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THE WAY TO THE CONTRACTUAL MODEL OF ANCHORING HEALTHCARE CHAPLAINS IN THE CZECH LEGAL SYSTEM

Introduction

One year after the Velvet Revolution in the Czech Republic, with the gradual application of the principles of religious freedom and cooperation, a model also began to be formed for the pastoral care of churches in health care facilities (especially hospitals, long-term care hospitals, etc.). Only a short time ago, in 2019, was the service legislatively established.

1. The concept of a healthcare chaplain in the Czech environment

A chaplain, as defined in the 1983 Code of Canon Law¹ (can. 564), is a priest or bishop (*sacerdos*) who is permanently (at least in part) entrusted with the pastoral care of a community or a group of Catholics (categorical pastoral care). It is therefore focused primarily on extra-parochial sacramental pastoral care in the specific conditions of a particular community of believers.

However, this definition (as in many other similar areas: prisons, army, police, etc.) in the Czech Republic does not correspond to both the real possibilities of the Catholic clergy (a lack of clergy) and to pastoral conditions – it has repeatedly been shown that these positions need to be approached in the Czech Republic more ecumenically than being purely confessionally defined.

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¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317.

The Codex's definition of a chaplain does not allow deacons, let alone lay people, to be included in this term, and thus all women (who predominate in pastoral care in health care). Within the framework of ecumenical relations, the Czech Catholic Church thus began to use this term more widely, as a designation for not only clergy of individual churches, but also lay workers entrusted with this service. Two terms are now used: healthcare chaplain and volunteer, the former designating those who provide this care systematically and usually professionally (though not necessarily full-time), while the latter refers to those involved in this care in their spare time [Němec 2015, 57]. It is thus closer to the international definition of this mission (healthcare chaplain), as defined by the *Standards for the Provision of Healthcare Chaplaincy Service in Europe*.²

The activities of chaplains in hospitals focus mainly on wards with long-term stays or on patients with serious diagnoses (e.g., oncology, radiotherapy clinic, pain treatment centre and aftercare department). It is a combination of spiritual care, some kind of accompaniment in psychological support (in collaboration with trained psychologists and therapists), and personal human accompaniment, especially in the direction of understanding life-threatening situations and seeking encouragement, which can lead to his holistic healing (holistic approach) in the context of the human bio-psycho-socio-spiritual model. A chaplain is a member of multidisciplinary teams from the medical and non-medical professions. Within them, it has its place in the field of existential, moral and purely religious issues. Hospital chaplains work not only in hospitals, but also in other health care facilities, as well as in social services facilities, where the element of health care is significantly present. If the client requires the chaplain to administer the sacraments, and if the chaplain is not a priest, the chaplain will organise this with a priest from the client's particular church.³

The healthcare chaplain is a specially trained worker,⁴ who is part of the hospital staff (unlike the clergy of certain churches who come by invitation),

² Standards for Health Care Chaplaincy in Europe, http://www.enhcc.eu/turku_standards.htm [accessed: 06.11.2020].

³ Here is an advantage for Catholics: Catholic chaplains are usually commissioned to administer the Eucharist and are therefore partially able to provide sacramental ministry.

⁴ Usually a graduate of the Faculty of Theology with a follow-up specialised educational course.

ecumenically-oriented, performing spiritual care. Among other things, this model unexpectedly proved successful in the recent COVID-19 epidemic, as chaplains being a part of hospital staff had access to patients and clients, in contrast to the difficulties with which church clergymen entered closed facilities. The theological education of a healthcare chaplain and the fact that they are sent to the service by their own ecclesial community should be a guarantee that the service will not be separated from the Church, even if it is considered as being in a supra-confessional manner in the Czech conditions.

2. Development of the legal status of healthcare chaplains in secular law

Special legal regulation of the position of hospital chaplains in the Czech Republic did not exist until 2019, although negotiations took place both at the inter-church level and in contact with political representation. The right to clinical pastoral care is implicitly enshrined in the *Charter of Fundamental Rights and Freedoms* in Art. 16, which describes the freedom of expression of religion individually or in community with others (Charter of Fundamental Rights and Freedoms, Art. 16, para. 1 and 4).

In the original, still federal Act on Churches No. 308/1991 Coll., an explicit mention of chaplaincy in the area of health and social services was included in para. 6, sect. 1: churches could establish their own medical facilities and provide their religious services in state facilities. The currently valid Czech Act on Churches No. 3/2002 Coll. does not contain an explicit mention of the activities of churches in the field of health care. The clergy went to medical facilities mainly for the faithful of their church according to the benevolence of these facilities, invoking general constitutional rights. The Concordat Treaty of the Czech Republic with the Apostolic See was to enshrine this issue in Art. 14, para. 2 and 3, however, the ratification of this treaty, signed on 25 July 2002, was not approved by the Chamber of Deputies of the Czech Parliament. Until 2006,⁵ when at least an inter-church agreement was reached, this situation did not change.

⁵ *Dohoda o duchovní péči ve zdravotnictví mezi ČBK a ERC* (20.11.2006); *Dodatek č. 1* (12.12.2011): effective since 1 January 2012; *Dodatek č. 2* (15.01.2019), <http://kaplan-nemocnice.cz/souvisejici-dokumenty-a-odkazy> [accessed: 15.01.2020].

The subject of the Inter-Church Agreement (2006) and both of its Appendices is the regulation of sending healthcare chaplains and volunteers to medical facilities without a confessional distinction of the target group. These chaplains and volunteers are posted on the basis of a written agreement between the medical facility and the church and set out the specific conditions for the chaplain's work, which operates in the facility on the basis of a decree issued by his or her church. For Catholic chaplains, the sender is a specific diocesan bishop or exarch of the Apostolic Exarchate in the Czech Republic. In the case of non-Catholic chaplains, it is the highest representative of the Church, specified in Appendix No. 1, Annex No. 4. The shortcoming of the original text of the Agreement was mainly excessive qualification requirements, so between 2006 and 2011 no chaplain was sent under this agreement. Appendix No. 1 from 2011 specified that the hospital chaplain should have a graduated theological faculty (Catholic or other) in the master's degree, have worked in general pastoral care for at least 3 years and have completed a subsequent extended healthcare chaplain course. Appendix No. 2 eased these requirements at the request of some member churches of the Ecumenical Council of Churches in the Czech Republic (further "ECC") so that the healthcare chaplain may have a bachelor's degree in theology and another master's degree in the medical or humanities listed areas. The extension course for healthcare chaplains in the Czech Republic is provided by the Cyril and Methodius Faculty of Theology in Olomouc, the Evangelical Theological Faculty in Prague and the Faculty of Theology in České Budějovice as part of lifelong learning. The sending of chaplains is announced by the churches to the coordinating units of the CBC and the ECC and to the representatives of the churches concerned in the given place. Churches should also pay attention to the personal qualities of the chaplain, ecumenical openness, and communication skills when choosing candidates [Tretera and Horák 2015, 221].

Act of 1 October 2010, the official Catalogue of Works (held in public services and administration) includes a new profession: chaplain. The vocation is performed by a clergyman who provides spiritual care in a broader sense. The (at the least) right to spiritual support during a stay in health care facilities came to the health care norm relatively late, in 2011, when a more extensive health care reform took place. Act No. 372/2011 Coll., on health services, in para. 28 (Patient's rights, para. 3), specifies that the patient may: re-

ceive in inpatient or one-day care spiritual care and spiritual support from spiritual churches and religious societies registered in the Czech Republic or from persons authorised to perform clerical work in accordance with the internal rules and in a manner that does not violate the rights of other patients, and with regard to their state of health, unless otherwise provided by other legislation; the patient's visit cannot be denied in cases of danger to his life or serious damage to health, unless otherwise provided by other legislation. Although the status of healthcare chaplains is not explicitly defined in this Act, the general provision of para. 2, sect. 2 specifying health services can be applied to them.

We then understand healthcare chaplains as other health professionals (non-medical profession). However, a more detailed definition of healthcare chaplains is missing both in Act No. 96/2004 Coll., on non-medical health professions, and in the Decree of the Ministry of Health No. 55/2011 Coll., on the activities of health professionals and other professionals [Menke 2017, 30-31]. In addition to these basic preconditions for the implementation of the service of healthcare chaplains, more detailed regulation of their position (the issue of access of chaplains to medical documentation, rights and obligations and cooperation of medical staff) and their qualifications were defined by the Methodical Instruction of the Ministry of Health from April 2017. Two professional organisations were established to coordinate their education and activities: the non-Catholic *Association of Healthcare Chaplains* (2011) and for Catholics the *Catholic Association of Healthcare Chaplains* (2012).⁶

3. Current legislative establishment

The position of healthcare chaplains is finally enshrined in the Czech legal system by the Methodical Instruction of the Ministry of Health of 2017 and especially by the tripartite Agreement on Spiritual Care in Health Care concluded between the Ministry of Health, the Czech Bishops' Conference (further "CBC") and the ECC of 2019.

Negotiations between CBC and the ECC with the Ministry of Health of the Czech Republic began informally at the end of 2011, and were officially

⁶ More detailed information available from: <https://kaplan-nemocnice.cz/zakladni-informace/> and <https://www.nemocnikaplan.cz/> [both accessed: 15.11.2020].

launched in March 2012 and aimed both to specify qualification requirements for hospital chaplains and enshrine the position of healthcare chaplains in the law to replace the current Act No. 96/2004 Coll., on non-medical health professions, and in the amended Decree of the Ministry of Health No. 55/2011 Coll., on the activities of health care workers and other professionals. Unfortunately, after the fall of the government in 2013, these negotiations did not continue, although attempts were made in the following years by CBC and the ECC. At this time, at least it became clear that it would be better to continue through the methodological instruction of the Ministry of Health than to wait for the political will to change the laws through the Parliament of the Czech Republic.

3.1. Council for spiritual care in healthcare

The methodological instruction of the Ministry of Health on spiritual care in sick-bed health care facilities of health care providers was issued in 2017, and although it has the nature of a non-binding recommendation (except for teaching hospitals managed directly by the Ministry), it specifies general principles of spiritual care, the rights and obligations of chaplains and their qualification requirements. Based on this instruction, the Ministry also established the Council for Spiritual Care in Health Care as a coordinating body (expert commission at the Ministry), in which, in addition to two representatives of the Ministry, two representatives from CBC and ECC and one representative of health service providers will participate (the Association of Czech and Moravian hospitals and the Association of Hospitals of the Czech Republic). The task of the council is to address serious issues of spiritual care in sick-bed health care facilities and may submit proposals for conceptual solutions to the Minister of Health. The Council is to meet at least once a year. One of the tasks of this newly established Council was the preparation of the tripartite agreement of ECC + CBC + Ministry of Health. This concept already has its equivalent in tripartite agreements on spiritual service in the military (para. 4) and prisons (Art. 3), and is strongly based on the text of the agreement on prisons [Němec 2019, 115]. The text of this tripartite agreement was intensively prepared from February 2019. After the creation of the text, the comment procedure by the ECC and CBC and also the legal department of the Ministry, this final Agreement was ceremoniously signed on 11 July 2019 in the hospital chapel of St. Wenceslas in Thomayer Hospital in

Prague.⁷ Also in September 2018, the Council for Spiritual Care in Healthcare specified in its document the Content of the minimum standards of the specialised course for healthcare chaplains.⁸

3.2. Tripartite agreement of 2019

As a still final legal establishment in the Czech legal system, a tripartite agreement was concluded in 2019 between the Ministry of Health of the Czech Republic, the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic.⁹ This agreement represents a historically significant step, as for the first time in health care it establishes legally the framework, concepts and structure for the provision of spiritual care in health care facilities provided by churches. The agreement is based on both the methodological guideline of 2017 and the current inter-church agreement as amended, as well as on a similar tripartite agreement in the field of prisons. It defines in particular: the purpose of the agreement and concepts, the structure of mutual cooperation, the authority and qualifications of the chaplain, the duties and rights of the chaplain, and the cooperation of the medical facility. In the transitional provisions, it eases, among other things, the qualification requirements for older experienced hospital chaplains (by analogy with the Act on Teachers).

Under this Agreement, spiritual care means non-medical service to all patients, healthcare professionals and visitors to inpatient facilities in addressing their personal, existential, spiritual, ethical and moral issues and needs. This service is consistently non-evangelistic in nature and its recipients use it voluntarily and on the basis of their free decision. The place of provision of spiritual care under this Agreement are sick-bed medical facilities that express their interest in its provision (Agreement 2019, Art. 3, para. 1 and 2).

⁷ Cf. Czech Bishops' Conference 2019, <https://www.cirkev.cz/cs/aktuality/190711ministr-zdravotnictvi-a-zastupci-cirkvi-podepsali-historicky-prvni-dohodu-o-duhovni-peci-ve-zdravotnictvi> [accessed: 05.11.2020].

⁸ Cf. Ministry of Health "A". Council for Spiritual Care in Healthcare – Documents, <https://ppo.mzcr.cz/workGroup/65> [accessed: 07.11.2020].

⁹ Agreement on Spiritual Care in Health Care concluded between the Ministry of Health, the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic from 11 July 2019 [henceforth cited as: Agreement 2019], <https://ppo.mzcr.cz/workGroup/65> [accessed: 06.11.2020].

The chaplain provides spiritual care on the basis of a legal relationship with a health care provider, especially an employment law provider. At the same time, the legal relationship must be conditioned by the duration of the authorisation by the entrusting church and the legation by the ECC and CBC (Agreement 2019, Art. 5).

The service of healthcare chaplains in the Czech Republic consists mainly of human listening and accompaniment, and even though they are ambassadors of specific churches, purely spiritual service accounts for about 15 percent of their activities. Service to the dying and the bereaved is very important: healthcare chaplains are practically irreplaceable in this area in the Czech Republic. In terms of health care responsibilities, chaplains must not provide partial health services (e.g. feeding patients, escorts for examinations, etc.) or provide information about the diagnosis to the family (although they have the right to know the patient's health if he or she agrees): this is primarily the task of medical staff and the healthcare chaplain is characterised as a non-medical worker in health care. The healthcare chaplain may enter inpatient and social areas (i.e. not in the operating theatres, etc.), according to the current possibilities to conduct a conversation with the patient, healthcare worker or visitor in reasonable privacy and bring needed equipment for worship services (Agreement 2019, Art. 6).

The agreement also sets out the principles of cooperation of the health service provider, thus, for example, its obligation to provide facilities for the chaplain's spiritual activities (chapel, office), and to inform its workplaces and patients about the chaplain's work. The chaplain's health service provider usually concludes a written contract with the commissioning church or union of churches specifying the activities of healthcare chaplains in the concrete medical facility (Agreement 2019, Art. 7).

Regarding the financing of this service, the situation is not always simple and this issue is not yet anchored at the central level (Ministry of Health). However, it is gradually beginning to take place in part or sometimes wholly by sick-bed facilities (hospitals, etc.), depending on the establishment of concrete operating chaplains in a singular facility. If the hospital pays for this service, it does so from other reserves; this service is not specified in the decree on the reimbursement of medical services. The chaplain's responsibilities include following the contract and organisational guidelines, and it has

been shown to work best when the chaplain has an employment relationship with the hospital.

Conclusion

We can therefore conclude that spiritual care in health care was legally anchored only in 2019, using a similar model of service of churches in the army, prisons, police, etc. in the Czech Republic, although this model does not strictly correspond to the Catholic definition in canon law. The ecumenical, non-missionary and not purely confessional model of patient pastoral care has a specific place in the Czech Republic. The position of healthcare chaplains is different from the canonical-legal concept of chaplain and includes persons developing spiritual care in medical facilities in the broader sense of the word. This is due to the effort for pastoral sensitivity to the signs of the times in the Catholic Church and in the churches associated in the Ecumenical Council of Churches in the Czech Republic.

Thus, this service is performed by professionally trained persons, who may be not only priests, but also clergy of non-Catholic churches or non-consecrated lay people across churches. In the Czech environment, the service of churches in health care constituted in this way can become more effective and trustworthy for health professionals in dealing with ethically demanding situations than a service defined by individual denominations or a mere clerical service intended for members of the own church. Epidemiological limitations in 2020 due to the COVID-19 pandemic have shown that this is the case: thanks to this model, greater intervention by chaplains in health care facilities was possible, where access from the outside was otherwise difficult.

What is not yet regulated is spiritual care in non-inpatient health care facilities or social services facilities, such as aftercare facilities, homes for the elderly, day and weekly social welfare institutions, low-threshold centres, etc. It is not possible to apply healthcare chaplains in the model as set out in Czech environment and perhaps it is also a shortcoming. So the question is whether there is another possible way of serving healthcare chaplains in other states? In the Czech environment, there are two reasons: in fact, there is a greater diversity of character of these facilities compared to sick-bed medical facilities and in legal terms their subordination to another ministry, name-

ly the Ministry of Labour and Social Affairs. Here, as in the past with sick-bed medical facilities, it will be necessary to wait for the acquisition of sufficient experience to enable the formulation of a legal solution. As for hospices as such, they are undoubtedly sick-bed facilities with a significant share of health services, so they are dealt with by the Ministry of Health (they belong to palliative medicine) and not by the Ministry of Labour and Social Affairs – and subsequently this is the situation of mobile hospices too.¹⁰

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The Way to the Contractual Model of Anchoring Healthcare Chaplains in the Czech Legal System

Summary

This paper discusses the gradual steps leading to the legal establishment of pastoral care in the health care system of the Czech Republic. It is written both from the position of confessional law and from the position of the theology of the Catholic Church. The Czech model was formed gradually and does not fully correspond to the definition of the healthcare chaplain in canon law. Its starting point is a super-confessional approach, focused on the patient, on his loved ones, but also on hospital staff, which in the Czech environment is not confessionally uniform (or predominantly Catholic). This model has worked better in this environment than the model focused solely on the provision of sacraments to Catholics. This is mainly be-

¹⁰ Cf. Ministry of Health “B”, <https://www.mzcr.cz/135-100-podpora-hospicove-paliativni-pece-v-cr/> [accessed: 09.11.2020]; Ministry of Health. 2017b, <https://www.mzcr.cz/tiskove-centrum-mz/vlada-schvalila-legislativni-zakotveni-hospicu-do-ceskych-norem/> [accessed: 09.11.2020]. Nevertheless, the Ministry of Labour and Social Affairs does not completely renounce them, although this area clearly tends towards healthcare, see Ministry of Labour and Social Affairs. 2018, <https://www.mpsv.cz/-/ministerstvo-podava-pomocnou-ruku-domacim-hospicum-a-dusevne-nemocnym> [accessed: 09.11.2020].

cause it deals with environments that do not encounter disease (or death) and because it is set up as a combination of spiritual care, some kind of psychological accompaniment and personal human accompaniment, especially in understanding life-threatening situations and seeking encouragement that can result in the context of the bio-psycho-socio-spiritual model of man in holistic healing.

Key words: healthcare, spiritual care, chaplaincy, pastoral care, churches and religious societies, healthcare law

Droga do kontraktowego modelu uregulowania kapelanów szpitalnych w czeskim systemie prawnym

Streszczenie

Artykuł omawia stopniowe kroki prowadzące do prawnej bazy duszpasterstwa w systemie opieki zdrowotnej w Republice Czeskiej. Jest napisany zarówno ze stanowiska prawa wyznaniowego, jak i ze stanowiska teologii Kościoła katolickiego. Model czeski kształtował się stopniowo i nie odpowiada w pełni kanoniczno-prawnej definicji kapelana szpitalnego. Punktem wyjścia jest „superwyznaniowe” podejście, skoncentrowane na pacjencie, na jego bliskich, ale także na personelu szpitala, który w czeskim środowisku nie jest wyznaniowy (lub w przeważającej mierze katolicki). Model ten sprawdził się lepiej w tym środowisku niż model skupiony wyłącznie na udzielaniu sakramentów katolikom. Głównie dlatego, że interweniuje w środowisku, które nie spotyka się z chorobą (lub śmiercią) i ponieważ jest traktowany jako połączenie opieki duchowej, pewnego rodzaju psychologicznego i osobistego towarzyszenia ludzkiego, zwłaszcza w zrozumieniu sytuacji zagrażającej życiu i szukaniu zachęty, która w kontekście „bio-psycho-społeczno-duchowego” modelu człowieka skutkuje jego holistycznym uzdrowieniem.

Słowa kluczowe: opieka zdrowotna, opieka duchowna, kapelan, duszpasterstwo, kościoły i związki wyznaniowe, prawo zdrowotne

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