

EUROPEAN HUMANIST FEDERATION

Address by David Pollock to a meeting held on 4 June 2012 between the European Humanist Federation and European Commission officials on

CLASHES OF RIGHTS

The EU declares its values in its Treaties. Repeatedly it names respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.¹

These are also the fundamental values of the EHF - indeed, they are not just compatible with but constitute a large part of our values. In particular we are committed to freedom of religion or belief - it is a "precious asset" for us as non-religious people no less than it is for believers. But freedom of religion or belief is only one among many human rights.

We have a two-level vision. First there are our own fundamental non-religious beliefs about the nature of life and morality - but we recognise that these engage eternal questions on which there is never likely to be agreement; but within our basic beliefs is also a view of society that entails commitment to human rights, for everyone, and to equality and non-discrimination in their application.

The institutions of such a society have to be secular, in the sense of neutral on the unresolvable questions of ultimate beliefs. The EU also should be and sometimes says it is committed to secularism in this sense.

For it is no longer viable (as in the past) to hold that the state should support the beliefs and principles of a single dominant religion. An alternative governing principle is required. Most plausible is that the law should above all safeguard individual human rights - in this context, most notably freedom of religion or belief and freedom of expression - and the principle of equality and hence non-discrimination.

This principle of equality maintains that every human being should command in law equal worth and dignity and value and protection. It is in the practical working out of this principle, especially as regards freedom of religion or belief, that problems arise.

The *forum internum* is inviolable but *manifestation* of beliefs is subject to necessary limitations - "prescribed by law" and "necessary in a democratic society" in particular for "the protection of the rights and freedoms of others". One person's human rights stop where

¹ Thus: "the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law" - Preamble, Charter of Fundamental Rights; "freedom, democracy, equality and the rule of law" - Preamble, Treaty on the European Union; "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." - Article 2, Treaty on the European Union.

another's begin. It is that difficult boundary that we wish to examine.

My role this morning is not to go too much into legal detail but to set the context. Europe today is in the midst of a huge transition. In the past, it was almost universally Christian. The state was usually identified with Christianity - indeed, with one or another locally dominant denomination of the Christian religion.

As a result, we have inherited today a situation where the churches have immense power and privileges. Many remain engaged constitutionally with the state, enjoying special rights of access to power, not least through political parties with historic and sometimes continuing links to the churches. They own huge estates and immense wealth. Yet they receive billions of Euros a year in subsidies from public funds. As a result of their past contribution to society, they run a large proportion of public services - education, hospitals and so on - mainly (sometimes entirely) at public expense.

Their power is entrenched by conservative principles and is defended partly by a rhetoric that equates religion with virtue and partly by leveraging the religious duty of adherence to the church.

This is assisted by the assertion of unlimited freedom in the name of religion and by aggressive exercise of rights of conscience by a Christian minority, which Isabelle Rorive will deal with in more detail. There is a very real risk of Europe going down the American road where (as in the recent *Hosanna-Tabor* case² in the Supreme Court) separation of church and state has come close to church freedom from all inconvenient civil law.

But while the European tradition is one with a strong religious character, the European reality of today is of a people who, if they have not abandoned Christianity, have certainly relegated it to a minor, largely cultural interest. The EU's own Eurobarometer surveys have consistently illustrated this over the last few years:

- only 5% "participate actively in or do voluntary work for" a religious or church organisation³
- 46% think religion has too important a place in society⁴
- 50% "tend not to trust" religious institutions⁵.

² *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* etc.

³ Eurobarometer 73: Public Opinion in the European Union (November 2010) - available at http://ec.europa.eu/public_opinion/archives/eb/eb73/eb73_anx_full.pdf.

⁴ Eurobarometer 66: Public Opinion in the European Union (September 2007) available at http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf.

⁵ *ibid.* See also Eurobarometer 74: Public Opinion in the European Union (February 2011) - available at http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_anx_full_fr.pdf: when asked to pick up to three from a list of twelve 'values', people in Europe placed religion last: only 6% chose it as important to them to their personal identity.

Moreover, as early as 2005 Eurobarometer found that only 52% of people believed in God while 18% rejected outright even the idea of 'some sort of spirit or life force'.⁶

These figures offer no justification for the power and influence that the churches still retain in society. Yet despite the cries of anguish about persecution of Christianity in Europe that emanate from parts - far from all - of the ecclesiastical community, it remains the non-religious who lack power and representation.

Our problems, in speaking on behalf of the organised non-religious population of Europe and in seeking to defend the interests of all non-religious Europeans, are our historically recent emergence from oppression, our weak and poorly resourced organisations, and above all our lack of a collective identity as non-religious.

For most non-religious people, being non-religious is not an identity and they do not join organisations on that basis. The analogy drawn by Sophie in't Veld, the MEP who chairs the European Parliament Platform for Secularism in Politics, is that stamp collectors form clubs, but people who do not collect stamps do not form clubs for non-stamp-collectors.

Lacking a clear identity, at least we do not suffer much discrimination of a direct and overt nature. But lacking organisation and therefore confidence in their non-religious beliefs, the majority of the non-religious people of Europe remain generally unassuming and uncomplaining.

Yet

- They are the people who are not eligible for (or at least not preferred for) a wide range of teaching and public service jobs because the employer is a religious organisation.
- They are the doctors who may be forbidden to carry out abortions by the religious hospital that employs them.
- They are the women who as a result too often cannot get abortions or emergency contraception or have to go through hoops to do so.
- They are the public service employees who, because provision of the service is contracted to a religious organisation, find that their jobs are at the mercy of religious oversight of their private lives.
- They are the taxpayers whose tax is paid to a church to support a religion they do not believe in and its political campaigning that they oppose.
- They are the scientists who cannot get EU funding for their work because the EU, under religious pressure, has excluded much research using human embryonic stem cells.
- They are the writers and artists who cannot get their work published or exhibited for fear of offending religious sensibilities.
- They are the gay couple that risk being turned away at a hotel or registry office,
- or who are split up in a retirement home contracted out to a religious charity that disapproves of their "inherently disordered condition".

⁶ Eurobarometer special survey: Social values, Science and Technology (June 2005) available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf.

- They are the parents who find the only school available to them is a religious one,
- or who cannot get their children into the local school because it is religious.
- They are the painfully and terminally ill who cannot end their lives because the churches prevent reform of the law.

More generally, they are all the people who resent the all-too-common assumption that religion is identical with virtue and that therefore it is somehow not respectable to oppose any demand made by the churches or to criticise anything labelled “religious”.

So in sum protecting non-religious identities is in practice less about limiting discrimination based directly on non-religious beliefs and much more about reining in the excessive religious exemptions from equality laws and the undue religious restrictions on freedom of expression and the excessive privileges that religion enjoys under the current arrangements in political access and in provision of funding.

Here we would naturally look for protection to the EU with its commitment to human rights, to equality and non-discrimination and to secularism. Sadly, too often the EU has failed us. Let me look in particular at the exceptions in the employment framework directive.

We do not contest that some exceptions - particularly those in Article 4.1 - were necessary - but the directive was too loosely worded and in its transposition into national law the exceptions have been widened, often blatantly beyond what the directive allows.

So we have cases like:

- the veto exercised by the Roman Catholic church in the German state of Bavaria over appointments to 21 professorial chairs in 7 of the 9 state universities under the state’s Concordat of 1974 - patently in breach of the Framework Directive but so far unsuccessfully challenged in litigation.
- the rule in Malta that, because they are required to give confessional religious instruction, all primary teachers must have “a serious Catholic religious conviction” and “a personal situation that accords with the Roman Catholic morality to which the teacher must testify”⁷ - or risk losing his or her job if the local priest objects.
- the German law that permits religious communities to determine for themselves the scope of their religious mission and then claim wide exemptions from employment laws for all the schools, hospitals and the like that they run, albeit with public money, so that they can claim disloyalty to their ethos if anyone leaves the church, or gets divorced, or marries a divorced person, or is homosexual, and so on.

I can cite also the wide range of jobs advertised in the UK that are apparently limited to Christians - a quick Google search found on one site vacancies for a cookery tutor, a school taxi driver, a Fashion Expert, a HandyPerson, a Ironing Lady, a Cleaner, a Housekeeper, and a

⁷ Quotations are from the concordat between Malta and the Holy See.

Chauffeur; elsewhere there were posts for a receptionist at a medical charity, a head of sales and marketing in a private healthcare company, and an ICT technician in a religious school, and so on. It is difficult to imagine that all these were subject to genuine occupational requirements.

And the directive is ineffectively policed. The Commission is slow to take action: I draw my examples from United Kingdom, where the government has failed to act on the Commission's Reasoned Opinion 226 of November 2009 (*Infringement no 2006/2450*) on the UK's transposition of the Directive. Unlawful discrimination against LGBT people has therefore been permitted by UK law to continue for the last nine years.

I wish to enquire whether it is right that the Commission will shortly be following up its Opinion, and in that context will it deal also with the other complaints that have been made about UK legislation that is incompatible with the Directive, namely:

- one from the British Humanist Association of April 2010 - ref (2010)1206 - about the School Standards and Framework Act 1998
- one from the National Secular Society of February 2011 - ref (2011)733 - about protection of teachers' employment
- another from the National Secular Society of March 2011 - ref (2011)1060 - about vocational courses at Roman Catholic colleges
- another from the National Secular Society of March 2011 - ref (2011)1061 - again about the School Standards and Framework Act 1998
- another from the National Secular Society of July 2011 - ref (2011)2671 - about the Education (Scotland) Act 1980.

Incidentally, I would remark that if there is so much to complain about in the Directive's transposition by the UK, which is relatively dutiful in transposing EU law, the situation elsewhere is presumably at least similar or more likely worse.

I wish also to enquire about a reply from the Directorate General for Education and Culture on 17 February 2012 to a member of one of our member organisations, which seems to suggest that the Commission does not act on complaints it receives about failures of transposition. The reply said:

With regard to the alleged discrimination against teachers and schools staff in faith schools, we take the view that such matters are to be handled on a case-by-case basis and that it is for national or local courts to determine, after a careful examination of all the relevant elements of the case, if such practices are contrary to applicable national and EU law, in particular the provisions of Directive 2000/78/EC.

Such a regime would be immensely repressive, and we should welcome an assurance that well argued complaints about failure to transpose will indeed be examined and acted on. *[NB: This assurance was received.]*

It would also be useful to know how responsibility for monitoring with transposition is allocated as between the DG of Justice and DGs concerned with the subjects of legislation - that is, employment, education and so on. *[NB: we were told that responsibility rests with DG Justice.]*

So what we are asking for is closer and prompter scrutiny of transposition in this area, because the rights of the very large population of non-religious people are at risk from the unwillingness of governments to confront historically entrenched religious privilege and from aggressive assertion of religious exemptions by powerful religious organisations.

We are asking also for much tighter wording and narrower exemptions in future legislation. The UK - and presumably other member states - simply ignored many of the detailed conditions in the employment framework directive: why should not there be a requirement that each and every element of a directive's wording in such matters must be transposed? Subsidiarity should not be allowed to prevail over human rights.

In the draft new directive on goods and services, the original draft was again wide open to religious exploitation. The European Parliament proposed several vital amendments, in particular to Recital 18 on education and Article 3, where the Parliament proposes to state

“Where the activities of churches or other organisations based on religion and belief fall within EU competence, they shall be subject to the Union's non-discrimination provisions”.

If religious organisations choose to involve themselves as agents of the state in the delivery of public services, then there is no reason whatever why they should not be bound by the same rules as public authorities.