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THE CLERGY IN KHAKI (E., Madigan and M., Snape (2013):238) . THE JURIDICAL STATUS OF THE CHAPLAINS IN EUROPEAN ARMED FORCES

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THE CLERGY IN KHAKI (E., Madigan and M., Snape (2013):238)[1]**. THE JURIDICAL STATUS OF THE CHAPLAINS IN EUROPEAN ARMED FORCES**

Emanuel TĂVALĂ[2]

Abstract:

There is concern in many legal systems over the meaning and the implications of the term religion which the law contains.

This concern is manifested in those borderline cases in which new religious movements come to the law seeking legal recognition as religious communities or groups. In this article we will deal with the presence of religion through the chaplains in the army, one of the oldest manifestations of religion in the society.

We will not deal with the institution in the US legal system which is probably best organized and present with the troops all over the world. We will deal here with the European countries' situation and laws.

One commonality across most liberal democracies today is that their armed forces dispose of military chaplains.

Religious freedom for soldiers who have enlisted or are drafted into an organization that as a total institution is not always capable of providing sufficient private sphere for such religious exercise is the main argument made in state-church regimes as different as the French, the German, the Romanian or the Dutch one. 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.

One specificity of the military is that in all these European countries the religious rights of soldiers can be limited if military arises.

Second, if there is a right to access spiritual care, this spiritual care is not necessarily denomination-specific even though all of these liberal democracies dispose of at least two different chaplaincies.

From this perspective it may not astonish that in France as well as in the Netherlands the Jewish chaplaincy naturally felt obliged to offer spiritual care to Muslim soldiers who accepted this service during times before a Muslim military chaplaincy was set up.

Keywords:

military chaplaincy, European comparative law, religious freedom, secularization, freedom of conscience.

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The chaplaincy situation in the armed forces seems to be best regulated in the European countries at national level and at the same time, it seems to be the oldest one in comparison with the other sectors of the social sphere. One commonality across the countries presented here is that their armed forces dispose of military chaplaincy. Religious freedom for soldiers who have enlisted or are drafted into an organization that is not always capable of providing sufficient private sphere 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.

Historical overview

It is clear that the institution of military chaplaincy is a venerable one which has very deep roots placed in the history of each state and especially of each nation. In this way, 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 (D., Bergen (2016):16). In fact, it is easy to observe this fact by reading the national reports where the army chaplaincy is founded very early in the national history of each European country. Actually the presence of the religious element *extra murros ecclesiae*, as chaplaincy in the armed forces is present all over Europe in different forms. The history of army chaplaincy goes back far in the history, and we can identify special army priests in 742 when the first German council[3] took place

Military chaplaincy in **Germany** (in a wider sense) has a rich tradition leading back to the middle ages. The 1st German National Council of 742 forbade that military chaplains took weapons while accompanying the troops to the battlefields. Charlemagne took over this legislation and decided that military chaplains regularly should provide spiritual support for the troops in the battlefields. Military chaplaincy during the centuries remained to be active only during wartimes. 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 German territories. (A., Dörfler-Dierken (2008):14) During the 16th Century we first find the office of a Vicar General for this special pastoral care. The Protestant Reformation established the confessional division of the military chaplaincy in protestant and catholic. The typical and

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

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unique organisation of this chaplaincy in Germany with some professional and some part-time military chaplains also has its tradition coming at least from the 19th century. The Prussian legislations from 1870 on was taken over for the emerging German nation. While the Protestant Military Chaplaincy was headed by a full time serving "Feldpropst" (Field-Provost), the Catholic Military Chaplaincy had a voluntary Field-Bishop. Traditionally the Princebishop of Breslau took over 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 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 fulltime serving 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 Art. 27 RK we find a new legal basis for the military chaplaincy in Germany. The RK hereby solely gave the church and state law basis. The detailed legislation had to be set in force by the competent administration.

In the case of **Romania**, "priests of the army" were identified very early, such as *Reverend Iuga* (in 1424), living in the time of Alexander the Good and other clergy who fought alongside their reign, and later, even becoming bishops, such as Anastasius Crimca in Moldavia or the Transylvanian Sava Brancovici. Transylvania found itself under different regimes over the centuries, not having its own defense force, army duties being taken up and exercised by some men of the Church (priests or monks), who moved masses of people, raising them to battle.

During the medieval period, while fighting to defend the territory and during the revolutions of 1821 and 1848-1849, there were many priests alongside people whom they shepherded, including in 1830, at the emergence of permanent Romanian army as "national militia" in Romanian Principalities.

On 2nd of May 1850 the great noble politician Nicolae Ghica, the Head of 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". (Ghe., Vasilescu, (1996):129)Similarly, Ghica is the one naming the character traits of the three future priests, who must be: *by their venerable manners in society, by their perfect knowledge of their profession and needful science, able to instill soldier regiments with moral truth, which is the fear of God, obedience to laws and the exact fulfillment of their duties.* (Ghe., Vasilescu, (1996):129)

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Metropolitan Niphon agreed to seek three priests to match the description above and wish to work in the army for a salary of 250 lei (Ghe., Vasilescu, (1996):129) per month. Once they were introduced to the army head, Prince Barbu Dimitrie Stirbei issued, on 10th July 1850, the Decree no. 124 appointing the three chaplains.

Metropolitan Church and military Works Ministry will draw up shortly, respectively in October 1850, the first instructions on *chaplain duties* in 7 points, which are a guide to follow by the department until 1870 when, by Decree no. 603 of April 6th, Prince Carol I approved of 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 would extend to all troops and territorial units, and in 1877, unit priests were replaced by garrison priests, who provided religious services to all military units in that garrison.

The traditions of Catholic pastoral care in the Polish army date back to the first decades after baptism was accepted in 966 by Mieszko I, the first historical ruler of the Polans' state.Towards the end of XVII 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 it independence, chaplains accompanied insurrectionist units in 1830 and 1863 as well as Polish military units established during World War I (B. Ratajczak (2003):316-317; A., Merker (2005):335).

Directly after Poland regained its independence, the Catholic military bishopric was created (the dispositionsconcerning the provision of pastoral care in this form were also included in the Concordat of 1925).Apart from that, in the Polish army of the inter-war period there were also the institutionalized structures of Orthodox, Evangelical-Augsburg and Jewish chaplaincies, and up to1923 – also Muslim chaplaincy (2003):316-317; A., Merker (2005):335). .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 (directly subordinatedto the Roman CatholicMilitary Bishop), 12 Orthodox clergymen, 8 Evangelical clergymen and 3 Jewish rabbis. (2003):316-317; A., Merker (2005):335).

The first English military-oriented chaplains, for instance, were priests on board proto-naval vessels during the eighth century A.D. 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

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or other dignitary.[4] 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. (H., Adlington. (2013):34)

As 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 had the care of it obtained their name.[5] If in Western Europe the word chaplain had at the beginning different meanings, for example, he could have represented a cleric who attended upon 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 near the ruler was the condition for political recognition. The close connection between state and church was always pointed out by the ecclesiastical representatives especially after the proliferation of the humanist ideas and the separation between state and church began to be evident.

[4]'Chaplain', *Jowitt's Dictionary of English Law*, Sweet & Maxwell, 2010, Volume I, p. 370.
[5] The Gentleman's Magazine and Historical Chronicle, Volume 101, Part 1, p. 632.

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1. Legal Framework for the nowadays chaplaincy in Europe

At national level, the European states facilitate nowadays 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 it is shown in the UK report. (N., Doe. (2011):203-213).

The regulation on this field may be found as follows and it shows that the legal basis of chaplaincy is a complex mix:

1. In special acts which regulate the situation of army chaplains:
In the **UK** it was set out in the Army Chaplains Act in 1868. Military chaplaincy is a matter of military law. 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-parochial district'was set out in the Army Chaplains Act 1868, s. 6.[6]But though military chaplaincy derives ultimately from custom under the Royal Prerogative, its exercise isa matter of military law, as currently set out in the Queen's Regulations (QRs) for the three services: army, navy, air force (RAF). (J., Rivers. (2011):208-213).

In **Romania** there is Law 195/2000 on the organization and establishment of chaplaincy. *Law no. 195/2000 on the organization and establishment of chaplaincy* currently governs this particular category of staff of the Ministry of National Defense. The chaplain is defined as "the servant of a church or of a denomination recognized by law, 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 further on their identification with the military staff or civilian personnel.

In accordance with Art. 29, para. (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 resumed with a *Protocol on the organization 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 sentence resuming the religious assistance institution in the army in order to continue Romanian people traditions: "*The Romanian army resumes permanent religious assistance, aiming to meet the requirements of religious, moral and spiritual needs of the military and contribute to their religious, patriotic, civic and moral education*."

[6] Which was extended to the Royal Air Force by SR & O 1918/548 (Rev I p. 896: 1948 I p. 50.

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The Department of Religious Assistance works as part of the Romanian Army General Staff. Founded on 1st 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 subordinated to the Defence Policy Department, and then to the General Staff. Since 2007, the department has been directly subordinated to the Head of General Staff.

By this *Protocol*, the following have been regulated:

a) the tasks given in charge to the Department of Army Religious Assistance:

- work together with the leaders of other denominations than the Orthodox, which are recongnized by law, having 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 thematics of moral and religious education programs and concern with material support necessary to undertake activities of assistance and moral-religious education;

b) the rights and duties of chaplains:

- were *administrative subordinates to commanders whose structures they were employed in,* conforming to rules and duties stipulated by the country laws and regulations for civilian personnel in the ministry and spiritually and canonically obeying the local bishop, observing religious rites.
- the priest had the status of *commander counsellor* in religious and spiritual, civic and patriotic, moral, ethical matters and could not have a parish;

c) chaplain enrollment conditions:

- superior theological studies, permanent degree, at least 5 years of pastoral activity, Church and social prestige, good health condition;
- the local bishop recommended, according to Church criteria, chaplains to the Patriarchy for the units/garrisons required by the Ministry. Candidates passing the selection exam were enrolled and participated in a 60 days special course at the Academy of Military Studies, which was conducted in agreement with programs drawn up by the General Staff Inspectorate, in partnership with the Romanian Patriarchy. Enrollment and office installation of the chaplain was made on the recommendation of the Ministry of National Defense by the Romanian Patriarchate, by the respective garrison commander, with the participation of the local Bishopric representative;

d) remuneration:

- "chaplains employed under this Protocol shall be employed and remunerated on the duties of counselor, expert, specialist inspector

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(professional degree II-IA, Annex no. 1 of *Law no. 40/1991*) to central units and on the duties of counselor, expert, specialist inspector (professional degree II-IA, Annex no. 10 of the *Government Decision no. 281/1993*) to other units";

According to Art. 29 para. (1) of the *Constitution* which provides that "*No one may be compelled to adopt an opinion or to adhere to a religion contrary to his convictions*" in the *Protocol* it was stated that "military participation in religious services and religious assistance programs will be freely conducted, according to their religious affiliation, any proselytizing activities being excluded. Military unit commanders will support soldiers of other beliefs than the Orthodox, at their request, in order to receive religious assistance from the Church or the denomination they belong to".

In fact, the very Department of Religious Assistance, newly established, comprised Orthodox priests, general staff officers and representatives of the Roman Catholic Church and the Evangelical Alliance, having mainly the intention to provide the framework for the elaboration of draft laws and regulations necessary prior to designing a methodology for religious service conduct in different situations.

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

In **Latvia** the activities of chaplains are regulated by the Law on Religious Organizations which speak in its section 1 par. 8 on the organization of chaplaincies as well as the 5th part of Section 14 of the same law. The Cabinet Regulation on Chaplaincy Services (15th of February 2011) stipulated the basic principles for the chaplaincy activities in Latvia. (R., Balodis. (2005):265) Pursuant to this Regulation a chaplain is a person, who in 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.

In **Estonia** the provisions on religious assistance in public institutions is to be found in the Act on Churches and Congregations (2002), article 9, par. 1 and 2. This provision is located in the chapter that deals with 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 Defense 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.

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(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 Defense 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] (Merilin Kiviorg (2006):110)

In **Lithuania** chaplaincy is not addressed in the Constitution, nor in the law on religious communities and associations (1995) but the temporary law on the military command adopted on the 15th of July 1993 speaks in its article 4 about the senior Chaplain of the Lithuanian Army. In the law on the organization of country defense (1998) it is also stated about military chaplains. There is also an Agreement signed with the Holy See on 5thMay 2000 which speaks about the care of the Catholics in institutions run by the State. This agreement could move the position of the country from this second type to the third one. 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.

In **Slovenia** the religious assistance in the army is regulated by article 22 of the Religious Freedom Act (2007, revised in 2010) corroborated with The Defense Act (hereinafter: the DA) and the Law on Military Service. Despite the duty of the Slovenian Army be neutral towards religion, which demand that it may not promote or disfavor any religious conviction or world view, the Army has to ensure 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 legal basis for military chaplaincies that are led by military chaplains that the Government pays for (see common provision of Article 6 of both Agreements). The Defense Act 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 organized (Article 52 of the DA).

In the **Czech Republic** the participation on chaplaincy is basically open to all registered religious communities and since 2002, this freedom has been restricted in two areas: army and prisons through the act no. 3/2002 Sb which gives the right only to those religious communities which obtain *a special right* to exercise this religious care. In the armed forces, no one's freedom of religion may be restricted and no one shall be coerced into

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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. Soldier can attend religious services in his free time outside the military area; however, he 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. (J., R., Tretera. Z., Horak. (2014):42)

3. Through agreements signed between the state and the religious organizations:

In **Hungary** such an agreement was signed with the Holy See on the Catholic military Ordinariate and similar agreements were concluded with other denominations as well. 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 institutionalized 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 the Chaplaincy to help 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"*.[7] Furthermore, 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.

In **Spain** the Roman Catholic chaplaincy in the armed forces is ruled by the Agreement between the state and the Holy See from 1979, developed by the Royal Decree 1145/7th September 1990 on Religious Chaplaincy. (N., Doe (2011):207) There are also chaplaincies organized for Evangelical, Muslim and Jewish persons and it is ruled by Article 8 of the three Agreements with the Federations signed in 1992.

[7] Constitutional Court Decision 940/B/1994. AB

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In **Poland** the military Ordinariate was reinstated in 1991 and this fact was subsequently included in the Concordate with the Holy See from 1993. Nearby there do function 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. On 25th April 1997 Military Chaplaincy in Croatia was founded by the Decision of the Pope St. John Paul II and first Military Bishop was appointed. This was prerequisite for making the Statute of Military Chaplaincy which entered into force on 22nd September 1998 which was followed by making By-Law on the organization and operation of the Military Chaplaincy of Croatia approved by the Holy See. (N., Skalabrin in W., Lienemann. H., Richter Reuter (eds.), (2005):227) It is important tom stress that Croatian Chaplaincy is competent for both military and police units which are not the case for many other states which have similar regulation of this issue. Also, there is a document called "Internal Organization of Military Chaplaincy Service" which is not publicized for the reason of being classified as a *military secret*.

In **Portugal** there is the Concordate signed in 2004 and in its article 17 it is stated *the right to religious care for the Catholics in the Armed Forces*. (Vitalino Canas in G., Robbers (2003):447) The next article speaks about the spiritual care in other institutions and this may determine us to put the country in the second type presented here.

4. No Special Regulations

In the other countries *the spiritual care for the armed forces follow the spirit of the times (*Sophie van Bijesterfeld in G., Robbers (2003):374) as it is shown in the report for **Netherlands** where there is no strict legal foundation for it and it exists (organized by six denominations) just as a result of the historical practice. In **Finland** for example the authorities have not sought to organize chaplaincy and there is no single word for the phenomenon, but the Finnish Defense Forces employ Lutheran and Orthodox chaplains to fulfill their mission inside the military corps.

In **Malta** in (Ugo Mifsud Bonnici in G., Robbers (2003):352) there is no law which defines or regulates chaplaincy and 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.

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3. Status of the Chaplains, Appointment and Revocation

When we are speaking about the status of the army chaplains we are referring first of all to their place in the military forces as officers or as civil servants of the army assimilated to military ranks.

The activity of military chaplains is subordinated to a general chaplain (who may be a bishop, a vicar or one of the priests) and usually this person has an equivalent rank with a general (there may be some terminological particularities on each country). In the appointment process of the general chaplain may be identified a tight collaboration between state and church, a revived Byzantine *symphonia* as the **Spanish** case proves it: in the nomination of the Archbishop chief of the Service, a special commission elected by the Foreign Ministry 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 named by the Pope. Generally speaking, Spanish Law sets four ways or models (Ivan C. Iban in G., Robbers (2003):144).

1. Integration of the chaplain into a special corps of the public Administration. The priests are nominated and named following the same system used for appointing civil servants. They are under the ecclesiastical but also under the civil command. [In this category are, for example, the permanent ministers of Roman Catholic chaplaincy to the Armed Forces] (N., Doe (2011):207).

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 the religious chaplaincy. The State pays the amount of money agreed as salary for the work done to the denomination. There is no legal or labor relationship between the State and the priests. (N., Doe (2011):207) [This is the model of the Roman Catholic chaplaincy in prisons].
- the hierarchy of the denomination proposes the clergy to be appointed as chaplain to the direction of the public institution. If there is no objection to the proposed candidate, the direction will sign a labor contract with him. He will carry out his work under the civil Administration's command. [For example, the Roman Catholic chaplaincy works in the hospitals of the public network of the INSALUD].

3. Public institutions authorize the chaplains of the denominations to perform their religious duties inside each centre through an agreement with the State. The public Administration has no labor relationship with the chaplain nor pays the personal expenses of their work. However, it does provide the material needs of the chaplaincy. [This is the model of the

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Evangelical and Jewish chaplaincy in the Armed Forces, penitentiaries and hospitals, ruled in the 1992 Agreements].

4. Public authorities in charge of the institutions can authorize individuals of certain denominations to go to the places of worship the hours and days prescribed by their religions. [So, military personnel of Jewish or Islamic faith could be authorized to go to the synagogue on Saturdays or to the mosque on Fridays, as ruled in Article 8.1 of the Agreements].

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.

The Form of Organisation

The institution of chaplaincy is usually organized as a Department for Religious and Moral Affairs (Belgium), Religious Chaplaincy Service (Spain), Directorate of Religious Affairs (Cyprus), Section for Religious Assistance (Romania) etc. and the name could vary. (N., Doe (2011):211)

Conditions for Acceptance

Those clerics who do intend to become chaplains should fulfill several conditions of theological studies and degrees, experience, passing an exam and then special training sessions organized by the Army. For example, in the **United Kingdom**, the Ministry of Defense 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. (J., Rivers. (2011):2008-213)

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

In **Romania** there are specific conditions which the future chaplain have ti fulfill for the acceptance:

- superior theological studies, permanent degree, at least 5 years of pastoral activity, Church and social prestige, good health condition;
- the local bishop recommended, according to Church criteria, chaplains to the Patriarchy for the units/garrisons required by the Ministry. Candidates passing the selection exam were enrolled and participated in a 60 days special course at the Academy of Military Studies, which was conducted in agreement with programs drawn up by the General Staff Inspectorate, in partnership with the Romanian Patriarchy. Enrollment and office installation of the chaplain was made on the recommendation of the Ministry of

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National Defense by the Romanian Patriarchate, by the respective garrison commander, with the participation of the local Bishopric representative.[8]

In **Netherlands**, every military chaplain needs an approval of his/her denomination before they can be appointed as such, and a relevant master's degree. Nowadays everybody agrees that military chaplains are active on fields like moral counselling, moral education on ethical issues, justified violence, and justified warfare.

Specificities

In the context of society secularization, in **Belgium** there appeared secular humanist counselors as military chaplains even if in other parts, humanist chaplains are described as *contradictions in terms or as abominations against the Christian establishment.* The introduction of secular humanist counselors 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), which in 2010 resulted in all military chaplains being granted the same (equally beneficial) financial status.[9] The same is to be met in **Netherlands**.

Against the Christian establishment of the army by the presence of the chaplains we may find the case of Daniel Sarriedine (A., Emilianides. (2011):87), a Muslim from **Cyprus**, who refused to serve in the National Guard because it has an Orthodox character. As a matter of fact, the Council of Ministers decided that the Turkish Cypriots should no more have the obligation to serve in the National Guard. Furthermore, the military service became voluntary for the 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.

Chaplains and Labour law

The military chaplains may be hired on a temporary basis or on a permanent basis. This possibility does exist in Romania (art. 12 of Law 195/2000). The same is in **Spain** (Ivan C. Iban in G., Robbers (2003):145-

[8] *Protocol on the organization and conduct of religious attendants in the Romanian Army* under no. A.4868/7242

[9] Art. 7 and 8 Royal Decree of 18 April 2010, Moniteur belge 20 May 2010. The central body of the secular humanist movement filed an annulment request against the new arrangement, but eventually withdraw from the proceedings: Council of State, 14 March 2011, no. 211.791.

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146). where *permanent priests* must be at least 50% of all the chaplains. They have to pass an examination and be named by the Defense 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 *mission canonica* is withdrawn. The 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 Defense Forces, with the approval of the Minister of Defense, but the Defense 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 Defense Forces Head Chaplain criticized 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 on due to diocesan reorganization".[10]

The **German** case is interesting because the chaplains were integrated in the social education program of the *Bundeswehr* by appointing the chaplains as teachers for *Lebenskundlicher Unterricht (professional ethics).* This ensures the independency from the military and civil hierarchy. In **Estonia** they are civil servants paid from the State budget, supervised by the State and their religious organization which gives the approval for their appointment.[11]

In **United Kingdom** (N., Doe (2011):209), chaplains are appointed by the Secretary of State for Defense on the recommendation of the appropriate Chaplain General after being nominated by an accredited representative of the religious organization 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 Defense 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

[10] 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
[11] Meirilin Kiviorg, loc.*cit.*

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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.

The uniform

About the **uniforms** used by the 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 the mass or other liturgical services. In **Finland** they use the uniform during military service and the liturgical uniform during the mass. In **Romania** the clerical uniform is being used all the time. In **Latvia,** chaplains are uniformed soldiers with appropriate service ranks and it is considered that wearing this uniform helps the chaplain to integrate better in the military environment.

Funding

As shown before, military chaplains may have the rank of officers or they may beassimilated with officers. This has an impact on the remuneration of the chaplains and on their retirement age.

In most of the countries, military chaplains are paid by the State through the budget of the Defense Ministry (State): **Finland**, **Hungary**, **UK**, **Romania**, **Czech Republic**, **Italy**, **France**. In the above mentioned countries where the relation between church and state is granted by a Concordat with the Holy See the chaplains are also state funded. This is the case for **Poland**, **Portugal** or **Spain** (for the catholic chaplains). (N., Doe (2011):211)

In **Sweden** the financial responsibility for the field dean belongs, since 1996, to the Church of Sweden.

In **Latvia,** an interesting way of funding chaplaincy is to be met because apart from state and local government institutions, which support chaplaincy from the public budget, material provisions may be provided also by capital companies with which a chaplain has legal employment relations.

In the case of **secular humanist counselors** from Belgium (here the chaplains are paid by the state)it is interesting that the introduction of secular humanist counselors 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 be granted the same (equally beneficial) financial status.

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Conclusions

One specificity of the military is that in all these countries the religious rights of soldiers can be limited if military arises.

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

Another commonality of military chaplaincy relates to the tasks that military chaplains fulfill. They are focused on helping soldiers to cope with difficult situations in their daily professional and private lives. Because they play a role of confidants and because they represent a second organization next to the military that claims to govern their intervention, military chaplains are not or 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 organization itself whereas the Balkan countries' and the catholic oriented countries' military chaplaincy can be identified as a well-integrated into the military organization.

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 assimilated with military ranks or they even obtain military ranks with all the benefits which they mean.

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. In the center of the organization of military chaplaincies stays the argument of representativeness. The state is much invested in selecting and recognizing religious groups so that only those groups that are explicitly invited by the state to provide military chaplains can participate in discussions over distributions 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. Yet, these are exceptions rather than the rule.

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

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

- The emotional and spiritual intense relationships developed between chaplains and the men and women they serve. Here should be taken into account also the possibility of existing, for example extremist imams as chaplains who may determine extremist positions on the believers in the army.
- How have military chaplains dealt with the enormous responsibility of ministering soldiers about killing or being possibly killed?
- The third point is that of chaplains' often precarious position between military and religious authorities, or, if not precarious, a dual legal position. As an example there is the aforementioned case of Ireland.
- The fourth point would be the migration as a reality with a possible impact on the European chaplaincy…

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

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