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editorial

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Religious Diversity and
Secular Models in Europe –
Innovative Approaches
to Law and Policy

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Innovative Approaches to Law and Policy



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Some considerations on the Transparency, Accountability and Good Governance in Church Finances

By Lisbet Christoffersen, Universities of Copenhagen & Roskilde, Denmark

General norms in European societies require that organisations, be they public or private, follow standards of transparency, accountability and good governance. Nevertheless some argue that such standards are not relevant to religious organisations, since they basically are set on earth to meet other standards or other requirements than those of a private firm or a public institution. The general argument for this standpoint is however not obvious and necessitates more than just a general reference to 'freedom of religion' to deviate from the general standards of management of entrusted funds.

One of the comparative results of the RELIGARE project has revealed that some European countries include good governance of church finances in their regulatory standards while others seem to think that religious people *per se* are good at managing other people's resources. In Denmark, even though there are no regulatory standards in this field, except for the majority church – *folkekirken* – many religious communities have adhered to a general ethical scheme that implies to regularly publish general information on financial decisions (e.g. the web-side of the Catholic Church). In case of the *folkekirke*, such information is

however not easy to access. However, even though general rules are followed, the lack of *transparency* is heavily criticized. The general understanding there seems to be that as long as rules are followed, no general information is necessary.

To the contrary, public *transparency* to combat corruption and abuse of office would require that organisations provide general, regular and easily accessible information about the use of their resources, not only targeted at those directly financing the church – be they private faithful or public institutions – but also at the general public as well as internal leaders and employers. This is related to the requirement of *good governance* based on the idea of shared goals and trust according to which a religious organisation make accountable choices at the internal and external levels. Churches and religious communities must meet general standards of *accountability* in relation to the use of money and human resources, basically belonging to others, as well as in regard to other resources: buildings and, for that matter, spiritual resources and responsibility for their general contributions to society. The key conception is that even churches and religious communities should have *decency* integrated within their dna in regard to information and use of the resources with which they are entrusted.

José Manuel
Durão Barroso,
President of the



RELIGARE FINAL CONFERENCE

Secularism and Religious Diversity in Europe: Opportunities and Perspectives 4 - 5 December 2012

Last December a Conference took place in Leuven organised by the University of Leuven (Katholieke Universiteit Leuven - Faculties of Law and Canon Law) and the Centre for European Policy Studies (CEPS). This two-day conference aimed at discussing the RELIGARE project's key findings and to offer an opportunity to reflect upon their EU relevance.

The first day was held at the University of Leuven and consisted of a detailed presentation and an in-depth discussion of the research results among RELIGARE partners and external scholars and experts. The meeting was opened by the Dean of the Law Faculty, Mr. Bernard Tilleman, and chaired by Prof. Marie-Claire Foblets, coordinator of the RELIGARE project.

The morning and afternoon panels revolved around five main avenues of reflection for more were followed by an evening panel, featuring a keynote speech by Herman Van Rompuy, President of the EU Council, and having as discus-

sion panellists Adam Seligman (Boston University), Olivier Roy (European University Institute), Maleiha Malik (King's College London), Marco Ventura (KU Leuven) and Tore Lindholm (University of Oslo).

The second day's sessions took place at the Centre Albert Borschette in Brussels. They were opened by Ms. Louisa Anastopoulou, Scientific Officer, DG Research, European Commission. The panels' discussions were preceded by keynote speeches by Thorbjørn Jagland, General Secretary of the Council of Europe, and Lázló Surján, Vice-President of the European Parliament.

They brought together RELIGARE partners and established scholars and representatives from the European Commission and the Council of Europe with the view of integrating the RELIGARE project's findings in a process of policy making or a dynamic of cumulative effects in their field of work (non-discrimination, integration, anti-racism and dialogue with religious groups). This second day's conference was concluded with a video address by José Manuel Durão Barroso, President of the European Commission.

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State Support ...

Research within this theme questions the obligation of the State to continue to financially support churches and other religious or faith based organizations. In particular it questions the legitimacy of such support in the present-day context, where such support may, amongst other things, risk creating inequality between secular and religious values in Europe.

It is also a policy-oriented reflection on the relevance of the methods of financial State support and a prospective reflection on possible new models in order to adjust to the important changes that have occurred in European societies over the last decades.

RELIGARE INTERNATIONAL SEMINAR - Religious communities & State support

Strasbourg, 27 June 2012

Organized by the National Centre for Scientific Research (PRISME-University of Strasbourg), this scientific event gathered together legal scholars, canonists and political scientists focusing on the issue of the public funding in order to support religious activities and institutions.

After an overall introduction by F. Messner (CNRS/University of Strasbourg) the various contributions offered a presentation of the theoretical framework forged by the canonists and theologians which was completed by the account of religious authorities' experience in Denmark, France, Italy, Germany, Turkey, Belgium and the United Kingdom. This meeting aimed at providing some clarity to the question of the financing of religious communities through the overall analysis of the key elements of the denominational law and theological principles specific to the Catholic, Protestant, Jewish and Muslim religions.

The contributions to this busy symposium allowed extraction of the main elements of a comparative approach to highlight the public authorities' role in managing and using the subsidies granted to religious denominations. They outlined how tensions can arise between the religions' freedom to organize their activities and the control over the use of public funds and, in certain cases, between this freedom of organization for religions and the principles of public accountability. The morning and afternoon sessions brought into the light for discussion issues such as the limits of the margin of appreciation of the religious communities in this field, the varying level of control over certain religions – is it more advanced for some groups than for others?–, and accounting considerations in terms of how the specific context of Churches and funded religions fits with the obligation to provide accounting records and to justify their expenditures.

In addition, the comparative panels based on the main religions provided a certain insight into the way religions consider their funding by public authorities, through their founding texts and their religious internal law as regards buildings maintenance, salary and training of religious leaders, charity, educational and social institutions. Every religion abides by the principles set in its normative texts while flowing into the status of cult of the host country. But funding mechanisms vary across countries. They differ even more within a country de-



pending on the degree of "recognition" and "cooperation" of each religious community with the government.

Country case studies and experiences were shared by Mgr Roland Minnerath (Archbishop of Dijon), Bernard Xibaut (Chancellor of the Archbishopric of Strasbourg), Mr Erling Tiedemann (Councilor for the Roman Catholic Bishop in Denmark), Tiziano Rimoldi (Director of the Italian Adventist College Villa Aurora - Florence), Bishop Peter Fischer-Moeller (Diocese of Roskilde, Danish Lutheran Church-folkekirken), David McClean (Diocesan Chancellor, Reader Emeritus - Sheffield), Driss Ayachour (Vice President of the Regional Council of the Muslim Faith - CRCM-Alsace), Imam Yahya Sergio Yahe Pallavicini (President of the Institute of Islamic Studies - IHEI - and Vice President of the Islamic Religious Community in Italy - COREIS), Dr. Fazlý Arabacý (Rector of the Private Faculty of Islamic Theology of Strasbourg, Diyanet), Francis Levy (President of the Bas-Rhin Consistory), Yeshaya Dalsace (Massorti Rabbi), Rabbi Isak Alaluf (Jewish Community of Turkey).

RELIGARE POLICY MEETING - Negotiating Religious Pluralism in Europe: Between the EU and the ECHR

Strasbourg, 28 June 2012

This third RELIGARE Policy Dialogue Meeting was co-organised by the Centre for European Policy Studies (CEPS), the University of Leuven (Katholieke Universiteit Leuven - Faculties of Law and Canon Law) and the National Centre for Scientific Research (PRISME-University of Strasbourg).

The thematic focus was to give guidelines for dealing with the challenging issue of religious pluralism in European societies with an enlarged perspective contributed to by taking into account the European law of human rights and the law of the European Union. In this context particular attention was devoted to the role of the Council of Europe and European Court of Human Rights in the developing field of law and religion in Europe considering that religious questions are increasingly negotiated in a supranational arena, not only between domestic legal orders and European judges, but between two European level systems, particularly where they intersect with human rights. While religious matters remain at the margins of EU competence, this trend is meant to be reinforced by the EU's future accession to the ECHR and the now binding nature of the EU Charter of Fundamental Rights.

This day-long event brought together an impressive number of RELIGARE researchers and established scholars from across Europe featuring a round of interdisciplinary papers given over the course of three sessions. The morning session was dedicated to "key witnesses" with leading experts in the field of religion discussing the relevance of religious pluralism for contemporary Europe and underlying the reasons why religious diversity should be addressed in the European sphere. The two afternoon sessions featuring Council of Europe policymakers and legal practitioners, followed by discussion papers, revolved around the role and influence of the Council of Europe in the field of religious pluralism and the current and future interactions between the European legal systems and national courts. Special attention was paid to the state of affairs of the EU's accession to the European Convention on Human Rights and its implications on religious pluralism debates in the scope of EU policy making. The meeting was concluded by Prof. Marie-Claire Foblets (K. U. Leuven).



M.-C. Foblets,
Coordinator of the
RELIGARE project



European Court of Human Rights

Focus on case law

France

Council of State, 19-07-2011 **Fédération de la libre pensée et de l'action sociale du Rhône, n. 308817**

The applicant is the Federation of the Free Thinking and of social action of the Rhône county. It sought to annul the City council of Lyon's decision to grant a subsidy of 1,5 million francs to the Fourvière Foundation. This subsidy was meant to contribute to the financing of an elevator to make the access to the basilica of Fourvière easier for disabled persons. The applicant's appeal was dismissed by the administrative court of Lyon in 2002 and later on by the administrative court of appeal of Lyon in 2007. The Federation accordingly lodges an appeal with the Council of State.

The Council of State refers to articles 2 and 13 of the 1905 Act. Article 2 provides that "the Republic neither recognizes nor salaries or subsidizes any religion" while, pursuant to article 13, "the State, the Departments, the Cities and the public establishments of inter-cities cooperation will be entitled to grant the subsidies necessary to the maintenance and the conservation of the places of worship they own". Moreover, the Council quotes article 5 of the Act of 2 January 1907, which guarantees to the clergy and the faithful the use of the place of worship for religious purpose.

The Court takes the view that those provisions nevertheless allow the financing by a City of the maintenance and preservation works under the condition that the equipment at stake corresponds to a local public interest based on the cultural importance of the place of worship and the touristic and economic development of the City and is not of religious use on the one hand, and, on the other hand, that the public subsidy is not granted to a religious association (association culturelle) and is used for financing the equipment only.

If those conditions are met, the fact that this equipment might be also used by the worshipers does not affect the legality of the City of Lyon's decision. Accordingly, the judgment of the administrative Court of appeal of Lyon is upheld.

Germany

Social Welfare Tribunal Lüneburg, 12-05-2011, N. S 22 SO 19/09

The plaintiff claimed reimbursement of the costs of the Islamic funeral of her husband. She had arranged the transportation of the corpse to Turkey, where the funeral had taken place according to his last will.

The court granted only the costs which have arisen and would also have arisen from a funeral in Germany. It adjudged that there was no interference with the basic right of freedom of religion neither of the deceased nor of the plaintiff, since Islamic creed would not oblige the followers to be buried on Islamic territory. There are Islamic cemeteries in Germany, especially in Hamburg. Therefore, the costs which result from the transport of the corpse abroad are not necessary expenses and cannot be reimbursed in the framework of income support.

ECHR, *Wasmuth v. Germany*, 17-02-2011

n. 12884/03

The right not to indicate his religious convictions is not absolute

The facts - For some years, the wage-tax cards of the applicant had been entailing a section "Church tax deducted" which was left blank, informing informed his employer that he had not to deduct any Church tax for Mr Wasmuth. He unsuccessfully asked to the local authorities to provide him with a wage-tax card disclosing no information related to his religious belonging for the fiscal years 1997 and 1998. He lodged an appeal with various German courts arguing that this refusal amounted to a breach of his right not to disclose his religious opinion.

More particularly, the finance court held in 2002 that the entry left blank on the wage-tax cards aimed at guaranteeing him that no Church tax would be deducted. In addition, the finance federal Court uphold this decision on the ground that the disclosure of his religious opinion to the Church authorised to levy the tax did not place an unacceptable burden on him.

The ECHR decision - First, the European Court of human rights deems that this obligation to disclose one's religious non-belonging to the Church authorised to levy Church tax amounts to an interference with the applicant's right not to indicate his religious convictions.

Second, the Court states that there are a legal basis to this interference and case law related to this issue.

Third, this interference pursued the legitimate aim of ensuring the right of Churches and religious societies to levy religious tax.

As to whether the interference had been proportionate to that aim, the European Court follows the German jurisdictions in thinking that the reference to the applicant's religious or philosophical beliefs on the wage-tax card had a limited influence. Indeed, it only indicated to the fiscal authorities that he did not belong to one of the six Churches of religious communities that can levy tax.

In addition, the tax card is not publicly used and has no utility outside the relationships between employee and the fiscal authorities.

Unlike other cases held by the Court, Mr Wasmuth had not been required to explain why he did not belong to one of the religious communities. Accordingly, the Court deems that the obligation imposed on the applicant was not disproportionate to the aims pursued.

As to Mr Wasmuth's complaints that by providing the requested information he was taking part in the Church tax system and supported the Church, whose position he disapproved, it is rejected by the Court. This participation to the system was minimal.

Lastly, the Court takes into account that there is no European standard in the Church and religious groups financing area, this issue being closely linked to each country's history and tradition.

There had been no violation of article 9.



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EVENTS/CONFERENCES

Title	Date	Venue
Religions and International Human Rights law	July 8th-26th, 2013	44th Annual Study Session in International and Comparative Law of Human Rights <i>International Institute of Human Rights, Strasbourg</i> The purpose is to provide advanced courses in international and comparative human rights law with a focus on religion and under the direction of specialists from around the world. Online registration: www.iidh.org
Religion, Democracy, and Equality	August 21st-23rd, 2013	Third ICLARS Conference <i>Virginia, USA</i> The general conference aims to investigate issues among the following themes: religious pluralism and treatment of religious minorities; religion and anti-discrimination norms; hate speech, hate crimes, and religious minorities; religion and gender issues. Proposals by all interested scholars should be submitted, together with an abstract of 300-500 and a CV, by 1 May 2013, to wrightde@law.byu.edu . http://www.iclars.org/content/blurb/files/ICLARS2013CallforPapers2.pdf
Culture, religion and Society	August 25th - September 1st, 2013	UCSIA Summer School <i>University Centre Saint-Ignatius Antwerp (UCSIA), Belgium</i> The emphasis of the interdisciplinary UCSIA summer school programme will be on Religion, Reform and the Challenge of Plurality. The research will explore the processes of change that arise in the interaction between religions and societies in contexts of plurality. Deadline for applications: April 28th, 2013, www.ucsia.org/summerschool