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Term Paper

The Role Of Religion In the European Union
-
**The Example Of The Discussion About Religious References
In The EU Primary Law**

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1. Introduction

1.1 On The Search For A 'European Identity'

Next to the far-ranging normative functions of a democratic constitution which manifest themselves within the positive law and which take the place on the top of the constitutional hierarchy of norms, the constitution also functions as a basis for the formation of a national or – in the case of the European Union (EU)- a supranational identity. This role can already be identified within the normative function, but is more difficult to catch (Weiler, 2004:38). On the other hand, the EU has "(...) since the days of its foundation completed a success story of half a century without making too much ado about the question of identity" (Meyer, 2004:10).

The area the European Union is comprising today is about half the size of the US-American mainland and is being populated by around 490 million citizens (Rifkin, 2004:216), since the latest enlargement processes the number is even calculated to be around 500 million. These citizens are living in a state that is not actually a state, but that is acting like one. Such a institution of government like the EU has never existed before. It regulates areas such as economy, trade, energy, transport, communication and increasingly also education across national borders.

The starting point of the EU was a cooperation in the economic and later political area. It is a matter of integration policy on the system level which focusses on certain policy areas (Lepsius, 2004:4). A high degree of integration of its citizens was therefore never necessary or urgently required. Only the increasing competencies of social, internal and cultural policy resulted in the need for a stronger European identification. More exaggerated, one presumes today that the question of a European identity is a question of the legitimacy of the EU in the eyes of the citizen and therefore nothing less than the future sustainability of the political community EU (Meyer, 2004:13).

The EU motto is "United In Diversity". In Europe, many cultures exist which are all somehow made from a European fabric or – the other way around – make up a European fabric. It is questionable, what exactly it is that unifies them, what is the basis of a European culture with which everybody can and shall identify him or herself. The historical substantialist position defines the attributes of the European cultural peculiarity with regard to history. Some see the humanistic roots in the Ancient World, the Renaissance, the Enlightenment and the modern understanding of the sciences (Gehrhards, 2004:14). Others define the cultural identity of Europe by drawing a connection to Christianity(ibid.).

The question how the European Union handles these topics, is no longer only a question of defining ones own identity in order to make its citizens relate to the construct called EU. It is also no longer only a question of the role and the influence of the churches in the EU. With the increasing

importance of non-Christian religious communities on its territory, namely the Islam, the EU has to find an answer due to other reasons now. While several member states have started attempts to incorporate the Islam as an organised religious community and to develop a dialogue, the EU has to follow. Therefore, the question remains: What is the role religion plays on the European level? Is there explicit reference to Christianity? And what are the implications of the European regulations for religious communities in general, non-Christian in particular?

1.2 Introduction Into The Topic

On the search for possibilities of identification in order to overcome the criticized remoteness of the EU to its citizens, the question of a reference to the importance of Christianity for the European history or even a direct reference to God has caused heated debates in Europe. Nearly no topic received so much medial attention and caused so many discussions during the elaboration of the draft of the European Constitutional Treaty as the quest for a reference to God or a reference to Christianity in the preamble of the later constitutional treaty.

Looking for the influence of churches and religious communities on the European level, the case of the draft of the constitutional treaty alone would hint at the fact that religion and religious references are still highly discussed and controversial topics, but that the importance attributed to them within the question of creating a sense of identity for Europe is diminishing. At the same time, the question of the influence of the churches on the European level cannot only be defined by the missing reference to God in the preamble. As important as the more representative effect of an incorporation into the preamble are the religious rights and regulations about the status and the role of churches and religious communities which are laid down in the European treaties.

In this paper the process of this discussion shall be traced back. I will analyse the influence of the ecclesiastic and religious organisations on the work of the convention during the preparations of the constitutional draft. This shall show that although the reference to God has not been incorporated in the treaty, it nonetheless contains a progress for churches and religious communities, not only because of the codification of their status and rights, but also because of the norms and values that form the basis of the treaty.

In the work, the main point of reference will be the work on the draft for a constitutional treaty for the EU during the years 2002-2004. Although this treaty finally failed and therefore the Treaty of Lisbon is the most recent work, the work on the constitutional treaty and the religious and

ecclesiastic regulations defined during this process have been crucial and were mainly incorporated into the Treaty of Lisbon.

2. Anchoring Religious And Ecclesiastic Rights And Provisions On The European Level

2.1 Stages Of Development

2.1.1 First Structures Of A European Right To Religion

The establishment of a right to religion on the European level is a step that has been taken comparably late. This becomes understandable when considering that the story of the European unification process has been designed mainly as a economic process. Only with the Treaty of a European Union (7 February 1992) first structures of a European right to religion became apparent. Religious freedom, "the commitment of the Union to neutrality in ideological questions, to tolerance towards different religions and ideologies [and] to the equal treatment of religious communities" (Robbers, 2003:148) were laid down in the community law.

Article 6 of the EU-Treaty makes use of the basic rights that have already been granted since 1950 in Article 9 of the European Convention on Human Rights (ECHR) (Waschinski, 2007:44):

"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, and to manifest his religion or belief, in worship, teaching, practice and observance" (ECHR, Art. 9).

2.1.2 The Declaration No. 11 Of The Treaty Of Amsterdam 1997

A breakthrough for the freedom of religion on the European level was the signing of the Treaty of Amsterdam, 2 October 1997. The treaty was signed by all heads of state and government and came into force in May 1999. This treaty established elements of a European freedom of religion for the first time within the agreement, that is on the level of the primary legislation, and not only within judicial texts and decisions of the European Court of Justice (Heinig, 2004:171).

Furthermore, the intergovernmental conference took a first step towards a European 'constitutional church law' by adopting the declaration No. 11 (Leinemann, 2004:186) This so-called 'Amsterdam Declaration on Churches' can be traced back mainly to the German chancellor, Helmut Kohl, who wanted to reach a locking-up of the ecclesiastic rights in the European Community Law. It 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. (Häberle, 2006:521)

According to this formulation, church and religion are entitled to become important factors and critical partners of the European Union and its integration process. As the declaration on churches - due to the resistance of France- is only a accompanying declaration and not part of the community agreement, the judicial nature of its content is ambiguous. However, the dominant opinion is that a declaration to the treaties is part of the treaty surroundings and therefore " (...) has to be taken into consideration when interpreting the primary legislation and politically obligates the Union" (Heinig, 2004:171).

2.1.3 The Charta Of Fundamental Rights 2000

A next big step on the way to a European freedom of religion was the proclamation of the Charta Of Fundamental Rights on 7 December 2000 in Nice. With this charta, a reference to Article 9 of the ECHR is drawn, which garanties in Article 10 religious freedom as an individual right (Robbers, 2003:154). During the debate of the Charta of Fundamental Rights, the question of an explicit reference to the religious heritage of Europe was the cause of a heated debate. Mutual agreement did only exist in so far, that a preamble should precede the Charta. If this should contain references to the Christian-occidental traditions stayed the controversial issue. The French prime minister, Lionel Jospin, refused this because of the laical tradition of his country and the danger of an exclusion of " the universality of fundamental rights because of religious references in the preamble"(Riedel, 2005:679).

Despite long negotiations, a common position could not be found and the politicians finally agreed on a compromise: in the German version of the preamble to the Charta Of Fundamental Rights the expression "geistig-religiöses Erbe" (spiritual-religious heritage) of Europe is used, while the English ("spiritual heritage") and the French ("patrimoine spirituel") version only refer to the 'spiritual heritage' (Goerlich, 2004:38). This underlines the phenomenon of the European law that different countries accentuate different meanings due to their historic experinces and traditions concerning religion. Nonetheless, the Charta Of Fundamental Rights is culturally and religiously important as it justifies a "religious and ideological principle of neutrality for the European Union" (Robbers, 2003:157).

2.2. Preparations For A European Constitution

2.2.1 Appointment Of A Constitutional Convention

A new chance to clarify the relation between religion and the European Union was offered during the reform debate related to the Eastern enlargement of the Union. As the Treaty of Nice had been perceived as the least common denominator by all parties involved, on 14 / 15 December 2001, the European Council established a European Convent under the direction of the former French president Valérie Giscard d'Estaing. The aim was to completely revise and simplify the European Community Law body (Declaration of Laeken).

The idea of the model of a convent – which had already worked for the development of the Charta of Fundamental Rights- was that next to the governments, members of the European Parliament , the national parliaments and members of the European Commission would participate in the work on the new treaty. The goal was here to be able to include national interest better and to enhance the public discussion about the future form of Europe(Heinig, 2004:172). With these aims in mind, the convent started its work in the beginning of 2002 and finished it with the introduction of a 'Draft for a Treaty establishing a Constitution for Europe', which was accepted in unison on 10 July 2003 by all members of the convent (Riedel, 2005:680).

In order to become legally binding, it needed the approval of all heads of state and government as well as the 10 future member states of the EU during the next session of the European Council. This failed on 13 December 2003 due to the question of voting weights in the council (Leinemann 2004:195). Only during the Irish EU Council presidency the second attempt in spring 2004 was successful; the draft was accepted on 18 June and signed on 20 October 2004.

2.2.2 Two Dimensions Of The Discussion About " God In The Constitution"

Next to the discussion about a 'double majority' in decisions, the question about 'God in the constitution' was the one that had an enormous effect on the public interest and the intergovernmental conferences. " The diversity of the discussion itself is another sign for the heterogeneity of the relation to religion within the different member states of the European Union" (Leinemann, 2004:197).

Here, two dimensions have to be separated that have often been taken as one in the public debate. Firstly, it is the position of churches and religion in the new treaty and secondly, it is the religious references in the preamble. The main intention of the churches, which participated through the civil

society consultations in the convent, was focused on the first dimension: They wanted to secure their position in the member states and anchor their rights in the treaty (Waschinski, 2007:63).

There was actually little discussion about this first dimension, the judicial position of the religious communities, on the European level. One agreed during an early stage to integrate the Amsterdam Declaration on Churches from 1997 with the addition of an "(...) open, transparent, and regular dialogue" between the EU and the churches, directly into the treaty (Heinig, 2004:181). The same wording was later used in the Treaty of Lisbon .

3. Fundamentals Of Religious References In The Preamble To The Draft Of A Constitutional Treaty

3.1 Reference To Christianity

The real reason for the heated discussions and debates during the constitutional convent and the intergovernmental conference was the question of religious references in the preamble of the constitutional treaty. Also here, we have to separate between two dimensions of 'religious references' which were mainly understood as one and the same in the public discourse.

We have to differentiate between – on the one hand- a reference to Christianity and – on the other hand- a reference to God (Waschinski, 2007:63f.).

A reference to Christianity would include the religious norms and values that are related to that and underline the important role of this specific religion in the European history. This would at the same time open the question "(...) if a reference like this [...] is compatible with the presence of Islam in the European Union" (Huber, 2004:59).

3.2 The General Reference to God

A general reference to God on the other side, would refrain from naming Christianity and would therefore not be bound to a specific religion.

Again, two possibilities for a reference to God are available. The invocation of God (*Invocatio Dei*), like the Irish Constitution contains it, implies the naming of the God one calls to put the constitution under his protection. In contrast to that is a simple reference to God, towards whom humans have to take responsibility, but who is not seen as a 'ruling' God (*Nominatio Dei*), as it is the case in the

German constitution (Goerlich, 2004:11f.; Lehmann, 2004:71f.). Here "the constituent bodies were aware of this trans-individual responsibility during the process of drafting the constitution" (Weinholt, 2001:170).

4. Analytic Summary And Conclusion

4.1 Summary Of The Findings

The draft for a constitutional treaty contains numerous references to religion, religious communities and churches. According to the preamble, the EU draws from "(...) the cultural, religious and humanistic inheritance of Europe(...)" . In the opinion of the churches, this can be seen as an advancement in comparison to the preamble of the Charta of Fundamental Rights from 2000 (Lehmann, 2004:61). Furthermore, Article 51 gives the Amsterdam Declaration on Churches constitutional status and therefore guarantees that the EU respects the status that churches and religious communities do have in the member states.

By incorporating the Charta of Fundamental Rights in the second part of the draft of the constitutional treaty, the individual and collective freedom of religion is recognised. Moreover, in other parts of the treaty, rights are recognised that are of importance for the churches and religious communities. Among those are provisions in Art. II-70 about freedom of thought, conscious and religion, Art. II-74 about the right to education, Art. III-81 about non-discrimination and Art. III-82 about respect for cultural, religious and linguistic diversity (Weninger, 2007:222). Here, there has been a change in the Treaty of Lisbon 2007. The text of the Charta will not be part of the treaty but it will be declared legally binding through a reference. Some states have already declared to decide about exceptions for themselves. This could lead to a rebound in the discussion about the self-image of the European Union.

4.2 Conclusion

The draft of a constitutional treaty has tried to enhance the development of a European identity with the help of this treaty (Goerlich, 2004:38). The picture we get from this is not showing that a Christian Europe would be the precondition for this identity. The constitutional treaty – nor the later Treaty of Lisbon – contains a reference to God and no special naming of the Christian heritage of Europe, but its values, goals and principles are mainly compatible with Christian ideas (Berkmann, 2004:166). In a certain way, this is a minimal concession to achieved standards, at the same time it also shows a development in the direction of a fruitful dialogue. Goerlich (2004:39) judges this as

follows:

„If we consider all the elements of the draft of a constitutional treaty, we witness a process of consolidation of the position and the recognition of religion in the law of the European Union".

The churches have come to the conclusion that it is more important that the constitution – or in general, the treaties of the EU- give the churches and religious communities their position, especially in the main text of the constitution, than a nicely formulated but little binding "pious preamble" (Weninger, 2007:218). Therefore, they accept the new treaty as a useful instrument to pursue their interests in the context of the European integration process and which allows them to actively and responsibly contribute to the work in the Union.

Moreover, it can be shown that a transnational European law concerning the relationship between the churches and European public power. The constitutional treaty was – the Lisbon treaty is- on the way to recognise the self-determination of churches and religious communities within the European Union.

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