

CERTAIN ASPECTS OF THE RELATIONSHIP BETWEEN RELIGION AND THE EUROPEAN UNION

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1 Introduction

The relationship between the European Union, and, in a larger sense, the European public sphere, and religion is rather controversial. The subject has become an increasingly important topic in international academic literature,³⁰ and nowadays we can discern significant processes which are, on the one hand, part of the discourse about the future of the European Union and, on the other hand, indispensable for understanding the role of religion in European public life. To begin with, we should point out that the European Union cannot interfere in ecclesiastical, religious and confessional matters, which fall exclusively within member states' competence. The Lisbon Treaty explicitly states the above,³¹ an entry which was included in the Constitutional Treaty mainly in response to pressure from churches.³² Notwithstanding, there are numerous links between religion and the European Union's public policies, which can be distinguished on different levels from a legal, sociological and ethical point of view. Article 17(3) of the Treaty on the Functioning of the European Union stipulates that the European Union recognises the specific contribution of churches and religious

30 Byrnes & Katzenstein (eds.), *Religion in an expanding Europe*. Cambridge University Press, 2006. p. 336; Burkhard Josef Berkmann: *Katolische Kirche und Europäische Union im Dialog für die Menschen – Eine Annäherung aus Kirchenrecht und Europarecht*, Duncker & Humboldt, Berlin 2008. p. 686; Ronan McRea, *Religion and the Public Order of the European Union*, Oxford University Press, 2010. p. 272; Norman Doe, *Law and religion in Europe: A Comparative Introduction*, Oxford University Press, 2011. p. 336; Lucian N. Leustean, *Representing Religion in the European Union: Does God Matter?* Routledge, 2012. p. 246; Lucian N. Leustean, *The Ecumenical Movement & the Making of the European Community*, Oxford University Press, 2014. p. 278.

31 TFEU Art. 17 (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 organisations.

32 Pope John Paul II in his post-synodal apostolic exhortation *Ecclesia in Europa*, concerning the draw up of the future European constitutional treaty, emphasises the following: 'While fully respecting the secular nature of the institutions, I consider it desirable especially that three complementary elements should be recognized: the right of Churches and religious communities to organize themselves freely in conformity with their statutes and proper convictions; respect for the specific identity of the different religious confessions and provision for a structured dialogue between the European Union and those confessions; and respect for the juridical status already enjoyed by Churches and religious institutions by virtue of the legislation of the member states of the Union.' *Ecclesia in Europa. II. János Pál pápa Az Egyház Európában kezdetű szinódus utáni apostoli buzdítása*, Szent István Társulat, Budapest 2003. p. 97.

organisations to the structure of the Union and maintains an open, transparent and regular (structured) dialogue with these organisations.³³ On the following pages we will succinctly review how this structured dialogue evolved and what its prospects are (2), we will then examine the main tendencies shaping the understanding of the role of faith in European public life, which are closely linked to the evolution of legislation concerning religious freedom (3). Thereafter we will analyse the connections between European law and religion (4) and finally we will seek to draw a few conclusions on the basis of the above (5).

2 The representation of religion in the European Union – the antecedents and possibilities of structured dialogue

Religion has been historically problematic from the perspective of European integration, so much so that it was practically not mentioned explicitly in European documents from the Schuman Declaration (1950) to the adoption of the Maastricht Treaty (1991). This period was characterised by the growing secularisation of the continent, especially its Western part and, as a result, Europe became more non-religious than any other continent, whereas in other parts of the world we could observe the opposite trend of de-secularization.³⁴ Lately, the academic community has been willing to speak of a certain shift concerning the role of religion in the public sphere, although some authors consider it a poorly construed academic presumption.³⁵ The silence of the EU over religious matters has been broken with the 11th Declaration attached to the Treaty of Amsterdam (1997), which states that ‘The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.’³⁶ This disregard of religion seems rather strange, considering the fact that the statesmen who played a prominent role in the creation of European integration were well aware of the importance of churches and religious associations, and many of them had Christian Democratic background. The latter fact contributed directly to the success of European integration as the founding fathers were operating on common ideological grounds, thereby smoothing the way of cooperation. One of the explanations of the si-

33 TFEU Art. 17 (3) Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

34 John T.S. Madeley & Lucian N. Leustean, ‘Religion, Politics and Law in the European Union: an Introduction’, *Religion, State & Society*, Vol. 1–2, 2009, p. 3.

35 Jens Köhrsen doubts the increasingly dominant role of religion in the public sphere and the prospect of a post-secular society. Cf. Jens Köhrsen, ‘How religious is the public sphere? A critical stance on the debate about public religion and post-secularity’, *Acta Sociologica*, Vol. 55, No. 3, 2012, pp. 278–283.

36 Declaration on the Status of Churches and Non-Confessional Organizations.

lence regarding religion could be that the founders, albeit driven towards integration by ethical principles stemming from their religious beliefs, chose to ignore faith formally as they were concerned that, instead of deepening collaboration, it could lead to new conflicts between East and West.³⁷

Despite the marginal role of religion during the integration process churches have closely followed the European project and have mostly adopted a supportive stance. This is also true for the Catholic Church, which has tried to contribute within its powers to the success of integration, enabling Europe to fulfill its mission and responsibility in the context of global civilizational processes.³⁸

According to the typology of L. N. Leustean, presented below, there are four types of intermediaries (actors) representing religion at the European Union.³⁹

Based on L. N. Leustean's theory, the first type of relations between churches and European institutions are *public-private relations*, which emerged mainly as the product of personal religious interests of politicians involved in the process of European integration rather than from a systematic policy on religion.⁴⁰ The second type are called *experimental relations*, initiated by Gaston Thorn, President of the European Commission, with the aim of establishing the possibility of cooperation with churches and religious organisations on the Commission's side as well. Upon recommendation from Secretary General Émile Noël, Thorn appointed Umberto Stefani, on the 13th of September 1983, as special counsellor in charge of compiling a census of religious organisations and informally liaising with the Holy See.⁴¹ The continued development of experimental relations was also encouraged by President Jacques Delors – the creator of the internal market – who himself was also committed to religious and ethical affairs, and once said, 'Europe needs a soul'.⁴² During the creation of the internal market, churches and religious organisations strengthened their presence in Brussels, as gradually increasing integration had an indirect impact on their activities as well. One of Delors's closest advisors was Louis Lacroix, who was entrusted with the

37 Lucian N. Leustean, 'Representing Religion in the European Union. A Typology of Actors', *Politics, Religion & Ideology*, Aug. 2011, p. 296.

38 Blandine Chelini-Pont, 'Papal Thought on Europe and the European Union in the Twentieth Century', *Religion, State & Society*, Vol. 1–2, No. 37, 2009, p. 143.

39 See: Leustean 2011, pp. 295–315; Lucian N. Leustean, 'Does God matter in the European Union?' in: Lucian N. Leustean (ed.), *Representing religion in the European Union, Does God matter?* Routledge, 2013, pp. 5–11.

40 Id. Such group was the Ecumenical Commission on European Cooperation, chaired by André Philip and existed between 1950 and 1974, which brought together high-ranking politicians and churchmen.

41 Id. Umberto Stefani retained his position during the first five years of Jacques Delors's presidency and was instrumental in organising the visits of Pope John Paul II to European institutions in 1985 and 1988.

42 Quoted by Miklós Király, 'Európa keresztény gyökerei és az Alkotmányos Szerződés', *Iustum Aequum Salutare*, Vol. II, No. 3–4, 2006, p. 67.

ethical aspects of integration. After his death, Delors appointed the so-called ‘Lacroix Group’ of advisors in 1987, and later, in 1989, the Forward Studies Unit (FSU), which was asked to establish informal contact with churches and religious communities beside examining ethical issues.

The third type of intermediaries between integration and religion are the *proactive relations*, whereby seeking potential cooperation became a direct goal of the European Commission. Within the mandate of the Forward Studies Unit, the appointment of Marc Luyckx in 1990 led to new opportunities for building a relationship between the Commission and religious communities. A report by Luyckx concluded that, despite the process of secularisation, there was an increasing interest in spirituality coupled with science and technology.⁴³ Luyckx tried to foster closer relations between the Commission and religious communities,⁴⁴ although his previous religious affiliation (he had worked as a Catholic priest) was regarded as a problem by some religious groups. In 1996, the Forward Studies Unit was renamed as the Group of Political Advisors to the European Commission (GOPA) and lasted until 2005. During that time, a programme was implemented under the leadership of Tomas Jansen and later Michael Weniger, named ‘A Soul for Europe: Ethics and Spirituality’.⁴⁵ With this programme, the Commission intended to promote religious dialogue between Christians, Jews, Muslims and humanists, pursuing Delors’s concept, but the programme never had an effect on a formal legal level. The discussion on the text of the Treaty Establishing a Constitution and its Preamble – which focused on the question of whether or not to include a reference to God and Christianity – revealed that, despite the increase of religious presence in Brussels, national governments continued to have the final word on religious issues based on their pre-established views on what religion’s role should be in the EU.

According to the classification of N. L. Leustean, the fourth form of mediation between the EU and religious organisations is that of *institutionalised relations*. In 2005 GOPA became the Bureau of European Policy Advisors (BEPA) and represented José Manuel Barroso’s stance on religious issues. From November 2014 BEPA has been replaced by the European Political Strategy Centre (EPSC)⁴⁶ in the Commission led by Jean-Claude Juncker.⁴⁷

In terms of institutionalised relations, the Roman Catholic Church stands out as the only religious group with a diplomatic representation. According to the

43 Religion confronted with science and technology. Churches and ethics after Prometheus. An exploratory report by Marc Luyckx, Brussels, European Commission 1992, cited by Leustean 2013, p.8.

44 Churches, religious and convictional communities were equally involved in this work.

45 http://ec.europa.eu/dgs/policy_advisers/archives/activities/dialogue_religions_humanisms/sfe_en.htm (10 January 2015).

46 <http://ec.europa.eu/epsc/>.

47 http://europa.eu/rapid/press-release_IP-14-2262_en.htm.

rules of the diplomatic representation established in 1970, the Apostolic nuncio not only represents the Holy See, but also holds the title of doyen of the diplomatic corps accredited to the European institutions. The Catholic Church opened an official representation in Brussels in 1980, namely the Commission of Bishops' Conferences of the European Community (COMECE).⁴⁸ The COMECE monitors the work of European institutions and aims to convey the opinions of the Catholic Church by adapting them both to the working of the Union and to the church's own priorities.

The first Protestant church to have an independent office was the Evangelical Church of Germany (EKD) in 1990, which, in addition to maintaining contact with European institutions, provides experts to the Church and Society Commission of the Conference of European Churches (CSCCEC). The CEC is an inter-church organisation, comprising different Protestant Churches and representing them altogether in strict cooperation with COMECE. After the Maastricht Treaty, more and more Christian Churches followed the strategy of the Evangelical Church of Germany and set up an independent office in Brussels in addition to common representation. Thus the Patriarchate of Constantinople (1994) the Orthodox Church of Greece (1998), The Orthodox Churches of Romania and Cyprus (2007) and the Anglican Church (2008) also have their own representations.

Among the Catholic religious orders, the Jesuit order has been the most active in engaging with the European project. In 1956, they founded the Jesuit European Office (OCIPE) in Strasbourg, and they opened another OCIPE office in Brussels in 1963, which now functions as the Jesuit European Social Centre (JESC), and in 1990, they opened an office for the Jesuit Refugee Service. The Dominican order established its presence in Brussels through its spiritual centre (Spirituality, Culture and Society in Europe).

The presence of churches and religious organisations in the proximity of European institutions increased considerably after the Maastricht Treaty. Maastricht was seen as precursor to a deeper integration, which could trigger the enlargement of the competencies of the European Union to additional fields where it could have a direct impact on the pastoral and institutionalized social work of churches and religious associations. There were certain concerns voiced by churches and religious organisations that the EU will ignore their specific operating needs during its progress, and will hinder their functioning under their own ethical rules with its ever-expanding lawmaking. The Lisbon Treaty laid down a reassuring solution for churches and religious organisations, when it stipulated that 'The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States',

48 <http://www.comece.org/>.

which had been proposed already by the 11th Declaration attached to the Treaty of Amsterdam. Perhaps the most important objective of the intensified presence of churches and religious associations in Brussels is to channel their traditions and experience through their representation into a dialogue with with European institutions in order to help shape the future development of the integration process. The Lisbon Treaty leaves ample room for such endeavors, recognizing explicitly the ‘specific contribution’ of churches and religious organisations and requiring that the Union maintain ‘an open, transparent and regular’ dialogue with them. In compliance with the above, several high-level expert meetings take place, partly at annual summits,⁴⁹ partly arranged ad-hoc for debating special issues.⁵⁰

The fact that the European Union is a *secular organisation* is a determining factor for structural dialogue, as it can only be successful if the churches and religious organisations are capable of translating their views to the secular language of the EU.⁵¹ From the Union’s point of view, these meetings are excellent occasions to communicate its openness – beyond making ‘family photos’ for representative purposes – towards religious issues, promoting its acceptance and legitimacy in certain communities. However, the practical results of the dialogue and meetings have been rather modest according to Péter Erdő, President of the Council of European Bishops’ Conferences (CCEE), taking into account the fact that they aren’t followed up by serious collaboration.⁵²

3 The place of religion in the European public sphere

As indicated previously, religion is not a primary issue for the European Union, it has no specific policies and scope of authority nor does it take concerted actions on the matter. The member states’ attitude towards religion typically includes the consideration of the positive and negative sides of religious freedom, the regulation of the relationship between state and church, and the institutional framework of religious freedom. However, limiting the relationship of religion and law only to these aspects can lead to a restricted approach. The European Union, through its practices and the definition of its identity, must also formulate a standpoint to answer the demands represented by religion in Europe, both in the private and the public sphere. Religion influences the law of member states

49 <http://www.comece.org/site/en/euchurchdialogue/annualsummitmeetings>.

50 <http://www.comece.org/site/en/euchurchdialogue/dialogueseminars>.

51 Churches and religious organisations are typically compelled to use a secular language and mechanisms in order to communicate opinions coming from their religious stance during their dialogue with European institutions. For more, see the experiences and view of Frank Turner, formal OCIFE director. Frank Turner, ‘Dialogue and advocacy at the EU’, in: Leustean 2013, pp. 83–86.

52 <http://www.magyarKurir.hu/hirek/erdo-peter-az-europai-unioban-nem-divat-vallas>.

by moulding the notion of public morals and public perception and, consequently, promoting certain behaviours and restraining others. As such, cultural and religious backgrounds have a direct impact on national laws. The EU, in matters within its competence, like internal market law, has an indirect effect on these national norms through its legislative actions, thereby reducing the ability of member states to govern issues falling into these categories.⁵³ Hence, EU law affects the general role of religion in today's Europe, but this effect works both ways as, religion can also influence EU lawmaking. McCrea notes that this religious influence, with mediation from member states, is present in the EU's laws, as a source of its constitutional values and is also an element of lawmaking.⁵⁴ Habermas observes that the ethical content of religion underwent a slow secular transition and has been built into the theory of statehood, thus a secular version of religious discipline is inextricably connected to the deeper layers of the modern, democratic, constitutional state.⁵⁵

When it comes to protecting religious freedom, The European Court of Human Rights, similarly to the EU's basic stance, lays more emphasis on the limitation of interference from religion (the negative aspect of religious freedom) than on ensuring the freedom of religious expressions (the positive aspect of religious freedom). Thus the prevailing trend in the European public sphere is to secure the independence of public life from religious communities, based on both an underlying assumption that personal autonomy is the more important value and on a particular interpretation of the meaning of a neutral state.⁵⁶

There is an intense debate concerning the shift of emphasis between the positive and negative sides of religious freedom and the governing concept of a neutral state, in which the ruling of the ECHR in the *Lautsi v. Italy* case became a key reference point. On 3 November 2009, the European Court of Human Rights unanimously ruled that the compulsory display of crucifixes in the classrooms of public schools restricted the right of parents to educate their children in conformity with their convictions and the right of the child to believe or not to believe, therefore it violated the Convention.⁵⁷

53 For example, the European law on the organisation of working time; in the context of Sunday trading, the collision between the protection of the Sunday and economic freedoms; concerning the institutions of churches, their employer status versus the rules on non-discrimination based on religion; the display of religious symbols and trade marks law; biotech regulation and related ethical questions, etc.

54 McCrea 2010, pp. 35–73.

55 Conversation of Jürgen Habermas and Joseph Ratzinger cited by Balázs Fekete, 'Túl a közhelyek Rubikonján', *Iustum Aequum Salutare*, Vol. I, No. 1, 2005, p. 172.

56 Javier Martínez-Torron, 'The (Un)protection of Individual Religious Identity in the Strasbourg Case Law', 2012 *Oxford Journal of Law and Religion*, pp. 1–25.

57 For a detailed case study, see: Schanda Balázs & Koltay András, 'A Lautsi-ügy a feszületről az állami iskola osztálytermében', *Jogesetek Magyarázata*, 2011/4, pp. 77–85.

The decision caused a considerable stir in European public opinion. The Italian Government lodged an appeal to the Grand Chamber of the Court which reversed the Lower Chamber's ruling in its March 8th, 2011 decision, declaring that the compulsory display of crucifixes in public schools did not violate the Convention. According to the Grand Chamber there is no consensus among European states on whether religious symbols should be present or not in public life and public education, the decision belongs to the competence of each member state, therefore it cannot be considered as a violation of the Convention.

The priority of personal autonomy (based on freedom and equality) as the defining value of the EU, and the ideal of a religion-free public order arises from the essential tenet of the Age of Enlightenment, according to which the radical separation between the realm of faith and that of reason is desirable, and the ruling of the public sphere should be based exclusively on the latter, which is equally accessible to all individuals. Dominic McGoldrick notes that these assumptions on the relationship of religion and public life are challenged by the following statement of Pope Benedict XVI reflecting on the European situation during his visit to England in 2010: '(...) where is the ethical foundation for political choices to be found? The Catholic tradition maintains that the objective norms governing right action are accessible to reason, prescinding from the content of revelation. According to this understanding, the role of religion in political debates is not so much to supply these norms, as if they could not be known by non-believers – still less to propose concrete political solutions, which would lie altogether outside the competence of religion – but rather to help purify and shed light upon the application of reason to the discovery of objective moral principles.'⁵⁸ For the Pope, distorted forms of religion, such as sectarianism and fundamentalism, arose when insufficient attention was given to the purifying and structuring role of reason within religion. This is why the Pope suggested that the world of reason and the world of faith – the world of secular rationality and the world of religious belief – needed one another and should not be afraid to enter into a profound and ongoing dialogue, for the good of civilization. McGoldrick argues that if faith has a role to play in public debates on the determination of 'reason' then this mixes the realms of faith and reason again, and this takes faith back into the 'public sphere'.⁵⁹

58 http://www.vatican.va/holy_father/benedict_xvi/speeches/2010/september/documents/hf_ben-xvi_spe_20100917_societa-civile_en.html

59 Dominik McGoldrick, 'Religion in the European Public Square and in European Public Life – Crucifixes in the Classroom?', *Human Rights Law Review*, 2011/3, pp. 459–463.

In the speech⁶⁰ he delivered to the European Parliament on November 25th, 2014, Pope Francis underlines the importance of the individual, who is not only an economic agent, but also endowed with *transcendent dignity*. In this way, the head of the Catholic Church makes a connection between the concept of human dignity, one of the core elements of the theory of human rights, an ethical pillar of European integration, and the perception of the person – which constitutes the basis of the Catholic doctrine. The Pope emphasises that a Europe no longer open to the transcendent dimension of life is a Europe at risk of losing its own ‘humanistic spirit’. He adds that this Christian legacy, which played an important role in the social and cultural shaping of the continent, and still has a contribution to offer, does not represent a threat to the secularity of states or to the independence of the institutions of the European Union, but rather an enrichment. This is clear from the ideals which shaped Europe from its beginnings, such as peace, subsidiarity, solidarity, and humanism.⁶¹

4 Relationships between religion and EU law

4.1 Relationship with regard to the Treaties

As a starting point of our analysis, we should note that in the constitutional traditions of member states religion, and in most cases this means Christianity, has historically occupied an important place, the significance of which has slowly diminished with the growth of secularization and the separation of church and state.⁶² The EU started to focus on religion relatively late, alongside the drive to protect fundamental human rights and the Lisbon Treaty represented an important step forward. The Preamble of the TEU mentions religion as one of the sources of the EU’s core values: ‘Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law (...)’.

Alongside the breakthrough achieved by The Lisbon Treaty in the field of protecting fundamental human rights, it has become increasingly important to un-

60 Cardinal Reinhold Marx, the President of COMECE calls the speech of Pope Francis a message of hope and encouragement. He draws attention to the fact that the decision of the Pope to come to Strasbourg before visiting any individual EU member state, as such, gives a strong signal that the Pope supports the European Union and encourages dialogue with it. <http://www.comece.eu/site/en/press/pressreleases/newsletter.content/1866.html>.

61 See: http://w2.vatican.va/content/francesco/en/speeches/2014/november/documents/papa-francesco_20141125_strasburgo-parlamento-europeo.html.

62 See: Szabolcs Anzelm Szuromi, ‘Megjegyzések az egyház es az állam modern kori viszonyának változásához’, *Jogtörténeti Szemle*, 2003/2, pp. 7–13.

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derline the values of the European Union. The basis of the public structure of the European Union derives from the traditions of member states and, as such, it reflects their common values. In the context of fundamental rights, the constitutional traditions of member states are part of EU law as general principles.⁶³ Article 2 of the Treaty on European Union states the fundamental its values:

‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’

In article 3 of TEU, the European Union has set the following goal:

‘The Union’s aim is to promote peace, its values and the well-being of its peoples.’

The context of article 2 of TEU is set by article 3(1), so the articles above together mean that the aim of the European Union is to promote peace, human dignity, freedom, democracy, equality, the rule of law, respect for human rights and the well-being of its peoples. The Preamble of the TEU lays down that they ‘continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity.’⁶⁴ In regard to the principle of subsidiarity, the TEU provides the following.

Article 5(3) of TEU: ‘Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.’

Although there is no consensus about the philosophical history of certain values among authors of various ideological backgrounds,⁶⁵ and they are recog-

63 TEU Art. 6 (3) Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.

64 Pius XI: *Quadragesimo anno*(1931) in: Tomka Miklós & Goják János (eds.), *Az Egyház társadalmi tanítása*, Szent István Társulat, Budapest, 1993, p. 117. ‘it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.’

65 Ladislav M. Orsy (Georgetown Law) states that international human rights conventions are the minimum of the ethical and moral standards of a given era, but there is no consensus about their philo-

nized by divergent philosophical doctrines, it is hard to argue against the fact that from the values listed in the Treaty, human dignity, the principles of solidarity and subsidiarity are deeply rooted in the Christian tradition.⁶⁶ Furthermore, emphasising these values opens the door for dialogue with the churches as they are strongly entitled to opinions on the matter.⁶⁷

The article of the EU on Churches entered into force with the adoption of the Lisbon Treaty:

Article 17(1)-(3) of TFEU: ‘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 organisations.

3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.’

A new, outstanding element compared to the Declaration attached to the Treaty of Nice is article 17(3) of TFEU where the Union acknowledges the ‘specific contribution’ of churches, and stipulates the requirement of a structured dialogue with them.⁶⁸ This requirement concerns both churches and philosophical and non-confessional organisations, which definition relativizes the importance of the provision by extending the list of addressees to organisations which are difficult to define. However, the undisputable significance of this provision is that it creates an obligation in the Treaty for a substantial, structured consultation with the churches.⁶⁹

When discussing the relationships between religion and the Treaties, it is worth mentioning the lively debate around the drafting of the Preamble of the Constitutional Treaty, which managed to reach the threshold of wider public

sophical history. The origins of certain values are explained differently by authors belonging to different philosophical approaches. Interview.

66 Balázs Schanda states that prioritising the human dignity and the idea of solidarity are undeniably Christian values. See: Balázs Schanda, ‘Vallási diszkrimináció – európai normák’, in: Gábor Galik & Miklós Matók (eds.), *Vallási sokféleség es a vallási antidiszkrimináció jogi szabályozása a magyarországi es a határon túli vallási közösségek tapasztalatainak es teológiájának tükrében*, Ministry of Education and Culture, Budapest, 2009, p. 120.

67 Interview with Johanna Touzel COMECE officer 20 August 2012. In this regard, see for example A Europe of Values, The ethical Dimension of the European Union, COMECE, March 2007.

68 Point 20 of the European Parliament’s report on the perspectives of developing dialogue with the civil society under The Lisbon Treaty (2008/2067(INI)) of 13 January 2009 stresses that, besides dialogue with the civil society itself, there is also a need for an open, transparent and regular dialogue between the Union and churches and religious communities, as provided for by The Lisbon Treaty.

69 The Catholic Church shows great sensitivity towards the problems of Europe and the European Union, which comes through its rich work in this regard. See: Francois Foret & Blandine Chelini-Pont, ‘Papal Thought on Europe and the European Union in the Twentieth Century’, *Religion, State & Society*, Routledge, Vol. 37, Nos. 1–2, 2009, pp. 131–146.

awareness. The central point of the discussion was where to put the emphasis when defining Europe's identity. In that respect, it is worth recalling Joseph Weiler's remark. In Weiler's opinion, the draft of the Convention⁷⁰, despite its international nature, deliberately used the term 'constitution', which, beyond the regulation of the functioning of the state and the relationship between the state and the individual, also implies a choice of values and identity made by the political community.

This choice is usually expressed through references in the preambles. The Convention chose to proclaim Europe's common moral background with the insertion of a rather solemn preamble, without reference to God or Christian roots, therefore it seems to be a choice of values in the context to come. Weiler argues that religious freedom is a generally accepted value in the constitution of most member states. Certain national constitutions have abundant reference to God, others acknowledge certain religious organisations as state religion, so such references are not incompatible with European legal and constitutional history.⁷¹ On the other hand, there is the approach which declares secularism as the core value, like the Italian and the French constitutions, which have proud secular preambles. In the course of drafting the Constitutional Treaty, one principle was that it could not be biased – even on the level of symbolism – in any way; neither by confronting the religious sentiment with the secular one, nor by favouring a specific religion. Nevertheless, the wording isn't neutral if it advocates the secular viewpoint, this means only that from the secular and religious option, it chooses the first. Weiler believes that the correct solution is that of *tolerant pluralism*, which guarantees both the religious sensitivity (freedom to have a religion) and the secular sensitivity (freedom not to have religion) alike, as does the new Polish constitution of 1997.⁷²

The opinion of Frank Turner, the former leader of the since transformed OCIPE, provides an extraordinary insight. He is inclined to accept the omission of any reference to God in the Constitutional Treaty, because such reference would be inevitably defined by politicians, and would be presumably different from the theological notion of God, which could only lead to misunderstanding.⁷³

70 The European Convention worked from 28 February 2002 to 10 June 2003 to create the draft of the Treaty establishing a Constitution for Europe.

71 The German constitution uses the expression 'Conscious of their responsibility before God and man'; the Irish constitution says 'In the Name of the Most Holy Trinity (...) and (...) our Lord'. The Greek constitution states that 'The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ', etc.

72 'We, the Polish Nation – all citizens of the Republic, *both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith* but respecting those universal values as arising from other sources, equal in rights and obligations towards the common good (...)'.
73 Interview with Frank Turner, 30 August 2012.

According to Ronan McRea, the European Union structured its approach towards the integration of religion in its public order around the common European cultural heritage (constitutional tradition) and the currently dominant attitude, according to which the EU prefers to maintain a balance between the religious, cultural and humanist influences on the public sphere. This drive to achieve a balance appears as an aim at the normative level, but it is also a part of European identity. Moreover, it considers religion itself as a constituent of identity on a personal and collective level. He notes that the EU can integrate more successfully those religious traditions which already have roots in European culture and which do not aim for exclusiveness.⁷⁴

4.2 The European secondary law on religion

An in-depth examination of relations between European legislation and religion clearly shows that religion was initially left out from the scope of community law, a tendency also noticeable in the practice of the EU's Court of Justice. European law didn't recognize the concerns raised by religion, consequently, it generally acted as a barrier to religious demands raised in accordance with the traditions of member states. This one-sided relationship slowly eased, and European lawmaking has been paying growing attention to religious needs.

The first source of European law which included religious aspects was *the Council Directive 93/119/EC*,⁷⁵ on the protection of animals at the time of slaughter or killing. The Directive provides that the particular requirements of certain religious rites must be taken into account, and it excludes the 'animals subject to particular methods of slaughter required by certain religious rites' from the list of animals which should be otherwise stunned before slaughter or killed instantly.

The *Council Directive 94/33/EC*⁷⁶ on the protection of young people at work states that 'with respect to the weekly rest period, due account should be taken of the diversity of cultural, ethnic, religious and other factors prevailing in the Member States; (...) it is ultimately for each Member State to decide whether Sunday should be included in the weekly rest period, and if so to what extent.' In this context, the directive refers back to the religious and cultural traditions and respects them in regard to the regulation of the weekly rest period on Sundays. This way, the legislator avoided a typical conflict between European law and the religious demands embedded in member states' law.

74 McRea 2010, p. 4.

75 Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing, OJ L 340, 31.12.1993.

76 Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, OJ L 216, 20.8.1994.

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The *Directive 97/36/EC of the European Parliament and of the Council* (30 June 1997)⁷⁷ prohibits advertising and teleshopping in any broadcast of a religious service, except when the scheduled duration is 30 minutes or longer. Furthermore, member states have to ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.⁷⁸

An important aspect of the European legislation which concerns religion is the anti-discrimination regulation. According to the *Council Directive 2000/78/EC*,⁷⁹ a discrimination based on religion or belief, disability, age or sexual orientation undermines the achievement of the objectives of the EC Treaty, therefore any direct or indirect discrimination as regards the areas covered by this Directive should be prohibited, with the exception of a few cases when a difference of treatment can be justified. The directive refers to the 11th Declaration on the status of churches and non-confessional organisations, annexed to the Amsterdam Treaty, in view of which the member states can maintain or lay down specific provisions with regard to genuine, legitimate and justified occupational requirements which might be indispensable for carrying out a particular activity.

The *Regulation (EC) No 45/2001 of the European Parliament and of the Council*⁸⁰ prohibits the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life. As a limitation on the scope of the prohibition, the regulation refers back to the national data protection law and excludes from the prohibition all non-profit-seeking bodies not subject thereto, provided that the processing is carried out in the course of their legitimate activities with appropriate safeguards and on condition that the processing relates solely to the members of this body or to persons who have regular contact with it. A further condition for the limitation of the prohibition is that the data are not disclosed to a third party without the consent of the data subjects.

77 Directive 97/36/EC of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 202, 30.7.1997.

78 Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, OJ L 298, 17.10.1989.

79 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2.12.2000.

80 Reg. (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001.

The delegated legislation of the Commission also contains a regulation⁸¹ acknowledging religious aspects, which describes the origins of the protected traditional terms used for certain wine sector products. As in the case of the wine called Lacryma Christi, ‘a product of high quality level which owns religious connotations’, produced through a ‘particular production method’⁸² from the grapes growing on the slopes of Mount Vesuvius. The register includes in addition the historical term ‘Vin Santo’,⁸³ of which it is said that ‘with regard to the origin of the term, numerous hypotheses have been formulated, most of them are connected to the Middle Age. The most reliable is strictly connected to the religious value of wine. This wine was considered quite extraordinary and boasted miraculous virtues. It was commonly used when celebrating the Holy Mass and this can explain the term “Holy wine” (vinsanto).’⁸⁴

We can also find examples of legal documents accepting religious points in the foreign policy of the Union.⁸⁵ The Council, concerning the enforcement of measures regarding Libya imposed by a resolution of the UN Security Council, excluded from the travel ban prohibiting entry to the territory of member states the cases when travel is justified on the grounds of humanitarian need, including religious obligations.

The *Directive 2010/31/EU of the European Parliament and of the Council*⁸⁶ makes it the sole responsibility of member states to set minimum requirements for the energy performance of buildings and building elements, but they can decide not to set or apply these requirements to buildings used as places of worship and for religious activities.

81 Commission Regulation (EU) 401/2010 of 7 May 2010 amending and correcting Regulation (EC) 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products, OJ L 117/60.

82 The point of the method is that grapes are pressed lightly.

83 The term refers to the particular wine typology and to the corresponding and complex production method which implies the storage and drying of wine grapes in suitable and properly ventilated places for a long aging period and in traditional wooden containers.

84 Commission Regulation (EU) No 401/2010 of 7 May 2010 amending and correcting Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products.

85 Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya, OJ L 58/53, 3.3.2011.

86 Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, OJ L 153/13, 18.6.2010.

4.3 Religion-related and ethical principles in the cases of the European Union's Court of Justice

In the *Van Rosmaalen case*,⁸⁷ the European Court of Justice had to settle a case regarding the pension of a Roman Catholic priest belonging to the Premonstratensian Order, who served as a missionary between 1955 and 1980 in the Belgian Congo, which in 1960 became Zaire. Since no other appropriate category existed in European law, the Court considered that the missionary priest who was supported by his community was a self-employed person. Although the national laws of member states usually have specific categories under which religion-related work can be recognized, European law didn't take this into consideration.

In the *Vivien Prais versus Council case*,⁸⁸ the Court admitted the lawfulness of a claim based on religious grounds. In the particular case, Ms Prais was unable to attend the written examination for a position held by the Council on Saturday, claiming that it was against her Israelite faith. Even though the Court dismissed the request that the Council should allow Ms Prais to take the tests on another date, it stated that if the appointing authority was informed that religious reasons made certain dates impossible for candidates to take the written test, the appointing authority should take this into account in fixing the date for tests.

On the subject of Sunday trading, the Court had to resolve the conflict between the regulation of the seventh day as a day of rest, mostly for religious reasons, and the requirements of the free movement of goods. The problem is a good example of how the Community law – in relation with the internal market, particularly at a certain stage during the development of the legal practice – overreachingly tried to enforce economic freedoms and restrain the member states' rules serving other public policy purposes. In the *Torfaen case*,⁸⁹ The Court ruled that the member state's ban on Sunday trading constituted a measure having an effect equivalent to a quantitative restriction, however it accepted the legitimacy of the purpose of these national measures 'in accordance with national or regional socio-cultural characteristics' and left it to the competence of the national courts to ascertain whether the effects of such national rules exceed what is necessary to achieve the aim in view (and in that respect, to assess their compatibility with the Treaty).

87 Judgment of 23 October 1986 in Case 300/84, A. J. M. van Rosmalen v Bestuur van de Bedrijfsvereniging voor de Gezondheid, Geestelijke en Maatschappelijke Belangen, [1986] ECR 03097.

88 Judgment of 27 October 1976 in Case 130-75, Vivien Prais v Council of the European Communities, [1976] ECR 01589.

89 Judgment of 23 November 1989 in Case C-145/88, Torfaen Borough Council v B & Q plc. European Court Reports, [1989] ECR 03851.

In the well-known *Grogan case*⁹⁰ the Court had to settle a dispute between an Irish society for the protection of foetal life, and a student association, which provided information on abortion accessible in the United Kingdom. The rule of the Irish law on the protection of foetal life was in conflict with the freedom of services. The European Court ruled that the medical termination of pregnancy, performed in accordance with the law of the state where it is carried out, constituted a service within the meaning of the Treaty, but in the case – because there was no connection between the clinics and the student associations distributing the information – it did not find any infringement of the Treaty. Concerning the moral argument of the society for the protection of foetal life, the Court made it clear that it was not for the Court to substitute its moral assessment for that of the legislature of those member states where the activities in question are practiced legally. Through its reasoning, the Court avoided addressing moral questions and it expressly rejected the implied request for a choice of values.

In the *Omega case*⁹¹ the freedom of services ran counter to the principle of human dignity (its civil law definition) enshrined by the German basic law in connection with a shooting game. Regarding the violation of human dignity, the court of reference asserted that the game could violate the constitutional principle of human dignity. In its judgement, the European Court, besides noting that the level of protection varies in different member states, confirmed the legal practice of the protection of fundamental rights being able to override economic freedom in certain cases. It is worth noting that in the *Omega case* the European Court based its ruling on a public order complaint, which relied on a fundamental right, that of human dignity, espoused by the German constitution. The main import of the case is the admission that the moral stance of national law has a direct impact on Community law through the notion of public order.

The European Court's ruling in the *Oliver Brüstle versus Greenpeace case*⁹² is of great importance to the protection of human dignity. The Court decided on the patent filed by Oliver Brüstle in December 1997, which concerned isolated and purified neural precursor cells, processes for their production from embryonic stem cells and the use of neural precursor cells for the treatment of neural defects. On application by Greenpeace, the *Bundespatentgericht* (Federal Patent Court) ruled in the proceedings at first instance that the patent at issue was invalid. During the appeal proceedings, the *Bundesgerichtshof* (Federal Court of

90 Judgment of 4 October 1991 in Case C-159/90, *The Society for the Protection of Unborn Children Ireland Ltd v Stephen Grogan and others*, [1991] ECR I-04685.

91 Judgment of 14 October 2004 in Case C-36/02, *Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn*, [2004] ECR I-09609.

92 Judgement of 18 October 2011 in Case C-34/10, *Oliver Brüstle versus Greenpeace eV*, [2011] ECR 09821 For case analysis see: András Pünkösty, 'Az Európai Bíróság ítélete az emberi embrió fogalmáról és védelméről', *Jogesetek Magyarázata*, 2012/1, pp. 101–106.

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Justice) submitted a question to the European Court concerning the interpretation of the concept of ‘human embryo’, not defined by the Directive 98/44/EC on the legal protection of biotechnological inventions. Although in the pursuit of the meaning of the concept of ‘human embryo’, the Court points out that it is not called upon to broach questions of a medical or ethical nature, but must restrict itself to a legal interpretation of the relevant provisions of the Directive,⁹³ it also concludes that, in the context and aim of the Directive it is shown that the European Union’s legislature intended to exclude any possibility of patentability where *respect for human dignity could thereby be affected*.⁹⁴ As part of the examination of the purpose of the Directive, the Court refers to the preamble of the Directive, which states that ‘ordre public and morality correspond in particular to ethical or moral principles recognised in a Member State, respect for which is particularly important in the field of biotechnology’. Article 6 of the Directive provides that ‘Inventions shall be considered unpatentable where their commercial exploitation would be contrary to ordre public or morality’. According to the Court, the concept of ‘human embryo’ must be understood in a wide sense. The importance of the judgement consists essentially in the fact that it excludes from patentability the result of a research which is not separable from industrial and commercial use and which includes a process that necessitates the prior destruction of human embryos, or for which human embryos are needed as base material. Thus, the Court accepted to pass a judgement directly on a bioethical issue, already significant in the member states, and this decision was welcomed by certain religious associations with a declaration of support.⁹⁵

5 Closing thoughts

Schuman’s original vision that the great plan of establishing Christian democracy will prevail with the construction of Europe emanated from the conviction that there is a strong correlation between Christian ideals and the progress of democracy.⁹⁶ These motivations were predominant while writing the well-known Schuman declaration,⁹⁷ presented on May 9th, 1950, in which he set as objectives the contributions which ‘Europe can bring to civilization’, ‘the preserva-

93 Judgement point 30. ‘it should be pointed out that, although, the definition of human embryo is a very sensitive social issue in many Member States, marked by their multiple traditions and value systems, the Court is not called upon, by the present order for reference, to broach questions of a medical or ethical nature, but must restrict itself to a legal interpretation of the relevant provisions of the Directive’.

94 Judgement point 34.

95 <http://www.comece.org/site/en/press/pressreleases/newsletter.content/1390.html> (23 October 2011).

96 Cited by Erich Kussbach, ‘Keresztény Európa és európai integráció’, *Valóság*, Vol. 7, No. 3, 1995.

97 http://europa.eu/abc/symbols/9-may/decl_hu.htm (20 October 2011).

tion of peace' and to 'create a de facto solidarity' and invited the European nations to this quest.⁹⁸ The declaration was received favourably and integration has moved forward on its path, albeit with a changing pace. Nevertheless, it could be startling that almost six decades after the Schuman declaration, in its 2007 report entitled *A Europe of Values, The Ethical Dimension of the European Union*, the COMECE voices its concerns over the fact that 'Europe's leaders shared a vision of European integration that was overly technocratic' and 'in the absence of a clear agreement between them on the final goal of the European project, they ceased to proclaim its underlying values'. 'Europe, which was a visionary project – uniting peoples and nations to ensure lasting peace – now looks a mechanistic process.' 'Its citizens see the European Union as a powerful bureaucratic machine which endlessly argues about obscure subjects, which is remote, cumbersome and costly and over which they have very little influence.'⁹⁹ In view of the above, seemingly there is a sharp contradiction between the vision of Schuman and its reality, though with the adoption of the Lisbon Treaty the European values and the moral aspects of the Union have been formally reinforced. But only the near future will tell how much of it will actually become effective.

In the beginning, European integration paid little attention to the existence of religion, the Community (today: European Union) law was rather limiting of the expression of religious needs embedded in the traditions of member states and, furthermore, it focused on independence from any religious influence instead of highlighting the communal identity building role of religion, and refused to refer to specific religious traditions.¹⁰⁰ The attitude of the Union towards religion is slowly shifting. The process is upheld by the necessity to form its own identity, which is indispensable for its citizens to be able to better relate to the European Union and for the ambitious European project to be sustained over time. In that aspect, the results of the contractual reform are controversial, the Union wasn't quite able to harness the identity forming elements of religion for boosting the legitimacy of the Union,¹⁰¹ however, its stance based on European values, the recognition of the contribution of religious organisations, the initiation of a structured dialogue with them, as well as the increased sensitivity of the European courts all point towards a more consistent balance.

98 In the Declaration Schuman also calls the development of the African continent one of Europe's essential tasks, as an international aspect of the achievement of solidarity.

99 Commission of the Bishops' Conferences of the European Community: *A Europe of Values, The Ethical Dimension of the European Union*, March 2007, Brussels, 8. The brief quotation above does not allow us to draw conclusions about the COMECE's standpoint on the European Integration.

100 Therefore in the debate relating to the Constitutional Treaty, the EU refused to refer to Christianity, and later in connection with the Iraqi conflict also avoids to call by its name the Christian community, even though this particular characteristic is the very reason of their persecution.

101 See: Francois Foret, 'Religion: a Solution or a Problem for the Legitimation of the European Union?', *Religion, State & Society*, Vol. 37, Nos. 1–2, 2009, pp. 38–50.