

Could the ecclesiastical courts submit the demand for “preliminary ruling” to the European Court of Justice?

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1. INTRODUCTION

The ecclesiastical courts constitute for a number of reasons a fascinating field of research. First of all, each church and religious community has its own system of courts,¹ consisting from two up to several instances. For example, the system of Catholic courts consist of diocesan and metropolitan courts, of the Holy Roman Rota (sometimes even with their national branches, like in Germany or in Spain), Apostolic Signatura, with the Pope himself being the highest judge (can. 1442 of the Codex Iuris Canonici, hereinafter CIC). For the Church of England, there are consistorial courts, two provincial courts (York and Canterbury), alternatively Court of Ecclesiastical Causes Reserved or "Her majesty in Privy Council", finally the Queen herself.² For the Protestant Church, at the German example, there co-exist church courts, church tribunals and Constitutional Tribunal of the Evangelische Kirche in Deutschland (hereinafter as EKD) together with the administrative courts for Union of the Evangelical Churches in the EKD, one administrative court for each Landeskirche and one Administrative Tribunal of the Union of the Evangelical Churches in the EKD.³ Secondly – and that makes the picture much more interesting – the legal position of ecclesiastical courts varies from state to state. Even within one member state, the legal standing of ecclesiastical courts differs significantly. For example, the courts of Church of England are royal courts, just like other state courts, while the courts of other churches and religious communities have almost no legal standing at all.⁴ In the UK,

¹ Conference of Interfaith Legal Advisers Network in London, organised by Cardiff Centre for Law and Religion, 19 January 2009. Papers are available online: <http://www.law.cf.ac.uk/clr/networks/ilan4.html>.

² Ecclesiastical Jurisdiction Measure 1963, more details in following chapters and footnotes.

³ Kirchengesetz über die kirchliche Verwaltungsgerichtsbarkeit (Verwaltungsgerichtsgesetz) from 16. June 1996, version published on 15 February 2005, (OJ of the EKD, p. 86 or internet: <http://www.uek-online.de/vwgg.uek.pdf>).

⁴ They can be regarded merely as arbitration institutions in the meaning of Arbitration Act 1996.

the churches and religious communities other than Church of England are regarded as voluntary associations of their members, and their internal law as a contract between the members.⁵ Thus, the catholic courts in England, but also in Hungary⁶ and in France are non-existing from the legal point of view, while in Spain or Italy, according to the codes of civil procedure, their judgements are treated like judgements of a foreign court (an important example is the case Pellegrini,⁷ which at the end has been judged by the European Court for Human Rights in Strasbourg). Thus, the situation varies not only between churches in one Member State, but also the opposite is true: catholic courts in England and in Italy have completely different legal standing.

The ecclesiastical churches all across Europe deal with a variety of issues: for the Catholic Church, the majority of cases refer to the marital life, while the courts of Church of England are mainly busy with the property issues, e.g. management of property, cemeteries, even selling books from the parish library, all of which called "faculty cases".⁸ Both the catholic and protestant courts in Germany deal with various issues, and their interactions with the state courts are presented in the exhaustive collection called "Entscheidungen in Kirchensachen", currently edited by S. Muckel. They all prove importance of the notion "*res mixtae*", which unites *sacrum* and *profanum*. The common denominator for all ecclesiastical courts in Europe are the questions connected with the labour law, partly relating to the clergy (or ex-clergy), but mainly to lay people, working for the churches or religious institutions in hospitals, schools, kindergartens, universities, etc. It is worth recalling that the internal church law frequently obliges a church to apply the rules as foreseen by the national labour law (see can. 1286 of the Codex Iuris Canonici: "Administrators of goods [...] in the employment of workers are to observe meticulously also the civil laws concerning labour and social policy, according to the principles handed on by the Church"). As a consequence, these provisions indirectly, albeit effectively, oblige the churches to apply the EC law, which to a constantly higher degree replace the respective national law. Some respective examples are analysed below. This fact leads to a probably unexpected question: if ecclesiastical courts are obliged to take into account the community law, are they allowed to ask the Court of Justice of European Communities (hereafter: ECJ) in Luxembourg for an interpretation of EC-law, as foreseen by the Article 234 of the Treaty establishing the European Community (hereinafter ECT; the procedure is known as "preliminary ruling")? In other words: could the ecclesiastical courts be "referring courts" in the meaning of Art. 234 ECT? This short article shall attempt to give an answer.

⁵ D. McClean, State and Church in the United Kingdom, in: G. Robbers (ed.), State and Church in the European Union, Baden-Baden, 2005, p. 562.

⁶ B. Schanda, Church autonomy in Hungary, in: G. Robbers (ed.), Church Autonomy, 2001.

⁷ Case 30882/96, judgement from 20 July 2001.

⁸ N. Doe, The legal framework of the Church of England, p. 142.

2. CRITERIA DEFINING A “REFERRING COURT” – CRITERIA ESTABLISHED BY THE ECJ ITSELF

Overall purpose of the preliminary ruling is to ensure uniform interpretation of the EC law in all the European Union. According to the Art. 234 of the ECT, "the Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- a) The interpretation of this Treaty;
- b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice".

First of all, there is no uniform legal definition, what is a court in the meaning of Art. 234. The ECJ underlined that it is “a question governed by Community law alone”, whether a body making a reference is a court or tribunal for the purposes of Article 234 of the Treaty. Already in 1966 the ECJ stated that "the expression <court or tribunal> in article 177 of the EEC Treaty may in certain circumstances include bodies other than ordinary courts of law".⁹ As a matter of fact, the ECJ itself over years has been giving answers to this question, and the answers sometimes varied significantly from the Member States might have expected. This issue was subject of rich jurisprudence and exhaustive studies, so it seems sufficient to recall here only the most significant cases. For example, as courts in this sense were recognised a court of a professional organisation (Broekmeulen, case 246/80, ECJ 1981, 2311), a court constituted on the basis of a collective agreement (Danfoss, case 109/88), an institution supervising the public procurement in Germany (Dorsch, see below). The ECJ accepted also questions asked by the Italian Consiglio di Stato and Dutch Raad van State (Garofalo, case 69-79/96, 1997, I-5603, 17). On the other hand, the ECJ refused to accept questions submitted by a number of bodies, e.g. the Tribunale civile e penale from Milan, arguing, that it was performing administrative and not judicial tasks (Job Centre Coop, case C 111/94, 1995, I-3361). As a matter of fact, the European Court of Justice issues approx. 300 preliminary rulings per year (301 in 2008), and another 288 has been submitted in 2008.¹⁰

⁹ Case 61/65 *Vaassen (née Göbbels)* [1966] ECR 261.

¹⁰ Annual report of the European Court of Justice, accessible also on http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-03/ra08_en_cj_stat.pdf.

Having said that, the question remains: are ecclesiastical courts allowed to ask the ECJ for a preliminary ruling? The answer can be given basing on a number of criteria, established in the jurisprudence of the ECJ over the decades. In case C-54/96 *Dorsch Consult Ingenieurgesellschaft mbH and Bundesbaugesellschaft Berlin mbH vs. the Vergabeüberwachungsausschuß des Bundes (Germany)*¹¹ the ECJ listed a couple of criteria, some other were identified by the commentators, who analysed the problem before this judgement was issued. Basing on these findings, following criteria should be taken into consideration:

- 1) whether the body is established by law
- 2) whether it is permanent
- 3) whether its jurisdiction is compulsory
- 4) whether its procedure is *inter partes*
- 5) whether it applies rules of law
- 6) whether it is independent

The commentators added following a number of criteria, which to certain extent overlap with ones quoted above. For the purpose of this paper, let us limit to some criteria identified by K.P.E. Lasok in his manual “The European Court of Justice, Practice and Procedure”:¹²

- 7) the composition of the body must be determined by an exercise of or entail a “significant degree of involvement” on the part of public authority
- 8) the procedure must be similar to that of ordinary courts
- 9) the decision must bind the parties and therefore be enforceable.
N. Solar added that:¹³
- 10) the court issues a judgement

The above presented list of criteria is of course not exhaustive.

Criterion 1: Whether the ecclesiastical courts are established by law

The ecclesiastical courts are established on the basis of the internal law of the churches and religious communities. In several Member States the state acknowledges in the concordates the right of Catholic Church to exercise its own jurisdiction (Austria, Belgium, Germany, Italy, Poland, Portugal, Spain) and it mentions explicitly the canon law as a separate system of law. The Spanish decreto-ley from 1947 went much further: it

¹¹ Case C-54/96, [1997], ECR I-4961, para. 23.

¹² London 1993, p. 556.

¹³ N. Solar, *Vorlagepflichtverletzung mitgliedstaatlicher Gerichte und ihre Sanierung*, Wien-Graz 2004, p. 31.

confirmed a creation of the separate tribunal in Madrid (national Rota Romana for Spain), and in Art. 2 confirmed that the judgements issued by this tribunal will have legal effects in Spanish law.¹⁴ In states where exist a state Church (or established church), the situation is even more obvious. As it will be underlined many times in this paper, the situation in England is a particular example. The courts of Church of England are established on the base of Ecclesiastical Jurisdiction Measure from 1963 (hereinafter EJM), which itself is based on the Church of England Assembly (Power) Act from 1919.¹⁵ The continental reader shall be aware, that measures of the Church of England have the same legal force like acts of Parliament, they must be approved by the House of Commons and the House of Lords, signed by the Queen, and published by Her Majesty Stationery Office, in one volume together with the acts of the Parliament.

Criterion 2: Whether the ecclesiastical courts have permanent character.

The ecclesiastical courts existed already in 4th century, at the times of Emperor Constantine. It has been William the Conqueror who clearly separated state courts from ecclesiastical ones.¹⁶ Overwhelming majority of ecclesiastical courts was created well before the European Court of Justice was established in 1952. The Holy Roman Rota functions since times of Pope Innocent IV, with first written rules of procedures dated 1331. Not only historically these courts are permanent: according to the Can. 1468 of CIC, "Insofar as possible, every tribunal is to be in an established location open during stated hours". The courts should not be classified as ad hoc courts. Also in the sense of staff they employ they are permanent, which will be closer discussed at point 6 (independence).

Criterion 3: Whether its jurisdiction is compulsory

The jurisdiction of the ecclesiastical courts in the matter they are competent, is obligatory. For the Catholic Church, canon 1401 of CIC underlines, that "By proper and **exclusive** [bold by me, MR] right the Church adjudicates:

- 1/ cases which regard spiritual matters or those connected to spiritual matters;
- 2/ the violation of ecclesiastical laws and all those matters in which there is a question of sin, in what pertains to the determination of culpability and the imposition of ecclesiastical penalties."¹⁷

¹⁴ A. C. Ivarez Cortina, M. J. Villa Robledo, Repertorio legislativo y jurisprudencial de derecho eclesiástico español, Pamplona 1998, s. 110.

¹⁵ Halsbury's Statutes, vol. 14, London 2003, p. 554-618, text available also online: http://www.opsi.gov.uk/RevisedStatutes/Acts/ukcm/1963/cukcm_19630001_en_1.

¹⁶ Halsbury's Laws of England, vol. 14, London 1975, p. 694.

¹⁷ Apart from the obligatory form of jurisdiction, there exist in the Catholic Church, a possibility of arbitration, as foreseen by the canons 1713-1716 CIC.

For the EKD, there is a regulation known as *Rechtswegverordnung*, which clearly states which ecclesiastical court is competent to judge and when the case should be submitted to the state court.¹⁸ Semantically, in order to underline the compulsory character of the ecclesiastical courts, the statute of the EKD from 2003 replaced the words “Schlichtungsstelle” (settlement body) by “Kirchengericht” (church’s court).

The EJM lists competencies of the courts of Church of England (art 6-12). On top of that, a state court might have issued a “mandamus”, by which it denied its own competence to judge and obliged the ecclesiastical courts to issue a judgement. It is a clear proof that the state recognizes the obligatory competence of these courts. The respective case law dates as of 16th century and is broadly commented in the English legal literature.

Also the state courts in Germany refused occasionally to issue a judgement, underlining that certain questions remain the internal competency of the ecclesiastical authorities. This may be illustrated by following examples: a retired German Catholic priest, who married a woman, was deprived of his pension. When he asked the administrative court to help him, the *Oberverwaltungsgericht* in Rheinland-Pfalz refused to judge, arguing it was internal affair of the Church.¹⁹ In another case, the evangelical pastor wanted to solve the question of the service apartment and brought the case to German state courts. But the *Verwaltungsgericht* in Düsseldorf rejected his application stating, that the state courts were not competent.²⁰ In these and similar cases, German courts recall Art. 137 of the *Weimarer Reichsverfassung* in connection with the Art. 140 of the Basic Law from 1949 (*Grundgesetz*), which guarantees that “Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all.”²¹

Only at the beginning of the 21st century the German courts seemed willing to change their case law: the judgement of the *Bundegerichtshof* from 28.03.2003²² may mean a new trend in the jurisprudence.

Constitution of Cyprus in Art. 111 recognises the competencies in family matters of the ecclesiastical courts: Orthodox and of some other Christian denominations (Armenians, Maronites, Roman Catholics).²³

¹⁸ Verordnung from 13.09.1985, published in the OJ of the EKD, Year 1985, Heft 11, p. 401.

¹⁹ Decision from 29.04.1985, case 2 E 3/85, published in: G. Winands, *Kirchliche Sanktion eines Zölibatsverstosses und staatliche Gerichtsbarkeit*, in: *Die öffentliche Verwaltung*, Februar 1986, Heft 3, s. 98 i nn.

²⁰ Judgement 13 February 1998, U 1 K 10671/95, published in *Entscheidungen in Kirchensachen*, vol. 36, p. 68.

²¹ Official translation provided by German Bundestag.

²² V ZR 261/02.

²³ A. Emilianides, *State and Church in Cyprus*, in: G. Robbers (ed.), *State and Church in the European Union*, Baden-Baden 2005.

Criterion 4: Whether the proceeding is inter partes

This criterion may seem problematic for ecclesiastical courts. As a matter of fact, quite a number of cases are disciplinary procedures, and in marital proceedings there is a function of *defensor vinculis* (defensor of marital bond), who is acting in order to save and keep the marriage. Finding a classical inter partes proceeding, as it is in civil law, is not obvious.

Criterion 5: Whether the courts apply rules of law

This question has been partially answered in the point 1, in which was proved that the ecclesiastical courts are established by law. For historical reasons, it would be a faux-pas of the positivist lawyers to deny the legal character of the canon law: it has been coded already in 12th century in a form of *Decretum Gratiani*, known as *Corpus Iuris Canonici*. The internal law of the protestant churches is for clear reasons less ancient, but to a high extend it is similar with the state law.

Even today, the state legislation recognises the legal character of the internal church regulation: as mentioned above, the concordats refer to canon law, the state courts mentions internal law in its judgements, etc. The state recognises the civil effects of marriages concluded according to internal law of churches or religious communities, in particular to canon law (Italy, Ireland, Lithuania, Poland, Spain),²⁴ recognises the legal personality of bodies which acquired the personality according to the canon law (Austria, Hungary, Poland).²⁵

As a result of constant migrations and intercultural and interreligious marriages, in frames of international private law, the state courts happen to apply or at least take into consideration the religious law. This is the case for e.g. the adoption of Muslim children, where state courts recall, that Koran does not allow the adoption. In family cases of Israeli citizens living in the EU, the state courts must apply religious rules, because the Israel still does not have a uniformed family law, but the religious norms apply. The courts of the European MS object to apply the religious law, if it violates the basic principles of rule of law and of democratic society, e.g. the proceeding in front of a rabbinic court, where a man divorces from his wife by handing in a divorce letter,²⁶ or in case of a so-called talaq-divorce²⁷ for Muslim marriages.

²⁴ See national reports in G. Robbers (ed.): *State and Church in the European Union*, Baden-Baden 2005.

²⁵ The attempt of comparison of ecclesiastical law systems in Member States can be found in: M. Rynkowski, *Remarks on Art. I-52 of the Constitutional Treaty – New Aspects of the European Ecclesiastical Law?*, In: *The Unity of the European Constitution*, Ph. Dann, M. Rynkowski (eds.), Heidelberg 2006, p. 343-352.

²⁶ E. Jayme, *Religiöses Recht vor staatlichen Gerichten*, Heidelberg 1999, p. 8 and f.

²⁷ Cited in *Entscheidungen in Kirchensachen*, S. Muckel (ed.), vol 34, p. 172.

Criterion 6: Whether they are independent

The question of independence is subject of slight controversy: there are a number of facts which must be taken account of. It is widely recognised that the level of independence is guaranteed by the education of judges, the question by whom they are appointed, in which way they may be deprived of their function, last but not least remains the question of “*iudex inhabilis*”. All churches require from their judges solid professional background and respective experience: the chancellor (judge) of Church of England must be 30 years old, be barrister or judge for at least 7 years (art. 2 of the EJM). The Catholic judge should be doctor or at least licentiate of canon law (can. 1421 CIC).

The Catholic and Anglican judges are appointed by the bishops, the evangelical by the Council of EKD. Frowein and Peukert, based on the judgements of the European Court of Human Rights in Strasbourg underline that the fact the judge has been appointed by the executive power does not mean he or she is not independent, as long he/she is acting independently.²⁸ The period of the mandate of judges varies, but in most cases it is 5 years (Catholic) or 6 years (EKD), there is no period for the Anglican. It is worth recalling that the judges of the supreme national courts, as well judges of the international courts are appointed for a given period time; in case of ECJ the re-appointment is possible, which basically is recognised as limitation of independence, because the judge may try to please appointing authority in order to be re-appointed.

The Art. 32a of the Fundamental Order (Grundordnung) of the EKD underlines that the judges are bound by the Holy Scripture, belief and the valid law of EKD. The presidents of courts, presidents of chambers, and for the Constitutional Court of the EKD two out of four judges must be eligible to seat as judges in German secular courts.

On the other hand, “*iudex inhabilis*” is precisely defined in the CIC. For the Church of England, if chancellor believes that he should not judge given case, he appoints with permission of his bishop a judge ad hoc.

The question of the independence of the ecclesiastical courts and their judges was raised in a number of trials, even before the European Court of Human Rights. Rev. Tyler²⁹ from the Church of England claimed that the consistory court is not independent from the bishop, and that filling an appeal in this respect to a provincial court, which is appointed in the same way by the Archbishop, does not make any sense. The European Commission of Human Rights stated in the decision, that the courts of Church of England fulfil the criteria required by the European Convention and hence are courts in the meaning of Article 6.6 of this Convention. Interestingly, the European Court came to a different conclusion in another case, submitted by Mr Helle,³⁰ stating that the cathedral

²⁸ Cases Campbell and Fell, and Sramek, quoted by J.Frowein, W. Peukert, in: EMRK-Kommentar, Kehl 1996, p. 251.

²⁹ Case 21238/93, decision of the Commission, 05.04.1994.

³⁰ Case 157/1996/776/977, judged the 19.12.1997.

chapter of Evangelical-Lutheran Church in Finland, acting as a court of first instance, is not an independent body (as a matter of fact, bishop is ex officio the chairman of the cathedral chapter). On the national level, question of independence of catholic courts was raised by a director of Caritas in Germany, who was dismissed by a bishop of Limburg. The director claimed a judge appointed by the bishop may not be independent in such a trial – but the Verwaltungsgerichtshof of Hessen did not share his view (case 24 DH 2230/98, decision 11.11.1998, cited by Entscheidungen in Kirchensachen vol. 36, p. 492).

Criterion 7: The composition of the body must be determined by an exercise of or entail a “significant degree of involvement on the part of public authority”

The answer is easy only for the Church of England, where the Queen appoints the Auditor and the Dean of Arches (one and the same person, being simultaneously the chairman of two provincial courts: of the Arches Court of Canterbury and of the Chancery Court of York), and the judges of the Court of Ecclesiastical Causes Reserved. The Queen acts on the advice of Prime Minister.³¹ On the contrary, in Germany, according to the Art. 137 sentence 2 of the Weimarer Reichsverfassung, which is still in force, the churches and religious communities "shall confer their offices without the participation of the state or the civil community".³² In other states, the public authorities are not involved in the appointment of any religious functions, except for the right of governments to be informed before a new bishop is being appointed by the Pope.

Therefore, except for England, the criterion 7 remains unfulfilled.

Criterion 8:

The procedures applied by the ecclesiastical courts are similar to those applied by the state courts: the Codex Iuris Canonici includes a part (“book”) VII called “De processibus”, which in over 300 canons carefully and in detailed way determines the competent forum, the position of witnesses, question of the proofs and documents, the competencies of judges, the proceeding, possible exceptions, etc. The Papal Constitution “Pastor Bonus”³³ regulates the functioning of the Apostolic Signature and Roman Rota (art. 123-130), and each of this tribunal issued own rules of proceeding. For example, Normae Romanae Rotae Tribunalis dates from 18 April 1994.³⁴

For EKD in Germany, there is an internal statute called "Gerichtsverfassungsgesetz", which regulates in chapter IV details of proceedings. It does refer in many places to the valid state legislation, e.g. for the fees of advocates refers to German code of civil procedure. For all questions not regulated by the law on the Constitutional Tribunal of

³¹ D. McClean, op. cit. p. 564.

³² Official translation provided by the Bundestag.

³³ P.V. Pinto (ed.), Commento alla Pastor Bonus e alle norme sussidiarie della Curia Romana, Rom 2003.

³⁴ Acta Apostolicae Sedis 86, (1994), p. 508-540.

EKD, the provisions of law concerning the Federal Constitutional Tribunal shall be applied. Similar refers to already mentioned administrative courts of the Union of the Evangelical Churches of the EKD, the detailed rules of proceeding are included in the *Verwaltungsgerichtsgesetz* of the EKD.

Concerning the Church of England, there is a number of “Measures” which refer to various procedures, just to mention the Faculty Jurisdiction Measure from 1964, Clergy Discipline Measure from 2003 and a number of others, which set rules of procedures.

Criterion 9: The decision is binding for the parties and may be enforceable.

Indeed, the decision is binding for the parties, but there are certain problems connected with the enforceability. The German state courts refuse to issue clauses assuring enforceability: they base themselves on the abovementioned Art. 137 of the WRV and Art. 140 of GG, that if a certain issue is an internal ecclesiastical affair judged by a competent church tribunal, the state should not interfere: cases from 1963 (Verwaltungsgericht Munich) and 2001 (Oberwaltungsgericht Nordrhein-Westfalen) are good examples.³⁵

Criterion 10: The court issues a judgement (and not an opinion or declaration)

The CIC specifies all elements that are compulsory for a judgement. For the EKD and Church of England, the procedures are very similar to the procedures of state courts, which also have impact on their judgements.

FINAL REMARKS AND CONCLUSIONS

After the analysis of criteria put together by the ECJ, some specific questions relating to ecclesiastical courts should be asked. For example, in case of tribunals of the Holy See, being the supreme Catholic tribunals the question is whether the ECJ would accept a question submitted by a court not being a court of a Member State? What about the language of proceeding – taking into account, that the decisions of the Holy Roman Rota are still published in Latin?

The answers seem relatively easy. As a matter of fact, the ECJ has already accepted a question submitted by a Benelux-tribunal,³⁶ which is not a court of one of the Member States. It accepted also a question asked by courts from the Isle of Man³⁷ and from Jersey,³⁸

³⁵ Respectively: *Zeitschrift für evangelisches Kirchenrecht* vol 12, p. 162 and vol. 2003, p. 342.

³⁶ Case C-265/00 *Campina Melkunie*.

³⁷ Spr. C 355/89, *Department of Health and Social Security przeciw Christopher Stewart Barr and Montrose Holdings*, ETS 1991, I-3479.

³⁸ Spr. C 171/96, *Rui Alberto Pereira Roque vs His Excellency the Lieutenant Governor of Jersey*, ETS 1998, I-4607.

arguing that the courts in London were the next hierarchic instance. The paradox of the Apostolic Signatura, being the highest administrative tribunal of the Holy See is that it is located in Rom (Piazza della Cancelleria, 00 186 Roma), but not on the territory of Vatican City State. For the language issue it is worth recalling that the Holy See uses in international relations Italian, so the question would be formulated presumably in Italian.

As a matter of fact, the chances that an ecclesiastical court would submit request for preliminary ruling are actually much higher than it would be expected. It is widely known that churches employ all across Europe thousands of persons, working in hospitals, schools, houses for elderly people, but also in church administration and even in cemeteries. On the other hand, the EC labour law, in particular the non-discrimination law, is gaining the importance. It is sufficient to recall some of the famous non-discrimination directives, e.g. the directives 76/207 (Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions Official Journal L 039, 14/02/1976 p. 40–42), directive 86/378 (Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, Official Journal L 225, 12/08/1986 p. 40–42), or directive 75/117 (Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women Official Journal L 045, 19/02/1975 p. 19-20). The case law of the ECJ must not be ignored: judgements Barber (case C-262/88), Defrenne II (case 43/75) or Kalanke (case C-450/93) constitute milestones and are widely discussed in handbooks and manuals on EC law.

Finally, as euro is the official currency of Vatican,³⁹ it can not be excluded that Vatican would be interested in interpretation of a regulation, issued by the European Central Bank.

Thinking of Art. 234 it would be interesting to ask a more detailed question, which of the ecclesiastical courts would be the one which may ask for a preliminary ruling, and which would be obliged? The ECJ developed in this respect interesting case law. However, talking about religious courts must be taken into account, that the Pope himself and the Queen are the highest judges of the Catholic Church and of Church of England. Would the ECJ deliver a preliminary ruling if they would submit the question?

It can not be forgotten that the question of mutual interaction between secular and ecclesiastical courts remains in some Member States an open question. In this respect, it seems interesting to have a closer look, whether an ecclesiastical court could be a

³⁹ See decision 1999/98/CE, based on monetary convention between Republic of Italy, acting on behalf of the European Community, and the Vatican City State, represented by the Holy See, of 29 December 2000, modified by the convention and decision of the Council of 7 October 2003 (2003/738/EC, OJ L 267/27).

“referring court” in the meaning of Art. 234 TEC, once a relevant communitarian issue has come up. As shown in the introduction, such a possibility shall not be excluded, actually it becomes more and more probable.

The framework of this paper did not allow for a broad analysis: only a selection of criteria and selection of judgements could be presented. Although various aspects were showed randomly at the example of Catholic, Anglican and Evangelical courts, it can not be forgotten, that there exist also other court, e.g. Beth Din for Jewish communities or, in England, Muslim Arbitration Tribunal.

Theoretically, the answer based on the analysis conducted in this short paper seems positive: for vast majority of courts, the answer to almost all questions is positive. The ecclesiastical courts certainly are established by law, they are permanent, they apply rule of law, and their procedures are similar to that of ordinary courts, they issue judgements. There remain certain controversies as to independence, character *inter partes* or enforceability. Following the judgment of the ECJ in the case *Broekmeulen*,⁴⁰ some authors⁴¹ claim that the courts of associations or sport organisations shall be entitled to ask for a preliminary ruling. If that is the case, why would be such a status denied for an ecclesiastical court? Let us all wait for a first demand of an ecclesiastical court to find out, whether the above analysis was correct.

⁴⁰ Case 246/80, ECJ 1981, p. 2311.

⁴¹ C. Koenig and C. Sander, *Einführung in das EG-Prozessrecht*, 1997, n. 474, as cit. by Ch. Calliess, M. Ruffert, *Kommentar zu EU- und EG-Vertrag*, Neuwied 2002, p. 2112.