

# **Christian Churches in European integration: the process of treaties reforms and the EU migration and asylum policy**

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## **Introduction**

There is a general acceptance in Social Constructivism that identity and non-state actors are relevant contributors to the process of European integration (Christiansen et al. 1999). At the same time, one can argue that Christian Churches are able to act as the identity formers, both on the European and national levels, and can be regarded, in some respect, as non-state actors (Enyedi 2003, Habermas 2008). As the identity formers, they are willing to contribute to the formation of their own vision of European identity, where Christian values and norms constitute an important part. As non-state actors, they interact with the actors of the civil society, as well as with the governments and politicians on the issues of their concern. Thus, Churches become the participants of the European integration process, and the role played by Churches on the European level goes far beyond the private religious space.

This paper will analyse two concrete cases, where Churches made their contribution. The first is the process of the treaties reforms in the European Union, with a special emphasis on the Constitutional Treaty and the Treaty of Lisbon. The second case is dedicated to the role of Churches in the EU migration and asylum policy. The empirical data for this paper was gathered from the documents and from the research interviews, which were conducted by the author with the representatives of the Christian Churches and the EU institutions.

## **Case 1. Christian Churches in the process of the EU treaties reforms**

The process of the last reforms of the European Union treaties was, to a large degree, a unique and distinctive enterprise. On the eve of the greatest enlargement of the Union it became clear that, under the scope of existing treaties, it will be very difficult to manage the EU of 25,

comprising the countries with diverse political and economic systems (Best et.al. 2008). The need for the new amendments of the Treaties, which could offer for the “emerging European polity” (Luyckx 2000) more sustainable way of development, was pronounced (Lantis 2008). The whole process of reforms, announced at the Laeken summit in December 2001, took full eight years, and ended in December 2009, when the Treaty of Lisbon entered into force. These eight years were full of controversies, with the fierce debates and rivalry among the numerous actors involved.

The Declaration of the Laeken Council pointed out to the need for the EU “to become more democratic, more transparent and more efficient” (Presidency Conclusions, p.21). In order to “consider the key issues arising from the Union’s future development and [...] identify the various possible responses”, the European Council decided to “convene a Convention composed of the main parties involved in the debate on the future of the Union” (Presidency Conclusions, p.24). Thus, the process of reforms began with the work of the Convention on the Future of Europe (the European Convention), which assembled in February 2002 and lasted until July 2003. The Convention eventually produced the text of the Treaty Establishing a Constitution for Europe (the European Constitution), which was designed to replace the Treaty on European Union and the Treaty establishing the European Community. The second stage took place from October 2003 to June 2004, when the text was discussed and amended at the Inter-Governmental Conference. The final phase came after the Constitutional Treaty was failed at the ratification process, and Member States decided to draft the Reform Treaty instead. The Reform Treaty was finally agreed in October 2007 and signed in December of the same year in Lisbon. It was ratified by all Member States within two years.

### 1.1 The Christian perspectives’ on the Constitutional Treaty

The European Christian community understood well the high importance of the treaties reforms, initiated in the early 2000s. It is not surprising that it was the [Catholic] Commission of the Bishops’ Conferences of the European Communities (COMECE), who came with such remarkable statement:

Never before in the history of the European Union has the project of rethinking its objectives, responsibilities, structures, and the principles on which it is constructed been taken up so visibly and systematically (Contribution, 21/05/2002).

The initial stage of the process of reforms was largely the word-driven: Churches articulated their goals and views, making them known both to the policy-makers and the wider public. This was mainly done through both the formal statements and the speeches of the leading figures in Christian Churches.

Catholics made the starting step. In May 2002 the Pope John Paul II, during his visit to Bulgaria, said that the message of Christianity is “relevant even to those who, in the field of politics, are working to bring about European unification” (William Kole 2002). In the same month, in “the first contribution to the Convention”, the COMECE touched upon a number of general issues, such as the inclusion of the Charter of Fundamental Rights in the EU Constitution, and the importance of the principles of solidarity and subsidiarity. The Commission of the Bishops’ Conferences did not refrain from making more specific recommendations. These recommendations were related to the three main issues (reference, dialogue and status), and they became the focus for the fierce debates of the subsequent months and even years. More precisely, the COMECE recommended that a future Constitutional Treaty should:

- (1) recognise the openness and ultimate otherness associated with the name of God. An inclusive reference to the Transcendent provides a guarantee for the freedom of the human person;
- (2) [acknowledge] the specific contribution of Churches and religious communities [and] provide for the possibility of a structured dialogue between the European institutions and Churches and religious communities;
- (3) Incorporate Declaration No.11 annexed to the Final Act of the Treaty of Amsterdam, expressing its respect for the status of Churches and religious communities as recognised by every Member State (Contribution, 21/05/2002).

Few days later the Orthodox Church of Greece joined the campaign, issuing on 30 May 2002 its official statement “On the future of Europe”. Metropolitan Athanasios (Hatzopoulos), the Head of the Representation of the Church of Greece to the EU, explained that the Statement “was an answer to a question directly posed to the Synod of our Church by Giscard d’Estaing [the President of the Convention]” (Hatzopoulos 2010). The Greek Church made three main proposals for the Constitution, requesting that:

- a. The principles of Religious Freedom and basic Human Rights are to be fully and specifically guaranteed and safeguarded, and deceitful proselytism forbidden [...].

- b. Respect for the common conscience of the Peoples of Europe concerning the Christian roots of their diachronic and contemporary spiritual legacy is to be ensured [...].
- c. Church-State relations [...] are to be left to the internal Law of each Nation, within the framework of religious freedom, as this is specifically foreseen in Statement No.11 of the Treaty of Amsterdam [...]

(Zorbas 2003, p. 229)

One month later the development of the campaign crossed the borders of the Catholic and Orthodox confessions. In June, a number of Christian organisations (Church and Society Commission of the Conference of European Churches (CSC CEC), Caritas Europa, European Federation for Diaconia, Association of World Council of Churches related Development Organisations in Europe, International Cooperation for Development and Solidarity and COMECE) produced a joint letter, addressed to the President of the Convention. The vagueness of the general statements made them acceptable to almost anyone (for example, when the letter spoke about the support for the fundamental rights and “the pursuance of the common good”). More specific requests, which were present as well, coincided, to a certain extent, with the May’s proposals of the COMECE (especially when it referred to the status of Churches and religious communities). One of the novelties was a request to acknowledge in the Constitutional text “the religious and spiritual heritage of Europe”, but no request to make a reference to the Transcendent was made (Letter, 28/06/2002).

Three months later, in the common proposals, articulated by the Church and Society Commission of the Conference of European Churches and the COMECE, the May’s requests of the COMECE were in general repeated, albeit with a bit different wording. As in the June’s letter, the request to make a reference to the Transcendent was not included (most likely because of the position of some Protestant Churches in the CEC). At the same time, the COMECE and CEC stated clearly that the omission from the Constitutional Treaty any reference to religion, churches or religious communities “[w]ould constitute a vacuum, given their vital significance to society as a whole, to the values and identities upon which a society is based, and to the Union’s relationship to its citizens” (“Churches and Religious Communities in a Constitutional Treaty of the European Union”, 27/09/2002).

These common positions, produced between May and September, became the reference points for those politicians and officials, who respected the opinion of the Churches and who shared the same values and beliefs. Apart from the Catholics and Greek Orthodox, neither

other Orthodox, nor Protestant Churches made any statements on the issue. As separate entities, they remained mostly silent in the first months of the Convention, relying more on and contributing to the work of the pan-European Christian institutions (such as CSC CEC). This changed when the debates at the Convention (especially on the Preamble) became more heated, attracting substantial attention from the circles outside the session halls of the conventionalists. How these debates were going is the next issue of concern.

## 1.2 Churches as non-state actors and identity-formers: mobilisation and support

We are now going to look in some more detail how the Churches and the organisations or individuals who supported them acted during the process of the treaties reforms. This requires the analysis of the three main stages: debates at the Constitutional Convention, debates on the Constitutional Treaty at the Inter-Governmental Conference, and the debates on the Treaty of Lisbon.

### 1.2.1 Debates at the Convention

The Convention on the Future of Europe was composed of 105 members, representing Heads of States and Governments, national parliaments (of the fifteen member states and the thirteen candidate countries, including Turkey), European Parliament and the European Commission. The plenary sessions were normally held once a month, and the Presidium, composed of twelve members, was assembled as necessary between the plenary sessions.

The first mentioning of religion at the Convention came as early as during the second session (21-22 March 2002), in the context of the discussion on European values. The Italian members of the Convention spoke about the Christian-Jewish values and the role of Churches in the social area. In particular, the member Marco Follini “[m]entioned the “role of the religious traditions” and reminded the states not to forget about that aspect in their debates on the future of Europe” (The European Convention, p.8). During the third session (15-16 April 2002) Henning Christophersen, a representative of the Danish Government, “[e]mphasised that the regulation of the state-church relationship has to remain in the competence of the member states” (The European Convention, p.15). Also, the Dutch member Rene van der Linden at the fourth session (23-24 May 2002) spoke about “the importance of the Churches for the development of civil society” (The European Convention, p.23). Interestingly, the members of the Convention, who spoke at the second and third sessions, did so before the appearance of any formal Churches’ submissions to the Convention. Apparently, the Italian and Danish

members acted just out of their own convictions, and, in case of Denmark, reflected the Constitutional arrangements of their state.

A more active campaign from Churches and Christian organisations came later, as well as more active mobilisation of the members of the Convention. In June, the representatives of the Churches (CEC) were able to articulate their ideas and concerns at the special session of the Convention, devoted to the hearing of the civil society groups (24-25 June 2002). But the most intensive involvement of the Churches, both on the European and national levels, was recorded in the second half of the year 2002 and the first half of 2003, especially after it became clear that 'In the skeleton of the draft constitutional treaty made public by the Praesidium on the 28 October 2002, no reference to religion was made' (Leustean 2007). Churches acted in three main dimensions: petitions, negotiations, and the use of the opportunities, provided by the specific Church-State relations of their countries. Not surprisingly, the Pope of Rome, as the head of both the Church and the State (the Vatican) was able to act on the highest political level. In a meeting on 31 October 2002 with the President of Convention, Valéry Giscard d'Estaing, John Paul II "repeated his request for a clear reference to God and Christian faith", emphasising:

The contribution of Christianity and man's Christian vision in the history and culture of different countries is part of a common treasure and it appears logical that this should be inscribed in the project of the Convention (N.Smith, EU Observer, 08/11/2002).

To these requests, coming from the outside, the "insiders" also joined. Just a day before the meeting of d'Estaing and John Paul II, two German MEPs (Ingo Friedrich and Joachim Wuermeling (alternate)) "announced their intention to push for a more precise reference to religious heritage and to God in the preamble or the body of the constitutional text" (N.Smith, EUObserver, 08/11/2002). As Wuermeling explained:

We waited until the process of the work in the Convention became more focused. I was indeed in contact with the COMECE and EKD [Evangelical Church of Germany], but acted out of my own convictions (Wuermeling 2010).

Peter Pavlovic (CEC) also confirmed, that the CSC CEC "had the discussions with the several members of the Convention, but not in order to 'organise' them. We simply wanted to express our position, and the rest was with them, to act as the politicians" (Pavlovic 2010). Wuermeling

presented his contribution with the 25 signatures of the members and alternates on 31 January, 2003. The text was proposed as follows:

The Union values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect these universal values arising from other sources

Between the end of October 2002 and the end of January 2003 the religious agenda also did not suffer from the lack of events. At the 11<sup>th</sup> plenary session of the Convention (7-8 November 2002), Farnleitner, representing the Austrian government, “[s]pecifically asked for a recognition of declaration No. 11 annexed to the Treaty of Amsterdam, which protects national church-state relationships” (The European Convention, p.80). The working group on the “Complementary competences” (led by Christophersen from Denmark) proposed that the provision “The Union respects the national identity of Member States” should also exemplify “the essential elements of the national identity”. Notably, it was suggested to include in the list “the legal status of churches and religious societies” (The European Convention, p.82). This was especially welcomed by Teufel and Wuermeling (Germany), Farnleitner (Austria), and Serracino-Inglott (Malta).

In early December, the representatives of the religious organisations met the Justice and Home Affairs Commissioner Antonio Vitorino (he was also a member of the Convention). During the meeting, the representative of the CEC made emphasis on such issues, as the status of churches, the dialogue between the churches and the EU, and the social dimension of the new treaty (N.Smith, EUObserver, 04/12/2002). Thus, it was highlighted as the priority area for the CEC.

In mid-December, the COMECE and CSC CEC submitted to the Convention their second joint legislative proposal. They suggested the three versions of the Preamble: the one similar to the Charter of Fundamental Rights (“conscious of [...] what Europe owes to its spiritual and moral heritage”), the one as suggested by some members of the Convention (“taking inspiration from its cultural, humanist and religious heritage”), and the formulation, presumably, of the Churches themselves: “Conscious of human responsibility before God and equally conscious of other sources of human responsibility...” (Joint recommendation, 18/12/2002). Notably, it was the first time when the representatives of three Christian confessions jointly wrote about the possibility to mention God in the text of the Constitutional Treaty. Churches also repeated their requests to preserve their status under national law and asked to make the provisions for the structured

dialogue: “The European Union respects the specific identity and the contribution to public life of churches and religious communities and maintains a structured dialogue with them” (Joint recommendation, 18/12/2002). Few days later, the head of the Catholic Church in Poland, Cardinal Jozef Glemp, criticised the members of the Convention, since, according to him: “It appears that the basic law is drawn up by people whose opinions differ greatly from those of average Europeans, who are mainly believers. We are therefore seeing a violation of democracy by the elites who are forming the EU” (AFP, 03/01/2003). Finally, in January 2003, the Pope submitted a plea to the Convention, where he claimed that Christianity in Europe “holds a privileged position” and Christian beliefs “permeated Europe’s history and institutions” (Constant Brand, AP, 05/02/2003).

Of course, the opponents of the Churches kept their eyes open: the European humanist organisations, led by the European Humanist Association, started the campaign to combat the religious presence in the Constitution. A member of the Convention Josep Borrell Fontelles (Spain) in his specific contribution (22/01/2003) asked to “Leave God Out of This”. He claimed that the adoption of the Pope’s demand would mean “[a]n important change in a political project which is inherently secular from the beginning”.

It became a moment of somewhat unpleasant experience for the Churches and their supporters, when in the articles 1-16 of the Treaty, released on 6 February 2003, no reference to religion or God was made. However, at the 16<sup>th</sup> session (27-28 February 2003) the Convention’s President emphasised that “[t]he Presidium would at a later stage propose clauses of relevance to religion and the churches in three areas of the future Constitution” (The European Convention, p.114). Alojz Peterle (member of the Presidium from the accession candidate countries) claimed that there was even a slight majority in the Presidium in favour of the reference to Christianity (Peterle 2010). A number of the members of the Convention spoke strongly in support of the religious content, with Danuta Hubner, a representative of the Polish Government, summarizing the opinions:

My personal view is that without such a reference [to religious heritage], the Constitutional Treaty will not be complete. Religions and Christianity among them have been part and parcel of our continent’s history. Respect for pluralism of opinion can very easily go together with a recognition of the role of religion, for example in the Preamble to the Treaty (Personal remarks, p.3)

After the February's uncertainty, the coordinated efforts of the Churches became even more visible and strong. The Vatican, expressing directly (not via the COMECE), its perspective on a number of Constitutional issues, requested:

- (1) the juridical recognition of churches and religious communities, entailing, specifically, the right of each one to freely organize itself, in keeping with its own statutes and objectives;
- (2) the safeguarding of the specific identity of churches and religious communities and, in virtue of the contribution that the latter make to public life, to provide for structured dialogue between the Union and these confessions;
- (3) respect, on the part of the Union's legislation, of the juridical status that religious confessions enjoy in virtue of the national legislations of the member states.

Cardinal Sodano, underlining that the inclusion of the Christian heritage in the text of the Constitution is not "the most weighty aspect of our requests", emphasised nevertheless: "Yet, we consider it important because it corresponds to an undeniable historical fact: The cultural roots of European values are multiple, but Christianity has contributed to forge the latter in a particular way" (Sodano 2003). In March 2003, the representatives of the Orthodox Churches of Greece, Romania, Bulgaria, Cyprus, the Ecumenical Patriarchate and the Moscow Patriarchate at the inter-Orthodox meeting in Crete, adopted a common declaration on the Draft Constitutional Treaty. In this document, reflecting the will of the European Orthodox family, Churches asked, inter alia, that:

The Constitutional Treaty should include explicit reference to Europe's Christian heritage, by means of which the principles and values of the biblical and Graeco-Roman tradition were perpetuated, which, with subsequent cultural elements constitute the foundations on which the modern European construct is founded (Conclusions 2003).

The 11 Declaration of the Treaty of Amsterdam on the status quo of the Churches and non-confessional religious unions must be incorporated in the Constitutional treaty to ensure that its pertinent provisions will not be violated by the legislation of the Member-States (Conclusions 2003).

In that context, the formulation of the relevant article of the Constitutional Treaty was proposed as follows:

The European Union respects and does not prejudge the national law in each member state on the relation between State and Church and the internationally acknowledged principles of religious freedom for individuals and the churches (Conclusions 2003).

Metropolitan Athanasios (Hatzopoulos), describing the tactics, chosen by the Church of Greece, emphasised the non-declaratory part of its activities:

Archbishop Christodoulos had regular contacts with every partner available involved in the preparation of the Treaty. My role as representative of the Church of Greece was to prepare the meetings and make sure that there was a follow up. I remember his annual meetings with MEPs, his speech in the European Parliament in October 2003, his encounter with Giscard d'Estaing, Patrick Cox and Josep Borrel in Athens, his discussions with the Prime Minister and several Ministers of the Greek Government... Christodoulos thought that it was better to approach Europe in a way of dialogue through speeches and encounters rather than issuing statements of the Synod (Hatzopoulos 2010).

Thus, by March 2003 almost all major European Churches, either acting alone, or in the unity with others, became involved in the drafting process. The only dissonating voices, breaking the unity among Christians, were coming from the Protestants. In fact, Protestants remain the most divided Christian confession not only in terms of their doctrines, but also in terms of their attitudes towards the European Union, ranging from the full support to the fierce opposition (which is normally expressed by the representatives of the Free Churches, who often refer to the EU as “the Catholic superstate” (see Noble 1998)). For the mainline Protestants (Lutherans) the issue of the Preamble seemed to be of little importance. For example, Paul Verner Skærved, Chairman of the Council on International Relations of the Lutheran Church in Denmark, stated in that respect:

To me, the decisive question is whether it is in the interest of the churches that the Jewish-Christian basis is mentioned. I doubt it. The most important must be that we can preserve our identity as a Danish church in a new Europe and hopefully also contribute to the process. If something is to be inscribed in the treaty, it should not be God or the Christian values but the recognition of the role of the churches as a part of the European picture and, above all, the religious freedom – to be free in the practice of one's religion

and free of pressure from religious, political, and atheistic powers (Church of Denmark, 2003).

The Lutheran Churches in other countries held the similar views. For the Lutheran Church of Finland (one of the most active on the EU issues among the Protestant Churches in Europe), the issue of the Preamble “was not a priority” (Eloranta 2010). In fact, the more important issues for the Lutherans included social policy, human rights and participatory democracy. On the Preamble, the Church of Finland did not issue any separate statement (it only acted via the CEC), and a number of the minority Protestant Churches (for example, in France and Italy) were even not in favour of the reference to God, because “the laicite was the way that allowed them to function” (Eloranta 2010). The Quakers were unable to take a common view on the “reference problem”, due to the broad range of incompatible opinions (Weitsch 2010). Instead, in their recommendations (as formulated by the Quaker Council on European Affairs), the “Society of Friends” touched upon other issues: the human values, the improvements to democracy and transparency within the EU institutions and the external action (Thomas 2003, Weitsch 2010). Quakers argued in favour of the regular dialogue with the civil society, NGOs and Churches and opposed the increase of military capabilities of the Union (Weitsch 2010).

However, this break of consensus did not prevent the majority of Christian Churches to see in April their first real success. At the 18<sup>th</sup> session of the Convention (3-4 April 2003), the Vice-President Dehaene presented the article 37, which proclaimed the guarantees for the status of Churches under national law and declared the regular dialogue of the EU with Churches. “Philosophical and non-confessional organisations” also came under the regulations of the article, but Dehaene underlined that “[t]he dialogue of the European institutions with the churches, religious, philosophical and non-confessional communities has to be clearly distinguished from other forms of regular dialogue with civil society organisations” (The European Convention, p. 127). In May, in the first draft of the Preamble, published on 28 May 2003, the reference to religion was made, but in very general terms and in the combination with the statements which were considered subjective and biased:

Drawing inspiration from the cultural, religious and humanist inheritance of Europe, which, nourished first by the civilisations of Greece and Rome, characterised by spiritual impulse always present in its heritage and later by the philosophical currents of the Enlightenment, has embedded within the life of society its perception of the central role of the human person and his inviolable and inalienable rights, and of respect for law.

The criticism to this draft was mainly concerned with the “historical incorrectness”. As it was underlined in the official statement of the Russian Orthodox Church:

We believe that the philosophical currents of the Enlightenment may be mentioned in the Preamble only along with the Christian inheritance and perhaps that of other religions visibly present in Europe. A reference to an abstract "spiritual impulse" does not remove this problem (Moscow Patriarchate 2003).

Many other Christian Churches articulated the same or similar criticism, pointing out to the lack of the objective understanding of history, shown by the authors of the document. Some members of the Convention fully shared this concern. Edmund Wittbrodt, member of the European Convention (Poland) and Marta Fogler, alternate member (Poland), initiated an amendment: to insert, along with the philosophical currents of the Enlightenment, also the ones of the Christianity and the Renaissance. Frantisek Kroupa, alternate member of the Convention (Czech Republic), suggested that, in order to acknowledge the importance of religion, “the heritage of Bible” should be mentioned, since it will make the text more acceptable for Muslims. A member of the Convention, Danuta Hubner spoke about the “[n]eed to indicate the Christian values as one of the sources of Europe’s inheritance, especially when there are made particular references to the traditions of Greece and Rome, and of the Enlightenment”. Indeed, as the members of the Convention Peter Serracino Inglott and Michael Frenedo, and alternate John Inguanez pointed out, the inclusion of Christianity could be necessary “for a more faithful reflection of history”. Gabriel Cisneros Laborda, member of the Convention, called the formulation of the draft Preamble “unacceptable and scandalous” (in words of Ignace Bertin), which in fact is “the historic falsification”, and the expression of the deliberate attempt “to eliminate Christianity from the European memory”. Those who held the opposite views were reluctant to see the word “religious” at all. The members Olivier Duhamel and Robert Badinter, and the alternate Pervenche Beres suggested to write “spiritual”, instead of “religious and humanist inheritance”, and the alternate Jacques Floch suggested to insert “laics” after the “religious”.

Possibly due to this criticism, the references to Greek and Roman civilisation, as well as to the Enlightenment were deleted from the Preamble. The text gained more neutral and balanced context. In the new version, the EU was drawing inspiration

[f]rom the cultural, religious and humanist inheritance of Europe, the values of which, still present in its heritage, has embedded within the life of society the central role of the human person and his or her inviolable and inalienable rights, and of respect for law.

But this new version continued to attract some criticism, complemented by the requests for its alteration. Edmund Wittbrott suggested that the preamble should also speak about the “Christian-Judaic inheritance of Europe”. Although 37 members and alternates of the Convention put their signatures in support of this amendment, they did not succeed and the Preamble remained unchanged. Also almost unchanged remained the article 51 (initially 37), which was fiercely opposed by some humanist associations and some members of the Convention. They even wanted to delete it altogether, since the “interests and role [of the Churches] are covered by other articles dealing with civil society” (Soren Lekberg amendment). However, the Draft Treaty, presented at the Thessaloniki European Council on 19-20 June 2003, contained both the disputable Preamble and the article 51, to the visible dissatisfaction of those who wanted (and promoted) different wording and meaning. But the struggle was far from over, since the process entered into the most important stage—the search of consensus among the member states.

#### 1.2.2. Debates at the Inter-Governmental Conference

It took quite a long time for the participants of the Inter-Governmental Conference to reach an agreement on the text of the Constitutional Treaty, since many principal questions (such as the rule on majority voting) were at stake (see Streinz 2008). Indeed, although the conference started on 4 October 2003, the text of the Treaty was fully agreed only in June 2004. It was pompously signed by the 25 member states in Rome, on 29 October 2004.

Although Churches claimed some success at the time of Convention, it soon appeared that they were not fully satisfied with the draft version of the Treaty. As early as in June 2003 the Pope appealed again “to those drawing up the future European Constitutional Treaty so that it will include a reference to the religion and in particular to the Christian heritage of Europe” (AFP, International news, June 28, 2003, Saturday). The Vatican’s official stance was supported by the voices from the “periphery”. In the letter, addressed to the Italian Prime Minister Silvio Berlusconi (in September 2003), the Conference of Polish Bishops stressed that “It is impossible to build the future of Europe without the spiritual foundation, which is based on the truth about its past and present”. Bishops expressed hope that Italy, during its presidency, will ensure that the text of the Constitutional Treaty recognises “Christian roots of Europe and

will give appropriate place to the religious meaning” (List 2003). But overall, the statements and declarations of the Churches during the IGC lost their frequency and intensity, compared to the phase one (mainly due to the fact that Churches articulated and thoroughly explained their ideas at the time of European Convention). The usual contacts of Churches with various political institutions and groups continued, and the Churches’ message was basically the same as in 2002--2003. For example, archbishop Christodoulos of the Church of Greece claimed in his October 2003 speech to the members of the European Parliament:

The demand for a reference to Christianity is not an act that aims to obstruct the secular state, but an act that desires to protect European consciousness. The planned European constitution’s failure to refer to the foundations of European consciousness represents in my view the first truly regrettable event in the history of the Union (Address 2003).

At the time of the IGC, Churches turned to be less visible, but the governments and politicians assumed more actively the role of defenders of the Churches’ views. In September 2003, before the formal opening of the IG Conference, eight countries (Italy, Spain, Ireland, Malta, Poland, Portugal, Slovakia and the Czech Republic) indicated their wish to see the presence of Christianity in the Constitution. The Czech Republic made even a larger proposal, with a reference to Ancient Greek philosophy, Roman law, Jewish and Christian roots and rationalism. The opposition was expressed by Cyprus and Turkey. The initiative of the eight was supported by the proposal, signed by 82 Members of the European Parliament. Also, the attempt was made to get some public support: in November 2003 a petition, signed by 400.000 people from different countries of Europe, was presented to the Council Presidency by a number of MEPs, led by Mario Mauro and Elizabeth Montfort. Montfort underlined that Europe, which spells out its own identity (in Christian sense), will thus be open to other cultures (EPP Group 2003). The actors behind the petition, as claimed on the European Peoples Party website, were the “[i]ndividuals who spontaneously launched the petition” (EPP Group 2003). Schlesinger and Foret assume that this petition remained unknown to the most of the key actors of the debates, therefore the “attempts to develop a broader constituency in order to mobilize the support of various strands of public opinion has had little success” (Schlesinger and Foret 2006, p.68-69).

In spite of these requests and campaigns, the final version of the Constitutional Treaty omitted any reference to Christianity or God (not least due to the fierce opposition from Belgium and France). French representatives, for instance, pointed out to the principle of laicite in the French Constitution, but Richard Chartres, bishop of London, claimed emphatically: “[w]hy should the whole of Europe retreat from genuine pluralism in favour of a secular confessional state?”

(Values and Principles, p.474). However, as in the phase one, the reference was just one of the problems. Secular groups renewed their claims for the deleting of article on the “Status of churches and non-confessional organisations”. In December 2003 a coalition of secular groups “urged EU leaders to delete Article 51”. They claimed that the above mentioned article “not only maintains the privileges of the churches in each member state but also defines them as permanent established partners of the European Union”, which “would mark the end of the principle of separation of churches and the state” (R.Evans, National Post (Canada), 09/12/2003). Moreover, it was even emphasised that with the joining of the EU of the countries with a strong Vatican influence, “[t]he door will be wide open to the Church hierarchy to impose its reactionary social views” (R.Evans). Churches and their supporters managed to successfully resist to those who campaigned for the deleting of article 51.

In fact, the provisions, related to the religious issues, remained virtually unchanged in the final text of the Treaty Establishing a Constitution for Europe (if compared to what was proposed by the Convention in June 2003). One can even claim that these provisions became slightly more favourable towards religion. “The cultural, religious and humanist inheritance of Europe” remained in the first sentence of one of the articles of the Preamble, but the article itself was moved from the second to the first place in the Preamble. In addition, a new wording of the article clearly put the religious inheritance (along with the cultural and humanist) as the one, from which “have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law” (Preamble, October 2004). The article on the “Status of churches and non-confessional organisations” became the article I-52 (instead of 51), and only added the words “under national law” in the text of paragraph 2 (“The Union equally respects the status *under national law* of philosophical and non-confessional organisations”).

The final version of the Treaty was assessed quite positively by the Roman Catholic Church. In a paper, published in March 2005, the COMECE regretted that the Treaty “does not include reference to Christianity”, but at the same time welcomed that “[t]he religious freedom in its corporate dimension, the dialogue between Churches and the Union, as well as the protection of the status of the Churches in the Member States has been introduced into the Constitutional Treaty” (COMECE 2005, pp. 3-4). Moreover, the COMECE suggested that “[b]y making reference to the religious inheritance of Europe, the Constitutional Treaty implicitly accepts the predominant contribution made by Christianity to today’s Europe” and “by explicitly using the Christian term ‘church’ and respecting their specific contribution, the Union shows consciousness of Europe’s Christian heritage” (COMECE 2005, pp.14-15).

### 1.2.3. The Treaty of Lisbon: actions and evaluation

The fate of the Constitutional Treaty was somewhat unhappy: its ratification process did not go according to plan. It was necessary for all Member States to complete the ratification within two years, but the 'no' votes at the referendums in France and Netherlands in May and June 2005 "destabilised the EU" (Syrpis 2008, p.221). In June 2005 the European Council called for a "period of reflection", in order to find the solution acceptable for all Member States. Syrpis claims that "throughout this period, there was great uncertainty as to the fate of the Constitution, and as to the prospects for, and direction of, any reform of the EU" (Syrpis 2008, p.221). According to Tsebelis, "The purpose of this reflection period was to give the countries more time to debate and to ratify the constitution" (Tsebelis 2008, p.266).

After this period (which ended in December 2006), there was the understanding among the EU leaders that the new Treaty needed to be worked out, preserving the main provisions of the Constitutional Treaty (Konig et.al. 2008). The text of this new Treaty, known as the Reform Treaty, was agreed at the Inter-Governmental Conference in Lisbon in October 2007 and signed in December of the same year. After the uneasy ratification process, with the two referendums in the Republic of Ireland, it came into force in December 2009. The religious or religion-related issues did not play the substantial role at this stage, although their presence was certainly visible. For example, at the debates before the referendums in Ireland the fear was expressed that the Lisbon Treaty, if ratified, would allow the EU to "undermine Ireland's constitutional prohibition of abortion" (Dinan 2009, p.116). Some Catholic groups, led by Coir, argued that the Lisbon Treaty "would also encourage the growth of euthanasia and prostitution", and the Charter of Fundamental Rights, becoming legally binding under the Lisbon, "would be used as a Trojan horse to introduce extreme secular legislation which would further erode Irish identity and attachment to Christianity" (O'Brennan 2009. p.263). There were some attempts from the Churches and political leaders to return to the possibility of the reference to Christianity in the Preamble, but the intensity of the debates was not comparable to what happened several years ago. The main provisions of the Treaty of Lisbon, related to the religion, were left almost unchanged, if compared to the Constitutional Treaty. There were only some technical and unimportant amendments. The paragraph on the "religious inheritance" in the Preamble moved from the first place to the second. The article on the "Status of churches and non-confessional organisation" (article I-52 of the European Constitution) became the article 17 of the Treaty on the Functioning of the European Union, losing its name, but retaining its full content.

Although at this last stage Churches were indeed less visible, it is fair to claim that they were the active participants of the process of the treaties reforms from the very beginning to the very end. Their own assessment of the outcome is varied, but in general shows a favourable opinion. The official report of the COMECE, mentioned earlier (and dedicated to the Constitutional Treaty), reflects the position of the Catholics towards the Treaty of Lisbon (since the religious and religion-related elements were left there virtually unchanged). The Church and Society Commission of the CEC, in its report on the Treaty of Lisbon (December 2009), stated that in many aspects the content of the Treaty coincided with the objectives of the CSC. In particular, the Charter of Fundamental Rights became legally binding, the status of the Churches under national law is respected, and the EU is obliged to hold a regular dialogue with the Churches (CSC 2009). “The biggest disappointment concerns the lack of progress in the enhancement of non-military means of conflict prevention and crisis management”,-- underlines the report (CSC 2009). However, as Peter Pavlovic stated, “I believe that most of the crucial submissions from the Churches were adopted, and they are found in this or that way in the formulations of the Treaty” (Pavlovic 2010).

Lutheran Churches of Sweden and Finland were generally satisfied with the final text of the Treaty, asserting that the “Christian values are very much represented in the Treaty” (Eloranta 2010). The Quakers were happy with the fact that the articles on the dialogue with civil society and religious organisations became a part of the Treaty, but were displeased that their pacifist stance on the military issues was largely ignored (Weitsch 2010). The Russian Orthodox Church, admitting that “without Christian roots the text of the Preamble was deprived of its sense as a whole”, stated at the same time that “from the practical point of view, the fact that there is now the systemic dialogue with the Churches (art.17) is probably even more important” (Ilin 2010). The Russian Church also welcomed that, in the light of the article 17, Churches are not equalised with the NGOs, interest groups and social partners (Ilin 2010). The idea that the Church cannot be equalised with the NGOs was also explicitly articulated by bishop Porfyrios, the Church of Cyprus representative, who stated that “We are not here as an NGO. We are Church. We are not representing financial interests. We are spiritual institution. These issues are in different categories” (Porfyrios 2010).

However, the comparison of the initial requests with the outcome is suggestive that the level of success for the Churches and their influence should not be overestimated. Indeed, the reference to the religious inheritance in the Preamble was included, but any references to the requested Judeo-Christian inheritance or God were omitted. Although Churches managed to

get the recognition of their “identity and specific contribution”, this was done alongside the same recognition for the philosophical and non-confessional organisations (thus, the organisations which are actually secular and in many cases strictly anti-religious, like the European Humanist Federation and various groups of the Free-Masons). Therefore the COMECE’s opinion that “the Constitutional Treaty implicitly accepts the predominant contribution made by Christianity to today’s Europe” and “the Union shows consciousness of Europe’s Christian heritage” (COMECE 2005, p.14) seems a bit ungrounded, reflecting more the willingness of the Catholics, rather than the real state of affairs.

The same applies to the provisions for the “open, regular and transparent” dialogue with the Churches and religions. Indeed, it was an achievement that the dialogue was mentioned separately from the dialogue with the civil society, but this was watered down by the inclusion of the mentioned “philosophical and non-confessional organisations”. Moreover, initially Churches requested the “structured” dialogue, but this word did not appear in the wording of the article. Consequently, the article 17, if applied in its totality, simply means the dialogue with almost everyone, without any formal obligations from the side of the European Union. In fact, it is left at the goodwill of the EU to envisage any formal structure for the dialogue. This has already been requested by the representatives of Christian Churches, but nobody can force the EU to do more than was done before the Lisbon Treaty came into force (the regular meetings of the religious and the EU leaders started several years earlier). It is not surprising that even one of the opponents of the Churches, Sophie in’t Veld, chair of the European Parliament Platform on secularism in politics, admitted that the final outcome of the Reform Treaty “can be regarded as a success or failure for one of the sides, depending on how it will be put in practice” (in’t Veld 2010).

## **Case 2. Churches and the EU migration and asylum policy**

The EU Member States have never been completely mono-ethnic societies, although the presence of foreigners varied a great deal across Europe. Undoubtedly, the ‘outsiders” made their contribution to the linguistic, cultural, religious and other developments of the continent. Immigration was regarded by some as “crucial to Europe for demographic and economic reasons” (D’Appollonia 2008, p.203). Others maintained that the issues of migration and asylum are adequately placed on the political agenda. Andrew Geddes argued:

Migration and asylum impact squarely and directly on the sovereign power, authority and capacity of states, on key social institutions, such as labour markets and welfare states, and on complex notions of belonging and identity (Geddes 2008, p.5)

In the European Union of today, the problems of migration and asylum are one of the most acute. They attract visible attention from the media, political parties, and non-governmental organisations. Christian Churches also do not stay aside. In fact, they have been active in this field for several decades. Therefore their contribution can hardly be ignored. This is especially true because this contribution comes with the high degree of professionalism and the desire to be with the most vulnerable and suffering.

## 2.1 The EU immigration and asylum policy: the main developments

The starting point of the European Communities cooperation in the area of migration is dated as back as in 1970s. The start was non-pretentious and gradual. Although “from 1975 onwards intergovernmental cooperation was gradually established in the fields of immigration, the rights of asylum and police and judicial cooperation” (Gradual establishment), the European institutions were excluded from the process of regulating immigration and asylum. Decisions were taken at the intergovernmental level, reflecting the “lowest common denominator”. The way from the intergovernmentalism to the dominance of supranational procedures was long and complicated. It passed through the three main stages, which were regarded as the milestones of this way. D’Appollonia explains:

In the first [stage], from the mid-1970s to the mid-1980s, immigration policies were designed and implemented exclusively by the member states. Then, from the mid-1980s to the mid-1990s, national governments began to coordinate their policies with the intergovernmental Schengen Agreement. The third stage was initiated by the Maastricht Treaty and the Treaty of Amsterdam. These treaties gave the EU competence over immigration, visa and asylum policy (D’Appollonia 2008, p.206).

Of course, the necessity to shift from intergovernmentalism to supranationalism did not come accidentally. Rather, it happened under the influence of historical events. Those changes that occurred in the USSR and Eastern Europe in the late 1980s, had the direct impact on migration. The number of immigrants in the Western European countries climbed rapidly. After the “iron curtain” fell and the borders of the former socialist states were open, thousands of people went to the West, hoping to escape either the difficulties of the transition period, or just

in the quest of the “better life”. The fear of political persecution was also a valid reason in some cases.

However, it will be ungrounded to claim that the former socialist bloc turned into the main supplier of immigration. The immigrants were also coming from the other sides of the horizon, including the areas affected by ethnic conflicts. Carl-Ulrik Schierup maintains:

During the 1990s, substantial number of migrants also came from Eastern Europe and the former Soviet Union, Africa, the Middle East, and Asia (while Latin America became a less significant source than it was in the era of the military regimes in the 1970s and 1980s). Economic transformation, political upheavals, ethnic conflicts, and environmental disasters all triggered migrations, whether of refugees, asylum seekers, or undocumented workers. The result was an ever-greater diversity in the geographical, ethnic, and cultural backgrounds of migrant populations (Schierup 2007, p.22).

The diversity and the numbers of this “migrant populations” made them very visible in the EU (although some fears, expressed by the media and anti-immigrations parties, proved to be exaggerated). Consequently, the Union had to respond with the adequate changes in the area of immigration and asylum:

Following years dominated by intergovernmental cooperation outside the ambit of the EC Treaty, in 1999 the Treaty of Amsterdam inserted new legal competences covering most dimensions of immigration law, ranging from external border controls and visas, to asylum and resident third country nationals. Since then, there has been a very active legislative programme which has established rules governing different strands of migration, such as asylum, family reunion, and irregular migration (Bell 2007, p137).

The Treaty of Amsterdam became the cornerstone, which marked the U-turn in the Union’s policy in immigration and asylum. As a result of complex negotiations, it was decided that “[i]ssues of borders, visas, immigration, asylum, and civil law would be transferred to the EC law, but subject to a special regime for a five-year transitional period” (Peers 2006, p.21). During the transitional period the member states’ powers were essentially preserved. Also, the UK, Ireland and Denmark were given complex opt-outs and the Schengen acquis was incorporated into the EC and EU Treaties (again, with special rules to Denmark, Ireland and the UK) (Peers 2006, p.21).

Soon after the Amsterdam Treaty came into force, the European Council at its summit in a Finnish town Tampere (December 1999) adopted a plan “which set out broad political principles, in particular concerning asylum, migration, and criminal law” (Peers 2006, p.21). The necessity to establish a Common European Asylum System was proclaimed. This system was designed to be with

[a] clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status (Presidency Conclusions, Tampere European Council, art.14).

The Tampere Council also emphasised that in the longer term “Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union” (art.15). The need for a fair treatment of third country nationals, who reside legally in one of the Member States, was pronounced (section III, articles 18-21), accompanied by the understanding that “The legal status of third country nationals should be approximated to that of Member States’ nationals” (art.21). The Council also stressed the need for a “common active policy on visas and false documents” as well as the necessity to combat illegal immigration (articles 22-23).

Two years later, the European Council at its summit in Laeken (14-15 December 2001) reviewed the measures, taken since December 1999, and noted that the progress was “slower and less substantial than expected” (Presidency Conclusions, art. 38). The Laeken Council defined the main features of the “true common asylum and immigration policy”. It underlined, inter alia, the necessity for the readmission agreements, “the development of a European system for exchanging information on asylum, migration and countries of origin” and “the establishment of common standards on procedures for asylum, reception and family reunification” (art.40). Half year later, at the Seville Summit (21-22 June 2002), the more positive rhetoric was employed. The Seville Council praised, in particular, “the comprehensive plan to combat illegal immigration, the plan for the management of external borders and the Directive laying down minimum standards for the reception of asylum seekers in Member States” (Presidency Conclusions, art.27).

During the first (five-year transitional) period, when both the Commission and Member States had the right of initiative, the balance in making proposals was more in favour of the

Commission. Indeed, it made 38 proposals, compared to 25 of the Member States. In some areas the number of proposals was disproportionately favouring one of the sides. Peers explains:

[M]ember States made three civil law proposals, while the Commission made eleven; member states made one asylum law proposal, while the Commission made eight; the Commission made all eight proposals on legal migration; Member States made seven visas and borders proposals, while the Commission made ten [...], and Member States made fourteen proposals on irregular migration, while the Commission made one (Peers 2006, p.22).

Due to the constraints of the consensus mechanism of decision making (used in 1999-2004), the number of proposals agreed and adopted was much lower than initiated. But it did not prevent the European Union from the issuing of important legislative acts. In the area of legal immigration, the Directives on the right to family reunification and long-term resident status for third country nationals were adopted in 2003. The Directive on the conditions of admission for the purposes of study came at the very end of 2004 (in December). In the area of illegal immigration, the appropriate plan (designed to combat illegal immigration and trafficking of human beings) was adopted by the EU Council of Ministers in February 2002. It was followed by the Return action programme, adopted by the European Council in November 2002. The Directive on mutual recognition of expulsion decisions was adopted in May 2001.

In the area of asylum, a meaningful legislative package was formed, dealing with the most important problems. In January 2003 the Directive on the minimum standards on the reception of asylum applicants (the "Reception Conditions Directive") was adopted. It was followed (in February 2003) by the "Dublin regulation", determining the responsibility of Member States for the examining of application for asylum. The Directive on qualification for becoming a refugee (the 'Qualification Directive') was the last one of this series. It was adopted in April 2004. Of course, it is hardly possible to imagine the legislative package on asylum without the "Asylum Procedures Directive", but it was formally adopted only in 2005 (i.e. after the end of the transitional period). Finally, the European Refugee Fund was extended in December 2004 for the next period (2005-2010). This Fund was established for the first time in 2000.

The end of the transitional period gained its distinctive feature by the adoption of a new policy plan, known as the "Hague Programme". This programme, formally endorsed by the Brussels Council on 4-5 November 2004, was aimed at "meeting new challenges" faced by the EU. The

European Council urged the Member States to “implement fully the first phase without delay”, saying that the aims of the Common European Asylum system in the second phase “will be the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection” (Hague Programme, 1.3). The Council underlined the necessity ‘for greater coordination of national integration policies [of third country nationals] and EU initiatives in this field” (Hague Programme, 1.5). The necessity of closer cooperation with third countries was also emphasised, as well as the necessity to establish the minimum standards for return procedures (Hague Programme, 1.6).

Based on the Hague Programme priorities, the Commission presented in 2005 the Action Plan, where the main policy initiatives were suggested as the concrete actions. Also, at the Inter-Governmental Conference in The Hague in May 2005, the Member States “[a]greed to use qualified majority decision-making and co-decision in the fields of asylum, immigration and border control issues” (Plender 2008, p.305). Commission got the monopoly of initiative. With the adoption of the Treaty of Lisbon, the qualified majority voting and co-decision was extended to the measures concerning legal migration, visa lists and visa formats. Also, as a result of the Lisbon Treaty ratification, “[e]ach current legal base conferring competence to adopt immigration or asylum measures would be amended to a greater or lesser degree” (Peers 2008, p.221).

After the end of the transitional period and the advent of the second phase (2005-2010), the EU decision-making process (in most areas of immigration and asylum) was no more constrained by the rule of unanimity. The legislative programme acquired its second breath. As it has already been mentioned, “the Asylum Procedures Directive” was adopted in 2005. Two years later, in 2007, the European Commission issued the Green Paper on the Future European Common Asylum System. After broad consultations with the governments and representatives of civil society, the Commission adopted in June 2008 a Policy Plan on Asylum. The necessity to amend three “most important EU asylum directives” was pronounced: the “Reception Conditions”, “the Procedures” and “the Qualification” Directives. In 2009, the Commission issued the recasts for the Qualification and Procedures Directives. Also in the second period, a number of consultative documents on the integration of third country nationals was published, including the Commission’s communication “A Common Agenda for Integration—Framework for the Integration of Third-Country Nationals in the European Union” (September 2005) and the “Council conclusions on the strengthening of integration policies in the EU by promoting unity in diversity” (June 2007). Finally, the important directive was adopted in 2008 in the area of illegal

immigration, introducing the common standards and procedures for returning illegally staying third-country nationals (the “Return Directive”).

At present, the EU work in this area remains in the active phase. It is broadly accepted that the legislative acts adopted so far need some improvements. The QMV and co-decision create more favourable working conditions, but the diversity of opinions and views of the Member States and other actors still can cause certain confusions. Therefore Churches may find themselves in such conditions, when their aims and objectives substantially contradict to the policy initiatives of their own countries. Nevertheless, it does not prevent Christian community from being active in the field. This will be explained in more detail in the next section.

## 2.2 Churches and the migration issues

At first glance, it might be tempting to suggest that the issues of migration are somewhere on the periphery of the Churches’ interests. Benz Schar and Ralf Geisler point out that “Mainstream theological thinking does not naturally put us in touch with the field of migration. Migration does not occur in the indices of current work on dogmatics and ethics” (Geisler and Schar 2008, p.4). Although this opinion might, to an extent, be true, we need to take into account some additional factors. Even if theologians may not deal with the migration directly, they certainly touch upon the issues which are related to it: the dignity of a human being, the issue of the motherland and the foreign land, the problem of the deception and the meaning of material wealth. Schar and Geisler rightly emphasise:

[m]igration is omnipresent in the Bible as well as in church history as a kind of “red thread” [...] Imagine how deeply the concepts of salvation in the Bible are “migration-bearing”, beginning with the promise to Abraham, continuing with the exodus experience right down to the Babylonian exile which forced the Jews to reconsider their traditional faith and make it suitable for their life in diaspora. [...] If we [...] look at this liaison of theology and migration from the angle of today’s migration experiences, we have to admit that finding oneself thrown in a migration situation highlights in a very clear way what has to be said about the human condition in general (Geisler and Schar 2008, p.4).

In a further reinforcement of the above mentioned, Jean-Marc Ela discovers that the roots (or basis) of the opening towards the stranger are “in the very essence of God himself. In the famous story of Gn. 18, 1-15 God takes the form of three tired strangers to reveal himself to Abraham” (Ela 2008, p.9). Amele Adamavi-Aho Ekue argues:

The Biblical narrative context contains a multitude of such stories of leaving, separation and seeking a home abroad. The exodus story is such a prominent illustration, which is appealing for migrants because it tells also about the possibility of safeguarding collective identity without the maintenance of the original territorial or national context (Ekue 2008, p.26).

Athanasios Papathanasiou, pointing out that the man is created on the prototype of the Son of God (Christ), emphasises: “This is of particular importance, because only if each person is unique and unfading can there be true otherness and, in consequence, true openness to those who represent the non-I” (Papathanasiou 2008, p.33). Heinrich Bedford-Strohm arguing that “Christian ethics aim at integrating migrants, not at social exclusion” also claims that the Christian ethics presuppose some special attitudes towards the migrants:

The gift and mandate of humanity’s being created to the image of God should remind us sharply of the vulnerability of migrants and refugees who seek permission to stay in our countries (Bedford-Strohm 2008, pp.38-39).

Indeed, “[i]solating oneself from one’s human neighbours (including the stranger facing me) inevitably implies isolating oneself from God as well, and from God’s powerful resources of life” (Bedford-Strohm 2008, p.39). Moreover, “The New Testament interprets the integration of the stranger as an integral part of the insoluble interconnection between love of God and love of neighbour” (Bedford-Strohm 2008, p.41). In the Old Testament, “The commandment to treat foreigners with respect and care is made plausible by illuminating their vulnerable situation” (Bedford-Strohm 2008, p.41). Bedford-Strohm writes about the Christian Ethics of Empathy, according to which

Migrants and refugees who seek asylum are entitled to being treated in accordance with human dignity. Correspondingly, those who decide on granting or denying asylum are obliged to engage in the legal traditions connected with the concept of human dignity (Bedford-Strohm 2008, p.43).

According to Bedford-Strohm, the role of the Churches is quite straightforward: they “[h]ave to proclaim their solidarity with refugees and migrants who seek asylum in Europe. Yet the churches also need to proclaim their solidarity with those who bear political responsibility and who have to find feasible, humane role of sociality” (Bedford-Strohm 2008, p.44).

It looks plausible that contemporary theologians agree (in general) that the message of the Bible and Christian ethics envisages that the area of migration should not remain alien to the representatives of Christian community. What is more important, this area is one of those where the concrete actions, bringing visible benefits for the suffering, need to be taken. These actions may come in different formats, starting from the direct aid to the refugees, asylum-seekers, irregular migrants and other people in need, and finishing with the fostering Christian dimension of the relevant legislation.

### 2.3 Churches as non-state actors: the work in the area

The area of migration is a good indication of how Churches organise their activities as non-state actors. Indeed, this is the sphere where Churches have the extensive and substantial expertise, which reflects the work started a long before the EU acquired the migration and asylum competence. In most cases not the Churches themselves, but different Christian organisations, which cannot be equalised with the Churches, work in this area. Therefore we can speak about the Church NGOs, which are firmly established in Brussels and which use different methods to achieve their aims.

The most representative of them is the Churches' Commission for Migrants in Europe (CCME). It was founded in 1964 and is now the organisation of churches and ecumenical councils from Austria, Belgium, Czech Republic, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Romania, Switzerland, Spain, Sweden, the United Kingdom and Ireland. Also, it has the contacts with the Ecumenical Patriarchate and with church partners in Denmark, Hungary, Poland, Serbia, Slovakia and Russia (Christian Organisations in Europe, March 2005, 1.1., p. 1). This is the only organisation in the area of migration and asylum, which unites the representatives of all three Christian confessions—Orthodox, Catholic and Protestant.

Other organisations are mainly associated with the Catholic Church. The Caritas Europa ("Catholic relief, development and social service organisation") has established the Migration Committee, comprised at present of the representatives of Germany, Russia, UK, Sweden, Spain, Austria, Lithuania, Italy and Turkey. This Committee is "in charge of shaping migration related policies of Caritas Europa". Among its tasks is the monitoring the evolution of EU policies in relevant fields and proposing and organising appropriate action (Christian Organisations in Europe 1.2, p.2).

COMECE is dealing with the issues of migration within one of its working groups—the Working Group on Migration. The group “brings together experts from several Bishops’ Conferences as well as Brussels-based Catholic organisations working for migrants and refugees” (Christian Organisations in Europe 1.3, p.3). Normally the meetings of the group take place up to four times a year, with the discussion and analysis of the EU legislative proposals with Christian perspective.

Jesuit Refugee Service Europe is a Catholic organisation, which deals with the issues of refugees and asylum seekers. Apart from the practical assistance to the asylum seekers, JRS Europe “studies emerging law on asylum, advocates for just asylum policies based on the dignity of the person and brings the concerns of JRS workers in developing countries to the attention of the decision makers in the EU” (Christian Organisations in Europe 1.5, p.1).

We can also mention the International Catholic Migration Commission, as well as the Conference of European Justice and Peace Commission and the Quaker Council for European Affairs, although the former is dealing with the migration issues not only on the European, but also on the global level, and the latter deals with a number of various issues, in which the migration is included, but not given any priority.

Since these organisations are Church-based, they are inspired by the same or similar principles as the Christian Churches themselves. Indeed, if we look at the proposals, which were made at different stages of the legislative process in the last several years, we shall discover that these organisations were concerned, first of all, with the dignity, welfare and the rights of the human being. In these proposals we could find the desire to defend the family, including the concept of “extended family” (3.1.1., p.4), and the right for the family reunification, the desire to defend those who are the most vulnerable, oppressed or exploited. It is evident that the individual stands in the centre of concern of these organisations, rather than anything else.

The strategy, which is employed by Christian organisations, is similar to other NGOs, but at the same time, it bears the impact of their somewhat unique status, of their “family links” with the Churches. First, Christian organisations collaborate closely with each other, as well as with the secular organisations, working in the area of migration. Second, Christian organisations act at both supranational (European) and national levels.

At the supranational level, they launched the system of joint comments, supported by six Christian organisations: Caritas Europa, CCME, COMECE, ICMC, JRS-Europe and QCEA.

These comments, adopted by consensus, demonstrate the high degree of unity among the Christians of different denominations on the issues of migration and asylum. Indeed, these organisations, as normally emphasised in every statement, “[r]epresent churches throughout Europe—Anglican, Orthodox, Protestant and Roman Catholic—as well as Christian agencies particularly concerned with migrants and refugees”. The organisations involved do not constrain themselves by the joint comments, since the individual letters and petitions are also used. CCME, for example, admits that “In addition to joint comments on communications and proposals for directives on migration and asylum, letters to the EU respective Presidencies were sent, particularly in the development of the asylum procedures directive” (Activity Report 2003-2005, p.4).

In fact, all of the organisations mentioned have their own agenda, sometimes with a certain “specialisation” in the field. The activities of the CCME are the most comprehensive, with a range of issues in focus. As seen from its Activity Reports, the organisation was dealing both with the immigration and asylum, trying to answer to the most challenges posed by the EU. In its 2005-2007 report, CCME admitted that “[l]obbying with European institutions at the level of the EU has ever since 1999 progressively gained importance” (p.3). In addition, “CCME continuously facilitated efforts of the platform [NGO platform on asylum and migration) to engage in a more systematic way with the European Commission [...] CCME also managed to intensify the contact with the European Parliament’s LIBE committee” (Activity Report 2009, p.7).

On the European level, Christian organisations mainly interact with the European Commission and European Parliament, and to a less extent—with the Secretariat of the Council of Ministers. Peter Verhaeghe explains for the work of the Caritas:

We have different ways to do that. In the first place we have to know what we say. We come to an agreed position of Caritas Europa on the specific issues, and then the work with the EU institutions starts. The one thing is the contact with the staff members of the European Commission, who are responsible for the drafting communications, or for the draft directives or other legal instruments. We know what they are planning, but we try to know more about the draft content at that time. It is not always possible, but for a number of things we had the opportunity to already contribute with the suggestions on how to formulate specific articles. Some of them are taken into account, others are not. Once the proposal or the communication is published, we have to develop the official reaction to it, confirmed in a second round of consultation with the member organisations.

Then, it is only in the last few years we increased the cooperation with the European Parliament. It was less before, because the EP had less co-decision, and because of the lack of time and resources. We have to choose our targets were carefully: whom to lobby, and when. The members states—this is the third thing, where we have a double approach. On the one hand, you have the rotating presidencies, which now have a bit less importance than before, which we approach. There are also permanent representations of other countries. Simultaneously there is an action in the member states by the Caritas organisations. For example, if we meet the representatives of one of the countries in Brussels, because they have specific objection, then we try to repeat the same with the same message in the capital of that country, with the member organisation. It is not always possible, because not all organisations are so strong, or developed, or working and knowledgeable on all these issues at the national level. But when it is possible, we try to do it (Verhaeghe 2010).

For Christian organisations the work on the national level has more advantages in those countries, where the Church is highly respected or adequately established due to the specific features of the Church-State relations. According to Doris Peschke, Churches were able to argue well in Sweden and Greece, mainly due to the specific links with the authorities they have. The representatives of European Commission assess quite positively the contribution of the Churches. As an official from the Commission stated:

Here in Brussels we are sometimes a bit far from reality, we do not know what happens, say, in the reception and detention centres. Churches know that, because one of their roles is to be with the poor people, with those who are in need. Therefore it is very important for us: to know what Churches say about the situation people live in and about their problems. In that sense Churches are very active, very important, sometimes even more important than secular NGOs (EU Commission official 2010).

Another official from the Commission, who works in the area of resettlement, stressed that “in my field the churches are very active, and quite capable to influence, to put their ideas forward. Through putting their ideas forward and through their expertise, they are taken into consideration” (EU Commission official 2010).

Thus, we can see that Christian organisations are regarded as well-established actors in the area of migration and asylum. Their concrete contribution will be assessed via the analysis of some initiatives, reflected in the recent EU legislation.

#### 2.4 Return directive: an uneasy struggle

The Return Directive was one of the first legislative proposals, made when the co-decision procedures in the area of migration and asylum became the EU reality. The preliminary steps were taken even before the draft of the Commission's proposal appeared in 2005. As early as in 2001, in the Communication on a Common Policy on Illegal Immigration (15/11/2001), the Commission "[p]ointed out that return policy is an integral and crucial part of the fight against illegal immigration" (Commission 2005, p.2). It was emphasised that the "Return policy needs to be based on three elements: common principles, common standards and common measures" (Proposal 2005, p.2). In February 2002, the Council adopted the Action plan to combat illegal migration.

Churches and Christian organisations were monitoring the process from the very beginning. In May 2002 the Caritas, CCME, COMECE, ICMC, JRS-Europe, and QCEA expressed their perspectives on this issue. In particular, they spoke about the necessity to open more chances for the legal immigration (in order to decrease the illegal one), and not to exclude the possibility of regularisation for those who reside illegally. Christian organisations pointed out to the poor and unstable conditions for many illegal immigrants, who "[w]ork under unprotected conditions, many in rural and agricultural sectors, providing domestic cleaning and care services, as well as employing their skills on building and construction sites, in restaurant and hotel services" (Joint Comments 2002, p.5). Commenting on the return measures, Christian organisations clearly expressed their support for the softer, more tolerant measures, such as "the principle of the priority of voluntary return over forced return", as well as the necessity to consider the human rights situation in the country with which the readmission agreement is planned for the conclusion" (Joint Comments 2002, p.5).

In April 2002 the Commission presented the Green Paper on a Community Return Policy. On the basis of this Paper a public hearing was organised in July, with the COMECE and CCME representatives taking part in this event. The Christian organisations underlined again the necessity for the "clear, accessible and open procedures for legal labour migration into the EU" and "an improved efficiency and quality of asylum procedures, and an asylum policy which would make it possible to reach the territory of the Union in a legal way" (CCME 2002, p.2). The

necessity for the priority of the voluntary return was emphasised, and it was also clearly articulated that all measures need to “uphold the dignity of each person” (CCME 2002, p.5). The representatives of Churches spoke about the necessity of fairness and justice, in order for the interests of the member states not to take the precedence over the interests of suffering people. In its explanatory notes, which were attached to the draft Directive, the Commission summarised the main proposals from the “NGOs”, although Churches were not specifically mentioned.

However, the further work of the Commission on the Return Directive was conducted in a more closed manner, only with the consultations (in the second half of 2004) with the “Member States experts active in the field of return” (Commission 2005, p.3). As a representative of Caritas Europa noticed, “there was impossible to get any information on the draft, until it was published” (Verhaeghe 2010). Therefore only the appearance of the draft in the public domain in 2005 allowed the Christian organisations to express again their visions and concerns.

The first public statement was made on 31 August 2005, when Churches, together with some secular organisations, published “Common principles on removal of irregular migrants and rejected asylum seekers”. The signatories included Caritas Europa, JRS-Europe, CCME, Quaker Council for European Affairs, Spanish Evangelical Church, Cimade, and Federation of Evangelical Churches in Italy on the Church side and Amnesty International, ECRE, Human Rights Watch, PICUM, Save the Children, and SENSOA on the secular side. These principles included, inter alia, the request for the priority of the voluntary return, the guarantee of access to effective remedies, prohibition of the re-entry ban and respect of the family unit (Common principles 2005). The comment, which was published by Christian organisations in March 2006, stated that the above mentioned principles “[s]erve as a reference point for this comment” (Joint Comments 2006, p.2). Although Churches spoke about some positive aspects of the draft Directive, they identified the issues for concern as well.

First, Churches expressed regret that the Member States may be allowed not to apply the Directive in the transit zones (Joint Comments 2006, p.3). Second, the provisions for the voluntary return were criticised. Christian organisations mentioned that the time period of four weeks “is not sufficient to organise a voluntary return in a fair and proper way” (Joint Comments 2006, p.3). The term “absconding” was also criticised, as having negative connotation, which is derived from the criminal law (it was suggested to use a more neutral term). The possibility of issuing the return decision together with the removal order was found unacceptable, because it “[w]ill put such pressure on migrants that they will not be able to properly consider voluntary

return” (Joint Comments 2006, p.4). Also, the very fact that the assessment of the risk to abscond is left entirely to the Member State (as well as the opportunity to force such person “to stay at a certain place”) will, according to the Christian organisations opinion, “[l]ead to a systemic use of detention” (Joint Comments 2006, p.5).

Christian organisations expressed severe criticism on the provision of re-entry ban, which, in their view, “should be deleted from the directive” (Joint Comments 2006, p.6). If left, it should be of no more than one year (instead of the suggested five) and for adults only. Churches pointed out to the vagueness of the notion “threat to public policy”, so that in practice “[e]very migrant with no permit may be considered as a threat to public policy” (Joint Comments 2006, p.6). The very fact that only the “main elements of the return and/or removal order” will be translated for the irregular immigrant (and not the whole document) was also perceived with regret.

In addition to that, the absence of the automatic suspensive effect of appeals against return and removal orders was criticised, as well as the maximum duration for detention (“temporary custody”) of six months. Christian organisations stated:

Six months as a maximum duration of detention is too long for an administrative measure which applies to persons who are not criminals. Because of its gravity, detention should be as short as possible and should be limited to the time necessary to organise return with due diligence of the administration (Joint Comments 2006, p.8).

Churches were also concerned that one of the articles did not forbid the detention of minors (Joint Comments 2006, p.9). In summary, they articulated their requests:

[W]e call for the Return Directive to be: applicable in transit zones; to establish a clear preference for voluntary return; to promote the two-step procedure; to assure better protection for vulnerable people and prevention of detention of minors in accordance with international obligations; to abandon or at least restrict re-entry bans; to provide for the proper translation of documents and effective judicial remedy; to apply the same minimum standards to return and removal as to the reception of asylum seekers; to avoid detention and to guarantee fair treatment in detention (Joint Comments 2006, p.10).

Some practical steps were taken as well. Christian organisations (and secular NGOs) had several meetings with the Members of European Parliament. CCME, CEC (in cooperation with Caritas Europa and COMECE) “[w]rote to the Presidents of the European Parliament, European Commission and EU Council to voice the churches’ concerns” (Activity Report 2005-2007, p.5). The meetings were held with the EU Presidency in Slovenia and EP President in Strasbourg (Activity Report 2005-2007, p.5).

The European Parliament, which was involved to the decision-making process on the basis of the co-decision, made certain suggestions for amendments, as seen both from the Draft Report on 16/6/2006 and the final Report on 20/09/2007. The parliamentarians, in particular, stressed clearly that the voluntary return should be preferred (European Parliament 2007, p.7), that at least four weeks should be granted for the voluntary departure (European Parliament 2007, p.12), that no reimbursement of the return procedure would be required as a pre-condition for the lifting of the re-entry ban (European Parliament 2007, p.17), that the third-country nationals will be informed about the legal remedies they have in writing and “in a language the third-country national understands or is reasonably presumed to understand” (European Parliament 2007, p.19), and that the sentence “such visits may be subject to authorisation” is deleted from the article, dealing with the visits to temporary custody facilities (European Parliament 2007, p.23).

However, the Parliament refused to accept the view that the Directive should be applied to the transit zones and that the re-entry ban should be abolished or substantially reduced (European Parliament 2007, p.16). The legislative body virtually enlarged the temporary custody for up to 18 months (European Parliament 2007, p.22). In the “minority opinion”, expressed by MEP Giusto Catania, the necessity of “temporary custody” and 18 months of detention was severely criticised, as well as the conditions of some detention centres in which the irregular immigrants are kept (European Parliament 2008). This obviously coincided with the Churches’ criticism of the detention centres conditions.

Overall, it is true that in the final version of the directive many of the Churches’ suggestions were not taken into account. But we need to bear in mind that the great diversity of opinions of the stakeholders made the achievement of the common position very difficult. Therefore even partial success is suggestive that the role and influence of the Churches should not be underestimated and, surely, should not be ignored.

## Concluding remarks

Christian Churches took active participation in the whole process of the recent treaty reforms, and contributed actively to the issues of migration and asylum in the EU. They acted in different formats, but with a clear set of objectives and with a range of methods, which were selected to achieve these objectives. Their activity was visible at both the national and supranational levels, involving different layers of the EU decision-making process. This activity was welcomed and supported by some politicians and by the public opinion of the countries with more religious population.

At the same time, it is worth noting that Churches acted under a very strong opposition, in the circumstances, when the politics is dominated by secular forces. Therefore, albeit their success was indeed limited and only partial, they managed to establish themselves as strong, influential and respected participants of the debates and the European policy-making. Sophie in't Veld admitted that Churches are "very influential, by far the most influential in Brussels" (in't Veld 2010). The work on the Treaties reforms and the EU migration and asylum policy reflects the fact that Churches are constituent parts of the modern European society, that they are able to contribute well to the debates on identity and to the formation of the identity itself, even in the time of the growing secularisation in some parts of the European continent. What is more important, the Churches proved to be efficient in forming very strong coalitions in their support--the coalitions, representing the intellectual and political elite. They were able to actively contribute to the national agendas, not least due to their special roles in some European countries, reflected in the models of the Church-State relations. Thus, their ability to mobilise, their ability to appeal, and their ability to deal with the top officials, as well as historically sound and grounded argumentation re-affirmed that the specific status and role of Churches would not be ignored in the EU both now and in the future.

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