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STATE AND CHURCH IN LUXEMBOURG

ALEXIS PAULY

I. SOCIAL FACTS

Between Germany, Belgium and France lies the Grand Duchy of Luxembourg, the smallest member of the European Union. Luxembourg encompasses an area of 2,586.36 square kilometres and has a population of 440,000. Of the total population, 37% are foreign nationals residing in Luxembourg.

Since the enactment of a law of 1979 it has been prohibited for the State to collect data concerning an individual's confession or membership of a religious group. However, one may assume that perhaps 90% of the population can be considered Catholic. A few thousand are Protestant (either Lutheran or Calvinists), about 700 are of the Jewish faith, several thousand are considered to be of no denomination, and the remainder of the population belong to other non-formally recognised religious groups. It must also be noted that it is rather difficult to make estimates of the strengths of the various confessions in the population due to the large number of foreigners living in Luxembourg. In the Portuguese population there is also a large number of persons who consider themselves to belong to the Jehovah's Witnesses. Recently Muslims came from the Balkans.

From these statistics one can see that religion still plays an important role in Luxembourg. The current situation must nevertheless be examined from a historical aspect in order to be fully understood.

II. HISTORICAL BACKGROUND

Since the seventeenth century the Duchy of Luxembourg has been divided up between six Catholic dioceses, namely: Trier, Liège, Metz, Verdun, Reims and Cologne. This splintering between dioceses has had serious consequences, particularly in the realm of Church discipline. The religious history of Luxembourg is thus partially mixed up with the history of foreign dioceses.

Given a rather powerless Church, the State's power was largely unimpeded and thus able to flower. Under Burgundian rule the State managed to retain a large measure of official control over the Church. The Spanish king acted similarly and consequently the Austrian rulers found during their time of power that the circumstances regarding Church control were indeed favourable. Carl VI intervened in Church affairs quite rarely, while in contrast, Maria-Theresa and Joseph II intervened on behalf of the State so regularly and systematically, that one can properly speak of "Josephism". Measures taken by the various rulers included attempts to control certain forms of popular beliefs, attempts to regulate religious communities and under Joseph II, they went so far as to attack and control the training of the clergy.

The time of the French Revolution is clearly recognised by the resistance and opposition of the clergy and the population of Luxembourg to the republican laws. Essential for the understanding and interpretation of Church and State relations in Luxembourg is the Concordat of 1801. Luxembourg was at this time a French Department.

III. THE CONCORDAT: APPLICATION AND RESISTANCE

From the moment of the conclusion of the Concordat, and especially after the unilateral enactment of the articles organiques (organic articles) by Bonaparte, it faced condemnation and rejection by the Church hierarchy. In Luxembourg there were many disputes concerning the Concordat. First certain portions were critically questioned, and after the independence of Luxembourg the legal force of the whole Concordat has been called into question.

1. THE APPLICATION OF THE CONCORDAT BEFORE THE INDEPENDENCE OF THE COUNTRY

1.1 THE FRENCH PERIOD

By the provisions of the Concordat of 1801, the largest part of Luxembourg belonged to the diocese of Metz, which was at that time the largest diocese in France. Church life was for the most part peaceful even though two new sets of parish boundaries ran into opposition. The majority of the clergy and the faithful accepted the new law and remained loyal to the newly appointed bishop. The few priests who refused to accept the authority of the Concordat and their small band of followers resided for the most part in the Francophone part of the country.

1.2 THE PERIOD DURING WHICH THE GRAND DUCHY OF LUXEMBOURG WAS UNDER DUTCH SOVEREIGNTY

King and Church alike hesitated between 1814 and 1815, although for quite different reasons, to apply the Concordat of 1801. The King believed that the Constitution of 1815 provided sufficient means to keep the Church in check. He attempted, for his own advantage as successor to the former Dutch rulers, to re-institute the *indult* that Pope Paul IV in 1559 had granted to Philip II and his successors, allowing them the right to appoint the bishops. According to article 17 of the Concordat of 1801 which envisaged a special treaty should a successor of the head of the State not be a Catholic, a Concordat between the King and the Holy See was concluded in 1827. It reaffirmed the validity of the Concordat of 1801. It furthermore stated that the nominees for the office of Bishop were to be nominated by the Diocesan Chapter. The King would be able to strike from the list those of whom he did not approve. The Diocesan Chapter would then elect the future bishop from the candidates already approved by the king. The Pope, for his part, would make the appointment, provided that the nominee fulfilled the criteria for a bishop as prescribed by Canon Law. The Concordat of 1827 was never put to practice, and in 1852 was legally terminated by both sides. In 1823 Luxembourg was withdrawn from the diocese of Metz and placed under the control of the diocese of Namur.

1.3 LUXEMBOURG DURING THE BELGIAN REVOLUTION

With the exception of the fortified city of Luxembourg, the rest of the country belonged between 1830 and 1839 to Belgium. This brought about a

dual legal system with regards to religious matters. The relationship between the city of Luxembourg and the diocese of Namur rapidly deteriorated, and in 1833 the Pope was forced to withdraw Luxembourg from the diocese of Namur and appoint an Apostolic Vicar for the city. Since such a post was not provided for in the then current Concordat, the appointment was used as a means and as a piece of evidence to invalidate the Concordat. For the rest of the country, the constitution of Belgium was in force, which was to later serve as a model for Luxembourg.

2. THE CONCORDAT DURING THE TIME OF INDEPENDENCE

2.1 LUXEMBOURG UNDER WILLIAM I

The unification of the remainder of Luxembourg with the capital city occurred under rather poor circumstances. To avoid dislocation in the administrative structure, the former laws were provisionally to remain in force. As a result, many took the position that now the Belgian Concordat system was valid for the whole of Luxembourg. This point was however contested by others who argued that this system had been nullified by the Treaties of London. The Grand Duchy with its new borders was withdrawn from the Diocese of Namur and integrated into the apostolic vicariate of the city of Luxembourg.

2.2 THE CONSTITUTION OF 1848

The Belgian Constitution of 1831 served as a model for the framers of the Luxembourg Constitution. However, on the subject of religious freedom, the Luxembourg Constitution was far more restrictive. Therein one can see the large influence of the liberals. Without wanting to free themselves completely from the 1801 Concordat, the authors of the constitution took the position that a new Concordat would be worked out and that in the meantime, the terms of the current Concordat were to remain in force. This can be seen from a fairly dubious and relatively unclear compromise. Article 23 of the Constitution of 1848 (Article 22 of the current Constitution) states that “the interference in the nomination and appointment of the *chefs des cultes* in the Grand Duchy, the method of nomination and suspension of the remaining clergy, their ability to correspond with their superiors and to report publicly about their activity insofar as they concern the relationship between the Church and the State are matters for treaties, which are to be

submitted to the Chamber of Deputies, when provisions for intervention become necessary”.

In the transitional conditions, an article 125 was added which stated that until the treaties foreseen in article 23(22) are concluded, the prevailing provisions about churches are to remain in force.

3. THE PRACTICAL APPLICATION OF THE CONCORDAT

It is not easy to analyse the current application of the Concordat. Many of the provisions are too abstract and general to be applied directly or indirectly. Measures to complete and amend the original text needed to be taken. Often, however, the Concordat still gives the framework within which problems can be tackled.

In the Concordat of 1801 the Catholic Church as such was not recognised, but only certain structures necessary for its operation. So, a decree of 1809 concerned the *conseils des fabriques d'Eglise* (church councils). The legal capacity of these bodies was recognised, and by creating administrative and supervisory authorities the administration of their property was regulated.

IV. THE LUXEMBOURG CONCORDAT MODEL IN PRACTICE

1. THE LUXEMBOURG CONCORDAT MODEL

Thus far, the goal of this essay has been to establish the relationship between the Church and the State since the French Revolution by reference to the Concordat of 1801. The maintenance of the Concordat gave rise to numerous discussions. For some, particularly the 19th century liberals, it was still considered to be in force and a valid device to control and keep the Church within certain defined boundaries. For others, above all the Catholics, either it was considered to have been dissolved or it was judged that it should be dissolved because it seriously impeded the freedom of the Church.

My opinion is that the Concordat was never formally nullified, but that its operation was certainly enlarged and modified. It is however unnecessary to determine which of the provisions of the organic laws of the Concordat are still in force, which have been expressly removed, or which have simply

passed into obscurity with the passage of time. There were also certain articles that were originally applied, but which ceased to be operative at a time which cannot be precisely determined.

Beyond the Concordat of 1801, one can thus speak of a Luxembourg Concordat-model. That is, the intention of the Church and State to solve jointly the problems which arise and to give mutual support to one another if there should be any difficulties. The State grants the Church a measure of protection, and in particular places financial means at its disposal. The Church, on the other hand, gives a measure of moral support to the State and is partly used to legitimise the State. Luxembourg, being a small, easily violable State, would be unable to sustain any major internal crisis, and the Church and the trade unions take this into consideration.

2. THE ADAPTABILITY OF THE CONCORDAT MODEL

The adaptability of the Concordat model is astounding. It would be wrong, though, to consider the Concordat of 1801 as an ironclad arrangement; in the hundred years that it was in force in France, it also had changes made to it. There are furthermore certain reasons why in Luxembourg its adaptability was encouraged. For example, in Luxembourg there has never been specific secular legislation. Without a doubt, the anticlerical movement of the 19th century wanted to make certain that the power of the Church was kept tightly within its well defined boundaries. The Constitution of Luxembourg is also not so advantageous to the Church as is the Belgian Constitution. Since the turn of the century, however, the Catholics have enjoyed political dominance.

Even more important, though, is the suppleness of the administrative system of Luxembourg. Everyone knows one another and it is therefore easy to find solutions... One has the impression that there exists a slight reluctance to regulate the status of the Church. One attempts to find solutions to problems by adapting the budgetary laws, through laws concerning the civil service, or simply through tacit administrative agreements. Beyond the above mentioned methods of reaching legal solutions, there seems to be currently a substantial approval and consensus throughout Luxembourg's society of this method. It might perhaps be easier to change a written law than to change a firmly entrenched convention. It certainly is not clear that it would be in the interest of the Church to demand rigid legislation.

The Church finds fault with the fact that certain organs of the Church, such as the dioceses or parishes, are not recognised by the State. Church and State laws are in opposition to one another in this instance.

As a result it can be said that the relationship between the Church and State in Luxembourg is determined by a Concordat system, which is eased by the Constitution and above all by reaching practical arrangements and agreements.

3. SYSTEMATICS OF LUXEMBOURG ECCLESIASTICAL LAW

Luxembourg has no established Church. The statistics that were referred to in the introduction show a Catholic majority of over 90%, vouching for the fact that the Church indeed has an extraordinary significance in Luxembourg.

Religious freedom and freedom of worship are completely guaranteed by article 19 of the Constitution.

V. THE LEGAL STATUS OF RELIGIOUS BODIES

1. THE RECOGNISED RELIGIOUS COMMUNITIES

In Luxembourg the Catholic Church and two Protestant communities are recognised by the State and have the legal status of public corporations. This also holds true for the Jewish community. These recognised public corporations often also make use of associations and companies, as regulated by the civil law, when administering property and goods.

Other religious communities, such as the Moslems, are not yet recognised as public corporations in Luxembourg. Religious communities which are not as such officially recognised can however take advantage of all legal rights under private law, in particular the right to create a foundation. Such foundations have nearly the same rights as are enjoyed by recognised religious communities.

2. THE DIOCESE

Despite plans in the 16th century, it was only in 1870 through a unilateral act of the Pope that the diocese of Luxembourg was established. The State was annoyed that it was not consulted beforehand, and thus refused immediately to recognise the diocese. A law passed on April 30, 1873 recognised the founding of a diocese in Luxembourg under the condition that “the current relationship within the Church leadership was not to be changed and its rights and duties would furthermore be continued to be regulated by the provisions in operation”. Two conclusions may be reached from these conditions. The diocese would not be recognised as an organ with legal capacity. Second, the legislator did not want to call the Concordat into question nor to touch the relationship between Church and State. The law stipulates the oath that the Bishop is to take and also regulates his income. Only a Luxembourg national may be appointed as Bishop. Lastly, the appointment is only to be valid after the State has given its own consent. This in fact means that a nominee of the Pope who is not approved by the government could do nothing for which the approval of the State was required. The Bishop would also have no power to confer Church offices and he himself would receive no salary.

On the basis of a law passed in 1981, the bishopric is now a person under public law. This provision, similar in general to the status of religious communities regulated by public law in Germany, appears in the Luxembourg system like a transplanted model. Above all the tax advantages of this law are similar to those which are granted to non-profit organisations and institutions of public interest.

In 1988 the diocese of Luxembourg through a unilateral act of the Pope, was granted the status of an archdiocese.

3. CHURCH AUTONOMY IN THE PUBLIC SPHERE, PARTICULARLY THE SOCIAL SERVICES

Formerly, there were a large number of religious social service institutions in Luxembourg. This was particularly so in regard to hospitals and retirement homes, where the majority were run by women's religious orders. In the case of both hospital and retirement homes, there has been seen a steady increase in the number of such institutions provided through public funds. In addition, the State allots public funding for hospitals and retirement homes run by nuns.

Generally, those social services which are still operated by the Church opt to be regulated by private law. This is true for hospitals, retirement homes, and also for schools, which will now be described in detail.

VI. CHURCHES AND CULTURE

1. SCHOOLS

In the Concordat of 1801 and also in the *articles organiques* there are no specific arrangements dealing with either schools or religious instruction.

1.1 THE PROVISIONS OF THE CONSTITUTIONS

The subject of schools is dealt with only briefly in the Constitution of Luxembourg. The text of Article 23 reads as follows: “The State is responsible for providing every Luxembourger with an elementary education... The State is responsible for the creation of the necessary secondary schools and colleges... The funding of the public education system and the supervision of schools by the government and the local authorities are to be regulated by laws; furthermore all questions related to the education system are to be regulated by the law... All Luxembourgers are free to study at the university of their choice, either in the Grand Duchy or abroad, subject to the legal regulations concerning their terms of admission to the particular place of work and the exercise of the particular occupation.”

The Constitution takes no particular stance on religion or religious education within the education system, but it also does not rule out its possibility. The private school system is not specifically protected by the Constitution; a citizen of Luxembourg however, is free to attend domestic or foreign schools. At this point it must be noted that the Constitution contains no set of guaranteed constitutional rights such as one finds in the German Basic Law or the Italian Constitution, but instead Luxembourg has ratified the European Human Rights Convention, which is more specific in relation to the sphere of education. On the other hand however, since the 19th century there have been legislative provisions regulating religious instruction in the State school system; these laws have also been used to regulate private schools. Private schools, however, have never played a large role in Luxembourg. The Church has instead attempted to influence the State school system and not to create its own guidelines for instruction.

1.2 THE CHURCH AND THE PRIVATE SCHOOLS

1.2.1 THE LEGAL FRAMEWORK

A law passed on 31 May 1982 regulates the relationship between the State and private secondary schools. For approximately ten years, politicians had attempted to solve the problem of private schools by proposing that those schools which so desired could be integrated into the State school system. One such draft law was proposed in 1974. The 1982 legislation, however, goes in the opposite direction by acknowledging the private schools, thus regulating and standardising the control and inspection of such schools. The directors and teachers of these schools are required to have the necessary professional qualifications. In the case of justified refusal to allow such a school to open, it is possible to appeal to the Council of State, it having the capacity to act as an arbitration committee in such instances.

1.2.2 THE FINANCIAL FRAMEWORK

The new law has since 1981 allowed for the possibility of contractual terms with the private schools. Under such terms, instruction in the secondary levels must be comparable to the State school system, the lesson structure of the State schools must be followed and at each level the private schools must make use of the State schools' curriculum, while three lessons per week may be used at the school's discretion. They must also apply the same criteria for admission and transfer as the State schools. If all conditions are met, the State will take on 80% of the costs of the lessons following the State pattern; if the school fails to meet all the conditions, the State will finance only 40% of the costs. The status of the secular private school teachers will as a general rule be regulated by the current labour law applying to private sector employment. Their status must necessarily be seen then as insecure. A socialist proposal that would have guaranteed such teachers privacy outside of the workplace and their work duties was rejected.

2. THE SEMINARY

Luxembourg has its own Catholic seminary for the training of priests, it is not to be found in a university, though, as Luxembourg has no true fully-fledged State university. The seminary is thus a self-supporting religious establishment.

The seminary was established in 1842 through a royal decree and has legal capacity (article 11 of the Concordat of 1801, article 113 of the Enactment of 1809 and section IV of the Enactment of 1813). The director and professors are paid from public funds. As a result of the very small number of priestly appointments, the few seminarists from Luxembourg study abroad. Therefore the seminary has diversified its capacity and now trains lay religious teachers. The old form has been assumed by a religious teacher training college.

3. MASS MEDIA

The daily newspaper with the largest circulation in Luxembourg is the “Luxemburger Wort” with a circulation of 80,000 copies per day; the paper belongs to the archdiocese. Through the Luxemburger Wort, the archdiocese also owns a controlling interest in a radio station with the name of “De Neie Radio” (D.N.R.).

VII. LABOUR LAW WITHIN THE CHURCH

1. PRIESTS AND OTHER MINISTERS

The Constitution ensures that the salaries and pensions of priests and other ministers of religion are paid by the State and regulated by law (article 106 of the Constitution of 1868). In 1848 the meaning of the text was clear to the framers of the Constitution, as there was only one recognised religious community, the Catholic Church.

Today the situation is no longer so clear-cut; the functions undertaken within the Church have become more complex and multi-faceted. Furthermore the Protestant Churches and the Jewish community have become formally recognised by the State.

The laity have also taken on a much greater role within the Church, particularly in acting as catechists. Do these individuals also fall under the framers' intentions and within the meaning of “priests and other ministers”? A distinction could be argued for, based upon constitutional, administrative, budgetary, civil or criminal legal notions. The State and the existing case-law can, however, by no means accept the former interpretation of the “*ministres du culte*” given by the Church. There is an exchange of letters

between the Prime Minister and the Bishop, allowing the Catholic Church to also confer “Concordat positions” of vicars and chaplains on lay people.

2. A SPECIAL STATUS

The Concordat was supposed to re-establish the right to the performance of religious observances within France. In the 19th century the liberals in Luxembourg also wanted to integrate the clergy into the structural mechanisms of the State. This was done with the deliberate intention of favouring “lower clergy”, whereby the prerogatives of the “upper clergy” would become restricted. The result was advantages and disadvantages for the entire clergy.

2.1 THE ADVANTAGES

Since 1842, appointments to the priesthood are freely made by the Church without the need for approval by the State. Today appointments and transfers of the priesthood are made solely by the Archbishop. The priests are not a part of the public administration. The government is informed.

In the sphere of the right to religious freedom, the protection of churchly functions and dignitaries is clearly defined (article 145 of the Luxembourg Criminal Code).

The principle of the clergy being salaried is guaranteed by the Constitution (article 126). However, the majority of the legal conditions relating to the priesthood are to be found in the laws of the Concordat.

In 1998 a law ratified conventions with the Catholic Church, two Protestant denominations, the Judaism and the Greek-Orthodox about finances, the number of ministers...

What is the situation, then, when the Bishop exercises disciplinary action against the clergy? There seems to be no clear judicial answer to be found. The Bishop is responsible for watching over belief and morals, and the State over the public order. Since 1998 there have been no cases about this subject.

2.2 THE DISADVANTAGES

For the priesthood there are nevertheless certain disadvantages.

According to article 268 of the Luxembourg Criminal Code, priests owe a duty of restraint when delivering a religious sermon. For example, a priest delivering a sermon describing civil marriages as cohabitations, supporting his point of view by using obscene remarks, was prosecuted under this provision of the Criminal Code.

Priests are furthermore not allowed to become public officials, members of Parliament, members of the European Parliament, Mayor or Deputy-Mayors. Finally, a priest, on the ground that he was under the authority of his Church superiors and was thus not qualified to act as an independent officer in the judicial system was refused admission as an attorney.

3. SOCIAL SECURITY

Priests and other clergy in a paid occupation enjoy the same social rights and benefits as their non-religious colleagues. As teachers, hospital staff or as professors, they will be treated in exactly the same way as any other employed individual.

For an analysis of the position in social security law of the Church clergy, one must distinguish between the priesthood and ministers on one hand and the other employees of the Church on the other.

3.1 PRIESTS AND OTHER MINISTERS

According to the laws dealing with social security, priests and other ministers are on the same legal footing as civil officials and members of the civil service. In cases of illness or invalidity, they enjoy the same insurance protection as any other civil official. The pension of the clergy is guaranteed by article 106 of the Luxembourg Constitution. The standard age of retirement at which pension benefits may be enjoyed is 65 years old. Priests are, however, free to continue working beyond this age.

Those priests or clergy who give up their churchly or religious office are entitled to the respective portion of their pension, which is assessed according to the duration of employment in their office.

Lastly, priests and clergy are protected in case of injury while performing their duties by the social security laws.

3.2 OTHER EMPLOYEES OF THE CHURCH

A law passed in 1974 integrated those employees of the Church into the law of social security.

The criteria for qualification of being a member of a religious order has been interpreted very broadly and goes beyond the canonical requirements. Other non-clerical employees of the Church are subject to rules under private law in the same way as any other privately employed individual, whether in respect of their pension or accident and health insurance.

4. THE LAITY AS EMPLOYEES OF THE CHURCH

As a result of the declining numbers of ordained priests, the laity is bolstering the Church by being increasingly entrusted with the performance of religious duties and functions.

The Concordat, though, makes no mention of regulations concerning the laity. As previously mentioned, there has been written correspondence between the Prime Minister and the Bishop concerning this matter.

The lack of legislative regulations and pertinent case-law hampers the understanding of the exact terms of the legal position that the laity have within the Church as employees. Many lay teachers of religion are bound by labour contracts regulated by private law. The Archbishop proposes catechists for employment to the Minister of Education and then after they are successfully employed, he bestows upon them the *missio canonica*.

It seems that employees under private law terms are employed under the standard of the “*missio canonica*”.

VIII. FINANCING OF CHURCHES

In contrast to the position in Germany, the Church in Luxembourg is not supported by a Church tax. Its funding is instead to be found in the State budget. The officeholders of the Church, that is the Bishop, the clergy and also some of the employed laity, are paid from the funds in the general State budget.

The publicly acknowledged Churches, moreover, enjoy as corporations under public law the same tax-exemption as private law foundations.

IX. RELIGIOUS ASSISTANCE IN PUBLIC INSTITUTIONS

1. MILITARY AND HOSPITAL CHAPLAINS

In Luxembourg the military chaplains care for the military personnel as well as for the police forces. The legal status of the chaplains is dealt with and regulated under military law. In public hospitals the hospital priests have the right to visit the patients, but there are no specific legislative arrangements concerning the care of patients in hospitals or nursing institutions.

2. THE CHURCH AND THE STATE SCHOOL SYSTEM

In the law of 1843 concerning primary-school instruction, the Church was allowed to wield considerable power. The Church in general watched over the public elementary schools, had a right of co-determination concerning the textbooks to be used, and also had the possibility of making religious education a mandatory subject. In 1912 a social-liberal coalition instituted a law which demanded that elementary schools be religiously neutral. Although the Church lost its power over the school system, priests were still to give one hour of religious instruction. The Bishop boycotted this law, until 1921 when a *modus vivendi* was found, which granted freedom not only for the teachers, but also for the Church. After 1968 secondary school students had the right to choose (when they are below the age of consent, with parental consent) between taking part either in Christian religious education or courses in world ethics. The students could also opt to waive both courses.

Since 1988, however, secondary school students have had to choose between a Catholic religion course and a morals and values course. Students may only waive these courses if they are members of another religious community.

X. THE LEGAL STATUS OF PRIESTS AND RELIGIOUS: ESPECIALLY ELIGIBILITY FOR ELECTIONS

In Luxembourg priests and other salaried members of the clergy may not be elected to Parliament or local councils; judges have the same restrictions upon them. Technically, this result has been reached because neither the priests nor judges may take leave in order to fulfil a political mandate.

Non-salaried clergy on the other hand are free to enjoy the right to be elected to a political office.

XI. MATRIMONIAL AND FAMILY LAW

In this area of law there are no features peculiar to Luxembourg. In Luxembourg the legal principle of the obligatory civil marriage is in force.

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