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## **The Charter of Fundamental Rights of the European Union in the Light of the Principle of Unity in Diversity (Part II)**

**Citation:** Kaczmarczyk Ł., 2022, *The Charter of Fundamental Rights of the European Union in the light of the principle of unity in diversity (Part II)*, Nurt SVD, vol. 151, no. 1, p. 83-96

### **Abstract**

The elimination of religious references in the CFR's preamble can be interpreted as a disregard for the tradition of appeals to God and Christianity, typical for the most EU member states, which should be reflected in the EU symbols in the name of respecting the principle of unity in diversity. The rejection of *invocatio Dei* is a sign of reluctance to the functioning of the religious factor in the public space, based on the anti-clericalism rooted in the French Enlightenment, despite the declaration expressed in the Charter that its axiological layer primarily reflects the common constitutional traditions of the member states.

**Keywords:** Charter of Fundamental Rights, European Union, unity in diversity, human rights, European values, *invocatio Dei*.

### **Streszczenie**

Wyliminowanie w preambule KPP odniesień religijnych można interpretować jako lekceważenie typowej dla większości państw członkowskich UE tradycji odwoływania się do Boga i chrześcijaństwa, która powinna znaleźć

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odzwierciedlenie w symbolach UE w imię poszanowania zasady jedności w różnorodności. Odrzucenie *invocatio Dei* w preambule Karty jest oznaką niechęci wobec funkcjonowania czynnika religijnego w przestrzeni publicznej, niechęci wynikającej z antyklerykalizmu zakorzenionego we francuskim oświeceniu, mimo wyrażonej w Karcie Praw Podstawowych deklaracji, że jej warstwa aksjologiczna odzwierciedla przede wszystkim wspólne tradycje konstytucyjne państw członkowskich.

**Słowa kluczowe:** Karta Praw Podstawowych, Unia Europejska, jedność w różnorodności, prawa człowieka, wartości europejskie, *invocatio Dei*.

### Introduction

In this part the author analyses the abandonment of direct references to God and the Christian religion in the preamble of the Charter as an example of a fundamental violation of the EU principle of unity in diversity, primarily for ideological reasons, despite the respect to the religious sphere declared in the constitutional traditions of EU member states that mostly refer to the metaphysical roots of European civilization. Consequently, the CFR might be held as a regulation dominated by the laicisation tendencies in Europe, which in the light of political correctness might justify the shaking of the balance in the unity in diversity principle towards the unity of such kind that is neutral from the ideological point of view, but at the expense of the marginalized axiological diversity of the Old Continent.

#### 1. The rejection of *invocatio Dei* in the Charter's preamble

The assessment of the consequences of rejecting direct references to Christianity in the preamble of the CFR should result from the emphasizing the importance of the preamble in political and legal acts as a declaration setting axiological directions of document's interpretation. Although itself it usually does not have binding force, a preamble acts as a "ceremonial introduction, in which the legislator presents the motives of issuing a normative act, intended goals or basic values, defining the *ratio legis* of the act" (Stawecki & Winczorek, 1999, p. 114)<sup>2</sup>. The preamble of the CFR is therefore a special and solemnly

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<sup>2</sup> The purpose of the preamble in a constitution is not only to define the roots of the state's identity by "indicating the historical and political foundations of the constitution and placing it in the background of the systemic tradition of

expressed attempt to present the foundations of the self-awareness of the European community, which states, that “conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law”.

References to the enigmatic “spiritual and moral heritage” of the EU indicate that, unless the religious factor has been completely ignored, “it can be hardly missed that much has been done to minimize its presence” (Piechowiak, 2003, p. 13).

Particularly contentious issue was the lack of references in the CFR’s preamble to the significant contribution of the Christian religion to the development of the European culture<sup>3</sup>, what can be interpreted as a belief that “christianity does not require noticing and appreciating even in the articulation of the symbolic and axiological foundations of the Union” (Gierycz, 2008, p. 11). The reluctance of some member states towards direct references to the Christian tradition in the Charter is a corollary of secularization processes in Europe, which resulted, as John Paul II pointed out in his speech in February 2002, from “the firm and total exclusion of God and natural moral law from all areas of human life, and in consequence Christian religion has been pushed into the private sphere” (Jan Paweł II, 2002). The Pope expressed his disagreement with ignoring the Christian roots of European culture in the CFR, naming it “the anti-historical and derogatory behaviour of the fathers of the new Europe, because the Old Continent needs Jesus Christ not to lose his soul and not lose what has made it great in the past and what makes it today the object of admiration of other nations” (Jan Paweł II, 2002).

In the opinion of supporters of the CFR’s preamble in the current version, devoid of *invocatio Dei*, the lack of direct references to the religious roots of European civilization cannot, however, a state and events that accompanied the adoption of the constitution”, but also to set the interpretative directions that law enforcement agencies cannot ignore in applying the constitution (Garlicki, 2001, p. 43).

<sup>3</sup> In a speech to the new Belgian ambassador to the Holy See, John Paul II emphasized, among others, that “the building of Europe, which is slowly taking place before our eyes, requires the good will and determination of the authorities and the desire to base the Union on the common values, with the awareness of the Christian roots of the different peoples who are a permanent reality of European history and culture. In fact, the decisive contribution of Christianity, of the Christian vision to the history and culture of the different countries belongs to the common treasure and so it would seem logical to inscribe it in the draft of the European Convention” (*Address of John Paul II*, 2012).

be assessed in terms of “historical dishonesty” because references to Christian values in the Charter take place indirectly, hidden in the ethical layer, manifested in universal humanistic values, based on the inherent dignity of the human person along with the rights and freedoms arising therefrom (Weiler, 2003, p. 25). The Christian axiology has been ultimately introduced into the document as one of the ontological and moral systems relevant to the European identity, i.e. a kind of cultural fact that can inspire the moral attitudes of some individuals (Miklas, 2010, p. 121), although the Charter’s text contains numerous manifestations of “moral compromises” clearly contradicting the radical personalism of Christian religion. The above mentioned postulates of incorporating Christian values into the CFR’s ethical layer, without the need for a direct reference to God, were implemented in the draft of the Charter presented by the Commission of the Bishops’ Conferences of the European Union (COMECE), in which the right to life from conception to natural death, freedom of thought and religious denomination, the right to marriage as a union of a man and a woman, the protection of rights of churches in the exercise of practical and legal tasks of a religious nature were clearly distinguished. However, the relevant proposals were not included in the CFR’s final version (Mik, 2003, p. 134).

One of the attempts to alleviate axiological disputes over the relationship between Europe’s cultural heritage and the Christian religion with respect to the principle of unity in diversity was the acceptance of differences in translations of the CFR’s preamble into national languages. While the phrase “the spiritual-religious and moral heritage of Europe” can be found in the German text, French and English versions ignore references to religion, citing only the “spiritual heritage of Europe” due to the principle of state secularity enshrined in the French constitution. In addition, according to the arguments presented by Roman Herzog, the head of the Convention developing the draft of the Charter, the French translation of the text is actually much closer to the general understanding of the concept of religiosity, because the French word “religieux”, clearly associated with bigotry or the sphere of “people belonging to the order”, differs from the meaning of the German word “religiöse” or the Polish “religijny”. The French version of the preamble also more closely matches the wording in translations accepted by other EU member states (Herzog, 2002).

## 2. Models of the Church-state relations in the constitutions of the EU member states

The rejected references to Christianity in the CFR's preamble can be a sign of an unwillingness to let the religious factor function in public space, based on the anti-clericalism of the French Enlightenment, took place despite the declaration expressed in the preamble that the source of European law is primarily the common constitutional traditions of member states, what should mean that the values that are the building blocks of the identity of individual EU countries constitute the axiological layer of the Charter. However, analysing the solutions adopted in the constitutions of the Union's member states concerning the relationship between state communities and churches or religious associations, "axiological polytheism" (Herzog, 2002) in the Charter, manifesting itself in the removal of references to the Christian roots of Europe, can be interpreted as a consequence of ignoring national constitutional traditions<sup>4</sup>. The European constitutions (both in the preamble and in the basic principles) contain numerous indications regarding the place of Christian tradition in shaping the identity of the nation, the freedom of religion in the individual and institutional dimensions, and the impact of spiritual and religious space on the axiology of the constitutions (Safjan, 2003, p. 43).

Despite a considerable diversity in shaping relations between the state and the churches in Europe, three basic models of the coexistence of these communities can be distinguished, in accordance with the way of defining the place of religious values in the ethos of societies and the solutions adopted in the cultural and religious spheres (Robbers, 2003, p. 123). Although constitutions of EU countries might seem to show numerous formal similarities, there are noticeable differences in specific systems regarding the presence of religion in public life, which indicates the high "sensitivity" and the very clear dependence of forms of coexistence between state authorities and churches on social axiology and tradition typical for a given country. The concept of ideological neutrality of the European public sphere, giving diverse content to the secularity of the state, is implemented through a model of pure separation, based on the consistent application of the principle

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<sup>4</sup> John Paul II also drew attention to the fact that the existence and freedom of churches and religious communities' activities were recognised in the constitutions of many European countries, appealing to the authors of the CFR to include references to European religious heritage, especially Christian one (*Address of John Paul II*, 2002).

of separation of church and state, coordinated separation, providing for significant openness to religious values within friendly relations between the two communities, and the paradigm of a religious state, adopting extreme positions by emphasizing the national character of a chosen religious community and therefore seldom in the EU<sup>5</sup>.

A pure separation model is based on the radical “neutrality” of public authorities, as a result of which the representatives of churches and religious communities are not entitled to exert any influence on the shape of legislation and activities of state institutions. Hence, the principle of ideological indifference of the state is identified with the desire to eliminate the religious factor from public life and religious freedom is reduced to the private sphere (Krukowski, 2003, p. 220)<sup>6</sup>. This model corresponds to legal solutions adopted among others in France, the Netherlands and the Czech Republic.

The lack of references to religion in the French Constitution is a consequence of references to the Enlightenment tradition, which is expressed in the preamble, stating that “The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946” (*French Constitution*, p. 4).

The constitutional separation of the Church from the state of 1905 was guaranteed in Article 1 of the Constitution<sup>7</sup>, according to which France is an “indivisible, secular, democratic and social Republic” (*French Constitution*, p. 4). Despite the formal premises for the lack of connections between the sphere of the sacred and the profane in the French public space, in practice, however, there is a favourable cooperation between religious communities and state institutions, expressed, inter alia, in the recognition of religious associations, military pastoral activity or the presence of religion in the education

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<sup>5</sup> Differently describing the relationship between the Church and the state, one can distinguish the system of connection and one of separation of both communities (Pietrzak, 1999, p. 53-54), as well as models of the atheistic, neutral, secular and religious states. (Safjan, 2003, p. 60).

<sup>6</sup> Such a form of respect for the religious needs of citizens does not provide guarantees for religion in the public sphere, since it is difficult to separate institutional and human rights to religious freedom in public life (Orzeszyna, 2007, p. 6).

<sup>7</sup> The exception are legal solutions adopted in Alsace and the Moselle department, because in the years 1871-1918 they belonged to the German Reich.

system, notwithstanding the ban on teaching religion in state schools<sup>8</sup>. The French version of “neutral secularization” is therefore approaching the solutions adopted under the presented below coordinated separation model.

According to the model, public authorities respect pluralism of religious communities, formally not allowing links with the institutions and governing bodies of churches and denominational organizations, although in key areas of socio-political life they are open to cooperation for the common good, especially in the field of education, charity and humanitarian activities (Krukowski, 1993, p. 38). Such a relationship between the church and public authority is the most widespread in EU and adopted for example in Poland, Italy, Germany, Spain, Belgium, Austria, Hungary and the Baltic states.

An example of mutual respect for the autonomy of the state and religious community and ideological pluralism is the preamble to the Polish constitution, taking into account religious and secular “sensitivity”: “Having regard for the existence and future of our Homeland, which recovered in 1989, the possibility of a sovereign and democratic determination of its fate, we, the Polish Nation – all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources, equal in rights and obligations towards the common good – Poland” (*The Constitution of the Republic of Poland*).

This declaration is supplemented by the provisions being a model example of the implementation of coordinated separation (Article 25), according to which “the relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good” (paragraph 3), and relations between the Polish authorities and the Roman Catholic Church are determined by international treaty concluded with the Holy See, while with other churches and religious organizations – by agreements (paragraphs 4-5) (*The Constitution of the Republic of Poland*).

The preamble to the German constitution contains quite general, though direct references to God in words: “Conscious of

<sup>8</sup> Similar regulations were introduced in state schools in the Netherlands, which result from the strictly interpreted constitutional separation of the state and the church (Article 23(3)(5) of the Dutch Constitution) (*The Constitution of the Kingdom of the Netherlands*).

their responsibility before God and man, inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law" (*Basic Law for the Federal Republic of Germany*). It is notable that the *invocatio Dei* in the document was not only recognized as a formula that undermines the religious or ideological neutrality of Germany, but also was consciously accepted due to the fact that the rebuilding of statehood after Nazi totalitarianism must be based on "superior moral principles", because this totalitarianism was a perfect example of political action stemming from the will of the majority clearly emancipated from objective laws (Muszyński, 2002, p. 41)<sup>9</sup>. The preamble to the Irish constitution adopts a special wording, stating that "In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, we, the people of Éire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial, gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation, and seeking to promote the common good" (*Constitution of Ireland*). Attention should be drawn to the fact that, despite a specific religious constitutional vocabulary developed in the document, it does not imply a violation of the principle of religious freedom in Ireland (Weiler, 2003, p. 39).

In Italy, the Catholic religion was stripped of its position as a state religion in the agreement on the revision of the Lateran treaties of 1929 (*Agreement Between the Italian Republic...*) concluded in February 1984, which was annexed to the Italian constitution of 27<sup>th</sup> December 1947. It was a consequence of the separation of state and church tasks (but without excluding the cooperation between the communities), resulted from the equality of religious denominations before the law (Article 3) and the freedom to establish religious associations or institutions (Article 20) (*Constitution of the Italian Republic*). Similarly,

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<sup>9</sup> In one of its rulings on axiology in the educational system the German Federal Constitutional Court confirmed that "a state that extensively guarantees freedom of religion and thereby commits itself to religious-ideological neutrality cannot abandon the culturally transmitted and historically rooted hierarchy and sense of value on which the society is based and upon which its own tasks also depend. The transmission of intellectual traditions, moral experiences and behavioural patterns cannot be indifferent to the state. This applies particularly to schools, where the cultural foundations of society are extremely nurtured and renewed" (Brenner, 2003, p. 81, 83).



constitutional guarantees for ideological freedom in Lithuania do not interfere with the guarantees of free professing religion and performing religious practices, provided that the basic principles of social coexistence are respected (Article 26) (*Constitution of the Republic of Lithuania*).

In the third model the religious communities representing the state religion are privileged, enjoying exceptional legal protection at the expense of formally guaranteed space for the religious freedom<sup>10</sup>. Although according to the religious state concept, representatives of public authorities belong to a privileged religious community, this model should be distinguished from systems based on the existence of the so-called state church (similar to a Scandinavian or British model), which do not, however, imply restrictions on the freedom of religion concerning other churches and religious associations. The examples of a religious state among EU member states are Greece and Malta (Krukowski, 2003, p. 220).

In the Greek model the dominant role of the Orthodox Church is pointed out, because all regulations introduced by the state and actions taken by administrative authorities have to be compatible with the doctrinal principles of the Church. This issue was regulated in the Greek constitution, which stipulates, inter alia, that “the prevailing religion in Greece is that of the Eastern Orthodox Church of Christ [...]. The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited” (Article 3) (*The Constitution of Greece*).

Such direct references to the tasks of church institutions in society are adopted in the Constitution of Malta, which, as a result of granting the religion of the Roman Catholic Apostolic Church a special status, provides for “the duty and the right [of the Church’s authorities – ŁK] to teach which principles are right and which are wrong”, especially as part of the compulsory religious teaching in all state schools (Article 2) (*Constitution of Malta*).

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<sup>10</sup> It is worth emphasizing that the atheist state, attempting to eliminate the influence of religious factors on public life, education or social media, is in fact a religious state à retours. An example of a radical solution in this respect is the constitution of Albania adopted on 28<sup>th</sup> December 1976, which indicated that “the state recognizes no religion whatever and supports atheist propaganda for the purpose of inculcating the scientific materialist world outlook in people” (Article 37). In the constitution, it was also prohibited to “create any type of a fascist, anti-democratic, religious or anti-socialist organization” (Article 55) (*The Albanian Constitution*).

The analysis of constitutional guarantees in European countries in the field of religious freedom and of the place of Christian values in the preambles of basic laws indicates that the adopted solutions are to a large extent similar and consistently based on, consistent with Christian thought ideas of freedom of religion and beliefs, religious and philosophical pluralism, not considering any religion as state-owned and respecting the principle of state-not-intervening in the internal affairs of the churches and religious associations. The coexistence of state institutions and religious organizations in the countries of the Old Continent is essentially consistent with the models of pure and coordinated separation, with a diverse range of cooperation between state authorities and religious communities, and of the presence of religions and religious communities in public space (Safjan, 2003, p. 62). There is no doubt that the deep rootedness of fundamental rights and constitutional values in European culture, saturated with Christian axiology (though not always regarding transcendence), confirms the close link between the European societies and the religious sources of the Old Continent's heritage, which still determines the importance of religion in their lives. The ideological neutrality of the state in contemporary Europe cannot therefore be equated with the postulates of axiological indifferentism.

The elimination of religious references in the CFR's preamble can therefore be equated with a disregard for the tradition of appeals to God and Christianity, typical for the most EU member states, which, however, in the name of respecting the principle of unity in diversity, should be reflected in the EU symbols. The Charter, edited in the spirit of supposedly guaranteeing religious rights in European societies, has in effect become an emanation of the secularization of public space, imposing relativism in the sphere of values, against the declared desire to seek common cultural and legal roots of European values. Considering the Charter as a document informing the European legal order, it can be expected, however, that replacing the historical interpretation of legal acts in EU with a purposeful and evolutionary interpretation might ultimately result in giving the notion of "spiritual and moral heritage" also such content that will include Christian heritage of Europe (Mik, 2003, p. 135), although it is difficult to imagine the dominance of CFR interpretations of this type without changing European societies towards increasing religiousness.

## Conclusion

The unfortunate interpretation of the “united in diversity” principle was at the root of the ignorance of references to Christianity in the preamble of the CFR, which therefore became not so much a reflection of the constitutional solutions of most EU member states, but an expression of a strong ideologization of social life in the Old Continent, capable of setting axiological standards in Europe based on “christophobia”<sup>11</sup>, manifested in public space of some European countries. Consequently, the CFR’s preamble reflects anti-metaphysical phobias resulting from hypertrophy of moral relativism, supported by simplifications identifying the religious factor with a direct threat to human autonomy, and the adoption of certain goals and values as eternal – with a violation of the principles of “practical reason” (Miklas, 2010, p. 123).

What is the most important, questioning the role of traditional metanarratives filled with the elements of transcendence in the process of creating ethical and cultural foundations of social coexistence in Europe is not only historical anachronism, but also a manifestation of the erroneous belief that the affirmation of religion in shaping European heritage contradicts the principle of separation of church and state required in the modern world (*Address of His Holiness Pope John Paul II*)<sup>12</sup>. The mention of Christian sources of culture of the Old Continent in the Charter is held as a form of profession of faith, violating the ideological and religious neutrality of European public space<sup>13</sup>. Scepticism about

<sup>11</sup> This concept was introduced by J.H.H. Weiler postulating the acceptance of the religious basis of European values in the CFR: “Christian Europe is not a Europe that excludes or necessarily a confessional Europe. It is a Europe that equally recognizes all its citizens, believers and non-believers, Christians and non-Christians. It is a Europe that, although it refers to its noble humanistic heritage, also abandons christophobia, not afraid of embarrassment when it admits that Christianity is one of the important elements in the development of its civilization. Finally, it is a Europe which regains the wealth arising in confrontation with one of its main intellectual and spiritual traditions in public discussion of its own past and future. Tradition, which is the Christian heritage” (Weiler, 2003., p. 14).

<sup>12</sup> The Holy See addressed words of gratitude to those governments that, “being aware of the past and the historical context in which the new Europe is emerging, have put in an effort to give concrete expression to the recognition of their religious heritage” (Navarro-Valls, 2004, p. 2).

<sup>13</sup> A. Zoll rightly stated that the elimination of a religious factor as useless in the axiological discourse in the context of the CFR’s preamble was a consequence of confusing the terms, “because civilization’s heritage constituting the foundation of common values and the secular nature of the state are another thing” (Florczak, 2010, p. 73).

direct references to God and Christianity in the CFR's preamble cannot, however, lead to a negative assessment of the importance of religion in the development of society, which – analysed even through the prism of cultural factors – is still a key element of social and political life in Europe. Contesting the theological dimension of European values may ultimately result in highlighting post- and even anti-European factors, favouring the destabilization of member states cultures and hindering the implementation of the principle of unity in diversity in the form shaped in the treaty regulations.

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