

KEK SEMINAR “EU CONSTITUTION AND THE CHURCHES”

THE DIALOGUE BETWEEN CHURCHES AND THE EU

- Article 51, section 3, of the Draft Constitution for Europe -

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1. Introduction

What is the role of religion in the future of Europe? And what does this imply for the position of religion in a future European Constitution?

Those are fascinating questions, not only because ‘religion’ and ‘Europe’ each are fascinating phenomena, but also because a whole new dynamic is taking place in both of these domains. To try to understand this dynamic is in itself worthwhile; to try to relate the developments in those domains to each other and to reflect on their interrelationship is of even greater importance. Especially in the light of the present historic opportunity of shaping perspectives that may be crucial for the understanding of the relationship between religion and European policy making in the near future and for the interpretation of the articles on church and religion in a future Constitution for Europe.

Throughout the centuries, notably throughout the last two centuries, we have built a reservoir of concepts, models and thoughts concerning the relationship between public authority and religion in Western Europe. That heritage is strongly intertwined with the concrete historic development we have gone through. To a large extent, historic circumstance has flavoured our abstract models. In other words, these models necessarily rely on – conscious or unconscious - presumptions of the social reality, the functioning of public administration, and that of the churches.

Because of this historic determination and the underlying presumptions we cannot simply revert to familiar national models about church and state relationships for the determination the relationship between church and the EU and the position of religion and the churches in a new European Constitution.

To start, the EU is not simply to be compared with a modern nation state. Moreover, a brief glance at European states shows a certain variety of historically established arrangements. Furthermore, both at the national level as well as at the European level the reality of public policy making is different than a casual glance at a classic constitution makes us believe.

In this light, Article 51, section 3, of the Draft Constitution for Europe, deserves special attention. It states:

“Recognising their identity and their specific contribution, the Union shall maintain an open, transparent, and regular dialogue with these churches and organisations [i.e., churches and religious associations communities in the Member States].”

To assess the importance of this Article for the future relationship between religion (or church) and the EU, we should not approach it from the classic perspective of church and state relationships, but from the perspective of the changes that manifest themselves in the way in which European law and policy is actually being developed.

I would like to discuss this Article from three perspectives:

* First, the significance of this Article in terms of changing patterns in the way input and participation in the policy process is being (re)organised.

* Second, the significance of this Article in terms of new ways of connecting law and morality in public policy making.

* Third, the threats (interpretation of) this Article is subject to and the challenges it presents to the churches.

2. The dialogue between churches and the EU

The Constitutions that we know now were established in the wake of the modern age of institutions: an age in which our classic ideals of democracy and the rule of law through institutions was realised.

While our national constitutions are still monumental tributes to this age and the achievements that it bought forth, the reality of public policy making has radically changed. Institutions are still important anchor points, but they are no longer the exclusive channels.

Indeed, we still have a legislature, a government, and a judiciary. Laws – general rules - are still enacted, rules are executed and conflicts are adjudicated on the basis of those rules. Parliamentarians continue to be elected. It is, however, a simplification to identify democratic processes with parliamentary processes.

Usually, consultation procedures take place at a massive scale before suggested policy and regulations are being launched. Support bases are often developed and secured prior to formally establishing policies. Green and White Papers are good examples of this. Within and outside of Parliament “hearings” take place and “dialogues” are being organised. NGOs and other groups also participate in policy making through offering their views on their own initiative. Involvement of “civil society” seems to sum up many of these developments.

The sharp divide between public and private policy making is even fading. Policy often is really a matter of “co-production” between public authorities, NGOs and

corporate world. Barriers, that were until recently considered unassailable, are being pulled down. A good example of this is the initiative to develop a sort of corporate social responsibility at the European level, a policy that itself is being developed through consultations. A modern Constitution must take this into account. It cannot be that a merely institutional framework is erected while relevant semi-institutional developments are completely ignored.

It is therefore a major break through that the Draft Constitution for Europe recognises these developments as significant and that it promotes these developments through Articles such as Article 46, 48 and 51.

It is an ever-greater breakthrough that these Articles are headed under the title “The Democratic Life of the Union”.

A closer look at these Articles also reveals a preference for “open participation” and not “locking up” the participants in one or the other advisory body.

It is a significant development in which churches should find and have a place too.

The context is one of participation and not (exclusively) one of traditional “church and state” relationships; the participation of churches in the European project should therefore not be seen in a backward-looking way of 19th century church and state relationships, but in a future-oriented new way of thinking about enriching the input in public decision-making processes; - just as Article 51, section 3, does.¹

3. Morality and Law

What do the churches have to offer substantively and in which way does this differ from other input? Here we stumble on the theme of morality and law.

With respect to this age-old theme, roughly two approaches exist: the approach of legal positivism and that of natural law. In the first approach, law is seen as being expressed and established through the official organs of the state according to the procedures that are prescribed for that purpose. The law thus established is also the final word.

According to the second approach, positive law is always a preliminary and time-dependent (or: temporary) expression of higher moral values which the law should reflect..

Whatever ones own theoretical preference on the issue, the reality in the recent past was determined – generally speaking – by a broad consensus and by shared values and norms. Thus, these values *de facto* could find their way into legislation. In relatively static times, they could also attain a high degree of matter of course. At present, continuously new questions arise, questions with a strong moral charge. Because they may indeed be very new, it has hardly been possible to reach consensus

¹ This does not mean that churches are seen as a (super) NGOs. Churches are a category *sui generis*.

on these questions through long practical experience. That makes substantive regulation often difficult. Added to that, developments may be so fast that legislation is often lagging behind: at the moment legislation is established, already new questions appear. And, perhaps more importantly, disagreement in society on those questions often hamper the enactment of parliamentary legislation on such issues. This is not surprising, as even in morally non-problematic areas the written Act of Parliament has lost much of its pride of place and is eroding from within.

For some, these observations lead to the conclusion that law and morality are increasingly diverging and that this is a good thing. I would like to assert the opposite: because there are no traditional ways norms do not present themselves a debate about law and morality has become all the more important. The legislature can facilitate this debate in various ways, for instance, through making use of open notions in the law and referring to notions of morality and justice – a development we even see in the Draft Constitution.

Moral insights and perspectives, offered through religious and ethical traditions about current questions are therefore important, also in the context of law and policy making. Here we touch the relevance of the “dialogue” as we have set forth above.

The involvement of churches and religions traditions and their participation are clearly of a different nature than those of single-interest groups and NGOs. Even now, when the EU has opened up to more policy domains and has left the pre-occupation with merely economic issues, it is in this stage of the development of the EU, still important to prevent imbalances of policy concerns in the policy domain.

Without claiming a monopoly for these issues, it is here that there is a need for participation in the debate that can take place through a dialogue with the churches and the EU. It is also here that it is important for the churches, not so much to present concrete solutions to answers, but to provide perspectives and directions, based on a coherent world view, view of humanity, and God. Thus, religious traditions can enrich the process of policy making.

4. Two threats and a challenge

In my view, there are two threats and a challenge. I have deliberately not chosen models of church and state relationships as a starting point for my presentation. Such an approach would place the current issue in a too limited perspective. That, however, does not mean that, seen from such perspectives, hesitations or objections could be envisaged. From a German perspective, this is probably not the case; for the French doctrine of “laïcité” this is different. The typologies of church and state models such as separation of church and state, co-operation and established-church systems are increasingly imperfect typologies to characterise church and state relationships in modern times as well as the developments that occur therein – even at the national level. Analysis of the various national systems shows at least as much significant

similarities as differences. Also, these various systems increasingly have to respond to the same time of societal and political developments and often come up with comparable results. Even in a country as France new and unexpected realities appear.

Nevertheless, those typologies are strongly entrenched in the constitutional mind-set and are the glasses through which the ideal position of churches in the public domain is envisaged. Politically, this is something to take into account. A simple approach of the issue we have been discussing from the dogma of “laïcité” hampers a positive and future-oriented approach. Therefore, the choice of perspective is so important.

Secondly, over the last few years, religion has become more visible again in our societies, in a way to which public authorities must also respond. Religion can and is perceived as divisive factor but also as cohesive factor in society. This is true for the national as well as the international level.

On the one hand, we see nationally as well as in Europe a search for religion; and from the side of the government a search for dialogue with religion. There is often a political-intuitive feel that something important is involved, even if one cannot directly find the form and the basis for this. But it is clear that a certain connection needs to be established that goes beyond formal institutional relationships. Article 51, section 3, bears witness of this.

On the other hand, we see a certain uneasiness with regard to religion, especially vis-à-vis Islam. In the relatively calm period we have gone through, a number of institutions, relationships, and freedoms have become self-understanding. Even in our stable western society, we now see that in times of change counter reactions occur. This is reflected in national debates on freedom of religion, freedom of education, freedom of opinion. That fear, not to know what one is in for with religion, also has effects at the European constitutional level. It is important to realise this, and to provide an adequate response.

The challenge

Over the last decades, Churches have been actively involved at the European scene. In studying and analysing European developments, Churches have provided a bridge to the national constituencies and have also provided input into the European policy machinery. They started on a totally informal basis, and have been able to establish a position with respect to the EU on matters that matter.

The relevance of churches and the necessity of provisions such as Article 51, section 3, is not obvious to all. Churches must therefore deliberately engage in a search for the best ways in which they can participate and must accomplish their mission in providing policy orientations.

For the churches it is of strategic importance to know how to organise oneself and to prepare for that input; and, secondly, to spot the topics and issues that are and will be

of significance. As the EU moves into new policy fields, as new challenges occur, it is the challenge of the churches to provide for new ways of engaging with European policy.

5. Conclusion

The large political debate now focuses on institutional issues such as the number and status of Commissioners, Council of Ministers' presidency, and power balances between Member States and between Member States and the EU as reflected in voting rights and veto power. This is understandable. Nevertheless not distract us from the fact that at a much more inconspicuous level, the Draft Constitution provides innovations that have long-term significance for the character of the EU and European integration; its values and its orientation, also in terms of the underlying vision of man and society. This is also true for issues of citizenship and democracy.

The adoption of Article 51, section 3, of the Draft Constitution for Europe is great achievement and is of great significance. It marks a changing and future-oriented way for democratic participation, for a new openness towards values, and for the underlying identity of the European Union.

Churches had a role to play and still have a role to play. In the way they communicate their values, the values may be the same, but the way of communication may take a new form with imagination. Churches can be again the catalysts of forward-looking change and innovation.