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Spiritual Care in Public Institutions in Europe



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West and East: New Trends in Spiritual Care in Public Institutions in Europe. An Introductory Overview

I. Definition of Spiritual Care in Public Institutions

In recent decades, a separate section has been formed within the branch of law called *religion law* or *law and religion* in all European and many overseas countries, the subject of which is *spiritual care in public institutions*. In some countries the term *chaplaincy* is used. It focuses on two thematic areas which are closely related.

1. First Area of Spiritual Care in Public Institutions

The first thematic area is the legal safeguarding of the religious freedom of individuals, members of religious communities, separated from the rest of the population by a barrier of the public institutions in which these individuals remain due to a variety of lawful external causes.

Since ancient times, these include the military, the prison system, boarding and non-boarding schools, hospitals and other health care facilities or social institutions.

Newly, from the mid or late twentieth century, the police, the fire brigades, temporary residence facilities for legal immigrants and asylum seekers, and facilities for illegal immigrants before their deportation are also included. The service traditionally provided to members of religious communities in the public institutions includes both the provision of religious services and assistance to put their religious life into practice, as well as the personal dimension of human assistance.

2. Second Area of Spiritual Care in Public Institutions

The second thematic area related to the legal safeguarding of spiritual care in public institutions is extension of the existing care provided by representatives of religious communities from the care of members of religious communities to all those who stay in the aforementioned institutions and who show interest in the care of religious community representatives. In this context, we speak of *service of presence* and *service of listening*.

The second thematic area of spiritual care has developed alongside newly introduced care of institutional psychologists in parallel with it. Not as a competition, but as

a complement. The care provided by psychologists and spiritual care by religious communities have many features in common, but each of them is based on different foundation of human knowledge as well as two different and distinctive approaches to clients.

Special feature of spiritual care in many countries is its ecumenical dimension, i. e. provision of spiritual care to representatives of different religious communities in cooperation or jointly.

3. Reason for both Areas of Spiritual Care Based on Legal Philosophy and Constitutional Law

Both areas of spiritual care in the public institutions were opened as a result of broader understanding of the mission of religious communities in advanced democratic society, accepting the ideas of *humanity* in relation to each person, and recognizing *plurality* of the society.

Another reason for the need for both thematic areas can be seen in increasing *secularization* and *moving the church away* from the public space in all countries of the world. And precisely in the countries where these trends are more common it is all the more necessary to care spiritually through service of presence and service of listening also for persons who are not believers and/or do not adhere to any religious community.

An idea may be connected with the second area of spiritual care, that guaranteeing the exercise of individual and collective religious freedom in a free country includes public and legally effective recognition that religious communities have the right to offer their charitable, humanitarian and general educational service to everyone, not just within their own community but also outside, including the public institutions. For example, the Constitutional Court of the Czech Republic stated in the reasoning of one of its judgments that the activity of religious communities ‘... in no case can be reduced to a mere confession of a certain religious belief ... but their activity is considerably broader and it also consists in emanation of religious values outwardly, not only through religious activities, but also through charitable, humanitarian and general educational activities.’¹

4. Spiritual Care Extended Beyond Spiritual Care in Public Institutions

In many countries, spiritual care has been developed for those who finished their staying in care of the public institutions. It is mainly the case of post-penitentiary care for persons released from imprisonment or protective treatment, or people released from

1 Judgment of the Constitutional Court of the Czech Republic, file no. Pl. ÚS 6/02, 27th November 2002.

hospital or other institutional care, including institutions for hard-to-educate youth. However, public institutions inform religious communities of the need to help these clients on a contractual basis.

Care of victims of crime, terrorism, public violence and natural disasters is considered another group of spiritual care. In particular, the police and fire brigades provide information on the need to help these clients.

5. Composition of Teams Providing Spiritual Care

Finally, it is necessary to add who constitutes spiritual care teams in public institutions. They consist primarily of chaplains specialized for individual disciplines and volunteer helpers from the ranks of religious communities' members, in both cases usually with special training. In many countries, the term *chaplain* does not indicate whether the worker was ordained in his or her religious community (i. e. whether he or she is priest, minister, preacher or deacon from a religious point of view) or whether he or she is a non-ordained member of the community (i. e. layperson from a religious point of view).

Chaplains and their volunteer helpers are often placed in multidisciplinary client care teams in public institutions. They work together with psychologists, educators, doctors and other experts.

In some countries, associations formed under secular law or church law also participate in spiritual care in public institutions.

II. Contents of Publication *Spiritual Care in Public Institutions in Europe*

Publication *Spiritual Care in Public Institutions in Europe* is a collective monograph, written by twelve professionals from nine European countries who deal with this issue in their academic and research practice. Each of them dedicates one chapter to legal safeguarding of spiritual care in public institutions particularly in his or her country. It is based on the legal system of his or her country and contributes to understanding the basic trends in the European cultural environment.

The publication presents comprehensive comparison of the current legal situation in *Western and Midwestern Europe* with an uninterrupted tradition (Germany, United Kingdom, France, Switzerland, Austria) with the situation in the *Middle Eastern European countries*, which had to build their structure of spiritual care in public institutions newly after the fall of Communist regimes in 1989 (former East Germany, Hungary, Poland, Slovakia and the Czech Republic). Knowing the different developments in different countries enables mutual enrichment and suggests how modern democratic

states can take the benefits of their legal systems from one another. The publication presents the state of legal regulation as of July 2019.

After the short Introductory Overview by *Professor Jiří Rajmund Tretera* from Prague, who is one of editors of this monograph, the book is introduced with the chapter written by *Professor Gerhard Robbers*, who has been managing international research in the field of religion law for decades from his headquarters in Trier. In his treatise on Germany, he combines the view of spiritual care in both the western and eastern parts of the formerly divided German state.

Professor Mark Hill QC from London and Cardiff, in his treatise on England, presents a view from the country specific in its tradition of spiritual care built on traditional structures associated with the established church and allows us to understand its benefits.

Professor Francis Messner from Strasbourg presents the French model, very different from the religion law regulation in other European countries, based on the still effective law on the separation of state and churches of 1905 (with the exception of several departments in Alsace-Moselle and all French overseas territories). However, despite separation, spiritual care is provided in public institutions in many sectors.

Professor Adrian Loretan from Lucerne explains the Swiss model, influenced by the idea of direct democracy in all legally quite different cantons.

Professor Wolfgang Wieshaider from Vienna and Prague describes the Austrian legal regulation following the centuries-old tradition from the time of the monarchy and the First Austrian Republic to the present modern approach in a pluralistic society.

Professor Balázs Schanda from the Pázmány Péter Catholic University in Budapest deals with the Hungarian system, which is shaped by centuries-old tradition and multiconfessional diversification of Hungarian society.

Professor Piotr Stanisz from the Catholic University of John Paul II in Lublin, presents the Polish system characterized by an excellently elaborated regulation of spiritual care in individual public institutions, provided not only by the majority Catholic Church, but also by other religious communities.

Dr Martin Šabo and *Dr Michaela Moravčíková*, both from the University of Trnava, discuss the Slovak system of spiritual care in public institutions, which is based on concordats with the Apostolic See regarding spiritual care for Catholics and on public law treaties identical in content regarding members of other religious communities. Dr Šabo, who is also prison chaplain, brings his personal experience to the article.

Associate Professor Damián Némec from Palacký University in Olomouc introduces spiritual care in healthcare facilities in the Czech Republic, including its latest developments, under the July 2019 Agreement on Spiritual Care in Healthcare. We paid special attention to this issue and dedicated a special chapter to it, as this form of

spiritual care was pushed through after very difficult or even stormy debates. We took the opportunity that one of the main authors of the agreement wrote about this topic.

Associate Professor Záboj Horák from Charles University in Prague, the second editor of this monograph, introduces the Czech model of spiritual care based on trilateral agreements between the state, the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic. This model relies on the close ecumenical cooperation of more than ten largest religious communities that send their representatives to public institutions by mutual agreement.

This monograph was created as part of the Progress Q02 *Publicization of Law in European and International Comparison* program at Charles University in Prague, coordinated by *Professor JUDr. PhDr. mult. Michal Tomášek, DrSc.*, Vice-Dean of the Faculty of Law, Charles University.