

Fédération Humaniste Européenne

European Humanist Federation

International non-profit association under Belgian law

NOTE CONCERNING ARTICLE 37 OF THE DRAFT TREATY

The purpose of the present note is to examine the meaning and impact of article 37 of the draft of the constitutional treaty resulting of document 650/03, especially regarding the principles governing the relations between the churches and the state. Is this arrangement compatible with these principles ? Is it meaning a progress on the way of a separation of churches and state or, on the contrary, a step back ?

Article 37 is composed as follows:

- 1. The European Union respects and do not prejudice the status under national law, of the churches and associations or religious communities in the Member States.*
- 2. The European Union equally respects the status of philosophical and non-confessional organisations.*
- 3. The Union shall maintain a regular dialogue with these churches and organisations recognising their identity and their specific contribution.*

The comments specify that the two last paragraphs reproduce the text of declaration n° 11, appended to the Amsterdam Treaty and that paragraph 3 intends to maintain a dialogue with the churches “as well al with the civilian associations, see article 34”.

So, paragraph 3 of this measure - insofar it can be interpreted as “self” executing means that the churches have the right to benefit of a privileged dialogue with the Union, being understood that, on a juridical basis, there is no prejudice regarding the quality and effects of this dialogue.

On the other hand, the Union cannot interfere in the relations between the states and the churches.

A fortiori, and even if it is not written “expressis verbis”, the Union cannot interfere either in the temporal or in the spiritual of the churches. Giving another interpretation to this text would mean it would no longer have any effect.

Article 37 shows evidently a change in perception: whereas the principles tend to protect mutually each sphere (public and religious) from the interventions from the other, article 37 seems, on the contrary, to protect the religious sphere from the interventions of the public authorities of the Union, but imposing as well to these authorities to accept favorably the opinions expressed by the religious institutions.

This means that the equilibrium, in European institutional law, is in fact broken in favour of the institutional religious sphere.

We can also consider that, if the comments on article 37 seem to put in parallel the system of philosophic and religious communities with the civil society concerned in article 34, the first ones benefit from a special system.

Indeed, whereas the dialogue with the civil society, organised by article 34, must necessarily take place with the “representative associations” and “be open” and “transparent”, no condition is posed concerning the religious organisations, neither in terms of representativity, nor in terms of open-mindedness and transparence.

This means that reading “a contrario” article 37 versus article 34, gives on one hand the Union a very large power of appreciation, even arbitrary, in its choice of the religious institutions with which it wants to dialogue, and on the other hand it allows to eventually give an institutional and hidden character to this dialogue.

Conclusion

Article 37 means clearly a regression regarding the classical constitutional regulations concerning religions in so far that:

- it sets up a right for the religions to interfere in the actions of the public authorities – even if this right of interference is limited to a privileged dialogue;
- it imbalances the relation between the churches and the Union forbidding the latter to take into consideration the situations of the churches in the member states;
- it permits a hidden dialogue to be implemented;
- it enables the Union to discriminate when choosing the religious institutions authorised to participate in this dialogue.

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