RELIGION, SECULARISM AND PLURALISM
THE EUROPEAN EXPERIENCE

Muhammad al Sheikh ●

Europe is really rather an odd place. Look at the text of the draft constitution it put before its citizens on 17th and 18th June 2004 with a preamble referring to what – after an extraordinary exercise in verbal acrobatics – it called "Europe's cultural, religious and human heritages". A phrase like that glosses over all the conflicts that have divided the partners and turned them into separate entities. We have Italy, Malta, Poland, Portugal, the Czech Republic and Slovakia on record as demanding a specific reference to the "Christian religion" in the preamble; other voices clamour for a reference to "God" in the text of the preamble(Germany and the United Kingdom), while a third group wants a reference to the Trinity (Greece and Ireland) and a fourth – France – calls for explicit respect to be accorded to the principle of secularism, or *laicite*, which it has long regarded as tantamount to Holy Writ. With each group "rejoicing at what it has," it is almost as if some of them see these

● **Scholar and academic from Morocco.**

various versions of Europe as constituting a threat to secularism while there are others – by contrast – who regard it as a favourable opportunity for secularism that needs to be welcomed.[1]

- 1 -

The dichotomy between politics and religion – the subject of the disputes in this preamble – has been at the heart of European thought since the beginning of the Modern Age in Europe, and this is particularly true of the nineteenth century when it was at its height. We therefore need to examine it from the point of view of there being, as a matter of principle, two "essential entities" – an "essential political entity" and an "essential religious entity," a "citizen" and a "believer". For Europeans, the link between the two has become a serious problem and raises the question: Can a "believer" be a "citizen" or is his "believer country" not one of those modern "citizen countries" that have been created in this ephemeral world? Or conversely: Can a "citizen" be a "believer" or are citizenship and atheism mutually inseparable?

It is a traditionally held belief borne out by reality that a state owes its origin to the "community of its citizens" (unless we take the extreme anarchist position), just as it is generally held, at least in the Western tradition, that the "Church" – in its widest sense (except in certain isolated and exceptional cases) – owes its origin to the "community of believers". This poses the inevitable question, which has been asked in Europe more frequently than elsewhere: "What does the state represent where the church is concerned?" (and of course: "What does the church represent where the state is concerned?") Does the church regard the state as its "temporal partner"? And does the state regard it as its "religious partner"? Since the "community of citizens" – or "political community" – believes that it derives its authority from the people, while the "community of believers" – or "religious community" – sees its authority as coming from God, and since the "political community" is primarily a temporal

1 Jean-Paul Willaime: *Laicite, Religions et Construction Europeenne* in Laicite et Separation des Eglises et de l'Etat: Historie et Actualite, sous la direction de Jean Bauberot, Paul d'Hollander et Mireille Estivalez, Presses Universitaires de Limoges (PULIM), 2006, p. 213 sq.

community and the "religious community" is primarily an "otherworldly" community, these further questions arise: "How can the two communities coexist? By cooperating or by severing any mutual relationship they may have had? And what form would this 'mutual severing' take? And what kind of cooperation would there be?"

- 2 -

It is no secret that, because of its eventful and turbulent history when compared to the rest of humanity, Europe has come to be regarded as an experimental laboratory. Our main area of interest is the relationship between the state and religion. In this respect, Europe has a wide range of experiences:

Firstly, from the point of view of principle. Europe has examined, and when possible tried, every conceivable type of state-religion relationship. Erik Wolf (1902-1977) the German philosopher, legal authority and expert on Church Law, educed the possible ties (in principle) between the state and religion and found that – nominally, though not in reality – they could be summed up as follows:

If we look at the question from the church's point of view, we will find that the relationship between church and state is either one of "exclusion", in which the church "excludes" the state – so that we find ourselves looking at an "excluding church" and an "excluded state" – or an "identity relationship" in which the church "absorbs" the state; in this case we are looking at an "absorbing church" and an "absorbed state"; alternatively there can be a "relationship of expediency," in which case we are looking at a "dominating church" with "indirect" authority and a supplicant, exploited state. Another alternative is a "neutral relationship" with a "neutral" church and a "neutral" state.

If we consider it from the state's point of view we find the situation reversed. The relationship is either one of "exploited supplicant" in which the church finds itself the exploited party (a state church) subordinate to a "dominating state"; alternatively it is an "identity relationship" in which the state "absorbs" and the church is "absorbed" (the state taking on the

role of a church), or an "exclusion" relationship in which the church is "excluded" and the state "excludes" or persecutes.

The history of Europe offers numerous examples of these types of relationships.[1]

Secondly, from a legal point of view. Europe has tried to translate the state-religion configurations we have just listed into legal concepts. There have been several approaches to classifying the national laws governing relations between the state and religion in Europe. The French academic Thierry Rambaud has found that, broadly speaking, they can be classed from a historical-theoretical angle comprising three systems: "subordination," in which the church is subordinate to the state or vice versa, "separation," in which there are no links of any kind between the two institutions, and "cooperation," in which the state provides the religious institution with financial and legal support. Alternatively, the laws can be classified on a "nominal legal" basis. In such a case there is a distinction between the "contract system" based on the concept of the Concordat (a treaty between the Holy See and a sovereign state), and the "state church system" based on the notion of religion protected by the state and the state being affiliated to that religion. A further alternative is a "difference system" with "pluralistic separation" rather than mere straightforward secularism.

These are not the only legal options. Another possibility is the "nominal voluntary" approach involving three possible models: "state church", "separation" (i.e. absolute separation) and "cooperative separation" (i.e. "limited" separation).[2] Earlier, the academic Jacques Robert had classified religion-state relations as either "amalgamated" (i.e. a theocracy), or "loosely united" (i.e. mutual recognition and the state

1 Salvador Gomez de Arteche: *Les Relations entre le Pouvoir Politique et le Pouvoir Religieux: les Reponses de l'Histoire*, Service des Publics et Religions: Les Nouvelles Frontieres de l'Action Publique en Europe, textes reunis par Helene Pauliat, Presses Universitaires de Limoges (PULIM), 2006, pp. 89-94.

2 T. Rambaud: *La Separation des Cultes et de l'Etat en Droit Public Compare. Analyse Comparative des Regimes Francais et Allemand*, Paris, LGDJ, 2004, pp. 4-6.

church system), or, finally, "separation" (including secularism in its specific sense), which can take the form of "mutual non-recognition," "mutual hostility" or "mutual goodwill".[1]

There are also five other major legal categories: "national religious laws", the law on recognized forms of worship, consensual law, the "registered religions law" and "other systems that are not subject to any specific legal codification".

Europe has tried and experienced all these types of regulatory systems and continues to do so.

- 3 -

Contrary to what many people believe, there are several types of secularism, not just one. An objective assessment of French secularism – were such a thing possible – would reveal that it is exclusive to France and a highly specific product of that country's history. This has been observed by the French historian Rene Raymond[2] and probably explains why the French academic Micheline Milot noted that secularism – or *laicite* – is a concept highly charged with ideological significance. Therefore, she adds, if it is to be used "properly" (i.e. objectively), it is high time to take it out of its French context.

The numerous forms of secularism share little in common apart from the name and some attributes. A recent book on the subject lists six different types, which it sees as owing their origins to geo-political circumstances and the radical changes experienced by European society. They are: "separatist secularism," "authoritarian secularism," "anti-clerical separatism," "civil belief secularism," "recognition secularism" and "cooperative secularism".[3] Another writer prefers a simpler, more black and white system of classification: "hospitable secularism" and "confrontational

1 Jacques Robert: *La Liberte Religieuse et le Regime des Cultes*, Paris, PUF, 1977, p. 17.

2 Rene Raymond: *Religion et Societe en Europe: La Secularisation aux XIXe et XXe siecles (1789-2000)*, Paris Le Seuil, 1998.

3 Jean Bauberot and Micheline Milot: *Laicite sans Frontieres*, Paris, Seuil, 2011.

secularism",[1] while a third distinguishes between "closed (i.e. militant) secularism" and "open secularism".[2] Of the attributes which the different types of secularism share in common, some consider that there are two: state neutrality towards the different religions and mutual independence of the two institutions. In this context, "neutrality" means that the state may not express an opinion on the truth or otherwise of a particular creed, since this is a matter for the individual citizen to decide for himself or herself. "Mutual independence" means that the state – which has now been liberated from the tutelage of the religious institutions – makes its own independent decisions regardless of whether or not they conform to the principles and teachings of the church; this being the case, the state alone is responsible for determining how the individual should live under a system of "administrative contracts" in which their religious beliefs are irrelevant.[3]

Others list four types of secularism: guarantee of freedom of belief, equality (between citizens), non-discrimination (by members of one belief system against another), separation of politics from religion, and state neutrality towards all belief systems.[4]

French secularism differs from other versions in four ways:[5]

1. In the confrontational relationship between state and church – following the French Revolution and throughout the nineteenth and twentieth centuries – over the role of religion in France. This has led to divisions and schisms within the country, to the point where France has been described as "split into two camps or two nations".
2. Ideologically. The ideological aspect is more intense than any that are to be found in other European countries. This is due to the critical – and even vindictive – philosophical and political attitudes towards religion. (Atheism, rationalism, Marxism, Freemasonry etc.)

1 Salvador Gomez de Arteche: *Les Relations entre le Pouvoir Politique et le Pouvoir Religieux: les Reponses de l'Histoire*, op. cit.

2 Henri Madelin: Colloque: *Nouveaux Enjeux de la Laicite, Collection: Questions en Debat*, Paris, Centurion, pp. 144-145.

3 Claude Proeschel: *L'Idee de Laicite: Une Comparaison Franco-Espagnole*, Paris, L'Harmattan, 2005.

4 Jean Bauberot and Micheline Milot: *Laicite sans Frontieres*, op. cit.

5 Jean-Paul Willaime: *Laicite, Religions et Construction Europeenne*, op. cit.

3. In the belief that the state should have a strong, centralised, dominant role in its relationship with civil society; this is due to the country's heritage of a "centralised unitary" state – a heritage inspired by its tradition of "*Liberte*" and "Enlightenment".

4. In its strong aversion to public expressions of cultural or religious identity and a tendency to regard religion as a private matter.

- 4 -

Now let us take a look at Europe on the eve of France's vote on the law on the separation of religion from the state (1905) – an event seen as a landmark in the history of secularism in Europe. What is the situation today over a century later?

Before the French parliament held its debate on the separation of religion from the state, the French minister and diplomat Aristide Briand (1862-1932) produced a huge report on the situation with regard to the relationship between church and state in Europe at that time. The report proposed classifying the systems for regulating that relationship in three categories, which would then be introduced into law as three degrees of "evolution" or "development" that would lead the country in stages from the old theocratic system to full secularism.

1 – Category One – the lowest on the "ladder of evolution" – included those states (whether Catholic, Orthodox or Protestant) that were still subordinate to the established church. In this category – described as "theocratic or quasi- theocratic systems" – one religion was dominant and the state only accepted "social institutions that conformed to the principles of that religion". This model was the direct opposite of secularism.

The report covered Catholic states like Spain and Portugal, Orthodox states like Russia, Greece, Romania, Bulgaria and Serbia, and Protestant states like Sweden and Norway.

2 – Category Two – the second stage on the road to full secularism – included states that the report was hesitant to describe as "quasi-secular". States in this category recognized freedom of belief and the freedom

of different religions to practise their own religious rites. Despite this, however, the state itself regarded some religions as public institutions which it recognized, financed and supported; this had been the situation in France throughout the nineteenth century under a system described as the Concordat. This category could be best described as "a system of recognized forms of worship," and the new separation law proposed to abolish it. At that time there were still systems in Europe – in the German statelets, Austria-Hungary, Italy, Belgium and the Netherlands – where relationships – some close, some not so close – existed between church and state.

3 – Category Three – the third and final stage on the way to full secularism. In this category we find states that are completely neutral and secular while recognizing the equal status and independence of all faiths. In these states the churches are separate from the state. The report was unable to find any states of this kind (of which France was possibly destined to be the sole example), except outside Europe; that is to say, in the United States of America, which the author of the report described as having its "own vision" of secularism, and Mexico (particularly Mexico); here he was of course referring to Mexico before the revolution of 1911.

Generally speaking, then, the proposed models submitted to the French deputies of 1905 for their consideration comprised:

1. "Anti-secular systems," in which the state gives absolute priority to one religious denomination and excludes others.
2. "Semi-secular systems," in which the state does not give preference to a particular religious denomination rooted in its own history, but recognizes several different denominations to which it provides material support.
3. "Fully secular systems," in which the state opts not to choose any religion or denomination and prefers to allow both religion and the state to operate in complete freedom.

What is the situation in those states today, more than a century after the French deputies first read the report and approved the 1905 Law on the Separation of Church and State?

After completing his research into this question Yves Bruley, the French academic and historian of secularism, made the following observations:[1]

1 – If we consider the first category of this classification we will find that – as far as Europe is concerned anyway – it no longer exists unless we include the Vatican. There are no longer any theocratic or religiously or temporally-based totalitarian systems. Religious freedom has made real advances over the course of the century. For example, under Spain's constitution of 1978 the state ceased to be subordinate to any religious creed whatsoever, while at the same time endorsing the necessity of "cooperative relations" between the state and religions. It was on this basis – i.e. cooperation, not subordination – that agreements were signed with the Holy See in 1979; these were followed by agreements with representatives of the Jewish and Islamic faiths… Moreover, some years ago the then Spanish Prime Minister Zapatero held negotiations with the Spanish Catholic Church on replacing the state payments to the Church with an income tax (maximum rate 0.7%), which the state would pay into the Church funds provided that the individual Spanish tax-payer submitted an official request to that effect. In Portugal the separation of church and state was declared at the same moment that the country's Republican Constitution was approved in 1911, though this did not prevent the Portuguese dictator Salazar from signing a Papal agreement with the Catholic Church in 1940 under which the Church was to receive financial support. Following the enactment of the Law of 2001, which brought it more into line with its neighbour Spain, Portugal recognized religious equality.

Now let us leave the Catholic countries and turn to the situation in the Protestant ones. In a "velvet secular revolution" Sweden declared the separation of the state from the Lutheran Church in the year 2000 and religious affairs came under the Ministry of Culture's remit. However, the Lutheran Church continues to receive financial support from the state. In Denmark "Lutheranism" is the "National Church" and in that capacity it enjoys state support under Article 6 of the Kingdom's Constitution. The

1 Yves Bruley: Un Tour d'Europe de la Laicite in Services Publics et Religions: Les Nouvelles Frontieres de l'Action Publique en Europe, op. cit. pp. 39-44.

Church is under the supervision of the Ministry of Church Affairs, the clergy have the status of employees and citizens pay a religious tax. Other religions and denominations are free to set up their own associations.

As far as the Orthodox states are concerned, Greece has continued to maintain its strong, exclusivist link with the Orthodox Church and those in charge of Orthodox religious affairs have the status of employees. Religious education is compulsory in schools and (one of the anomalies of the modern Greeks) the propagation of other faiths is prohibited. Even so, however, the Greek regime could not in any way be described as theocratic; indeed, such a term would be more applicable to the Danish political system.

2 – What about the second category – the one which is "neither this nor that"; i.e. neither outright anti-secular nor totally secular?

Italy concluded a new agreement in 1984 which ended the Catholic Church's status as the state religion, though it affirmed that: "Catholic principles form a part of the Italian people's historic heritage." Under the Italian Constitution the state may enter into agreements with religions that have acquired a "new status" (that is to say, that have acquired the status of being "recognized religions"). Italians may allocate 0.8% of their taxes to the "recognized religion" of their choice. This is similar to the Spanish system.

In Germany the churches are recognized as "public rights institutions," while the state has recognized what its calls the "general mission" of the churches which receive support and are beneficiaries of their share of the religious tax. Citizens who declare their affiliation to a particular church may pay religious taxes to that church via a fund set up by the state.

In Belgium the state, regions and local communities support recognized denominations (Catholic, Reformed, Jewish, Anglican, Muslim and Orthodox). The situation in the Netherlands is quite different in that any transfer of funds to "religious groups" was deleted from the Constitution in 1983 and the state stopped paying the clergy's stipends. However, an annual grant from the state is split between the different denominations and there are other financial privileges.

Other cases could be described as "one-offs". In the United Kingdom the Queen is the head of the Anglican Church, while the Prime Minister appoints the bishops, who are entitled to sit in the House of Lords. However, apart the "established church," other religions and denominations are independent of the state and are free to organise themselves in accordance with the law on associations. In Ireland the Catholic Church ceased to be the "official established church" in 1978 and was no longer funded by the state. However, the Constitution still refers to the Holy Trinity.

3 – Finally, it would be erroneous to say that the French version of separation between church and state should necessarily be taken as a template for Europe as a whole. Even though it is true that religious freedom has spread to a large number of countries, it is also true that in most member states of the European Union there are agreements between the state and various religions or denominations, including agreements with the Holy See - a situation that does not pose any "coexistence problems". Whether or not it entails public funding or guarantees equal status for all religions, the "recognized faiths" system operates in several countries.

Generally speaking, most European countries grant the churches financial privileges in that they allow the taxpayer to support them if he or she wishes to do so. If we compare the situation in France with the rest of Europe, however, we should note that the majority of European states prefer to regard religion as playing a useful social role; hence they consider it perfectly legitimate to grant the different faiths special privileges, whether in the form of direct financial support or by redirecting a portion of the state's income tax. In Europe, the public funding of religious institutions is able to coexist with temporal laws, particularly in such areas as public morality and taxes.

To conclude, in most European countries the religious aspect of national identity is not an issue that creates tension – or certainly not to the same extent as it does in France, where it was crucial throughout the nineteenth century until it was finally settled in 1905 in favour of *laicite*,

or secularism. This could possibly be the reason behind the French representatives' hostility to the reference to "Christian roots" in the preamble to the Constitutional Treaty.

- 5 -

Some legal experts see Europe's standard religious codification system as being simultaneously complex and fundamental.[1] It operates on two distinct levels:

1 – The basic level. This includes procedures for protecting individual and collective religious beliefs so as to guarantee basic rights in the religious sphere. These include freedom of belief, freedom to practise (or not practise) religion, and equality and non-discrimination on religious grounds, all of which are written – with some differences in the way in which they are expressed – into the constitutions of the European states and the European Convention on Human Rights, as well as the Universal Declaration on Human Rights. Although the Declaration is not binding, the European Convention is binding and enforceable by a judge with mandatory powers.

2 – The second level. This level pertains to the regulation and organisation of religious practice – that is to say, the organisation and activities of religious groups. Freedom of worship is enshrined in Germany's Basic Law as well as in the Belgian, Irish, Italian, Polish, Portuguese and Slovak constitutions; this reflects the fact that European states enjoy a cooperative relationship with the churches and religious denominations, in which each side assists the other in achieving its economic objectives through the creation of legal systems that are designed for that purpose. At the same time, while the nature of the links between the state and the churches varies widely from country to country, overall they are clearly harmonious; this is reflected in the general principles governing the European systems' links with religion, which include freedom of worship, neutrality on the part of the state, autonomy for different religious groups and the principle of cooperation.

1 Ed: Francoise Curtit et Francis Messner: *Droit des Religions en France at en Europe: Recueil de Textes*, Bruxelles, Brylant, 2008.

Anyone who examines the way in which freedom of worship is guaranteed in Europe (which includes the right to belong, or not belong, to a particular faith, as well as the right to practise, or not practise, religious rites, and the right to express, or not express, religious beliefs) will find it exemplified in Article 20 of the Belgian Constitution, which states: "No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion, nor to observe the days of rest." While it may be true that religion plays a useful role in forming a person's character, it is also true that no-one can be forced to believe in a faith. Hence the need to distinguish on the one hand between an individual's belonging (or not belonging) to a religion and, on the other, the question of religious worship. Worship – and this is undeniable – occupies an important place in the "public space" and is practised publicly. However, whether or not an individual belongs to a religion is a private matter and is thus protected. Hence the European laws on religions are significant in that they succeed in fusing citizenship with religious affiliation.

Today, guarantees of religious freedom are of fundamental importance since they determine the status of worship and the nature of the laws on religion and religious practice. In doing so, they include the presumption that the state has no religion and that it is neutral on religious issues and, moreover, that the state – an institution based on the will of its citizens – is not subject to any religious oversight. A further presumption is that the principles and values of European legislation have not been dictated by any religious authority but rather, that the modern laws dealing with religion are designed for another purpose – that is, to safeguard religious freedom and define the relationship between religion and the state.

The fact is that the principles of independence and the right to regulate and define the nature of religious practice follow on logically from the principles of state neutrality and religious freedom. As the state is non-religious – and consequently "non-theological" – it would be inappropriate for it to become involved in the nuts and bolts of religious issues. Therefore it does not oversee the religious denominations within its borders or interfere in their internal affairs, regulations and laws, nor has it a role in appointing members of the clergy.

Freedom to organise and regulate religious practice can take a variety of different forms depending on the nature of the state concerned. Nevertheless, there are two main common elements:

1 – Religious groups are able to define their own belief systems without any interference from the state. This is something which is respected in all European countries, though it was not the case in the nineteenth century; for example, Article 4 of the old French Law stipulated that it was forbidden to publish or promote any denominational or creedal decision until permission to do so had been obtained from the government.

2 – In addition to denominational independence, religions also have the freedom to organise, which means that a religious institution has the right to organise itself in accordance with its beliefs and its internal laws and statutes. This principle is applied throughout Europe, despite the fact that national differences between its peoples are sometimes highly significant.

Cooperation between state and religion takes place within a framework of religious freedom and state neutrality. The public authorities do not negotiate with religious groups according to their denominational or theological positions or views, but because religion – as an element of the nation's culture – plays an important role in the life of the community. Cooperation between state and religion falls within the broad context of the ties which exist between the public authorities and the different sections of society; however, this cooperation is relative and tailored to fit the size of the relevant confession's congregation, its standing in the country and the nature of its activities.

Article 16c of the European Union Treaty provides for a regular dialogue to be held between the European Union institutions and the churches, religious associations or communities. This recommendation is also stipulated in the constitutions and legislative provisions of several European countries, particularly Article 16 of the Spanish Constitution, which states that: "The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain cooperation relations with the Catholic Church and other confessions." Article 25 of the Polish Constitution stipulates that the goal of cooperation

is to serve the "common good," while Article 4 of the Slovenian law on religious freedom (2nd February 2007) recommends that the state should cooperate with religious communities with the aim of serving the common good. Similarly, the Portuguese law on the same subject (22nd June 2001) states that "the state will cooperate with the churches and religious communities established in Portugal, taking into consideration their representativeness, namely in view of the promotion of human rights, of the integral development of each person and the values of peace, freedom, solidarity and tolerance."

- 6 -

What do Europe's different confessional systems have in common?

European legislation on religious practices is designed to support and regulate religious beliefs while reinforcing cooperation between religion and the state; meanwhile, each state is free to decide on its implementation. Where funding is concerned, several states provide generous assistance, while others are more restrained, yet at the same time, this assistance may be extended to certain faiths and withheld from others. Religious systems and laws are expected to conform to the constitutional principles dealing with the freedom to practise or not practise a religion, as well as the neutrality of the state and its non-religious character, equality between faiths, and freedom for the different religions to organise their religious affairs.

The principle of "religious independence" – and the freedom for religious communities to organise themselves as they wish and regulate their own affairs – is linked to the principle of "state neutrality". This is a pivotal element of contemporary law on religions and it is enshrined in the constitutions of several member states of the European Union. In several other states the law guarantees freedom of worship and the freedom for different denominations to organise their affairs independently of the state in accordance with their own particular beliefs, laws, rules and regulations. Hence in most member states of the European Union the clergy are not subject to the Labour Law, the Civil Service Law or other similar laws.

Freedom to organise is also covered by a special law on religious institutions. In France, for example, the parish communities are subject to a special law and operate under the authority of the bishop in co-ordination with the Holy See and in accordance with the constitution of the Catholic Church. In Germany the religious communities enjoy full autonomy in the way they organise themselves and manage their personnel affairs, and the principles of freedom of worship and the freedom to organise provide the legal basis for the religious education programmes and the appointment of teachers of religion in the public preparatory and secondary schools, as well as in the faculties of theology in the state universities. However, some Christian confessions carry more weight that others.

The support and spiritual comfort provided by the churches in the armed forces, hospitals and prisons is also based on guarantees of religious freedom and freedom of worship. The state makes every effort to ensure that freedom of worship is respected for all individuals who live in closed environments, such as soldiers, hospital patients and prisoners.

The funding of religious institutions is also based on the principle of religious freedom. At the same time, in view of the role played by religious activities, it is also aimed at serving the public interest. Religion is regarded as a social phenomenon that helps develop and form the character of the individual citizen by promoting the values of altruism, unselfishness and solidarity. Funding takes various forms and can include payment of the clergy's stipends, allocating a proportion of income tax for religious institutions, tax exemptions, church taxes collected by the financial administration, and annual subsidies.

- 7 -

What are the national features of the European laws on religions?

In an earlier section we mentioned that some constitutional studies class the laws governing relations between religion and the state in Europe as falling into five categories:

1. National laws on religion:

These are represented by the laws governing the national churches. Either they are purely national (the Nordic countries), or they take the form of "established churches" (the United Kingdom), or they are "dominant churches" (Greece). These laws were introduced by the temporal authorities, either in the wake of the schism between the Eastern and Western Churches (as in the case of Greece), or after the Reformation (Denmark), or as a result of conflict between the Monarch and the Pope (the British Isles). Although the wording of these laws has been amended from time to time over the years, in numerous cases no consideration has been given to the position of the religious minorities.

One distinctive feature of the national churches is a relative lack of independence where creedal issues are concerned. This is because relations between church and state are so close that the two bodies have become fused together and preference is given to the church as the only institution that truly belongs to the state and the community. One possible exception is the United Kingdom, where the public authorities nevertheless provide strong economic support.

Historically, what distinguishes a national church from other churches is the fact that the populace belong simultaneously to a particular nation and a particular faith or confession, on the principle: "As the Monarch is, so is the Faith." This type of regime was prevalent in Europe during the eighteenth century and a hybridised version of it still exists, particularly in the Nordic countries, the United Kingdom and Greece. One of its shortcomings is the fact that it is incompatible with the principle of "religious pluralism"; that is why Sweden abandoned it on 1st February 2000 when the Law on the Separation of the State from the Church (1998) came into force and replaced it with a system of registered religious faiths similar to that in ex-Communist Eastern Europe. For example, Article 40 of the Estonian Constitution affirms that "there is no state church," while Article 14 of the Constitution of the Russian Federation declares that the state's secularist character is derived from the principle that all religious organisations "shall be separate from the state and there shall be no official

state religion". While Article 3 13 of the Bulgarian Constitution recognizes the Orthodox Church as the "traditional religion of the Republic of Bulgaria," because of its cultural and historical role, the next paragraph of the same Article asserts that there is a "wall" separating the church from the state.

2. The system of "recognized faiths" – which has its origins in the eighteenth century – is incompatible with "state church" laws, and "a state with a religion" needs to accept the principle of freedom of worship for minority faiths as a first step towards constitutional recognition of religious pluralism. The distinctive feature of such a system these days is that the state should be committed to meeting the religious needs of the local faith groups (financial support for those responsible for administering religious affairs, places of worship, etc.), while granting the different faith institutions their legal status in the community. In Belgium today – for example – most of the major religions now enjoy precisely the same privileges as those enjoyed by the "recognized religions" at the beginning of the nineteenth century. In Austria, by comparison, we find that although that country has a long-standing tradition of agreements with the Catholic Church, today it has granted legal status to its religious minorities (Protestants, Jews, Muslims, Orthodox etc.). However, little has been done to update the procedures for remunerating those whose job it is to administer religious affairs.

Luxembourg finally abandoned this system in 1797 in favour of a "convention" system.

3. The "convention" system

This system is designed to rationalise the relationship between the state and religions through a mechanism for establishing bilateral agreements. It was gradually adopted in the Catholic countries – its original aim was a contractual agreement specifically between the state and the Catholic Church – though by the end of the twentieth century it had been expanded to include the non-Catholic minorities in Italy, Spain, Luxembourg, Portugal, Hungary and Poland. (It had already been introduced in Germany by the beginning of the twentieth century.) It is written into the constitutions of several European states; Article 22 of the Luxembourg Constitution (17th October 1868) includes the statement that:

"...relations between church and state are subject to conventions ..." Although this only applied to the Catholic Church, it was later expanded (1997) to cover all recognized faiths following the success of its introduction on an experimental basis (1982). In conformity with the country's old-established tradition, Article 25 of the Polish Constitution (2nd April 1997) states that "... relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute" and that "...relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers." Article 7 of the Italian Constitution (22nd December 1974) speaks of the independence and sovereignty of both church and state and allows agreements to be made between them through a negotiating mechanism. Article 8 provides for agreements with non-Catholic religions. Compare this with the situation in Germany, Spain and Hungary.

4. Registered faiths

Registers were introduced in Europe – particularly during the last thirty years or so of the twentieth century – for registering what were described as the "minority religions" or "religious organizations". This approach differs from the "recognition system" which stipulates an advance vote on the relevant law or the publication of a decree. Generally speaking, with a few exceptions (Estonia and Lithuania) registration consists of a formal declaration and the administrative authorities are not entitled to oppose it unless the details on file (name of denomination, aims, legal rules, list of supervisors etc.) are incorrect or the file is incomplete. Procedures for registration were established in Spain in 1980, Poland in 1989, Hungary in 1990, Lithuania in 1995, Sweden in 1998, Portugal and Slovakia in 2001, and Estonia and the Czech Republic in 2002.

The difference between this system and the previous one is that it does not entail state recognition of religious communities; however, a religious organization may acquire the status of an independent legal entity consistent with the aims it has registered for itself.

Contrary to the prevailing belief that Europe's religious laws are a "chaotic mosaic," this actually means (again generally speaking) that Europe's essential unity owes its existence to the common principles derived from the legal systems of the individual states, and to their shared constitutional traditions which guarantee freedom of religion (individually and collectively), in addition to state neutrality and freedom for the different confessions to organize themselves as they wish.

At the beginning of this article we mentioned the strange reference to "Europe's cultural, religious and human heritages" in the preamble to the Constitutional Treaty. This pluralistic recognition of "heritages" does not specify the religious heritage by name, and when it speaks of religion it does not refer to a single "religious heritage"; had it done so, it would have meant the Christian heritage, and if it had added a second one it would have meant the Jewish heritage as well.

The fact that it does not name any particular religion allows other, non-Christian, faiths, particularly Judaism, Islam and Buddhism, to be regarded as belonging to Europe's "religious heritages". Moreover, alongside the religious heritages there are also cultural and human heritages; this means that we should not only be considering the non-religious philosophical element as well, but also the fact that Europe has always been a battleground between religion and religion's critics.