

## **Catholics For a Free Choice – Europe**

# **Article 52 of the European Constitution**

*ARTICLE I-52: Status of churches and non-confessional organizations:*

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

*- Treaty establishing a Constitution for Europe, October 2004*

## **Background**

In February 2002, with the accession of ten additional countries to the European Union approaching, a new body, the Convention on the Future of Europe, was charged with drafting a constitution that would define the rules for political life in an EU of 25 or more member states. The Convention was composed of a total of 105 delegates, representing the European Commission, the European Parliament, the governments and parliaments of the 25 countries concerned and nine observers from civil society. After 18 months of work the constitutional draft was submitted to the Council of the European Union (the main decision making body in the EU) for final approval by the governments of the member and accession countries. The Constitution was agreed by the European Parliament in June 2004 and is now awaiting ratification by each of the 25 member states. This will be done either by an act of parliament or through a referendum.

A major source of conflict emerged during the discussions about the new constitution regarding the role and rights of religious entities. The Constitution draft includes a “church” article (Article 52, but Article 51 in previous drafts) which grants significant and unique privileges and rights to religious denominations and makes them exempt from some European laws and regulations. The Catholic church strongly backed these measures. As a result, there was intense lobbying by the Catholic hierarchy throughout the process, including Vatican audiences with high European officials. John Paul II received Valérie Giscard d’Estaing, president of the Convention, Pat Cox, president of the European Parliament, Tony Blair, prime minister of the United Kingdom, Joschka Fischer, German vice-chancellor, and others. He summoned the ambassadors of member states who are accredited to the Holy See to a meeting to inform them of his wish to have certain elements included in the European Constitution. The lobbying was strong at the national level, too, where the national bishops’ conferences used their many formal and informal structures to pressure their governments and their countries’ delegates to advance the church’s concerns.

## **The Vatican’s Objectives**

The Vatican wanted five points to be included in the Constitutional Treaty. The three central ones were:

- **The recognition of the “institutional dimension” of religious freedom.** The Vatican argued that full religious liberty comprises three dimensions: the individual dimension, namely the right to choose one’s system of beliefs; the collective dimension, or the right to associate with others to live out the precepts of one’s faith; and the institutional dimension, meaning the constitutional recognition that religious faith communities are also political actors in their own right, but in a specific form differing from other actors in civil society. According to the Vatican, the religious dimension embraces the whole range of human preoccupations and lends competence to the church in almost all matters, justifying a specific status, different from other civil society organizations. The main advocate of this point, besides the Vatican, was the German Catholic church, which already enjoys this status at the national level and would like to gain similar status within the EU.

**This request was acknowledged in Article 52.**

- **The recognition of an exemption from European law and regulations that the church considered to violate its teachings.** Religious freedom already grants the church the right to administer itself as a faith community, according to its teaching. This new right would institutionalise on a European level an exemption that grants the church the right to implement employment practices without having to comply with European policies and regulations that the church considers a violation of its teaching. This

means that Catholic-run or affiliated hospitals, schools and social service projects would not have to respect EU principles and laws on non-discrimination. In the name of “institutional religious freedom” and “subsidiarity” Catholic-affiliated projects could refuse to hire and could fire gay, lesbian, bisexual and transgendered people, and divorced and re-married people as well. They could also refuse to hire or fire people who publicly express disagreement with church positions on key policy issues, like contraception or abortion. Helmut Kohl, then Christian Democrat chancellor of Germany and an ally of the German bishops, succeeded in overcoming the resistance of the French delegates to have this right recognized and added to the Treaty of Amsterdam, the 1997 compact between the EU member nations outlining the foundations for an expanded EU in the 21st century. The Vatican’s desired language was annexed in Declaration No. 11—the first mention of the church in a European legislative document—and it allows for all organisations recognised as a church or a community of faith or conviction to be exempt from Article 13 of the treaty, which prohibits discrimination on the grounds of religion or sexual orientation. The Vatican sought to have this declaration promoted from an annex to an integral part of the new constitution.

**This request was acknowledged in §1 of Article 52.**

- **The institution of a specific consultative status for the church.** This would provide for the Catholic church to be consulted in the pre-drafting stage of legislation on a wide range of matters where the church feels it has expertise and for regular consultations at the highest level of the various EU institutions. The Catholic church wished to have a constitutionally granted voice in state affairs and demanded a permanent liaison office within the European Commission.

**This request was acknowledged in §3 of Article 52.**

The two other points desired by the Vatican concerned the **mention of God** and of **Europe’s Christian roots** in the Constitution. Although these requests are less important—even treaties signed today between the Holy See and specific countries no longer refer to God—they are a potentially dangerous precedent against the human rights of individuals. A political entity based on a social contract, the basis of political pluralism, is contrary to the idea of the divine foundation of authority. Only recently, a doctrinal note to Catholic policy makers released in January 2003 by Cardinal Ratzinger declared that the separation of religion and politics did not mean a separation of morals and politics. It asserted that the Catholic church has the divine, ultimate and legitimate authority to define the truth on morality and what is right in politics. It exhorted Catholics active in politics to defend the church’s positions without compromise, in particular on issues related to the family and to sexual and reproductive health and rights.

## **Current Catholic Church Access to the EU**

The Catholic church is the only religious community to be represented in Brussels and, like Saudi Arabia, the United States, China or any other foreign country, is represented in person by an ambassador, the apostolic nuncio. Apostolic nuncios represent the Holy See, as a foreign political authority, not only in Brussels but also in each one of the member countries of the EU and of the accession countries as well. And each member country has its own diplomatic relationships with the Roman Catholic church through an ambassador at the Holy See.

The apostolic nuncio to the EU is a member of the Commission of the Bishops' Conferences of the European Community (COMECE), constituted by the delegates, one per national bishops' conference, and is the body that seeks to be the institutional church interlocutor of the EU in the context of participatory democracy on the ground of Article 52. This means that, **through Article 52, and in the context of participatory democracy, the ambassador of a "foreign country" is claiming the institutionalisation of pre-legislative consultation and a special privileged status within the EU.**

Even without the aforementioned provisions, the church already has direct influence within EU institutions. Several European Commission officials regularly consult the COMECE when drafting legislative documents, as church agencies do have expertise on areas such as migration. In addition, it has become established procedure for COMECE to meet with the representative of the government that holds the rotating European presidency to exchange information and present the church's concerns.

Since 1992, the Commission presidents, all Catholics, have had a personal "adviser on religious affairs." As the former president of the European Commission Romano Prodi put it, "The policy of the Commission as regards the involvement of churches in the development of ever-closer union is to recognize their importance both in their own right, and as conveyors of opinion about it. For these reasons, the Commission maintains a permanent dialogue with them."

To date, all of these advisors on religious matters have been Catholic: Jérôme Vignon, Thomas Jansen and Michael Weninger. Thomas Jansen is a member of the Central Committee of German Catholics (Zentralkomitee der deutschen Katholiken, or ZdK). During the Convention, Jansen headed the cabinet of Göke Friedrichs, the president of the EU's Economic and Social Committee and one of the nine observers at the European Convention. Michael Weninger is a conservative Austrian diplomat who strongly supports the creation of some form of Directorate General for Religious Issues in the Commission.

Despite these avenues for regular, though informal consultation, the

Catholic church's position is that it is not enough to be informally consulted, because non-codified rights are too volatile and depend on the goodwill of the individuals in office. "It seems important now to move on to a formal modus, obligatory for the European Commission, and no longer dependent on its goodwill," explained Rev. Pierre de Charentenay, former head of the Jesuits' Catholic European Study and Information Centre in Brussels. The church wishes to have "special status" within the EU. For the church, a consultative status that grants it the right to comment on all European Commission proposals and on the work of the European Parliament is in fact a substantial advantage, because it makes it easier to monitor the EU. The activities of the institutions of the EU are complex, and the church "need[s] to have personal contacts to be informed about initiatives that are being taken," de Charentenay explained. He added, "It might happen that, because of a lack of information, we miss something. The work on the issue 'Women and fundamentalism'...is a good example. The final document was very critical of Catholicism. Concerning the issue of non-discrimination in the workplace [on the other hand], the religious organisations were very attentive. They have obtained for themselves an exemption...."

If the Catholic hierarchy is concerned about its involvement in the legislative process, provisions for participatory democracy, such as those contained in Article 47, are sufficient mechanisms to allow for active citizenship for all individuals and institutions within the EU.

*ARTICLE I-47: The principle of participatory democracy:*

- 1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.*
- 2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.*
- 3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.*
- 4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which such citizens must come.*

## Religious Freedom or Discrimination?

It is important to recognise that religious freedom is one of the basic human rights already granted in the documents that established the core principles of the EU: the European Convention on Human Rights, the Treaty of the European Union and the Charter of Fundamental Rights of the European Union. To grant an institutional religion, and in particular the Catholic church, special status with special rights, distinct from any other civil society organisation creates four problems:

1. *Many people in the EU will face discrimination.* Although the majority of people living in Europe say they belong to a religious community, many studies show that most Europeans do not practice their religion and are generally indifferent to religion. Moreover, studies show that only a dwindling minority of Catholics agree with the positions of the hierarchy on the topics highest on the Vatican's agenda: the family and sexual and reproductive health and rights. Hence, the church hierarchy's views on these issues are not illustrative of the opinions of the majority of Catholics, who would be misrepresented if the bishops' positions were taken as the expression of mainstream Catholic opinion. Catholicism is pluralistic and this pluralism cannot be appropriately represented if the church hierarchy expresses a monolithic "Catholic" opinion on any matter, particularly on issues related to family life and sexual and reproductive rights. For instance, there is no "Catholic party" in Europe. Catholic policy makers belong to all parties and Catholic citizens vote for parliamentary candidates from all parties.

*More importantly, labour laws in their country or in the European Union will not protect either Catholics or non-Catholics working for church related agencies— even those funded by public monies.*

2. The Catholic hierarchy is not democratically elected. As a result, the Catholic faithful have no voice in the appointment of those who claim to speak for them.

3. Many European citizens are religiously indifferent agnostics or atheists who do not wish to be considered members of a particular religious community or do not organise politically on the basis of religious beliefs. Moreover, most of Europe's religious institutions do not seek the same political voice nor have the same political structures in Europe as those of the Catholic hierarchy. These groups and individuals would be at a distinct disadvantage in the political process. Should other religions choose to organize politically we would face the same kind of religious strife that has developed in countries where there is religious law. For example, in India, there are laws that are obligatory for Muslims, other laws for Hindus. In much of the Islamic world, Sharia is the basis of secular law. Should that be