox Church remained constantly concerned for those in the military structures, even stipulating in the Romanian Orthodox Church Organisation and Operation Statute of 1951, in its Article 135: «Members of the clergy, priests, deacons and psalts are obliged to assist and officiate religious services to soldiers, whenever they are asked». Since 1989, Law 195/2000 has been applied to the Ministry of the Interior structures (Gendarmerie, Fire) and other structures aimed at national security policy, as well as with regard to the chaplains in the structures of other ministries. However, the implementation of this law has suffered different changes in this Ministry. The Religious Assistance Service of the Ministry of the Interior was first placed under the authority of the Public Relations, Traditions, Education and Sports Directorate, where there were incompatibilities between the two services. In 2007, the provision of religious assistance in the units under the Ministry of the Interior underwent an Administrative Reform through the passage of Law 195/2000 on the *Organisation and Operation Regulations of the Information and Public Relations Department*»; because of subsequent reorganisations of the Ministry's central apparatus, the Department of Religious Assistance has been moved to a lower level, inside the *Cultural Centre*.

Ministry of the Interior Order no. 148 of 2 October 2014, regarding the approval of the Organisation and Operation Regulations of the Information and Public Relations Department, introduces a requirement for the Ministry of the Interior Religious Assistance Department to report to the Holy Synod of the Romanian Orthodox Church.

Order no. 15/2015 of the Ministry of the Interior was published in Official Gazette no. 127 of 19 February 2015, approving the Organisation and Operation Regulations of the Information and Public Relations Department.[20] The Order provides that the Department is the unit of the Ministry of the Interior's central apparatus (which includes the Religious Assistance Department, article 4, paragraph 4) that is intended to supervise the application of provisions concerned with moral and religious assistance/education in the structures of the Ministry of the Interior. It aims to organise and carry out these activities, providing spiritual protection to the personnel, respecting the rights and freedoms of conscience of the individual and offering guidance and

[20] The respective order was issued based on the provisions of Article 7 paragraph (5) and Article 12 paragraph (3) of E.G.O. no. 30/2007, on the organisation and functioning of the Ministry of the Interior (Off. Gaz. no. 309 of 9 May 2007, with its subsequent modifications and amendments), modifications approved by Legea no. 15/2008 (Off. Gaz. no. 127 of 19 February 2008).

expert support. The Department must provide annual briefings on the work done to the Holy Synod of the Romanian Orthodox Church (Article 22, letter i).

The units comprising the Ministry of the Interior employ 22 military priests and have 13 churches and 21 chapels, with six churches and three chapels under construction or in the planning phases.

In addition to the aforementioned priests, there are 16 priests who work for the Protection and Guard Service, the Special Telecommunications Service, the Romanian Intelligence Service, the Romanian Parliament and Otopeni International Airport.

Similarly, there are chapels operating on university campuses; these fall under the direct authority of the denomination to which they belong.

5. State Chaplaincy and Islam and Other New Religions

As has been mentioned, when someone belongs to another religious organisation recognised by the State, they have the option to seek religious representatives from that organisation. The same is the case with Muslims working in the Romanian army or placed in detention.

6. Chaplaincy Unions

Each of the above sectors has one coordinator from each denomination; there are no professional associations in this regard, except for the religious associations the priests belong to. Such associations are forbidden under the auspices of article 123, paragraph 8 of the Statute for the Organisation of the Romanian Orthodox Church.

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS IN THE SLOVAK REPUBLIC*

Michaela Moravčíková**

1. Historical and sociological approach

The first Czechoslovak Republic (1918 - 1938) took over the legislation of the Austro-Hungarian Monarchy, which enshrined the cooperation between the State and churches in many areas of social life. This also included the service of chaplains in the army and prisons. The Austro-Hungarian legislation was repealed by a brief derogation clause included in the section 14 of Act no 218/1949 Coll. on State Economic Support for Churches and Religious Communities. By Act no 217/1949 Coll., the National Office for Church Affairs was established, to serve as a central body of the state administration which took over competences in all church issues performed by other state bodies until then. Later, in 1956 this Office was dissolved and its competences passed to the Ministry of Education and Culture. In the totalitarian regime the clerics were employees of the Church. This regime liquidated church schools and stopped activities of churches in many areas of social life. Religious teaching in schools was reduced to a minimum level, positions of chaplains in the army and prisons were cancelled, and their presence in health and social care facilities was only tolerated to a different extent depending on the specific case. The ruling communist party initiated the systematic atheisation of the society, including liquidation of church associations, orders and even entire Greek-Catholic Church for some time[1]. Comprehensive legislation governing state-church relations was adopted only after the fall of communism in 1990.

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[1] 1950-1968.

2. National regulation of the chaplaincy and definition of chaplaincy services

Provisions of the Slovak constitutional law are contained in the Constitution of the Slovak Republic[2], and in the Charter of Fundamental Rights and Freedoms, which is, according to the Constitution, a part of the constitutional order of the Slovak Republic. The chaplaincy in public institutions is not mentioned in the Constitution.

The possibility to conclude agreements with the State was granted to churches and religious societies by Act 394/2000 Coll. amending Act 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies. The Catholic Church and eleven other registered churches made use of this possibility. An important highlight in the Slovak church policy was the adoption of the *Basic Treaty between the Holy See and the Slovak Republic no 326/2001 Coll.* On 11 April 2002 the President signed the *Agreement between the Slovak Republic and the Registered Churches and Religious Societies in the Slovak Republic No 250/2002 Coll*, which had been granted prior consent by the Government and the National Council. Although of different nature, the wording of this Agreement is almost identical with the Basic Treaty between the Slovak Republic and the Holy See. The Basic Treaty between the Slovak Republic and the Holy See has settled, *inter alia*, that the parties would conclude four other partial treaties. The first one, the *Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic no 648/2002 Coll*., came into force on 27 November 2002. Almost identical is the *Agreement between the Slovak Republic and Registered Churches and Religious Societies on Pastoral Care for Believers in Armed Forces and Armed Units of the Slovak Republic no 270/2005 Coll.* In addition, *The Treaty between the Slovak Republic and the Holy See on Catholic Upbringing and Education no 394/2004 Coll.* and the *Agreement between the Slovak Republic and Registered Churches and Religious Societies on Religious Upbringing and Education no 395/2004 Coll.* were made. Principal questions of status and activities of churches and religious societies in the Slovak Republic are regulated by *Act 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies as subsequently amended*. The law does not contain the definition of the spiritual. Pursuant to section 7 of this Act, persons carrying out the spiritual activities perform these with the commission of churches and religious societies according to their internal regulations and generally binding regulations[3]. The churches themselves assess the competence of persons to perform their spiritual activities and, accordingly, determine their classification. In accordance with their internal regulations, religious and

[2] Act No 460/1992 Coll.

[3] Labour Code no 311/2001 Coll. as amended.

religious leaders are appointed to function, possibly even for a particular territorial area. The Slovak Republic guarantees the inviolability of holy places, which are in accordance with the Canon law intended for religious acts. Under the inviolability of a sacred place, the Parties understand the protection of this place by preventing its use for purposes other than those it serves in accordance with Canon law, and to prevent the violation of its dignity[4].

3. Organization of chaplaincies by the State

Religious assistance in public institutions in the Slovak Republic is organized by churches and religious societies in cooperation by the State (Ministry of Interior, Ministry of Defence, Ministry of Health, Ministry of Social Affairs and Family) and public institutions.

According to Basic Treaty between the Holy See and the Slovak Republic, Article 5, The Catholic Church has the right to perform apostolic missions, particularly liturgical rites and religious practices, to proclaim and teach Catholic doctrine. According to Article 14, the Catholic Church has the right to perform pastoral service in the armed forces and police corps. Armed forces officers and police officers have the right to participate in worship services on Sundays and days of religious holidays, unless this is inconsistent with the fulfilment of serious duties. They may participate in other religious rites at the time of employment, with the consent of the relevant service body. According to Article 15, the Catholic Church has the right to perform pastoral care for the faithful in the institutions of detention and in the correctional institutions. As the Article 16 reads, the Catholic Church has the right to develop activity of a pastoral and spiritual nature, and religious training and upbringing in all formative state institutions, educational and medical institutions, state institutions providing social services, including those used for obligatory institutional education, and for the care and social reinstatement of drug dependent persons, in accordance with conditions agreed between the Catholic Church and the respective institution. The Republic of Slovakia will ensure that conditions are fit for the exercising of this right. Persons who are under the care of these institutions have the right to participate in the Mass on Sundays and on days of obligation and are granted the liberty to fulfil all religious acts. Nearly identical provisions can be found in the Agreement between the Slovak Republic and the Registered Churches and Religious Societies in the Slovak Republic. The *Act no 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies* in its section 9 reads: «Persons appoint-

[4] Article 5, Basic Treaty between the Holy See and the Slovak Republic, and Article 5, Agreement between the Slovak Republic and the Registered Churches and Religious Societies in the Slovak Republic.

ed to carry out clerical activities have the right to enter buildings of public social care and health care establishments and homes for children, as well as buildings designed to accommodate military units and provide detention or imprisonment, and places of mandatory curative treatment and protective education. Churches and religious societies shall, in absence of rules applying to the entry of such buildings and/or places under generally binding regulations, negotiate such rules with the respective establishments and/or units. All persons in such buildings and/or places have the right, particularly in cases endangering life and health, to spiritual service usually provided by a cleric of their own choice. In addition, they are entitled to keep spiritual and religious literature of their own choice». Sacral premises, especially chapels and pastoral centres are built according to the rules of churches and religious societies and in line with the rules which are followed by the public institutions concerned. In general, we can say that the organisation of the service of chaplains in public institutions is carried out by churches which seek to constructively cooperate with the State and public organisations.

4. The Chaplaincy in the public institutions

4.1. The Chaplaincy in the armed forces and armed units

Armed forces are the Army of the Slovak Republic and armed units are Police Corps, Fire and Rescue Corps, and the Unit of Penitentiary Guard.

In the modern history of the Slovak Republic, the service of clerics in the Army of the Slovak Republic began only in 1994; a year after the Slovak Republic was established. In the same year, two clerics started carrying out their activities at the Ministry of Defence of the Slovak Republic: one was appointed by the Slovak Bishops´ Conference and the other was appointed by the Ecumenical Council of Churches. A year later, a common Office for Military Clerics was set up with the Ministry of Defence; the Office started its activity on 1 February 1995. Systemized vacancies for military clerics were created in the General Staff of the Slovak Army, commands of corps and in the military universities. Organisationally, the military clerics were subject to the relevant commanding officer, professionally to the director of the Office for Military Clerics irrespective of confession. As the concept defined, the military clerics were to perform their activities in the spirit of ecumenism and respect for other religious tradition. Care for soldiers of other religious orientation was to be ensured individually and in cooperation with representatives of the relevant church. The main role of the Office of Military Clerics was to fill systemized vacancies in the Department of Defence and prepare clerics for such mission. When the *Basic Treaty between the Holy See and the Slovak Republic* was adopted, in which the parties agreed to enter into a partial agreement on the service of clerics in the armed forces, its preparation started almost immediately. On 28 November 2002 the *Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believ-*

ers in the Armed Forces and Armed Units of the Slovak Republic was ratified. On the basis of the *Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic no 648/2002 Coll*., in January 2003 the *Ordinariate of Armed Forces and Armed Units of the Slovak Republic* was established, having the status of a diocese, and the Ordinary was appointed on 1 March 2003, having the status of a bishop[5]. The Treaty regulates the pastoral care for Catholics in Armed Forces, Police Corps, in the Unit of Penitentiary Guard and Railway Guards, and for persons deprived of freedom by a decision of a State authority. Similar is the *Agreement between the Slovak Republic and Registered Churches and Religious Societies on Pastoral Care for Believers in Armed Forces and Armed Units of the Slovak Republic No. 270/2005 Coll. The Centre of the Ecumenical Pastoral Service in the Armed Forces and Armed Units of the Slovak Republic* was officially opened by ceremony services on 10 March 2007. It is the supreme body of the second structure of pastoral care in the armed forces and armed units and a parallel structure of the Ordinariate. Both structures are financed by the State.

The chaplains of the Ordinariate of Armed Forces and Armed Units are the clerics of the Roman-Catholic Church and Greek-Catholic Church. The priests of the Ordinariate are in the service in the individual units of the armed forces, armed units and rescue corps and respect the regulations corresponding to their service class. Legal status of the clerics of the Ordinariate is guaranteed by Canon law, laws of the Apostolic Constitution «Spirituali militum curae», Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic and applicable laws of the Slovak Republic, fully respecting their special clerical status. The military clerics may not be charged with duties which would be in contradiction with their service performance. The clerics of the Ordinariate may not have service weapons, they may not carry them nor use them[6].

The Ordinary appoints the clerics to the service and offices in the Ordinariate according to the rules of the Canon law. Such appointed clerics are accepted to the service relationship and offices by relevant service superiors in the armed forces, armed units or rescue corps[7]. The Ordinariate has tree vicariates: Vicariate for the Armed Forces, Vicariate for the Ministry of Interior and the Vicariate for the Unit of Penitentiary Guard.

[5] The Ordinariate has both canonical and state legal subjectivity. The Ordinary is appointed by the Holy See, he is member of the Bishops´ Conference of Slovakia and organisationally is included in the Armed Forces of the Slovak Republic.

[6] Article 27, Statute of the Ordinariate of Armed Forces and Armed Units of the Slovak republic.

[7] Article 22, Statute of the Ordinariate of Armed Forces and Armed Units of the Slovak republic.

Currently, the Slovak Bishops´ Conference is involved in intense discussions with the Ministry of Defence and the Ministry of Interior about the exercise of rights resulting from the *Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic*.

The Centre of the Ecumenical Pastoral Service covers activities of several churches. By percentage, the number of the clerics of individual churches is as follows: 49% Lutherans, 20% Reformed Christian Church, 15% Orthodox Church, 2% Methodists, 2% clerics of Brethren Church, 2% Baptists, 2% Old Catholics, 2% Hussite Church, 2% Jewish Communities. Likewise the Ordinariate, it has three offices according to the competence: Office of the Ecumenical Pastoral Service in the Armed Forces of the Slovak Republic, Office of the Ecumenical Pastoral Service of the Ministry of Interior of the Slovak Republic, and Office of the Ecumenical Pastoral Service of the Unit of Penitentiary Guard. The clerics of the Centre are obliged to perform the service in the spirit of ecumenism irrespective of their confessional affiliation. The Centre is led by General Pastor appointed by the Ecumenical Council of Churches. General Pastor decides about the acceptance, reassignment or removal of the clerics, according to internal rules of the churches and religious societies involved. Pastors who perform pastoral service in the armed forces and armed units have the rights and obligations defined by internal rules of their churches and competences of the Centre and are in the service employment relationship of the armed forces and armed units. Chaplains hold ranks of officers in line with the positions within the armed forces.

4.2. **The Chaplaincy in the hospitals**

The presence of chaplains in hospitals and pastoral activity is not regulated in acts on health care. It is implied in the constitutional right to freedom of religion, under Article 24 of the Constitution of the Slovak Republic. Section 6 of *Act no 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies* reads that churches and religious societies may establish and operate their own health care and social care establishments, and participate in the provision of related services, in accordance with the applicable laws. The main legal confession regulation does not stipulate the right to pastoral, but rather health care activity. *The Basic Treaty between the Holy See and the Slovak Republic* and the *Agreement between the Slovak Republic and the Registered Churches and Religious Societies in the Slovak Republic* guarantee this right[8].

In every health care facility, religious services are performed by the local clerics, however, recently, there is a trend to appoint hospital chaplains, especially within the

[8] Article 16 in both documents.

Catholic Church. The hospitals for which the clerics have been appointed, establish spiritual administrations. The chaplains are financed by the sending church or religious society. To support and develop this service, the Slovak Bishops´ Conference has set up a Council for Health Pastoral Care. It is led by the bishop charged with pastoral care in the health care area.

4.3. **The Chaplaincy in the penitentiaries**

The legal basis for the operation of chaplains in the penitentiaries *are Basic Treaty between the Holy See and the Slovak Republic (*Article 15), *Act no 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies*, Article 9, *Agreement between the Slovak Republic and the Registered Churches and Religious Societies in the Slovak Republic*, (Article 15), *Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic* and *Agreement between the Slovak Republic and Registered Churches and Religious Societies on Pastoral Care for Believers in Armed Forces and Armed Units of the Slovak Republic*. As part of the church administration, the Vicariate of the Unit of Penitentiary Guard and the Centre of the Ecumenical Pastoral Service of the Unit of Penitentiary Guard have been established. The Vicariate is divided in deaneries and parishes, in line with the Canon law. The organisational structure of the Centre is identical with the one of those institutions where prison pastors perform their activities. Chaplains hold ranks of officers in line with the positions within the armed forces.

4.4. **The Chaplaincy in the other public institutions**

Chaplaincy in Police Corps, Railway Guards and Rescue Corps (fire brigade, mountain rescuers) runs on the same legal basis as Chaplaincy in armed forces. The clerics hold the ranks of officers according to their category in the armed units. Within the existing church administration, the Vicariate of the Ministry of Interior of the Slovak Republic has been set up, and it organises the service of Catholic chaplains. The service of chaplains of churches and religious societies associated in the Ecumenical Council of Churches is controlled by the Office of the Ecumenical Pastoral Service of the Ministry of Interior of the Slovak Republic. The Catholic structure is divided in deaneries and parishes, the Ecumenical structure copies the selected bodies of the Ministry of Interior in which pastors of the Centre perform their activities (Police Academy, District Police Directorates).

According to the Article 24 of the Constitution, churches and religious societies organize the teaching of religion and, according to *Act no 308/1991 Coll. on the Freedom of Religious Faith and the Position of Churches and Religious Societies*, believers have the right to be educated in a religious spirit and - on fulfilment of conditions established by internal rules of churches and religious societies as well as by the

applicable laws - to teach religion. This issue is amended in more detail by the *Basic Treaty between the Slovak Republic and the Holy See, and the Agreement between the Slovak Republic and the Registered Churches and Religious Societies*; the contracting parties refer to a more detailed amendment in special agreements - *Treaty between the Slovak Republic and the Holy See on Catholic Upbringing and Education no 394/2004 Coll.* and *Agreement between the Slovak Republic and Registered Churches and Religious Societies on Religious Upbringing and Education no 395/2004 Coll.* In addition to the conditions for establishment of church schools and religious teaching in public schools, they enshrine the activity of the university pastoral centres. The university pastoral centre is a special-purpose facility run by one or more registered churches or registered societies. It can be run on premises of the given university based on the agreement between the relevant authority of the registered church or religious society and the relevant university. The religious service in the university pastoral centre is performed by the rector of the centre and his colleagues based on the appointment by the relevant authority of the registered church[9]. Except for that, chaplains are active also in church and private schools. Catholic churches establish their spiritual administrations which are in charge of pastoral care for students and pedagogical and other employees of schools.

5. State chaplaincy and Islam and other new religions

The number of Muslims in the Slovak Republic is low, perhaps not more than 5000 persons. Any Islamic religious organization is registered as registered church or religious society according Act on the freedom of belief and the position of churches and religious societies.

Imams and clerics of non-registered churches may enter public facilities as visitors. In case of health or life threat, or in other emergency case, it is the chief of the specific facility that is in charge and takes decisions.

6. Private chaplaincies

Chaplains carry out their activities also in private schools and in private health and social care facilities. It is not a small number of health care facilities established by churches. In Slovakia, chaplaincy in health care area is performed mainly by Hospitaller Order of St John of God - Merciful brothers (*Ordo Hospitalarius Sancti Ioannis de Deo*). In the area of education and upbringing, active are for example Jesuits, Opus Dei, Salesians of Don Bosco, Franciscans, Ursulines. The Catholic Church, the

[9] Article V, Treaty between the Slovak Republic and the Holy See on Catholic Upbringing and Education no 394/2004 Coll. Article 5; Agreement between the Slovak Republic and the Registered Churches and Religious Societies.

Evangelical Church of Augsburg Confession and the Orthodox Church also perform spiritual service in charity organisations such as Catholic Church, Evangelical Diaconia, Orthodox Philanthropy, Diaconic Association Bethany of the Brethren Church. The chaplain service is also an integral part of the church orphanage, church boarding schools (e.g. Dowina and Ister administered by Opus Dei), senior houses, shelters for battered women, church shelters for homeless people and hospices.

7. The Chaplaincy Unions

The associating of priests in the Slovak Republic is not very popular - perhaps due to the past associations of priests cooperating with the communist regime, which was seen rather negatively. In Slovakia, there is a voluntary Association of Evangelical Clerics which, in addition to its internal mission, manages funds to support members of the association. Within the Catholic dioceses, there are associations of priests, e.g. Unitas - association of priests of the Spiš diocese. Within the Ordinariate of the Armed Forces and Armed Units, Community of Soldiers and Policemen has been set up; it is a voluntary formation of the Ordinariate members. In the area of health care, there is Catholic Health Union which, however, does not group the clerics, but health care workers with university education and focuses, *inter alia*, on spiritual service and spiritual accompanying.

RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS - SLOVENIA

Blaž Ivanc*

1. Historical and Sociological Approach

In the 25-year period since the proclamation of an independent and democratic Republic of Slovenia in 1991, the role of religion and the presence of religious assistance in public institutions have changed substantially. The general change in state attitude towards the presence of religious assistance in public institutions is marked by a transition from the anti-religious mission of the communist State towards a neutral, democratic and pluralistic mission of the modern Slovenian State. Instead of being a repressive instrument of promotion and indoctrination for the state's atheistic ideology, public institutions, such as the police and the army, had to ensure democratic constitutional rights and freedoms.

Under the Constitution of the Republic of Slovenia of 1991, a new constitutional momentum or guarantee emerged and provided for individual and collective religious assistance to individuals that serve in public institutions and who, because of this circumstance, have limited regular access to religious assistance. Consequently, the mission and operations of public institutions had to change in order to accommodate the right to regular individual and collective religious assistance, which is one of the protected elements of the constitutional right to religious freedom, enshrined in Article 41 of the Constitution (Ivanc, 2015; Šturm, 2004).

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2. National Regulation of the Chaplaincy and Definition of Chaplaincy Services

Constitution

The Constitution does not explicitly regulate chaplaincy. As mentioned above, religious assistance in public institutions is protected by the right to religious freedom (Article 41) and by the principles of autonomy of churches and religious communities, equality and State-Church separation (Article 7).

International Agreements

The International Agreement between the Republic of Slovenia and the Holy See on Legal Issues (signed on 14 December 2001 and ratified on 28 January 2004), in Article 12, enshrined the duty of the state to ensure the observance of religious freedom by also providing religious assistance in public institutions. Thus, Article 12 (section 1) of the Agreement explicitly refers to prisons, hospitals, nursing homes and other public institutions where the free movement of the persons residing or serving there is hindered. On the basis of Article 12, section 2 of the Agreement, the Catholic Church may freely conduct pastoral activities in public institutions, although it must respect specific general and internal legal rules that apply to a particular public institution.

Legislation

In 2007, the National Assembly passed a new Religious Freedom Act (hereinafter: the RF Act), which introduced new general rules concerning religious assistance in public institutions. Chapter IV (Articles 21 to 25) of the RF Act of 2007 regulates the rights of registered churches and other religious communities and their members. The bill enshrines provisions that explicitly concern the armed forces, the police, prisons, hospitals and social welfare institutions as well as public institutions. However, the RF Act is not exhaustive and many important provisions on religious assistance in public institutions are included in other statutes, e.g. the Military Service Act, the Defence Act, the Enforcement of Penal Sentences Act, the Police Act, and the Patients' Rights Act. The RF Act determines the core content of the right to religious assistance in public institutions in the sense of positive religious freedom, which on the individual level as well as on the collective level protects the right to profess one's religion and the right to freely exercise one's religion. In this respect, it guarantees freedom of communication with priests, participation in religious rites performed at the public institution, the right to receive religious guidance and the right to receive religious literature (Ivanc, 2015).

Special **State-Church Agreements**

Even before the enactment of the RF Act, state-church agreements represented an important part of Slovene law on religion. In the process of separate negotiations

with some churches and religious communities, the government signed several and separate state-church agreements with the following parties, which are (after the Catholic Church) the major churches or religious communities in Slovenia: 1. The Evangelical Church in the Republic of Slovenia, 2. the Pentecostal Church in the Republic of Slovenia, 3. the Serbian Orthodox Church, 4. the Islamic Community in the Republic of Slovenia and 5. the Buddhist Congregation Dharmaling.

One should stress that regulation by state-church agreements evolved before the enactment of the RF Act (2007), which in Article 21 allows the state to sign agreements with registered churches or other religious communities, if the purpose of such an agreement is to implement individual provisions of the Constitution or the law. The supreme authority of a church or other religious community in the Republic of Slovenia or the supreme authority of a church or other religious community with an international legal personality that is competent for the matter under its autonomous rules are able to act as parties to the agreement.

3. Organisation of Chaplaincies by the State

Due to the constitutional principle of State-Church separation (Article 7 of the Constitution), the state's direct involvement in the organisation of chaplaincies is somewhat restricted. A comprehensive constitutional review of the RF Act in this area took place in 2010.

The 2010 ruling of the Constitutional Court partially sanctioned the statute concerning the labour law status of religious personnel in public institutions. The Court held that the employment of priests (or religious assistants) as public servants in the army and in the police corresponds to the demands that objectively arise from the special circumstances that limit the individuals' access to religious assistance (e.g. special burdens, different living conditions). However, according to the Court's opinion, the employment of priests or religious assistants serving as chaplains by public hospitals or by the Ministry of Justice as public servants violated the constitutional principle of separation.

The RF Act does not regulate the status of chapels.

4. Chaplaincy in Public Institutions

4.1. Chaplaincy in the Armed Forces

Religious assistance in the Slovenian Army is regulated by Article 22 of the RF Act:

«Members of the Slovenian army of both genders shall be entitled to religious spiritual care during their military service in compliance with the rules on military service and the defence of the country».

Despite the duty of the Slovenian Army to be neutral towards religion, which demands that it may not promote or disfavour any religious conviction or world view, the Army must ensure the constitutionally-protected freedom of religion. Religious

assistance in the Army was historically first regulated by two agreements with the Catholic Church (September 2000) and with the Evangelical Church (October 2000). Both agreements provided the legal basis for military chaplaincies led by military chaplains who are paid by the Government (see the common provision of Article 6 of both Agreements). The Defence Act (hereinafter: the DA) determines that soldiers are entitled to enjoy the right to religious assistance during their military service and it is up to the Minister to determine the manner in which this care is organised (Article 52 of the DA).

On the basis of Article 52 of the Defence Act and of Article 6, section 2 of the Military Service Act, the Minister of Defence enacted the Rules on the Organisation of Religious and Spiritual Care (hereinafter: the Rules), which set out in detail the organisation and enjoyment of the right to religious spiritual care of military personnel and civilians working in the Slovenian Armed Forces. They are entitled to uninterrupted worship in accordance with the law and the rules of service in the Slovenian Armed Forces. The Rules determine that religious assistance in the Slovenian Armed Forces is organised by the Military Vicariate. The Military Vicariate operates within the General Staff of the Slovenian Armed Forces; it is led by the military vicar and manned by military personnel with the title of military vicar, deputy military vicar, assistant military vicar, and military chaplain or pastoral assistant, in accordance with the regulations governing the employment of the Slovenian Armed Forces. Its main mission is to ensure religious assistance for the military and civilian people of different faiths during military service or work in the army. During peacetime, states of emergency, wartime, military exercises and on missions in other countries, it must provide religious assistance to soldiers and civilians in accordance with legal regulations, international agreements and the working plans of various military commands, units and institutions (Ivanc, 2015; Čepar, 2015). The Rules determine that the staff of the Military Vicariate must:

«—Be available to military personnel and civilians for conversation, advice and support
— Organise and manage the liturgical ceremonies and gatherings for military and civilian personnel according to their own religion
— Invite priests of relevant religions to held religious ceremonies
— Guarantee the equal status of religious communities as well as military and civilian individuals, regardless of their religion
— In events such as accidents, suicide, illness or death of a member of the Slovenian Armed Forces, upon the request of the commanding officer and in accordance with the affected person (or his/her relatives), collaborate in the activities designed to alleviate the effects of an emergency, including spiritual assistance. In order to ensure the right to religious assistance the officers in command are obliged to:
— By arrangement with the Military Vicariate and the religious authorities, allow interviews or lectures with religious content for military and civilian personnel

(who wish to do so) and determine the appropriate facilities in a way that does not disturb the work of the military unit or institution and the command process
— In cooperation with the military clergy, set aside the time, space, and other opportunities for worship and conversation
— Allow military and civilian personnel to participate in religious ceremonies outside of military facilities in their spare time or when not performing military tasks during which they must not leave their post
— Allow for the free receipt of religious literature and religious press
— Enable official representatives of churches and religious communities equal opportunities and means of entry into the area and premises of the military facilities in which they may operate in accordance with the Rules (such as those provided for official visits by employees of the Ministry of Defence with the rules of service in the Slovenian Armed Forces)». (See Articles 4 and 5 of the Rules; Ivanc, 2015).

Article 6 of the Rules provides that the Military Vicariate, with the agreement of the commanders of military units, may inform military and civilian personnel (who wish to do so) about the content of religious assistance and about religious sites in the area of the military unit or institution. In addition, it may also provide religious assistance to the family members of military and civilian personnel and other employees in the Ministry of Defence and their family members (upon their request).

4.2. **Chaplaincy in Hospitals**

The right to religious assistance in hospitals and social welfare institutions that are performing institutional care is ensured by Article 25 of the RF Act. Religious assistance must be assured by a sufficient number of appointed priests. They have the right to provide religious service without hindrances. They may freely visit the residents at the appropriate times. Religious personnel may not be employed in hospitals as public servants, but they may receive remuneration for their work. Churches and religious communities may organise chaplaincies for religious assistance in hospitals. For example, the Catholic Church established a special Hospital Parish for this purpose. The ministers responsible for health and social welfare issued special regulations that deal with the way in which patients and residents of social welfare institutions that are unable to attend the ceremonies outside an institution owing to their age and health-related problems may receive religious assistance. The statute and special rules acknowledge the right of patients or residents to take part - to the extent possible - in religious ceremonies organised on the premises of public institutions, and the right to receive religious literature and instruction. One should also mention the statutory duty of hospitals and social welfare institutions to provide for the appropriate premises (e.g. chapels) and technical conditions for ensuring religious assistance to patients and residents.

In addition, the Patients' Rights Act (2008) also acknowledged the importance of religious spiritual assistance in hospitals by demanding that a patient's dignity and his/her moral, cultural, religious, philosophical and other personal convictions must be respected (Article 3, PR Act). Article 13 of the PR Act determined the obligation of every health care provider to ensure the conditions for the appropriate religious assistance of hospitalised patients. Detailed rules have been set forth by the Rules on the Organisation and Implementation of Spiritual Care in Hospitals and Other Health Care Providers (2008).

4.3. **Chaplaincy in Penitentiaries**

Evidently, persons who are deprived of liberty by a court decision or whose movement is restricted and must stay in a prison, juvenile detention facility, juvenile correctional facility or training institution (hereinafter: the detained persons), face great obstacles to effectively practise religious freedom. Despite this fact, their right to regular individual and collective religious assistance must be respected.

Under Article 24 of the RF Act, the Ministry of Justice has the obligation to ensure religious assistance and other spiritual care in penitentiaries. After the intervention of the Constitutional Court the Ministry of Justice may only provide for other forms of payment for the work performed by priests (chaplains) and their religious assistants. A chaplain (religious worker) priest may perform his/her work without hindrance and visit the detained persons of their respective religious belief without supervision at the appropriate time. The statute guarantees the right to take part in religious ceremonies which are organised in the institution and the right to receive books with religious literature and instruction. Another important statute in this area is the Enforcement of Penal Sentences Act, which acknowledged (Article 78.a) the prisoners' right to religious assistance, which must be implemented in accordance with the RF Act. Statutory limitations for the execution of religious assistance are established in cases where there are safety concerns and in the interest of preserving order. The Minister of Justice provided for detailed regulation by passing the Rules on the Organisation and Implementation of Spiritual Care in Prisons, Educational Institutions, Juvenile Detention Centres and Training Institutions for Physically and Mentally Handicapped Youth. A coordinator for religious spiritual care works within the office of the Prison Administration of the Republic of Slovenia.

4.4. **Chaplaincy in Other Public Institutions: Police, Airports, Parliament, Municipalities**

No special statutory provisions have been put in place that would regulate chaplaincy in the Parliament, at airports and in municipalities. Under Article 23 of the RF Act and Article 73.a of the Police Act, the state has the duty to provide religious spiritual care to policemen and policewomen upon their request. Naturally, the obli-

gation to provide religious spiritual care arises in cases where different circumstances make the exercise of religious freedom difficult.

According to the Rules on the Organisation and Method of Spiritual Care in the Police (hereinafter: the Rules), a police officer has the right to religious spiritual care under the conditions laid down in the RF Act and in the Rules.

The Rules first call for the appointment of a special person, who is a staff member or an employee of the General Police Directorate (hereinafter: the GPD) and who is responsible for the organisation of religious spiritual care. According to Article 3 of the Rules, he or she has to cooperate with other national authorities and representatives of registered religious communities in Slovenia and has to ensure equality among different religions. The Rules explicitly demand that commanding Police officers are obliged to enable the smooth exercise of religious spiritual care for police officers. Their exercise of religious care may not interfere with regular police work (see Article 4 of the Rules).

The Time of Religious Assistance

In principle, police officers may benefit from religious assistance only in a time when they are not performing official tasks or during rest time. This time does not count as their working time. In exceptional cases (e.g. natural disasters, times of emergency, work in war situations), the time for religious assistance may be carried out during working hours due to special circumstances, as long as it does not hinder police operations.

The Form and Place of Religious Assistance

The Rules determine that religious assistance may take the form of an interview or a religious ceremony, which may - on national and religious holidays or other feast days that involve the participation of a large number of police officers - take place at the premises of a religious community. According to Article 9 of the Rules religious assistance may be given, if this is possible, in the appropriate spaces of police facilities. Such a space must ensure the confidentiality of the conversation. The Rules do not prohibit the formation or use of a Chapel.

Religious assistance might be provided on the premises of a religious community or in other places as well.

The appointment and revocation of religious personnel (chaplains) who provide religious assistance is the responsibility of churches and religious communities (in some cases explicitly determined in the provisions of state-church agreements).

5. State Chaplaincy and Islam and Other New Religions

In 2007, the Islamic Community in the Republic of Slovenia signed a separate state-church agreement. Article X of said agreement provides for comprehensive

coverage of the religious freedom of individuals and groups of individuals in hospitals, health care facilities, prisons, military barracks and other institutions where the movement of persons is limited or prevented. The Islamic Community has the right to provide religious spiritual care in all public institutions according to sectoral regulations.

6. Private Chaplaincies or Similar Activities as Organised by the Churches in Other Institutions

Private chaplaincies are organised in private Catholic grammar and secondary schools and provide for religious teaching and assistance. They are separate from state authorities and act only under the rules of churches and religious communities.

7. Chaplaincy Unions

In Slovenia no chaplaincy unions have been established.

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RELIGIOUS CHAPLAINCY IN SPAIN

Agustín Motilla

1. Historical and Sociological Approach

Spanish history is deeply rooted in the Christian tradition. The overwhelming presence of one religious denomination, Roman Catholicism, in social life and in the political scene is one of the main characteristics of our history. Therefore the Roman Catholic Church's legal status has been, and continues to be today, a topic of political and social debate. The three other denominations that have signed agreements with the State (the Evangelical, Jewish and Muslim religions) have a total number of followers that represents just 1 to 1.5 percent of the Spanish population. This may justify the differences between the way religious chaplaincy is handled with regard to the majority Church and the other denominations.

From a historical point of view[1], the first example of permanent Roman Catholic chaplaincy was in the Royal Army during the reign of King Philip the Second. During the 16th century, as members of the army (known as «Tercios») were deployed to Italy and Flanders, Roman Catholic priests provided spiritual assistance to the troops. One century later, in 1644, a General Vicar was named as the chief of the Catholic chaplaincy. His authority came from both the Pope, who nominated him, and the King, who appointed him for the nomination, after negotiations between the Church and the State. As a State institution, the Vicariate was under the command of the Ministry of War.

The Royal Army model of religious chaplaincy was subsequently extended to penitentiaries and hospitals. Since 1834, a Roman Catholic priest has been named by the bishop to the religious chaplaincy of the prisons within each diocese. There have been Catholic priests in public charity houses (orphanages, homes for the elderly or disabled, hospitals, etc.) since the 19th century. They are appointed by the bishop, as well.

[1] See, A. Motilla, *La Administración española en materia religiosa (1808-1977)*, Editorial Comares, Granada 2009, pp. 139-153.

Around this time there was a growing tendency of the Roman Catholic chaplaincy to break off and become a separate entity from the ordinary jurisdiction of the bishops. Hence, at the end of the 19th century, religious chaplaincy was provided by a special corps of the public administration, the Chaplaincy Corps.

In 1889 the Royal Army Chaplaincy Corps was created, under the General Vicariate's command. This organism of the Ministry of War had a hierarchical structure that was autonomous and independent of the Roman Catholic bishops.

Within the prisons, a Chaplaincy Corps was created in 1881 under the direction and supervision of the Highest Chaplain. This public body fell under the authority of the Ministry of Justice.

With regard to chaplaincy in charity houses, at the beginning of the 20th century a Roman Catholic chaplaincy under the command of the Highest Chaplain was established; it had a hierarchical structure, and was a part of the Ministry of Internal Affairs.

All the Catholic chaplains who served in these Corps had the status of civil servants.

These Corps were abolished during the First and the Second Republic (1873-1874, 1931-1939). The Republican governments believed that the existence of a Roman Catholic chaplaincy enforced by special Corps within public institutions was against the State's *laicité* and the right of religious freedom of non-Catholic minorities.

With regard to chaplaincies for minority denominations, Articles 8 and 9 of the Agreements with the Evangelical, Jewish and Muslim Federations signed in 1992 set out their regulatory framework.

2. National Regulation of the Chaplaincy and Definition of Chaplaincy Services

The constitutional framework for religious chaplaincy lies in the right of religious freedom (Article 16.1 of the Spanish Constitution) and in the obligation of public institutions to promote citizens' fundamental rights (Article 9.2 SC). The enforcement of these declarations was established in the Religious Liberty Act, adopted on 5 July 1980. Article 2.3 states that «*to ensure true and effective application of these rights, authorities shall adopt the necessary measures to facilitate religious assistance in public, military, hospital, community and penitentiary establishments and any other under its aegis, as well as religious training in public schools*». Court decisions have interpreted this law in the sense that only in situations of individual need or difficulty - those in which citizens cannot satisfy their religious necessities by themselves - must the State provide for them by any of the models set out in legislation[2].

[2] Madrid Superior Court, Ruling of 13 September 1999.

With regard to religious chaplaincy in public institutions, the Army Royal Ordinances set out different models for the Roman Catholic Church and for other denominations. Constitutional Court Ruling 24/1982, of 13 May, stated that the system in force for Catholic members was lawful and it could be extended to minority religions[3].

The Roman Catholic chaplaincy in the Armed Forces is governed by one of the Agreements between the Spanish State and the Holy See of 1979, and was implemented by Royal Decree 1145/1990, of 7 September, regarding Religious Chaplaincy Service. Evangelical, Jewish and Muslim chaplaincy in the Army is governed by Article 8 of the three Agreements with the Federations, signed in 1992.

In penitentiaries, the General Penitentiary Act 1/1979 of 26 September[4] recognises the right of inmates to religious chaplaincy. The Roman Catholic chaplaincy is governed by Article 4.2 of the Legal Agreement with the Holy See, enforced by the Agreement between the Ministry of Justice and the Spanish Bishops' Conference (SBC) of 25 May 1993. Evangelical, Jewish and Islamic chaplaincy is governed by Article 9 of the 1992 Agreements and Royal Decree 710/2006, of 4 July, regarding the personal conditions of the chaplains belonging to the Federations.

Article 13, 1. j. of the Hospital Governance and Administration Rules[5] proclaims the right of patients to request a religious chaplain. The Roman Catholic chaplaincy is regulated by Article 4 of the Legal Agreement with the Holy See and the Agreement between the Government and the SBC[6]. Article 9 of the Evangelical, Jewish and Muslim Agreements also focuses on religious chaplaincy in public hospitals.

Finally, the Order of 4 August 1980 refers to Roman Catholic chaplaincy within public schools.

With regard to the definition of chaplaincy services, we cannot find a specific definition from the Roman Catholic Church. Generally speaking, it is part of the contents of the Church's rights of freedom of worship and teaching proclaimed in Article 1 of the Agreement on Legal Affairs with the Holy See. However, the specific rules of chaplaincy in public institutions give us a broader definition if we look at the functions assigned to Catholic priests. Their responsibilities go beyond strictly spiritual and religious matters. For instance, in the Armed Forces they must «*collaborate in*

[3] «… the fact that the State provides Catholic religious assistance inside the Armed Forces does not breach the Constitution. On the contrary, it is a way to make effective the fundamental right of religious freedom to the individuals and the communities …» (Legal Reasoning no. 4).

[4] Enforced by Royal Decree of 9 February 1996.

[5] Approved by Royal Decree 2082/1978, 25 August.

[6] Approved by Order of 20 December 1985.

the cultural and humanitarian development of the members»[7] and in prisons or in hospitals it is their duty to «*humanise penitentiary* [or hospital] *life*»[8].

There are more specific definitions of religious chaplaincy tasks in Article 6 of the Evangelical, Jewish and Muslim Agreements. For the Evangelicals they include «*worship, administration of sacraments, healing of the soul, Evangelical preaching and religious teaching*». The Jewish chaplaincy consists of «all the tasks derived from rabbinical tradition: worship, rituals, and rabbi teachings in the Jewish religion». And Islamic chaplaincy includes «all the practices according to Islamic law and tradition that arise from the Quran or the Sunna, and which are protected under the Spanish Religious Freedom Act».

3. Organisation of Chaplaincies by the State (nomination, education, State supervision, status according to labour law, status of chapels, etc.)

The individual's right to religious chaplaincy is provided by the State depending on the level of recognition the denomination he or she belongs to enjoys.

If the denomination is registered in the Religious Entities File, the member can apply for religious chaplaincy. The management of the institution must authorise each request.

Furthermore, only the denominations that are part of an agreement with the State are permitted to establish a permanent chaplaincy. Generally speaking, Spanish Law sets forth four ways or models:

1. Integration of the chaplain into a special corps of the public administration. The priests are nominated and appointed following the same system used for appointing civil servants. They are under ecclesiastical but also civil authority. [This category includes, for example, the permanent ministers of the Roman Catholic chaplaincy in the Armed Forces].
2. Through an agreement with the State, public institutions deal with the denominations regarding the payment of the chaplains in two different ways:
   — The denomination appoints the priests who will provide religious chaplaincy. The State pays the amount of money agreed upon as a salary for the work done to the denomination. There is no legal or labour relationship between the State and the priests. [This is the model for the Roman Catholic chaplaincy in prisons].

[7] Article 6 of Royal Decree 1145/1990.

[8] Article 2 of the Order of 24 November 1993; Agreement between the SBC and the Management of INSALUD, of 23 April 1986.

— The hierarchy of the denomination proposes the clergy member to be appointed as chaplain to the management of the public institution. If there is no objection to the proposed candidate, management will sign an employment contract with him. He will carry out his work under the civil administration's authority. [For example, the Roman Catholic chaplaincy in the hospitals that are part of the public INSALUD network].

3. Public institutions authorise chaplains from the denominations to perform their religious duties inside each centre through an agreement with the State. The public administration has no labour relationship with the chaplain, nor do they pay for the personal expenses of their work. However, it does provide for the material needs of the chaplaincy. [This is the model for the Evangelical and Jewish chaplaincies in the Armed Forces, penitentiaries and hospitals, set out in the 1992 Agreements].
4, Public authorities in charge of the institutions can authorise individuals from certain denominations to go to places of worship on the days and at the times prescribed by their religions. [So, Jewish or Muslim military personnel could be authorised to go to the synagogue on Saturdays or the mosque on Fridays, as established in Article 8.1 of the Agreements].

4. Chaplaincy in Public Institutions

4.1. The Roman Catholic Chaplaincy in the Armed Forces

The basic regulation on this topic is mostly contained in Royal Decree 1145/1990, of 7 September, which creates the Religious Chaplaincy Service within the Armed Forces, which is part of the State Secretariat of Military Administration of the Ministry of Defence.

The Army Archbishop is the head of the Service. According to Canon Law, he has ordinary jurisdiction over Roman Catholic military personnel and their families. He is nominated through a complex procedure: a special commission elected by the Ministry of Foreign Affairs and the Spanish Nuncio makes a list of three names to be proposed. The Holy See approves them; the Spanish King appoints one of them, who is then officially named to the position by the Pope[9].

The clergy members of the Religious Chaplaincy Service are tied to the Military Administration by a special relationship. However, they do not have a military rank. Their legal status is of two types:

— Permanent priests: they must comprise at least 50% of all the chaplains. They have to pass an examination and be named by the Defence Minister, after be-

[9] Article 1.3 of the 1976 Agreement between the Holy See and the Spanish State.

ing appointed by the Army Archbishop. They enjoy the status of civil servants under the command of the Military Administration. They can be dismissed if they breach their duties, or if the *missio canonica* is withdrawn.

— Non-permanent priests: they are bound by a contractual relationship with the Military Administration, from which they receive a salary. This contract cannot last more than eight years. They can leave the job at the end of the year if they wish to; they can also be removed at the decision of the Archbishop.

The status of the two types of Roman Catholic Armed Forces chaplains shows that they are tied to a dual fidelity: to the State, through the Defence Minister, and to the Church, through the Archbishop.

In addition, other individuals, priests or religious orders members, can voluntarily collaborate with the Service. They do not have any relationship with the Administration but can be reimbursed for certain expenses.

The State also covers the costs of the material needed in the religious chaplaincy: places of worship, liturgical items, etc.

4.2. **The Roman Catholic Chaplaincy in Hospitals**

As previously stated, in 1985 an Agreement between the SBC and the Ministries of Justice and Health was signed and put into practice the following year through a Covenant with the Director of the largest network of public hospitals: INSALUD. These Agreements regulate the Roman Catholic Service created in all public hospitals under the Director of the institution, in order to provide spiritual assistance to all Catholic patients who voluntarily request it.

The costs are fully covered by the hospital budget, not only for places or objects of worship but also for the salary of the chaplain. He is tied to the hospital by an employment contract. As in the Armed Forces, he can be dismissed if he breaches his duty or the bishop withdraws the *missio canonica.*

4.3. **The Roman Catholic Chaplaincy in Penitentiaries**

In accordance with Article 4.2 of the Legal Affairs Agreement with the Holy See, the chaplaincy in penitentiaries was established by the Agreement of 20 May 1993 between the SBC and the Ministry of Justice. It determines the number of Roman Catholic chaplains in relation to the number of inmates in a prison. The priests are named by the General Director of Penitentiary Institutions. The State pays the diocese an amount of money based on the numbers of hours that each Catholic chaplain works in the prison. All the expenses for material necessities (places and objects of worship) are also charged to the public budget. So, the priests that perform chaplaincy are not part of the public Administration. The dioceses must pay the chaplains' Social

Security payments. Voluntary clergy and members of religious orders may also be appointed by the bishop to collaborate with the chaplains at no cost.

Inside Armed Forces prisons, the Roman Catholic chaplaincy is provided by the permanent or non-permanent priests of the Religious Chaplaincy Military Service [10].

4.4. **The Roman Catholic Chaplaincy in Other Public Institutions**

All inmates inside reformatories or youth institutions and detention centres for foreigners waiting to be expelled from the country have the right to religious chaplaincy. In the case of reformatories, Article 39.1 of Royal Decree 1774/2004, 30 July, which establishes the Penal Responsibility of Minors Act, of 5 January 2000, sets out the right of minors to obtain religious chaplaincy from their denomination. Foreigners subject to a deportation procedure can also practise their religion and have spiritual assistance [11].

With regard to other social assistance institutions (those caring for dependants, the elderly, drug addicts, immigrants, the homeless, etc.), while Article 4 of the Legal Affairs Agreement with the Holy See refers to a future agreement regarding how the State would provide the Roman Catholic chaplaincy, that agreement has not yet been signed. Therefore, a permanent system of Catholic religious chaplaincy is not established at this time.

Additionally, there is religious chaplaincy in public institutions such as airports, railway stations, public schools, universities, etc. The responsibility for implementing and planning this chaplaincy falls to the management of each institution.

With regard to public schools, Roman Catholic chaplaincy is mentioned in Article 2 of the Education and Cultural Affairs Agreement with the Holy See, which defers the development of this chaplaincy to a new pact, which has not yet been signed. The Order of 4 August 1980 refers to places and acts of worship within the schools. As already noted, the actual implementation of this chaplaincy depends on the decision of the institution's management.

At public universities there is not a general rule about the right to religious chaplaincy. The Madrid Superior Court Ruling of 13 September 1999 stated that universities do not have the duty to provide religious chaplaincy, because the situation of students is not one of impossibility, or even of great difficulty, or displacement. However, it is also not forbidden by law. It depends on the rector or the governance committees' will to decide whether or not to establish a permanent chaplaincy. Most Spanish public universities have indeed organised a Roman Catholic chaplaincy because of historical or traditional reasons. Such chaplaincies are governed by the

[10] See Royal Decree 1396/1992, 20 November, on Military Penitentiaries.

[11] Order of 22 February 1999, on Detention Institutions for Foreigners.

agreements signed between the rector and the bishops of the dioceses where the universities are located.

5. Religious Chaplaincy of Other Denominations

As previously stated, members of the Armed Forces, inmates of penitentiaries, or patients in hospitals have the right to request religious chaplaincy if their denomination is registered in the public Religious Entities File. The director of the institution must authorise the request and the representative of the denomination's entry if there are no reasons of public order to prevent it.

Only with those denominations that have signed an agreement with the State may we speak of permanent and continuous chaplaincy, that is, with the Evangelical, Jewish and Muslim denominations.

Broadly speaking, authorised pastors, rabbis and imams provide chaplaincy to public institutions. The centre supplies the material and means to carry out the chaplaincy. There is no employment relationship between the administration and the minister of the denomination. So, the denominations must pay for the personal expenses involved in carrying out chaplaincy functions.

5.1. Religious Chaplaincy in the Armed Forces

Articles 8.3 of the 1982 Agreements state that within Armed Forces facilities, Evangelical, Jewish and Muslim chaplaincy will be provided by pastors, rabbis and imams chosen by the denomination and authorised by the military authorities. Material conditions will be similar to the Roman Catholic system.

The possibility for Jewish and Muslim members of the institutions to be authorised by their superiors to go to the synagogue on Saturday, or to the mosque on Friday, to pray and worship God is also prescribed.

5.2. Religious Chaplaincy in Penitentiary Institutions

Similarly, Article 9 of the Agreements establishes the right of Evangelical, Jewish and Muslim inmates to receive religious chaplaincy from their pastors, rabbis or imams, as authorised by one of the three Federations. Royal Decree 710/2006 of 9 July regulated the authorisation procedure. After the request from the Federation is received, together with the minster's public certificate of good conduct, the penitentiary administration will grant him/her permission to enter the prison. This authorisation is valid for a year, and another can be granted if the administration does not revoke it.

In the Evangelical and Jewish Agreements, the denomination does not receive any compensation from the State for the chaplains' work. However, the Muslim Agreement does include the possibility of public financing through a special pact (Article 9.3). In 2007 the Government and the Spanish Islamic Commission (SIC) signed

an agreement[12] regarding this issue: the penitentiary administration would give the SIC an amount of money that was the sum of the salaries of the imams who perform chaplaincy services in those prisons where more than ten inmates request it. The SIC must certify the hours effectively dedicated to Islamic chaplaincy.

5.3. **Religious Chaplaincy in Public Hospitals**

The 1992 Agreements recognise the right of Evangelical, Jewish and Muslim patients to request the assistance of their pastor, rabbi or imam inside public hospitals, as well. They can enter the hospitals at any time, as long as they are authorised by the Director of the centre (Article 9.1 and 2). The chaplain's personal expenses are paid for by the denomination. However, once again, the Muslim Agreement opens up the possibility of public financing if an agreement is signed. No agreement has been stipulated at this time.

5.4. **Religious Chaplaincy in Other Public Institutions**

Article 9 of the Agreements refers to Evangelical, Jewish and Muslim chaplaincy within assistance institutions (those founded for different aims such as caring for the homeless, drug abusers, unprotected minors, etc.), provided by ministers elected by the denominations and authorised by the management. This religious chaplaincy has not yet been put into practice.

6. **Private Chaplaincy or Similar Activities Organised by the Church in Other Institutions**

The Roman Catholic Church is the only denomination which is able to organise chaplaincy in private places. The figure of the Catholic chaplain or priest who must offer pastoral care to a community is governed by the Code of Canon Law (canons 564 and on).

In general, the bishops appoint and freely remove chaplains (canon 565). The Code, however, recommends naming a chaplain for those congregations of faithful who cannot be properly attended to by the parish (such as immigrants, seamen, vagrants, the homeless, etc., -canon 568). With respect to centres dependent on religious orders, the institution's superior shall nominate the chaplain. If it is a lay religious institution, the superior will nominate the chaplain to the bishop and the bishop will appoint him (canon 567).

[12] See Agreement between the Ministers of Justice and Internal Affairs, and the President of the SIC.

7. Final Remarks

International human rights agreements ratified by Spain, the Spanish Constitution and the Religious Freedom Act proclaim the fundamental right of each individual to his or her freedom of belief. In spite of this, the tendency of religious assistance laws is to restrict the right to request chaplaincy only to members of the religious denominations registered in the Religious Entities Files.[13] The collective (and non-individual) enforcement of the right to request religious assistance may constrain a fundamental right of all religious believers of any denomination.

As we have seen, in Spanish law there is a difference in treatment between the Roman Catholic religious chaplaincies inside public institutions, compared to the minority denominations which have signed an Agreement with the State. This may be justified by historical or sociological reasons. However, the Roman Catholic models of religious assistance create more State involvement and result in increased economic expenses. Moreover, it contributes to separating the legal treatment of the majority denomination from that of minority groups.

In addition, certain Roman Catholic religious assistance requires excessive State intervention that may breach public neutrality in religious matters. For instance, religious assistance in the Armed Forces is implemented through permanent chaplains who have the dual role of Church clergy member and civil servant. This may also limit the denomination's right to religious freedom. The chaplains are subject to a dual loyalty: the Church on the one hand, and their commitment to obey the public authorities to whom they are also subordinate on the other.

[13] For example, see article 230 of the Penitentiaries Regulation (approved by Royal Decree 190/1996, 9 February).

CHAPLAINCY - SWEDEN

Lars Friedner

Sweden has, neither legally nor in fact, a comprehensive view on chaplaincy. There is not even a Swedish word for the phenomenon[1]. Nevertheless, there are - in Sweden as well as in other countries - chaplains in the armed forces, in the hospitals, etc. However, the historical and sociological facts, as well as national regulation and organisation differ widely between the various forms of chaplaincy[2]. Therefore, it is not meaningful to give an overarching view of chaplaincy in Sweden. Instead, matters of history, organisation, Muslim chaplains, chaplains' unions, etc. will be described together with the different forms of chaplaincy. A common observation regarding all kinds of chaplaincy in Sweden, though, is that there are no laws passed by Parliament or Statutes from the Government on the matter. As will be obvious from the following, the normal legal basis for chaplaincy is agreements.

To offer a brief history of religion in Sweden, let us begin by saying that Sweden became a Christian nation in about the year 1000. The Christian Church of that time was the Roman-Catholic Church[3]. In the 16th century, Sweden became a part of the Lutheran Church Reformation, and the result was a Lutheran Swedish state church. For several centuries, no other religions were accepted[4]. However, the scene changed in the middle of the 19th century, when free Protestant churches, e.g. the Methodist Church, the Baptist Church, and - later - the Pentecostal movement, were established and allowed[5].

[1] The Swedish word «institutionssjälavård» - literally «soul cure at institutions» - has been used. But it does not cover the whole meaning of chaplaincy.

[2] Attempts have been made, though, to make comprehensive decisions on chaplaincy, see Ds Kn 1979:2. This proposal did not, however, lead to any detectable results.

[3] Göransson, *Svensk kyrkorätt* (Stockholm 1993) p. 22.

[4] Ib. p. 26 ff.

[5] Ib. p. 39.

The Lutheran state church, the Church of Sweden, remained the state church until the year 2000[6]. Even thereafter, the Church of Sweden is the religious community with the most members[7], though it is now legally more similar to the other religious communities of the country in several aspects.

Chaplaincy in the Armed Forces

Ever since the 16th century, there have been chaplains within the Swedish armed forces[8]. The chaplains were employed by the army or the navy. In 1925, in the peace-time after the First World War and the subsequent substantial reduction of the Swedish armed forces, most of the chaplains were dismissed, and only two positions remained. During some years in the 1930s, the number increased somewhat, through priests employed by the Church of Sweden dioceses (at that time state authorities), but then returned to the 1925 situation[9]. Even during this period, some state money was granted to the different units of the armed forces for soul healing among the soldiers. This money was often used to hire part-time priests[10].

As the international political situation worsened during the 1930s, the need for chaplains in the armed forces organised for war came to the surface. A new system for the armed forces chaplaincy was implemented by Parliament in 1939[11]. In this system a head chaplaincy committee was organised, as were part-time positions for military chaplains. A field dean was appointed[12]. To cover the need for chaplains, Church of Sweden priests as well as pastors from the free Protestant churches (and also some laymen) were mustered[13]. This led to a discussion about whether lay people could be allowed to distribute the Eucharist[14]. Although Sweden did not get involved in the Second World War, the armed forces were mostly organised for war during this period. The system of war-time chaplaincy in the armed forces has remained ever

6 Church of Sweden Act (1998:1591), Sw. *lagen om Svenska kyrkan.*

7 www.svenskakyrkan.se; www.sst.a.se.

8 Hansson, Kyrkan i fält - fältpräster i det svenska försvaret, organisation, principer och konflikter i ekumenisk belysning sedan 1900 (Skellefteå 2016) p. 11; Långström, Som det var och som det blev - riksdagens, försvarets och kyrkans roll för själavårdens utveckling inom försvarsmakten från beredskapstid till nutid (Stockholm 1997), p. 9 ff. ; Even during the Medieval Ages, there seems to have been some kind of chaplaincy within the armed forces, see Sandgren, »Det är bra med en präst liksom» - en undersökning kring några förutsättningar till andlig vård vid militära förband (Uppsala 1999) p. 20 and Anderberg, Själavården vid Sveriges försvarsmakt 1940 - 1945 (Uppsala 1947) p. 11 ff.

9 Hansson ib., 57; Anderberg ib. p. 33 ff.

10 Prop. 1939:139 p. 2 ff.; Långström ib, p. 21 f.

11 Prop. 1939:139, SU 1939:4, rskr 1939:4; Långström, ib. p. 29.

12 Hansson, ib. p. 159; Långström ib.; Anderberg ib. p. 47 ff.: Malmberg, *Den innersta fronten* (Stockholm 1940) p. 9.

13 Hansson ib. p. 59.

14 Ib. p. 11 ff.

since, although compulsory military service for all young Swedish men has since been abolished in peace-time[15].

In the Swedish armed forces' international missions (for the UN and elsewhere), there is always a chaplain participating (except in some minor missions)[16].

In 1989, the peace-time military chaplaincy was integrated into the ordinary organisation of the Church of Sweden[17], though the position of field dean, employed by the armed forces, remained. The position, however, was also opened up to priests and pastors from churches other than the Church of Sweden[18].

Since 1996, the Church of Sweden has taken financial responsibility for the costs of the field dean. The field dean is appointed by the commander in chief of the armed forces in co-operation with the Church of Sweden[19]. In 1996, the tasks of organising and maintaining the chaplaincy within the armed forces, in peace-time as well as war-time, were transferred to the field dean and the military authorities[20]. Today, the relationship between the armed forces and the Church of Sweden is set out in an agreement.

The chaplains in the armed forces are trained for their special task through a short training programme arranged by the armed forces[21].

Some units of the armed forces have special rooms for prayer and religious services. These are not specifically Christian but may be used by any religion[22].

In most places, «soldiers» homes' were built, connected to the armed forces' peace-time establishments. A «soldiers» home' is a building where the soldiers can spend their leisure-time. There is usually a café, a library, sports fields, and a chapel. The «soldiers» homes' were often a part of the activities of the free Protestant churches, although they mostly were organised as independent foundations[23].

Chaplaincy in Hospitals

The first hospitals in Sweden were started as early as the Medieval Ages. They were run by the Church, which at that time meant the Roman-Catholic Church. Every hospital had a chaplain. This system remained in place after the church Reformation. The Church of Sweden Church Ordinance of 1571 stated that the vicars should visit

15 Prop. 2008/09:140, FöU 2008/09:10, rskr 2008/09:292.
16 Elmberg, *Militär själavård* (Stockholm 2010) p. 76 ff.
17 Prop. 1987/88:31, KU 1987/88:30, rskr 1987/88:181.
18 Hansson, ib. p. 133.
19 Långström, ib. p. 62 f. Elmberg, ib. p. 68.
20 Elmberg, ib. p. 69.
21 Ib. p. 78 f.
22 Ib, p. 75.
23 Malmer, Hemmet vid nationens skola - väckelsekristendom, värnplikt och soldatmission, ca 1900 - 1920 (Stockholm 2013) p. 76.

the hospitals in their parishes every week. In the Church Act of 1686, this duty was changed into a visit every fortnight. However, it seems as if these provisions mostly aimed at some kind of supervision over the hospitals, rather than to perform chaplaincy work for the patients. In the 19th century, the number of hospitals grew strongly, and it was stipulated that every hospital should have at least one priest employed[24]. For cottage hospitals it was not compulsory[25].

In 1962, the system was changed through a decision of Parliament[26]. From this time, hospital chaplaincy became a task for the Church of Sweden, so that the parishes where hospitals were located should be responsible for - and finance - the chaplaincy at the hospital. On the other hand, the regions, which are in charge of the hospitals[27], should arrange for chapels in the hospitals.

The developments since 1962 have led to the increasing influence of religious communities other than the Church of Sweden in hospital chaplaincy. Initially, the free Protestant churches became a part of the hospital chaplaincy, followed by the Roman-Catholic Church, the Orthodox Churches and Muslim communities, with the arrival of immigrant groups in Sweden. But the system for financing remained - each religious community is financially responsibility for its participation[28].

As a relatively new trend within hospital care, the time patients spend at hospitals is diminishing. Patients are often sent home from hospitals quite soon, and they are then treated at home by home health care. This has changed the conditions for hospital chaplaincy[29]. However, there are still some patients who stay at hospitals for longer periods of time.

There are two associations for hospital chaplains, one for those who are priests in the Church of Sweden, and one for the pastors in the free Protestant churches. Education for hospital chaplains is arranged through the Swedish Christian Council.[30]

Chaplaincy in Prisons and Remand Prisons

There was probably some kind of prison chaplaincy as early as the Roman-Catholic period. But the Church of Sweden Church Ordinance of 1571 established the duty

[24] See National Hospital Statutes 1864 and 1901; Tuberculosis Hospital Statutes 1915; Mental Hospital Statutes 1858, 1883, and 1901; Hospital Statutes (1928:303) and (1940:1045); Statutes (1929:328) regarding State Mental Hospitals.

[25] Ds Kn 1979:2 p. 20 f.

[26] Prop. 1958:67 and B 21, SU 1958:B 91, rskr 1958:B 121.

[27] Only a very small number of private hospitals exist in Sweden.

[28] www.sjukhuskyrkan.se.

[29] Ib.

[30] Ib.

of priests to take care of persons in prison[31]. The Church Act of 1686 stated that the prison chaplains should be well qualified for their special duties[32]. The chaplains' work among those who were sentenced for life or facing capital punishment was emphasised[33]. Special instructions for prison chaplains were issued in 1835[34] and new ones in 1846[35]. Bigger prisons had full-time working priests and also had their own church buildings[36]. Smaller prisons had part-time priests. The priests received their salaries from the prison authorities. In 1953, the system for the smaller prisons was changed, so that a religion care committee for each such prison was set up. It consisted of the prison manager, a Church of Sweden priest proposed by the diocesan bishop, and a representative of the Protestant free churches proposed by the National Free Church Co-operation Committee. Both clergymen were appointed by the prison authorities. The clergymen received no salaries from the prison authorities, but they got some remuneration for the services that they held at the prison[37]. A few years later, this system was also introduced for bigger prisons[38]. In 1962, the system was confirmed through a decision in Parliament[39] and was then also extended to remand prisons[40].

In 1989, the Church of Sweden, at that time still a state church, integrated the prison chaplaincy into its regular organisation. The Church of Sweden part of the prison chaplaincy became a task for the local parish, supported by the diocese and funded through the National Church Trust[41]. The effect of this new system, which still remains in place, was that the Church of Sweden part of the prison chaplaincy came to be financed by the Church of Sweden itself - and ultimately by church members. However, the other part of the prison chaplaincy - performed by religious communities other than the Church of Sweden - is still financed by the state, through contributions from the Swedish Prison and Probation Service[42] to the Christian Council of

31 Forsback & Nordström in Svärd (ed.), Jag var i fängelse - en studiebok om den andliga vården vid fångvårdsanstalterna (Klippan 1970), p. 57.

32 Ib.

33 Arner, Kyrka och fångvård i Sverige 1846 - 1946 - historiska och principiella undersökningar (Lund 1963) p. 119.

34 K.Br. December 30, 1835.

35 June 3, 1846.

36 Levenskog, Institutionssjälavård i Sverige 1932 - 1989 med särskild hänsyn tagen till fängelsesjälavården (Uppsala 1997) p. 19.

37 Forsback & Nordström, ib.

38 Levenskog, ib. p. 82.

39 Prop. 1962:1 appendix 4, SU 1962:2, rskr 1962:2.

40 Mazetti in Carlsson (ed.), Vägen in - om andlig vård i Kriminalvården (Söderköping 2010) p. 111.

41 Prop. 1987/88:31, KU 1987/88:30, rskr 1987/88:181.

42 Sw. Kriminalvården.

Sweden[43], the Swedish Muslim Council[44], or directly to the religious communities involved[45]. With the Church of Sweden separated from the state since 2000, this system of financing the prison and remand prison chaplaincy may be regarded as a little biased, but so far no serious attempts to change have been made.

Since 1992, the chaplain services at prisons and remand prisons have been based on an agreement between the Swedish Prison and Probation Service and the Christian Council of Sweden. The Christian Council co-ordinates the prison chaplaincy and is also responsible for educating the chaplains[46]. The system with a committee at each prison and remand prison that consists of a Church of Sweden priest and a pastor from any of the free Protestant churches remains. At bigger prisons and remand prisons, Roman-Catholic and Orthodox priests are also included[47]. Nowadays, the Swedish Prison and Probation Service also has an agreement with the Swedish Muslim Council regarding Muslim chaplain services at bigger prisons and remand prisons[48]. Only religious representatives who are approved under any of these agreements are allowed to visit prisons and remand prisons. At the moment, there seems to be no need for chaplains other than Christian or Muslim[49].

Although in some cases they are financed by the Swedish Prison and Probation Service, all prison chaplains today are employed by their religious communities. There is a Prison Chaplains Association[50], where the chaplains meet and get an opportunity to discuss matters of common interest[51].

Chaplaincy in Other Public Institutions (police, airports, parliament, universities)

In Sweden there are examples of chaplaincies in public institutions other than those mentioned above. These include chaplaincies in the airports, the police, Parliament, and universities.

As a result of an initiative of the Church of Sweden diocese in Stockholm, airport priest activities at Stockholm-Arlanda airport started in 1989. Both the airport and the Church of Sweden were in the hands of the state at that time. A chapel was opened in 1993. The chapel is open to persons of any faith. Church of Sweden priests from

43 Sw. Sveriges Kristna Råd.
44 Sw. Sveriges Muslimska Råd.
45 Larsson, Andlig vård inom Kriminalvården - en kunskapsöversikt (Norrköping 2011) p. 11.
46 Mazetti, ib. p.112.
47 www.skr.org.
48 www.sverigesmuslimskarad.org.
49 Larsson, ib. p. 9.
50 Sw. SIK - Själavårdare i Kriminalvården.
51 www.skr.org.

the local parish are present nearly daily[52]. They normally have specially-designated positions as airport priests. The chapel is open to persons employed at the airport as well as travellers and visitors. It is quite common for couples to get married in the airport chapel before leaving for a honey moon. There are airport priests from the local parish as well at Gothenburg-Landvetter airport[53]. As far as can be discerned, Sweden has no union for airport priests. There is no legal framework concerning the airport priests. The legal basis for the airport priest's activities are agreements between the state-owned company which today runs the larger airports, and the local parishes of the Church of Sweden.

After an initiative of the Church of Sweden bishop in Stockholm, some priests from the Church of Sweden were especially designated to work with the police in Stockholm. This idea has been followed in other cities. The priests are always employed by their local parishes and normally work part-time as police priests. Their main task is to be at the disposal of the police, often for counselling of the policemen during - and especially after - situations of great stress. They also assist policemen when they must inform a person that his or her family member has been found dead. Today, the contact between police authorities and religious communities are - on the church side - organised by the Swedish Christian Council, which has delegated the matter to the Church of Sweden, the Roman-Catholic Church in Sweden, and the Uniting Church in Sweden. The three churches also are in charge of educating the police priests[54]. There is no information about unions for police priests. A private bill was presented to Parliament with proposals for a national legal regulation of the service[55], but the bill was rejected[56], and as of now the activities rely on agreements between the police authorities and the local church parishes.

Until 1866 the Swedish Parliament was based on representation by the four estates - the nobility, the clergy, the burgesses, and the peasants. Through a reform in 1866, when the representation in Parliament instead came to be based on the results of general elections[57], the question of a Christian group in Parliament came to the surface. (Contrary to many other European countries, Sweden has not - until quite recently - had a specific Christian political party.) Two different groups of Christian Members of Parliament were created. It seems as if the first group, which started its activities in 1888[58], mostly organised Members of Parliament who were affiliated

52 www.svenskakyrkan.se/arlandakapell.

53 www.swedavia.se/landvetter; www.svenskakyrkan.se/landvetterharryda.

54 www.skr.org.

55 Mot. 2004/05:Ju325.

56 JuU 2004/05:19, rskr 2004/05:308.

57 Nationalencyklopedin vol. 15 p. 504.

58 Andreasson, Kristet föreningsliv i riksdagen - en studie av riksdagens kristna grupp och dess föregångare (Stockholm 2004) p. 23.

to the free Protestant churches, while the second group, started in 1904, consisted of priests and other persons from the Church of Sweden[59]. The two groups later merged, and today there is just one Christian group in Parliament[60]. The group is apolitical, which means that Members of Parliament from different political parties attend the meetings. During some periods the group has worked for specific Christian aims in Parliament, e.g. the question of compulsory religious classes at school[61]. In other periods, and especially nowadays, the main scoop of the group is religious service for its members[62]. Since 1993, the group seems to have had a chaplain[63], who could be either a Church of Sweden priest or a priest or pastor from any other Christian church. The chaplain is elected by the group and has usually fulfilled the position as chaplain as a part of his or her daily duties as a priest or pastor.

There are also chaplains at Swedish universities and university colleges. Most of them are priests in the Church of Sweden, but some are pastors in one of the free Protestant churches. At some of the bigger universities the Church of Sweden priests are university chaplains as their full-time duty, but in other cases the task of university chaplain is a part-time position, which the priest or pastor fulfils within his or her normal job[64]. The university chaplains are appointed by their local religious communities and paid by them. There does not seem to be a formal association for university chaplains.

Although it perhaps cannot be defined as chaplaincy, there are examples of Church of Sweden priests taking special responsibility for a specific private company, a shopping mall, or the schools or the home assistance service of a municipality. There are also examples of priests who are priests of the Internet, taking part in young people's discussions, or priests participating in night walks in city centres on Fridays and Saturdays, meeting young people out partying[65].

[59] Ib. p. 37.
[60] Ib. p. 73.
[61] Ib. p. 90.
[62] Ib. p. 75.
[63] Ib. p. 76.
[64] www.universitetskyrkan.se; www.skr.org.
[65] Bodin, På andra arenor - ögonblicksbilder av Svenska kyrkans närvaro bland andra samhällsaktörer (Uppsala 2013).

CHAPLAINCY AND THE LAW IN THE UNITED KINGDOM

Frank Cranmer
Norman Doe

1. Historical and Sociological Aspects of Chaplaincy

The legal basis for chaplaincy goes back at least to the time of King Henry VIII in the sixteenth century, and the celebrated jurist Edward Coke (1552-1634) understood a chaplain to be a cleric who attends upon a king, prince, bishop or other dignitary[1]. Having a chaplain was often a mark of social distinction. For instance, the nobility and gentry might engage a chaplain to provide a family with pastoral support and education (beyond catechesis). The chaplain of a bishop assisted at episcopal visitations and ordinations to preach and to examine ordination candidates. A chaplain in the royal household would preach in the royal chapel, administer the Holy Communion (at the direction of the Lord Chamberlain), as well as perform pastoral, educational and cultural functions; for example, King James I (1603-1625) required from the royal chaplains two sermons each week during Lent - more than 70 clerics served the king as chaplains; and the poet William Lewis (1627-76) served as a chaplain to King Charles I from 1628 until 1642. For many, appointment as a royal chaplain provided a pathway to appointment to episcopal office - of the 81 bishops who served under Charles II and James II, 57 had been chaplains to the king or another member of the royal family. Many chaplains serving in noble households encouraged those who engaged them to patronize literature, the arts and scientific development; and, after 1638, the function of licensing plays (and the censorship aspect of this role) was delegated to the bishops' chaplains. Thereafter, the nature of chaplaincy evolved and by the latter part of the 18th century, the chaplain as tutor to an extended (gentry) family had become a settled feature of social life[2].

[1] «Chaplain»: *Jowitt's Dictionary of English Law* (Sweet & Maxwell 2010), Volume I, p. 370.

[2] Hugh Adlington, Tom Lockwood, Gillian Wright, eds., *Chaplains in Early Modern England: Patronage, Literature and Religion* (Manchester, Manchester University Press, 2013).

Today, chaplaincy may be understood as «a position held by a minister of religion within an organization or institution in order to provide spiritual services to its members or inmates»; The reasons for the existence of chaplaincies are: (1) that «the organization is to some extent a restricted community, whose members would otherwise be unable to access the services normally offered by a religious body to the general public»; (2) «the organization may embrace a distinctive cross-section of the public who warrant a specific type of spiritual ministry»; and (3) «chaplaincies offer the possibility of an independent presence in what are often hierarchical contexts, acting both as bridge-builders and whistle-blowers». Indeed, chaplaincies in the armed forces, prisons, hospitals, universities, schools, and in certain professions and industries make up to 10% of all employed ministers of religion - and these people are employed by the State or private organizations rather than engaged by their respective religious bodies. Moreover: «As a matter of individual religious right they are required by the need of the individual to access spiritual advice and assistance even when confined or constrained in some way»; and: «as a matter of collective right they are required by the need for religious communities to sustain their collective identity between members unable to meet and participate in their collective life under normal circumstances»[3].

2. National Regulation: The Legal Framework for Chaplaincy Work

The legal basis of chaplaincy is a complex mix of statute, secondary legislation, common law and custom. Chaplaincy is also the subject of regulation by quasi-legislation - informal administrative rules in the form, typically, of guidance, or codes of practice - which generates the expectation of compliance. What follows is an overview of some key issues.

Chaplaincy takes place within a legal framework; but much of that framework is permissive rather than prescriptive. Traditionally, the basic position in English and Scots law has been that «freedom» - not just freedom of religion but freedom of action generally - is the freedom to do as you wish, *always provided there is nothing in law prohibiting you from doing it*.

Essentially, therefore, freedom of religion and belief has been largely a negative right resting on two principles:

- *freedom to act within the law:* «every citizen has a right to do what he likes, unless restrained by the common law … or by statute»: Lord Donaldson MR

[3] Julian Rivers, *The Law of Organized Religions: Between Establishment and Secularism* (Oxford: Oxford University Press, 2011), Chapter 7 (p. 207); see also Christopher Swift, *Hospital Chaplaincy in the Twenty-First Century: The Crisis of Spiritual Care on the National Health Service* (Farnham: Ashgate, 2009), 154.

in *Attorney General v Guardian Newspapers Ltd (No.2)* [1990] 1 AC 109 at 178[4]; and

- *certainty as to what that law is:* «a statute means exactly what it says and does not mean what it does not say»: Lord Bridge of Harwich in *Associated Newspapers v Wilson* [1995] 2 AC 454-490 at 475.

In modern terms chaplaincy has three aspects: the right of religious organisations to undertake such ministrations, the right of individuals to receive (or reject) them and the corresponding duty of the state to accommodate their free exercise.

3. The Organization of Chaplaincies by the State

As we shall see below, the organization of chaplaincies depends on the context in which the particular chaplaincy work in question is carried out. As a result, there are subtle legal differences between chaplaincies in, for example, the armed forces, prisons, hospitals, universities, and schools. For instance, in prisons there is a statutory requirement for chaplains; whereas in hospitals, the matter is regulated by contract and quasi-legislation. This may have profound implications for the enforceability of the regime in question: law binds; quasi-legislation may not bind directly. In any event, as seen above, whatever the context in which the chaplaincy work is performed, chaplains generally have the status of employees under civil law. However, they may also have to be authorized to function by the relevant religious body to which they belong or with which they are associated. Thus, as a general principle applicable to most chaplaincies, the religious community will nominate the candidate and the institution (in which the ministry is performed) will appoint the chaplain, and it will be responsible, generally, for remuneration. Moreover, in so far as the institutions studied below may have a chapel or other room for the performance of religious rites, such spaces are provided under the chaplaincy arrangements by the host institution and, as such, generally, remain in the ownership and under the control of the host institution in question.

4. Chaplaincy in Public Institutions

4.1. Chaplaincy in the Armed Forces

In origin, military chaplaincy appears largely a matter of common law rather than of statute, though the power of the Secretary of State «to appoint from time to time any army chaplain to perform the functions of an army chaplain in any … extra-paro-

[4] See also Mark Hill, «The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in the United Kingdom» (2005) 19 *Emory International L R* 1129 pp. 1131-1132.

chial district» was set out in the Army Chaplains Act 1868, s. 6[5]. But though military chaplaincy derives ultimately from custom under the Royal Prerogative, its exercise is a matter of military law, as currently set out in the Queen's Regulations (QRs) for the three services: army, navy, air force (RAF)[6].

There are currently chaplains to the Regular Forces, to the Reserve Forces and to the various military cadet forces. Commissioned chaplains are drawn from those Christian Churches on the list of eligible denominations endorsed by the United Navy, Army and Air Force Board and maintained by the Ministry of Defence: the Anglican, Roman Catholic, Presbyterian, Congregational, Baptist and Methodist Churches, the United Reformed Church, the Church of Scotland, the Assemblies of God, the Elim Pentecostal Church and the Salvation Army. There is also provision for five chaplains from other faith groups - Jewish, Sikh, Hindu, Muslim and Buddhist - who operate across all three services. Chaplains are appointed by the Secretary of State for Defence on the recommendation of the appropriate Chaplain General following nomination by an accredited representative of the religious organisation concerned.

Army and RAF chaplains hold a specific rank - e.g. the RAF Chaplain-in-Chief ranks as an air vice-marshal - but, by tradition Royal Navy chaplains hold no rank at all; the Explanatory Note to Regulation 3 of the Armed Forces (Naval Chaplains) Regulations 2009 states:

> «A naval chaplain is commissioned as such, and is not an officer … Although subject to service law, a naval chaplain has no rank, and is therefore outranked by no-one … Conversely, a naval chaplain outranks no-one…».

The QRs for the RAF provide a useful summary of the role in general. Under QR J837 (*General - Observance of Religion*):

> «(1) Christian Chaplains are commissioned … to provide for the spiritual wellbeing, pastoral care and moral teaching and guidance of Service personnel and their families, regardless of faith or profession of no faith. They are to be given every support in the fulfilment of their ministry. They are not to be required to perform executive or operational duties save those proper to their profession. When a commissioned Chaplain cannot be made available, civilian Christian clerics of the appropriate denomination may be appointed Officiating Chaplains to the Military.
>
> (2) The reverent observance of religion in the Armed Forces is of the highest importance. It is the duty of all concerned to make adequate provision for the spiritual and moral needs of all personnel and dependants».

[5] This was extended to the Royal Air Force by SR & O 1918/548 (Rev I p. 896: 1948 I p. 50). For the current status of Army chaplains see D Bailey: «Legal Regulation of the Appointment, Ministry and Episcopal Oversight of Army Chaplains» (unpublished LLM dissertation, University of Wales 1999).

[6] For a detailed discussion see Rivers, *op cit*, pp 208-213.

There are two points to be noted: that religious observance is «of the highest importance» is simply a given, without justification, and that the express provision for ministry to families of RAF personnel presumably recognises that service families often lead a fairly peripatetic existence.

Under QR 114(1), RAF chaplains hold relative rank «solely for the purpose of defining status as regards precedence, discipline and administration … They are not, by virtue of that rank, eligible to exercise any executive command, or claim any advantage as regards emoluments (effective or non-effective)». Appointment, status, and duties are treated in QRs 839-841.

QR 842 makes provision for worship:

> «(1) In the light of local circumstances, Christian worship is to be arranged within Service churches or, if necessary, at convenient civilian churches, at suitable times … on Sundays, Good Friday and Christmas Day to permit the greatest possible number of personnel to attend. Week-day services are also to be arranged as convenient. Similarly, adherents of the five Recognised World Faiths other than Christian[7] should be permitted to make their religious observances on the days and at the times prescribed by their faith…».

4.2. **Chaplaincy in Hospitals: The National Health Service**

Chaplains have been a feature of the NHS since its inception in 1948[8], when the Ministry of Health declared that hospitals «should give special attention to provide for the spiritual needs of both patients and staff» and that management committees «should appoint a chaplain - or chaplains from more than one denomination - for every hospital for which they are responsible»[9]. In Scotland, Circular RHB(S) 1951/12, «Religious services and appointment of chaplains», expressed similar sentiments. Today, neither local NHS Trusts in England nor Health Boards in Scotland are required to provide chaplaincy services under statute; however, they are obliged to do so as *a matter of contract*. Under the NHS England Standard Contract 2014/15 «The Provider must take account of the spiritual, religious, pastoral and cultural needs of Service Users and must liaise with the relevant authorities as appropriate in each case»[10]. Similarly, in Scotland chaplaincy is governed by the Scottish Government's 2009 guidance, *Spiritual Care & Chaplaincy*; and the covering letter reminds Health Board Chief Executives that they should appoint a senior lead manager for spiritual

[7] Judaism, Sikhism, Hinduism, Islam, and Buddhism.

[8] St Bartholomew's Hospital, for example, was founded by Rahere together with the Priory of St Bartholomew in 1123: the two institutions did not become completely separate until 1420 - and the parish church of St Bartholomew the Less is located within the hospital precincts.

[9] Ministry of Health Circular HMC(48)62 (1948), quoted in Chris Johnson, «Managing Chaplaincy Service Delivery» (2003) *Scottish Journal of Healthcare Chaplaincy* vol. 6(1) 33.

[10] NHS England (December 2013) at 14.1.

care, that their Board's spiritual care policy should be updated in light of the guidance and local need and that they should provide a round-the-clock service.

NHS England provides non-statutory guidance on chaplaincy and, at the time of writing, had finished consulting on an updated version of its guidance[11], though it had not yet published the results. The consultation draft sets out a series of core principles, including:

- Chaplains must abide by the requirements of their sponsoring faith or belief community, their contracting organisation, the Code of Conduct and all relevant NHS/NICE standards.
- Patients, service users and staff must be made aware of the nature, scope and means of accessing the chaplaincy and should be able to do so at any time on any day of the week in facilities where urgent out-of-hours support is requested on average at least once a week.
- The chaplaincy should be able to access appropriate support for patients of particular religions or beliefs and, failing that, other chaplaincy support should be offered.
- Chaplains should maintain proper records in accordance with NHS policies for record-keeping.
- Patients and service users have a right to expect that chaplaincy care will be neither judgemental nor proselytising.
- Chaplaincy practice is a key outcome of the patient's experience of the service and should be informed by compassion.

A recent case, concerning Canon Jeremy Pemberton, an Anglican, illustrates with regard to the Church of England the interplay between civil law and compliance with internal church standards with respect to the exercise of chaplaincy ministry. Canon Pemberton was deputy senior chaplain at the United Lincolnshire Hospitals NHS Trust and in April 2014 married his partner Laurence Cunnington. The Acting Bishop of Southwell and Nottingham subsequently revoked his Permission to Officiate in his diocese because the marriage contravened House of Bishops' guidelines[12]. Sherwood Forest Hospitals NHS Foundation Trust in Nottinghamshire had offered Canon Pemberton the post of chaplaincy and bereavement manager but withdrew this when the Acting Bishop revoked his Permission to Officiate. The Trust's Director of Human Resources was reported as explaining that the offer had been subject to an approved

[11] NHS Chaplaincy Guidelines 2014, *Promoting Excellence in Spiritual Care*, available at <http://www.healthcarechaplains.org/news/documents/nhs_chaplaincy_guidelines_2014_v5.pdf>.

[12] *Pastoral Guidance on Same Sex Marriage* (15 February 2014) <https://www.churchofengland.org/media-centre/news/2014/02/house-of-bishops-pastoral-guidance-on-same-sex-marriage.aspx>. Specifically para 27: «… [I]t would not be appropriate conduct for someone in holy orders to enter into a same sex marriage, given the need for clergy to model the Church's teaching in their lives».

licence and authorisation from the Bishop[13]. Canon Pemberton then filed an employment tribunal claim against the Archbishop of York and the Acting Bishop of Southwell and Nottingham, citing the Equality Act 2010. His claim of wrongful dismissal and harassment was dismissed both in the lower tribunals and before the Court of Appeal[14].

The provision of continuing or follow-up spiritual care to those who have been discharged from hospital and have returned to their homes - under a regime of community care which may involve for example the National Health Service, social services, and a combination of publicly-funded and private carers (particularly as to the elderly), and the norms (if any) applicable to this - would be a fruitful area for exploration (beyond the scope of this study).

4.3. **Chaplaincy in Prisons**

Prison chaplaincy began as a peculiarly Anglican concern in England and Wales; however, the Prison Ministers Act 1863 empowered borough magistrates to pay non-Anglican clergy to minister to prisoners of their persuasions[15]. Currently, under section 7(1) of the Prisons Act 1952 every prison in England and Wales must have «… a governor, a chaplain and a medical officer»; and under 7(4) the chaplain must be «a clergyman of the Church of England». Similarly, section 53(3) requires Welsh prison chaplains to be clergy of the Church in Wales. Prison chaplaincy in England and Wales is by no means confined to Anglicans - nor, indeed, to Christians - but only those two Churches are *obliged* to appoint chaplains. Other chaplains are not statutory officers and are not bound to fulfil the statutory functions. For example, under Prison Rule 14(2) «the chaplain shall visit daily all prisoners belonging to the Church of England who are sick, under restraint or undergoing cellular confinement; and a prison minister shall do the same, *as far as he reasonably can*, for prisoners of his denomination»: so daily visits are obligatory for Anglican chaplains but not for others[16].

The Welsh «vestige of Establishment» merits further explanation[17]. The Welsh Church Act 1914 disestablished the Church of England in Wales and made provision for the actual separation of the Church in Wales from the Church of England which,

[13] «NHS Withdraws Job Offer to Gay Canon Jeremy Pemberton over Bishop's Refusal to Grant Licence», *Press Association/Huffington Post* 8 August 2014 < http://www.huffingtonpost.co.uk/2014/08/04/nhs-trusts-regret-over-being-prevented-from-recruiting-gay-clergyman-_n_5647823.html>.

[14] *Pemberton v Inwood* [2018] EWCA Civ 564.

[15] Séan McConville, *English Local Prisons, 1860-1900: Next Only to Death* (Routledge 1994) 131-132.

[16] Emphasis added: for a detailed discussion see Julian Rivers, *The Law of Organised Religions* (OUP 2010) pp 215-220.

[17] Generally, see T.G. Watkin, «Vestiges of Establishment: The Ecclesiastical and Canon Law of the Church in Wales» 2 *Ecc LJ* (1990) 110-115.

delayed by the First World War, took place in 1920 - 32 years before the Prisons Act 1952. However, the 1952 legislation was «An Act to consolidate certain enactments relating to prisons and other institutions for offenders and related matters with corrections and improvements made under the Consolidation of Enactments (Procedure) Act 1949»: an early example of statutory consolidation that did not, therefore, make new law. So the position of the Church in Wales in relation to prison chaplaincy, which had simply continued uninterrupted after disestablishment, remained undisturbed. The Prison Rules described above also apply.

Similarly, section 3(2) of the Prisons (Scotland) Act 1989 requires each prison to have as chaplain «a minister or a licentiate of the Church of Scotland» to be appointed by the Secretary of State for Scotland. However, section 9 makes supplementary provision for the appointment of prison ministers[18] of other denominations and other faiths where «the number of prisoners who belong to a religious denomination other than the Church of Scotland…» appears to the Secretary of State (or now, since devolution, to the Scottish Government's Justice Secretary) to require it. The Secretary of State «may pay a minister [so] appointed…such remuneration as he thinks reasonable». Also: «The Secretary of State may allow a minister of any denomination other than the Church of Scotland to visit prisoners of his denomination in a prison to which no minister of that denomination has been appointed». Nevertheless: «No prisoner shall be visited against his will by such a minister…but every prisoner not belonging to the Church of Scotland shall be allowed, in accordance with the arrangements in force in the prison in which he is confined, to attend chapel or to be visited by the chaplain»[19]. In practice, the overall service is delivered under an Agreement between the Scottish Prison Service, the Church of Scotland and the Roman Catholic Church[20].

Rules 13 to 19 of the Prison Rules 1999 (as amended), Part 6 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 and Part VI of the Prison and Young Offenders Centres Rules (Northern Ireland) 1995 make provision for the practice of religion or belief in prison - including access to chaplaincy services. The Service Custody and Service of Relevant Sentences Rules 2009 make similar provision in relation those in military detention.

In short, freedom of religion is not among legal rights exercisable by those in wider society (and are as such enforceable against the State) which are withdrawn from a person in prison.

[18] Non-Anglican prison chaplains in England and Wales were until recently described as «prison ministers» rather than as chaplains; in Scotland the distinction in title is still maintained.

[19] Prisons (Scotland) Act 1989, s. 9.

[20] See Callum Brown, Thomas Green, and Jane Mair, *Religion in Scots Law*, Report of an Audit at the University of Glasgow (Sponsored and Published by the Humanist Society Scotland: Edinburgh, 2016) 241-242.

4.5. **Chaplaincy in Education and Other Institutions**

Chaplaincy in schools and in institutions of higher and further education is largely a matter for the individual denominations and the individual institutions; and its extent and nature vary widely between institutions because the institutions themselves vary so widely.

4.5.1. ***Chaplaincy in Universities***

In a modern provincial university chaplains will most likely be provided by the churches themselves: probably full-time or half-time chaplains from the Roman Catholic Church, the Church of England and the major Free Churches supplemented by unpaid chaplains from smaller denominations. Some universities have historic arrangements with particular denominations and in many cases the costs are shared, so that the chaplain might be paid by the university but housed by the denomination in question. In some cases the chaplaincy building is provided by the university and in others by a particular Church: at Birmingham, for example, the building is provided by the Cadbury Trust - a charity established by the leading Quaker family in the city. Many universities, mainly those established after 1992, employ a chaplain directly, often regardless of denominational allegiance. Such posts are fully funded by and accountable to the university, except insofar as the chaplain is answerable to his/her own Church in purely ecclesiastical matters under its internal rules.

Methodist chaplains (and probably the case for all denominations other than the Church of England) are funded by the Church itself in one way or another, though some universities make a financial contribution. There are a few full-time Methodist chaplains in higher education but, on the whole, a local minister will act as part-time chaplain while also ministering on the local circuit. Funding tends to be on an ecumenical basis: so at Cardiff University, for example, contributions are paid to the joint Chaplaincy Fund and the chaplains draw on it in relatively equal shares - and it should be emphasised that the funding is provided for *chaplaincy activity,* not for remunerating the chaplains themselves or for maintenance costs.

However, in certain universities financing is rather different. Most Oxford and Cambridge colleges either became Church of England foundations at the Reformation or were founded subsequent to it. Sections 7 (1) and (2) of the Universities of Oxford and Cambridge Act 1923 empower the universities and colleges to make and amend their own statutes. In effect, therefore, those statutes are a form of delegated legislation[21]; and almost all of them stipulate that religious provision shall be Christian and

[21] S 7 (*Power of Universities and colleges to alter statutes*): «(1) [A] statute affecting the University made by the Commissioners or by any other authority, not being a statute made for a college, shall be subject to alteration…by statute made by the University under this Act…(2)[A] statute for a

Anglican[22]. Because they are independent institutions with their own endowments, almost all colleges have a chapel and at least a half-time chaplain[23] funded from the college's resources - and the larger colleges may have more than one. In addition, King's and St John's at Cambridge and Christ Church, Magdalen and New College at Oxford maintain Anglican choral services sung by choirs of boys and undergraduate choral scholars: but the music foundations are supported from college endowments, not from Government grants[24]. At Durham, the two independent colleges, St John's and St Chad's, are both Anglican foundations with chaplains on the college staff. The College of St Hild and St Bede, which is maintained by the University, has a full-time chaplain funded by an independent charitable trust which also funds the College's organ scholarships. The pattern varies across the other colleges: some have their own Anglican chaplains, while others either share a chaplain or appoint local clergy as honorary chaplains. The other denominations appoint chaplains to the University as a whole.

In strictly legal terms, therefore, chaplaincy in higher and further education appears to rest on a combination of college statutes, the law of trusts (as at Birmingham University and the two independent colleges in Durham) and the general rule in *Guardian Newspapers Ltd (No.2)* that actions are legal unless specifically prohibited. More generally, a fairly recent report commissioned by the Church of England, *Faiths in Higher Education Chaplaincy*, found that much chaplaincy work in tertiary education was voluntary, accounting for just over half of chaplaincy staff, and that the volunteers came disproportionately from minority faiths[25].

4.5.2. ***Chaplaincy in Schools***

Chaplaincy in schools is even more various. In Voluntary Aided and Voluntary Controlled schools, because the schools themselves are of a religious character chaplaincy will be supplied by the parent denomination but, it would appear from a recent

college made by the Commissioners, and any statute, ordinance or regulation made by or in relation to a college under any authority other than that of this Act, shall be subject to alteration…by statute made by the college under this Act …».

[22] J.M.S. Clines: *Faiths in Higher Education Chaplaincy* (London: Church of England Board of Education 2008) p 5.

[23] Variously described as, «chaplain» or «dean of chapel». Some of the newer colleges were founded by other denominations: for example Mansfield (Congregational, now URC) and Harris Manchester (Unitarian) at Oxford and Homerton (Congregational, now URC) and St Edmund's (Roman Catholic) at Cambridge.

[24] The majority of the other Oxford and Cambridge colleges and several at Durham also offer choral and organ scholarships but sung chapel services usually take place only two or three times a week.

[25] Almost one-third are from the Baha'i, Buddhist, Hindu, Jewish, Muslim and Sikh faith-communities.

study, not always by a designated chaplain[26]. On the other hand, public schools that were originally religious foundations appoint chaplains of particular denominations by virtue of their own trust deeds.

In Scotland, the role of chaplains in state-funded schools is rather more straightforward for denominational schools than it is for non-denominational schools. In denominational schools, the Education (Scotland) Act 1980, s. 21(3) states: «For each such school the education authority shall appoint as supervisor of religious instruction, without remuneration, a person approved as regards religious belief and character[27], and the supervisor so appointed shall report to the educational authority as to the efficiency of the religious instruction given in such school, and shall be entitled to enter the school at all times set apart for religious instruction or observance». Therefore: «chaplains to denominational schools are effectively presented by the denomination in whose interests a school is run (usually, but not always, the Catholic Church), rather than selected by a school's head teacher, which is in marked contrast to practice in non-denominational school»[28]. In Scottish non-denominational schools, religious instruction is a matter for head teachers, acting within the general frameworks set out in Scottish and Local Government policy documents, and with a view to local custom. Such schools may have «longstanding customary arrangements with local parish ministers in respect of religious observance, and may also appoint ministers as chaplains». However, there are no statutory obligations on such schools to appoint chaplains, nor to favour the ministry of the Church of Scotland; and «it appears from anecdotal evidence that at least some non-denominational schools do not appoint chaplains at all»[29].

For example, Glasgow City Council's 2009 Religious Observance Policy recommends that: «Appointment of Chaplains: In Roman Catholic Schools, chaplains are appointed by the Archbishop of Glasgow, whilst in the non-denominational sector they are invited to participate in school life by the Headteacher»; as to the «Chaplains in non-denominational schools…Chaplaincy teams are a core resource for schools» and they may support «a wide range of curricular activities…including Religious and Moral Education and Personal and Social Developments» - «Consequently it is the expectation of the authority that all schools will have a chaplaincy in place. Thus, in the non-denominational sector, chaplains may have a part to play in religious ob-

[26] «The Public Face of God: Chaplaincy in Anglican Secondary Schools and Academies in England and Wales» 7 (Church of England Archbishops' Council Education Division, April 2014).

[27] That is: «approved as regards his religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted»: s. 21(2A).

[28] See Callum Brown, Thomas Green, and Jane Mair, *Religion in Scots Law*, Report of an Audit at the University of Glasgow (Sponsored and Published by the Humanist Society Scotland: Edinburgh, 2016) para. 4.7.1.

[29] Ibid., 4.7.2.

servance, and within the context of «organised acts of worship within schools, the chaplain will be addressing members of their own faith communities. In this context a confessional approach is appropriate». Moreover: «As an integral part of the chaplaincy's involvement with the shared community values of the school, the chaplaincy exists to benefit and support all staff, children and young people and their families»[30].

4.5.3. *Chaplaincy in Parliament, the Police, the Courts and Industry*

There are also many chaplaincies in other professional, governmental and industrial settings.

Prayers are said at the beginning of sittings in the House of Commons. They are usually led by the Speaker's Chaplain while Members of Parliament stand, facing the walls of the chamber. Members of the public are not allowed into the public gallery at this time[31].

Chaplains have been appointed to the police since the mid-19th century. Whilst police chaplaincy remains small, sporadic, and low profile, numbers have grown since the 1980s and by 1988 there were 20 formally appointed chaplains; some are paid, many are voluntary and part-time; and they may belong to the National Association of Chaplains to the Police[32].

Chaplains also function in the Courts of Law of the state - they do so in over 30 courts and tribunals across the UK. The court chaplain movement, started in 2002 in Leeds Combined Court, in response to the needs of the families, victims and witnesses of the Selby rail crash, has continued to grow. Today, they minister to litigants, witnesses, jurors, lawyers, staff and judges. They work on the basis of arrangements between court managers and chaplains from the local community. They are normally in attendance at court on a part-time basis and are not financed by the Court Service but released from e.g. local parishes, or are members of an organisation like Workplace Ministry or, of an independent charity set up to supply chaplains to the local courts. The chaplains are predominantly from Christian denominations, although there is a part-time Muslim chaplain in Bradford and there are volunteer chaplains from other religions and beliefs. Lord Falconer, a former Lord Chancellor, stated: «Chaplaincies provide "a light at the end of the tunnel" for those who feel that the light has gone out. It is about offering hope to people who may feel that they are in a hopeless situation»[33].

[30] Ibid., 4.7.3.

[31] M. Hill, R. Sandberg, and N. Doe, *Religion and Law in the United Kingdom* (Wolters Kluwer: 2nd ed., 2014) para. 194.

[32] Richard Armitage, «Police Chaplaincy - Servant to the Service» (Home Office: September 1996).

[33] See e.g. *https://evangelicalsnow.wordpress.com (accessed 15 July 2016).*

In industry, for example, the Oil Chaplaincy was formed in the 1980s; this provides services to the oil and gas industry through off-shore visits, a counselling service, material support, and special services in a chapel in the Kirk of St Nicholas, Aberdeen; the chaplaincy is located in the headquarters of one of the oil companies and is funded by Oil and Gas UK[34]. Chapels and prayer-rooms at UK airports are also increasingly common; they are generally funded by interested religious groups and their facilities depend on the authorities of the airport in question; there is also an International Association of Civil Aviation Chaplaincies[35].

5. State Chaplaincy, Islam and Other Religions

As we have already seen, depending on the context, provision is made for the ministry of Muslim and other ministers of religion to function in the armed forces, hospitals, and so on.

Increasingly, higher and further education institutions appoint Jewish and Muslim chaplains as well as Christian ones; but funded chaplaincy in tertiary education is still very largely provided by Christian denominations. That is partly a matter of demography, partly of resources and partly of cultural history. However, it is not without its problems.

According to the 2011 Census, over 2.7 million respondents in England and Wales were Muslims[36]; and in 2007 the Government commissioned a study[37] of Islam within higher education from Dr Ataullah Siddiqui of the Markfield Institute of Higher Education[38]. He suggested that «Chaplaincy for Muslims has in general been both tentative and precarious. Muslims as a whole are only just catching on to the idea of chaplaincy» and implied that at least part of the reason was that the majority of Muslim students in the 1970s and 1980s had been foreign postgraduates whose priorities were largely «to find *halal* food, accommodation, and places for communal meetings and gatherings». He estimated there were over 30 Muslim chaplains/advisers in universities in England; but almost all were volunteers with little or no specific training for chaplaincy and many were largely unsupported financially[39]. Moreover,

[34] Julian Rivers, *op. cit.*, 225.

[35] Ibid., 226.

[36] See <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-religion.html>.

[37] *Islam at Universities in England: meeting the needs and investing in the future*, available at <http://www.mihe.org.uk/sites/default/files/upload/Documents/siddiqui_report2007.pdf>.

[38] The Institute, established in 2000 in association with Loughborough University, holds short courses in chaplaincy: see <http://www.mihe.org.uk/cert-chaplaincy>.

[39] Siddiqui pp 46, 48. He cites the example of an imam who led Friday prayers at a post-1992 university as a volunteer and who for sixteen years had had to pay out of his own pocket for petrol and parking.

though physical chaplaincy facilities for students (and staff) from non-Christian religions had grown there did not appear to have been any commensurate growth in paid personnel[40].

6. Private Chaplaincy Arrangements

As we have seen in section 4.5.3 above, chaplaincy work in private industry is growing. In addition, chaplaincy is also the subject of regulation in the private sphere in terms of the norms of religious organizations themselves, which norms have the status under civil law of the terms of a private contract entered by the faithful as members of the voluntary association in question. For example, the Methodists' *Constitutional Practice and Discipline* addresses the appointment of chaplains to the schools of the Methodist Independent Education Trust, to prison chaplaincy, to military chaplaincy, workplace chaplaincy[41], and hospital chaplaincy[42].

The norms of canon law in the Roman Catholic Church on chaplaincy are well-known[43].

By way of contrast, chaplaincy generally the canons of the established Church of England are largely silent. Canon C 5 empowers bishops to admit to holy orders «any person who is to be a chaplain in any university or in any college or hall in the same or in any school…» and Rules 93 and 94 of the Clergy Discipline Rules 2005 provide for disciplinary procedures in respect of chaplains of prisons, hospitals, universities, «schools and other institutions» and the armed forces; but canon law does not address the nature and functions of chaplaincy itself. Similarly, the national Church of Scot-

[40] Clines p 13.

[41] Methodist Conference, *The Constitutional Practice and Discipline of the Methodist Church* (Methodist Publishing 2013), Standing Orders 343, 354, 355 and 355A respectively.

[42] SO 802 - though it also states in SO 526 that «The pastoral oversight of Methodists in hospitals shall be regarded as part of their duty by the ministers and probationers stationed in Circuits in which such institutions are situated».

[43] Code of Canon Law 1983: Can. 564: «A chaplain is a priest to whom is entrusted in a stable manner the pastoral care, at least in part, of some community or particular group of the Christian faithful…»; Can. 565: «Unless the law provides otherwise or someone legitimately has special rights, a chaplain is appointed by the local ordinary…»; Can. 566§1: «A chaplain must be provided with all the faculties which proper pastoral care requires…»; Can. 566§1: «… [A] chaplain possesses by virtue of office the faculty of hearing the confessions of the faithful entrusted to his care, of preaching the word of God to them, of administering *viaticum* and the anointing of the sick, and of conferring the sacrament of confirmation on those who are in danger of death»; Can. 566§2: "In hospitals, prisons, and on sea journeys, a chaplain … has the faculty … of absolving from *latae sententiae* censures which are neither reserved nor declared…»; Can. 568: «As far as possible, chaplains are to be appointed for those who are not able to avail themselves of the ordinary care of pastors because of the condition of their lives, such as migrants, exiles, refugees, nomads, sailors»; and Can. 569: «Military chaplains are governed by special laws».

land's Acts of Assembly make no specific, unified reference to chaplaincy but there are several mentions of specific chaplaincy roles[44].

Though there is very little consistency between the internal rules of the denominations, underlying all of them is the general rule that: *chaplains must be authorised by and be in good standing with their sending denomination*. That rule was highlighted recently in the case of Canon Jeremy Pemberton which was described above in section 4.2. The case raised several questions, not least whether the Equality Act 2010 applies to the situation and whether there is any kind of employment relationship between Canon Pemberton and the two bishops that might fall within the jurisdiction of an Employment Tribunal. For the purposes of this national report, the case highlights the fact that chaplains in secular institutions may nevertheless remain bound by the ecclesiastical law of their own religious organisations in addition to their secular legal relationships. It is to this issue (employment) that we now turn.

7. Chaplains: Office Holders or Employees?

As we have seen, there are numerous associations available for chaplains to join. One topic of discussion for such associations may be whether under the civil law chaplains have the status of employees or office-holders. *Most* ministers of religion in *most* chaplaincy situations would appear to be employees with employment rights: full-time prison chaplains are employed by the relevant prisons service, NHS chaplains by NHS trusts and military chaplains under the Queen's Commission - though education chaplaincy is more varied. That view would appear to be supported by *Piper v Maidstone & Tunbridge Wells NHS Trust* [2012] UKEAT 0359 12 1812, in which the lead chaplain of the NHS Trust claimed successfully for unfair dismissal; on the other hand, in *Miller v Secretary of State for Home Affairs* [2004] UKEAT 00926 03 0405 it was held that a Quaker prison minister who was paid hourly for her attendance was not in an enforceable employment relationship.

In short, the precise employment situation of any individual will depend entirely on the facts of the particular case and the chaplain's institution[45]; and overlaying the individual's specific situation is the need to be in good standing with his or her own denomination.

[44] Notably in the HM Forces (Kirk Sessions) Act (Act VIII 1952) and in the Church Courts Act (Act III 2000), as amended.

[45] For a detailed discussion of the employment of church workers see F Cranmer «Case-law on Church Employment (August 2014) <http://www.churcheslegislation.org.uk/files/publications/Case-law_on_Church_Employment_-_August_2014.pdf>. For chaplains specifically, see Rivers, *op. cit*, p. 115.

Conclusion

Though chaplaincy is part of the wider protection of religion and belief under Article 9 of the ECHR, applicable to the UK by virtue of the Human Rights Act 1998, its funding is a matter of some controversy. The National Secular Society has argued that hospital chaplaincy leads to unequal care because many patients do not share the religion of the appointed chaplain and that the £29m spent on chaplaincy in England in 2009/10 should have gone to medical care: «if churches, mosques and temples wish to have representation in hospitals to visit those patients who want some religious support whilst in hospital, they should do it at their own expense»[46]. The response of the Church of England's Director of Mission and Public Affairs, Dr Malcolm Brown, was that it was widely accepted within the medical profession that healthcare involved looking after the whole person, not just the body: «The role of hospital chaplains in a regime of holistic care is not in doubt among serious practitioners»[47].

It is unclear whether or not the National Secular Society's critique resonates with the public at large, even with those who are avowed non-believers[48]. However, in any event, protecting the *right* to manifest religious belief under Article 9 ECHR must surely imply the duty to give people who have little or no control over their freedom of movement - in prisons, in hospitals and (sometimes) in educational establishments - reasonable *opportunity* to manifest their religion. Chaplaincy is an important part of that opportunity; and whether or not, in the final analysis, society at large should fund it is a socio-political question, not a legal one. In any event, the evidence from the United Kingdom indicates how chaplaincy and its enjoyment involve, generally, private religious activities practised in a broadly public environment - and the dominant juridical model at work is that of cooperation between religion and the State.

[46] National Secular Society: «Hospital Chaplaincy» (April 2012) <http://www.secularism.org.uk/uploads/nss-hospital-chaplaincy-campaign-briefing.pdf>. It is equally scathing about school chaplaincy: see «School chaplains: the Church of England's latest plan to evangelise in schools» (June 2014) <http://www.secularism.org.uk/blog/2014/06/school-chaplains--the-church-of-englands-latest-plan-to-evangelise-in-schools>.

[47] «Hospital chaplains who cost £29m a year have no clinical benefit, says controversial study», Daily Mail <http://www.dailymail.co.uk/health/article-1361357/Hospital-chaplains-cost-29m-clinical-benefit-finds-controversial-report.html> (28 February 2011).

[48] See, for example, Daniel Sokol, «The value of hospital chaplains» (8 April 2009) <http://news.bbc.co.uk/1/hi/health/7990099.stm>.