

Relations between church and state in Germany

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Ladies and gentleman,

The examination of the relation between state and church from a protestant point of view should be introduced by two quotes from a scripture of Martin Luther. The scripture dates back to the year 1523 titled „Von weltlicher Obrigkeit, wie weit man ihr Gehorsam schuldig sei" [Secular Authority: To What Extent It Should Be Obeyed]. The reformer writes: „ *Wo weltliche Gewalt sich vermisst, der Seele Gesetze zu geben, da greift sie Gott in sein Regiment und verfährt und verdirbt die Seelen*" [And so, where secular authority takes it up on itself to legislate for the soul, it trespasses on [what belongs to] God's government, and merely seduces and ruins souls]. Hence, Luther draws the following consequences: „*Darum muss man die beiden Regimente sorgfältig voneinander unterscheiden und beide bleiben lassen: eins, das fromm macht, das andere, das äußerlich Frieden schafft und bösen Werken wehrt*" [For this reason one must carefully distinguish between these two governments. Both must be permitted to remain; the one to produce piety, the other to bring about external peace and prevent evil deeds.]

According to this, Luther intends that the relation between state and church referring to the freedom of faith should be **distinguished** carefully, whereas distinction doesn't mean separation. Therefore I would like to begin by exposing how this principle developed in the law of the Federal Republic of Germany. Secondly, I will unfold the role of churches in society. In the third and last part I will report how church and state interact by the activities of the Representative of the EKD in Germany and the European Union.

I Judicial principles of the relation between state and church in the Federal Republic of Germany

The constitutional court of religion of the Federal Republic of Germany traces back to the **Weimar Constitution of 1919** which had to redefine the relation between church and state after the end of the state church. **Three principles** were followed: freedom of religion, ideological neutrality of the state and self-determination of all religious groups. Thus, the freedom and equality of all religious and ideological communities should be guaranteed in a secular state. The Weimar Constitution and the following Basic Law of the Federal Republic of Germany codify the separation between church and state and take a different path than Great Britain or Denmark where the Anglican or the Lutheran church is the state church. But the separation between state and church doesn't mean that everything religious is banned into privacy. These laïcal solutions have been chosen by France and Belgium. The Weimar Constitution and the following Basic Constitutional Law are rather taking an intermediate way by describing „*freiheitsdienende Offenheit des Staates für die Religionen seiner Bürger*" [an openness of the state conducting the religious freedom of its citizens] (Hans Michael Heinig).

The Federal Constitutional Court describes the neutrality of the state towards religious groups as „promotional neutrality". It is possible to go even further by claiming: there is a relation **based on partnership** between church and state.

This German religious constitutional law based on cooperation is reflected most explicitly in the **contracts** between state-run bodies of the Federation, the federal states and the churches. The particular form of these contracts are illustrating that the relation between state and church is characterized by independence and cooperation: state and church are separated but relate to each other. Within the contracts with the federal states, the discussed agreements cover for example topics like universities, cemeteries, preservation of monuments and the broadcasting service - often the entire spectrum of the state-church cooperation is visible.

The basic "interfaces" characterizing the relation between church and state can be found in the **Basic Law**. This includes for example the religious education, the church tax and military chaplaincy in the

Federal Armed Forces. The rights guaranteed in the Basic Law which the two big churches claim to are - in contrast to what currently has been read in the media and therefore gets into many people's mind - **no privileges**. They derive from the status of being public bodies which can be acknowledged to all religious groups or non-religious ideological groups under certain conditions. This results from article 137 of the Weimar Constitution which is related to article 140 of the Basic Law. Today, Jehovah's Witnesses and the Muslim Ahmadiyya-community are for example public bodies.

Let me begin with **religious education in schools** which is a consequence of the freedom of religion guaranteed by the Basic Law. Also it is aiming at a cooperation based on partnership. Article 7 of the Basic Law defines that the state exercises the right of supervision, while the religious groups take the responsibility of the classes being concordant with their basic set of beliefs. Religious education should provide the free religious and ethical orientation of children and adolescents. This also includes Muslim religious education whose implementation is supported by the EKD.

Another often criticized point of contact between church and state codified in the Basic Law is the **church tax**. The term "tax" is mistakable. The church tax is not a state-run tax, but in its core rather a membership fee of the churches. The subject of church taxes can dispose of this tax liability by seceding from the church, which would be unthinkable in the case of a state tax. However, churches are able - as well as other religious and ideological groups as public bodies - to assign the collection of the church tax to the state. This has been done by the two big churches in Germany as well as the Jewish community. Something that is known by the fewest critics of this cooperation is that **both** sides profit to a high degree in doing so: the religious and ideological groups save the expenses of building up an administrative structure. On the other hand, the state is paid for this assistance by keeping 2 to 4 percent of these taxes of churches or other religious or ideological groups.

In regard of the relation between church and state and talking about finances the term "**state services**" quickly rises. This relates to the **indemnity payments** of the state to the churches. An important reason therefore traces two hundred years back: with the Principal Decree of the Imperial Deputation (Reichsdeputationshauptschluss) from 1803 the Holy Roman Empire expropriated church properties east of the Rhine. Thereby those regional principals were compensated for lost properties on the western side of the Rhine which in the meantime has gone to France. To this day the state is compensating the occurred financial damage for the churches in a way that the missed **incomes of these expropriated properties** are compensated regularly. The Weimar Constitution intended and the Basic Law intends **to relieve** these state services. Jurists assume that "relief" in article 138 of the Weimar Constitution (which means article 140 in the Basic Law) does not mean "expropriation without compensation". From this results the claim that a relief - which of course is not rejected by the EKD - should occur in accordance to the rule of law and under fair conditions. "Fair" signifies in this context that the churches which have planned their budgets including these routine state services receive a compensation of which they can obtain a **long-term** economic benefit.

Within the church there was and is an ongoing debate about the close cooperation between state and church in the **military chaplaincy** in the Federal Armed Forces. Legal basis for the pastoral care in the Federal Armed Forces is the military chaplaincy contract of 1957. Within this document the Federal Republic of Germany and the Protestant church agree that the military chaplaincy should be on behalf of and under supervision of the church. Responsible is the Military Bishop, who is not employed by the state. The state provides the organizational structure of the military chaplaincy and covers the expenses. This refers to the state's obligation to grant the freedom of religion laid down in the Basic Law. Since the state restricts this assurance by barracking soldiers, executing maneuvers, or obliging them to foreign military services lasting for months, it has to provide compensation. This does not only include soldiers but also people sentenced to imprisonment. That is why prison chaplaincy is also financed by the state.

II The role of the church in the Federal Republic of Germany: a high-performing participant of the social life and backup of the democratic constitutional state

I hope that I have made it clear that the relation between state and church in the Federal Republic considering its constitutional basics aims at the same time on separation as well as on cooperative

partnership that has to prove its worth over and over again. The state acknowledges the churches and religious communities as important social protagonists. Directive is thereby the principle of subsidiarity. Subsidiarity implies here that the state only provides services within a social and cultural realm if there are no social agencies or if those are not willing to do so. In that sense existing competence is used, the civil society is encouraged, diversity supported and consolidation averted. The subsidiarity principle reacts historically to the policy of enforced conformity of National Socialism. By providing that the subsidiarity principle can unfold its effects the churches contribute to the stabilization of our democratic society.

The commitment of the churches in society is especially present in the **diaconal realm**. The official number of full-time employees of the Diakonie Germany is currently 449.000 and about 10 million people use their services. The numbers within the Roman Catholic Church and their organization Caritas are comparable. Out of the commitment of the Protestant and Catholic church our society draws profit in multiple ways: It profits of the special competence of the employees of the Diakonie and Caritas, of the financial equity ratio provided by the churches in different sections and last but not least the additional commitment of volunteers counting 700.000 in the protestant facilities alone. Thus the church and the Diakonie provide the possibility and the agency which can benefit all citizens. Thereby a unique contribution can be made for the functionality of our society.

Considering **education** and **culture** churches also constitute important partners of the state. Religious education in schools has already been mentioned. In addition to that there are the schools, universities, academies and day-care centers for children run by churches, which provide significant contributions to our multi-religious society. Hence the facilities communicate social values like identity-formation and identity-orientation, acceptance, lingual communication and tolerance. The high demand in this church service for society can be proven by numbers: Every sixth place of daycare centers for children is run by the Protestant Church. Altogether, Church and Diakonie run 1.134 protestant schools of all types. Within the cultural realm the Protestant and Catholic Church provide every year significant financial means between 3.5 and 4.8 billion Euro. That corresponds approximately to the amount of money which is allocated annually by all federal states of Germany together. In this spirit, the church demonstrates special commitment in monument conservation and music; to mention only two of them.

In the course of the subsidiary principle the church is involved in an important state assignment: the **developmental cooperation**. Each year the protestant development service "Brot für die Welt" receives more than 120 million Euro from the state; additionally about 120 million Euro come up which have been made available through church tax revenues or donations from the EKD and the member churches. Thereby, projects in Africa, Asia and Latin America can be supported. In contrast to the state the church can make use of a network of around 3000 local partnership organizations which are even active within remote regions or under very dangerous circumstances. These local partners can reach and mobilize people who would not easily be accessible for governmental organizations.

These examples might suffice to show how the church is acting beyond its core competencies. The church supports, comforts und accompanies millions of people in our country throughout the proclamation of the gospel und offers them a spiritual and social home within the community. That is the church's first and the noblest task. But it does not stop at this point. The Protestant and the Catholic Church make a socially productive and democracy stabilizing contribution which does not only benefit its own members but all people in our country and also people beyond the German borders.

To accompany the current political affairs in a critical way and to take an active part in society - this is what the Christian churches want because of their **basic approval to the democratic form of government** which is not only demanding the handover of responsibility to the churches but also enabling it. Within the commonly written text "democracy needs virtues" of the EKD and the German Bishops Conference from 2006 the conviction is pronounced that our liberal democracy "relates in a special way to the Christian conception of man".

Consequently, churches comment on various political and social contexts. They do this without being asked but are from time to time requested to bring in their expertise within social and political processes. On the national and European level we intend as good as possible to speak with one voice. This is the concern of the Representative of the EKD Council.

III The Representative of the EKD Council in the Federal Republic of Germany and the European Union

The office of the Representative has existed for the past 66 years. The EKD Council created it just a few months after the foundation of the Federal Republic of Germany. After the horrible events of the national socialist period the EKD intended to be established significantly close to positions of political responsibility in order to observe their doings as closely as possible and if necessary to be able to influence it. The department of the representative acts in a hinge position between church and federal or European politics. The representative is responsible for the political information of the council and for the political communication of the EKD. Thus the church is participating in various social debates and is dealing in a specific way with the contact points between state and church.

Since October 2013 Prelate Dr. Martin Dutzmann is holding this office. It is located in Berlin within the district Mitte at the Gendarmenmarkt while the office in Brussels is situated very near the European Commission. The Prelate carries out the task of political communication together with his small staff of employees. The majority of this staff is made up of theologians and jurists. Furthermore, there is a close and trustful cooperation with the catholic colleagues of the Catholic liaison office in Berlin under the direction of Prelate Dr. Karl Jüsten. The experience has shown: the closer the ecumenical solidarity the greater are the prospects of success. The smooth ecumenical cooperation between those two offices gives reason to hope that cooperative activities can be reinforced in other areas as well.

Despite the fact that the Representative mainly operates within and out of Berlin the work in Brussels is increasingly gaining importance. Since 1990 the EKD is represented in Brussels. Together with director Katrin Hatzinger eight other employees work there. Initially the office was intended to be an early warning system for the protection of the institutional interests of the EKD but then expanded its activities due to the increasing competences and assignments of the European Union.

The success of European policy will depend on succeeding to "give Europe a soul". Jaques Delors who was president of the commission of the European Community between 1985 and 1994 said this and got to the heart of the issue. To give its citizens a better and closer understanding of Europe is also considered as one of the tasks of our office. When it concerns the matter of forming the European basis of values, reinforcing the solidarity and to communicate the European idea to the citizens the churches consider themselves as partners of politics.

Owing to ecumenical efforts the social significance of churches is **accredited by contract now on the European level as well**. This arises from Art. 17 of the Treaty on the Functioning of the European Union: „Die Union (achtet) den Status, den Kirchen und religiöse Vereinigungen oder Gemeinschaften in den Mitgliedstaaten nach deren Rechtsvorschriften genießen und beeinträchtigt ihn nicht" [the Union respects the status enjoyed by churches and religious associations or communities and doesn't impair it]. Later in the very same article the Union is mentioning: „offenen, regelmäßigen und transparenten Dialog mit den Kirchen, Religions- und Weltanschauungsgemeinschaften in Anerkennung ihrer Identität und ihres besonderen Beitrags" [to maintain an open, steady and transparent dialogue with the churches, religious and ideological associations in recognition of their identity and their special contribution]. Hence the European Union has not chosen the French model of laïcité by banning every religious aspect from the public space. In contrast to that it decided to be addressable to churches and religion. This illustrates that the European Union is not only intending to be an economic community but also a community of values.

Concretely the activities can be divided into three categories:

1. The church in Berlin and Brussels

First and overall is the function to be church for the politicians. This implies the celebrating **service**. Within the session weeks of the parliament (Bundestag) two church services are offered weekly. They

take place in the prayer room of the Reichstag and are organized alternating between Prelate Dr. Dutzmann and Prelate Dr. Jüsten, employees of both offices or members of the German parliament. Currently, about 25 members of parliament of almost all parliamentary groups are participating in these devotions. Further, the political church offices are responsible for ecumenical services which are celebrated before official acts of state as constituting the Bundestag or the election of the Federal President. These offers illustrating the band between church and state are lively contact points of church and state. This also applies to services of gratitude and blessing which are celebrated in the Bundestag since 2009 at the end of each legislative period or for the annual worship in respect of the voyaging diplomats.

Subsequently, the aspect of **community** should be taken into account regarding the presence of the church in politics. Regularly, protestant members of parliament but also representatives without the confessional connection are invited to join a breakfast at the office in Berlin as well as in Brussels. Beginning always with a devotion, in the process of the event a thematic impulse follows and apart from that there is time for conversations and personal exchange. In a similar way, every year the employees of the members of parliament are invited to the Gendarmenmarkt. Within this context the annual Johannes-reception for representatives of society, church and state organized by the Representative in Berlin as well as the ecumenically arranged annual reception in our office in Brussels should be mentioned. Additionally, during the decade of the Reformation each year a trip for members of the German and the European Parliament is organized which should present different "sites of Luther's life". In the previous year Leipzig was the destination, for 2015 Torgau was chosen.

The fields of activities of the church in the political Berlin clearly include obviously the pastoral care as well. This takes place in each church community at an agreed date but also very often unplanned at encounters on other occasions.

2. Commitment for the weak

„Tu deinen Mund auf für die Stummen und für die Sache aller, die verlassen sind.“ (Sprüche 31,8). [Speak up for those who cannot speak for themselves, for the rights of all who are destitute. *Book of proverbs 31,8*]. This verse of the Bible is a mission statement for the work of the Representative. By participating at political and social debates the church's main concern is that of those people whose voice is not or poorly heard within the political realm.

Very intensively the offices in Berlin and Brussels deal with issues of refugees and migration. At the European level we have been concerned with the installation of a Common European Asylum System (CEAS). During their summer session in June 2014 the heads of state and government passed the strategic guidelines of the European Justice and Domestic Policy for the next five years. The focus lies on the implementation of the instruments an asylum existing in the member states. The EKD office in Brussels has taken position in advance. In March 2014 an official statement emphasized that although the existing legal instruments of the CEAS should be implemented, the European Asylum Policy would need a complete reorientation: the guiding principles for the European Asylum and Migration Policy should be human rights and human dignity and not sealing-off instead!

Concretely the EKD is of the opinion that there is a lack of legal migration routes for persons in need of protection to apply for asylum. Therefore, all conceivable options for protected entry procedures and visa facilitations for refugees and people in need of protection should be examined as well as possibilities of family reunifications and resettlements. It should be prevented that people entrust themselves to tractors and accept dangerous illegal entry routes to Europe. Furthermore the European Union needs a coherent and future-oriented immigration system offering an approved access for migrant workers urgently. Concerning the management of its borders and thereby the use of the border guard agency Frontex the protection of human life and the respect for human rights must have absolute priority.

A simple example illustrates how far Europe is currently away from a common area of freedom, security and justice: negative decisions on applications for asylum are recognized among the member states whereas positive decisions - if an applicant for asylum is accepted as a refugee - are only valid within the country where this recognition has been carried out. The fact that people fleeing from war,

torture and persecution have a right to protection and human rights is often forgotten in the debate on refugee, asylum and migration. These aspects have to be always emphasized in conversations with responsible politicians of the European Parliament and the European Commission as well as members of the German government. Hence, the compliance of the fundamental values of the asylum policy of the European Union is demanded. For years the office of the EKD in Brussels has cooperated with other Christian organizations like Caritas Europa, the Churches' Commission for Migrants in Europe (CCME), the Jesuit Refugee Service and the Commission of the Bishops Conferences of the European Community (COMECE).

It is well known that the issue of asylum is a major concern at the federal level. Especially the so-called church refuge is currently debated. Church refuge signifies that a parish or a church community hosts refugees if their members are convinced that a deportation could endanger life and limb of the people in need of protection. The goal is the resumption or the repeated checkup of the asylum procedure concerning their legal status by the competent state authorities. With the number of refugees entering our country from many conflict regions of the world the number of church refuge has increased, too. This however has led to increasing criticism of the church refuge by governmental representatives. Thereby, there has been the complaint that the churches intend to undermine the criticized Dublin-III-Regulation of the European Union by making increased use of the church refuge.

In an extensive exchange with the president of the Federal Office for Migration and Refugees Prelate Jüsten and Prelate Dutzmann succeeded together with their competent juristic employees to calm things down after experiencing certain altercations: the Federal Office has assured continued toleration of the humanitarian tradition of the church refuge whereas the churches affirmed that the church refuge should not be looked upon as an offence against the constitutional state but rather as an assistance in individual cases or in scenarios of ultima ratio. Furthermore, the churches have declared that they do criticize the Dublin-III-Regulation but rather by using their political channels instead of the usage of church refuge.

Another present issue is the **Transatlantic Trade and Investment Partnership (TTIP)**. On behalf of the Chairmen of the Council of the Protestant Church and the German Bishop's Conference Prelate Jüsten and Prelate Dutzmann participate at the meetings of the advisory council convened by Economics Minister Gabriel. At this council they are obviously not the only consultants - but they are the only ones who refer to the possible consequences of this agreement on the commerce with the Global South. It is already noticeable how rich and emerging nations are taking position in consideration of the agreement. Poor and small countries like for example Liberia, Sierra Leone or Uganda are not in a position to do so, nor will they be able to assert themselves. For people in those countries of extreme poverty the concept of development projects is not a sustainable aid. They need fair conditions for commerce. Here the voice of the churches is demanded.

The office in Brussels is also examining the other aspects of TTIP: Besides the demands for more transparency and citizen participation the EKD further focusses on the continuation of standards concerning health, social and consumer protection as well as environment protection and the protection of public service against forced privatization. The parliaments of Europe have to be able to perceive their task as democratically legitimized legislators in the future, too. In this context the question arises whether provisions of investment protection and arbitration proceedings between investors and states are necessary. The churches consider that even in the future it must be possible to pass regulations for the protection of the common good without the possibility of certain clauses of investment protection or similar provisions undermining it. This position is advocated towards members of the European Parliament and employees of the European Commission at many formal and informal encounters.

The EKD also demonstrates great commitment in the debate of **assisted suicide**. In the past the Council of the EKD has unambiguously stood up for punishing every form of organized assisted suicide. We welcome the decision to lift the three line whip for the vote of the expected draft law. Likewise, we welcome the decision to vote on that draft law after a long time of consultation within the parliament. It is important that the **debate is considered to be a debate on dying humanly in Germany**. Thereby, the palliative and hospice care for dying persons has become an important matter. The ongoing debate demonstrates that many people - including responsible politicians - are not sufficiently informed about

the already existing ethical and legally justifiable possibilities of dying humanly in Germany. The EKD is committed to provide relevant information about this issue. Within the political realm the position of the EKD has been advocated in various sessions without any specific commitments to parliamentary groups. Some weeks ago, our office organized a parliamentary evening about this issue in cooperation with the Diakonie Germany. Further, we have been involved in a panel discussion of the Friedrich Ebert Foundation and moreover we have been in exchange with numerous members of parliament.

The next example of the daily activities is about the procedure of **issuing visas**. Since 2005 the Foreign Office has aggravated its visa issuance policy. Until then the attitude of "in case of doubt pro freedom of travel" had been established. This practice has led in regard to certain countries to immense problems - cases of corruption and human trafficking have been revealed and a Commission of Inquiry of the Bundestag has been set up. Since then the issuing of visas is handled very restrictively by the Foreign Office. Focus of each assessment is the **preparedness of the applicant to leave the country**. Considering a person's preparedness to leave the country there are generally the aspects of the person's family and professional conditions. For a married father in a well-paid position it is therefore relatively easy to enter the Federal Republic of Germany. In case of a non-privileged applicant the application is generally refused. The fact that the churches are especially cooperating with young, poor or other unprivileged people is causing major problems inviting those ecumenical partners.

An aggravation of this issue is caused by the European cooperation of various member states' diplomatic missions and the issuing of applications concerning Schengen visas. In Congo for example, instead of German officials, the Belgian diplomatic mission is handling in a so-called "House of Schengen" (Maison Schengen) all applications for a visa to Europe - even if an applicant wants to travel to Germany. Understanding country-specific specialties like an exchange program of the church can be expected even less in Belgian officials than German officials. Moreover, in case of an expected refusal of an application it is impossible for the employees of our office to intervene at the Foreign Office.

We have talked to the Foreign Office to call attention to these issues. In doing so, we've experienced understanding and support. However, we could not actually solve the problem. This is why we suggested a fundamental examination of the practice of issuing visas in the Foreign Office.

3. Representation of church interests

Thirdly, the office of the representative of the EKD is eventually advocating the interests of the church as an institution. This, however, is the smallest part of our work.

The establishment of the office in Brussels in 1990 was mainly caused by the consultations about the data protection directive (95/46/EC) in Europe. This directive intended in French-laïcal tradition that the state cannot be allowed to collect and to transfer data. The enormous consequences for the church tax system are easily imaginable. At that time the churches were able to intervene in time to avoid worse consequences. However, this incident has raised awareness about how much influence the legislation from Brussels can have on the cooperation between state and church in Germany. Currently, the data protection directive has become an important matter again and once more we have managed to intervene at the European Commission and the German government in order to consider the special requirements of the German churches - not least against the resistance of France.

Concerning the representation of interests the legislation of **minimum wage** should be exemplary mentioned. In cooperation with the Catholic office it has been pointed out in an official statement to the Federal Ministry of Labor and the Bundestag that the churches basically welcome the establishment of a general minimum wage to counter the excrescences of unregulated labor markets and to protect the people from lower wages. However, the churches criticized that the initial draft law of the government did not consider the constitutionally protected "third way" of churches within the labor law. This "third way" allows the churches to determine the wages and working conditions of the commissions equally staffed by employers and employees. Therefore, certain modifications within the legislative procedure have been successfully demanded.

Even this last example demonstrates that the state is willing to cooperate with the churches to an extent which reaches far beyond the provided conditions of the Basic Law. Our work concerning our

own interests is not ignored of being annoying or even impeded but rather conceived as a spirit based on partnership and therefore promoted by chance.

I am about to finish. I have tried to illustrate how the relation between church and state in Germany and Europe is organized legitimately and how this relation is actually presented. I have intended to describe the current issues by dipping into our offices in Berlin and Brussels. The conclusion is unambiguous: church, society and state can be very content with this situation. This condition, however, should not be taken as incontrovertible. In Germany not a few people regard the relation between church and state with mistrust. Many argue that the separation reaches not far enough and there is an increasing support for demands of a laical solution like France. The relation between church and state practiced in Germany and accepted by the European Union serves actually the entire society. However, it requires an over and over updated justification and promotion. Last but not least, my speech was intended to serve that purpose and I would be glad if it turned out well finding good arguments for the German model of the relation between church and state.

Thank you for your attention.