

Resumé in English

Freedom of religion and the protection of human rights in the European Union – contribution of the Holy See

The aim of the present dissertation is to analyze and summarize the situation in the European Union regarding the guarantee of human rights, with particular reference to religious freedom, without, however, dealing directly with the relevant jurisprudence of the European Court of Human rights (ECHR, Strasbourg) or of the European Court of Justice (ECJ, Luxembourg).

For this purpose, the necessary information has been assembled for a complete overview of the social, political, cultural, religious and juridical conditions of European society. The sources used are principally official documents of the European Union, the United Nations and the Holy See, as well as numerous detailed studies of the individual themes under consideration, of a historical, economic, linguistic, religious and juridical character. In the search for information, the internet has also been used, but always on condition that the source is sufficiently authoritative, e.g. the websites of official European Union institutions or of the Holy See, of universities or of State statistical agencies.

CHAPTER I – The contemporary relevance of the religious question in Europe

The first step is a chronological sketch of the evolution of the concept of law in general, inasmuch as this is the basis of the idea that there exist fundamental rights that are proper to the human being, focusing on the gradual development of the concept of fundamental human rights as we understand them today. The concept of freedom of religion and religious freedom is defined. There follows an analysis of

their expression in the Documents of the European Union and the Church's Magisterium, considering in turn the various aspects of the concrete application of the freedom of religion, including the duty on the part of the civil power to guarantee it, the right to education corresponding to the religious convictions of parents, the independence and the freedom of the Church. Finally an analysis is offered of the changes that took place in Europe after 1989 and of the consequences of enlargement to include countries from the former Soviet bloc for the protection of human rights among the various Member States of the EU.

CHAPTER II – European integration

The safeguarding of fundamental human rights has long been regarded as a matter to be treated juridically only within the legal systems of individual European countries. Until the close of the Second World War, all interference on the part of third States was considered inadmissible, and this included the field of human rights; with the Universal Declaration of Human Rights (UDHR), which was approved and proclaimed in Paris on 10 December 1948, it was intended to move beyond this understanding, extending it to the international level. Attention is given to the Convention for the Protection of Human Rights and Fundamental Freedoms (signed in Rome on 4 November 1950).

Thus the genesis of the UDHR is considered, and an analysis is offered of the Articles by which the guarantee of freedom of religion was established by the United Nations, up to and including the approval of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion and Belief on the part of the UN (1981). This is followed by some reflections on the principal measures adopted by the European countries that have shaped the current political configuration of Europe, from the establishment of the League of Nations in 1919 until the adoption by the European Council of the definitive text of the Treaty of Lisbon (19 October 2007), which remains to be ratified.

CHAPTER III – The religions present in Europe

This chapter is a synoptic picture of the principal religions practised in Europe. It has not always been possible to obtain exact statistics concerning the faithful of every religion considered, but it goes without saying that the number of Muslims, Buddhists and Hindus in Europe is increasing.

The fundamental principles of the following religions practised in Europe are described: Christianity, Judaism, Islam, Hinduism, Buddhism, including a reference to the so-called *unwritten religions* present in Europe.

On the relationship between atheism and freedom of religion, some critical observations are summarized regarding fatalist ideas about a clash of civilizations currently taking place or soon to take place in Europe, in the light of the inter-religious dialogue that has been initiated between moderates in the West and in Islam.

CHAPTER IV – The *laïcité* of the State (the secular status of the State)

The concept of *laïcité* is defined, together with a description of the relation between the *laïcité* of the State and the problem of freedom of religion. The history of *laïcité* is summarized, consisting in the relationship between papacy and empire, describing the theocratic condition in the pre-Christian State, Caesaro-papism and the effort made in subsequent centuries to achieve recognition of the distinction between civil power and spiritual power. The principal medieval doctrines concerning the relationship between temporal power and spiritual power are presented; an analysis is offered of the model of *laïcité* that inspired the Constitutions of modern European States, and reference is made to the modern position of the Holy See regarding the *laïcité* of the State.

Next comes an analysis of the type of relations that exist between European States and the Holy See, relations that were or still are based on the institution or absence of a Concordat.

For an evaluation of the application of the concept of *laïcité* in the Constitutions of European countries, a brief analysis is given only of the Constitution of the Republic of Italy, which can assume a paradigmatic value insofar as it is the

Constitution of a secular European State that is particularly sensitive to the problem of *laïcité* (it is the only State in Europe that borders with the Vatican). Guaranteeing freedom of religion coincides with the right to freedom of expression sanctioned by the Constitution. No particular priority is attached to the specific content of individual religions. The freedom that the Italian Constitution guarantees to religious confessions is therefore a “political freedom”.

Some treatises from the 19th and 20th centuries are examined from the point of view of the safeguarding of the rights of minorities and the protection of religion. It is stressed that it was above all the search for the maintenance of internal peace that drove individual European nations to sign international accords for the safeguarding of the freedom of religion.

There follows an analysis of the Directive 2000/78/CE, which in the European union prohibits discrimination based on religious belief or personal convictions. It concludes with a consideration of concordats and other international relationships between the Holy See and the States of the EU, identifying three typologies of Church-State relationships: the first, when a Church assumes the role of State Church; the second, when there is separation of Church and State but with a tendency to seek a certain type of agreement and concordat with religious confessions in order to regulate the so-called “mixed matters”; and a third typology characterized by a rigid separation between State and Church.

CHAPTER V – The Holy See and the European Union in support of religious freedom

Here a brief summary of the history of papal diplomacy is given, starting with the first pontifical legate of whom anything is known, in the year 314 A.D., and continuing with the analysis of the role of pontifical legates.

The various types of medieval pontifical legate are described, the creation of the *Sacra Congregatio de Propaganda Fide*, and the constitution of pontifical nunciatures in all known parts of the world in the 17th century. Then comes an examination of the situation of the Holy See during the Congress of Vienna, some reflections on the change that followed the loss of the Papal States in 1870, until the

signing of the Lateran Treaty of 1929 and its subsequent variations. Reference is made to the *Codex Iuris Canonici* of 1917 and 1983, with an analysis of the canons dealing with pontifical representatives.

It is stressed that the diplomacy of the Holy See was committed to the task of arbitration and peace-building, at international level. Four phases are identified in the historical evolution of the type of relationship between the Holy See and the civil power. It is stressed, moreover, that the character of *impartial State* in the international arena permits the Holy See to be constantly present and always aiming at a full acceptance of universal values, such as fundamental human rights, in the legal systems of European States.

Conclusions

In this work, an attempt has been made to highlight the fact that the protection of fundamental human rights, especially through their juridical affirmation in the Constitution and in the laws of the European Union, is the principal way to guarantee freedom and dignity to man himself, wherein lies the basis of social and political stability.

An attempt is made to describe whether and how fundamental human rights are guaranteed in the European Union, with particular attention to freedom of religion. The Convention for the Protection of Human Rights and Fundamental Freedoms, which came into force in September 1953, did not specify the concept of religion and of religious belief. This convention serves as the basis of the Charter of Fundamental Rights of the European Union, which establishes various rights of European citizens, and was integrated into the Treaty of Lisbon in 2007. If this is ratified by all 27 Member States of the EU, freedom of religion, on a par with other human rights, will be part of the Community's legal system.
