

ARTICLES

HUMANITARIAN AND PASTORAL FURTHERANCE OF REFUGEES IN THE CATHOLIC CHURCH¹

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1. Introduction

The most significant challenge in foreign and security policy that European states had to face in the year 2015 was a migrant and refugee crisis. Each European country and EU state built their political standpoints along different principles, which later manifested in different actions. We could see a great deal of clashes of views, which derived from the different points of views. However, not only among the leaders of European countries but also in each European society did tension occur. Those civil or international organizations that dealt with refugees or immigrants often ran counter to the migration policy of the represented country.

Meanwhile, both the leaders of each country and the society expected the Catholic Church to reflect the current situation theoretically, and to join aid and charity work as well.

In this study I am trying to clarify the principles on the following issues: what are the duties of the Catholic Church regarding people far from their homes, and what are its tasks which do not belong to the main field of activity, but according to its humanitarian attitude it will take part in.

In the article I use the words ‘refugees’, ‘migrants’, ‘immigrants’ as working terms without any ideological and political content.

2. The appearance of the refugee issue in the Pope’s and the Holy See’s documents

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Regarding the current refugee crisis, it must be clearly seen that the Catholic Church is primarily responsible for the pastoral care of Catholics who are far from their left behind. The first ecclesiastical documents and the field of activity of the gradually established ecclesiastical institutions also confirm this. Besides, the Holy See or local churches take several humanitarian and diplomatic steps to handle the refugee issue both globally and locally.

The speed of the course of events requires the leaders of the Catholic Church to give an ‘ad-hoc’ assessment. These papal or Holy See “reflections”, formulated for motivational and encouraging reasons, are not laws. Instead, they serve as guidelines for the ecclesiastical administration which participate in humanitarian and pastoral care of immigrants’. This fact is not marginable, but its significance cannot be overrated. It is not about legislative amendment, nor are we talking about establishing new institutions or assigning tasks, but it is about defining basic behavior and moral principles.² What is more, not each local ecclesiastical institution has appropriate infrastructure, financial and human resources to comply these basic principles.

The refugee issue appears basically in the topic of social teaching of the church. Ecclesiastical documents reflected a social phenomenon when it became effective for some historic or economic reason or when migration became a world political and security issue. Papal utterances examine migration issues with different thoroughness. It is not their task to create legislative frameworks. They define those main guidelines along which the migration policy of the Holy See, the canonical frameworks of pastoral care and the institutions of humanitarian assistance can develop.³

Lumen gentium, the dogmatic constitution on the church of the Second Vatican Council notes in connection with the activity and unity of the church that the pastoral care of different ethnical and ritual groups should favour true Catholic mind. (LG 13) According to *Christus Dominus* (18) “Special concern should be shown for those among the faithful who, on account of their way of life, cannot sufficiently make use of the common and ordinary pastoral care of parish priests or are quite cut off from it. Among this group are the majority of migrants, exiles and refugees, seafarers, air-travelers, gypsies, and others of this kind.” The same article of the document calls the attention of local episcopal conferences that “they should look to and promote their spiritual care by means of suitable methods and institutions. They should also bear in mind the special rules either already laid down or to be laid down by the Apostolic See (15) which can be wisely adapted to the circumstances of time, place, and persons.” The conciliar documents formulate pastoral-theological principles, which must be considered in the pastoral care and humanitarian assistance of people

² POPE FRANCIS: Migranti e rifugati. Verso un mondo migliore. *Migranti*, 2014/1. 5.

³ Jaime BONET: El Factor Religioso en el derecho humanitario bélico: algunas cuestiones de interés para el Derecho eclesiástico del Estado. In: María Blanco – Beatriz CASTILLO – José FUENTES – Miguel SÁNCHEZ-LASHERAS (ed.): *Ius et Iura*. Navarra, Universidad Navarra, 2010. 134–150. For example Leo XIII: Enc. Rerum novarum. 15. V. 1891. n. 33. *Acta Sanctae Sedis*, 1890–91/23. 641–670. It states the principle that is still determinant today: Everybody has the right to stay in their native land [...] and no to be forced to leave for a strange country.

far from their native land.⁴ The principles were repeated in the post-conciliar Canonlaw, specially in the so-called ‘constitutional’ law. In this sense the legislator created legal relationship between hierarchy and the Christian faithful.⁵ Thus the duty of the hierarchy is to provide pastoral care to the Christian faithful who are far from their native land for any reason.⁶

To give an efficient pastoral care, particular features deriving from their mother tongue, culture and traditions must be considered.⁷ This way the institutions that provide them pastoral care must be established on the level of the universal and particular church.⁸ Moreover, different Catholic institutions that provide humanitarian assistance come into existence under theological principles. However, whilst the primary subjects of pastoral care – yet, the Catholic Church has a missionary feature – are the Christian faithful, the church does not make such a differentiation on the field of humanitarian aid. What is more, the institutions mark that they must provide humanitarian assistance for the vulnerable without any discrimination on the grounds of denomination and religion.

The post-conciliar social encyclicals and the Pope’s utterances also follow conciliar principles. Pope Paul VI’s encyclical, *Populorum progressio*, published in 1967, speaks about the duties of developed countries to accommodate and educate the young and immigrant workers and to promote the dialogue between cultures. John Paul II’s encyclical, *Sollicitudo rei socialis* refers to the difficulties that stand in the way of individual development, because of which a lot of people “opt out of national life, impelling many to emigrate”.

According to paragraph 62 of Pope Benedict XVI’s encyclical, *Caritas in veritate*⁹, published in 2009, the drama of migration on one hand derives from the huge number of people involved, and on the other hand from the social, economic, political, cultural and religious problems it raises. It is a serious epochal phenomenon whose handling exceeds the capability of each state and requires the cooperation of nations and international organizations.¹⁰ An important factor is that not only do the rights of migrants but those of the host societies have to be protected. Hardly ever can we hear the latter factor though, it is an integral part of the social teaching

⁴ Jean BEYER: Fondamento ecclesiale della Pastorale dell’Immigrazione. In: Jean BEYER – Marcello SEMERARO (ed.): *Migrazioni Studi Interdisciplinari*. Roma, Centro Studi Emigrazioni, 2003. 9–33.; Velasio DE PAOLIS: La chiesa e le migrazioni nei secoli XIX e XX. *Ius Canonicum*, 2003. 13–49.

⁵ Javier HERVADA: *Introduzione critica al diritto naturale*. Milano, Giuffrè, 1990.

⁶ Velasio DE PAOLIS: L’impegno della Chiesa nella pastorale della mobilità umana secondo il Codice di Diritto Canonico. *Seminario*, 1985/25. 131.

⁷ Benlloch POVEDA: La nuova legislazione canonica e sulla mobilità sociale. In: Julián HERRANZ (ed.): *Migrazioni e diritto ecclesiale*. Padova, Edizioni Messaggero, 1992. 21.

⁸ Josémaría SANCHIS: La pastorale dovuta ai migranti ed agli itineranti (aspetti giuridici fondamentali). *Fidelium Jura*, 1993/3. 452–453.; Velasio DE PAOLIS: La pastorale dei migranti nei documenti conciliari. *Informationes SCRIS*, 1989/2. 238–257.

⁹ POPE BENEDICT XVI: Enc. Caritas in veritate. 29. VI. 2009. *Acta Apostolicae Sedis*, 2009/101. n. 61., 696–697.

¹⁰ POPE BENEDICT XVI: Enc. Caritas in veritate. n. 67., op. cit. 701–702.

of the Church when we analyse the possibilities of pastoral care and humanitarian assistance to migrants.

3. Basic principles of Pope's and the Holy See's documents and offices toward ensuring pastoral care to those living far from their native land

Certain documents of the Pope's and the Holy See explain the legal and structural frames of the pastoral care for people living far from their native land. The ninth canon of the Fourth Lateran Council (1215) is an interesting record of legal history. It directs local church leadership to take into consideration the pastoral care of those who had to leave their native land and did not speak the language of the area where they had settled down. The conciliar direction refers to the responsibility of the local church authority.

Because of the Catholic migration of the 19th and 20th century, the opinion became much more general that not only on local level should the pastoral care of migrants be assisted but via a separate office of the Roman Curia.¹¹ In 1912, with his *motu proprio*, *Cum omnes catholicos*, Pope Pius XI established the special office responsible for migrants.¹² The Pope regularized its power,¹³ so the office acted exclusively and in its own right in organizing the pastoral care for those living far from their native land. Besides, that time the office did not work separately but in subservience of Consistorial Congregation.¹⁴ Later, the Congregation tried to give a briefing, mainly through documents and instructions, to those who provided pastoral care to Catholics of different nations.¹⁵

In 1914, Pope Pius X established the office, whose exact legal frames were laid down too, to provide pastoral care to Italian immigrants.¹⁶ In 1914 the Pope wanted to establish a seminary which was to educate priests providing pastoral care to refugees, but it came into existence only in 1920 because of WW I.¹⁷ Then, Consistorial Congregation established an institution to provide pastoral assistance to refugees of Italian nationality.¹⁸ Pope Benedict XV appointed a 'personal prelate' to coordinate the activities of those priests who provided pastoral care to Italians living abroad.¹⁹

¹¹ Comprehensive historical description: Angelo NEGRINI: La Santa Sede y el fenómeno de la movilidad humana. *People on the move*, 2002/34. 88–89.

¹² POPE PIUS X: Motu proprio. Cum omnes catholicos. 15. VIII. 1912. *Acta Apostolicae Sedis*, 1912/4. 526–527.

¹³ Pope Pius X was always deeply concerned about the life of people living far from their native land. Gian Carlo PEREGO: Un Papa, un Vescovo e I migranti. *Migranti*, 2014/1. 7–8.

¹⁴ Consistorial Congregation is the predecessor of the current Episcopal Conference.

¹⁵ CONSISTORIAL CONGREGATION: Decretum. Etnographica studia. 25. III. 1914. *Acta Apostolicae Sedis*, 1914/6. 182–186.

¹⁶ About the establishment of Collegio Urbano di Sacerdoti per l'Immigrazione italiana see. POPE PIUS X: Motu proprio. Iampridem. 19. III. 1914. *Acta Apostolicae Sedis*, 1914/6. 173–176.

¹⁷ CONSISTORIAL CONGREGATION: Notification. 26. V. 1921. *Acta Apostolicae Sedis*, 1921/13. 309–311.

¹⁸ CONSISTORIAL CONGREGATION: Decretum. 3. IX. 1918. *Acta Apostolicae Sedis*, 1918/6. 669–671.

¹⁹ POPE BENEDICT XV: Notification. 23. X. 1920. *Acta Apostolicae Sedis*, 1920/12. 534–535.

The office was reformed after WW2 and it was subordinated directly under the Secretary of State. Then, in 1951, the International Catholic Migration Commission was formed. In 1952, the Apostolic Constitution, *Exsul familia* reassured its exclusive competence, and formed its ongoing structure.²⁰ Pope Pius XII's constitution is often mentioned as the magna charta of the Holy See's migration policy²¹ although it still carried the ecclesiastical approach of the era: it could not forget about territorial principle, and the assistance of lay faithful was limited.²² However, the document must be considered a significant step: the idea is expressed that it is not the minimum to reach in pastoral assistance of those far from their homes but a system must be built up that is able to supply their pastoral care.²³

During Paul VI's papacy certain offices of the Roman Curia were significantly reshaped, which affected the Holy See's office responsible for those far from their homes. In 1965, the Pope established a separate office which became responsible for the nomadic. Then, in 1967 under the leadership of the Congregation for the Clergy, he built up another office responsible for tourists.²⁴ In 1970, Paul VI contracted the two offices, and built up the Pontifical Council, subordinated under the Congregation for Bishops for the pastoral care of migrants and tourists.

In terms of law development, Pope Paul VI's *motu proprio*, *Pastoralis migratorum cura*, is significant as it emerged in the light of the principles of the Second Vatican Council.²⁵ The direction of the Congregation for Bishops, „*De pastoralis migratorum cura*” („*Nemo est*”),²⁶ which formulates practical aspects, is attached to this Papal document.

Oppositely the 1917 Code of Canon Law, the current Code of Canon Law does not give details on the function of the Roman Curia. Therefore the regulation of the office responsible for the faithfuls far from their home could be found in the Apostolic Constitution, *Pastor Bonus* (art. 149–151)²⁷, and in the regulation for internal use. The Apostolic Constitution, *Pastor Bonus* eliminated the dependence of

²⁰ POPE PIUS XII: Apostolic Constitution, *Exsul Familia*. VIII. 1. 1952. *Acta Apostolicae Sedis*, 1952/44. 649–704.

²¹ Luigi GOVERNATORI: Commentarium in Const. Apost. „*Exsul Familia*”. *Apollinaris*, 1953/26. 155–174.

²² Eduardo BAURA: La cura pastorale extraparrocchiale. In: GRUPPO ITALIANO DOCENTI DI DIRITTO CANONICO (ed.): *Laparrocchia*. Milano, Glossa, 2005. 255.

²³ Luigi SABBARESE: Girovaghi, migranti, forestieri e naviganti nella legislazione ecclesiastica. In: *Corso di formazione della Fondazione Migrantes*. Manuscript. 5.

²⁴ Giovanni CHELI – Luigi SABBARESE: Pontificio Consiglio della Pastorale per i Migranti e gli Itineranti. In: Pio Vito PINTO (ed.): *Commento alla Pastor Bonus e alle Norme Sussidiarie della Curia Romana*. Città del Vaticano, Libreria Editrice Vaticana, 2003. 216.

²⁵ POPE JOHN PAUL II: Motu proprio. *Pastoralis migratorum cura*. 15. VIII. 1969. *Acta Apostolicae Sedis*, 1969/61. 601–603.

²⁶ CONGREGATION FOR BISHOPS: Instr., *De pastoralis migratorum cura* („*Nemo est*”). *Acta Apostolicae Sedis*, 1969/61. 614–663.

²⁷ JOHN PAUL II: Apostolic Constitution. *Pastor Bonus*. VI. 28. 1998. *Acta Apostolicae Sedis*, 1988/80. 899–900.

the office, changed its name and so it became Pontifical Council for the Pastoral Care of Migrants and Itinerant People.

The Pontifical Council did not cover only migrants but all of those who left their native land for any reason:²⁸ “going on trips”, “leaving their native land”, “nomads”, who has not had to leave their native land but, because of their lifestyle, they lead an itinerant life, occasionally over the borders of their own native land. Similarly, the council was competent in the pastoral care of fishermen, seafarers and air transport personnel.²⁹ There was no difference whether they have left their native land of economic, political, religious, ethnic reasons or they have been forced to leave. The council was directed by the President, in the rank of an archbishop,³⁰ helped by the Secretary, assisted by the Under-Secretary and by the Councillors.³¹

The council was divided into nine “departments”: migrants, exiles, refugees, displaced people, fishermen and seafarers, air transport personnel, nomads, circus and fairground people, those who go on trips for reasons of piety, study or recreation, land transport workers and other similar categories, which are of different importance.

Though the most important duty of the council was to provide pastoral care for people far from their native land, the classical form of charity, providing psychological and material help for migrants, occurs, too.

The council works with the authority of the universal church as well as of the Pope’s, but in order to achieve higher efficiency it cooperated with the local churches.

4. Reflection and structural modification of Holy See in light of ongoing migration crisis

By the beginning 2000s it had become relevant to publish a new ecclesiastical document which was coherent with the existing legislation. Such a basic document needed which was harmonized with the pastoral-theological principles of the Second Vatican Council and considered the new social, political and security challenges.³² As a result, the direction *Erga migrantes*, published 3rd May 2004, was born.

The document, *Erga migrantes* is a summary as the Apostolic See had already referred to the most important questions of migration in its documents examining the social teachings of the Church before the direction appeared. In post-synodal documents, examining the situations of Africa (1994), America (1997), Asia (1998), Oceania (1998) and Europe in the year of the Great Jubilee (2000), we can find references to the protection of refugees’ human rights, to their reception and pastoral care.³³

²⁸ CHELI–SABBARESE opt. cit. 216.

²⁹ JOHN PAUL II: Motu proprio. Stella Maris. 31. I. 1997. *Acta Apostolicae Sedis*, 1997/89. 209–216.

³⁰ Gian GIACOMO-Sanzi SARTORI: Comment on Canon 360. In: QUADERNI DI DIRITTO ECCLESIALE (ed.): *Codice di Diritto Canonico Commentato*. Milano, Ancora, 2001. 350.

³¹ Heribert SCHMITZ: Die Römische Kurie. In: Joseph LISTL – Heribert SCMITZ (ed.): *Handbuch des katholischen Kirchenrechts*. Regensburg, Verlag Friedrich Pustet, 1999. 378.

³² Julián HERRANZ: *Giustizia e pastoraltà nella missione della Chiesa*. Milano, Giuffrè, 2011. 412.

³³ „If we consider, among the causes which lead many to leave their own land, the state of extreme poverty, underdevelopment and insufficient freedom which unfortunately still characterizes various

The direction, *Erga migrantes* contains four big parts and a final conclusion, into which the actual parts of the ecclesiastical documents were incorporated. Its appendix deals with the canonical concepts of migration. It refers to the lay faithful (1), chaplains and missionaries (2), men and women religious (3), church authorities (4), Conference of Bishops and corresponding hierarchical structures of the Eastern Catholic Churches (5) and the than Pontifical Council.

Regarding the refugees' pastoral care, the direction notes that the leaders of the church must do their best for the refugees' pastoral and humanitarian care. Regarding the non-Christian or non-Catholic, they must respect the principle of freedom of conscience and religion (17). Local church authorities must be prepared for refugees' different language and cultural background. Therefore, it is an important aspect that the number of refugees in local communities should not exceed the limit that could cause tension because of the differences (89). Previous papal statements encouraged local church authorities to use the advantages of church universalism, its cross-border institutions and help new-comers with keeping in touch with the left-behind (32). Regarding waves of migration, the importance of people-to-people contact and the role of Catholic institutions have arisen again. At the same time, more called attention to national security risks which can be caused by these kinds of activities of the church. Because of the vast number of refugees, national security agencies are overwhelmed. Therefore, the more significant entities of a given country should show greater national security sensitivity, and should avoid unnecessary risks, which can be generated by contribution in communication.

The direction, *Erga migrantes* considers that in western societies there can be extreme political powers which can perform violently against refugees. In different official forums the church has already raised objection against refugees' ethnic or religious discrimination.³⁴ The document urges canonical opportunities to be used locally, and to form personally organized church institutions to provide pastoral care for migrant groups.

The Holy See asks the church authorities of the countries involved to send the Pontifical Council an annual report (p. 20 § 1 7), through which the Holy See can obtain up to date information regarding each country. The present nature of immigration requires more frequent communication between local and central organizations.

Because of the current security challenges and the migration crisis, Pope Francis published the *Motu Proprio Humanam progressionem*³⁵ and formed a new "dicastery", Promoting Integral Human Development by unifying the former pontifical councils for Justice and for Peace, for Migrants, for Charity and for Healthcare. The new dicastery is currently governed by statutes approved *ad experimentum*. The four

countries, there is a need for courageous commitment on the part of all to bring about a more just international economic order capable of promoting the authentic development of every people and country." JOHN PAUL II: Post-synodal Apostolic exhortation *Ecclesia in Europa*. 28. VI. 2003. *Acta Apostolicae Sedis*, 2003/92. 710.

³⁴ Giovanni Giulio VALTOLINA: "La paura è la madre di ogni razzismo". Atteggiamenti e orientamenti dei cittadini europei verso gli stranieri immigrati. *People on the move*, 2010/11. 113–129.

³⁵ POPE FRANCIS: *Motu Proprio*, *Humanam progressionem*. 17. 08. 2016. *Acta Apostolicae Sedis*.

dissolved councils lost their functions and articles of 142–153 of the Apostolic Constitution *Pastor Bonus* have also been abrogated. The new office is simply called a “Dicastery” and not a “Congregation” or a “Pontifical Council”. This must be a temporary solution until the permanent place of the new Dicastery is found within the curial structure. According to the fifth article of the statute “the Dicastery also represents the Holy See with regard to the creation and supervision of international charitable organizations and funds established for the same purpose”.³⁶ The new Dicastery is responsible for “migrants, those in need, the sick, the excluded and marginalized, the imprisoned and the unemployed, as well as victims of armed conflicts, natural disasters, and all forms of slavery and torture.” The pope’s decision was not a surprise since many analysts expected a similar move.³⁷ The creation of this combined office is in line with Pope Francis’s social views expressed in his encyclical – ‘*Laudato si*’. It is worth mentioning the messages on the World Day of Migrants and Refugees. These assessments are not laws. At best, they clarify the function of legal institutions or the meaning of legislation. They formulate basic principles and behaviour, moral sentences and – if you wish – recommendations for political leaders of each country and for the leaders of international organizations. The supreme ecclesiastical legislator describes how to put canonical institutions much better into the pastoral and humanitarian service of people far from their homes. The opportunity is given to reflect to the actual situation of world politics and security state, and in this forum it calls the attention of each country and international organization to the new challenges of migration.³⁸

5. The opportunity of refugees’ pastoral care in current Canon Law

The Code of Canon Law, published in 1983 was formed with taking into account the conciliar principles. While CIC (*Codex Iuris Canonici*) was being adapted, it was clearly visible that migration had become a much more significant challenge but then, migration – either considering nationalities or its quantity – was radically different from the current situation. To reach higher efficiency, the new code makes basic principles which can be used regarding the humanitarian and pastoral care of people

³⁶ FRANCIS: Statutes of the Dicastery for Promoting Integral Human Development. 17. 08. 2016. http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco_20160817_statuto-dicastero-servizio-sviluppo-umano-integrale.html.

³⁷ Elise HARRIS: *Pope Francis creates new Vatican office for integral human development*. <http://www.catholicnewsagency.com/news/pope-francis-creates-new-vatican-office-for-integral-human-development-34673/>.

³⁸ On the occasion of the 89th World Day of Migrants and Refugees Pope John Paul II asked local Catholic institutions to help strangers with integration and not to make them feel cultural and language differences. Moreover, he condemned exaggerated nationalism of any kind, and referred to the ‘most vulnerable strangers’: refugees without any documents, the exiled, people looking for shelter [...] refugees of bloody conflicts, female and child victims of human trafficking.” JOHN PAUL II: Presentation of the Pontifical Message for the World Day of Migrants and Refugees. *People on the move*, 2002/90. 5–7. Regarding their structures and messages these presentations, given on the World Day of Migrants and Refugees, are similar.

living far from their native land.³⁹ The legal options, guaranteed by the code, open the way to establishing different organizations for the pastoral care of migrants'.⁴⁰ Each institutional option cannot always be used. A competent ecclesiastical authority considers the circumstances, and establishes the most appropriate institutional setting to provide pastoral care for migrants.

5.1. The pastoral care of people living far from their native land within the frames of the local parish

Canon 529 of CIC deals with the general pastoral duties of the parish priest. Paragraph four commends "those exiled from their country" for the attention of the parish priest. The word usage of the Canon is general, it refers to anyone who is a refugee or far from their native land for any reason from education to work.⁴¹ The legislator wanted to indicate that the parish was the liturgical and spiritual place for Catholics far from their native land. As for putting the law into practice, the legislator's purpose did not totally happen. For migrants, because of their cultural, language and other difficulties, could not be fully integrated into a local parochial community.⁴² Or rather, the faithful did not take the strangers unreservedly. It is a typical example of the problem when the legislator's intentions and the implementation of the legislation cannot be put into effect because of the attitude of the recipients and other objective barriers. The first paragraph of Canon 529 mentions the pastoral care of "those exiled from their country" among the tasks of the parish priest. The Canon indicates that the parish priest should pay special attention to – in addition to the poor and the sick – those far from their native land. It is the pastoral duty of the parish priest arising from his office.⁴³ In a parish church, people far from their native land can receive from the 'treasury of the Church'. (LG 37; Can. 213).⁴⁴ It involves administration of sacraments⁴⁵ and words of God and

³⁹ Eduardo BAURA: Movimientos migratorios y derechos de los fieles en la Iglesia. *Ius Canonicum*, 2003/43. 51.

⁴⁰ Piero Antonio BONNET: Comunione ecclesiale, migranti e diritti fondamentali. In: PONTIFICIO CONSIGLIO DELLA PASTORALE PER I MIGRANTI E GLI ITINERANTI (ed.): *Migrazioni e diritto ecclesiale. La pastorale della mobilità umana nel nuovo Codice di Diritto Canonico*. Padova, Edizioni Messaggero, 1992. 35.

⁴¹ Juan CALVO: Comment to Cannon 529. In: Ignacio Juan ARRIETA (ed.): *Codice di Diritto Canonico. Leggi e Complementari*. Roma, Colletti a San Pietro, 2004. 413.; Agosto MONTAN: *Il diritto nella vita e nella missione della Chiesa*. Bologna, Edizione Dehoniane, 2000. 446–447.

⁴² Hans C. VÖCKING: Migration und Pastoral. Eine Chance für die Katholizität der Kirche. *Ost–West. Europäische Perspektiven*, 2003/3. <http://www.owep.de/artikel/353/migration-und-pastoral>. In his studies the author, the ex-secretary of the Migration Committee of the Council of European Episcopal Conferences, calls the attention, that it is difficult to integrate immigrants into local parishes.

⁴³ MONTAN op. cit. 449.

⁴⁴ Francesco COCCOPALMERIO: Il parroco »pastore« della parrocchia. *Quaderni di diritto ecclesiale*, 1993/1. 12–13.

⁴⁵ Because of greater mobility and unsettled conditions, from time to time it is not easy tell which sacraments can be administrated validly. In case of a marriage it can effect the validity of the

other pastoral activities.⁴⁶ However, due to cultural and language difficulties the effectiveness of these activities, especially of Catechism and spiritual conversations, is questionable. The legislator indicates that preaching God's words on the level of Catechism, homily and preaching should fit the faithful's age and intellectual capacity (LG 28; CD 30; can. 757). In case of refugees and immigrants, it can hardly or at the expense of sacrifices be achieved, as their cultural and language differences are extremely significant.⁴⁷ The pastoral care of immigrants cannot make up the majority of a parish priest's everyday work, it should fit into the group of tasks that he provides regarding his office. It is reasonable to provide the pastoral care of people far from their native land via the local parish church if the number of immigrants does not exceed the critical threshold, which would come at the expense of the parish's other pastoral work arising from his office. There is no reason why competent members of the parish church cannot join in the pastoral care of people far from their native land. Furthermore, it increasingly seems to be a task that makes it possible for the faithful, suitably their position, to participate in the priestly, prophetic and royal mission, instituted by Jesus Christ, of the Church on the level of the parish church. This participation can involve visiting immigrant families, looking after the ill, charity activities, even religious education – if one has ecclesiastical permission.⁴⁸ The last one is extremely significant if the secular faithful have language, where appropriate cultural knowledge.

If the pastoral care of "those exiled from their country" exceeds the capabilities of the local parish priest, it is advisable to exercise other possibilities guaranteed by the current canon law. It can mean appointing a personal parish priest or, if circumstances justify, establishing pastoral institutions, which is guaranteed by canon law. The competent priest can be a 'chaplain' (Can. 564), an episcopal/general vicar providing and organizing pastoral care for migrants (Can. 476) and a personal parish priest. (Can. 518).

In theory a personal prelate could be established, but so far one personal prelate has been established with a totally different character.

Formerly, the so called 'mission' was known, it was deliberately established to provide pastoral care for people arriving from other countries.⁴⁹ Mission is not an exact canonical category, therefore it is difficult to place it among the other ecclesiastical structures. So can it be difficult to find financial sources for a pastoral

presentation of sacraments. (In case of not verified marriage obstacles).

⁴⁶ Alvaro DEL PORTILLO: *Laici e fedeli nella Chiesa*. Milano, Giuffrè, 1999. 64–74.

⁴⁷ Mauro RIVELLA: Il parroco come evangelizzatore: l'esercizio del »munus docendi« (c. 528, par. 1). *Quaderni di diritto ecclesiale*, 1993/1. 23.

⁴⁸ ERDŐ, Péter: A világiak munkája a plébánián. Teológiai és egyházzogi vonatkozások. In: ERDŐ, Péter (ed.): *Élő egyházjoga*. Budapest, Szent István Társulat, 2006. 292–293.

⁴⁹ Jaime B. ACHACOSO: Shepherding an Itinerant Flock A Survey of Institutions and Jurisdictional Structures for the Pastoral Care of Filipino Migrant Workers. *Philippine Canonical Forum*, 2010/12. 29–68.

institution, especially when a certain institution is not recognized and nor supported by the civil law.⁵⁰

Nevertheless, if a pastoral institution is not established, the parish will be a spiritual and liturgic place for them, too.⁵¹

5.2. The pastoral care of people living far from their native land via appointing a parish priest

The new code, compared to the old one, attributes greater significance to the legal institution of the parish priest. 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, which is to be exercised according to the norm of universal and particular law” (Can. 564). CIC introduces the legislation regarding chaplains through eight canons. (Cann. 564–572) Canon 568 of the Code is especially about those chaplains who are appointed to take care of a certain social group. The legislator sees the importance of the chaplain’s activity in their taking care of groups who cannot receive the parish priest’s general service. According to the Code, these social groups are those of “migrants, exiles, refugees, nomads, sailors.” The legislator’s intention is that “as far as possible, chaplains are to be appointed” for the pastoral care of the above mentioned. The list of CIC is not exclusive, rather it gives examples, and it entrusts to choose the groups who are in need of special pastoral care to the local ordinary’s judgement.⁵² It is an advantage for the priest to speak the language of a certain ethnic group and to know its culture. It is the best for the priest to belong to that certain ethnic group as the particular churches of the host country rarely have competent priests from all aspects.

In connection with migration, particular churches can use the possibilities of the current law which applies to handing over priest permanently or temporarily. The post-conciliar legislation made incardination easier.⁵³ On the one hand, it had theological reasons: priesthood should carry the responsibility towards universal

⁵⁰ Astrid KAPTJUN: *Die katholischen Migrantengemeinden – Staatskirchenrechtliche Ausblicke und das Kirchenrecht*. <http://www.migratio.ch/de/dokumente/artikel-buecher-und-studien-zur-anderssprachigenseelsorge/studien/die-katholischen-migrantengemeinden>.

⁵¹ Francesco COCCOPALMERIO: La pastorale dei fedeli che si trovano fuori del domicilio. In: *Migrazioni e diritto ecclesiale. La pastorale della mobilità umana nel nuovo Codice di diritto canonico*. (Pontificium Consilium de Spiritualibus Migrantium atque Itinerantium Cura) Padova, Edizioni Messaggero, 1992. 193–200.

⁵² John A. ALESANDRO: Comment on Canon 568. In: James CORIDEN – Thomas GREEN – Donald HEINTSCHEL (ed.): *The Code of Canon Law. A Text and Commentary*. New York, Paulist Press, 1985. 446.

⁵³ José Martín AGAR: Appunti per una riflessione sull’incardinatione. In: Luis NAVARRO (ed.): *L’istituto dell’incardinatione*. Milano, Giuffrè, 2006. 452.

church.⁵⁴ On the other hand, it had to promote a better distribution of the clergy.⁵⁵ Regarding better distribution of priests, the regulation of the Second Vatican Council, *Presbyterorum ordinis*, puts emphasis on supplying particular pastoral care.⁵⁶ "Not only should a better distribution of priests be brought about but there should also be favored such particular pastoral works as are necessary in any region or nation anywhere on earth." (PO 10) The pastoral care of people far from their native land can be regarded as such a particular area.⁵⁷

The legislation of the current Code which refers to incardination was born accordingly conciliar principles (Cann. 265–272). Therefore the legal possibility of both ex- and incardination and "handing over" for predetermined time was made easier. If the diocesan bishops of two particular churches agree, there is the possibility to incardinate a cleric from the diocese of the sending country into the diocese of the host country to supply pastoral care for immigrants. So the particular churches of the host countries can get a pastor that speaks the immigrants' language and knows their culture. This canonical institution is worth being used when the number of immigrants makes it reasonable and therefore pastors stay in the host country on a permanent basis. However, it is only the canonical side of accepting pastors, the accepting particular Church should consider its national security and civil law aspects as well.

If people far from their country intend to stay temporarily in the territory of a particular church, or there are not many of them, or rapid integration can be foreseen, it is better to use the canonical institution of moving to another particular church for predetermined time (Can. 271).⁵⁸ As for accepting clerics for predetermined time, it is not only the cleric's request and competence, but also the bishops' of the two particular churches opinion, and last but not least the faithful's interests are considered.⁵⁹ In case of the priest from the sending country for ethnic groups far from their native land permanent reception is hardly an option, but the diocese of the accepting country receives pastors temporarily.⁶⁰ In this case, the two bishops should agree on the activity of the clericals in a written agreement. Code of Canon Law does not mention what elements the agreement between ecclesiastical principals should

⁵⁴ The rules of incardination and excardination must be modified so that the ancient institution should remain, but they should suit present pastoral demands better." PO 10. See Pierantonio PAVANELLO: I Presbiteri fidei donum speciale manifestazione della comunione delle Chiese particolari tra loro e con la Chiesa universale. *Quaderni di diritto ecclesiale*, 1996/1. 49–51.

⁵⁵ Javier HERVADA: Personal Prelature from Vatican II. to the New Code: An Hermeneutical Study Canons 294–297. *The Jurist*, 1985/45. 379–418.

⁵⁶ Alvaro DEL PORTILLO: *Consacrazione e missione del sacerdote*. Milano, Ares, 1990. 30.

⁵⁷ José María RIBAS: *Incardinación y distribución del clero*. Pamplona, Universidad de Navarra, 1971.

⁵⁸ CONGREGATION FOR CLERGY: Notae directivae. Postquam apostoli. 26. p. 25. III. 25. 1980. *Acta Apostolicae Sedis*, 1980/72. 343–364. It has been confirmed again recently by the Holy See. CONGREGATION FOR BISHOPS: Directorium. Apostolorum successores. n. 17. 22. II. 2004. *Enchiridion Vaticanum*, 2004/23. 1068–1069.

⁵⁹ Clergy PERSONNEL: Policy and Canonical Issues. *The Jurist*, 45/1985. 517.

⁶⁰ Juan Ignacio ARRIETA: *Diritto dell'organizzazione ecclesiastica*. Milano, Giuffrè, 1997. 365.

contain. According to different authors, the following questions are worth discussing: the length of a future service, the particular duties of a cleric's during his pastoral care, the place of service and housing, remuneration and the question of health and social insurance.⁶¹ Civil law and national security barriers, which according to the canonlaw do not mean the limits of temporary take-over, should be considered. Pastoral duties, the pastoral care of migrants as well, can be provided – with the superior's permission – by a cleric that belongs to an institution of consecrated life. It is more and more frequent in dioceses, because of the growing lack of priests.

5.3. Appointing an episcopal vicar to organize the pastoral care of people far from their native land

If it is justified, the pastoral care of migrants can be organized through an episcopal vicar. The Second Vatican Council thought, paying attention to the changed social circumstances, it was important for the diocesan bishop to have other assistants beside the general vicar in more important pastoral cases (CD 27).⁶² After the council, the importance of this institution was emphasized in several Papal and Holy See documents.⁶³ The Code refers to the episcopal vicar's competence, appointment and losing office in general (Cann. 475–481). In case of an episcopal vicar, that is responsible for immigrants, there are special qualities which are worth being measured.⁶⁴ Among others, these qualities can be the knowledge of a language, a culture or, where appropriate, a special rite. The latter does not only mean liturgy but also the tradition of the church "sui iuris" and its peculiarities in ecclesiastical disciplines and government. In many cases, the episcopal vicar, appointed for providing pastoral care for people far from their native land, comes from the cultural milieu of migrants in majority. In other cases, the episcopal vicar has spent a long time in the sending country, or he has some language and cultural knowledge for other reasons. In the countries that are involved in migration, dioceses, using their canonical rights, have appointed episcopal vicars to harmonize the pastoral care of migrants on diocesan level. This solution exists in several Anglo-Saxon and Western-European countries.

⁶¹ Francis SCHNEIDER: Comment on Canon 271. In: James CORIDEN – Thomas GREEN – Donald HEINTSCHEL (ed.): *The Code of Canon Law. A Text and Commentary*. New York, Paulist Press, 1989. 340.

⁶² Velasio DE PAOLIS: De Vicario Episcopali secundum Decretum Concilium Oecumenicum Vaticanum II „Christus Dominus”. *Periodica*, 1967/56. 309–330.

⁶³ EPISCOPAL CONGREGATION: Directorium. *Ecclesiae imago*. 22. II. 1973, *Leges V*, nr. 202. 6528–6529.

⁶⁴ Gian Giacomo SARZI SARTORI: I vicari del vescovo e l'esercizio della «vicarietà» nella Chiesa particolare. *Quaderni di diritto ecclesiale*, 2005/18. 11–12

5.4. Pastoral care of people far from their native land through structures organized on ecclesiastical personal concept

After the Second Vatican Council the personal concept, beside the territorial institutions, was getting more and more important regarding pastoral activity.⁶⁵ These institutions are built up – on the one hand – on universal law, on the other hand on local, particular canon law which considers national circumstances.⁶⁶ Pastoral structures on personal concept, providing pastoral care for people far from their native land, had already been established before the Vatican Council. Pope Pius X established ordinariates in the USA and Canada to provide pastoral care for Rusyns. Pope Benedict XV also established an ordinariate for refugees in Italy. Pope Pius XI used the same canonical structure when he provided pastoral care for Slavs in China.

Pope Pius XII used this ecclesiastical structure for Eastern Catholics in Brasil, for Polish refugees in France and Germany. Pope John XXIII ordered to establish an ordinariate for Eastern Catholics in Argentina. Pope Benedict XV established a personal diocese in Calabria to provide pastoral care for Greek Catholics arriving from Albania. Pope Pius XII established a personal diocese for refugee Maronites in Cairo.

5.4.1. The personal diocese to provide pastoral care for people far from their native land

According to the principles of the current CIC, particular churches and diocese as their preferred forms are basically organized on territorial concepts. It is also a general principle that a diocesan bishop should consider the faithful's special situation and circumstances when providing them pastoral care. (Can. 383 § 2)⁶⁷ Pope John Paul II's post-Synodal apostolic exhortation about episcopal service, *Pastores gregis* emphasized this principle regarding refugees and migrants. He added that diocesan bishop had to separate financial resources for this activity in the territory of a diocese.⁶⁸

Besides, the Code reinforces the main rule of the territorial concept (Can. 372 § 1), in the same canon (Can. 372 § 2) the Code makes it possible for the supreme authority of the Church to erect personal diocese after the conferences of bishops have been heard and the faithful's spiritual demands have been considered.⁶⁹ The law speaks

⁶⁵ ERDŐ–SZABÓ (ed.) op. cit. The volume of studies outlines the institutions of the Catholic Church operating on territorial and personl concept, and describes the legal framework of new, personal institutions.

⁶⁶ Eloy TEJERO: Comment on Canon 568. In: Ángel MARZOA – Jorge MIRAS –Rafael Rodríguez OCAÑA (ed.): *Exegetical Commentary on the Code of Canon Law*. Vol. II/2. Montreal, Wilson and Lafleur, 2004. 1443–1444.

⁶⁷ *Communicationes*, 1980/12. 296.

⁶⁸ JOHN PAUL II: Post-synodal Apostolic exhortation. *Pastores gregis*. 16. X. 2003, 16. n. 45, 67. *Acta Apostolicae Sedis*, 2004/96. 885–886.; 914–916.

⁶⁹ John RENKEN: Comment on Canon 372. In: BEAL–CORIDEN–GREEN op. cit. 509.

generally, and the difference from the territorial rule is explained with “due to special circumstances”. The cultural and language capabilities of people far from their native land constitute the special pastoral circumstances.⁷⁰ The personal diocese has all those rights that the territorial diocese owns: it can incardinate clericals, it can have its own clergy and can erect ecclesiastical institutions on a wide scale. Managing and controlling occur according to the laws of the institutional structure of the territorially limited diocese and to its existing laws. Besides, if the pastoral care of people far from their native land is provided through the personal diocese, the jurisdictional competences must be clarified, and the tensions deriving from clashes of competences should be minimized.

The personal diocese’s – or rather its leader’s, the personal bishop’s – competency is also territorially limited, which is the territory of a certain country under its conference of bishops.⁷¹ It is not the competency of the local ecclesiastical authority to erect a personal diocese, but of the Apostolic See.⁷² Normally, this competence belongs to the Congregation for Bishops, but in missionary territories the Congregation for the Evangelization of Peoples has competence (Can. 373).⁷³ Regarding the Conference of Bishops, Canon 372 § 2 notes that the Apostolic See can erect a personal diocese “after the conferences of bishops concerned have been heard”. This process is logical in case of a personal diocese erected to provide pastoral care for people far from their native land. If all goes well, local bishops have sufficient information regarding the nationalities, the rites and the number of immigrants in the territory of the Conference of Bishops. At best, the members of the Conference of Bishops can judge which canon law structure is the most suitable to provide pastoral care for people far from their native land. The members of the Conference of Bishops may be familiar with migration policy of the state authorities and they are in connection with state participants.⁷⁴ With the information they have, they can significantly help the Apostolic See erect the most suitable ecclesiastical institution to provide pastoral care for people far from their native land.

Local diocesan bishops still have the rights and duties to provide pastoral care for people far from their native land even if a personal diocese is erected because of the diocesan bishop’s general pastoral responsibility, which covers the pastoral care of immigrants’, refugees’, migrant workers’ and students’. In order to avoid

⁷⁰ Luis OKULIK: *Aperti giuridici della cura pastorale dei fedeli di rito orientale nelle diocesi latine*. In: Arturo CATTANEO (ed.): *L'esercizio dell'autorità nella Chiesa*. Venezia, Marcianum Press, 2004. 53–63.

⁷¹ Giorgio FELICIANI: *La dimensione collegiale del ministro del vescovo a livello locale*. In CATTANEO (2004) op. cit. 64.

⁷² Thomas GREEN: *Commentary on Canon 372*. In: BEAL–CORIDEN–GREEN op. cit 318.

⁷³ It is confirmed by *Pastor Bonus*, paragraphs 75–78 of the Apostolic Constitution referring to Congregation for Bishops.

⁷⁴ In certain countries – eg. in the USA – the committee of the Conference of Bishops charged with immigration and refugee issues criticizes civil laws considering human rights. COMMITTEE ON MIGRATION OF UNITED STATES CONFERENCE OF CATHOLIC BISHOPS: *On Human Trafficking*. Washington DC, United States, Conference of Catholic Bishops, 2012.

superfluous duplication⁷⁵ and to reach higher pastoral effectiveness, the cooperation among the members of the Conference of Bishops cannot be ignored.⁷⁶

5.4.2. *Personal parish to provide pastoral care for people far from their native land*

Personal parish, also organized on personal concept, is a known institution in current law with its much narrower powers. In case of a prelature the legislator has maintained the principle that the prelature is erected on territorial concept (Can. 518). Besides, CIC gives the possibility, if it is reasonable, to erect a personal parish similar to the personal diocese. While the personal diocese is erected considering the aspects of the Holy See, a personal parish is established within the diocesan bishop's own power.⁷⁷ In Canon 518, the legislator shortly refers to the principles that can play roles in establishing a parish. The list of CIC is not complete, it only gives some examples to the diocesan bishop. In the text of the Canon, the legislator mentions the aspects of the rite, languages, nationalities which can form the base of establishing a parish. All these reasons can occur due to migration in the territory of a particular church or an Conference of Bishops. The local diocesan bishop has the right to establish more than one parishes to provide pastoral care for people far from their native land. In case of organizing such a differentiated pastoral care, he can consider the language, rite, nationality, age, etc. of a certain community.

A personal parish priest regarding people he takes care of, has the same rights and duties as a territorial parish priest has.⁷⁸ It means catechism, preparation for sacraments, having spiritual discussions or providing a service. The advantage of the personal parish is, comparing to the personal diocese, that the smaller organization requires less administration, it can be erected, modified or terminated faster.⁷⁹ It is the diocesan bishop's right to evaluate the situation and to make a decision, but the opinion of the clerical senate should be considered as well when establishing a parish (Can. 515 § 1). Namely, it is a basic principle that a diocesan bishop cannot establish a parish without the clerical senate being heard. In case of the parish, erected to provide pastoral care for people far from their native land, it is extremely important

⁷⁵ Carlos SOLER: La jurisdicción cumulativa. *Ius Canonicum*, 1988/28. 172–179. In his study, the author analyses the duplications appearing in the territory of the ecclesiastical government. Regarding the pastoral care of immigrants, he notes that the pastoral institution established for immigrants is useful, and the legal possibilities are the fruits of legal development, but both the leader of this institution and of the local particular church should be tolerant and cooperative with each other.

⁷⁶ FELICIANI (2004) op. cit. 53–63.

⁷⁷ Paolo MONETA: Territorialità Personalità Nell'organizzazione funzione Giudiziaria. In: ERDŐ–SZABÓ (ed.) op. cit. 687–689. The author emphasizes the duties of the local ecclesiastical authority to ensure the rights of those living in need of special pastoral care and in special circumstances.

⁷⁸ Helmut PREE: Nichtterritoriale Strukturen der hierarchischen Kirchenverfassung. In: ERDŐ–SZABÓ (ed.) op. cit. 518–519.

⁷⁹ Winfried AYMANS – Klaus MÖRSORF: *Kanonisches Recht*. Paderborn–München–Wien–Zürich, Ferdinand-Schöningh, 1997. 190.

as the priests of the senate together have a wider view on the pastoral care required by people far from their native land.

5.4.3. Erecting a personal prelatore to provide pastoral care for people far from their native land

The canonical institution of a personal prelatore is new in the existing canon law.⁸⁰ As the Code says, the reason for erecting a personal prelatore is “to promote a suitable distribution of clerics” or “to accomplish particular pastoral or missionary works for various regions or for different social groups”. The Apostolic See can erect a personal prelatore after bishops concerned have been heard. The prelatore consists of priests and deacons (Can. 294), but the lay faithful can also join the pastoral activity of the prelatore.⁸¹ The law reveals that, in theory this legal institution would correspond to providing pastoral care for people far from their native land as the legislator clearly stated that the institution wanted to look after people who are in need of pastoral care. It is obvious that people far from their native land need special pastoral care, as well as they form a clearly visible group of the local Catholic community.⁸² When establishing a personal prelatore, similarly to personal dioceses, the Apostolic See seeks the opinion of the Conference of Bishops concerned. Establishing, later modifying or terminating is the right of the Holy See.⁸³ The personal prelatore is, considering its territorial aspects, more flexible than the personal diocese. It is not evitable for that the pastoral and governmental jurisdiction of the prelatore to cover the territory of an episcopal conference. If the situation of people far from their native land is similar in the territory of the neighbouring Conference of Bishops, it is not forbidden for the same personal prelatore to have jurisdiction in the territory of the country concerned. As the personal prelatore has also got the right to have its own seminar, namely to have an institution responsible for educating priests and to have its own presbitery (Can. 295), it has the advantage that during their studies priest candidates are not only provided with general theological, philosophical and canonical education but with education in connection with the special duties of a prelatore. Besides, the Holy See does not seem to prefer to establish this legal institution to provide pastoral care for people far from their native land.

⁸⁰ Javier HERVADA: Personal Prelature from Vatican II. to the New Code: An Hermeneutical Study Canons 294–297. *The Jurist*, 1985/45. 379–418.

⁸¹ Joseph Edward FOX: *The Personal Prelature of the Second Vatican Council: An Historical Canonical Study*. Roma, Università San Tomaso, 1987.

⁸² Jean BEYER: Il nuovo Codice di Diritto Canonico e la pastorale della mobilità. *On the move*, 1983/3. 18.

⁸³ Gaetano LO CASTRO: Le prelatore personali. Profili giuridici. *Ius Ecclesiae*, 1989/1. 467–491.

5.5. Catholic organizations erected to provide humanitarian aid for immigrants

In 2015, the wave of migration made it clear that not only did the Catholic Church have to give pastoral assistance but humanitarian aid as well. While the pastoral care is the right and duty of the church, refugees' humanitarian aid is an overall social challenge.⁸⁴ As the church has always been sensible on the poor, the helpless and the vulnerable, it is obvious for the church to participate in refugees' humanitarian service through its different organizations.

However, a few principles must be seen clearly.

The ecclesiastical structures of each country have different capacity. You cannot compare the organizations of the German Catholic Church, having been in service for a long time, to the human, financial and structural resources of the Catholic Church in the former socialist countries.

There are significant differences in the needs of migrants. If migrants do not want to settle down or stay longer in a certain country, it is no use thinking of institutions which, as in Germany, help migrants with integration, language education, housing or taking a job. It is not what refugees need either. In these countries institutions should be turned towards providing rapid and temporary help (food, water, medicine, warm clothes, blankets etc.).

The activities of ecclesiastical, state and other denominational organizations should be coordinated. Superfluous institutional duplication in assistance must be avoided. It is important to be familiar with the legal frames of the activity, as there can be gap in the law or uncertainty in state or international regulations. It is not worth for Catholic organizations dealing with humanitarian aid, undertaking an activity that leads to tension with state authorities.

Regarding the activity of Catholic institutions, national security awareness must be emphasized. The tasks of national security services have increased because of the growing number of migrants arriving in European countries. We must be aware that certain activities (sheltering, providing anonym health care) raise national security concerns, which must be regarded by Catholic charity organizations, too.

5.6. The canonic diversity of organizations erected to provide humanitarian service

While the above mentioned institutions, which can be established to provide pastoral care, are canonically clearly defined institutions of the Catholic Church, the organizations participating in humanitarian activities are canonically diverse, even unidentifiable in some cases. It is problematic as the supervisory bodies, the legal limits of asset management and activity scope cannot be identified clearly.

Quite often a committee or an office, governed by an Conference of Bishops, provides humanitarian service for immigrants in the territory of the conference. The Code has a short reference to the committees and institutions of the Conference of

⁸⁴ FISCHL, Vilmos: Egyházi karitatív szervezetek szerepe a válságkezelésben. *Kard és Toll*, 2006/2. 92–101.

Bishops, which says the conference can have “other offices and commissions which, in the judgment of the conference, more effectively help it to achieve its purpose.” Their functions must be clarified in the regulation of the episcopal conference. (Can. 451) The usefulness and the exact functions of an institution have to be measured and defined by the members of the conference. For example, in Italy the permanent council of the Conference of Bishops ordered to erect a separate office for immigrants in 1987.⁸⁵ The office fulfils its duties through diocesan representatives and its five offices in the country.

The rules of the institution, with its centre in Rome, indicates that the centre – according to canon law – is a legal person. If secular law does not guarantee legal personality for ecclesiastical persons, the secular legal status of the institution must be clarified.

In the USA, *US Conference of Catholic Bishops Migration and Refugee Services*, the institution subordinated to the Conference of Bishops, possesses a significantly wide range of legal power and field of activity, ecclesiastical and secular institutional connections.⁸⁶

The majority of immigrants arriving in the USA are Catholics, so the church feels more involved in not only providing pastoral care but humanitarian assistance as well.⁸⁷ It has a separate program for children who have lost their families,⁸⁸ it is in touch with state authorities responsible for immigration, and it makes regular analyses, evaluations about state laws, and, where appropriate it proposes daring legislative amendments.

In accordance with the legislator’s intention, among episcopal conferences there are initiatives to give theoretical and practical solutions for migration. “Relations between conferences of bishops, especially neighboring ones, are to be fostered in order to promote and protect the greater good” (Can. 459 § 1), to which the Apostolic See must be heard. (Can. 459 § 2) Such an initiative was the foundation of a team, by the Symposium of Conference of Bishops of Africa and Madagascar, to help refugees. The conferences were motivated by the fact that there were three million African refugees in 2011, and according to some forecasts every tenth African will work far from their native land. The task of the team is to study the phenomenon of migration, and to make suggestions to the local churches on organizing common actions. For example, a recommendation was formulated on an action in the interests of protecting families as migration has disarranged a lot of African families.⁸⁹

⁸⁵ Antonio INTERGUGLIEMI: Le novità legislative e lo spirito di accoglienza. *Social news. Mensile di promozione sociale*, 2014/3. 15.

⁸⁶ Ugo POLETTI: Decreto di costituzione della fondazione »migrantes«. https://www.chiesacattolica.it/cci_new_v3/allegati/10429/STATUTO%20Migrantes.pdf.

⁸⁷ Migration and Refugee Services. <http://www.usccb.org/about/migration-and-refugee-services>.

⁸⁸ Children and Migration. <http://www.usccb.org/about/children-and-migration/index.cfm>.

⁸⁹ La migrazione di molti africani distrugge le loro famiglie. <http://vaticaninsider.lastampa.it/nel-mondo/dettaglio-articolo/articolo/africa-18495/>.

The Council of the Bishops' Conferences of Europe working in the spirit of the ecclesiastical colleagues of the Second Vatican Council has kept an eye on European migration since its foundation. The migration section of the Committee of *Caritas in Veritate* deals with the assessment of pastoral and humanitarian activities for refugees.⁹⁰ The Committee *Caritas in Veritate* was named after Pope Benedict's encyclical, and beside migration it pays attention to justice, peace and the protection of creation. Its aim is that European bishops should share their experiences in these questions. Earlier, refugee issues were dealt with by separate committees, which – after having been converted into sections – were incorporated into Committee *Caritas in Veritate* which deals with other social questions, too. Its efforts are helped by the Pontifical Council and other international Catholic societies, responsible for refugee issues.⁹¹

A lot of ecclesiastical organizations that were established by the faithful are engaged in humanitarian aiding of refugees. In most cases, these organizations are not specifically established for aiding of refugees, but for more general assistance, and they changed their mission to the modified circumstances. The faithful have the rights to erect such organizations. Thanks to the theological thinking of the Second Vatican Council, the freedom of association to promote the goals of the church has an honoured place in current Canon Law (Can. 299 § 1).

Among the goals of the church, practicing charity has always played an important role (Can. 298 § 1),⁹² which appears – in connection with 20th century refugee issue – in helping refugees exiled from their native land. Such associations can be international, national or regional, namely diocesan, and according to their dependence on ecclesiastical authorities they can be public (Cann. 312–320) or private (Cann. 321–326). The public associations of the Christian faithful, even if they are grassroot initiatives, are approved by ecclesiastical authorities, universal and international associations are approved by the Holy See (Can. 312 § 1 1) Saint Egedius Association is of such character, which – beside its humanitarian activities – maintains soup kitchens, social centres for refugees in several cities, and provides legal counselling, health care, food and clothes donation for people in need. In such cases, approval and supervision are provided by the the Pontifical Council for the Laity.

National public associations are approved by the episcopal conference in its territory (Can. 312 § 1 2), and diocesan associations are approved by the diocesan bishop also in his own territory. (Can. 312 § 1 3) An example for the former is the German Saint Raphael Society, which was recognized by the German Conference of Bishops in 1947, as the only association of the conference responsible for refugees.

⁹⁰ There are institutions with the same names subordinated to Conference of Bishops too.

⁹¹ Migration section. http://www.ccee.eu/ccee_en/ccee/00002309_Migration_Section.html. Pl. Caritas Europa, the International Catholic Migration Commission.

⁹² Giorgio FELICIANI: Il diritto di associazione e le possibilità della sua realizzazione nell'ordinamento canonico. In: Winfried AYMANS – Karl Th. GERINGER – Heribert SCHMITZ (ed.). *Das konsoziative Element in der Kirche*, 1989.408–409.

The association was renamed to Saint Raphael Work, and it went through significant structural changes.⁹³

Private societies, although they had more freedom, were subordinated to the supervision of ecclesiastical authorities regarding their activities. In the field of humanitarian aid for refugees, several legal and ethical questions can arise, which should be supervised by an ecclesiastical authority. Regarding the pastoral care for refugees, the Code has significant general principles (Can. 304). It is such a sensitive field of activity that it must be specified accurately how the pastoral care for refugees fits in the goals of the society. Regarding the correct identification of the society, it is important to specify the conditions of headquarters, management and participation exactly.⁹⁴ For Catholic associations, dealing with refugees, there can be national security aspects that are irrelevant in other areas of humanitarian aiding. These must be considered by the principal responsible for acceptance and specifying tasks.

Every kind of society is subordinated to the supervision of the Holy See (Can. 305 § 2), diocesan and other societies if they work in a particular diocese, to the supervision of the local ordinariates.⁹⁵

Societies can wear the name Catholic with the consent of a competent ecclesiastical authority (Can. 300).⁹⁶ In sensitive areas, such as humanitarian aiding of migrants, it is extremely important to define which society of the Catholic Church works in which area.

It is more and more frequent that Catholic associations with similar characters cooperate in order to reach higher efficiency. As we are talking about institutions with significantly different canonic and civil legal opportunities, the frames of co-operation should be clarified in this case, too. In Italy, at the beginning of the 2000s, a summary was given to the Catholic organizations that were involved in the pastoral and humanitarian care of immigrants.⁹⁷ In the documents, the most important questions with a view to humanity, which often arise in this field, are discussed: unemployment, the under-age, children, women's specific support, family reunion, people of different faiths, handling challenges concerning Islam, legal aid and health care. Naturally, the situation has changed, but it is worth giving such out line, as the staff of the organizations providing humanitarian aid do not know the pitfalls that arise in connection with the humanitarian care of immigrants. In such activities, education and preparation are canonic principles, at the same time. (Can.

⁹³ Die Katholische Arbeitsgemeinschaft: <http://www.kam-info-migration.de/55427.html>.

⁹⁴ Miguel Delgado GALINDO: Gli statuti delle associazioni di fedeli. *Ephemerides Iuris Canonici*, 2011/51. 429–444.

⁹⁵ Luis NAVARRO: *Diritto di associazione e associazioni di fedeli*. Milano, Giuffrè, 1991. 44–48.; Maria Angela PUNZI NICOLÒ: *Libertà e autonomia negli enti della Chiesa*. Torino, 1999. 71–83; Venerando MARANO: *Il fenomeno associativo nell'ordinamento ecclesiale*. Milano, Giuffrè, 2003. 90–101.

⁹⁶ Fidel González FERNÁNDEZ: *I movimenti. Dalla Chiesa degli apostoli a oggi*. Milano, BUR, 2000.; Joseph RATZINGER: I movimenti ecclesiali e la loro collocazione teologica. In: *I movimenti nella Chiesa*. Città del Vaticano, 1999. 23–51.; Giuseppe RIVETTI: *Il fenomeno associativo nell'ordinamento della Chiesa tra libertà e autorità*. Milano, Giuffrè, 2008. 135–142.

⁹⁷ Ibid.

329) Several German Catholic organizations which are engaged in the pastoral care of immigrants also co-operate. For example, it is a peculiar German initiative of the relief organizations which provide anonim health care for immigrants. Anonimity is for those who, without any valid documents and residence permit, are not able or do not want to turn to health care institutions.⁹⁸ Anonimity is guaranteed, which is partly good as diseases dangerous for the whole society may be discovered, on the other hand, it raises certain national security worries.

It is not unusual that some section of organization is involved in the humanitarian care of immigrants. For example, German Caritas Association has a separate organizational unit responsible for immigrants, and it has diverse tasks from organizing language courses to promoting integration and actions against racism.

In other cases, it is not stated literally that a certain institution has a separate section to provide humanitarian aid for immigrants, but simply this field can be found among its other activities. So does it work in case of Hungarian Catholic Caritas.

Due to migration, other institutitons of the Catholic Church, not dealing with migration originally, became involved. Educational institutions are of this kind, in this field ecclesiastical institutions have to face the fact that the proportion of migrant young people is rising.⁹⁹ Moreover, in connection with migration, where the social teaching of the church should be reconsidered, ecclesiastical and Catholic universities and research institutions will have significant roles, too.¹⁰⁰

6. Possible solutions of the Code of Canons of the Eastern Churches for the pastoral care of people far from their native land

In most cases faithfuls far from their native land belong to an Eastern Church. So personal canonic formations, established for immigrants follow the traditions and law of the Eastern Churches. *Codex Canonum Ecclesiarum Orientalium* (CCEO) knows personal ecclesiastical structures – similarly to the Latin Code. Obviously, these ecclesiastical structures, due to the traditions of Eastern Churches, show differences both in their names and leadership.

Before the existing *Codex Canonum Ecclesiarum Orientalium* appeared, the Holy See, considering the geographical fragmentation of each *sui iuris* churches, had already established personal ecclesiastical formations for the faithful of the community, which was justified with belonging to the same rite. In the 20th century, the Holy See, due to the significant migration of the Rusyn Greek Catholics, established exarchies to provide pastoral care for Rusyn Greek Catholics in Canada and Germany, for Ukranian Greek Catholics in the USA, Canada, Argentina,

⁹⁸ Malteser Migranten Medizin. <http://www.malteser-migranten-medizin.de/startseite.html>.

⁹⁹ Vinicio ONGINI: A che punto siamo con l'integrazione? *Migranti*, 2014/1. 14–16.; Alberto CAMPOLEONI: Una scuola “diversa”. *Migranti*, 2014/1. 17.

¹⁰⁰ Lóránd UJHÁZI: Il regolamento giuridico della formazione dei teologi nella Chiesa Cattolica. In: András Lóránt OROSZ – Lóránd UJHÁZI (ed.): *Vita consacrata e diritti umani nella Chiesa Cattolica dell'Europa centro-orientale ed altri saggi. ed altri saggi di diritto canonico*. Budapest–Pannonhalma, L'Harmattan, 2011. 87–112.

Australia, Brasil and Great-Britain and for Armenian Catholics in France. According to the the Code of Canons of the Eastern Churches, an exarchy is the part of people of God which was not formed into an eparchy (diocese) for some reason, and which is led by an eparch on territorial or other principles (CCEO, Can. 311 § 1). The legislator indicated that this ecclesiastical structure is not appropriate, but there can be objective circumstances which make it necessary to use this form. Such a circumstance is when vast number of the faithful belonging to the Eastern Church with its own rights lives over the border of the patriarchate or major archiepiscopate. In these cases, in order to the canonic discipline – according to which the Christian faithful have the right to get pastoral care in accordance with their own rites – be realized, the Holy See can order their pastoral care to be provided via exarchies (CCEO, Can. 312 § 2). CCEO gives the possibility for patriarchs and major archbishops, considering the particular circumstances, to establish an exarchy in their own territories with the contribution of their permanent synod (CCEO, Can. 85 § 3) and with a prior notice to the Holy See (CCEO, Can. 85 § 4). It may be important in the Middle-East regions, where the security states of the bordering countries are significantly different, and migration is frequent among the countries. As in these territories several Eastern Churches co-exist with similar and territorially defined hierarchies. However, it is more frequent to establish an exarchy outside the territory of the patriarchate or major archdiocese – in North- and South-America and in Europe – to provide pastoral care to those who belong to a certain Eastern Churches. In this case the Apostolic See has the right of establishment.¹⁰¹ As for the duties and the rights of the Holy See, it has a separate office responsible for providing pastoral care for people far from their native land, yet in case of Eastern Catholics the Congregation for the Oriental Churches has the authority, too.¹⁰² The basic task of the Congregation is to provide the opportunity of spiritual life in accordance with their own rites for the members of Eastern *sui iuris* communities. To realize it, the congregation has to estimate the number of Eastern Catholics in a certain territory and to assess the possibility of establishing the institutional frames to provide pastoral care. The congregation can play a mediatory role among a local Conference of Bishops, a local diocesan bishops and a *sui iuris* ecclesiastical hierarchy. The mediatory role can mean that the in rite responsible hierarchy provides

¹⁰¹ Luigi SABBARESE: Comment on Canon 312 of CCEO. In: PINTO (ed.) op. cit. 277. Before the publication of CCEO, there was a suggestion that if an exarchy is established for the faithful of the Eastern Church anywhere all over the world, the patriarch of the *sui iuris* church should have a kind of voice and consultation right. The suggestion was rejected. See *Nuntia*, 1989/28. 56. See George NEDUNGATT: The Patriarchal Ministry in the Church of the Third Millennium. *The Jurist*, 2001/61. 1–89.

¹⁰² Pablo GEFAELL: Impegno della Congregazione per le Chiese Orientali a favore della comunità orientali in diaspora. *Folia Canonica*, 2006/9. 117–137.

priests of rite who have language and cultural competences.¹⁰³ Namely, it can be difficult for local ecclesiastical authorities to provide pastors of rite.¹⁰⁴

Though CCEO misses a pastor's canonical description, in practice Eastern *sui iuris* churches appoint pastors in duties for different immigrant Christian faithful. As for the significance of the legal possibilities of incardination and excardination, they are possible only inside a certain *sui iuris* church. So, a priest belonging to the Eastern *sui iuris* Church cannot be incardinated into a Latin particular church, but temporary taking over is possible.

7. Consequences

In the canonical regulations of the Catholic Church, and in the Code of Canon Law, ecclesiastical structures organized on the personal concept were appearing more and more important. These institutions are used when pastoral organization on the territorial concept cannot comply with a special pastoral challenge for some reason. These institutions do not put an end to the responsibilities and rights of local ecclesiastical institutions.

Before the Second Vatican Council, the Catholic Church was already aware of the fact that people far from their native land live in special conditions, and this fact must be considered when organizing pastoral care for them. The new Code significantly made it easier to build up the institutional background. On local level, the personal diocese, the personal parish, or theoretically the personal prelature can be the solution.

The recent migrant crises made the church realise that not only should pastoral care but humanitarian aid also be considered. The latter is not only for Catholics, but for any people in need.

The ecclesiastical structures of countries possess significantly different sources in this field. On the other hand, the demands that are drawn up about the Catholic Church concerning migrants are different.

The task of the institutions responsible for Catholic humanitarian aiding of the so called transit countries is to give fast and temporary help. On the contrary, the institutions with similar features of destination countries help establish the bases of integration.

When establishing humanitarian aiding, the operation of ecclesiastical, state and other denominational organizations should be coordinated. The organizations cannot ignore the existing secular legal environment and national security risks arising in connection with migrant crisis.

¹⁰³ Ariel David BUSO: *La organización eclesiástica de los inmigrantes*. In: ERDŐ –SZABÓ (ed.) op. cit. 386–387.

¹⁰⁴ The organization of the pastoral care of each Eastern Church is described definitely by Antonio Maria VEGLIÓ: *Strutture pastorali per i migranti cattolici delle Chiese Orientali*. *People on the move*, 2010/11. 147–161.