

# Religion in Society

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A memorandum to the RELIGARE Project, on religions, belonging, beliefs and secularism in Europe on the Project's four research themes:  
Public space / The Workplace / The Family / State Support

Submitted by the

OBSERVATORY ON  
**INTOLERANCE AND DISCRIMINATION**  
**AGAINST CHRISTIANS** IN EUROPE

[www.IntoleranceAgainstChristians.eu](http://www.IntoleranceAgainstChristians.eu)

# Initial remarks

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The RELIGARE project is a three-year European research project funded by the European Commission. Its stated purpose is to explore adequate policy responses to religious and cultural diversity as a social reality in Europe. Given that the project is funded by the European Commission, it is expected that its findings might have an important impact on the framing of future EU policies.

It is supposed that, as a scientific project, RELIGARE is based on independent research. The researchers are free to look for and to find facts and figures insight and inspiration wherever they deem appropriate. It would therefore be wrong to consider it a public consultation project, to which 'stakeholders' are invited to make submissions.

We have nevertheless become aware of such an (unsolicited?) submission having been made by the "*European Humanist Federation*" (EHF), an international non-profit organisation registered in Belgium that, according to its self-description, aims "*to promote secularism and a humanist vision of cultural, social and ethical values in Europe and to work for social and cultural progress.*" It claims to unite "*over 40 organisations in twenty countries across Europe, with contacts in many more.*" No clear information, however, is available as to the actual size of the constituency represented by these organisations.

The Observatory on Intolerance and Discrimination against Christians in Europe ([www.IntoleranceAgainstChristians.eu](http://www.IntoleranceAgainstChristians.eu)) monitors and catalogues instances in which Christians and Christianity are marginalized or discriminated against throughout Europe. Our research is used by international and European governmental organizations, politicians, journalists and civil society.

Naturally, while documenting incidents of intolerance and discrimination, the real and practical meaning of freedom of religion, conscience and expression have become very tangible to us. Upon studying the submission of the European Humanist Federation to RELIGARE, we stumbled over quite a number of claims that advocate for or constitute in themselves intolerance and discrimination against religion in general and against Christianity in particular.

While the EHF claims to be committed to the freedom of religion and belief, the apparent purpose of its submission is to undermine this freedom and to promote policies through which religious belief, under a false pretext of 'neutrality', would be evicted from the public sphere, and the freedom of citizens to act according to their conscience seriously curtailed.

While EHF is of course free to make submissions, and RELIGARE equally free to receive them, it is clear that this debate and research should be balanced. It seems thus timely and useful to submit an answer to the EHF submission, in which the truth and meaning of concepts such as "religious freedom", "freedom of conscience", "secularism", etc., is explained and appropriate policy recommendations are made.

Together, with renowned experts, we compiled this submission which has become more than an answer: it maps out the way to a Europe that is conscious of its heritage and has respect for fundamental rights, without disregarding today's plurality of religion and belief.

## **Abstract**

(Summary of main thoughts. For an in-depth analysis, please read the full text.)

### **Religious Freedom as a Human Right**

Freedom of Religion is recognized in all major human rights documents. Its most detailed definition of found in a document of the Roman Catholic Church, *Dignitatis Humanae*. It is the right to adhere, or not to adhere, to a religious belief, the right to be free from coercion in religious matters, and the right to manifest religion or belief, in worship, teaching, practice and observance.

The right to religious freedom is not only an individual right, but also applies, as a collective right, to religious communities. For them, it comprises inter alia the right to govern themselves according to their own norms, the right to public worship, the right to instruct their members in the practice of the religious life, the right to select, educate, appoint, and transfer their own ministers, the right to erect buildings for religious purposes, and to acquire and use suitable funds or properties, the right to public teaching and witness to their faith, whether by the spoken or by the written word, and the right to hold meetings and to establish educational, cultural, charitable and social organizations, under the impulse of their own religious sense.

### **Religion and the Common Good**

Religion, and most of all the Christian faith, is a *valuable asset* for society: Religious people have a healthier lifestyle and higher life expectancies; are less likely to suffer from depression, have more stable marriages, are less likely to engage in criminal activity, and are more generous in contributing to the common good. Therefore religion should be *fostered and encouraged*, not restricted or oppressed. Given that those advantages apply in particular to Christians, it follows that, in the eyes of any reasonable and well-intentioned politician, practising Christians must be the most desirable of citizens.

### **Fundamentalism**

It is regrettable to observe the term ‘fundamentalism’ being used as an instrument of demagoguery by certain ‘secularist’ movements. The term ‘fundamentalism’ has its origin within the Protestant community of the United States in the early 20th century, describing a specific package of irreducible theological beliefs (the ‘fundamentals’). Today, the term fundamentalism describes a blind and uncritical observance and a disregard of facts in favour of one’s faith or ideology.

The reproach of ‘fundamentalism’ does not hold true with regard to mainstream Christianity.. On the contrary, a characteristic trait of Christianity is the openness to adapt philosophical and theological positions to scientific findings.. Many of the most important scientific discoveries were made by Christians.

### **Secular ‘Humanism’ – or Militant Atheism?**

It should be noted that the EHF submission is full of rather unsubstantiated negative stereotypes, through which religion is identified as the single source of all social evils: religion is portrayed as “*totalitarian*” (p.3), and Christianity accused of “*dividing rather than uniting*” society (p.4) and producing “*alienation*”. Strangely enough, no mention is made of the fact that the great totalitarian ideologies of the 20<sup>th</sup> century, Communism and Fascism, were decidedly anti-Christian.

The secular 'humanism' underpinning the EHF submission appears to have the sole purpose of attacking other worldviews and lifestyles. Such an ideology, which defines itself *ex negativo* (i.e. solely through its opposition to other people's beliefs and values) is not likely to make any significant contribution to the common good. Whereas religious communities entertain a great number of hospitals, dispensaries, residences for elderly people, nursery schools, schools, universities, all of which are open to the general public, one never sees a similar commitment to the public good on the side of atheist groups.

### **Dialogue with Non-Believers**

The EHF paper argues that atheist and humanist organisations should be granted similar consideration or official standing in a regular and transparent dialogue as is foreseen for churches by Article 17 of the TFEU.

Such requests, which aim at giving disproportionate consideration and influence to a marginal social group, are manifestly ill-founded, because:

- Someone who professes to have *no* religion or belief cannot claim a right to manifest his irreligion or non-belief "*in worship, teaching, practice and observance*". What worship, practice or observance would that be?
- It is unclear who the European Humanist Federation actually represents. The actual membership of the federation seems to be negligible. It is wrong to claim that any person who does not frequent a Church every Sunday is not a Christian, or to assert that any person not holding a baptism certificate (or similar) must be considered to share the militantly anti-religious views of EHF.
- One should be mindful of the risks and dangers associated with granting any consideration or official standing to organisations that must be expected to promote an agenda that is not conducive, but radically opposed, to human rights. The historic experience with atheist totalitarian regimes provides ample proof for the radical antagonism between militant atheism and human rights. There is no reason why the ideology of irreligion should be given a second chance.

### **The Meaning of 'Secularism'**

The EHF calls secularism "*the principle that, in a plural, open society where people follow many different religious and non-religious ways of life, the communal institutions that we share (and together pay for) should provide a neutral public space where we can all meet on equal terms.*" However, what in this definition is called a 'neutral' public space would in reality be a public space from which all religious symbols, views, opinions, or other elements, must be removed. In actual fact, therefore, such a 'neutral' public space would not be neutral at all: it would accommodate the ideology of atheism and exclude all others.

The EHF claims that "*The European Court of Human Rights... considers the principle of secularism as one of the founding principles of the rule of law and the best guarantee for democracy and the respect of human rights.*" This statement is wrong. The ECtHR never made such a statement. What it did say was something different: that a country where the constitution gives particular importance to the principle of 'secularism' has the right of defending this constitutional value by prohibiting and dissolving a political party that wants to introduce a legal order based on the principle of theocracy. But this argument could equally operate in the inverse direction: If a country in its constitutional law foresees a state religion or an established church, it may prohibit as 'unconstitutional' all political activities that seek to overturn that situation.

Christianity recognises the secular character of the State, but interprets it differently. The term “secular” is derived from the Latin word *saeculum*, which designates not necessarily a determined amount of time (one century), but is also used to designate the life span of a person. ‘Secular’ is thus everything that is of *limited duration*, such as the earthly life of each human being, or that has to do with (merely) earthly or temporal matters. For Christians, there is thus no difficulty in recognising the ‘secular’ character of the State. The task of politicians and public administrations is to ensure the temporal well-being of citizens, whereas it is the task of the Church to ensure their eternal salvation. Both tasks should be separate from each other. But it does not mean that the State should be irreligious or anti-religious, or that the public sphere should be cleansed from all traces of religiosity, nor can it justify the exclusion of religious views and opinions from public debate.

### **Concept of “Neutrality” or “Secularism” is not Binding**

There is thus one fundamental assumption in this debate, which is found not only in the EHF submission to the RELIGARE project, but already in the project’s own terms of reference, and which needs to be challenged: *it is the notion that there is an obligation for States to be “neutral” with regard to religious or secular world-views.*

There are many States in Europe, and even within the EU, that have not signed up to “neutrality” or “secularism” which becomes evident by looking at their constitutions. References to God are made and / or a special status is granted to religion in the constitutions of Germany, Switzerland, Ireland, Greece, Italy, Liechtenstein, Malta, Monaco, Denmark, England, Finland, Iceland, Norway, Andorra, Poland, and Spain.

The UDHR, the ECHR, or the EUFRC do not demand the equal treatment of all religions and worldviews. *Freedom of religion and conscience is not equal treatment of all religions.* Instead, it demands, as a minimum, tolerance and accommodation for all religious beliefs unless they are found to stand at variance with fundamental requirements of justice.

### **Public Space**

EHF argues that the presence of **religious symbols** in the public space violates a principle of ‘neutrality’ or ‘secularism’. This point of view is manifestly ill-founded, given that such principles are inexistent in EU and international law. The mere existence or presence of religious symbols or religious language can, moreover, never be considered a violation of a person’s freedom of religion or conscience.

Restrictions with regard to **religious clothing** severely restrict the personal liberty of citizens, and must thus be duly justified. In a free society, everybody should be free to wear what he or she wants except for reasons of safety, decency, or where the wearing of a uniform is reasonably required.

With regard to **education of children**, the State’s role is ancillary to that of the parents. The State has therefore no right to indoctrinate children with the ideologies that may, at a given time, prevail among the political elites. It follows that the role of publicly funded schools is to support the parents in giving to their children the education they want to give them. If parents want to educate their children in the Christian faith, the state – even if it defines itself as “secular” or “neutral” - must support them in this effort. This could be done by adequately supporting confessional schools and / or by establishing the possibility for religion lessons in state-owned schools, if there is sufficient demand for it.

### **The Workplace**

Current EU legislation to prohibit discrimination in employment recognises the need for exceptions for *organisations with a specific ethos*. Similar respect ought to be paid to the ethos based on religion or belief of **individual employers**. To reduce limitations on contractual freedom, it should be reminded that the principle of ‘neutrality’, and hence the obligation to provide equal treatment irrespective of religion, applies to the State more strictly than it does to private employers.

With regard to **conscientious objection**, it should be noted that EHF’s call for ‘*regulation*’ is in fact a call for restriction of this fundamental right.

EHF’s suggests that “*human rights, including rights to conscientious objection, apply only to individuals and not to institutions*” and that, for this reason, Christian hospitals, or even Christian Churches, are not entitled to them. It is, however, nowhere said in international law that human rights can only be exercised individually. On the contrary, with regard to certain human rights, their collective nature is explicitly recognised or implied in the nature of the right (e.g. the right to free assembly, or the right to maintain a given cultural identity, or religious freedom, which is to be exercised “*either alone or in community with others*”).

Contrary to EHF’s claim, ‘conscientious objection’ cannot be restricted to ‘religious liberty’ issues: Moral objections are generally based on solid and objective reasons, and the objector may even be an atheist.

## Family

It is perfectly legitimate and reasonable to understand “marriage” to be a life-long alliance of one man and one woman with the purpose of rearing children, or to define “family” on the basis of marriage and descent. This concept of family has existed long before the advent of Christianity, and it is not the tenet of one particular religion.

EHF, by contrast, seeks to promote a novel concept of “marriage” and “family” that discards the natural complementarity of the two sexes as irrelevant. Rather than on any natural order, this novel concept is based on arbitrary “choices”. If consequently followed, it would turn into a “family” any group of two or more persons that chooses to call itself by that name.

However, words become meaningless if their meaning is expanded beyond reasonable limits. The all-inclusive novel concept of “family” would only result in dissolving the concept. As a consequence, it would become impossible to devise policies that provide targeted support to those families that correspond to the natural order of things.

EHF argues that “*there is no evidence that [homosexual] marriages cannot provide a successful environment for bringing up children*”. But, considering that the protection of a children does not allow experiments in vivo, and with regard to the fact that under the natural order the begetting of children requires both a male and a female parent, the burden of proof is on those who argue in favour of bringing a child up same-sex marriages, not on those who are sceptical.

## State Support

In most European countries religious organisations are for the greatest part financed by the voluntary contributions of their believers. However, through these contributions, religious believers provide not only a direct support to their own religious community, but also an indirect support to the common good.

If and where **financial support** is given **by governments**, it is justified by the following reasons:

- the public interest to maintain and cultivate the country’s cultural heritage and identity;

- the support for specific initiatives that contribute to common good (such as schools, hospitals, etc.). Such support usually only complements the funding provided by the faith-based group itself, and would in the same way be provided to any organisation making a similar contribution.
- a third reason is the compensation, usually contractually agreed upon, for property that was – often under rather questionable pretexts – seized from the religious communities in question in the course of history.

It is therefore obvious that calls for the reduction of current state funding of churches and religious bodies have hardly any justification. What certainly has no foundation at all is the suggestion that other religious communities that have only be recently established, or indeed ‘humanist’ groups such as the EHF, should be entitled to the same funding.

## Full Text of Submission

### Religious Freedom as a Human Right

In the given context, we should remember that Freedom of Religion is a human right that has been recognised as such in the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (ECHR), and the EU Fundamental Rights Charter (EUFRC):

**Art 18 UDHR:** *“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

*2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”*

**Art 18 ICCPR:** *“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

*2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*

*3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

*4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”*

**Art 9 ECHR:** *“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, and to manifest his religion or belief, in worship, teaching, practice and observance.”*

**Art 10 EUFRC:** *“1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.*

*2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.”*



However, the exact meaning of this right, its scope and its limits, are not defined in these provisions with adequate precision. There is some case-law from the European Court of Human Rights (ECtHR) that provides further guidance:

**Buscarini and Others v. San Marino** (application No. 24645/94): it is a violation of the freedom of conscience if a State requires elected officials to take an oath on the gospel prior to entering into office.

**Kokkinakis v. Greece** (application No. 14307/88): a law prohibiting ‘proselytism’ (i.e. the attempt by a member of a religious group to persuade others to join that group) stands in contradiction to the freedom of conscience and religion.

**Leyla Şahin v. Turkey** (application no. 44774/98): a law that bans wearing the Islamic headscarf at universities and other educational and state institutions does not violate the freedom of conscience and religion.

**Folgerø vs. Norway** (application no. 15472/02): compulsory teaching on “Christianity, Religion and Philosophy”, if undertaken with the apparent intention to foster religious belief, can violate parents’ rights to educate their children according to their own beliefs (Art 2 of Protocol Nr 1).

**Lautsi v. Italy** (application no. 30814/06): The compulsory display of a crucifix in the class rooms of public schools does not violate the rights of non-believers to religious freedom (Art 9 ECHR) or to educate their children according to their own beliefs (Art 2 of Protocol Nr 1), despite the State’s self-professed neutrality.

It can be summarised from these judgments that, given the wide array of diverse legislative approaches in different CoE Member States, States dispose of a wide margin of appreciation: neither the ban of headscarves from school premises nor the compulsory display of the crucifix in classrooms violate the freedom of conscience and religion. However, this freedom is violated when people are forced to actively profess a faith or participate in its worship, or when children are ‘indoctrinated’ against the will of their parents. The latter supposedly also applies with regard to atheist indoctrination.

## **The Catholic Church’s Doctrine on Religious Freedom**

The Roman Catholic Church, *alone among all religious communities*, has developed a doctrine on the issue of religious freedom. That doctrine is contained in the Constitution “*Dignitatis Humanae*”, a text that was adopted at the end of the Second Vatican Council. To this day, given that neither any other Christian Church, nor any non-Christian religious community, nor any secular institution has ever attempted to develop any similar doctrine, this document *remains a unique source of inspiration* for all those wishing to build a pluralistic society on the basis of a “right to religious freedom” rather than on a principle of “tolerance”.

We therefore attach this document as an annex to this submission.

From the above-mentioned sources of international law as well as from the Catholic Church’s teaching that freedom of religion and conscience comprises inter alia the following:

- The right to **adhere, or not to adhere, to a religious belief**

- The right to **be free from coercion** in religious matters: no one is to be forced to act in a manner contrary to his own beliefs
- The right to **manifest religion or belief, in worship, teaching, practice and observance.**

The right to religious freedom is not only an individual right, but also applies, as a collective right, **to religious communities.** For them, it comprises inter alia:

- The right to **govern themselves according to their own norms**
- The right to honour the Supreme Being in **public worship**
- The right to **instruct their members in the practice of the religious life,**
- The right to **select, educate, appoint, and transfer their own ministers**
- The right to **communicate with religious authorities and communities abroad,**
- The right to **erect buildings for religious purposes,** and to acquire and use suitable funds or properties
- The right to **public teaching and witness to their faith,** whether by the spoken or by the written word.
- The right to hold meetings and **to establish educational, cultural, charitable and social organizations,** under the impulse of their own religious sense.

It is generally recognised that there is one important limitation to that right: it is that just public order must be observed. For this reason, the obligation for the State to respect freedom of religion does not mean that homicide, violence, theft, fraud, extortion, slander, sexual abuse, polygamy, adultery, or similar, must be tolerated if they occur in a ‘religious’ context. Nor is the State obliged to tolerate the propagation of any ‘religious’ or ‘secular’ doctrines, however sincere the belief of their adherents may be, if they promote or justify such behaviour. In that sense, the State does have the right to exert certain supervision over the beliefs and attitudes that circulate in society, and to intervene where the common good so requires.

As far as the Catholic Church is concerned, it is clear that, like all other religious communities, it believes that the value of its doctrine consists in *its inherent truth.* The Church therefore considers itself to be under the *obligation* of offering this truth to all men. To search for truth is a moral obligation for everybody, and at the same time it is a fundamental human right. Inversely, the Catholic Church believes it holds the right to announce that truth anywhere and at any time.

## Religion and the Common Good

As pointed out, the Catholic Church rejects the idea that anyone should be forced to adhere to any religious belief, including the Catholic faith. But at the same time it believes that no one has the right to prevent the Catholic faith from being adhered, manifested, propagated, and practised. For even those who, for whatever reasons, do not share the Christian faith, should recognise the contribution it makes for the common good. This concerns both the faithful themselves and society as a whole.

First of all, it should be recognised that the Christian faith encourages social, and discourages anti-social behaviour: it requires the faithful to be loyal citizens, faithful spouses, loving parents or children, it forbids theft, violence, debauchery, and untruthfulness. There is thus nothing inherent in its doctrine or practise that could reasonably justify hostility or intolerance against Christianity, or any attempt to remove it from the public sphere.

Besides that, the positive impact of religion, and in particular the Christian faith, has been amply demonstrated by the social sciences:

- Religious people have a healthier lifestyle and higher life expectancies
- Religious people are happier than non-believers, and less likely to suffer from depression
- Religious people have more stable marriages
- Religious people are less likely to engage in criminal activity
- Religious people are more generous in contributing to the common good (e.g. through social work, or through donating funds)

From all this it follows that religion, and most of all the Christian faith, is a *valuable asset* for society; therefore it should be *fostered and encouraged*, not restricted or oppressed. Indeed, in the eyes of any reasonable and well-intentioned politician, Christians must be the most desirable of citizens.

As a cautionary remark, it should be pointed out that what we are speaking about is *genuine* religion. Nobody should be encouraged to adhere to any religion solely for the reasons mentioned above. The one and only reason to adhere to any world view should be its inherent *truth*, not its social usefulness. For that reason, we strongly reject the idea of a ‘civil religion’ suggested by ‘philosophers’ such as Voltaire or J. J. Rousseau: it would only be an instrument for politicians to control and manipulate the consciences of citizens. In stark contrast to this, the effect of *genuine* religion is liberating and anti-totalitarian: whoever believes in God is less likely to succumb to the temptation of political idolatry.

## **The Risk of Fundamentalism**

Critics of Religion, including critics of the Catholic faith, often warn against the danger of ‘fundamentalism’. Without doubt, it is true that many philosophical convictions and worldviews carry a risk of exaggeration and narrow-mindedness that may result in political extremism. But that is equally true of ‘secularist’ movements – perhaps even more than for religious ones. It is therefore regrettable to observe how the term ‘fundamentalism’ is being turned into an instrument of demagoguery by certain ‘secularist’ movements, which themselves are much more ‘extremist’ than any of the religious groups they are targeting with such critique, seeking to discredit the very idea that religious believers should have the right to manifest their belief through practical observance. In that sense, they term as ‘fundamentalist’ any genuine religious belief (i.e., any belief that has practical consequences), and seek to subvert the right of all citizens to act according to their conscience. But there are two important points that seem to escape their attention: firstly, that decisions of conscience (such as “conscientious objection” against military service, abortion, euthanasia, etc.) usually is based on rational and well-founded reasoning rather than on ‘religious belief’ and, secondly, that – even if the conscientious objection were religiously based, it would nonetheless remain that the “*right to manifest one’s religion or belief in teaching, practice, worship and observance*” is explicitly recognised as a human right through the UDHR, the ECHR and the EUCFR.

This is not to belittle the risks of (religious *and* secularist) fundamentalism. But there is a need for all participants in this debate to understand what ‘fundamentalism’ is, and what it is not.

The term ‘fundamentalism’ has its origin within the Protestant community of the United States in the early 20th century, where, against the background of theological controversy around

'modernist' tendencies that sought to reconcile religion with a 'scientific' worldview. It was originally coined by the opponents of those tendencies to describe a specific package of irreducible theological beliefs (the 'fundamentals') that they considered to be the criteria to determine who belonged, and who stood outside, the Christian community.

Today, the term fundamentalism describes a blind and uncritical observance and a disregard of facts in favour of one's faith or ideology.

This reproach does not hold true with regard to mainstream Christianity. The basis of Christianity, especially as laid out by the magisterium of the Catholic Church, is generally not an interpretation of Scripture in which every word must be taken literally, but a living tradition which integrates Divine revelation, classical philosophy and modern science.

The openness to adapt philosophical and theological positions to scientific findings is a characteristic trait of Christianity: This explains why the Catholic Church has always promoted and sponsored scientific research. Indeed, some of the most important scientific discoveries were made by practising Catholics, among them many priests (such as Nikolaus Kopernikus and Gregor Mendel). However, scientific research should not be carried out in a moral vacuum: the purposes and methods of research have moral implications one needs to be aware of. At the same time, moral judgements should be based on scientific facts.

One example for this is the Church's doctrine on abortion. Paradoxically, some pro-abortion advocates today call on the Church to revert to a position some theologians held during the Middle Ages, according to which a foetus was not to be considered a human being until the second month of pregnancy. This corresponded to an opinion held by many scientists of the time who drew a parallel between the conjugal act and the sowing of a seed into fertile soil. This view had to be revised when it was discovered that women produce ovular cells, and that a new human being with a unique genetic identity comes into being at the moment of conception, when an ovular cell and a sperm merge into one. Contrary to a stereotype often found in the mass media, the Catholic Church forms its moral judgments on the basis of the newest scientific research – which, by contrast, is often ignored by 'progressive' and 'enlightened' secularists whenever it comes into conflict with their own pre-ordained opinions.

The exercise of the apostolic magisterium is indeed what protects the faithful from subjectivism, fideism or fundamentalism. Other faith systems, including irreligious ones, are far less secure from such temptations. This is easily seen in the case of Islam (which is based on a holy scripture that must be understood in its literal sense), but it is also true for the secular ideologies of the last century, which were built on seemingly 'scientific' pretensions (such as 'dialectic materialism', or the concept of a biologically superior 'Herrenrasse'), which nobody was allowed to call into question. The uncritical - and hence un-scientific - belief in 'evolution' (as opposed to a critical stance that would view any scientific theory as merely preliminary, and which would be mindful of the natural limits of empirical science) can, in that sense, also be described as a 'secular fundamentalism'.

## **Secular 'Humanism' – or Militant Atheism?**

This leads us to some reflections on the nature of the ideology of 'Humanism' which a small yet vociferous group of proponents wants to be understood as an alternative not only to the

Christian faith, but to religion at large, and which, at the same time, they pretend should be treated on a par with the religious faiths it opposes.

In order to do justice to this ideology, we choose as a point of departure the description given to it by its own proponents. According to the European Humanist Federation (EHF), from whose website the following quotation is taken, Humanism is:

*"a democratic and ethical life stance, which affirms that human beings have the right and responsibility to give meaning and shape to their own lives. It stands for the building of a more humane society through an ethic based on human and other natural values in the spirit of reason and free inquiry through human capabilities. It is not theistic, and it does not accept supernatural views of reality."*

This definition raises some serious questions. The first and most pressing of them is: what is meant by *"the right and responsibility to give meaning and shape to one's own life"*? The concept of responsibility requires that there is someone to be responded to. If there is (as the 'non-theistic' part of the definition suggests) no God, *to whom* are 'Humanists' responsible? Each one to himself? Or to their fellow 'Humanists'? Or to society as a whole? Or has 'responsibility' been included in this definition because it sounds good?

A second question is: *what* are Humanists responsible for? According to the above definition, the 'responsibility' relates to *"giving meaning and shape to one's own life"*. But what exactly does that mean? Could it be just any 'meaning' or 'shape', as long as it is distinguishable from the meaning and shape of other people's lives? Certainly the lives of Hitler or Stalin had, in that sense, more 'meaning' and 'shape' than that of most other people: both have left their mark in history, have made an enormous impact on the lives of entire nations (if not of humanity as a whole), and are likely to be remembered (albeit not with gratitude) for many centuries to come. Supposedly, that is not the kind of 'shape' or 'meaning' most 'Humanists' would wish to give to their lives; but if it isn't, then there must be some criteria to determine what kind of 'shape' or 'meaning' they want to achieve. In the absence of such criteria, it appears that each one sets the goal for himself, i.e. that 'shape' and 'meaning' is *purely subjective*. If there are no objective criteria to distinguish good and evil (both of which are metaphysical categories), then the choices made by Hitler and Stalin are at least not excluded.

A third question is: if 'Humanism' stands for *"the building of a more humane society through an ethic based on human and other natural values"*, what would such a 'more humane' society look like? On which values (especially: which *other-than-human* values?) is this novel ethic to be based? The concept appears to be blurred, and its meaning imprecise. What remains is mere subjectivism: the rejection of the idea of an objective moral order.

The only point in the definition that offers some clarity is where it says: *"it is not theistic"*. In other words, the only firm conviction that a 'Humanist' necessarily must have is that there is no God. But this would turn so-called 'Humanism' into an ideology that is defined *ex negativo*: it does not explain what *is* the case, but only affirms what *is not*. It makes no proposition of its own, but only attacks the beliefs and moral convictions of others. It comprises no concept of 'virtues' that its own followers would be encouraged to acquire; instead, it seeks to discourage others from acquiring and practising the virtues they might find in their respective worldviews.

We must distinguish here between *atheism*, which is the positive conviction that there is no God and that all religious beliefs must therefore be fought against, and *agnosticism*, which can be

described as a position according to which the truth of claims about the existence or non-existence of any God, is unknown or unknowable. While atheists fight against religion<sup>1</sup>, it would be perfectly reasonable for agnostics to follow a precautionary principle and offer prayers and sacrifice to any deity they hear of – just to make sure that, if any such deity exists, it will not feel offended. However, few self-described agnostics follow such a principle, just as few self-described atheists actually militate against religion. This is comparable to many Muslims or Christians, who describe themselves as believers but do not meticulously follow all the precepts of their respective religions. The strength of a person’s worldviews or convictions, be they religious or irreligious, can considerably vary over time. It would therefore be wrong to claim that any person who does not frequent a Church every Sunday is not a Christian, or to assert that any person not holding a baptism certificate (or similar) must be considered to share the militantly anti-religious views of EHF.

Having said this, it should nevertheless be noted that the ideology underpinning the EHF submission (which is better known and more appropriately described as ‘militant atheism’ rather than ‘humanism’) is one that by its very nature must be intolerant. While religions like Christianity, Islam, Hinduism, etc., which make propositions of their own, leave ample room for their followers to encounter with tolerance all those who do not happen to share their beliefs, such attitude is not possible for atheists, whose sole mission is to fight *against* the religion of others. This negative, hostile, and intolerant attitude clearly becomes visible when one looks at the political agenda of the EHF paper, which is always directed *against* the rights of others: *against* crucifixes in class rooms, *against* the freedom of others to act according to their conscience, *against* the freedom of others to manifest their religion or express their views in the public space, *against* the protection of the right to life of the unborn, *against* the financial support by the State of faith-based schools or hospitals, and so forth, with more in that vein. It should be noted that the EHF submission is full of rather unsubstantiated<sup>2</sup> negative stereotypes, through which religion is identified as the single source of all social evils: religion is portrayed as “totalitarian” (p.3), and Christianity accused of “dividing rather than uniting” society (p.4) and producing “alienation”. Strangely enough, no mention is made of the fact that the great totalitarian ideologies of the 20<sup>th</sup> century, Communism and Fascism, were decidedly anti-Christian. Instead of looking at the questionable historic credentials of their own ideology, the authors, whose militantly anti-religious motivation there can be no doubt, preposterously claim that “secularism is the best possible guarantor of freedom of religion or belief for everyone” (p.8). Indeed it is – if ‘freedom of religion or belief’ is understood as meaning that society should be free of religion or belief. But this negative view stands in clear contradiction to the idea underpinning Art 18 UDHR and other relevant provisions, according to which religion and belief are positive values, so that ‘freedom of religion’ means that man should be free *for* religion.

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<sup>1</sup> It is certainly more appropriate for convinced atheists to fight against religion than to view it, as “philosophers” like Voltaire and Rousseau have suggested, as a legitimate means of manipulating the consciences of less “enlightened” people.

<sup>2</sup> For example, the fact that no explicit mention of Christianity has been inserted into the Preamble of the EU Treaty is quoted as indicating that the unique role of Christianity in the shaping of the European cultural identity is nowadays “disputed”. But in actual fact, it was the veto of one single Member State with a uniquely secular constitutional tradition that frustrated those efforts, while on the factual side the role of Christianity was completely *undisputed*.

An ideology that has the one and only purpose of attacking other worldviews and lifestyles is incapable of making any significant contribution to the common good. Whereas religious communities entertain a great number of hospitals, dispensaries, residences for elderly people, nursery schools, schools, universities, all of which are open to the general public, one never sees a similar commitment to the public good on the side of atheist groups (such as those united in the EHF). The great quantity of Christian schools and hospitals has its origin in the commitment of Christians to contribute to the good of society. There are many religious orders whose members vow obedience, poverty and chastity in order to devote their lives to the service of the poor and the sick. It is only natural that the State should recognise the value of such commitment and thus support it. Even in countries where Christians are a small minority, Christian schools and hospitals are often considered to be the best ones, and the non-Christian majority is grateful for their existence.

Do atheist movements take similar initiatives to serve the public good? Are there any hospitals where doctors and nurses serve the poor and sick out of a specifically 'atheist' motivation? No. Organised atheism makes absolutely no such contribution to the common good.

Instead, militant atheist movements view the support granted by governments to Christian hospitals and schools as undue 'privileges' that must be abolished (as if 'humanist' institutions like the Université Libre de Bruxelles did not, if and where they qualify for it, receive exactly the same support). Indeed, while they themselves make no similar efforts to serve the public, they make all efforts to prevent others from doing so. According to their view, the provision of health and education services should be monopolized by the State, and the State should be monopolized by themselves (i.e. governed by their own – militantly atheistic – principles). While the State still would be financed by all taxpayers, it would be constrained to operate under an atheist logic. The apparent purpose of this strategy is to evict religion from the public sphere. But the price that would have to be paid for it would be a high one. Not only would there be a loss of pluralism, but society would also lose to a wide array of services that currently depend on the idealism and self-sacrifice of many religiously motivated persons or corporations. Such idealism is not easily replaced through new state-run institutions. Rather than a 'privilege for religious believers', the State support for faith-based initiatives in the area of health and education is a 'privilege' for all persons benefiting from those initiatives (including many non-believers who prefer sending their children to Christian schools, or who want to be treated in Christian hospitals).

## Dialogue with Non-Believers

Given the positive and constructive contribution most religions, but especially Christianity, make to the common good, it seems natural that the EU should entertain, as is foreseen by Article 17 of the TFEU, a regular and transparent dialogue with them. At the same time, given the negative and destructive character of the atheist ideology, one has reason to ask why it should be given any similar consideration or official standing.

In this context, several considerations should be made.

The first is that religious freedom is a right for everyone, including irreligious people. For them, it certainly comprises a 'negative' form of freedom: they must *be free from coercion* in religious matters, and thus must not be forced to adhere to any religious community, or to take part in any act of prayer or worship. On the other hand, it must be clear that this is a purely 'negative'

freedom, which does *not* include a right to prevent others from manifesting *their* religion or belief, in worship, teaching, practice and observance. Besides that, it is at least questionable whether someone who professes to have *no* religion or belief can claim a right to manifest his irreligion or non-belief “*in worship, teaching, practice and observance*”. What worship, practice or observance would that be?

Secondly, it is clear that non-believers should not be excluded from dialogue. The Catholic Church itself seeks to entertain a friendly dialogue with all men of good will, including those who happen to adhere to no religion; for this purpose, a Pontifical Council for the Dialogue with Non-Christians was set up as early as 1964. The newest initiative in this regard is the so-called “*Courtyard of the Gentiles*” initiative to promote dialogue between believers and non-believers, which was launched by the Pontifical Council for Culture in March 2011. From the very beginning, the Church’s mission was to go to non-believers and make the gospel known to them: dialogue *par excellence*.

However, regarding the institutional recognition by the EU of “*philosophical and non-confessional organisations*” under Article 17, paragraph 2, of the TFEU, it should be recalled that it is dependent on the recognition of such organisations under the domestic law of Member States. Organisations that are not recognised as “*philosophical and non-confessional organisations*” by at least one Member State (and which do not, in that Member State, enjoy a status similar to that of a church or religious community) are not covered by that provision. (Certainly, most trade unions, professional associations, or bridge clubs will qualify as being ‘non-confessional’ – but this alone will not qualify them as partners for the kind of dialogue foreseen by Article 17, paragraph 3, of the TFEU...).

Thirdly, even admitting that the one or other “*philosophical organisation*” enjoys such formal status in a Member State, one has good reason to ask *whom* they can claim to represent. Whereas regular attendance to organised worship in churches, mosques, and synagogues, and the voluntary donation of financial support to churches and other religious organisations clearly indicate that these churches and organisations represent hundreds of millions of (more or less) committed religious believers, the same cannot be said of any of those organisations that claim to represent the cause of non-believers. While such organisations point to opinion polls according to which religious belief is ‘declining’ and, correspondingly, atheism is ‘increasing’, they generally fail to demonstrate that they themselves have any valid claim to represent the views and interests of that allegedly increasing number of non-believers. Neither does the regular turn out at the meetings or events organised by those organisations support the conclusion that those organisations are representative of more than (at best) some ten or twenty thousand committed militants Europe-wide, nor is there any other evidence that would give credibility to such claims. The question is then: why should the representatives of such a small constituency be treated on par with the representatives of the religious communities that for twenty centuries have shaped Europe’s cultural identity? Would that not give disproportionate and unjustified weight to those rather marginal pressure groups, and hence discriminate against religious believers?

Finally, one should be mindful of the risks and dangers associated with granting any consideration or official standing to organisations that must be expected to promote an agenda that is not conducive, but radically opposed, to human rights. Past experiences with totalitarian regimes (such as the Soviet Union, China, Albania, North Korea, Cambodia, Mexico) should serve as a warning against all those seeking to promote atheism as a foundational principle of society.



## The Meaning of 'Secularism'

However, hardly any of the countries that are more or less openly persecuted, or discriminated against, religious believers went as far as Albania, which in 1967 declared herself to be an 'atheist State'. In most other cases, religious persecution took place not in the name of openly professed atheism, but of 'secularism'. This should make us wary of those who today use a similar vocabulary in order to promote what is, perhaps, a similar agenda.

Once more, in order to do justice to the proponents of this agenda, we choose as a point of departure their own definition of 'secularism', which is again taken from the website of the European Humanist Federation (EHF):

*"Secularism is the principle that, in a plural, open society where people follow many different religious and non-religious ways of life, the communal institutions that we share (and together pay for) should provide a neutral public space where we can all meet on equal terms."*

What in this definition is called a 'neutral' public space would in reality be a public space from which all religious symbols, views, opinions, or other elements, must be removed. In actual fact, therefore, such a 'neutral' public space would not be neutral at all: it would accommodate the ideology of atheism and exclude all others. It is also difficult to understand how pupils can learn tolerance and pluralism in a school where they are never confronted with any elements of religious and cultural diversity, or where such elements must immediately be removed if, in a class of thirty, one single pupil so requires. Indeed, it must be feared that what is inculcated through such arrangements is the direct opposite of 'tolerance' or 'cultural awareness'. It is equally difficult to understand why diverse people must get rid of their diversity before they "can all meet on equal terms". Rather than promoting 'equality', such an approach would privilege non-believers.

Finally, one fails to understand why this strict elimination of any demonstration of allegiance should only apply to religion, and not to other issues where there may be a similar, or even wider, divergence of views.

The EHF then makes the following assertion:

*"The European Court of Human Rights has stated (Refah Partisi et al. v. Turkey) that it considers the principle of secularism as one of the founding principles of the rule of law and the best guarantee for democracy and the respect of human rights."*

This assertion is wrong. The ECtHR never made such a statement. What it did say was something different: that Turkey, in view of the importance the principle of 'secularism' enjoys within the context of the Turkish constitution, had the right of defending this constitutional value by prohibiting and dissolving a political party that wants to introduce the Islamic sharia as the new fundament of the legal order. But that argument is ambivalent: it could equally operate in the inverse direction. If a country in its constitutional law foresees a state religion or an established church, it may prohibit as 'unconstitutional' all political activities that seek to overturn that situation. There is thus no general statement by the ECtHR in favour of 'secularism', let alone an endorsement of any part of EHF's interpretation of that concept.

Further on, EHF ventures to define a 'secularist' ethic, which it believes should be made compulsory for all society:

*“Secularism requires that civil society find a common ethic, acceptable to all its members. It is the opposite of theocracy and rejects not just the establishment of a specific sect or denomination as the official religion of the state but also legal or other official discrimination in favour of religion at large or any particular religious group.”*

This statement reveals a strange understanding of ‘ethic’. If society must “*find a common ethic*” that is “*acceptable to all its members*”, then ethic becomes the result of a negotiation in which each single member of society can destroy that common ethic simply by opting out, i.e. by not accepting it. This would immediately result in an ethical ‘race to the bottom’: for nearly every moral precept, there will be someone wishing to ‘opt out’ from it. In the end, nothing is left. The ‘common ethic’ would result in no ethic at all.

It goes without saying that such a concept of ethics must be nonsensical from nearly every point of view, including that of most atheists. Indeed, as we will come to see, the argument that ethical rules must be ‘acceptable to all’ is invoked by ‘humanists’ whenever they themselves want to ‘opt out’ (e.g. in the case of abortion, where they argue that the insight that the foetus is a human being is ‘not shared by all’), whereas they do not accept any ‘opting out’ when it comes to the rules and principles they themselves want to impose on society. A telling example is the relentless campaigning of EHF against the exercise of conscientious objection by medical professionals who refuse to perform abortions... This concept of a ‘common ethic’ built on general ‘consensus’ is thus jeopardised by the duplicity and hypocrisy of its own proponents. But certainly, it provides a good explanation for the gradual dissolution of public morality that we have witnessed in past decades. People who did not accept the idea that sexual relations should have to do with responsibility have found the requirement of conjugal faith ‘unacceptable’, and have ‘opted out’. People who wanted to legalise abortion or euthanasia have ‘opted out’ from respecting the right to life. People wishing to promote homosexuality have ‘opted out’ from the traditional concept of marriage and family. But where such opting out is admitted, there is no reason why similar ‘opting out’ should not be admissible with regard to paying taxes, respecting speed limits, or fulfilling contracts.

It should be clear then that the ‘common ethic’ which society needs for its good functioning cannot be the result of negotiation, or of balancing out the divergent interests of different ‘stakeholders’. Instead, it must be based on principles that are accessible to the human reason, and which even persons with opposing interests can therefore be requested to respect. This kind of reason-based ethics is called ‘Natural Law’. The fact that ‘humanists’ – in stark contrast to their rhetoric - seek to establish rules and principles from which no one should be allowed to ‘opt out’ clearly indicates that they themselves recognise that there must be some kind of *objective* ethical rules. However, when they are called to explain why the precepts of their novel ethics should be more reasonable or objective than classical moral thinking, their reasoning never stands any scrutiny: it always boils down to the subjective interests of a small but vocal elite that are imposed on the rest of society.

In order to counter such an aberrant approach of ‘secularism’ that, as we have seen, would result in an ethical bazaar trade between different stakeholders rather than in any reasonable discourse, we would recall the true meaning of the word ‘secular’. This word is derived from the Latin word *saeculum*, which designates not necessarily a determined amount of time (one century), but is also used to designate the life span of a person. ‘Secular’ is thus everything that is of *limited duration*, such as the earthly life of each human being, or that has to do with (merely)

earthly or temporal matters. The opposite adjective would be 'eternal' or 'transcendental', which refers to whatever transcends the limited earthly existence of man.

In that sense, it is clear that state and politics are 'secular' matters: they have to do with, and are subordinate to, the earthly well-being of men. However, they must be mindful that man has (or, at least, that most men believe to have) a 'transcendental' vocation, which they must be allowed to follow if they are to live a happy and dedicated life.

Most EU Member States explicitly recognise this spiritual dimension of the human existence, and so does the European Union. While the EU vests this recognition in rather vague terms (speaking of a 'religious inheritance' and, at another place, of a 'spiritual and moral heritage'), most of its Member States, with a view of their specific cultural traditions and values, use more explicit language that specifically points to their Christian heritage.

For Christians, there is thus no difficulty in recognising the 'secular' character of the State. The task of politicians and public administrations is to ensure the temporal well-being of citizens, whereas it is the task of the Church to ensure their eternal salvation. Both tasks should be separate from each other. The advice, which was given by Jesus Christ himself, to "*give to Caesar what is Caesar's, and to God what is God's*" mandates thus a separation between State and Church. But it does not mean that the State should be irreligious or anti-religious, or that the public sphere should be cleansed from all traces of religiosity, nor can it justify the exclusion of religious views and opinions from public debate.

### **Is There an Obligation for States to be "Neutral" or "Secular"?**

There is thus one fundamental assumption in this debate, which is found not only in the EHF submission to the RELIGARE project, but already in the project's own terms of reference, and which needs to be challenged: *it is the notion that there is an obligation for States to be "neutral" with regard to religious or secular world-views.*

In actual fact, there is no such obligation in international law, nor is there any obligation for a State to be 'secular'.

Where the constitutional law of a State establishes 'neutrality' or 'secularism' as fundamental principles, these principles must be seen as deriving from the constitutional law of those countries, not as resulting from human rights. It was therefore one of the fundamental flaws of the ECtHR's original Lautsi decision that it was based on the assumption of an obligation for States to be "secular" or "neutral", while in actual fact the ECHR does not at all contain any such obligation. With this decision, the Court has tried to impose on the contracting States *a new obligation* that in fact they never had assumed. (The Grand Chamber, in overturning this flawed decision, has recognised that it was for the State Party to decide whether or not it wanted to embrace such principles.)

There are many States in Europe, and even within the EU, that have not signed up to "neutrality" or "secularism":

- The Preamble of the German Constitution invokes the "*responsibility before God and man*" of the German nation.
- The Preamble of the Swiss Constitution begins with the words: "*In the name of Almighty God!*"

- The Constitution of Ireland is introduced by the following Preamble: *“In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, we, the people of Éire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial...”*
- The Greek Constitution says *“In the name of the Holy and Consubstantial and Indivisible Trinity”* and the Greek Orthodox Church enjoys the status of an established church.
- The Constitution of Italy grants a specific status for the Catholic Church. Similar arrangements are found in Andorra, Poland<sup>3</sup>, Spain<sup>4</sup> and several Swiss cantons.
- Liechtenstein, Malta and Monaco recognise Roman Catholicism as their state or official religion.
- Denmark, England, Finland, Iceland and Norway have established (Protestant) churches. In Sweden, the status of the Lutheran Church as established church was abolished only in 2000.

The existence of established churches is incompatible with the idea of neutrality”, or with the ideology of “secularism”. Given that, upon acceding to the ECHR, none of the above-mentioned states found it necessary to modify its constitutional law in order to introduce “neutrality” and “secularism” as new founding principles, it becomes clear that the Convention was always understood as not enshrining such principles. The same can, *mutatis mutandis*, be said with regard to the accession of several of these States to the EU, and with regard to the adoption of the EU Fundamental Rights Charter.

If the perspective is widened to include countries outside Europe, it becomes clear that the UDHR, too, is not understood as enshrining “neutrality” or “secularism” as compulsory foundational principles. Nearly all countries with a predominantly Muslim population have Islam as their state religion.

What the UDHR, the ECHR, or the EUFRC demand is thus not the equal treatment of all religions and worldviews. *Freedom of religion and conscience is not equal treatment of all religions.* Instead, it demands, as a minimum, tolerance and accommodation for all religious beliefs unless they are found to stand at variance with fundamental requirements of justice. (This is why it is admissible for a State to prohibit dangerous sects like Scientology, or those similar. Likewise, it would be legitimate and even necessary to prohibit a religion that demands human sacrifices, or legitimates terrorism or suicide killings.)

The freedom of religion and conscience is thus a positive obligation for Member States to respect everybody’s right to have a religion, to manifest it *in worship, teaching, practice and observance*. But that does not include any obligations or prohibitions with regard to the appropriation of the public space.

It should equally be noted that the EU, and most notably the Lisbon Treaty (cf. Art 17 TFEU), explicitly recognises the Right of Member States to legislate, or maintain legislation, on *“the status under national law of churches and religious associations or communities”*.

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<sup>3</sup> Art 25 (4) of the Constitution

<sup>4</sup> Art 16(3) of the Constitution

It follows from all this that it is perfectly legitimate for EU Member States to give a special legal standing, or special consideration to some religious communities, as long as everybody's freedom of religion and conscience is respected. This is the case for EU Member States, whose commitment to religious freedom is well known and of long standing.

# Public space

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**RELIGARE introduction:** *"Following a preliminary reflection on the scope of the public space, the research within this theme concentrates on religious and other symbols in the public space and on the fundamental questions of ownership of and access to the public space. It will consider places of worship and sacred sites, religious dress codes, and private (religious) schools. It aims at providing inputs about how to rethink and restructure the public space in order to cope with the increasing religious and cultural plurality of European societies."*

## 'Ownership' of Public Space

In recent times, there have been various attempts, both at Member State level and Europe-wide, to eliminate religious symbols from the public space. The most spectacular of these, but certainly not the only one, was the ECtHR's Chamber Judgment in the case of *Lautsi vs. Italy*, where the Court found that the presence of a crucifix in the class room of a state-run public school violated a State's obligation to neutrality in the area of public education. This judgment was subsequently reversed by a Grand Chamber of the ECtHR.

A similarly visible case is that of *Ouardiri vs. Switzerland* (appl. nr. 65840/09), currently pending before the ECtHR, where the Court has been asked to censure the Swiss constitutional ban against the construction of minarets, which was enacted following a popular referendum in 2009.

As the introductory remarks of the RELIGARE project correctly point out, the presence of crucifixes, minarets, or church spires raise *questions of ownership of and access to the public space*. Indeed, the spire of a church, or the minaret of a mosque, is not strictly necessary for the building to serve its purpose as a place dedicated to cult and worship. Rather, the function of a minaret or a spire is to make this purpose visible to the outside and to attract attention to it. In this sense, minarets and spires can be viewed as a sign of (real or intended) dominance of the religion at question over the town or village at question. For centuries, therefore, in most European towns it would have been either *de facto* inadmissible, or even legally prohibited, to build edifices that were higher than any of the church spires. Only from the late 19<sup>th</sup> century onwards has it become possible to erect "secular" edifices that aspire to a similar dominance. Today, the skylines of many European cities are dominated no more by churches, but by skyscrapers owned by banks or insurance companies – which certainly raises some questions with regard to the priorities of our society. Against this background, it is understandable that the thought of European skylines being dominated by minarets raises fears and concerns not only among Christians, but also among the secular-minded.

## Religious Symbols

The question therefore must be framed in a different way. It is not whether the presence of religious symbols in the public space violates a principle of 'neutrality' or 'secularism', for such principles are nonexistent in EU and international law. The real question is: under which circumstances does the presence of a religious symbol, be it in the public space or elsewhere, violate the freedom of religion and conscience of a non-believer?

It is submitted here that the mere existence or presence of religious symbols or religious language can under no circumstances be considered a violation of a person's freedom of religion or conscience, except where that person would be forced, against his will or conscience, to manifest his allegiance to that religion. In other words: the presence of a crucifix in a classroom is not a violation of that freedom, but the compulsory participation in a school *prayer* is. In the same vein, the construction of church spires or minarets cannot be seen as limiting the religious freedom of others. The freedom of religion is violated if and where someone is forced to profess a particular religious faith or to participate in an act of religious worship against his/her will. But the mere presence of a religious symbol does not constrain anyone to do anything.

It should also be noted that there must be a balance between the rights of believers and non-believers. In the ECtHR's Chamber Judgement in the case of *Lautsi vs. Italy*, the rights of one single militant non-believer were held to invalidate the rights of all parents preferring the crucifix to be displayed in their children's classroom. But believers have as much right as non-believers to have their children educated according to their philosophical convictions. It is for this reason that the Austrian Constitutional Court has recently decided that a law foreseeing the display of a crucifix in a public nursery school does not violate anyone's freedom of religion if and where at least one half of the class adheres to a Christian confession.

### **'Religious' Clothing**

In several European countries, laws have been passed to prohibit the wearing of 'religious' symbols or clothing. In most cases, the scope of such prohibitions is limited to the public space of official institutions (schools, hospitals, universities, courts, ...) whereas in others it extends to the public space in general.

Such legislation severely restricts the personal liberty of citizens, and must thus be duly justified. In a free society, everybody should be free to wear what he wants.

It should be noted that in some cases, in an excess of 'secularist' zeal, prohibitions against 'religious' clothing extend to clothing styles that are not actually mandated by the religion in question, but rather by tradition and custom. And if that tradition (be it inspired by religion or not) is not in itself immoral, it is nonsensical why anyone should be prevented from maintaining it. After all, a Muslim woman that is not allowed to wear a headscarf might, in her subjective experience, feel just as indecently exposed as a 'western' girl that is forced to go topless.

It is also not clear why, in a world where everybody is permanently confronted with, and maybe overwhelmed by, advertising for commercially offered goods and services (including, at times, some rather indecent ones), the wearing of any symbol or clothing that has a 'religious' connotation should be subject to more restrictive rules.

For these reasons, restrictions against any clothing style can be justified only:

- for reasons of safety
- for reasons of decency
- for cases in which the wearing of a uniform is reasonably required.

## Education

One of the primary targets of those wishing to evict religion from the public space is its eviction from public education. Their argument is that:

*“Publicly funded schools should not promote one particular religious or non-religious lifestance as the only correct one but teach about the various lifestances (including Humanism) factually and in an objective way. Where parents or young people are offered an option of education into a particular lifestance, Humanism must be one option alongside the religions.”*

*“Parents should, in other words, be entitled, with the assistance if they wish of the churches or other religious institutions, to exercise their right to bring up their children within a particular religious or other tradition ... but they should not have the assistance of the public education system in doing it for them. The public education system should not promote any religion or belief but should adopt an educational approach so that children are not left in ignorance of the variety of beliefs they will encounter as adults in society and of the fact that their own beliefs are not shared by others. In our view, for the state to promote a particular religion or belief in schools is to infringe the autonomy of children and young people, making it difficult for them to come to their own conclusions on these ‘ultimate questions’...”*

What is evident in these remarks is that those making them have thoroughly misunderstood the role and purpose of a public education system.

With regard to the approach of putting all ‘beliefs’ on a par, or to the assumption of moral ‘autonomy’ of children, we may refer to what has already been said above. But in the first place, it is necessary to recall that *the parents, not the state, are the primary bearers of rights and responsibilities with regard to the education of their children*. The state, by contrast, must assist them in fulfilling this task. The State’s role is thus ancillary to that of the parents, not the other way round. The State therefore has no right to indoctrinate children with the ideologies that may, at a given time, prevail among the political elites.

It follows that the role of publicly funded schools is to support the parents in giving their children the education that they want to give them. If parents want to educate their children in the Christian faith, the state – even if it defines itself as “secular” or “neutral” - must support them in this effort. If they want to provide their children a non-religious education, the state must support this, too. However, a limit is set by objective considerations of morality: nobody has the right to educate his children to be violent or disrespectful, and even less can the state be obliged to assist in such education.

There are different ways for the state to support parents in their task of educating children. One of them consists in providing adequate financial or other support to privately owned schools, be they confessional or non-confessional. That support may of course be made dependent on the *quality* of the education provided - but the confessional or philosophical orientation of the school must be respected. This means that the State is obliged to provide adequate support to confessional schools – but of course *without forcing them to give up their religious profile*. It would be the same in the case of a privately owned non-confessional school.

Alternatively, or in addition, the State may also set up a state-owned school system, provided that the right of religious communities to have confessional schools is respected. Such state-



owned schools stand under a stricter requirement of ‘neutrality’ (i.e., they will neither have a religious, nor an atheist/humanist orientation), but at the same time should ensure that the children get the education the parents want to provide them with. It is for this reason that there should be religion lessons in public schools if there is sufficient demand for them. If there is any demand for ‘humanist’ ethics, such courses should also be provided to those demanding them.

It seems appropriate here to briefly mention the issue of crucifixes in class rooms. In our view, it is within the legitimate margin of appreciation for a country to allow, or even compulsorily foresee, the presence of a religious symbol in the class room, if a sufficiently great proportion of the country adheres to the religion in question. Such religious symbols in no way harm the rights of non-believing parents of providing a non-religious education to their children, because the mere presence of a religious symbol is not tantamount to an obligation of exhibiting allegiance to it.

## Religion in School Curricula

With regard to religion courses in schools, it is observed that currently the participation in such courses appears to be voluntary in all EU Member States. However, it could be argued that knowledge of the Christian religion is an unavoidable necessity for anyone wishing to understand the European culture. For that reason, there can be no doubt that Member States have the right, and maybe even the obligation, to ensure that all pupils are appropriately acquainted with the Christian religion, as long as they are not obliged to acknowledge their allegiance to it. Not explaining the teachings of Christianity to a pupil would deprive him or her from having access to European culture; in this way, it could be seen as depriving children of their right to education and as undermining their social integration.

In principle, EU Member States could therefore even make the Christian Religion a compulsory part of the curricula of state-owned schools. No principle of ‘secularism’ or ‘neutrality’ prevents them from doing so: for it would indeed be absurd for a society to remain ‘neutral’ with regard to the cultural heritage and identity it wishes to preserve. The only restraints imposed by the right to freedom of religion are that (1) no one must be forced to manifest allegiance or submission to the Christian faith and (2) that adherents of other faiths must have the possibility of having (in addition or as an alternative) religion classes of their own.

## The Use of “Religious” Arguments in Public Debate

One cannot help observing that the same people who argue that ‘religious’ arguments should “*by convention count for nothing in the minds of politicians and decision-makers*” have a nasty tendency of dismissing as ‘religious’ (and hence ‘irrational’) any and every argument that does not converge with their own (i.e. ‘humanist’) point of view. In reality, however, those unwelcome arguments are usually not based on any religious belief at all, but on pure reason, whereas the points of view taken by self-described ‘secularists’ are often characterised by a surprising degree of subjectivism and irrationality. Indeed, the rejection of the idea that there could be any such thing as an ‘objective’ truth or moral law appears to be the central tenet of the secularist world view, which therefore tends to give a person’s sentiments or desires precedence over reality. We refer to the section on ‘Family’ (below) for some telling examples.

# The Workplace

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**RELIGARE introduction:** *“This research area covers access to the labour market, labour relations, and the accommodation afforded to practices and duties based on religions or beliefs. On the one hand, this research deals with the relation between labour law and collective religious organisations, in order to assess the level of autonomy – e.g. exemptions and derogations - provided to particular organisations with regard to state regulations. On the other hand, religious practices and beliefs of individual employees are taken into account, including conscientious objections, alternative dispute resolution and reasonable accommodations.”*

## Non-Discrimination

Current EU legislation to prohibit discrimination in employment recognises the need for exceptions from equal treatment obligations where *“a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos”*. This is what allows, for example, Christian charities to restrict key posts to Christians. This exception must, however, be interpreted as recognising not only the legitimacy of requiring an employee to share a given religious belief, but also as allowing the organisation to insist that employees must respect the moral precepts of the belief in question.

It seems, however, hardly justifiable not to pay the same respect and deference to the ethos based on religion or belief of *individual employees*. Even if, from a moral point of view, it is clear that nobody should be discriminated in the workplace because of his religion, this legislation does raise some questions with regard to the limitations it sets for contractual freedom. It should therefore be reminded that the principle of ‘neutrality’, and hence the obligation to provide equal treatment irrespective of religion, applies to the State more strictly than it does to private employers.

## Reasonable Accommodation

Another question is to what extent employers can be obliged to respect and accommodate the religious duties of their employees (e.g. the duty of Sikhs to wear turbans, or the duty of Jews to eat ‘kosher’ and the duty of Muslims to eat ‘halal’ food, etc.).

Common sense would expect that ‘reasonable accommodation’ will not be a problem where employment is itself based on contractual freedom. It only becomes a problem where, through overly zealous ‘anti-discrimination’ laws, employers find themselves constrained to employ persons whom they would not have recruited, had their contractual freedom not been restricted.

With specific regard to the Christian faith, it should be noted that it does not impose on its adherents any duties that would require specific accommodation (with the sole exception of respecting Sunday as a day of repose, which in all EU Member States is a basic precept of labour law). The only possibility for a conflict of duties to arise is therefore the situation where an employee would have to exercise conscientious objection.

## “Conscientious Objection”

While recognized as a right, it is also a *moral obligation* for everyone to act according to his conscience. ‘Conscientious objection’ is therefore not a ‘privilege’ the legal order confers on religious believers. Instead, it describes the dilemma of those who, in their workplace or elsewhere, face a conflict of duties between what their own conscience and what their employer (or, in other instances, the law) requires them to do.

If, as is generally considered desirable, the legal converges with the moral order, such conflicts of conscience should hardly arise. Where they do arise, it must be assumed that either the conscientious objector’s moral judgment, or the order given to him, is at fault.

The legal order usually does not tolerate disobedience: an employee disobeying the orders of his employer violates his contractual obligations, just as someone who disobeys a legal provision is violating the law. Where - exceptionally - a law foresees a ‘right to conscientious objection’, this is often due to the fact that the content of that law is controversial.

This is the case with the ‘conscience clauses’ that, in many countries, are found in laws on abortion, euthanasia, organ transplantation, assisted procreation, stem cell research, etc.: they are indicative of the legislator’s sentiment that the practices and activities against which the ‘right to conscientious objection’ is guaranteed, are highly questionable and objectionable from a moral point of view, and that, even where a state accepts those practices, it must not impose them on anyone. In a certain sense, such ‘conscience clauses’ may also represent a political compromise between those who accept and those who oppose the practices in question. For the opponents, it is the second best solution: the best would be not to require or to prohibit the morally objectionable practices in question. And if the law included no ‘conscience clause’, they would have to object nonetheless, in order to preserve their moral integrity.

It should be noted that such ‘conscience clauses’ have their main impact not within the contractual relationship between a service provider and his client, but in labour law. The case of abortion (which is liberalised, but subject to ‘conscience clauses’ in most European countries) illustrates this: the ‘liberalisation’ of abortion means that abortion is under certain conditions tolerated (i.e. not subject to sanctions), but it does not confer an entitlement to anyone to have access to abortion, or an obligation for the State, or for any individual medical practitioner, to provide it. Even those who consider abortion a ‘health service’ can hardly argue that anyone is obliged by law to provide it, given that situations of extreme urgency in which a person’s life can only, and without any alternative, be preserved by performing an abortion, are hardly imaginable. Thus, an independent medical practitioner will usually not have to invoke ‘conscientious objection’ if he does not want to perform an abortion – he may, just like any other service provider, rely on his general freedom to choose which services he wants, or does not want, to offer. Those who may have to invoke such objections are the employed staff of (state-owned or private) health facilities, if and when they are requested to perform, or assist in the performance of, abortions. The effect of a ‘conscience clause’ therefore consists in invalidating and rendering unenforceable any contractual agreement insofar as it may result in a person’s obligation to perform abortions. Similar considerations apply *mutatis mutandis*, to ‘conscience clauses’ on euthanasia, assisted procreation, etc.

It would be mistaken to assume that conscientious objection against abortion (or other morally controversial practices) is always and only grounded on ‘religious belief’. Such assumption is often suggested by those who seek to dismiss moral objections against those practices as

'esoteric' or 'irrational' – with the apparent purpose of pre-empting a reasonable and objective debate on the matter in question. But wherever such a debate is allowed to take place it quickly turns out that the moral objection can be based on solid and objective reasons, and that the objector may even be an atheist. Where the law explicitly recognises 'conscientious objection', it makes no distinction between religious believers and non-believers. Article 10.2 of the EUFRC explicitly recognises the right to conscientious objection as a fundamental right.

It is certainly strange, then, that the EHF, in its submission to the RELIGARE project, wishes to discuss 'conscientious objection' in the context of 'religious liberty' – as if it was a religious issue. What is even more worrying is the call for 'regulation', which in this case means restriction, of this fundamental right.

With regard to EHF's grotesquely aberrant reasoning that "*human rights, including rights to conscientious objection, apply only to individuals and not to institutions*" and that, for this reason, Christian hospitals, or even Christian Churches, are not entitled to them, it suffices to point out that:

- it is said nowhere in international law that human rights can only be exercised individually;
- on the contrary, with regard to certain human rights, their collective nature is explicitly recognised;
- this applies not only to rights that by their very nature cannot be exercised by one person alone (e.g. the right to free assembly, or the right to maintain a given cultural identity), but especially to religious freedom, which is explicitly recognised as a right that is to be exercised "*either alone or in community with others*" (cf. Art 18 UDHR, Art 9 ECHR, Art 10 EUCFR);
- hospital governing bodies that decide not to provide abortion, euthanasia, etc., usually do not need to rely on their right to conscientious objection, but can rely on their contractual freedom.

The virulent campaigning by which certain groups seek to undermine – mostly in the context of abortion - the right to conscientious objection is revelatory not only of their irrationality, but also of their intolerance and of their deeply rooted opposition against the very same human rights to which, on the surface, they pay profuse lip service. A truly terrifying example for such an attempt was the draft report submitted by Mrs. Christine McCafferty to the Parliamentary Assembly of the Council of Europe, which aimed to oblige doctors and nurses to practise abortion despite their conscientious objection. Fortunately, the attempt was defeated and the right to conscientious objection re-affirmed.

# The Family

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**RELIGARE introduction:** *“This research area deals with personal status and family affairs. Given that secular systems still contain religiously-based institutions (e.g. the definition of «marriage»), it is no surprise that issues that call into question family models are under debate and give rise to lively polemics between religious and secular groups in several European countries. The issues investigated include religious marriages and divorces, as well as custody over children and the adoption of children when religious and formal legal prescriptions clash. The institution by some communities of parallel dispute settlement bodies to deal with family-related disputes is also investigated.”*

## Family and Marriage – “religiously-based institutions”?

We would, in the very first place, challenge the assumptions that are made by these introductory remarks. On the one hand, as we have already pointed out, not all EU Member States can be described as ‘secular systems’. On the other hand, marriage and family are not based on religion. They are based on the human nature.

Given that throughout known human history there has been religion (while atheism must be considered a very recent phenomenon), it hardly can be said that institutions like marriage or family predate religion. But that does not mean that they are “based on religion” any more than any other feature of our legal or social order. With certainty it can be said that both marriage and family predate Christianity and therefore cannot be considered Christianity-based. The ‘innovation’ added by Christianity was to define marriage as a sacrament. But that doctrine is and always was applied only to Christians having contracted marriage, not to non-Christians. The non-sacramental marriage of non-Christians (e.g. of Jews, or, which was less frequent in bygone centuries, of Muslims) was therefore equally considered valid marriage.

It is part of the human nature that man exists in two sexes and that these sexes complement each other: only two persons of different sex can beget children. It is equally part of human nature that children remain dependent on their parents’ care for many years after their birth, and that they require education. It is therefore natural for human beings to conceive of marriage as the life-long alliance of one man and one woman with the purpose of rearing children. This concept of family has existed long before the advent of Christianity, and it is not the tenet of one particular religion.

It also cannot be said that there is one typically “secular” concept of marriage and family. Certainly, secular ideologies like Communism or Nazism have been hostile to the traditional concept of family, because they viewed it as a structure that offered citizens some shelter against intrusion by a totalitarian State that aimed to bring all aspects of life, including private life, under its own control. While Nazism expected women to bear as many children as possible (which were needed as future soldiers), the Soviet regime viewed women primarily as additional workforce. Both totalitarianisms tried to alienate children from their families as early as possible, obliging them to join state-run youth organisations (Pioneers, Hitlerjugend), where they could be indoctrinated more easily. The “traditional” concept of family, as one can clearly see from this, is anti-totalitarian.

## The Real Issue: Reason vs. Irrationality

It is therefore strange to see the “liberal” secularists of today attack the natural concept of family with equal vigour as the totalitarian ideologies of the past century. However, their argument is a different one. They seek to promote “alternative” concepts of marriage and family, including marriage between persons of the same sex, or “families” that are “*not defined by marriage or descent*”.

What we are witnessing today, therefore, is not a struggle between “typically religious” and “typically secular” concepts of family. Instead, we are facing an increasing confusion, which in some quarters may well be deliberate and ideology-driven, over the inherent meaning of the terms “marriage” and “family”.

A good example is the following quote taken from a recent publication of the ‘EU Family Platform’, an EU funded research project:

*“Key policy and research issues ... include ... the need to move beyond an over-emphasis on the nuclear family and grasp new notions of family relationships, which may include a variety of different networks providing support and resources such as grandparents, relatives, friends and colleagues.”*

According to this quote, ‘friends’ and ‘colleagues’ would qualify as ‘family’.

With increasing frequency, one also encounters statements such as the following:

*“For me, family is wherever people take responsibility for each other.”<sup>5</sup>*

In view of this statement, two observations must be made. Firstly, the definition is over-inclusive: if taken at face value, it would transform into a ‘family’ a bus driver and his passengers, or a teacher and his class, or a general and his army, or a group of tourists tied together while climbing a mountain. This is certainly not the meaning generally ascribed to the term ‘family’. Secondly, by introducing such statements with the words “*for me*”, the speaker indicates that he is making a purely subjective statement. Yet in doing so, he also implies that no objective statement can be made, i.e., that in his view there is, or can be, no objective definition for the term ‘family’. But if we cannot agree on the meaning of a term, then the term becomes meaningless and cannot be used in any discussion. If all and sundry is called a ‘family’, then it becomes impossible to identify the specific contribution families make for the common good, or to provide targeted support to them.

Similar confusion is encountered with regard to marriage, a concept that, as a consequence of changes in social behaviour and of legal changes, has in recent decades undergone a process of distortion, alienation and change of meaning. While originally marriage was more stable due to its legal indissolubility, the legalisation of divorce in nearly all EU Member States (albeit under conditions that vary considerably from one country to the other) has changed the situation. Young couples still may have the aspiration, which is natural for them, to form stable life-long

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<sup>5</sup> A telling example for such statements, which are encountered with increasing frequency in the agenda of certain political parties, is found in the program of action of the new regional Government of the German Land of Baden –Württemberg: “*Familie im 21. Jahrhundert hat sich verändert und versteht sich heute als ein Ort, wo Menschen unterschiedlicher Generationen verbindlich füreinander Verantwortung übernehmen.*“

marriages – but the law does not support their wish for stability. Instead, the availability of divorce means that young couples have to take into account, and make arrangements for, the hypothesis of a divorce already while they are happily married (or even before they get married). The introduction of divorce has, by the way, also retroactively changed the meaning of marriage for all who were already married at the time. It is self-evident that the facilitation of divorce (e.g. through “express divorce” laws like in Spain) must be expected to have a destabilizing effect on the institution of marriage, including couples that already are married, and hence to undermine the stability of the social fabric. This, however, is not a “religious” issue, but a problem that will affect society as a whole.

The confusion becomes even greater where the meaning of “marriage” is extended to cover legally recognised homosexual relationships. Whatever moral stance one wishes to take with regard to homosexuality – it is clear that the legal recognition of homosexual “marriages” implies *providing equal treatment to what is in fact unequal*. Rather than promoting equality, such policy radically contradicts the fundamental principle of justice, which consists in treating equal things equally, and unequal things unequally. For there is an obvious difference between different-sex couples that are capable of forming a natural family (and which, in doing so, offer an important contribution to the common good), and same-sex couples who make no comparable contribution. This should be self-evident even for those who do not wish to make any moral judgments on homosexual behaviour.

The irrationality of same-sex marriage becomes apparent when one looks at the arguments with which organisations like EHF seek to promote it. It is argued (but without giving any evidence for it) that such unions “*were lawful in ancient Rome until banned in 340 AD*” (cf. p. 20 of the EHF submission) – and the reader is left to wonder whether all and everything that was lawful in ancient Rome should for that reason be made lawful today. Would that include slavery as well? After all, the abolition of slavery is undoubtedly owed to Christianity, which in EHF’s perspective might be a good reason to re-introduce it.

In a similar vein, EHF argues that “*there is no evidence that such marriages cannot provide a successful environment for bringing up children*” (cf. p. 20 of the EHF submission). It is of course very convenient for the advocates of such novel concepts to reverse the burden of proof in such a way. But quite obviously, nature wills it that children are born out of different-sex relations, not of same-sex partnerships. One must therefore suppose that children require both a male and a female parent. At first glance, it seems *unnatural* for children to be brought up in same-sex partnerships. Therefore, the burden of proof is on those who argue in favour of same-sex marriages, not on those who are sceptical.

But that is not all. If taken literally, EHF’s argument seems to be that *one single* case where two persons of the same sex bring up a child without that child demonstrably suffering harm would suffice to prove that same-sex marriages “*can provide a successful environment for bringing up children*”. Indeed, even a 99% failure rate would not disprove that education by a same-sex couple *can* be successful. But do we really want to set the bar so low, just because it might help arguing the cause for legally recognising same-sex marriage and gay adoption? If we were to accept such skewed arguments, would that not mean that the ideology of ‘LGBT rights’ has totally prevailed over the real needs of the children concerned? Would we accept the same arguments in regard to other would-be parents? For example, if one were to find a case in which a child has been raised by a drunkard and a prostitute without itself becoming a drunkard or prostitute, would this be considered a proof for drunkards and prostitutes generally being

capable parents? Yet in the case of drunkards and prostitutes, the discussion usually is whether *their own* children must be withdrawn from their custody, and the argument that speaks against this is that the natural parents usually have the strongest commitment to their own children. But one would never even dream of giving foster or adoptive children to parents that are under the slightest suspicion of offering anything but the best possible social environment for the children concerned. EHF's attempt to change the rules in favour of same-sex marriages or adoptions is thus manifestly absurd and disingenuous.

## **“Gender”-Ideology and Subjectivism**

Yet another host of difficulties has been opened by a novel ideology according to which the “sexual identity” or “gender” of a person is not determined by his or her biological sex, but by his/or her subjective sentiment, or choice, or self-definition<sup>6</sup>. A telling example of the confusion that can be generated by such ideologies is a recent judgment by the German Constitutional Court (Bundesverfassungsgericht, BVerfG), according to which a person must be legally recognised as belonging to the opposite sex solely on the grounds of his or her subjective “self-perception”. In other words, a man who believes or desires (it never becomes quite clear which...) to be a woman must be legally recognised as such (and hence has a right to have his personal documents changed), even if biologically he remains male and preserves the physiological faculty of fathering children<sup>7</sup>. Admittedly, the BVerfG still requires the gender reassignment to be based on the scientific opinions of two independent experts – but the question is what these experts are expected to base their opinion upon: not, as it appears, on any objective and verifiable facts, but on subjective sentiments. One is tempted to apply the same approach elsewhere: what, for example, would prevent a 30 year old man from claiming (and receiving) a full retirement pension on the ground that, according to his sincere self-conception, he feels as if he were 65 years old? If a man can consider himself a woman, then he can equally consider himself 35 years older than he actually is. And if in one case his fancy must be given legal effect, it is hard to see why it should not be that way in the other case as well.

Thus the widespread concern that is caused by such legal developments has not much to do with “religious sentiments” or “moral views” that may have been hurt. Instead, it is based on the observation that with increasing frequency legal decisions are based on highly irrational sentiments rather than on verifiable and objective facts: there is a growing discrepancy between law and reality, between the legal order and the real world. As with the above-mentioned developments regarding “family” and “marriage”, criticising such tendencies does not mean to defend a “religious belief” – on the contrary, it means to defend rationality.

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<sup>6</sup> The possibilities for such self-definition appear nearly limitless. In a recent publication on the “Protection from discrimination on the basis of sexual orientation and sex and/or gender identity”, the Australian Human Rights Commission (AHRC) has identified no less than 23 different “genders”. Besides male and female, these include gay, lesbian, transgender, trans, transsexual, intersex, androgynous, agender, cross dresser, drag king, drag queen, genderfluid, genderqueer, intergender, neutrois, pansexual, pan-gendered, a third gender, a third sex, sistergirl and brotherboy.

<sup>7</sup> BVerfG, 1 BvR 3295/07



## **Increasing fragmentation of family law. The need for unambiguous terminology**

In previous times, there was a wide convergence between the legal systems of all European States with regard to marriage and family law. The fact that terms like “man”, “woman”, “marriage” and “family” had the same meaning everywhere meant that the legal recognition of a person’s civil status (and of relevant documents) did not pose any major problems. This situation, however, has been radically jeopardised by those Member States which unilaterally have adopted new legislation that undermines the uniform and common understanding of these concepts. While in all other areas of law there is increasing convergence throughout the EU, the domain of family law is affected by increasing fragmentation and contradiction. This will become an important challenge for the EU in the coming years. The authors of this paper contend that this problem will not be solved by a terminological subjectivism through which words and concepts will ultimately become meaningless. Instead, it will be necessary to return to an approach that is objective and rational.

Once such a debate can take place without being blurred by an imprecise and arbitrary terminology, it will result that the natural family is deserving of protection and support more than any other social institution. As social research has shown again and again:

- Families based on marriage (rather than on de facto relationships) are more stable, and less likely to break up.
- Married couples are happier than unmarried ones.
- Married couples achieve better results in educating their children.
- Children growing up in families based on marriage are healthier, have a lower risk of poverty and social exclusion, are more successful at school, and less prone to drug addiction or delinquency.

It clearly results that, while non-married couples (and children born out of wedlock) are socially vulnerable and therefore need solidarity, the stable marriage between a man and a woman is by far the best basis for raising children. Marriage is therefore not one of many possible options that should all be treated on a par, but it is the social model that any successful policy for the family must be based upon. Therefore, social support given to unmarried couples, single parents, or children from broken relationships should serve to provide those beneficiaries with adequate social protection, but it should not have the perverse effect of promoting them as new role-models. A social policy that “rewards” instable relationships rather than marriage would incentivize irresponsible behaviour and de-stabilize society.

However, no “religious belief” is required to understand this. What is set out above, as a guideline for a policy on the family, is mere common sense, and a requirement of social justice.

# State Support

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**RELIGARE introduction:** *“This theme encompasses State support to religious and secular groups. The research aims at assessing the reasons that justify – or not – the public funding that is in place today. The State position and the religious communities’ point of view will be taken into account. The research will consider several issues: training and remuneration of the religious leaders, media, religious heritage and the current taxation typology.”*

A comparative study of the various systems of State funding for religious or secular groups existing in different countries is certainly of interest. But it must be questioned whether such study should pronounce itself on whether or not such funding is ‘justified’. As we have pointed out above, the legal situation is very clear: States are free to provide funding to religious communities, and there is no provision in international or EU law that prevents them from doing so. More specifically, international human rights law does not impose on States an obligation to be ‘secular’ or ‘neutral’ with regard to religious communities, or to provide ‘equal treatment’ to all religions, let alone to militant atheist groups.

It should be noted that in most European countries (with the exception of those where – as in Greece, Finland and Denmark - there is an established church), religious organisations are for the greatest part financed through the revenues drawn from property they legitimately own, or from voluntary donations of their faithful. If and where financial support is given by governments, it is usually justified by the following reasons:

- the public interest to maintain and cultivate the country’s cultural heritage and identity;
- the support for specific initiatives that contribute to the common good (such as schools, hospitals, etc.). Such support usually only complements the funding provided by the faith-based group itself, and would in the same way be provided to any organisation making a similar social contribution.
- a third reason is the compensation, usually contractually agreed upon, for property that was – often under rather questionable pretexts – seized from the religious communities in question (in most cases from the Catholic Church) in the course of history. A good example is the payments from the German Länder to churches, which have the purpose of compensating for the property seized in 1803, when the territories of the churches were secularized and many religious orders were dissolved.

Against this background, it is disingenuous for EHF and other demagogues to criticise the extent of financial support given to the Christian churches, or to call it ‘discriminatory’.

For instance, the French state would not have to *“maintain churches at a cost of about € 100 mn p.a.”* or to *“provide housing for priests at a cost of € 54 mn p.a.”*, if it had not confiscated all Church property in 1905. Similarly, it is difficult to understand why the EHF laments the restitution of confiscated Church property in Poland, or the fact that the Czech government, following a settlement negotiated with the Catholic Church, will, instead of returning the Church property that was confiscated by the Communist regime in 1948, provide for it. EHF’s critique of such arrangements reveals an apparent sympathy for the violent measures by which the Stalinist regimes of the time sought to repress the Church.

Yet even more absurd is EHF's critique of the church tax systems in countries such as Germany and Austria: it is tantamount to criticising churches for being financed by their own members! For it is only the registered members of the churches that pay these taxes, which for this reason is in substance a voluntary contribution. In addition, it should be noted that these taxation systems were introduced in Germany following the confiscation of Church property in the early 19<sup>th</sup> century. In Austria, the system was introduced under the Nazi occupation: the Nazis had confiscated the so-called "Religionsfonds", and compensated the churches with the right to levy a tax from their own members. This "Religionsfonds" in turn had been created by Emperor Joseph II with confiscated Church property: it was dedicated to finance the activities of the churches (including non-catholic ones, although only the Catholic Church had been the victim of expropriation), but administered by the State, and hence ensured a certain control over the Church by the State.

Similar arguments could be made with regard to most state funding of churches currently in place in Europe: it is absurd and reveals disregard of historic facts if they are described as 'privileges' for the churches. The historic truth is that the churches, and most of all the Catholic Church, have been pillaged time over time by secularist governments, and stripped of property that, in most cases, had been liberally donated by the faithful in order to sustain the mission of the Church. The financial support given by some governments to the churches are thus no 'privileges', but a modest compensation for this alienated property.

Last but not least, some of the factual assertions found in the EHF paper are gross falsities. For example, on page 25 of the EHF submission one reads that "*in Italy 8% of income tax goes to registered religions or to the state as nominated by each individual taxpayer...*". This is nonsense. The actual figure is 0.8% of a taxpayer's income (the contribution is therefore called "*otto per mille*").

In a recent judgment, the ECtHR has therefore recognised that there is no European standard regarding the funding of Churches, rather this issue should be linked to the different tradition and culture of each State (Wasmuth vs. Germany, appl. Nr. 12884/03, at § 63)

In light of the above, it is an obvious call for the reduction of current state funding of churches and religious bodies have hardly any justification. What certainly has no foundation at all is the suggestion that other religious communities that have only been recently established (e.g. as a result of immigration), or indeed 'humanist' groups such as the EHF, should be entitled to similar funding:

- these groups cannot credibly claim to have contributed to the cultural heritage and identity of the countries in question. It would rather seem advisable to wait for some time to see whether they will make any contribution that is worth preserving. With specific regard to 'secularists', it should indeed be noted that their self-chosen mission in history was to fight against that moribund heritage, and to destroy it: the ruins of Cluny, the destruction of Christ the Saviour's cathedral in Moscow, and many other examples bear ample testimony for this sad fact.
- with regard to initiatives contributing to the common good it must be observed that there are hardly any Islamic, Buddhist, or 'humanist' schools, hospitals, etc. that could merit State support. Of course, if and where such institutions exist, they should qualify for support under equal conditions. (The EHF contribution fails to demonstrate that this

is not already the case. Instead, it tries to make an argument according to which only hospitals offering abortion and euthanasia, or only education facilities not offering religion courses should be funded by the State, thus seeking to affirm supremacy of a militantly atheist ideology over all other worldviews.

- there is no reason for compensating any of these groups, given that they have in recent times never been victims of any pillaging or confiscation of their possessions.

## Annex I

DECLARATION ON RELIGIOUS FREEDOM  
*DIGNITATIS HUMANAЕ*  
ON THE RIGHT OF THE PERSON AND OF COMMUNITIES  
TO SOCIAL AND CIVIL FREEDOM IN MATTERS RELIGIOUS  
PROMULGATED BY HIS HOLINESS  
POPE PAUL VI  
ON DECEMBER 7, 1965

1. A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man,<sup>(1)</sup> and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty. The demand is likewise made that constitutional limits should be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations. This demand for freedom in human society chiefly regards the quest for the values proper to the human spirit. It regards, in the first place, the free exercise of religion in society. This Vatican Council takes careful note of these desires in the minds of men. It proposes to declare them to be greatly in accord with truth and justice. To this end, it searches into the sacred tradition and doctrine of the Church—the treasury out of which the Church continually brings forth new things that are in harmony with the things that are old.

First, the council professes its belief that God Himself has made known to mankind the way in which men are to serve Him, and thus be saved in Christ and come to blessedness. We believe that this one true religion subsists in the Catholic and Apostolic Church, to which the Lord Jesus committed the duty of spreading it abroad among all men. Thus He spoke to the Apostles: "Go, therefore, and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all things whatsoever I have enjoined upon you" (Matt. 28: 19-20). On their part, all men are bound to seek the truth, especially in what concerns God and His Church, and to embrace the truth they come to know, and to hold fast to it.

This Vatican Council likewise professes its belief that it is upon the human conscience that these obligations fall and exert their binding force. The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power.

Religious freedom, in turn, which men demand as necessary to fulfill their duty to worship God, has to do with immunity from coercion in civil society. Therefore it leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ.

Over and above all this, the council intends to develop the doctrine of recent popes on the inviolable rights of the human person and the constitutional order of society.

2. This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that, whether privately or publicly, whether alone or in association with others, within due limits.

The council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.(2) This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.

It is in accordance with their dignity as persons-that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility-that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom. Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed.

3. Further light is shed on the subject if one considers that the highest norm of human life is the divine law-eternal, objective and universal-whereby God orders, directs and governs the entire universe and all the ways of the human community by a plan conceived in wisdom and love. Man has been made by God to participate in this law, with the result that, under the gentle disposition of divine Providence, he can come to perceive ever more fully the truth that is unchanging. Wherefore every man has the duty, and therefore the right, to seek the truth in matters religious in order that he may with prudence form for himself right and true judgments of conscience, under use of all suitable means.

Truth, however, is to be sought after in a manner proper to the dignity of the human person and his social nature. The inquiry is to be free, carried on with the aid of teaching or instruction, communication and dialogue, in the course of which men explain to one another the truth they have discovered, or think they have discovered, in order thus to assist one another in the quest for truth.

Moreover, as the truth is discovered, it is by a personal assent that men are to adhere to it.

On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. It follows that he is not to be forced to act in manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious. The reason is that the exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God. No merely human power can either command or prohibit acts of this kind.(3) The social nature of man, however, itself requires that he should give external expression to his internal acts of religion: that he should share with others in matters religious; that he should profess his religion in community. Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed.

There is a further consideration. The religious acts whereby men, in private and in public and out of a sense of personal conviction, direct their lives to God transcend by their very nature the

order of terrestrial and temporal affairs. Government therefore ought indeed to take account of the religious life of the citizenry and show it favor, since the function of government is to make provision for the common welfare. However, it would clearly transgress the limits set to its power, were it to presume to command or inhibit acts that are religious.

4. The freedom or immunity from coercion in matters religious which is the endowment of persons as individuals is also to be recognized as their right when they act in community. Religious communities are a requirement of the social nature both of man and of religion itself.

Provided the just demands of public order are observed, religious communities rightfully claim freedom in order that they may govern themselves according to their own norms, honor the Supreme Being in public worship, assist their members in the practice of the religious life, strengthen them by instruction, and promote institutions in which they may join together for the purpose of ordering their own lives in accordance with their religious principles.

Religious communities also have the right not to be hindered, either by legal measures or by administrative action on the part of government, in the selection, training, appointment, and transferral of their own ministers, in communicating with religious authorities and communities abroad, in erecting buildings for religious purposes, and in the acquisition and use of suitable funds or properties.

Religious communities also have the right not to be hindered in their public teaching and witness to their faith, whether by the spoken or by the written word. However, in spreading religious faith and in introducing religious practices everyone ought at all times to refrain from any manner of action which might seem to carry a hint of coercion or of a kind of persuasion that would be dishonorable or unworthy, especially when dealing with poor or uneducated people. Such a manner of action would have to be considered an abuse of one's right and a violation of the right of others.

In addition, it comes within the meaning of religious freedom that religious communities should not be prohibited from freely undertaking to show the special value of their doctrine in what concerns the organization of society and the inspiration of the whole of human activity. Finally, the social nature of man and the very nature of religion afford the foundation of the right of men freely to hold meetings and to establish educational, cultural, charitable and social organizations, under the impulse of their own religious sense.

5. The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive. Government, in consequence, must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education, and the use of this freedom of choice is not to be made a reason for imposing unjust burdens on parents, whether directly or indirectly. Besides, the right of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all.

6. Since the common welfare of society consists in the entirety of those conditions of social life under which men enjoy the possibility of achieving their own perfection in a certain fullness of measure and also with some relative ease, it chiefly consists in the protection of the rights, and

in the performance of the duties, of the human person.(4) Therefore the care of the right to religious freedom devolves upon the whole citizenry, upon social groups, upon government, and upon the Church and other religious communities, in virtue of the duty of all toward the common welfare, and in the manner proper to each.

The protection and promotion of the inviolable rights of man ranks among the essential duties of government.(5) Therefore government is to assume the safeguard of the religious freedom of all its citizens, in an effective manner, by just laws and by other appropriate means.

Government is also to help create conditions favorable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights and to fulfill their religious duties, and also in order that society itself may profit by the moral qualities of justice and peace which have their origin in men's faithfulness to God and to His holy will. (6)

If, in view of peculiar circumstances obtaining among peoples, special civil recognition is given to one religious community in the constitutional order of society, it is at the same time imperative that the right of all citizens and religious communities to religious freedom should be recognized and made effective in practice.

Finally, government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens.

It follows that a wrong is done when government imposes upon its people, by force or fear or other means, the profession or repudiation of any religion, or when it hinders men from joining or leaving a religious community. All the more is it a violation of the will of God and of the sacred rights of the person and the family of nations when force is brought to bear in any way in order to destroy or repress religion, either in the whole of mankind or in a particular country or in a definite community.

7. The right to religious freedom is exercised in human society: hence its exercise is subject to certain regulatory norms. In the use of all freedoms the moral principle of personal and social responsibility is to be observed. In the exercise of their rights, individual men and social groups are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all. Men are to deal with their fellows in justice and civility.

Furthermore, society has the right to defend itself against possible abuses committed on the pretext of freedom of religion. It is the special duty of government to provide this protection. However, government is not to act in an arbitrary fashion or in an unfair spirit of partisanship. Its action is to be controlled by juridical norms which are in conformity with the objective moral order. These norms arise out of the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, also out of the need for an adequate care of genuine public peace, which comes about when men live together in good order and in true justice, and finally out of the need for a proper guardianship of public morality.

These matters constitute the basic component of the common welfare: they are what is meant by public order. For the rest, the usages of society are to be the usages of freedom in their full range: that is, the freedom of man is to be respected as far as possible and is not to be curtailed except when and insofar as necessary.



8. Many pressures are brought to bear upon the men of our day, to the point where the danger arises lest they lose the possibility of acting on their own judgment. On the other hand, not a few can be found who seem inclined to use the name of freedom as the pretext for refusing to submit to authority and for making light of the duty of obedience. Wherefore this Vatican Council urges everyone, especially those who are charged with the task of educating others, to do their utmost to form men who, on the one hand, will respect the moral order and be obedient to lawful authority, and on the other hand, will be lovers of true freedom-men, in other words, who will come to decisions on their own judgment and in the light of truth, govern their activities with a sense of responsibility, and strive after what is true and right, willing always to join with others in cooperative effort.

Religious freedom therefore ought to have this further purpose and aim, namely, that men may come to act with greater responsibility in fulfilling their duties in community life.

9. The declaration of this Vatican Council on the right of man to religious freedom has its foundation in the dignity of the person, whose exigencies have come to be fully known to human reason through centuries of experience. What is more, this doctrine of freedom has roots in divine revelation, and for this reason Christians are bound to respect it all the more conscientiously. Revelation does not indeed affirm in so many words the right of man to immunity from external coercion in matters religious. It does, however, disclose the dignity of the human person in its full dimensions. It gives evidence of the respect which Christ showed toward the freedom with which man is to fulfill his duty of belief in the word of God and it gives us lessons in the spirit which disciples of such a Master ought to adopt and continually follow. Thus further light is cast upon the general principles upon which the doctrine of this declaration on religious freedom is based. In particular, religious freedom in society is entirely consonant with the freedom of the act of Christian faith.

10. It is one of the major tenets of Catholic doctrine that man's response to God in faith must be free: no one therefore is to be forced to embrace the Christian faith against his own will.(8) This doctrine is contained in the word of God and it was constantly proclaimed by the Fathers of the Church.(7) The act of faith is of its very nature a free act. Man, redeemed by Christ the Savior and through Christ Jesus called to be God's adopted son,(9) cannot give his adherence to God revealing Himself unless, under the drawing of the Father,(10) he offers to God the reasonable and free submission of faith. It is therefore completely in accord with the nature of faith that in matters religious every manner of coercion on the part of men should be excluded. In consequence, the principle of religious freedom makes no small contribution to the creation of an environment in which men can without hindrance be invited to the Christian faith, embrace it of their own free will, and profess it effectively in their whole manner of life.

11. God calls men to serve Him in spirit and in truth, hence they are bound in conscience but they stand under no compulsion. God has regard for the dignity of the human person whom He Himself created and man is to be guided by his own judgment and he is to enjoy freedom. This truth appears at its height in Christ Jesus, in whom God manifested Himself and His ways with men. Christ is at once our Master and our Lord(11) and also meek and humble of heart.(12) In attracting and inviting His disciples He used patience.(13) He wrought miracles to illuminate His teaching and to establish its truth, but His intention was to rouse faith in His hearers and to confirm them in faith, not to exert coercion upon them.(14) He did indeed denounce the unbelief of some who listened to Him, but He left vengeance to God in expectation of the day of judgment.(15) When He sent His Apostles into the world, He said to them: "He who believes and

is baptized will be saved. He who does not believe will be condemned" (Mark 16:16). But He Himself, noting that the cockle had been sown amid the wheat, gave orders that both should be allowed to grow until the harvest time, which will come at the end of the world.(16) He refused to be a political messiah, ruling by force:(17) He preferred to call Himself the Son of Man, who came "to serve and to give his life as a ransom for the many" (Mark 10:45). He showed Himself the perfect servant of God,(18) who "does not break the bruised reed nor extinguish the smoking flax" (Matt. 12:20).

He acknowledged the power of government and its rights, when He commanded that tribute be given to Caesar: but He gave clear warning that the higher rights of God are to be kept inviolate: "Render to Caesar the things that are Caesar's and to God the things that are God's" (Matt. 22:21). In the end, when He completed on the cross the work of redemption whereby He achieved salvation and true freedom for men, He brought His revelation to completion. For He bore witness to the truth,(19) but He refused to impose the truth by force on those who spoke against it. Not by force of blows does His rule assert its claims.(20) It is established by witnessing to the truth and by hearing the truth, and it extends its dominion by the love whereby Christ, lifted up on the cross, draws all men to Himself.(21)

Taught by the word and example of Christ, the Apostles followed the same way. From the very origins of the Church the disciples of Christ strove to convert men to faith in Christ as the Lord; not, however, by the use of coercion or of devices unworthy of the Gospel, but by the power, above all, of the word of God.(22) Steadfastly they proclaimed to all the plan of God our Savior, "who wills that all men should be saved and come to the acknowledgment of the truth" (1 Tim. 2:4). At the same time, however, they showed respect for those of weaker stuff, even though they were in error, and thus they made it plain that "each one of us is to render to God an account of himself" (Romans 14:12),(23) and for that reason is bound to obey his conscience. Like Christ Himself, the Apostles were unceasingly bent upon bearing witness to the truth of God, and they showed the fullest measure of boldness in "speaking the word with confidence" (Acts 4:31) (24) before the people and their rulers. With a firm faith they held that the Gospel is indeed the power of God unto salvation for all who believe.(25) Therefore they rejected all "carnal weapons:(26) they followed the example of the gentleness and respectfulness of Christ and they preached the word of God in the full confidence that there was resident in this word itself a divine power able to destroy all the forces arrayed against God(27) and bring men to faith in Christ and to His service.(28) As the Master, so too the Apostles recognized legitimate civil authority. "For there is no power except from God", the Apostle teaches, and thereafter commands: "Let everyone be subject to higher authorities... He who resists authority resists God's ordinance" (Romans 13:1-5).(29) At the same time, however, they did not hesitate to speak out against governing powers which set themselves in opposition to the holy will of God: "It is necessary to obey God rather than men" (Acts 5:29).(30) This is the way along which the martyrs and other faithful have walked through all ages and over all the earth.

12. In faithfulness therefore to the truth of the Gospel, the Church is following the way of Christ and the apostles when she recognizes and gives support to the principle of religious freedom as befitting the dignity of man and as being in accord with divine revelation. Throughout the ages the Church has kept safe and handed on the doctrine received from the Master and from the apostles. In the life of the People of God, as it has made its pilgrim way through the vicissitudes of human history, there has at times appeared a way of acting that was hardly in accord with the

spirit of the Gospel or even opposed to it. Nevertheless, the doctrine of the Church that no one is to be coerced into faith has always stood firm.

Thus the leaven of the Gospel has long been about its quiet work in the minds of men, and to it is due in great measure the fact that in the course of time men have come more widely to recognize their dignity as persons, and the conviction has grown stronger that the person in society is to be kept free from all manner of coercion in matters religious.

13. Among the things that concern the good of the Church and indeed the welfare of society here on earth-things therefore that are always and everywhere to be kept secure and defended against all injury-this certainly is preeminent, namely, that the Church should enjoy that full measure of freedom which her care for the salvation of men requires.(31) This is a sacred freedom, because the only-begotten Son endowed with it the Church which He purchased with His blood. Indeed it is so much the property of the Church that to act against it is to act against the will of God. The freedom of the Church is the fundamental principle in what concerns the relations between the Church and governments and the whole civil order.

In human society and in the face of government the Church claims freedom for herself in her character as a spiritual authority, established by Christ the Lord, upon which there rests, by divine mandate, the duty of going out into the whole world and preaching the Gospel to every creature.(32) The Church also claims freedom for herself in her character as a society of men who have the right to live in society in accordance with the precepts of the Christian faith.(33)

In turn, where the principle of religious freedom is not only proclaimed in words or simply incorporated in law but also given sincere and practical application, there the Church succeeds in achieving a stable situation of right as well as of fact and the independence which is necessary for the fulfillment of her divine mission.

This independence is precisely what the authorities of the Church claim in society.(34) At the same time, the Christian faithful, in common with all other men, possess the civil right not to be hindered in leading their lives in accordance with their consciences. Therefore, a harmony exists between the freedom of the Church and the religious freedom which is to be recognized as the right of all men and communities and sanctioned by constitutional law.

14. In order to be faithful to the divine command, "teach all nations" (Matt. 28:19-20), the Catholic Church must work with all urgency and concern "that the word of God be spread abroad and glorified" (2 Thess. 3:1). Hence the Church earnestly begs of its children that, "first of all, supplications, prayers, petitions, acts of thanksgiving be made for all men... For this is good and agreeable in the sight of God our Savior, who wills that all men be saved and come to the knowledge of the truth" (1 Tim. 2:1-4). In the formation of their consciences, the Christian faithful ought carefully to attend to the sacred and certain doctrine of the Church.(35) For the Church is, by the will of Christ, the teacher of the truth. It is her duty to give utterance to, and authoritatively to teach, that truth which is Christ Himself, and also to declare and confirm by her authority those principles of the moral order which have their origins in human nature itself. Furthermore, let Christians walk in wisdom in the face of those outside, "in the Holy Spirit, in unaffected love, in the word of truth" (2 Cor. 6:6-7), and let them be about their task of spreading the light of life with all confidence(36) and apostolic courage, even to the shedding of their blood.

The disciple is bound by a grave obligation toward Christ, his Master, ever more fully to understand the truth received from Him, faithfully to proclaim it, and vigorously to defend it, never-be it understood-having recourse to means that are incompatible with the spirit of the Gospel. At the same time, the charity of Christ urges him to love and have prudence and patience in his dealings with those who are in error or in ignorance with regard to the faith.(37) All is to be taken into account-the Christian duty to Christ, the life-giving word which must be proclaimed, the rights of the human person, and the measure of grace granted by God through Christ to men who are invited freely to accept and profess the faith.

15. The fact is that men of the present day want to be able freely to profess their religion in private and in public. Indeed, religious freedom has already been declared to be a civil right in most constitutions, and it is solemnly recognized in international documents.(38) The further fact is that forms of government still exist under which, even though freedom of religious worship receives constitutional recognition, the powers of government are engaged in the effort to deter citizens from the profession of religion and to make life very difficult and dangerous for religious communities.

This council greets with joy the first of these two facts as among the signs of the times. With sorrow, however, it denounces the other fact, as only to be deplored. The council exhorts Catholics, and it directs a plea to all men, most carefully to consider how greatly necessary religious freedom is, especially in the present condition of the human family. All nations are coming into even closer unity. Men of different cultures and religions are being brought together in closer relationships. There is a growing consciousness of the personal responsibility that every man has. All this is evident. Consequently, in order that relationships of peace and harmony be established and maintained within the whole of mankind, it is necessary that religious freedom be everywhere provided with an effective constitutional guarantee and that respect be shown for the high duty and right of man freely to lead his religious life in society.

May the God and Father of all grant that the human family, through careful observance of the principle of religious freedom in society, may be brought by the grace of Christ and the power of the Holy Spirit to the sublime and unending and "glorious freedom of the sons of God" (Rom. 8:21).

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## NOTES

1. Cf. John XXIII, encycl. "[Pacem in Terris](#)", April 11, 1963: AAS 55 (1963) p. 279; *ibid.*, p. 265; Pius XII, radio message, Dec. 24, 1944: AAS 37 (1945), p. 14.

2. Cf. John XXIII, encycl. "[Pacem in Terris](#)", April 11, 1963: AAS 55 (1963), pp. 260-261; Pius XII, radio message, Dec. 24, 1942: AAS 35 (1943), p. 19; Pius XI, encycl. "[Mit Brennender Sorge](#)", March 14, 1937: AAS 29 (1937), p. 160; Leo XIII, encycl. "[Libertas Praestantissimum](#)", June 20, 1888: Acts of Leo XIII 8 (1888), p. 237-238.

3. Cf. John XXIII, encycl. "[Pacem in Terris](#)", April 11, 1963: AAS 55 (1963), p. 270; Paul VI, radio message, Dec. 22, 1964: AAS 57 (1965), pp. 181-182.

4. Cf. John XXIII, encycl. "[Mater et Magistra](#)", May 15, 1961: AAS 53 (1961), p. 417; *idem*, encycl. "[Pacem in Terris](#)", April 11, 1963: AAS 55 (1963), p. 273.

5. Cf. John XXIII, encycl. "[Pacem in Terris](#)", April 11, 1963: AAS 55 (1963), pp. 273-274; Pius XII, radio message, June 1 1941: AAS 33 (1941), p. 200.
6. Cf. Leo XIII, encycl. "[Immortale Dei](#)", Nov. 1, 1885: AAS 18 (1885) p. 161.
7. Cf. Lactantius "*Divinarum Institutionum*", Book V, 19: CSEL 19, pp. 463-464, 465: PL 6, 614 and 616 (ch. 20); St. Ambrose, "*Epistola ad Valentianum Imp.*", Letter 21: PL 16, 1005; St. Augustine, "*Contra Litteras Petilianii*", Book II, ch. 83: CSEL 52 p. 112: PL 43, 315; cf. C. 23, q. 5, c. 33, (ed. Friedberg, col. 939); idem, Letter 23: PL 33, 98, idem, Letter 34: PL 33, 132; idem, Letter 35: PL 33, 135; St. Gregory the Great, "*Epistola ad Virgilium et Theodorum Episcopos Massiliae Galliarum*", Register of Letters I, 45: MGH Ep. 1, p. 72: PL 77, 510-511 (Book I, ep. 47); idem, "*Epistola ad Johannem Episcopum Constantinopolitanum*", Register of Letters, III, 52: MGH Letter 1, p. 210: PL 77, 649 (Book III, Letter 53); cf. D. 45, c. 1 (ed. Friedberg, col 160); Council of Toledo IV, c. 57: Mansi 10, 633; cf. D. 45, c. 5 (ed. Friedberg, col. 161-162); Clement III: X., V, 6, 9: ed. Friedberg, col. 774; Innocent III, "*Epistola ad Arelatensem Archiepiscopum*", X., III, 42, 3: Friedberg, col. 646.
8. Cf. CIC, c. [1351](#); Pius XII, *allocution to prelate auditors and other officials and administrators of the tribune of the Holy Roman Rota*, Oct. 6, 1946: AAS 38 (1946), p. 394; idem. Encycl [Mystici Corporis](#)", June 29, 1943: AAS (1943) p. 243.
9. Cf. *Eph.* 1:5.
10. Cf. *John* 6:44.
11. Cf. *John* 13:13.
12. Cf. *Matt.* 11:29.
13. Cf. *Matt.* 11:28-30; *John* 6:67-68.
14. Cf. *Matt.* 9:28-29; *Mark* 9:23-24; 6:5-6; Paul VI, encycl. "[Ecclesiam Suam](#)", Aug. 6, 1964: AAS 56 (1964), pp. 642-643.
15. Cf. *Matt.* 11:20-24; *Rom.* 12:19-20; *2 Thess.* 1:8.
16. Cf. *Matt.* 13:30 and 40-42.
17. Cf. *Matt.* 4:8-10; *John* 6:15.
18. Cf. *Is.* 42:1-4.
19. Cf. *John* 18:37.
20. Cf. *Matt.* 26:51-53; *John* 18:36.
21. Cf. *John* 12:32.
22. Cf. *1 Cor.* 2:3-5; *1 Thess.* 2:3-5.
23. Cf. *Rom.* 14:1-23; *1 Cor.* 8:9-13; 10:23-33.
24. Cf. *Eph.* 6:19-20.

25. Cf. *Rom.* 1:16.
26. Cf. *2 Cor.* 10:4; *1 Thess.* 5:8-9.
27. Cf. *Eph.* 6:11-17.
28. Cf. *2 Cor.* 10:3-5.
29. Cf. *1 Pet.* 2:13-17.
30. Cf. *Acts* 4: 19-20.
31. Cf. Leo XIII, letter "[\*Officio Sanctissimo\*](#)", Dec. 22 1887: AAS 20 (1887), p. 269; idem, letter "Ex Litteris", April 7 1887: AAS 19 (1886), p. 465.
32. Cf. *Mark* 16:15; *Matt.* 28:18-20, Pius XII, encycl. "[\*Summi Pontificatus\*](#)", Oct. 20, 1939: AAS 31 (1939). pp. 445-446.
33. Cf. Pius XI, letter "*Firmissiman Constantiam*", March 28, 1937: AAS 29 (1937), p. 196.
34. Cf. Pius XII, allocution, "Ci Riesce", Dec. 6, 1953: AAS 45 (1953), p. 802.
35. Cf. Pius XII, radio message, March 23, 1952: AAS 44 (1952) pp. 270-278.
36. Cf. *Acts* 4:29.
37. Cf. John XXIII, encycl. "[\*Pacem in Terris\*](#)", April 11, 1963:AAS 55 (1963), pp. 299-300.
38. Cf. John XXIII, encycl. "[\*Pacem in Terris\*](#)", April 11, 1963:AAS 55 (1963) pp. 295-296.