Авторы статей о "западных" моделях церковно-государственных отношений -- профессиональные правоведы, специализирующиеся именно в этой области права -- не идеализируют сложившиеся в их странах системы и указывают на положения, оставляющие возможности неоднозначного прочтения законодательных документов, нуждающиеся, возможно, не только в уточнении, но и в изменении. Очевидно также, что реалии посткоммунистических обществ изобилуют большим количеством неактуальных для Запада, но тем не менее требующих, естественно, своего правового разрешения проблем. Едва ли не самая острая из них для большинства посткоммунистических стран - возвращение национализированного в свое время церковного имущества (всего имущества, а не только культовых строений), вызывающая горячие дебаты и напряженность в таких разных странах как Россия и Словения, Венгрия и Литва, Украина и Чехия. Разумеется посткоммунистическим обществам предстоит проделать большую и самостоятельную работу по совершенствованию системы церковно-государственных отношений, сообразуясь не только с мировым опытом и демократическими принципами, но и собственными традициями, интересами своих граждан и государств. Процесс этот -- книга с открытым финалом, поскольку развитие социальных организмов постоянно ставит на повестку дня все новые и новые вопросы.

CHURCH AND STATE IN BELGIUM

Rik Torfs

I. Social facts

Although censuses have left no questions to be asked on the religious beliefs of the Belgian population, personal research does still go on. This has produced the following figures for religious conviction for 1987 [1] :

Catholics	75,0 %
- practising regularly	23,0 %
- non- practising	52,0 %
Nonbelievers	12,0 %
- confirmed nonbelievers	5,0 %
- nominal nonbelievers	7,0 %
Muslims	1,5 %
Protestants	1,0 %
Jews	0,3 %
Other religions/ sects	0,2 %
Indifferent / undecided	10,0 %

These statistics give a picture in which the Roman Catholic church is clearly preponderant. Yet in practice there is a wide degree of secularisation taking place which, according to various experts, is more widespread than in countries such as the Netherlands or Germany. But in spite of all this, religion remains an extremely important social phenomenon, and a lot of attention needs to be devoted to the legal framework into which it fits.

2. Historical background

The basis for how the legal relationship between church and state has been arranged is to be found In the Belgian constitution of 1831. Since that date, there have been amendments made to the constitution on several occasions, yet the main principles governing church and state have remained in place. The pervading mood of 1830, the year Belgium became independent can still be felt. It was a time when bright young liberal politicians not only wanted to propagate the modern freedoms, but they also wanted to protect them constitutionally. Equally, it was a time when what was a rather progressive Belgian Church was prepared to step forward and be an ambitious partner in discussions to formulate the constitution. The letter from the Prince de Mean, archbishop of Mechelen, which was read out before those gathered during the assembly of the National Congress on 17 December 1830, undoubtedly had a major influence on the form taken for the final edition of articles 14, 15, 16 and 117 of the 1831 constitution, in which the basis for the relationship between church and state was to be laid down [2]. After many reforms in the 70s, 80s and 90s, the belgian constitution recently has had a face-lift that modified the numeration. Since February 1994 the relationship between church and state is laid down in the articles 19, 20, 21 and 181.

3. Legal sources

Church and State relationships in Belgium are largely governed by the constitution of 1831, a historic compromise between catholics and liberals. Constitutional rights and liberties also apply to religious matters, as regards for example freedom of education (art. 24) or freedom of press (art. 25). But the constitution also specifically provides the freedom of religion as such. Four specific articles are dealing with this topic [3].

Freedom of worship and its free and public practice are guaranteed under article 19 of the constitution, with the exception of punishment of criminal offences committed in the exercise of these freedoms. The negative counterpart of article 19 is formulated by article 20: no person may be forced to participate in any way in the acts of worship or rites of any religion or to respect its days of rest. Article 21 stresses that the State has no right to interfere with the appointment or induction of the ministers of any cult, or to forbid them to correspond with their church authorities or to publish the latter's acts, exception made for the ordinary rules of liability concerning the use of the press and publications. The article is generally interpreted as an affirmation of the freedom of internal ecclesiastical organisation. It contains at the same time an exception on this principle by providing that the civil marriage must always precede the religious marriage ceremony, with the exception of specific cases established by law.

Finally, article 181 says that the salaries and pensions of the ministers of the cult should be taken care of by the State budget.

There are also ordinary laws or stipulations and statute books concerned with the legal relationship between church and state. Here are a number of examples. Article 268 of Code of Penal Law punishes religious ministers who make direct attacks on the authorities during gatherings held in public with a fine and a prison sentence, articles 143 and 144 of the Code of Penal Law punish disturbance, disorder and taunting which stem from worship, articles 145 and 146 cover the defamation of and the striking of a minister, article 228 protects the official robes, and article 267 punishes ministers who bless marriages before a civil marriage service has been held.

4. Fundamental principles

It Is not unusual for the term 'separation of church and state' to be used as a description to sum up the relationship between the two bodies. This is probably something of an unfortunate choice of terminology. Much depends, of course, on what exactly Is understood by 'separation'. If this term gives the impression that church and state have absolutely nothing to do with each other, then it Is not an adequate one. In this hypothesis, a separation cannot be reconciled with article 181 of the constitution, in which it is stated that the payment of wages and pensions to ministers of the cult, is to be met by the state. Nonetheless, the question raises whether a 'separation' necessarily needs to end with an absence of all contact between them.

There is another term, however, which probably lends more clarity to the issue: a number of writers speak of the mutual independence of church and state [4]. This term not only emphasises the freedom which exists, but also the mutual consideration which, of course, demands at the very least the notion of accepting each other's existence. This all continues to be a delicate affair. Both the independence of church and state and the prevalence of pluralism in Belgium compel the state to take up a neutral position [5]. This does not imply that it needs to be seen to be unbelieving in the face of the phenomenon of religion. The government bestows support and protection to churches and non- confessional organisations. Indeed, that only serves to show their importance to society. The state positively promotes the free development of religious and institutional activities without interfering with their independence. In that sense, one might call this positive neutrality [6].

5. Legal status of religious bodies

Although Belgian law admits a theoretical equality among all religions, one cannot deny that a different treatment remains. Several religions have obtained official recognition (by or) by virtue of a law. The basis for such a recognition is the social value of the religion as a service to the population. Currently, six denominations enjoy this status: Catholicism, Protestantism, Judaism, Anglicanism (Law of 4 March 1870 on the organisation of the temporal needs of religions), Islam (Law of 19 July 1974 amending the said law of 1870) and finally the Greek and Russian Orthodox Church (Law of 17 April 1985 amending the same law of 1870).

Apart from the modest salaries (foreseen by article 181 of the constitution) for the ministers of religion of a government approved parish or bishopric [7] provided in the State budget, recognition entails also a few other benefits for the religions concerned.

Legal personality is attributed to the ecclesiastical administrations responsible for the temporal needs of the church [8]. The Church and church structures themselves do not enjoy any legal personality. A striking point is also the fact that any deficit incurred by ecclesiastical administrations for temporal goods must be paid by the municipalities. This escape possibility does not always encourage the proper responsibility of the administrations [9]. Another advantage: the church may request State subsidies for the construction or renovation of its buildings [10].

Pastors and bishops must be given appropriate housing and any expenditure for this purpose is chargeable to the municipalities or provinces.

Furthermore, recognised religions get free public radio and television broadcasting time.

Finally, religions may appoint army and prison chaplains, whose salaries are taken care of by the State budget.

Of the six recognised religions, Roman Catholicism is the most important. The figures provide indisputable proof to support this. It has not resulted in it having a privileged position, legally. However, that is, in fact, not entirely true. First of all, one cannot escape the conclusion that the legal statute in Belgian law for religions really finds its source of inspiration in the structure and the functioning of the Roman Catholic church. Here is an example of this: to be able to make an actual claim to state payment of religious ministers, a clearly hierarchically structured religious community is necessary, as is one which works on a territorial basis. For the Christian churches this is not such a big problem, but the Islamic faith fares differently. In the absence of mutual consensus which would lead to a representative being sent to discussions with the government, Islamic religious ministers are still not in the pay of the state.

In addition to this, the Roman Catholic church plays a bigger role than other religions when it comes to reciprocal affirmation of faith. This is seen when the military services form a line and perform affirmations of respect at the playing of a 'Te Deum' on the occasion of the national day [11]. The catholic church also had a prominent role at the funeral of King on 7 August 1993.

In summary. It may be said that there are six recognised religions, among which the catholic one is “primus inter pares”.

As well as the six recognised religions, there is a whole range of unrecognised ones. In terms of numbers, the Jehovah's Witnesses are in the lead with around 20,000 members, followed by the Mormons who have something like 3,000 believers. Numerous other groups have memberships approaching or well into the hundreds.

These movements do not always have a legal status which could be said to be enviable. Not only do they not enjoy the advantages the recognised religions can lay claim to, but they are sometimes not even regarded as religions, pure and simple. There is no legal definition of the term "religion". Therefore the decision is left to the courts of law. In view of the freedom of religion and the relationship between church and state as exists in Belgium, when a judge has to determine

whether a movement is a religion, he normally is not allowed to fall back on arguments concerning their content [12]. For a judge who, for example, looks at the criminal law or tax exemption files to establish whether he is dealing with a religion [13], this entails him having to work out whether the society concerned looks as though in is serious and en all reasonableness may be called a "religion" [14]. When doing so, in the first place he should base his judgement on external aspects such as the existence of temples, prayer texts or ritual acts. Sometimes, however, even this does not yield sufficient clarity and a certain amount of analysis of what is contained within the movement is still necessary. The law takes the view that for it to be regarded as a religion, there needs to be the cult of a deity [15]. As a result of this, the pure therapy offered by the Scientology Church is not considered, and that is also the case for theosophical organisations too [16].

Non-recognised religions or religious groups are more likely to clash with concepts like public order and good practices within the state order. Up until the abolition of compulsory military service, the problems the Jehovah's Witnesses encountered were very well known. Not only did they refuse to do military service, but also the alternative to it - civic service. On the basis of article 46 of the military penal statute book, the person concerned was classed as a deserter, and this generally led to a two year prison sentence [17].

To put it briefly, having taken everything into consideration, three categories of religion can be differentiated:

(a) the legally recognised and, in real terms, the major catholic church;

(b) the five other legally recognised but, in real terms, minor religions;

(c) the unrecognised movements, whether or not they fulfil the requirements which the law lays down on the concept religion.

6. Churches and internal organisation

Article 21 of the constitution always has been considered as a solid juridical basis for the selfgovernment of religious communities. The State may not supervise the Church and the latter is free to choose its own internal structure. Does this mean that the State has strictly no possibilities of control concerning churches and their own policy ? Not completely. A tribunal can control (a) whether the competent authority In the church took the decision and probably (b) whether the internal church procedures were followed [18]. Especially the latter form of control is recent, and forgoing in comparison with the traditional approach of Belgian courts and tribunals which only used to exercise a formal control limited to the question who could be considered to be the competent authority .

7. Labour Law within the Churches

There has been an important evolution taking place in recent years in the relationship between employment law and the church [19]. A distinction needs to be made between religious on the one hand and ordinary laymen on the other. As far as religious are concerned, it is possible to break it down into three stages.

The first stage saw the religious element dominate the relationship of religious with their churches. Accordingly, there could not be said to be an employment contract in force, and that is how those involved wanted it. A reason for that is because it meant that no social security contributions needed The balance was disturbed when a number of religious did submit a request for entitlement to a pension. To settle this matter, there needed to be verification of whether an employment contract was in force, and it was this that started the second stage.

A “presumption” exists in the second stage that the religious relationship dominates the entire working situation and that there is no employment contract. The special nature of religious life entails for those involved, in view of their compliance promise, that they are no longer regarded as employees or self employed. In that way, the notion of belonging to a religious community was given a very wide scope of significance and predates all the issues in labour relations which were to crop up later [20]. This position was slowly refined. After some time, jurisprudence rejected the false dilemma between the relationship one had as a religious with his or her order and the employment contract [21]. This, however, did not mean that the Cour de Cassation found recognition of an employment contract easy, yet. Besides the traditional elements associated with employment contracts (authority, management, supervision and remuneration), effective proof of the existence of an employment contract was demanded [22]. By doing this, an additional condition had been laid down before the employment contract could come into being, and it was difficult to make this tenable [23].

In the third stage, which is the present one, this presumption in favour of the religious relationship has been dropped. After being given the initial impetus by the Labour Courts of Appeal at Brussels and Antwerp [24], the Cour de Cassation also changed its mind in a judgement of 25 January 1982 [25]. This turnaround in the law's position, based on the presumption of tacit consent for there to be an employment contract - at least when the employer Itself is not the religious order - had become unavoidable. This is because society no longer considers labour in a religious context as manifestly different to other work [26].

The three-stage evolution sketched here came into being as a result of the pension files of religious. But the question of what the position of secular clerics is in employment law was being asked more and more often. Although generally speaking it is possible to follow the theory developed for religious here also [27], there are also a few important differences.

For the present there are the clerics active as church ministers in the manner which article 181 of the constitution sets out, and who receive state salaries for their work. The relationship between these clerics and the church authorities is controlled exclusively by the internal laws of the religion involved. As far as the catholic church is concerned, the incardination principle of the canons 265 and ensuing ones can be referred to inparticular, as well as canon law in general.

When the church authorities give clerics a different function, such as a teaching job in a school, it was clearly stated by the Cour de Cassation in a judgement of 13 January 1992 - after an initial jurisprudential trend in favour of the church [28] - that if the objective characteristics of an employment contract are present, it does indeed exist [29]. Neither article 16 of the constitution nor

the fact that a bishop can withdraw his mission with regard to the teaching to be given have led to the secular priest being unable to perform the job with which he has been entrusted in the scope of an employment contract .

The Cour de Cassation judgement of 13 January 1992 has had far-reaching consequences. From that date onwards, a clear distinction has existed between clerical ministers with a pure relationship to the church and clerics who are sent to work elsewhere by the church authorities and who may subsequently come to be working under the conditions of an employment contract.

As well as religious and clerics, an increasing number of laymen also work for the church. The central question here is how two totally different systems are to be brought into harmony with each other. On the one hand there is the church's own internal incardination principle, with little job security but with the liability of the bishop to maintenance as a safety net, and on the other there is the employment contract with solid job protection but without follow-up care once employment has been terminated - redundancy pay included. On 15 March 1990, the bishopric of Antwerp issued a canon law statute of particular law for pastoral workers [30]. Looked at in purely canon law terms, this statute does not seem too bad, but at the same time the pastoral workers involved have necessarily employment contracts. On this point a number of problems present themselves in the area of the 'ius variandi' and in the area of the fixed-term contracts conceded all too generously by the church. The subject requires more detailed explanation as, without it, court proceedings would certainly find the church authorities liable to pay substantial compensation.

8. Financing of Churches

As already mentioned, article 181 of the constitution clearly affirms that the salaries and pensions of the ministers of the cult are chargeable to the State [31]. It also states that the sums necessary for this purpose are included in the annual State budget.

On 5 April 1993, a second clause was added to article 181 of the constitution: "The wages and pensions of representatives of organisations recognised by the act who extend moral services, on the basis of non-confessional philosophy of life, are to be paid by the state, the sums required for this purpose are to be drawn out of the National Budget on an annual basis."

Of course, such an extension was not necessary [32]. Indeed, today the State budget already provides an annual sum by way of subsidy for the benefit of the organisation which officially represents secularism. And lay counsellors in the army are provided for as well [33]. But nobody can deny that a change of article 181 in favour of lay counsellors grants a certain constitutional recognition to secularism. An interesting detail: on the occasion of this extension of article 181, the possible payment of lay people working In the Church is also tacitly integrated. But seemingly, bishops fear of lay people professionally working In the Church prevails over the financial advantages that state payment obviously offers. Almost no lay people are paid by the state yet.

Anyway, since 1982 deacons can be paid as ministers of the cult. And the revision of article 181 of the constitution makes the futur payment of lay people simply inevitable. Very recently the first lay ministers of the cult were effectively remunerated by the State.

9. Religious assistance to public institutions

The spiritual support in prisons can be traced back to the Royal Decree of 21st May 1965 [34]. It offers the prisoner great scope in being able to receive support in the religion of his choice. A number of chaplains from the recognised religions are paid by the government. Catholic worship enjoys a few slight advantages. The catholic minister is the only one allowed to organise a day of reflection and he also receives greater material concessions [35].

For public hospitals only a limited arrangement exists and there is no state financing of it. A Royal Decree of 23rd October 1964 says only that church ministers and lay counsellors who have been requested by a patient must be allowed open access to the hospital. It Is to be wondered If this is also the case for a number of ministers from non-recognised churches. They could even be kept out of the hospital if the religious support they provide encourages faith healing and alternative medical techniques [36].

The legal basis for the spiritual support in the army can be found in the Royal Decree of 17 August 1927. The catholic, Protestant and jewish religions have been making effective use of it right up to the present day. Army chaplains are nominated by the state at the suggestion of the religious authorities, but they are not classed as government officials [37]. In the near future it is expected that there will be a reduction in the number of army chaplains on state pay. As a result of the abolition of compulsory military service, the number of troops in the army is decreasing.

10. Legal status of priests and members of regions orders

In principle, the legal position of priest and religious is no different from other citizens. There are, however, a few exceptions.

According to article 224, 6° of the Code of Civil Procedure, a church minister is exempted from having to serve on the jury of a court of assizes which deals with serious crimes.

There are also a number of incompatibilities which may raise questions. Article 36 of the constitution shows the incompatibility of being an official paid by the state and a member of parliament. This means that ministers of the cult in the sense of art. 181 of the constitution are in this situation and thus cannot be members of parliament. Positions on committees or in bodies other than the national parliament, in the provincial or local councils, for example, are still possible.

There is also a whole series of other positions incompatible with being a cleric such as a state councillor, the membership of an auditing body, a number of functions in the court of arbitration, judge, registrar, provincial governor, provincial registrar, district commissioner and member of a board of aldermen [38].

A priest, not paid by the state as a church minister, who is hoping to become a judge was not accepted as a candidate by the minister of justice on the basis of his belonging to the clergy (in fact an even more obscure term, geestelijke stand is used). He eventually took his case to the European Commission for Human Rights where the Commission ruled against him. The Commission saw in

article 293 of the Code of Civil Procedure - on which the minister was basing his case - no violation of religious freedom, as is delineated by article 9 of the ECHR [39].

11. Marriage and family law

As mentioned, article 21 of the constitution provides that the civil marriage must always precede the religious marriage ceremony, with the exception of specific cases established by law.

The Code of Penal Law stipulates in article 267 penalties for the minister of the cult who notwithstanding the constitutional prohibition celebrates such a marriage, unless one of the partners stands in peril of death.

It is clear that the second paragraph of article 21 forms an exception to the first, which confirms the freedom of internal organisation of religions. Historic reasons, above all, lie at the root of this restriction. In the nineteenth century, in the line of a long tradition, many people only married in church and did so despite the fact that the bishops encouraged them to also have a civil marriage. Such a systematic practice was, of course, particularly harmful for the efficient running of the civil side of the situation. With the view of bringing an end to this situation, and in a spirit of reconciliation, the catholic majority of the National Congress approved the second paragraph of article 16 of the constitution [40].

12. Conclusion

The situation of Church and State relationships in Belgium can be summarised as follows:

I. The system, quite favourable to religion, is more a system establishing mutual independence than separation in a strict sense.

2. Although all cults enjoy theoretically the same rights, there is an important juridical difference between recognised and non-recognised cults. At the same time practice shows the catholic cult as the “primus inter pares” among the recognised ones.

3. Gradually secularisation colours the Belgian Church and State system. This secularisation is not characterised by a frontal attack on religion, but by a gradual loss of fall autonomy of the churches in various fields. A shining example is the ongoing influence of labour law in church life as well as recent tendencies favourable to (moderate) state control of internal church procedures.

E N D N O T E S

1. Department of Sociology of Religions, K.U. Leuven.

2. Cf. HUYTTENS, E., Discussions du Congres national de Belgique, I, Brussel, Societe typographique belge, 1844, 525. See also MAST, A. and DUJARDIN, J., Overzicht van het Belgisch Grondwettelijk Recht, Gent, E. Story- Sclentia, 1983, p. 549-550, nr. 478.

3. A summary of the relationship between Church and State Is offered by VAN HAEGENDOREN, G. and AlEN, A., "The Constitutional Relationship between Church and State " In ALEN, A. (ed.), Treatise on Belgian Constitutional Law, Deventer/Boston, Kluwer, 1992, 265-268.

4. See e.g. DE GROOF, J., "De bescherming van ideologlsche en filosofische strekklngen. Een inlelding", In ALEN, A. and SUETENS, L. (ed.), Zeven knelpunten no zevenjaar Stoatshervorming, Brussel,

Story-Sclentla, 1988, 243 and 310 Included the bibliography mentioned In footnote 233, VAN HAEGENDOREN, G., "Religious and Ideological Accommodation In Belgium", Plural Societies, 1987, 18.

5. See BRAUD, Ph., La notion de liberte publique en droit franfais, Paris, L.G.D.J., 1968, 383; DE GROOF, J., o.c., 311.

6. De GROOf, J., o.c., 312 and the references quoted in footnote 244.

7. The law of 26 June 1992, Moniteur beige, 30 June 1992, raises the salary for a parish priest with 9,71% from 1 st November 1992 onwards. It is now 496.925 francs before tax.

8. The legal basis for these "kerkfabrieken" - "fabriques d'eglise" is constituted by the Imperial Decree of 20 December 1809 and by the Law of4 March 1870, Moniteur belge, 8 March 1870.

9. In Wallonia, the municipalities spend 1,2% of their average expenses for the cult, cf. COLLINET, R., "A propos des fabriques d'eglises, des secours communaux et de quelques subsides", in Le Semeur sortit pour semer. Grand Seminaire de Liege 1592-1992, Liege-Bressoux., Editions Dricot, 1992, 407.

10. Here again, the legal basis is the law of 4 March 1870, Moniteur belge, 9 March 1870. Additional financement possibilities are offered by the Law on Monuments of 7 August 1931, Moniteur belge, 5 September 1931. One may not forget however that Belgium only counts a little more than 9000 protected monuments, landscapes and entities. The city of Amsterdam on its own comes to a global number of 40000.

11. According to Cass., 18 June 1923, Pasicrisie, 1923, 1, 375 this was not contrary to art. 15 of the constitution and the negative religious freedom expressed by this article.

12. See VAN HAEGENDOREN, G., "Sekte of kerk: de niet-erkende eredlensten in Belgie" Tijdschrift voor Bestuurswetenschappen en Publiek Recht, 1986, 390.

13. See e.g. the example of Stevinisme, Court of Appeal Gent, 14 January 1885, Pasicrisie, 1885, 11, 121, of Salvation Army, Coir. Tribunal of Gent, 4 December 1890, Pasicrisie, 1891, Ill, 117 and Corr. Tribunal of Brussel, 6 February 1891, Journal des Tribunaux, 1891, 204, of Baha'i, Court of Appeal of Brussel, 12 October 1960, quoted by Commentaar W.l.B., 157/28; and of Jehovah's Witnesses, Court of Appeal of Brussel, 24 January 1962, quoted by Commentaar W.l.B., 157/29.

14. See the jurisprudence quoted by MAHILLON, P. et FREDERICO, S., "Het regime van de minoritaire erediensten", Rechtskundig Weekblad, 1961, 62, 2376.

15. Cf. Court of Appeal of Liege, 21 November 1949, Pasicrisie, 1950, II, 57. Antoinism is a cult limited to its members themselves. Consequently it was considered by the authorities to be an "oeuvre philantropique", without the quality of a religion.

16. VAN HAEGENDOREN, G., "Religious and Ideological Accommodation in Belgium", Plural Societies, 1987, 19.

17. Cf. TORFS, R., "L'objectlon de conscience en Belgique", in European Consortium for Church-State Research (ed.), Conscientious Objection in the E.C. Countries, Milano, Giuffre, 1992, 217 e.s.

18. The latter could be deduced from a recent decision of the Belgian Supreme Court, the Cour de Cassation: Cour de Cassation, 20 October 1994, Revue critique de jurisprudence belge, 1996, 119, note F. RIGAUX.

19. See TORFS, R., "Les eglises et le droit du travail", in European Consortium for Church-State Research (ed.), Churches and Labour Law in the E.C. Countries, Mllano/Madrid, Gluffre/Facultad de Derecho, 1993, 35-59.

20. See e.g. Conseil d'Etat, 25 October 1961, n° 8.883, decision Closset and Verstegen, R., "Arbeldsovereenkomsten voor geestelljken: een beslissende stap", Tijdschrift voor Sociaal Recht, 1983, 74.

21. See e.g. Labour Tribunal of Brussel, 7 December 1971; Labour Tribunai of Tournal, 13 February 1973; Labour Tribunal of Gent, 16 January 1976, all quoted by VERSTEGEN, R., Geestelijken naar Belgisch Recht. Oude en nieuwe vragen, Berchem-Antwerpen /Amsterdam, Maarten Kluwer, 1977, 37-39.

22. See Cour de Cassation, 21 November 1977, Pasicrisie, 1978, I, 317; Arresten van het Hof van Cassatie 1978, 331; Tijdschrift voor Sociaal Recht, 1977, 479, observation H. Demeester. A similar scepticism characterises other decisions by the same supreme court, Cour de Cassation, 7 February 1973, Pasicrisie, 1973, 1, 541; Arresten van het Hof van Cassatie 1973, 568; Cour de Cassation, 5 January 1977, Pasicrisie, 1977, I, 485; Cour de Cassation, 21 November 1977 (another decision than the one quoted above), Pasicrisie, 1978, I, 316; Arresten van het Hof van Cassatie, 1978, 330; Cour de Cassation, 23 February 1981, Rechtskundig Weekblad, 1981-1982, 2152.

23. DEMESTER, H., observation on Cour de Cassation, 21 November 1977, Tijdschrift voor Sociaal Recht, 1977, 485.

24. Labour Court of Appeal of Brussel, 23 March 1978, Tijdschrift voor Sociaal Recht, 1978, 521; Labour Court of Appeal of Antwerpen, 19 November 1980, Tijdschrift voor Sociaal Recht, 1983, 95.

25. Cour de Cassation, 25 January 1982, Tijdschrift voor Sociaal Recht, 1983, 85.

26. VERSTEGEN, R., "Arbeldsovereenkomsten...", Tijdschrift voor Sociaal Recht, 1983, 79-80.

27. Labour Tribunal of Tournai, 13 December 1985, Journal des Tribunaux du Travail, 1987, 37.

28. E.g. Labour Tribunal of Tournai, 13 December 1985, Journal des Tribunaux du Travail, 1987, 37, Labour Court of Appeal of Liege, 26 November 1986, Journal des Tribunaux du Travail, 1987, 411.

29. Cour de Cassation, 13 January 1992, Journal des Tribunaux du Travail, 1992, 225; Rechtskundig Weekblad, 1992-1993, 121.

30. Canoniek statuut van de pastorale workers en werksters, 15 March 1990, Daco, April 1990.

31. For more Information: VAN HAEGENDOREN, G. and ALEN, A., "The Constitutional...", In ALEN, A. (ed.), o.c., 266-267.

32. VAN HAEGENDOREN, G. and ALEN, A., "The Constitutional... ", in ALEN, A. (ed.), o.c., 267.

33. Law of I8 February I 99 1 Moniteur belge, 7 March 1991 .

34. Royal Decree of 21 May 1965, Moniteur belge, 25 May 1965. The relevant articles are 16, 36 bis and 55.

35. Art. 50 bis and 52 of the Royal Decree of 2 1 May 1965 .

36. VAN HAEGENDOREN, G., "Sekte of kerk. De niet-erkende erediensten in Belgie", Tijdschrift voor Bestuurswetenschappen en Publiek Recht, 1986, 390.

37. Cour de Cassation, 23 November 1957, pasicrisie, 1958, 1, 983.

38. See e.g. Law of 12 January 1973, art. 107, 1°, Law of 28 June 1983, article 35, 1°, Code of Civil Procedure, art. 293, 1°.

39. European Commission for Human Rights, H. Demeester vs. Belgium, Journal des Tribunaux, 1982, 524, Jura Falconis, 1981-1982, 449 with a critical observation by R. Torfs.

40. HUYTTENS, E., o. c. II, 468.

ЦЕРКОВЬ И ГОСУДАРСТВО В БЕЛЬГИИ

Рик Торфс

Хотя перепись населения не предусматривает вопроса о вероисповедной принадлежности жителей Бельгии, конкретные исследования позволяют заключить, что примерно 75% населения страны составляют католики, 1,5% - мусульмане, 1% - протестанты, 0,3% - иудаисты, 0,2% - приверженцы других религий и около 10% - индифферентные к религии, а также те, кто не определился касательно своей религиозной принадлежности.

Эта картина, однако, не дает представления о достаточно сильном процессе секуляризации, который, по мнению экспертов, затронул Бельгию в большей степени, чем, скажем, Нидерланды или Германию. Тем не менее, религия выступает исключительно важным социальным феноменом, требующим значительного внимания к правовым проблемам, возникающим на ее почве.

После февраля 1994г. взаимоотношения между церковью и государством регулируются статьями 19, 20, 21 и 181 бельгийской конституции. Ст.19 гарантирует свободу богослужений, их беспрепятственного и публичного отправления. Ст.20 одновременно утверждает, что никто не может быть принужден каким-либо образом к участию в богослужении какой-нибудь из религий либо признавать религиозный праздник днем отдыха. Ст.21 подчеркивает, что государство не имеет права вмешиваться в назначение священнослужителей, препятствовать им в связях с их церковными властями, публиковать соответствующие акты и т.д. -- словом эта статья утверждает

внутреннюю свободу религиозных организаций (некоторым исключением из этого принципа можно считать требование, в соответствии с которым церковному бракосочетанию должен предшествовать гражданский брак).

И, наконец, ст.181 говорит, что заработная плата и пенсия для служителей культа возлагается на государственный бюджет.

Термин "отделение церкви и государства" не употребляется для описания взаимоотношений этих двух организмов. Значительной мерой это, разумеется, вопрос терминологии: что на самом деле точно означает "отделение"? Если под этим понимать положение, при котором церковь и государство не имеют абсолютно ничего общего друг с другом, тогда, конечно, этот термин не адекватен бельгийской ситуации. Более точно было бы говорить об обоюдной независимости церкви и государства, о взаимном признании и уважении друг к другу, нейтрализме государства и его невмешательстве в дела религиозных и нерелигиозных организаций, чье служение важно для общества.

Хотя бельгийское законодательство признает теоретическое равенство между всеми религиями, в стране существуют достаточно отличные подходы к разным религиозным организациям. Ряд религиозных организаций пользуется официальным признанием, основанием для которого является социальная ценность религии в служении народу. В настоящее время таким статусом пользуется 6 деноминаций: Католицизм, Протестантизм, Иудаизм, Англиканизм, Ислам, Греческая (имеется в виду Вселенский патриархат - Ред.) и Русская православная церкви.

Эти деноминации, кроме скромной зарплаты для священнослужителей из государственного бюджета, имеют также и некоторые другие привилегии. Среди них право запрашивать государственные субсидии для строительства и реставрации церковных зданий, право на радио- и телевизионное время, право назначать армейских и тюремных капелланов, чья деятельность оплачивается государством, возмещение местными органами власти расходов церковной администрации.

Римо-Католическая церковь не имеет законодательно оформленного особо привилегированного статуса среди 6 вышеоупомянутых деноминаций, однако фактически она "первая среди равных" и в значительной мере бельгийское законодательство в вопросах религии генетически восходит к особенностям функционирования и иерархической структуры этой церкви.

Кроме указанных деноминаций в стране существуют и ряд других, не имеющих описанного выше статуса. Наибольшая из них - Свидетели Иеговы (около 20 тыс. членов) и мормоны (около 3000); численность членов других деноминаций не превышает тысячи в каждой. Они не пользуются привилегиями и порой даже не считаются религиозными организациями. Юридической дефиниции "религии" не существует, и трактовка этого понятия остается за судами. При определении сообщества как "религиозного", суды принимают во внимание большое количество обстоятельств, в т.ч. существование храмов, культово-обрядовой сферы, молитвенных текстов и т.п. Исходя из этого некоторые организации (например, Сайентологическая церковь), теософские общества не признаются религиозными организациями.

Внутренняя свобода и независимость церкви не означает, что государство не имеет возможностей контролировать религиозные организации.

За исключением нескольких позиций, юридический статус священнослужителей не отличается от статуса всех других граждан. Они, например, не могут быть членами жюри, рассматривающих тяжкие преступления, а также членами парламента - потому, что члены парламента не могут получать государственное жалование (членство в провинциальных и местных органах однако возможно). Есть еще ряд позиций, несовместимых со статусом священнослужителя (государственный канцлер, членство в аудиторских органах, судья, губернатор провинции и др.).

Отношения между церковью и государством в Бельгии можно кратко суммировать следующим образом.

1. Тут функционирует система, достаточно благоприятная для религии и устанавливающая скорее взаимную независимость, чем отделение в строгом смысле этого слова.

2. Хотя все религии имеют теоретически равные права, существуют важные юридические отличия между признанными и непризнанными религиями. В то же время Католическая церковь является на практике "первой среди равных" признанных религий.

3. Постепенная секуляризация сказывается на всей системе церковно-государственных отношений. Секуляризация не может быть охарактеризована как фронтальная атака на религию, но она ведет к потере полной автономии церквей во многих сферах. Ярким примером этого может служить влияние трудового законодательства на церковную жизнь и современные тенденции к установлению умеренного государстенного контроля над исполнением внутрицерковных процедур.

STATE-CHURCH RELATIONS IN GREECE

Charalambos Papastathis

I. Constitutional framework of State-Church Relations

The majority of the Greek people - amounting to 95.2% of the total population of the country - are members of the Eastern Orthodox Church. For this reason, we begin with the relations between the Greek State and the Orthodox Church.

The theoretical framework covering these relations is an advanced form of caesaropapism, a system referred to in Greek literature as that of "State-law rule" in the ecclesiastical matters. According to the Constitution, the State has the right to legislate in respect of all administrative matters concerning the Church, even as to its internal structure. During the War of Independence of 1821 the Constitution of the emerging Greece: I) established the Eastern Orthodox faith as the prevailing religion or "religion of the State", and also 2) guaranteed freedom of worship to the followers of other religions. The same Constitutions