

Religion and State Relationships in Europe*

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ABSTRACT: Although there is no true European model of religion and state relationships, the European dimension will become increasingly visible leading Europe to a creeping yet incomplete harmonisation of the various national systems. Europe has a model of religion and state relationships that is not homogenous and the focus is still on the national states. However, there is a common model, at least when one looks beyond formal differences. This common model shows a keen interest for far reaching religious freedom, mutual independence between religion and state combined with cooperation and state support.

The European Model

At first glance the title of this contribution does not seem to make much sense. There is no unified legal system with regard to religion and state relationships in Europe. Of course, as a result of the ongoing development of the European Union, binding European legislation is increasingly relevant for all member states. At the same time, one cannot neglect the role played by the European Convention on Human Rights. Here, the scope of application is not the European Union, but the Council of Europe, an even larger entity. Consequently, today, there is a lot of legislation at the European level. In the field of human rights, there is a high degree of unity among the member states of the Council of Europe, whereas the European Union covers various other legal fields including competition law, security measures, as well as various other matters.

However, religion and state relationships are not governed by European legislation. In this regard, the leading stipulation is declaration 11 of the final act of the treaty of Amsterdam (1997). This declaration reads: “The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organisations.¹” Clearly, religion and state

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relationships do not become a European matter. This principle finds itself confirmed in article 52 of the draft text for the European Constitution.² While this constitution did not survive its rejection by referenda in France and in the Netherlands, future efforts to safeguard the main achievements of the draft text will preserve the content of article 52. Also in the future, religion and state relationships will remain a national matter.

How can this choice for local competency be explained? The main reason certainly is that the legal position of religious groups is closely linked up with the national history of each member state. A complete unification seems to be a utopian idea. When one just looks at the specific situation of Germany and France, the possible emergence of serious difficulties is obvious. Germany has a system built around the idea of religions as *Körperschaften des öffentlichen Rechts* assuring them a lot of autonomy, including the right of levying taxes as well as its enforcement by public authorities. In France, the situation is considerably different, as this country considers itself as radically separationist. It cherishes the notion of *laïcité* as a somewhat mythical cornerstone of its religious policy. To be short, it seems very difficult to find a compromise between those two systems. In this perspective it can easily be understood that it were the German church representatives who insisted a lot on the acceptance of declaration 11 to the final act of the Treaty of Amsterdam. They feared the disappearance of the particularly generous legal status of churches in their country as an inevitable result of a possible European harmonisation of religion and state relationships.

Does declaration 11 mean that European level is and will remain absent when it comes to the legal position of churches and religious groups in the various member states? The answer to this question is certainly negative. Indeed, Europe influences the legal position of churches and religious groups in two different ways, a *direct* one and an *indirect* one.

The *indirect influence* is rooted in the overall extension of European legislation. The more matters are governed by European norms, the more pressure will be exercised on the existing legislation of the various member states. A turning point would certainly be the acceptance of European competency with regard to tax law. If that were to happen, many national systems with various forms of church tax or church subsidy would be directly influenced by this new situation.

At the same time, one should not underestimate the unifying force of the jurisprudence developed by the European Court in Strasbourg. Certainly, article 9³ of the European Convention on Human Rights deals with religious liberty and tackles only indirectly religion and state relationships. Yet, this indirect link is not unimportant, as it

makes discrimination between religious groups more difficult. It remains strongly connected with the overall observance of fundamental rights.

The *direct influence* is still emerging but seems to be inevitable on a short time basis. Article 52 of the draft text for European Constitution, the article quoted above, also envisages an open, transparent and regular dialogue between the European Union and religious or philosophical groups. More details with regard to this dialogue do not exist. It remains an open question what the true significance of this new stipulation will truly be. Anyway, the article is a starting point for a cautious development of religion and state relationships on a European level, without of course abandoning the principle of the Treaty of Amsterdam, leaving the focus with the member states.

To sum up, there is no true European model of religion and state relationships. Yet, the European dimension will become increasingly visible leading Europe to a creeping yet incomplete harmonisation of the various national systems.

Yet, we should not limit ourselves to a legalistic approach with regard to religion and state relationships in Europe. It is equally necessary to take into consideration the similarities existing between the various European countries. These countries have many things in common, notwithstanding their apparent differences at the rather superficial level of concrete legislation. Let me explain this idea. Although European systems give the impression of covering all possibilities from strict separation (France, The Netherlands) to state churches (England, Denmark, Finland, Greece), they share some specific values and approaches underpinning a true European model. This model is characterised by the continuous existence of a two level system.

On a basic level, *level A*, all religious groups do enjoy full religious freedom. This religious freedom contains various dimensions, including individual, collective and organisational liberty. It is obvious that the notion religious freedom should also cover delicate issues as well as hidden loopholes in the system. For instance, a citizen cannot be denied access to public office because of his religious conviction or adherence. Of course in case his religious involvement leads to the non-observance of the law or to inadequate functioning, measures against such a person can be taken. The reason is that his professional behaviour is at stake, and not his religious adherence.

Another delicate issue regarding full religious freedom on level A concerns the very concrete and practical possibility to participate fully in the legal life of the country in which the religious groups operate. There is no religious freedom in case religious groups cannot acquire goods or build churches. Likewise, there is no religious freedom

when access to legal personality is denied, especially if this legal personality is necessary in order to function successfully in daily life.

Clearly, the jurisprudence of the European Court in Strasbourg helped a lot in order to come to terms with the demanding concept of religious freedom as set up by the European Convention on Human Rights. It is remarkable to see how certain countries, including Greece, needed a lot of European case law in order to adjust their legislation and administrative practice to modern human rights standards. As a rule, orthodox countries find themselves more often at odds with the European Convention on Human Rights than catholic or protestant countries do. The strong entanglement between secular authorities and the church is a typical element of orthodox tradition. This basic attitude often leads to a negative position for minority religious groups, the latter not seldom being defined as foreign to the country's national culture.

Once level A finds itself clearly and solidly protected without making any distinction among the religious groups involved, *level B* can be taken into account. Level B is the superior level of the system. It can only be accepted in case level A offers all necessary guarantees with regard to everybody's religious freedom. Level B is the typically European level of state support, both moral and financial, to one or more religious groups enjoying some kind of privileged treatment. In some truly separationist countries this second level is perceived as unacceptable. Americans for instance consider equality among religious groups as a key element of religious freedom. Equality is part of the concept. No freedom without equality: that is the message. It goes without saying that the mere existence of level B constitutes a tacit recognition of some form of inequality among religious groups. Obviously, if the state decides to finance religion, it will open a gateway to differentiation, as it is not possible to finance all religious groups, including the smallest ones. The only way to avoid guilty discrimination consists in offering no support at all to any religion. Only then religious groups will share the same poverty, without any privileged group.

Notwithstanding these strong arguments pleading against church financing, there are also good reasons to maintain the existence of a level B as it currently exists.

A first reason is tradition, although the notion is slightly dangerous. The torturing of animals was also a tradition in many countries. The existence of a tradition does not preserve it from moral control.

Yet, there is also an important political argument. Not financing religious activities is easily acceptable in a system different from the welfare state. That is why the United States offers a good example of absence of financing. The U.S. is not really a welfare

state in the European sense. Taxes in the States are rather low, certainly in comparison with Europe, yet this situation entails some far-reaching consequences. As taxes are low, the state cannot offer free services to the same extent as European states do. Consequently, American citizens have to pay by themselves for most of their medical and college costs. The same principle can be applied when it comes to the issue of church financing. The faithful are responsible for the economic survival of their church or religious denomination, and they are more than happy to help. American faithful do not see the absence of state financing as a hostile act or as a sign of an overall negative policy towards religion. Religion in America relies upon the financial support by the faithful. A clear consequence is that the quality of religious services and rituals has to be good. Otherwise, the faithful can stop their support.

Another element of church financing by the faithful is the clear presence in an American context of the idea of the religious market. This principle is not entirely absent in Europe, as European countries are no longer religiously homogeneous. Yet, given the fact that subsidies in Europe are sometimes automatic and disconnected from concrete performances as they are delivered by the religious groups involved, the market mechanism is much more incomplete in the old continent. At the very most, the European system offers a mixture of state (organised) financing and the free market mechanism.

The mere principle of church financing, connected with the welfare state and its high taxes, is one thing. Another issue are the concrete mechanisms leading to financing of churches. In order to reconcile the idea of church financing in a welfare state with the equality principle as one of the cornerstones of religious freedom, the criteria leading to financial support must be both transparent and equitable. It should be said that most European countries are increasingly aware of this demand.

Which religions can be financed? Obviously, state religions do qualify. One can think of the Orthodox Church in Greece⁴ or Finland⁵, or the Church of England in England⁶, or the Lutheran church in Denmark⁷ and again in Finland. A criterion, in this last case, clearly is the historical setting in which the churches involved do evolve. In general, there is a tendency to weaken the ties between the state and its official religion. Already long ago the church of Wales has been disestablished as happened to the church of Sweden⁸ in the year 2000. In any case, even if some churches do remain state churches, the consequences of that principle are less relevant today than they used to be in the past. For instance, the mere existence of an official church does not prohibit other churches from enjoying religious freedom. Conversely, quite often an official status

does not lead to financial support, as is the case for the Church of England that is entitled to perform certain acts relevant in the public sphere, and finds itself paid for it. At the same time the Church of England does not receive any financial support without having delivered a concrete service.

In many European countries, financial support is given to religious groups without these groups enjoying an official status as a national religion or anything comparable. This is the case, in countries like Romania, Austria⁹, Belgium¹⁰ or Luxembourg¹¹. What increasingly does matter is the development of, sometimes official, sometimes informal criteria leading to church financing. Two grounds seem to be more acceptable than others, namely *statistics* and *history*. It is logical that large religious groups qualify more easily for financial state support than smaller denominations do. However, measuring exactly the statistical strength of a religious group remains hazardous, as in many countries census is not authorised. In that hypothesis, the state has to rely upon information offered by religious groups themselves as far as membership statistics are concerned. It goes without saying that errors or even some forms of manipulation are not excluded.

Next to statistics, history can be a good financing criterion. But then again, one should be nuanced in using historical roots as an instrument for possible distinction between religious groups. In the past, history led to a radical preference for the historical majorities, very often at the expense of smaller religious groups. More than once the latter were not just deprived of financial support, but also of basic religious freedom. Today, history can be helpful in the opposite way. It may become a tool in improving the legal status of minority religious groups. To put it in another way, in a more modern approach history sustains the position of the weak, more than it petrifies the privileged status of the majoritarian religious group. Two examples can illustrate this thesis.

The first one is the situation of the Orthodox Church in Finland. Statistically its importance is far from being spectacular. The Orthodox Church has a membership number that can be situated around one percent of the global population. And yet, together with the Lutheran church, the Orthodox Church is an official state religion. Just relying upon statistics, this approach cannot be understood. So there is another reason explaining the position of the Orthodox Church. The history of Finland finds its origin in Karelia, today situated in Russia. It is a region with very strong orthodox presence. The privilege enjoyed by the Orthodox Church can be seen as a tribute to the birth and

to the past of the Finnish nation. History corrects the overwhelming dominance of the current Lutheran majority.

Another, very different, example is offered by the presence in the board of the official German broadcasting company of a Jewish member, next to a Catholic and a to a Protestant one. Again, just looking at statistics learns that Catholics and Protestants, approximately equally strong in today's Germany, outreach by far the tiny Jewish minority. Yet, nobody will challenge the Jewish presence in this board, as Jews were the victims of the Nazi regime. Propaganda was a very important instrument of the Hitler regime. In that regard, the Jewish presence is highly understandable. Very similar to the Finnish case, this German dossier offers some form of positive discrimination to minority groups deeply rooted in local history.

An interesting and new question is whether and to what extent the future can also play a role for financing religious groups. Here, one spontaneously thinks of the position of Islam in many European countries. For the sake of integration, several countries think of the payment of Imams as well as the formation of the latter at state controlled institutions. Also the acceptance of burial techniques different from the overall state requirements, are an object of debate. Religion increasingly becomes a tool of social integration. European countries seek for possibilities aiming at strengthening social cohesion through the monitoring of religious groups. The attempt to throw a bridge between Islam and liberal democracies remains the most striking example in this regard.

To sum up this part, the following conclusions can be drawn:

- (1) Religion and state relationships in Europe remain a national matter.
- (2) Notwithstanding the national character of the religion and state relationships, there is a tendency towards more European congruency. This phenomenon takes place at the level of the European Union (increasing legislation, European Constitution) as well as at the level of the Council of Europe (European Convention on Human Rights, European Court in Strasbourg).
- (3) Again notwithstanding the national character of religion and state relationships, almost everywhere in Europe a legal regime in two levels can be distinguished. Level A guarantees full religious freedom to all private persons and religious groups, whereas level B grants some particular advantages to one or several denominations.

(4) The existence of two different levels can be explained by the presence of the European welfare state, in which taxes are elevated and the services or support delivered by the state are important. Not financing religion in Europe can be seen as a hostile act.

(5) As equality is often seen as an integral part of religious freedom, the selection of religious groups qualifying for level B has to be made in a transparent way, alongside criteria that are as objective as possible. These criteria are statistics and history, and could in the future also include social integration.

So far goes a summary of some global trends in Europe. What precedes clearly illustrates that, although religion remains a national matter, there also is a European model of religion and state relationships. It is characterised by a remarkable mix of very far going freedom combined with various forms of moral and material support that states give to religious groups and denominations. Yet, this common ground does not exclude a legitimate interest in the existing differences between the countries.

Different Approaches within the European Model

According to Gerhard Robbers¹² it is possible to differentiate between three basic types of civil ecclesiastical law systems in the European Union.

The first type is characterised by the existence of a state church or predominant religion. In these systems, there is an entanglement between state power and church structures. The systems of England, Denmark, Greece, Malta¹³, Finland fit in this category.

The second type consist of systems founded on a relatively strict separation between church and state, however without a complete absence of mutual ties or support. France¹⁴ and the Netherlands¹⁵ are good examples of this system, and to a certain extent also Ireland although the legislation of this country is highly coloured by catholic social thought.

The third type start from mutual independence of church and state. At the same time they fulfil a multitude of common tasks. This is the case for Luxembourg, Belgium, Poland¹⁶, Spain¹⁷, Italy¹⁸, Austria, Portugal¹⁹, Hungary²⁰, and the Baltic States. In some of these states, agreements between state and religious communities are important, and therefore some speak of states with a covenantal system of church-state relationships. In other countries the collaboration is organised through the constitution or through legislation. Eventually it does not matter which technique is used, the law or the covenant. What counts is the dominant idea of cooperation.

What are the trends in Europe? One could identify some:

(1) There is a clear move towards the disestablishment of the established churches. Forms of disestablishment can be found in Wales and Sweden, with clear tendencies into the same direction in Norway. At the same time, in England, more and more decision making power has been attributed to the General Synod of the Church of England.

(2) With regard to the self-determination of religious groups, there is a double tendency. On one hand religions are more autonomous than before, as they are no longer political rivals of the state. In the nineteenth century that rivalry was very explicit. On the other hand, in various countries, including France, Belgium and The Netherlands, there is a trend among secular tribunals to control more thoroughly the coping with internal ecclesiastical procedures. Moreover, a Belgian report of experts published in the fall of 2006²¹ suggest connecting church support with the observance of the principles guiding the democratic state and the rule of law by the churches and religious groups concerned.

(3) Church financing, either direct or indirect, remains a typical feature of European religion and state relationships. However, the underpinning reasons gradually move. Three different eras can be distinguished in the European history of the last centuries.

In the early nineteenth century, reasons for church financing included compensation for the nationalisation of church goods by the state. At the same time, however, the historical dignity of churches was, explicitly or implicitly, seen as an element of utmost importance. Respect for churches led to material support. Churches received support for what they *were*. Any additional performance was not immediately required. *Usefulness* of churches, though invoked from time to time, was not seen as a key element in the discussion. This is how the first period in recent history with regard to church financing can be described.

The second era started with the growing relevance of the welfare state. Early traces of this phenomenon can be situated immediately after World War I, yet its massive development took place in the late forties of the twentieth century. The welfare state was directed towards cooperation with various players belonging to society as a whole. Both the State and private organisations united their forces for the wellbeing of the citizens. An example can illustrate this thesis. The State was eager to offer adequate healthcare to its citizens, yet it was helped by private initiatives including hospitals owned and operated by religious congregations. The welfare state model finances religious groups not so much because of their *intrinsic dignity*, but because of their

willingness to cooperate with major welfare programmes the State was aiming at. To put it in yet another way, the source of church financing was not so much respect for religious groups, it found its origin in the concrete action undertaken by the latter.

The third era is the one we are living in right now. The key word no longer is cooperation, as in the aftermath of 9/11, it increasingly became security²². Are churches still welcome to collaborate with the State for the wellbeing of the citizens? They certainly are. Yet, the focus is elsewhere. State authorities sometimes feel some fear towards religious groups. A basis for their financing could be situated in their willingness to accept the democratic state, the rule of law, and the legal order. Churches receive money when they are respectful to the legal context they are operating in. In the *security* model, religious groups do not receive support because they are doing something positive or useful, they are supported because they are *not* doing certain negative things.

The evolution is clear. It leads us from *dignity* over *cooperation* to *security*. Interesting is that, on the surface, few things did change. Indeed, church financing goes on, and very often it does so in the same way it did during the previous decades or centuries. Yet, looking slightly deeper we see that the same formal rules are underpinned by different political assumptions, the latter changing smoothly without any formal debate.

Conclusion and Outlook

Europe has a model of religion and state relationships that is not homogenous. The focus is still on the national states. And yet, there is a common model, at least when one looks beyond formal differences. This common model shows a keen interest for far reaching religious freedom, mutual independence between religion and state combined with cooperation and state support. Even in countries like France where separation is cherished as a notion, the model as described in this contribution is clearly present. Altogether the position of religious groups, including minorities, is rather positive in Europe, although in some countries there remains too much scepticism towards new religious movements.

This positive relationship vis-à-vis the organised religious groups, occurs in an era of growing emancipation of the individual. This individual is probably more religious than many non-Europeans assume, yet he is sceptical with regard to churches and organised groups. Whether or not this tendency will change the attitude of governance with regard to church financing, remains unclear. At least theoretically one could

imagine other models are thinkable. They could focus more on the ad hoc financing of projects than on the structural support of hierarchical institutions. But then again, this is an issue for the future.

Reference:

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- ¹. Official Journal C 340, 10/11/1997, p. 133.
 - ². The Constitution's fundamental provisions: art. I-52 "Status of churches and non-confessional organizations:
 1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
 2. The Union equally respects the status under national law of philosophical and non-confessional organizations.
 3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations."
 - ³. Article 9. 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.
 - ⁴. C. Patasthis, "State and Church in Greece" in G. Robbers (ed.), *State and Church in the European Union*, Baden-Baden, Nomos, 2005, p. 115-138.
 - ⁵. M. Heikkila, J. Knuutila, M. Scheinin, "State and Church in Finland", in G. Robbers (ed.), *o.c.*, p. 519-536.
 - ⁶. D. McClean, "State and Church in the United Kingdom" in G. Robbers (ed.), *o.c.*, p. 553-575.
 - ⁷. I. Dubeck, "State and Church in Denmark" in G. Robbers (ed.), *o.c.*, p. 55-76.
 - ⁸. L. Friedner, "State and Church in Sweden" in G. Robbers (ed.), *o.c.*, p. 537-551.
 - ⁹. R. Pottz, "State and Church in Austria" in G. Robbers (ed.), *o.c.*, p. 391-418.
 - ¹⁰. R. Torfs, "State and Church in Belgium" in G. Robbers (ed.), *o.c.*, p. 9-33.
 - ¹¹. A. Pauly, "State and Church in Luxembourg" in G. Robbers (ed.), *o.c.*, p. 305-322.
 - ¹². G. Robbers, "State and Church in the European Union" in G. Robbers (ed.), *o.c.*, p. 578 e.s.
 - ¹³. U. Mifsud Bonnici, "State and Church in Malta" in G. Robbers (ed.), *o.c.*, p. 347-365.
 - ¹⁴. Br. Basdevant -Gaudemet, "State and Church in France" in G. Robbers (ed.), *o.c.*, p. 157-186.
 - ¹⁵. S.C. Van Bijsterveld, "State and Church in the Netherlands" in G. Robbers (ed.), *o.c.*, p. 367-390.
 - ¹⁶. M. Rynkowski, "State and Church in Poland" in G. Robbers (ed.), *o.c.*, p. 419-438.
 - ¹⁷. I.C. Ibán, "State and Church in Spain" in G. Robbers (ed.), *o.c.*, p. 139-155.
 - ¹⁸. S. Ferrari, "State and Church in Italy" in G. Robbers (ed.), *o.c.*, p. 209-230.
 - ¹⁹. V. Canas, "State and Church in Portugal" in G. Robbers (ed.), *o.c.*, p. 439-467.
 - ²⁰. B. Schanda, "State and Church in Hungary" in G. Robbers (ed.), *o.c.*, p. 323-345.
 - ²¹. *Le financement par l'Etat federal des ministres des cultes et des délégués du Conseil central laïque. Rapport de la Commission des Sages*, Brussels, 2005-2006, 239p.
 - ²². P. Keating, *Religious Freedom and Security. Public Order Based Restrictions to Freedom of Religion in Turkey and Western Europe*, Louvain, European Studies, 2003, 43p.