

EUROPEAN HUMANIST FEDERATION  
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Session 2 Rule of law

*“The OSCE human dimension goes much further in linking human rights with the institutional and political system of a state. In essence, OSCE states have agreed through their human dimension commitments that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively”.* (<http://www.osce.org/odihr/13492.html>)

The EHF has been attending HDIMs as well as other OSCE events since 2005 but until now we have limited our participation to the subjects of Freedom of Religion or Belief and Tolerance and non Discrimination because we felt that these areas were the most appropriate to discuss discrimination against non-believers. But past HDIMs point to the fact that the worst encroachments on Freedom of Religion or Belief and to Human Rights generally occur in states where the rule of law is ignored or, at best, implemented faultily.

The rule of law matters to humanists and secularists for at least two reasons: because the historical heritage of humanism is part and parcel of the hard-won principles of democratic governance underlying our Western societies; and because our humanist message on the defense of Human Rights and of secularism translates politically into the principles of the rule of law i.e. respect for legality, for human rights and fundamental freedoms, for human dignity, for equality and justice. So we speak as concerned citizens who are not asking anything for themselves but have democracy and social cohesion at heart and who know that in history social progress has always been brought about by citizens and their organisations rather than by governments. This is why we are particularly appreciative of the OSCE Human Dimension framework which recognises the role civil society organisations can play by insisting on the effective implementation of the rules and methods of governance to which member states are committed.

OSCE's main mission is to help Central and Eastern European Countries set up and improve their democratic systems, which is fine. But how are democracy and the rule of law faring in the West? In my own country, Italy, there are quite stunning examples of infringements of the rule of law: from the non-compliance with international commitments on the rights of asylum-seekers and the horrific suffering it causes to the election of our controversial prime minister himself who would not be sitting where he presently sits had the rule of law been effectively implemented.

Such breaches of the rule of law – but Italy is no exception - are before everybody's eyes and so, to avoid some states feeling less equal than others, my appeal to this

conference is that OSCE cast its glance westward as well. Apart from enhancing its overall commitment to the defence of the rule of law this would raise awareness of a dangerous trend that is besetting - to a greater or lesser extent - a large number of member states both East and West of Vienna.

I am referring to the policy<sup>1</sup> followed in recent decades by the Catholic church in its different manifestations, as Holy See or Vatican City State, or the figure of the Supreme Pontiff himself. This policy aims at seeking a public and institutional role for “religions”, meaning churches or, more precisely, church hierarchies. This claim has been accompanied by cries of alarm by religious leaders who denounce attempts – whose authors are seldom or never named - to push religion out of the public square or restrict religious freedom. An example in this respect concerns conscientious objection on religious grounds. The fact that it cannot be considered legitimate if it prevents other people from exercising a lawful right simply because nobody is above the law, is considered a form of discrimination or even of “christianophobia”. Such cries of alarm are usually followed by the claim that religions have a *public* role to play. And as of late the word *public* has been accompanied more and more often by the word *institutional*. To which the Pope has added the word *rights* when he said that, thanks to the Lisbon Treaty, churches now have “*institutional rights*”<sup>2</sup>.

What are these *institutional rights* that seem to have appeared out of the blue, without public discussion despite the momentousness of this issue? The Catholic hierarchies are convinced that what they call the Catholic moral doctrine - which they themselves have devised as only holders of the truth thanks to their exclusive transcendental connection - is the only source of morals and that these morals are to be followed, willy-nilly, by everybody. Dogma has to be turned into law. Cardinal Ratzinger made this clear in 2002: separation of church and state yes, but not on moral matters<sup>3</sup>. I submit that this policy and the pressures exercised to have it implemented are blowing adrift our system of democratic representation, the bedrock of democracy.

Let me dwell now on the word public: one more wind which blows in the same direction as that of institutional rights for churches. Public refers to *res publica*, meaning not only something that belongs to everybody but to everybody alike. So, obviously, members of the Catholic church, both as individuals and as members of a private body, enjoy the same liberty as everybody else to freely express their views and profess their religion in public. But church leaders speak from a position of authority so what if such views are applied to specific bills or laws and to government policy? what if, or rather when, religious leaders instruct their followers to break the law? In democracies members of parliament are accountable solely to their constituency but the Pope has repeatedly enjoined Catholic politicians to abstain from voting for laws that run counter to the catholic moral doctrine and threatened

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punishment in this world or in the next if they do so. Pope Benedict has repeatedly incited Italian pharmacists, who are bound by law to supply the drugs doctors prescribe, to refuse to deliver the morning-after pill. The Pope, a foreign citizen, head of a foreign state - the only one that has not signed the European Convention on Human Rights - puts pressure on Italian citizens to break the law. Is this in order? Does Freedom of Religion go that far? Coming from such an authoritative figure, is not this an abuse of dominant position or, to put it bluntly, subversion?

President Obama said that “*words must be meaningful*” and I am aware *subversion* is a very strong word, but at this juncture I do not hesitate to apply it to the Vatican policy with regard to the institutional sphere. Obviously not to such a policy alone, but to the entanglement between the Catholic church and a state represented by unworthy and obsequious although, alas, legitimate representatives.

This deserves our full attention. Does the framework of *pluralistic democracy based on the rule of law* upheld by OSCE allow for churches to have *rights at all* and, what’s more, *institutional ones*? In our legal culture the only possessors of rights are human beings. Which is why international forums have rejected the request to criminalise the defamation of religion. Besides, in our democracies the process of policy-making is the preserve of elected representatives and democratic representation is part of the OSCE comprehensive security concept. If a non-elected, private body were to intervene in law-making this would disrupt the basic principles of democracy and of the rule of law. This is the crux of the matter.

In citing these examples, in particular that of the morning-after pill (but similar examples are rife) I do not seek to place normative limits to the freedom of expression of religious representatives. What I seek to do - apart from insisting that the Vatican hierarchies display a greater restraint when dealing with public affairs - is to highlight two issues: a) the potentially subversive content that the imposition of views based on dogmas have on representative democracy and on the rule of law and b) that the Vatican policy vis-à-vis national and European institutions is a well thought out plan based on a pre-scientific worldview, and that the application of many of its tenets is contrary to internationally accepted standards of human rights.

The only guarantee for the OSCE Human Dimension framework to cohere and function consistently is the genuine acceptance and implementation of the rule of law.

1. The Vatican policy in this regard emerges from official documents such as the Encyclical *Evangelium vitae* which states that: “72....Authority is a postulate of the moral order and derives from God. Consequently, laws and decrees enacted in contravention of the moral order, and hence of the divine will, can have no binding force in conscience...; indeed, the passing of such laws undermines the very nature of authority and results in shameful abuse”.

(<http://www.vatican.va/edocs/ENG0141/ PS.HTM>)

2. ] Cardinal Ratzinger on Europe's Crisis of Culture (part 2)  
(<http://www.zenit.org/article-13687?l=english>)

3. “Doctrinal note on some questions regarding The Participation of Catholics in Political Life” which reads: “For Catholic moral doctrine, the rightful autonomy of the political or civil sphere from that of religion and the Church – *but not from that of morality* – is a value that has been attained and recognized by the Catholic Church...  
([http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20021124\\_politica\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html))

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