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## Spiritual Care of Religious Communities and Believers in Slovenian Hospitals<sup>1</sup>

*Duhovna oskrba verskih skupnosti in vernikov v slovenskih bolnišnicah*

**Abstract:** The author addresses the issue of access to spiritual care for religious communities and believers in Slovenian hospitals from the perspective of national legislation, hospital practice, and specific legal and human rights issues, such as circumcision of boys in Muslim communities. Religion and belief are analysed in terms of current legislation, and hospital practice is examined through various documents and interviews with medical staff. Analysis of sources such as national legislation, internal hospital documents (a total of 98 documents reviewed in 2021), and interviews with healthcare workers in Slovenian hospitals (a total of 13 respondents interviewed in 2021 and 2022) showed that the needs of different religious communities and believers are largely met during their hospitalisation in state hospitals, that human rights prevail over the right to medically unjustified interventions, and that doctors and management have sufficient understanding of the spiritual side of treatment.

**Keywords:** religion, access to spiritual care, discrimination, medical ethics, medical law, equal rights

**Izvleček:** *Autorica obravnava vprašanje dostopa verskih skupnosti in vernikov do duhovne oskrbe v slovenskih bolnišnicah z vidika nacionalne zakonodaje, bolnišnične prakse ter specifičnih pravnih in človekovih pravic, kot je obrezovanje dečkov v muslimanskih skupnostih. Vero in verska prepričanja analizira z vidika veljavne zakonodaje, bolnišnično prakso pa preuči skozi različne dokumente in razgovore z zdravstvenim osebjem. Analiza virov, kot so nacionalna zakonodaja, interni dokumenti bolnišnic (skupaj 98 dokumentov, pregledanih leta 2021) in intervjuji z zaposlenimi zdravstvenimi delavci v slovenskih bolnišnicah (skupaj 13 intervjuvancev, intervjuvanih leta 2021 in 2022), je pokazala, da so v državnih bolnišnicah potrebe različnih verskih skupnosti in vernikov v veliki meri zadovoljene med hospitalizacijo, da so človekove pravice nad pravico do medicinsko neupravičenih posegov in da imajo zdravniki ter uprava dovolj razumevanja za duhovno plat zdravljenja.*

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**Ključne besede:** religija, dostop do duhovne oskrbe, diskriminacija, medicinska etika, medicinsko pravo, enake možnosti

## Introduction

According to the 2002 census, there were 1,135,626 (57.8%) Catholics in Slovenia, and according to church statistics for 2019, based on the annual reports of Slovenian dioceses, there were 1,509,986 (73.76%) (*Letno poročilo Katoliške cerkve v Sloveniji 2021*, 12). The practice of collecting data on religiosity when registering residence was abolished in 2002, so we do not have more recent official data. Since 26.24% or 552,924 of the population belong to other religions or are non-religious – as mentioned, we do not have data on the numerical ratio between them – the question arises as to how the rights and needs of members of the prevailing and other religions are taken into account in health care.

The *Constitution of the Republic of Slovenia*, legislation (e.g. the *Freedom of religion act*, *Patient rights act*, *Rules on the organisation and provision of spiritual care in hospitals and at other healthcare service providers*) and internal hospital rules prohibit discrimination against people on the basis of their religion or belief. Nominally, equal treatment of all people is guaranteed, regardless of personal circumstances, including affiliation with a particular religion.

The main objective of the article is to verify whether the practice of access to spiritual care in twenty-three Slovenian state hospitals is in accordance with national regulations, how access is implemented by hospital rules and physicians, and which specific cases they encounter in this area.

## 1 Equal rights of religious communities in Slovenian legislation

Healthcare or any of its specific segments can be linked to the human right to freedom of religion, which is stipulated in Article 41 of the *Constitution of the Republic of Slovenia* and in the *Freedom of Religion Act* from 2007, which regulates the legal status of religious communities in the Republic of Slovenia. The Constitution guarantees freedom of religion and the right of individuals to express their religious beliefs publicly and privately.



It declares that all religious communities enjoy equal rights and prohibits incitement to religious hatred or intolerance.

Religious beliefs and religious communities are an integral part of a pluralistic democratic society, in which constitutionally guaranteed human rights and fundamental freedoms represent the common good. The *Constitution of the Republic of Slovenia* guarantees and protects freedom of religion in Article 41 (freedom of conscience). This provision is among the relatively few and exhaustively listed human rights and fundamental freedoms that may not be temporarily suspended or restricted in a state of war or emergency (Article 16). Religion is associated with or derives many rights and freedoms: principle of democracy (Article 1), separation of state and religious communities (Article 7), equality before the law (Article 14), right to personal dignity and security (Article 34), protection of privacy and personal rights (Article 35), protection of personal data (Article 38), freedom of expression (Article 39), right of assembly and association (Article 42), right to conscientious objection (Article 46), rights and duties of parents (Article 54), freedom of education and schooling (Article 57), prohibition of incitement to inequality and intolerance, and prohibition of incitement to violence and war (Article 63), and the duty of cooperation in the defence of the state (Article 123) (*The Constitution of the Republic of Slovenia* 1991).

The decision of the Constitutional Court of the Republic of Slovenia from 2010 was, among other things, helpful to the state in regulating spiritual and pastoral care in hospitals. The duty of the state to guarantee the right to religious freedom is shown passively and actively. Passively, the state, municipalities, and other holders of public authority are prohibited from deciding on matters concerning religious doctrine or the internal autonomy of religious communities; from requiring confession in religious matters; from rewarding or punishing acts that are expressions of religion; from discriminating against human rights and fundamental freedoms; from unjustly distinguishing (privileging or neglecting) persons on the basis of their religion (Constitutional Court of the Republic of Slovenia 2010, 92).

Actively, however, religious freedom also requires positive action by the state (Constitutional Court of the Republic of Slovenia 2010, 94). The



*Constitution of the Republic of Slovenia* requires that the possibility of efficient and effective exercise of human rights and fundamental freedoms be guaranteed. The state's contribution to this depends on how much it can do. However, the support must enable the effective exercise of the right (Constitutional Court of the Republic of Slovenia 2001). In the opinion of the Constitutional Court of the Republic of Slovenia, the active involvement of the state must be present above all when the exercise of religious freedom is significantly hindered or even impossible for the individual, and when circumstances give rise to a particularly intense experience of issues and dilemmas that fall under the concept of religious belief. These are primarily closed environments (military and penal institutions) and open environments where the exercise of religious freedom outside the institution is significantly hindered or made impossible due to the physical and other characteristics of the individual (hospitals and social welfare institutions). In these cases, the state must allow individuals to perform individual religious acts (e.g., individual use of religious symbols), provide access to books with religious content and to a priest, and allow religious rites to be performed. Since religious rites are a medium between the believer and transcendence, they are an essential part of religious practice, which usually takes place in groups in special consecrated spaces. Therefore, it is the positive duty of the state, prisons and public hospitals to enable the use of suitable premises for the collective practice of religion (Constitutional Court of the Republic of Slovenia 2001, 143).

Article 41 on freedom of conscience of the *Constitution of the Republic of Slovenia* provides that religious and other convictions may be freely expressed in private and public life. No one shall be forced to profess his or her religious or other beliefs. Parents have the right to provide their children with religious and moral education in accordance with their convictions. Religious and moral education of children shall be appropriate to their age and maturity and shall be consistent with their free conscience and their religious and other convictions. In addition, Article 7 of the *Constitution of the Republic of Slovenia* provides that the state and religious communities shall be separate. Religious communities have equal rights; they are free to carry out their activities.

Article 25 of *Freedom of Religion Act* on religious spiritual care in hospitals and social welfare institutions that provide institutional care states that: 1)



Persons in hospitals or social welfare institutions have the right to regular individual and collective religious spiritual care; 2) If there is a sufficient number of patients of the same religion in the hospitals, the ministry in charge of health care shall provide for the employment of the required number of priests in partnership. A priest so appointed and employed may exercise his ministry without hindrance and may visit the persons of the relevant religion at an appropriate time<sup>2</sup>; 3) Religious and spiritual care for those cared for in social welfare institutions who cannot participate in rituals outside the institution because of their age and health problems, shall be provided in accordance with the regulations of the minister in charge of social welfare; 4) Every patient should have the opportunity to participate to their best abilities in religious ceremonies organized in a hospital or institution providing institutional care and be able to receive books with religious content and instructions; 5) Hospitals or institutions providing institutional care arrange spatial and technical conditions for religious spiritual care.

In 2008, according to Article 25 of the *Freedom of Religion Act* and in connection with Article 13 of the *Patients' Rights Act*, the Minister of Health issued *Rules on the Organisation and Provision of Spiritual Care in Hospitals and at other Healthcare Service Providers*. The Rules set out the conditions for exercising the right to adequate religious spiritual care in hospitals and other health care providers where inpatient health care and emergency medical care are provided within the public health service network (Article 1). The tasks of religious spiritual care are performed on the basis of the standard of religious spiritual care. This is one person who performs the tasks of religious spiritual care of an individual church or other religious community (priest), per 500 hospitalized patients with an average daily occupancy of a health institution, calculated from a period of one year, in all health institutions except oncology and psychiatric health institutions and in institutions for the rehabilitation of persons where the applied standard of religious spiritual care is one priest per 300 hospitalized patients. If a medical institution cares for a larger or smaller number of patients, the number of priests is determined proportionally (Article 3).

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2 This Article, which refers to the employment of priests in hospitals, was partially repealed in 2010; see *Odločba o razveljavitvi* 2010.



The medical institution provides the spatial and technical conditions for religious spiritual care. The residents have the right to free access to the premises intended for religious spiritual care (sacral space). A patient who is unable to access the sacral space on his own due to their health condition is provided with religious spiritual care in their hospital room. In emergencies, religious-spiritual care is also provided in resuscitation rooms and other rooms that require a special way of working and moving. The health care institution shall enable the patients to receive books with religious content and instructions (Article 4). The tasks of religious spiritual care that can be performed in a health institution are: organizing and facilitating religious activities and rituals, visiting and spiritually monitoring patients, providing conversations and religious-spiritual assistance to patients, providing rituals on religious holidays, providing religious rituals for deceased patients, providing religious and spiritual care in emergencies, other tasks in the field of religious spiritual care. Priests and spiritual companions shall perform the tasks in such a way that they do not interfere with or hinder the procedure of treatment of patients or the regular work of healthcare workers. Healthcare professionals, on the other hand, respect the recipient's right to religious spiritual care by ensuring that priests can perform their duties without interruption at the appropriate time (Article 5). The Rules on the organisation and provision of spiritual care in hospitals and at other healthcare service providers also stipulate that financial resources for the organization of religious-spiritual care are provided by a medical institution following the *Freedom of Religion Act*; and that the medical institution provides religious-spiritual care based on a concluded employment contract with a full-time or part-time priest or based on a concluded business contract or other civil law contract, following the criteria from Articles 3 and 5 of these Rules (Article 7). However, practice shows the hospitals do not employ priests because of the general lack of money. The Government wanted to shift the burden of hiring a priest to hospitals by writing this into *Freedom of Religion Act and Rules on the Organisation and Provision of Spiritual Care in Hospitals and at other Healthcare Service Providers* without providing funds for this purpose.

According to the Supreme Court of the Republic of Slovenia, there is no case law for the *Freedom of Religion Act*. There is even no court case in the Republic of Slovenia that would deal with at least an alleged violation of religious freedom. No proceedings have been instituted against the



Republic of Slovenia for at least an alleged violation of religious freedom before the European Court of Human Rights.

## **2 The spiritual care in Slovenian hospitals**

### **2.1 Short history of spiritual care in Slovenian hospitals**

Spiritual care for patients in the hospital in Ljubljana has been provided since 1786, when the hospital was located in the Augustinian monastery, next to which there was also a church. At the time of the relocation in 1895, a small hospital Church of St. Cross was built, which was banned in 1948 and had its bell tower demolished in 1960 to make it no longer recognizable. There was also a hospital chapel at the Hospital for Women's Diseases and Obstetrics, which was converted into a lecture hall in 1948. (Zupanič Slavec 2012, 37)

In Slovenia, the Sisters of Mercy (daughters of the Christian love of St. Vincent de Paul) first settled in Maribor in 1843, and then in 1852 in Ljubljana. In 1855, they took care of the Ljubljana hospital (Berkopec 2015, 23). Until 1948, all nursing care in hospitals was provided by Sisters of Mercy, since then they were no longer allowed to work in public hospitals in Slovenia. The Sisters of Mercy mostly went to Serbia and Kosovo, and the hospital was left without qualified nursing staff. Until 1948, the Priestly Office of Clinical Hospitals had its registers and kept its correspondence, and the hospital priest (curate) was a civil servant. Until the late 1960s, hospital priests were Lazarists and Salesians. Since 1973, priests have even needed special permits to visit patients at the Clinical Centre and the Oncology Institute, which were not revoked until 1991. Near the Clinical Centre is the Church of St. Peter, built in 1730. Parish of St. Peter took over spiritual care in the hospitals after the Second World War. Its priests allowed patients to attend worship even when church care in hospitals was banned. The parish of St. Peter performed this task until the establishment of the first hospital parish in Ljubljana in 1985. The hospital parish is personal parish, which means that the hospital pastor has the rights and duties of a pastor in the pastoral care of patients at the Clinical Centre in Ljubljana. The first Mass at the University Clinical Centre was on Christmas Day 1991. The chapel in the clinical centre was created



in 1993 from the former histology lecture room in the basement. (Zupanič Slavec 2012, 37–38)

The work of the Catholic Church in the field of health pastoral care is in its specific missionary mission. By the end of the Second World War, the Church had done a great deal for the sick in Slovenia. After World War II, work was limited to the private level and was not socially recognized. Today, the Head of Health Pastoral Care at the Slovenian Bishops' Conference, together with colleagues in the local Church, provides incentives, recommendations and common starting points for the pastoral care of patients, the elderly, health professionals and monitors work and issues in medicine and health care. The number of pastoral workers in each hospital varies. There are about thirty parish priests in Slovenia who visit almost all hospitals. The goals of pastoral care for patients in the hospitals are: visiting and monitoring patients; the communion of the sacraments and liturgical services for patients and in-hospital chapels (out of twenty-seven Slovene hospitals /public and private/, twenty-three of them have a chapel); assistance in monitoring, catechesis and announcing the meaning of illness, suffering and death; organization and coordination of all different forms of pastoral work in the hospital; helping and serving patients and their relatives; religious assistance to health professionals. (*Letno poročilo Katoliške cerkve v Sloveniji* 2019, 47)

In the hospital chapels, priests from the local parishes face the plight of the sick and their deaths every day. The task of hospital priests is to provide the spiritual care for the sick, to pray, to listen, to counsel in trials of sickness, to present a gentle authority to help nurses if patients do not cooperate well in treatment, e.g. if they refuse to take medication, and to support and console relatives and health professionals. They are also approached by non-believers or believers of other denominations who try to connect them with their priests. For dying patients, hospital priests are confidants and conciliators, comforting with a silent presence, performing the last sacrament, and often maintaining contact with some healed patients after discharge from hospitals.

In Christian anointing of the sick the Church commends seriously ill believers to God to alleviate and save them. The rite is performed by anointing with oil and pronouncing the words prescribed in the liturgical books.





Anointing of the sick is performed only by the priest to believers who are still conscious but are in danger due to illness or old age. This sacrament can be repeated if the already anointed patient is healed and then becomes seriously ill again. Sick anointing is not given to unbelievers. (Sveto bolniško maziljenje 2020)

The frequency of spiritual care in Slovene hospitals in 2020 shows that the most common form of worship is the Holy Mass once a week, combined with additional opportunities for confession or conversation. This form of spiritual care is practised by 52% of all hospitals or their organizational units whose founder is the Republic of Slovenia and who perform health care activities at the secondary and tertiary level (fourteen hospitals out of a total of twenty-seven hospital facilities). The largest hospitals have several chapels each, as their units are not located in the same place (e.g. University Clinical Centre Ljubljana has 3 chapels).

Frequency of worship in Slovenian hospitals:

- *Every day* – two hospitals (both the largest University Clinical Centres in Ljubljana and Maribor who perform healthcare on secondary and tertiary level),
- *Three times a week* – two hospitals,
- *Twice a week* – one hospital,
- *Twice a week and on Christian holidays* – one hospital,
- *Once a week* – fourteen hospitals (with additional opportunities for confession and conversation),
- *Once a week and all the commanded Christian holidays* – one hospital,
- *Twice a month* – one hospital,
- *Once a month* – one hospital,
- *Three times a year on Christian holidays* – one hospital,
- *Twice a year on holidays* (Easter, Christmas) – one hospital,
- *Visits by appointment* – one hospital,
- *Visits twice a week* – one hospital. (Katoliška cerkev 2020)

Additionally, the pastoral care of the Deaf and Hard of Hearing of Slovenia is another categorical pastoral care of the Catholic Church in Slovenia. The threefold mission of the Church – preaching, worship, service – is intended for the linguistic minority of deaf and hard of hearing Catholics, their



relatives and friends, and interpreters for Slovene Sign Language. The official languages are Slovene Sign Language and Slovene. The pastoral care of the Deaf and Hard of Hearing of Slovenia is led by a vicar, appointed for a certain period by the Slovenian Bishops' Conference and working within the Interdiocesan Committee for the Pastoral Care of Health. (*Letno poročilo Katoliške cerkve v Sloveniji* 2019, 47)

Charitable support for the deaf-mute among Slovenes overtime was mostly offered by religious institutions, but when the legal, social and materially stronger state developed (from the Kingdom of Yugoslavia to the new Yugoslavia and present-day Slovenia), health and social institutions also tried to offer professional help to the hearing and speech impaired (Zupanič Slavec 2013, 29).

The beginnings of the pastoral care of the deaf and hard of hearing date back to 1845, when the Institute for Deaf Children in Gorizia was established. Important work in this field was carried out by priests, who introduced vocational education for deaf youth and regulated the status of teachers and wrote books for the education of the deaf. An important role was also played by the Sisters of Notre Dame, who founded a school for deaf-mute girls in Šmihel near Novo mesto in 1886. The Ljubljana Institute for Deaf Youth was established in 1900. Among the largest donors were pastors and deans. Two priests also served as catechists in the deaf-mute. After the Second World War, spiritual care was interrupted until 1970, when the Franciscan Father Jakob Bijol, who was also the initiator of the establishment of the Religious Centre for the Deaf and Hard of Hearing, began to take care for deaf children. After he died in 2001, his Franciscan Brother Bogdan Knavs took over the centre. Many European nations still do not have the opportunity to allow deaf and hard of hearing Catholics worship in sign language, their mother tongue, directly through priests. The Church in Slovenia has succeeded in this, so it belongs to the group of rare countries in which worship and pastoral care of the deaf and hard of hearing are provided. (*Letno poročilo Katoliške cerkve v Sloveniji* 2019, 47)



## 2.2 Current spiritual care in Slovenian hospitals

In 2021, three Slovenian hospitals mentioned in their internal rules the “religious spiritual care”, which is defined in reference to the *Rules on the Organization and Provision of Spiritual Care in Hospitals and Other Health Care Providers*, such as visiting and providing spiritual accompaniment to patients or providing religious rites for deceased patients. One general hospital in Slovenia (in Jesenice) explicitly states in its internal regulation that healthcare is considerate and respectful of the patient’s personal values and beliefs and that each patient brings their own values and beliefs into the healthcare process. This hospital also states that every healthcare professional should strive to understand the care and services they provide within the perspective of the patient’s values and beliefs. (Doričić et al. 2021, 7)

Since there were no sacral spaces for performing non-Christian rites in Slovenian hospitals, in 2017, the Office for Religious Communities of Republic Slovenia initiated the Ministry of Health to provide additional, religiously and ideologically neutral space for spiritual care in both University Clinical Centres in Ljubljana and Maribor (Gradivo za 2. sejo 2017; Email correspondence 2020) and in General Hospital Jesenice.<sup>3</sup> The initiative has been partly implemented.

In 2017, the Ministry of Health proposed to three Slovenian hospitals (University Medical Centre Ljubljana, University Clinical Centre Maribor, General Hospital Jesenice) to provide additional space for patients who are not of the Catholic faith. The Jesenice General Hospital responded to the initiative by saying that they have a great lack of space and that there is a lack of space for basic health care, so they cannot provide additional space for religious and non-religious spiritual care in the existing facilities. Nevertheless, the hospital published the contact details of registered churches and religious communities in Gorenjska (Upper Carniola) in an online newsletter on the hospital’s website to further inform patients. At the University Clinical Centre Maribor, a chapel was available to patients

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3 In Jesenice, the largest religious community are Catholics. Due to strong immigration from the Republics of the former Yugoslavia, especially from Bosnia and Herzegovina, there are also many Muslims who have found employment in the steel industry.



in the hospital, where masses for members of the Roman Catholic faith were held. According to the agreement, it was already possible to perform rituals for members of other religious communities at that time. Following the initiative of the Ministry of Health, a smaller space next to the chapel for the spiritual care of other religious communities was additionally allocated in Maribor. A chapel was available at the University Medical Centre Ljubljana, where masses were held for members of the Roman Catholic Church. At the initiative of the Ministry of Health, they reached an agreement with the parish administrator to vacate the space in the basement of the main building and allocate additional space for spiritual care for rituals of other religious communities next to the existing chapel, which had been used for individual interviews (Tičar 2017).

Furthermore, thirteen interviews with Slovenian medical personnel recorded between 2021 and 2022 show that they support and enhance constitutional rights to religious and spiritual support in hospitals. Spiritual care in Slovenia is at an enviable level regardless of the type of hospital. All Slovenian hospitals have lists of religious communities to which they can turn if the patient so desires. Some religious communities and patients' relatives are themselves well organized to provide spiritual care. One such case is the Muslim communities in areas where there were high numbers of migrant workers from former Yugoslavia in the past, such as Jesenice, and Jehovah's witnesses, also in Jesenice.

Although physicians sometimes do not immediately recognize the culturally specific spiritual needs of all patients or pay sufficient attention to cultural differences, they do their best to treat them equally and try to satisfy their religious needs. An example of good practice is the Department of Acute Palliative Care at the Oncology Institute in Ljubljana, where, before the coronavirus epidemic, family ceremonies for Muslim families with up to fifteen relatives were present, or, other ritual acts in the case of alternative, New Age spiritual communities were also allowed upon the death of a relative or individual needs of patients. This Department also have a specialized communication nurse who appropriately asks patients if they want spiritual care, as some of them are not even aware of this possibility. They also show particular flexibility with patients from Bosnia and Herzegovina and North Macedonia who want to go home to die, or they



help relatives bring the deceased home.<sup>4</sup> Another similar example is a mobile palliative care unit of the General Hospital in Jesenice where doctors visit terminally ill patients on site. There they come into contact with Sinti (who do not want to be called Roma), with Muslims and Albanians who have come to Jesenice to work in the steel industry, in construction and elsewhere, Bosnian drug addicts with cancer, with superstitious people regardless of their ethnicity or religion, with openly disrespectful people, with people who live in terrible hygienic conditions, with people who have their own beliefs about how to use drugs, with people who 'talk' to spirits when they get medical treatment, etc. Successful medical communication that also meets the spiritual needs of the various religious groups, people with specific beliefs, with better or not that well assimilated groups they encounter in their field of work, requires many years of professional experience, a great deal of patience and flexibility. These doctors encounter a variety of beliefs about death, the use of narcotics, physical intimacy, and are accustomed to people crossing themselves when they meet them on the street, spitting in front of them when a terminally ill relative has died in their care, or saying, »When this doctor comes, just buy a coffin«.<sup>5</sup>

In principle, care for special spiritual needs is permitted as long as it does not interfere with the health care and rights of others. For example, it is not allowed to light incense or anoint someone with special resins or the like in the hospital. The general hospitals in Jesenice and Novo mesto have a Catholic chapel. Spiritual care for Muslims in Jesenice means that the family has the mufti come to the hospital. The spiritual care before death always takes place in the rooms where the patients lie, because they are too sick to go to the chapel and there are not enough staff to take them there. Only surgical patients who are mobile can go to the chapel for pastoral care; internal medicine patients who may be so sick that they can only lie in their rooms cannot go there. Pastoral care does not take place in the morning, but in the afternoon, when the main medical care in the hospital ends. During the second wave of the epidemic of coronavirus, when a Catholic priest expressed a desire to resume pastoral care, some were

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4 Information from the interview with a doctor of the Oncological Institute in Ljubljana, August 16, 2021.

5 Information from the interview with a doctor of the mobile palliative care unit of the General Hospital in Jesenice, March 29, 2022.



very much against it because the hospitals were still closed to the public at that time. But then, when certain conditions were met, such as vaccinations, they too desisted, agreeing that the concerns were not justified.<sup>6</sup>

Jehovah's Witnesses are a typical example of how medical professionals can become impatient when the patient's decision thwarts the treatment plan. When a seriously injured patient in the hospital says he does not want to receive blood because of religious beliefs, serious problems arise. Even if the surgeon respects his will, other team members, such as anaesthesiologists, may refuse to anesthetize such a patient as a matter of conscientious objection. If the patient is seriously injured, he will die in his belief.<sup>7</sup>

Physicians from other backgrounds, such as those from environments with a high proportion of Roma, also report special cultural and religious needs. For example, some Roma women who come to the General Hospital in Novo mesto for childbirth go home immediately after the birth at their own request on the same day, sometimes even without the newborn. They perform some rituals at home and then come back to the hospital a day or two later to pick up the child. This used to be more common in the past, but there are still cases like this today. During this time, the hospital takes care of the baby, since Roma women usually do not breastfeed their children, but use formula and very soon switch to diluted milk with sugar.<sup>8</sup>

### **3 The case of circumcision of Muslim boys for non-medical reasons**

In Slovenia, religiously motivated circumcision is not the subject of any special legal regulation, neither in health law nor in the law that regulates the functioning of religious communities, nor in any other law. Within the formal health care system, it is used as a health care service by residents of Slovenia of the Muslim faith, as well as by persons of the Muslim faith from abroad, in both cases for children who cannot refuse or consent

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6 Information from the interview with a doctor from the General Hospital Jesenice, March 10, 2022.

7 Information from the interview with a surgeon from the General Hospital Jesenice, March 14, 2022.

8 Information from the interview with a doctor from the General Hospital Jesenice, March 10, 2022.



to the medical procedure. Therefore, the procedure can be performed without any specific legal restrictions. However, there are some legally relevant positions of the official state bodies of Slovenia on circumcision for non-medical reasons (Korošec 2013, 197–212).

In 2012, the Human Rights Ombudsman of the Republic of Slovenia examined the initiative of the initiator, who asked to assess whether circumcision of boys constitutes an interference with children's rights, especially if it is performed only for religious reasons and is not justified by health reasons (*Obrezovanje fantkov iz nemedicinskih razlogov je kršitev otrokovihih pravic* 2012). In this regard, the Human Rights Ombudsman obtained information from the Extended Professional College of Surgery, which according to the *Health Services Act* is the highest professional body in a particular field of health, the National Medical Ethics Committee and the Health Insurance Institute of Slovenia as a payer of health services. The Extended Professional College of Surgery responded that circumcision of boys for non-medical reasons is not medically justified, and that professional indications for the procedure are given in the urological literature. The National Medical Ethics Committee also responded similarly, namely that the ritual circumcision of boys for religious reasons in Slovenia is unacceptable for legal and ethical reasons and should not be performed by doctors. In addition to the unacceptability of circumcision from an ethical point of view, the National Medical Ethics Committee also emphasized that it is also unacceptable that already performed procedures are falsely presented in medical records as medically indicated. In 2012, the Health Insurance Institute of Slovenia did not have data on the annual number of circumcisions. The price of the service paid by the institution to the healthcare provider was 34.88 EUR. When the procedure is not medically indicated, the service is not paid for from the funds of the compulsory health insurance, so the procedure must be paid for by the patient or his representatives.

Although the Human Rights Ombudsman did not receive an initiative that would directly address the issue of circumcision in an individual child, it nevertheless examined the situation in the light of some important human rights issues, and particular children's rights. The *United Nations Convention on the Rights of the Child* (1989, in force 1990) obliges States parties to take all appropriate legislative, administrative, social



and educational measures to protect the child from all forms of physical or mental violence, injury and abuse while under the care of parents, legal guardians or any other person who takes care of him (Article 19). Article 56 of the *Constitution of the Republic of Slovenia* provides children with special protection and care, while Article 35 guarantees everyone the inviolability of physical and mental integrity. It is clear from those provisions that any interference with the child's physical integrity is limited and justifiable for medical reasons only. If there is a medical indication that circumcision is necessary to protect the child's health, such intervention is legal and legitimate, and parents are obliged to allow or enable it due to the responsibility for the child's development. If for any reason, the parents do not allow the medically indicated intervention, the competent authorities could determine the possible neglect of the child's duty of care and take the necessary measures provided for by law.

However, if the circumcision of the child is not medically indicated, but is only a consequence of the belief of his parents (religious or otherwise), such intervention has no legal basis. It does not even matter whether the child explicitly opposed the procedure. Interference with the physical integrity of a child solely because of the wishes of his or her legal representatives or guardians, therefore, constitutes an inadmissible interference with his or her body and, in the opinion of the Human Rights Ombudsman, also bears signs of criminal conduct.

Article 26 of the *Patients' Rights Act* from 2008 stipulates that a patient who is capable of deciding on himself is not allowed to undergo medical intervention or medical care without his prior free and conscious consent, except in cases provided by law. For children, the *Patients' Rights Act* stipulates that, as a rule, they can consent after the age of 15, unless the doctor assesses that he or she is not mature enough or capable of doing so. According to the law, a child before the age of 15 is generally not capable of consent, but even in these cases, the doctor may assess that he or she is capable of doing so. The law specifically stipulates that a child's opinion regarding treatment is taken into account to the greatest extent possible if he or she can express the opinion and if he or she understands its meaning and consequences.





The *Constitution of Republic of Slovenia* recognizes the right of parents to provide their children with religious and moral education following their beliefs. The guidance of children regarding religious education and moral education must follow the child's age and maturity and be in accordance with the child's freedom of conscience, religious and other definitions or beliefs (third paragraph of Article 41 of the *Constitution of Republic of Slovenia*). According to the Human Rights Ombudsman, guidance on religious education does not include the right of parents to choose to intervene in the child's body based solely on of their religious beliefs. Therefore, the Ombudsman considered that circumcision for non-medical reasons was inadmissible and constituted unlawful interference with the child's body and thus a violation of their rights.

Undoubtedly, the parents are primarily responsible for their children's development and health, but they must also, as guides in decision-making, take into account the best interests of the child. Also, in deciding, the parents' rights are limited by the rights of others, in this case, their children, as children's rights are not subordinated to the rights of parents. The right to religious freedom cannot justify an interference with the right to bodily integrity of another, so the Human Rights Ombudsman considered that circumcision for non-medical reasons is permissible only with the consent of the child, under the conditions set by the *Patients' Rights Act* i.e. after the child is at least 15 (*Obrezovanje fantkov iz nemedicinskih razlogov je kršitev otrokovih pravic* 2012).

In 2017, the Islamic Community in the Republic of Slovenia proposed to the Council of the Government of the Republic of Slovenia again for a dialogue on religious freedom, regarding the performance of ritual circumcision of Muslim boys (Gradivo k posameznim točkam dnevnega reda 2017). They suggested that circumcision should be possible in institutions that are competent and professional, as Muslim parents will never abandon this practice. If they cannot perform it in Slovenia, they will do it abroad. The Council of the Government of the Republic of Slovenia for Dialogue on Religious Freedom conducted an inquiry into the actual possibilities of performing circumcision in healthcare institutions (in nine general hospitals and six private medical institutions with the appropriate concession). The Council received responses from two general hospitals and two private ones with the appropriate concession.



The Jesenice General Hospital (where there is a strong Islamic community) stated that since December 3<sup>rd</sup> 2012, due to the opinion of the Extended Professional College of Surgery, the National Medical Ethics Committee and the Human Rights Ombudsman, it does not offer the possibility of circumcision (Gradivo k posameznim točkam dnevnega reda 2017). After the cessation of circumcision procedures performed at the hospital as self-paying within the day hospital at the Department of Pediatric Surgery of the Surgical Department of the General Hospital Jesenice, the number of unprofessionally performed procedures and complications increased. Jesenice is the area of a mixed population, including Muslims. The demand for professionally performed circumcision of boys for religious purposes is high. Many parents have found their way to the service in neighbouring Austria, where they perform the aforementioned interventions. Even more of them use »house interventions« performed at home, without appropriate professional approaches. The General Hospital Jesenice found that parents would find a way to have the procedure performed on their child, so the doctors considered the consequences for the child and accepted the view that it is less traumatic for the child if the procedure is performed professionally, although there is no medical indication. Therefore, the Hospital asked again the Commission for Medical Ethics of the Medical Chamber of Slovenia for a written opinion on this matter (Janša 2014). Izola General Hospital stated that it provides a circumcision service and that the price of the service, which is provided on a self-paying basis, is 550 EUR. The private concessionaires informed the council that they were not providing this service. One of them said that they do not provide the service because it is not allowed. To summarize, even general hospitals do not have uniform criteria for circumcision. The Jesenice General Hospital designs its offer of self-paying services according to their compliance with the opinions of the medical profession, while the Izola General Hospital designs its offer of self-paying services according to demand and the fact that circumcision is not prohibited for religious reasons (Gradivo k posameznim točkam dnevnega reda 2017).



## Conclusion

In Slovenia, there are twenty-seven hospitals. The Republic of Slovenia is the founder of twenty-two hospitals which include two University Clinical Centres in Ljubljana and Maribor, ten General Hospitals, seven specialised hospitals, five psychiatric hospitals, and two women's hospitals. Both University Clinical Centres also have maternity clinics, and all ten General hospitals also have maternity wards. There are no religious hospitals in Slovenia or those whose founder is the Catholic or other Church.

Access to spiritual care in Slovenian hospitals can be divided into a narrow and a wider context. The narrow context is pastoral care for Catholics, with access to priests, spaces for religious practices, and religious services. In the wider context, we can distinguish between respecting the customs and traditions of other religious groups, such as special diets, and meeting religiously motivated needs, such as blood transfusions for Jehovah's Witnesses and religiously motivated male circumcisions.

The possibilities for performing non-Christian rites in the sacred spaces available in Slovenian hospitals (usually hospital chapels) are not systematically nor uniformly regulated. Neutral or at least multi-religious use of these spaces is not guaranteed, since this has been left to the Catholic Church, which has equipped and consecrated these spaces and thus 'determined' that only Christian rites can be performed there. For most patients or their needs, such a solution is not a problem, as hospitals also allow spiritual care in the rooms and are able to accommodate a variety of spiritual needs of their patients. Usually, patients of other denominations also find a way to express their spiritual needs. Medical staff allow them to do so unless those needs would endanger them or other patients. So far, there has hardly been any demand on the part of patients or their relatives to satisfy the need for 'solitary reflection' or meditation beyond religion in the hospital chapels or other spiritual places of the hospital.

Circumcision of boys, if not medically indicated but only as a consequence of the parents' religious convictions, has had no legal basis in Slovenia since 2012.



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