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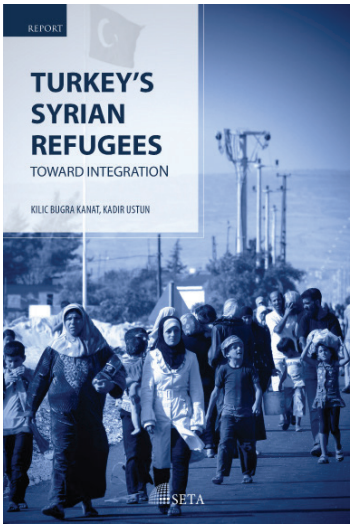
Turkey's Syrian Refugees



By KADİR ÜSTÜN and KILIÇ BUĞRA KANAT

In this report, we provide an overview of the situation of refugees in Turkey and the difficulties that Turkey is facing in handling such a major crisis alongside of its Southern border.

This report is the result of a four month long research project conducted in Washington DC and in Turkey. We conducted interviews with specialists in Washington DC and undertook a two-week long research trip to Istanbul, Ankara, Mardin, Şanlıurfa, and Gaziantep. We visited several refugee camps and conducted interviews with government officials, civil society organizations, opposition activists, experts, and academics as well as refugees and Syrian NGOs. In this report, we provide an overview of the situation of refugees in Turkey and the difficulties that Turkey is facing in handling such a major crisis alongside of its Southern border. We also assess the policy implications of this crisis for Turkey and the international community. We discuss Turkey's open-door policy, the camp and non-camp refugees, the legal framework, integration, the international community's response, and the impact on Turkish foreign policy choices. We end the report with a series of policy recommendations that we hope will help cope with this monumental task at hand and contribute to a better coordination between Turkey and the international community.

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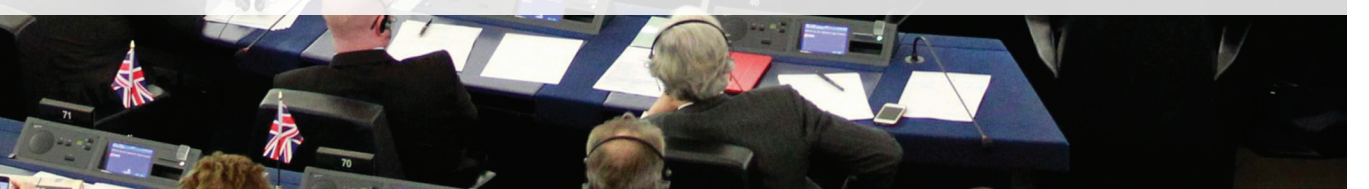

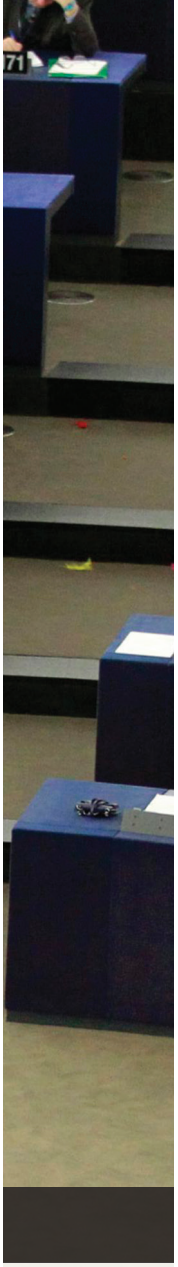

ARTICLE

Religion and Religious Communities in the EU Legal System

SILVIO FERRARI*

ABSTRACT *This article considers the different components of the "acquis communautaire" in the matter of religion. The "acquis communautaire" is the set of values, principles and rights that a state has to accept before becoming a member of the EU. EU legal provisions, European Court of Justice (ECJ) decisions and European Court of Human Rights (ECHR) rules are part of this "acquis", together with the constitutional traditions of the member states. The chapter dwells on this last component, arguing that there is a European model of state-religions relations that is reflected in the constitutional traditions of the EU member states. Whether this "acquis communautaire" is able to face the challenges raised by the growing religious diversity in the EU is discussed in the last part of the chapter.*

Introduction

This paper aims to answer the following question: With regard to the legal status of religion and religious communities, what can an applying state expect once its application to become a member of the EU has been taken into consideration and negotiations are started? What demands is the EU likely to formulate and what legal changes are going to be required? It is impossible to give an exhaustive answer, as each state has its own legal system and certain EU demands are prompted by the specific characteristics of that system. However, it is possible to provide a partial answer, limited to the conditions which depend on EU law and therefore are to be met by any state entering the EU.

Even within these limits, the answer is not easy due to the peculiar relations binding the EU and its member states. The EU has powers far larger than those normally attributed by states to an international organization. EU member states have given up a part of their sovereignty: in some domains, powers that

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Starting from this solid foundation, the EU body of law concerning religion and religious communities has steadily grown

were part of state sovereignty are now wielded by the EU or jointly by the EU and its member states. In other domains, states' powers are still intact. The outcome of this situation is a complex (some say baroque) architecture where EU law and the law of EU member states are intertwined and bound by a relationship of reciprocal influence. As a consequence, defining the exact meaning of the "EU legal system" is not simple.

A second element has to be taken into account. The member states have largely maintained political control of the EU and they frequently make use of it to point EU decisions in a direction close to their way of looking at the problem under discussion. Some EU decisions can be fully understood only by taking into account the legal and political traditions prevailing among the member states (the debate about the reference to Europe's Christian heritage in the preamble of the European constitution is a good example). Therefore, an applying state should also pay attention to the law of member states, as it could indirectly shape EU requests.

The first part of this paper will be devoted to explaining the meaning of the "*acquis communautaire*" in the matter of religion; in this way, the relevant sources of EU law will be identified. The second and shorter part will contain some references to the indirect influence that the member states' legal traditions can exercise on the EU. The results of this analysis will be summarized in the conclusion.

The *"acquis communautaire"*

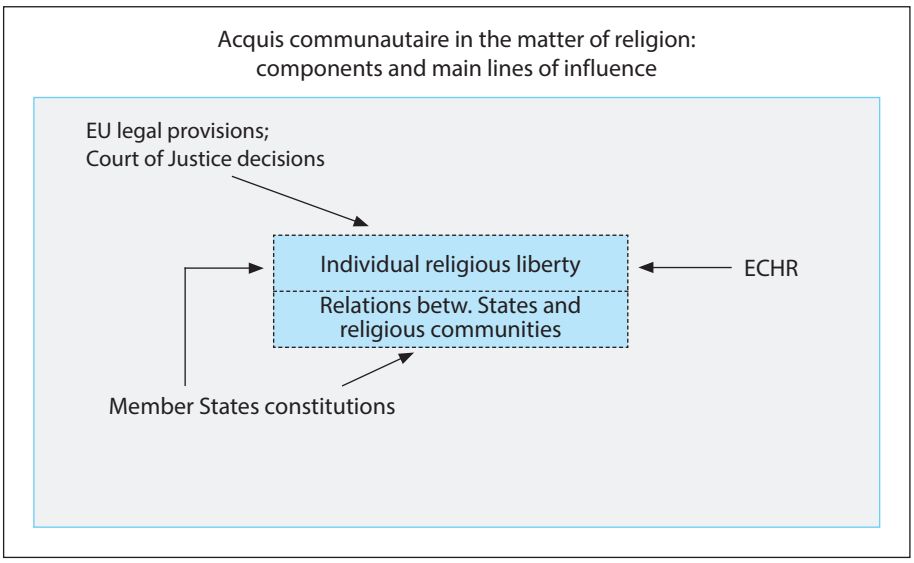
It is well known that the states which enter the EU are requested to adopt, implement and enforce the "*acquis communautaire*",[1] that is, the entire body of EU legal provisions. However, it would be misleading to think of the "*acquis communautaire*" as the treaties, the regulations and directives enacted by EU institutions and the decisions laid down by the ECJ. Due to the characteristics of the European unification process and the distribution of power between the EU and the member states, the "*acquis communautaire*" has the peculiar feature of being open-ended. Therefore, besides laws directly produced by the EU institutions, two other sets of legal provisions play a role in the formation of the "*acquis communautaire*": the laws of the member states and international law.

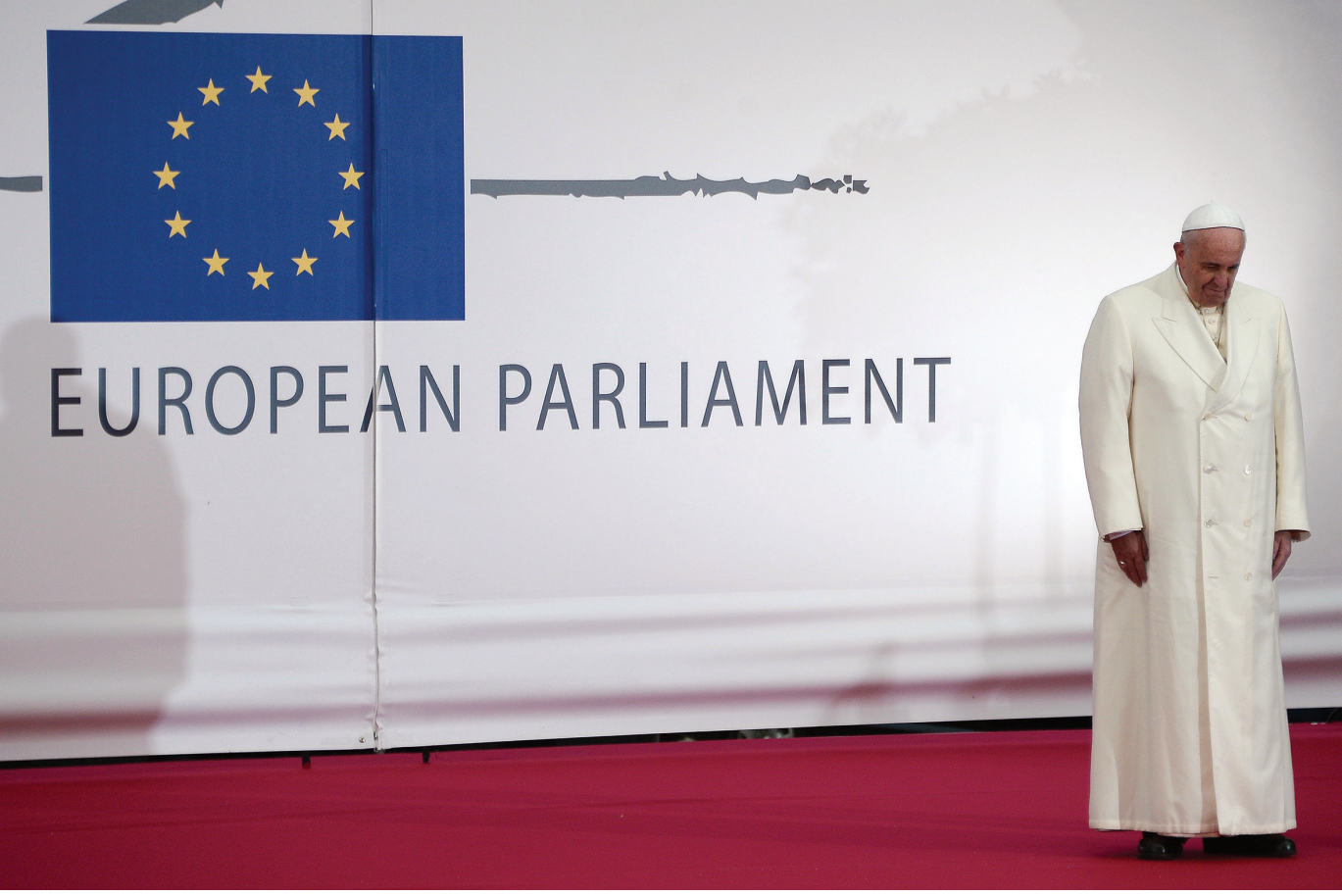
A good example of the complex structure of the EU legal system is the issue of human rights. With the adoption of the Treaty of Lisbon in 2009, the Eu-

ropean Union Charter of Human Rights became legally binding. Moreover, Articles 2 and 6 of the Treaty on European Union (TEU) state that the Union is founded on a set of values (freedom, democracy, equality, the rule of law, etc.) that are common to the member states and affirm that "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."[2] Therefore, the human rights recognized and enforced by the EU as general principles in its legal system are those deriving from: a) the EU legal provisions (the EU Charter of Human Rights) and, within the limits of a general principle, b) the European Convention on Human Rights, and c) the constitutional traditions common to the EU member states.

This mechanism also applies to religious freedom. To assess the relevance of the right to religious freedom in the area attributed to EU law, these three components have to be taken into account. However, they do not have the same impact. The difference emerges when the individual and collective dimensions of religious freedom are distinguished. Although they cannot be separated, the first dimension mainly focuses on the individual, and the second on the religious community, including the legal position religious communities have in EU law. The "*acquis communautaire*" covers both profiles but while individual religious freedom finds a fairly comprehensive discipline in EU and ECHR provisions, collective religious freedom (and in particular its profile concerning church-state relations) has to be primarily considered with reference to the constitutional traditions of the member states.

This interplay can be visually represented in the following way:





Pope Francis arrives at the European Parliament, on November 25, 2014 during a short visit at the European institutions in Strasbourg.

AFP PHOTO / FREDERICK FLORIN

Therefore, in order to have a correct picture of the place given to religious liberty in the EU legal system, all the components of the "*acquis communautaire*" must be taken into consideration.

The EU and ECHR Provisions Protecting Individual Religious Freedom

According to Article 6(2) of the Treaty on the Functioning of the European Community (TFEU), all the fundamental rights granted by the ECHR can be applied in the EU legal system as general principles.[3] As a consequence, Article 9 of the ECHR has become enforceable (within the limits of a general principle) and it provides EU law with a sound foundation for dealing with issues connected to religious liberty. Moreover, Article 10 of the European Union Charter of Fundamental Rights contains a provision that repeats the content of Article 9 of the ECHR. This foundation is further strengthened by the inclusion in the Treaty on the Functioning of the European Community (TFEU) of a provision which (going further than Article 14 of the ECHR) is committed to fighting discrimination based (inter alia) on religion (Article 19): equal treatment of persons of different religious beliefs or convictions is now directly granted by EU treaty law and a number of EU directives have applied this principle in the fields of employment, aid to developing countries, cooperation, etc.[4] Finally, all EU member states constitutions contain at least one provision that protects religious liberty along lines which are coherent with Article 9 of the ECHR and sufficiently homogeneous to give shape to a common constitutional tradition.[5]

Religion is not mentioned in the EU treaties but there are few doubts that its connection with national identity would lead to its being regarded in the same way

Starting from this solid foundation, the EU body of law concerning religion and religious communities has steadily grown. Directives and regulations frequently include one or more provisions which take into account the impact religion has in matters as disparate as tax law, slaughtering of animals, television broadcasting, working time, etc.[6]

Similar remarks apply to the case law of the Court of Justice. Since the Paris decision of 1976,[7] freedom to manifest one's religion has entered the catalogue of fundamental rights elaborated in EU case law[8] and the Court of Justice has made a significant number of decisions on matters of relevance for religions and religious communities, dealing with issues like the weekly day of rest, freedom of movement, employment, etc.[9]

Of course, the importance of religious issues in the EU legal system should not be overestimated. EU law deals with religion when and where religion is relevant in labor relations, custom law, data protection and in the other fields of EU interest,[10] but religion in itself remains outside the scope of EU competence. Therefore, it would be useless to look for a coherent and comprehensive set of EU provisions explicitly aimed at disciplining its different profiles. In EU treaties, there are no religion clauses as they can be found in most national constitutions or human rights conventions[11] and the ECJ case-law regarding religion is not comparable in scope and number of decisions to that of most European Constitutional Courts and of the ECHR. Nevertheless, within the limits of the EU area of competence, EU institutions are not without the legal tools required for dealing with problems raised by individual religious liberty.

The premise shifts when collective religious freedom –and in particular relations between states and religious communities– is taken into account: EU institutions show a distinct reluctance to enter this field. First of all, this unwillingness is due to the principles governing the distribution of power between the EU and its member states.[12] Those matters which are more closely connected to a state's identity –e.g., culture and education– are primarily left to the responsibility of the member states, with the EU playing a subsidiary role in the terms indicated by Article 5(2) of the TEC[13] and limiting itself to coordinating, complementary or supporting action. Religion is not mentioned in the EU treaties but there are few doubts that its connection with national identity

A unitary notion of religious freedom has taken shape in the EU and, after the fall of communism, has spread to other parts of the Old Europe

would lead to its being regarded in the same way. Therefore, the same criteria applied to culture and education would apply also to religion but, probably, on a larger scale. As a matter of fact, EU institutions seem to be even less inclined to deal with religion than they are with culture. Article 17 of the TFEU manifests this orientation very clearly: "The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States". This clause means that, firstly, the EU is not going to make uniform the church-state systems of its member states, meaning church-state relations are to be disciplined by national laws. Thus, Denmark can maintain its state church, Italy its concordat and France its separation as long as these legal systems do not infringe on the fundamental rights that the EU is bound to respect. Secondly, this clause means that the EU is not going to enforce legislation that impacts the legal status enjoyed by religious communities in a member state.[14] While the exact boundaries set by this limitation on EU action are still to be ascertained, the EU directive on equal treatment in employment[15] offers an initial example of what it could mean. Enforcing equal treatment in the occupational activities performed within religious communities would have significantly changed the status granted to some of them by the laws of certain member states: therefore, religious organizations have been exempted from applying this directive.[16]

Should we conclude, then, that EU law has (and is going to have) no real relevance to church-state relations? Not at all. It is likely that church-state relations will not be directly disciplined by EU law (as the EU is unwilling to legislate in this matter) nor by the ECHR (which deals primarily with individual religious freedom). Nevertheless, the "*acquis communautaire*" is not limited to these sets of legal provisions as it also includes the constitutional traditions of the member states.

The Constitutional Traditions of the EU Member States and the Relations between States and Religious Communities

The meaning of the "constitutional traditions common to the member states" mentioned in Article 6 of the TEU and how much the ECJ can rely on them to interpret fundamental rights is still discussed among lawyers.[17] Before entering this discussion, there are a few preliminary questions that should be answered: in matters regarding religions and religious communities, are there any constitutional traditions which are common to the EU member states? What are

they? Are they enough to provide a shared model of church-state relations which could serve as a reference point for the EU institutions?

Does a European model of church-state relations exist? At first glance, the national legal systems give the impression of a profound diversity: there are countries with a state church, countries with a system of separation between church and state, and countries where concordats and agreements are concluded with religious communities. However, beyond and beneath this diversity, there is a common European pattern of church and state relations, based on three features and one guiding principle which, in different forms and with different force, recur in the juridical systems of each country.[18]

The first feature is the protection of the individual right of religious freedom. Both the constitutions of the EU States and the international conventions that they have signed[19] contain a central legal nucleus aimed at: a) guaranteeing the right of every citizen to profess his or her own religion in conditions of equality with citizens of other religions (or of no religion) without this choice entailing limitations for the enjoyment of civil and political rights; and b) permitting the faithful of any given religious community to meet together, to practice their faith and to form religious communities and associations which can obtain juridical status under the law of the state.[20] Of course, at the level of non-constitutional laws, differences begin to emerge that are not negligible in the way that religious freedom is protected (or not protected) in each national system,[21] but these differences regard specific points and are increasingly limited by the case law of the ECHR.

Therefore, it is possible to state that a unitary notion of religious freedom has taken shape in the EU and, after the fall of communism, has spread to other parts of the Old Europe. Underlying this notion of religious freedom is the idea of the pre-eminence of the individual conscience, namely the right of each person to decide on the religion or belief that he/she deems in compliance with his/her own conscience in absolute freedom, without this choice entailing any negative consequences on juridical grounds.[22] As much in Western as in Eastern Europe, the apostate, the atheist and the follower of a minority religion suffer no diminution of their civil and political rights, which are due to all citizens, on account of their religion or conscience.

Two consequences derive from this conception. First, it implies that each individual not only has the right to adopt a religion, but also to abandon it or change it. The person who leaves his or her religious group (even when he/she has belonged to it since birth) exercises a right which the state guarantees against everyone, including the religious group that was abandoned. Secondly, a distinction has to be made between religious belief and its manifestation. Religious freedom must respect some fundamental values of general interest

that Article 9 of the ECHR identifies with public order, health or morals, the protection of rights and freedoms of others. The members of a religious community who violate these limitations in their actions, writings or words will be punished just like any other individual would be and cannot invoke obedience to a precept of their religion as a cause for impunity. But these limitations of freedom only concern the manifestations of a particular religion and not the religious belief itself; no-one can be punished solely for belonging to a religious group.

The second basic principle of the relationship between the state and religion in EU countries is the reciprocal autonomy of both states and religious communities. Like the two sides of a coin, this principle presents two closely connected aspects: on one side, there is the doctrinal and organizational autonomy of religious communities and, on the other, the autonomy of the state from any attempt to give their power a direct religious foundation.

Beginning with the first aspect, the independence and autonomy of religious communities is confirmed in the constitutions of many EU countries. Article 25 of the Polish Constitution, for example, states that "the relationship between the State, the churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere." Similar arrangements can be found in the constitutions of many other EU countries,[23] in the treaties and agreements stipulated by many states with various religious communities,[24] and in the decisions of the national constitutional courts[25] and the European Court of Human Rights.[26]

In this case too, however, the general principle suffers certain exceptions. In those countries where a state church is recognized[27] –and this is particularly true of Northern Europe– the bishops of the church are appointed by political authorities and the ministers of the church are considered public servants. This is undeniably a limitation on the autonomous powers of religious communities, although this holds true for a very small number of EU States (Denmark and England). Moreover, the state church system is declining all over Europe[28] and even in these countries the autonomy of religious communities is increasingly as a consequence of the principle of collective religious liberty and, consequently, a limit before which the authority of the state must stop.

What this autonomy actually means in practice varies from country to country, but there are two distinct tendencies. Doctrinal autonomy, that is, the capacity of religious communities to freely define their own system of belief without any interference from the state, is respected practically everywhere. In many countries (e.g., Germany), religious communities also enjoy orga-

nizational autonomy, namely being able to set up their own legal and self-government structures. In these instances, religious communities do not have to meet the requirements normally imposed on organizations of a secular character. For example, cooperation between the state and secular organizations is frequently subordinated to the democratic structure of their internal systems, whilst a similar requisite does not occur with reference to the organizations of a religious nature; or again, freedom of opinion is guaranteed by the state within many social groups of a secular nature but not within religious communities, where the dissident has only the right of withdrawal. EU states stop at the threshold of religious communities and overstep this limit only in particularly serious cases (e.g., when a crime is committed within the community), but in general the elaboration of the doctrine and (within the limits indicated above) the internal organization of religious communities is removed from the control of public authorities.

The autonomy of religious communities finds its *pendant* in the autonomy of the state from every form of religious control of its own power, which today has its foundation solely in the will of the citizens

The autonomy of religious communities finds its *pendant* in the autonomy of the state from every form of religious control of its own power, which today has its foundation solely in the will of the citizens. This means that the principles and values which inspire state legislation are no longer defined through direct reference to the precepts of a specific religion, even that of the majority of the citizens. It is enough to run through the constitutions of today's EU states to see that there is no place for the provisions which, until the beginning of the 19th century, declared that the state was bound to make its laws according to the doctrine of a particular religion. References to God, to religion and to religious communities that many constitutions still contain are nowadays directed at another purpose, that of ensuring religious freedom and disciplining relations between states and religious communities.

Distinction does not exclude cooperation. After the fall of communism, cooperation between states and religions is the rule and not the exception all over Europe. This cooperation may have a different scope, involve different subjects and become materialized in diversified legal forms. However, even in states which wave the flag of strict separation and *laïcité* (as in France), a system of cooperation between the public authorities and religious groups is not only in force but also on the rise.

There are two reasons that explain this propensity towards cooperation. On the one hand, a tendency to cooperate with all social organizations, both re-

The prevailing European trend is moving towards some form of state recognition or registration of different religions, which is frequently associated with some kind of contractual relationship

ligious and non-religious, is deeply embedded in the genetic code of the European modern state, which is founded on the consensus of its citizens. Cooperation with social groups is the normal way of governing the state. In this framework, religious communities have their place and states are ready to maintain a working relationship with them analogous to that which has been set up for other social organizations. On the other hand, in the eyes of many states, religions preserve an important significance in terms of social resource, both from a cultural, ethical or political point of view. This explains why, in many legal systems, religion is considered, together with art and science, a 'civilizational factor' of general interest which must be safeguarded and encouraged by public powers.

This tendency of the modern state to cooperate with religious communities is not indiscriminate. It is broader where there is a harmony between the values underlying the religious society and those which form the foundation of civil society, and it is narrower where this harmony does not exist. For example, almost all states give financial support, either directly or indirectly, to religious communities, but this economic support is not evenly distributed: some receive more, some less and others hardly anything. Many states provide for religious teaching within the national education system, but not all religions can be taught nor are they all taught on an equal footing. Cooperation with the state is almost always selective and graduated: religions that encourage their faithful to behave in ways conforming to the principles on which civil life is founded (the dignity of the human person, freedom of conscience, equality, democracy, etc.) receive a much greater measure of cooperation than those religious communities which are based on a different value system. However, failing to provide support is not the same as suppressing. As long as the doctrines professed by a religious community and the behavior encouraged in its adherents remain within the legal limits, these doctrines and this behavior are protected by the principles of religious freedom and cannot be the reason for any form of discrimination. In a democratic society, even ideals and life-styles that are very different from those held by the majority of the population find citizenship and shape the choices of public opinion.

These three features –protection of individual religious freedom, respect of the autonomy of religious communities and "selective" cooperation between states and religious organizations– define the architecture of the EU system of church-state relations. They are bound together by a guiding principle which

A cleric stands near a statue of the Virgin Mary in front the European Parliament building in Strasbourg, Eastern France, on November 24, 2014.

AFP PHOTO / FREDERICK FLORIN

governs their interaction. In a nutshell, this principle says that: a) all religious communities, including the newest and the farthest from the social and cultural values traditionally shared in a country, must enjoy some basic freedoms that allow them not only to survive but also to develop; and b) once these basic freedoms are granted to all, a reasonable degree of differentiation in state cooperation with religious communities is acceptable. How this guiding principle is applied and how rights are distributed in the two areas –the sphere of freedom and that of cooperation– which it defines is a matter for the national legislations.

What has been described here is only a paradigm or an "ideal-type" that is not applied perfectly to any EU country. Nevertheless, although each state has its own particularities, this pattern is helpful in giving a content to the "constitutional traditions common to the member states" mentioned in Article 6 of the TEU and in suggesting how EU institutions could interpret them when dealing with religion.

Between "Hybridization" and "Homogenization": The Hidden Impact of EU Membership

Besides the channel provided by Article 6 of the TEU with its reference to constitutional traditions, there are other ways –that may be more indirect but not

less effective– through which participation in the EU could affect church-state relations in the member states.

Political and social scientists underline that the church-state systems of the EU states are changing and converging towards a common ground qualified by a "friendly separation."[29] This transition principally regards the systems based on a strict union or a complete separation of church and state. On the one hand, France is in the process of softening what has been for almost a century the basic principle of its policy, namely that the state does not recognize any religion; teaching religion in public schools or financing the building of places of worship are no longer regarded as a betrayal of the "laïcité à la française."[30] On the other hand, the state church system is on the way to being dropped or deeply transformed by the nations which still maintain it: abandoned by Sweden, on the point of being so by Norway, altered in one of its fundamental points in Finland[31] and subject to recurrent discussion in England. Moreover, the system founded on a state or established church has not been adopted by any European post-Communist country,[32] not even by those whose religious tradition is Lutheran. The prevailing European trend is moving towards some form of state recognition or registration of different religions, which is frequently associated with some kind of contractual relationship (through concordats, agreements and state laws negotiated with religious representatives) with religious communities and with the predisposition of a few different legal regimes which are available to them.

When a new state becomes member of the EU, it has to accept this living legacy and at the same time it contributes towards its transformation, as new constitutional traditions become part of the "*acquis communautaire*"

The main reasons for this transformation are growing religious pluralism and the strengthening of religions in Europe. When more and more religious groups settle in the European space and, at the same time, religion regains political and social relevance, it is both hard to deny any recognition to all religions (as in France) and to rely on one religion only (as in North European countries). But does the EU have anything to do with this transformation of the church-state systems in its member states? I think so, for at least two reasons.

First, entering the EU means becoming part of a network of legal relations binding all EU member states. Contacts among these states –also at the bilateral level– increase and this has a contaminating effect on each legal system, which is bound to lose its "purity" and be "hybridized" through exchanges

with other legal systems. This explains the convergence of the member states' legal systems towards a common pattern (albeit a loose one) of church-state relations.

Second, once a state has given up a parcel of its sovereignty in favor of the EU, it is difficult to prevent any spin-offs occurring on those parcels which are still under full state control. Experience has abundantly shown that EU laws on matters which are not directly connected to religion can have an unexpected and unforeseen impact on church-state relations. In these cases, member states are led to adopt a similar course of action in response to EU input. There is a hidden but nevertheless effective "homogenizing" influence exercised by EU law on member states' laws.

Any state joining the EU should take into account that these homogenizing and hybridizing effects are part and parcel of EU membership.

Conclusions

Article 49(1) of the TEU affirms, "Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union". These values, which are common to all the member states, are "human dignity, freedom, democracy, equality, the rule of law and respect for human rights". They are part of the "*acquis communautaire*," a complex and dynamic body of law constituted by legal provisions derived from different sources which are in constant evolution. When a new state becomes member of the EU, it has to accept this living legacy and at the same time it contributes towards its transformation, as new constitutional traditions become part of the "*acquis communautaire*".

Religious liberty and relations between states and religious communities are disciplined by the EU legal system through provisions that offer clear indications but leave ample space for different applications, so that the diversity of each member state can be respected and offer an original contribution to the common building. The same conclusion applies to the "hidden" influence implicit in EU membership: it is effective but not compelling, in the sense that it does not oblige states to adopt a definite model. Rather it defines an area where a wide range of models are available.

In the field of religion and relations between state and religious communities, Turkey's diversity may be more pronounced than the diversity that characterizes other EU member states. However, nothing leads us to think that this diversity cannot be transformed into an element of enrichment for the whole communitarian structure.

Endnotes

1. No definition of "*acquis communautaire*" is provided by EU law but the Negotiating Framework governing the process of Turkey's accession to the EU (Luxembourg, 3 October 2005, text available at: http://www.deltur.cec.eu.int/_webpub/documents/negotiation/EU_TR_negotiating_framework.pdf) includes the following description: "The *acquis* is constantly evolving and includes: -the content, principles and political objectives of the Treaties on which the Union is founded; -legislation and decisions adopted pursuant to the Treaties, and the case law of the Court of Justice; -other acts, legally binding or not, adopted within the Union framework, such as inter-institutional agreements, resolutions, statements, recommendations, guidelines; -joint actions, common positions, declarations, conclusions and other acts within the framework of the common foreign and security policy; -joint actions, joint positions, conventions signed, resolutions, statements and other acts agreed within the framework of justice and home affairs; -international agreements concluded by the Communities, the Communities jointly with their Member States, the Union, and those concluded by the Member States among themselves with regard to Union activities." According to this definition, the "*acquis communautaire*" is also constituted by non-legally binding acts, but they will not be taken into consideration in this paper.

2. At the June 1993 meeting of the European Council, these principles were detailed in the following terms: "Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate' stability to take on the obligations of membership including adherence to the aims of political, economic and monetary union." European Council in Copenhagen, (21-22 June 1993). Conclusion of the Presidency (text available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf).

3. The exact meaning and scope of the reference to ECHR contained in Article 6 (2) of the TEU is still debated: see José Carlos Moitinho de Almeida, "La religion et le droit communautaire," in European Consortium for Church-State Research, *Religions in European Union Law*, Milano, Bruylant-Giuffrè-Nomos, (1998), p. 10; Philippe Manin, *L'Union européenne. Institutions, ordre juridique, contentieux*, Paris, Pedone, (2005), p. 490.

4. For a list of them see Gerhard Robbers (ed.), *Religion-Related Norms in European Union Law*, http://www.uni-trier.de/~ievr/EUreligionlaw/

5. See infra, para. 4.

6. A collection of the relevant provisions can be found in Gerhard Robbers (ed.), Religion-Related Norms. Their content is examined by Marco Ventura, *La laicità nell' Unione europea. Diritti, mercato, religione*, Torino, Giappichelli, 2001, pp. 126-33.

7. ECJ, Case 130/75, Prais v. Council [1976] E.C.R. 1589, paras. 6-19.

8. See Koen Lenaerts, Piet van Nuffel, Robert Bray, *Constitutional Law of the European Union*, London, Sweet and Maxwell, 2005, p. 737.

9. The list of the European Court decisions concerning religion and religious communities is available at http://www.uni-trier.de/~ievr/eng/eughe.htm#10-1976. For a review of the most important one see José Carlos Moitinho de Almeida, *La religion*, pp. 9-20; Louis-Léon Christians, "Droit et religion dans le Traité d'Amsterdam. Une étape decisive?," in Yves Lejeune (coord.), *Le Traité d'Amsterdam. Espoirset déceptions*, Bruxelles, Bruylant, (1998), pp. 200-202.

10. The fundamental principle was affirmed by the Court of Justice in the case Udo Steymann v. Staat secretaris van Justitie, (case 196/87 of 5 October 1988) where it is stated that "in view of the objectives of the European Economic Community, participation in a community based on religion or another form of philosophy falls within the field of application of Community law only in so far as it can be regarded as an economic activity." Although since then the EU competence has expanded to other domains, this principle is still valid.

11. See Michel Puéchavy, "La protection des droits de l'homme dans l'Union Européenne," in Adoración Castro Jover (ed.), *Iglesias, confesiones y comunidades religiosas en la Unión Europea*, Bilbao, Universidad del País Vasco, (1999), p. 57.

12. See Sophie van Bijsterveld, "Religions and Community law: separate worlds and growing understanding?," in *European Consortium for Church-State Research*, *Religions*, pp. 30-33.

13. "In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community." On EU powers in the fields of culture and education, see Koen Lenaerts, Piet van Nuffel, Robert Bray, *Constitutional Law*, pp. 305-11.

14. On this article see Sergio Carrera and Joanna Parkin, The Place of Religion in European Union Law and Policy Competing Approaches and Actors inside the European Commission, Religare Working Document No. 1, September 2010; Marco Ventura, Dynamic Law and Religion in Europe. Acknowledging Change. Choosing Change, EUI Working Paper RSCAS 2013/91 (Badia Fiesolana, European University Institute, 2013).

15. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,

16. Article 4 of the Directive affirms that "in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or beliefs constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. […] Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisations' ethos."

17. See on this point Marco Ventura, *La laicità*, pp. 92-94.

18. For a detailed analysis of the European pattern see Silvio Ferrari, "The European Pattern of Church and State Relations," *Comparative Law*, v. 20, Tokyo, Nihon University, (2003), pp. 1-24. On the same topic other perspectives are given by John T.S. Madeley and Zsolt Enyedi (eds.), *Church and State in Contemporary Europe: The Chimera of Neutrality*, London, Frank Cass, (2003); John T.S. Madeley, *A Framework for the Comparative Analysis of Church-State Relations in Europe, in West European Politics*, v. 26, n. 1, (Jan. 2003), pp. 23- 50; Marco Ventura, *La laicità*, pp. 98-116; Francesco Margiotta Broglio, "Il fenomeno religioso nel sistema giuridico dell' Unione Europea," in Francesco Margiotta Broglio, Cesare Mirabelli, Francesco Onida, *Religioni e sistemi giuridici. Introduzione al diritto ecclesiasti cocomparato*, Bologna, Mulino, (1997), pp. 114 ff.; Veit Bader, *Regimes of Governance of Religious Diversity in Europe: The Perils of Modeling* (paper given at the IMISCOE meeting of Amsterdam, (May 26-28, 2005).

19. According to the European Court of Justice, the international conventions on human rights signed by EU Member States contribute to the formation of the "acquis communautaire". See Michel Puéchavy, *La protection*, p. 63; Koen Lenaerts, Piet van Nuffel, Robert Bray, *Constitutional Law*, p. 737.

20. The legal discipline of the EU Member States is examined in Lars Friedner (ed.), *Churches and Other Religious Organisations as Legal Persons*, Leuven, Peters, (2007). About the right to obtain legal personality see the decision of the European Court of Human Rights in the case Sidiropolous and others v. Greece, July 10, (1998), para. 40.

21. These differences are stressed by Louis-Léon Christians, *Droit et religion*, pp. 198-200.

22. There are some exceptions to this rule: in some countries –for example, Denmark or Great Britain- the most important state authorities have to profess a certain religion. But these provisions, although they possess considerable symbolic value, impact an extremely limited number of people.

23. See Silvio Ferrari, "Constitution et religion," Michel Troper and Dominique Chagnollaud (ed.), *Traité international de droit constitutionnel. Suprématie de la Constitution*, v. III, Paris, Dalloz, (2013), pp. 437-478.

24. For a description of the provisions see Roland Minnerath, "La libertà religiosa tra norme costituzionali e norme concordatarie," *Quaderni di Diritto e Política Ecclesiastica*, (1999/1), pp. 87-96.

25. See, as an example, the decision 4/1993 (II.2) of the Constitutional Court of Hungary (text in Balász

Shanda, *Legislation on Church-State Relations in Hungary*, Budapest, Ministry of Cultural Heritage, (2002), in particular sect. A(c), 153-55).

26. See the sentence in the case Hasan and Chaush v. Bulgaria, October 26, (2000), n. 62 (application 30985/96), in www.cmiskp.echr.coe.int/tkp197/portal.asp?session/d=820504&skin=hudoc-en&action =request. In another decision (Supreme Holy Council of Muslim Community v. Bulgaria, appl. 39023/ 97, Judg. 16 December 2004, in www.echr.coe.int/Eng/Press/2004/Dec/ChamberjudgmentSupreme HolyCouncilftheMuslimCommunityvBulgaria16122004.htm) the Court affirmed that "the autonomous existence of religious communities is indispensable for pluralism in a democratic society".

27. On these countries see H. Legrand, "Les relations entre l'Eglise et l'Etatdans la tradition luthérienne allemande et nordique," *L'annéecanonique*, Vol. XLIII, (2001), pp. 25-46; Derek H. Davis, *Religious Liberty in Northern Europe in the Twenty-first Century*, Waco: Baylor University, (2000).

28. See infra, para. 5.

29. See Alfred Stepan, "Religion, Democracy and the 'Twin Tolerations'," *Journal of Democracy*, Vol. 11 (4), (2000), p. 42.

30. See René Remond, "La laïcité n'est plus ce qu'elle était," *Études*, (avril 1984), pp. 439-448 ; Jean-Paul Willaime, *Europe et Religions*. *Les enjeux du XXI siècle*, Paris, Fayard, (2004), pp. 279-345.

31. Since 2000, the bishops of the Lutheran Church are no longer appointed by the President of the Republic but are elected by the members of the Church: see Juha Seppo, "Church and State in Finland," *European Journal for Church and State Research*, Vol. 7, (2000), p. 214 and 8, (2001), p. 242.

32. See the contributions collected in Silvio Ferrari, W. Cole Durham Jr., Elizabeth Sewell (eds.), *Law and Religion in post-Communist Europe*, Leuven, Peters, (2003).