
Source: CHURCH AUTONOMY: A COMPARATIVE SURVEY (Gerhard Robbers, ed., Frankfurt am Main: Peter Lang, 2001).
Topic(s): Religious autonomy
Notes: Used with publisher's permission.
This book is available directly from the publisher at the following link: <http://www.peterlang.com/Index.cfm?VID=36223&vLang=E> .

STATE CHURCH AND CHURCH AUTONOMY IN NORWAY

INGVILL THORSON PLESNER¹

The article 2 of the Norwegian Constitution states that “The Evangelic-Lutheran Confession remains the public religion of the state”. However, it is also stated in the same article of the Constitution that “All citizens should enjoy the right to free exercise of religion”. Is this two-fold article a contradiction in terms or is it an expression of constitutional creativity in a specific historical and cultural context? Or we could ask; Is it possible to secure freedom of religion in general for all citizens, and church autonomy in particular – for both majority and minority churches – in a country with a state church system?

This paper will focus on the case of Norway, but will also use the contextual experiences in a more general discussion of the different dilemmas for both state and church following from the quest for church autonomy. It will use perspectives from the academic debate between the so-called “liberals” and “communitarians” in examining the different concepts of religious freedom and the limitations to this right for religious associations and individuals. First I shall present some of the aspects or dimensions of religious freedom which are relevant to the discussion of church autonomy and state church relations. Then I will look at the development towards more autonomy for the Norwegian state church – “The Church of Norway” – and describe the attempts to secure equal rights and opportunities for Christian free churches

¹ This article draws upon perspectives from the project “Religio-political models and contexts” (Plesner 2000a), which has been financed by DAAD (Deutsche Akademische Austauschdienst) in 1999-2000.

and other faith communities² in Norway, mainly focusing on the legal provisions.

I. DIFFERENT DIMENSIONS OF RELIGIOUS FREEDOM

Freedom of religion or belief is a basic human right. It is embodied in article 18 of the Universal Declaration of Human Rights of 1948:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change ones religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

The same formulation is to be found in the UN Covenant on Civil and Political Rights of 1966 (CCPR art. 18), and in the European Convention on Human Rights of 1950 (ECHR art.9). Both covenants include a paragraph which states the following about the limitations of the right to religious freedom:

Freedom to manifest ones religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for protection of public order, health or morals, or for the protection of the rights and freedom of others (CCPR art. 18,3, ECHR art. 9,2).

We can see that the state`s possibility to limit the right to freedom of religion or belief is limited regarding manifestations of religion by individuals and groups, whereas the right to hold a particular religion or philosophical view can not be subject to any limitations.

1. INDIVIDUAL AND COLLECTIVE DIMENSIONS

These declarations and conventions clearly express what we might call the individual dimension of freedom of religion. The protection of individual integrity in religious matters also require protection of the rights to join a

² When using the concept “faith communities” in the following, I refer to both religious and communities of non-religious believers (secular humanist associations). Also when using the term “freedom of religion” it is referred to the liberty of both religious and secular beliefs.

religious group – to “manifest religion in community with others” (CCPR art.18).

Organised churches and other faith communities are – from a legal and sociological point of view – to be considered as organisations in the civil society. State churches – or churches with particularly close bonds to the state – can also be seen as (parts of) public institutions. When later examining the case of Norway, we shall look closer at the tension between this status of a state church as both faith community and part of the state administration.

The right to religious freedom in general, and the collective dimension of this right in particular, means that there are limits to the state’s possibility to interfere either in the religious life of a private person or in the so-called “inner life” of an organised faith community. But the definition of what is to be considered as internal affairs and to what extent the state can make laws that limit the self-governing of the faith communities, varies from country to country. Also, as all other organs of a society, the faith communities will be subject to laws given by the parliament and statutes set forth by the government.

2. CHURCH AUTONOMY AND STATE CHURCH SYSTEMS

The right to church autonomy – following from the individual right to freedom of religion – can be seen as the right of faith communities and churches to self-governance in accordance with the world view of its members. One might say that it would be in principle less limits to the interference of the state in the affairs of a state church than to other faith communities, as the state church can be seen as a part of the state administration, with the government or king as its “head”, and not only as a faith community being a part of civil society and hence with a certain corporate autonomy. But taking the international human rights conventions as a starting point, an argument would be that there are limits also to the state’s possibilities to interfere with the religious life of a state church when this would limit the religious freedom of its members. The right of faith communities and churches to complain to international human rights institutions, as the European Court of Human Rights, is a manifestation of the recognition of certain corporate autonomy of these entities. A possible test on the degree of real autonomy for a state church might be to ask whether it could go to the national and international court system with a

complaint against the state in which it is situated and from which it takes some of its authority and legitimacy. We shall discuss this later in the paragraphs about the present Norwegian state/church relations.

The European Court of Human Rights as well as the former European Commission of Human Rights have through a number of decisions clarified some of the content of the right to freedom of religion stated in article 9 of the ECHR. One of these decisions is the Darby case of 1990 which states i.a. that a state church system in it self does not necessarily conflict with the right to freedom of religion or belief:

A State Church system cannot in itself be considered to violate Article 9 of the Convention. In fact, such a system exists in several Contracting States and existed already when the Convention was drafted and when they became parties to it. However, a State Church system must, in order to satisfy the requirements of Article 9, include specific safeguards for the individual's freedom of religion. In particular, no one may be forced to enter, or be prohibited from leaving, a State Church.

(ECHR, Darby vs. Sweden 1990, paragraph 45)

This would mean that one has to examine the relevant legal system and political practice in the field of state church-relations and religious affairs of a specific state to see if the right to freedom of religion of all its citizens is secured. In chapter two of this paper we shall look closer at the practical implications of the Norwegian state church system as it appears in different legal fields.

3. THE POSITIVE AND NEGATIVE DIMENSION OF RELIGIOUS FREEDOM

The collective dimension of religious freedom, demanding some kind of self-governance of the faith communities, actualises the question of the positive and negative dimension of human rights in general and freedom of religion/belief in particular; To what extent can the state be expected to take active steps to secure the factual possibilities of faith communities to provide their services to their members?³

³ For further presentation of the positive and negative dimension of religious freedom,

In some states, it is enough to have a strict separation of state and church, not to interfere in the inner life of faith communities and to respect the integrity of the individual in religious matters. The traditional French and ultra-liberal “laissez-faire approach” is an example of this conception of freedom of religion as mainly a right to freedom *from* state interference⁴. On the other hand, we have the “welfare state model”, giving support to religion by having close relations to one or two churches and/or giving active support to different activities of faith communities, both within the public institutions and in civil society⁵. This active politics of religion is built upon another conception of freedom of religion, emphasising also the freedom *to* religion, and is a characteristic of the politics i.a. of the Nordic countries, England and Germany.

There are dilemmas connected to both these religio-political approaches. A too strict separation of religion from the public sphere might in some cases limit the right of individuals to express their religious beliefs and belongings more than the exemption clauses in the human rights conventions open for (cf. CCPR art. 18, 3rd paragraph). A supportive politics of religion can easily lead to discriminative practices by favouring one or some faith communities and their members. The laissez-faire approach can be seen as based upon the liberal thesis that the state should be neutral towards different confessions as well as religion in general; The state should not support any specific conceptions of “the good life”, but provide a basis for peaceful co-existence between people who do not share the same conceptions of the good. The welfare state approach is build upon the idea that the state is and should be based upon certain values that are closely connected to certain cultural, ideological or religious traditions, and that it should take active steps to meet the religious needs of its citizens. According to this view, the state is also supporting the core values of society, the possibility to lead a religious life being one of them, by supporting religion in general and certain faith communities in particular. These two idealtypical positions can be connected to the two main positions in the ongoing socialphilosophical debate between

see for instance *Sophie C. Van Bijsterveld*, Church and state consultation (p. 28-29), a report from the Conference of European Churches, 1997.

⁴ Cf. *Axel Frhr. V. Campenhausen*, Staatskirchenrecht (p. 393-395), Beck'sche Verlagsbuchhandlung, Munchen 1996.

⁵ This dichotomy (the laissez-faire approach versus the welfare state-approach) in relation to politics of religion in general and different interpretations of the concept of religious freedom in particular is further developed in the project “Religio-political models and contexts” (*Plesner* 2000).

the so-called “liberals” and “communitarians”⁶. In the concluding discussions of the paper we will use and develop these analytical perspectives in an attempt to characterise the religio-political system of Norway in relation to the system of some other countries.

4. THE PRINCIPLE OF EQUAL TREATMENT

The legal responsibility of the state to take active steps to secure the possibilities of citizens to get religious service within public institutions, to give financial support to faith communities etc is very limited when taking the international conventions as a starting point. The fact that the Human rights conventions do not oblige the state to give such support, of course does not mean that the states should not take measures to support religious life. When a state has such an active and positive politics of religion, another dimension of freedom of religion is actualised; The quest for equal treatment of different faith communities in a pluralistic society. The ECHR stresses the principle of equal protection of the rights set forth in the Convention, without any discrimination of persons on grounds of i.a. religion (art. 14). This principle of non-discrimination means that unequal treatment between people belonging to different religious groups can only be accepted if it has a “reasonable” and “objective” explanation⁷. State actions to support the religious life of any individuals or groups therefore should be based on the principle of equal support to the different faith communities of the society.

Financial support through the tax system or through subsidies, and support to the employment of priests in public institutions such as hospitals and prisons could be seen as examples of fields where this principle should be taken into account. At the same time it might be said that the ECHR demands a reasonable evaluation of the specific conditions that might be taken as arguments for some kind of differentiation between the support to the

⁶ The communitarian approach emphasises the societal “need” for a common, normative ground providing a basis for the individual identification with the state as well as the rest of the population, and argues that state neutrality towards specific conceptions of the good is neither possible or desirable. The liberal approach is based on the principles of equal treatment before the law, and sees the role of the state as a facilitator for individual freedom and autonomy of all its citizens. The debate between communitarians and liberals is presented i.e. in *Will Kymlicka, Contemporary political philosophy*, Clarendon press, Oxford 1990.

⁷ Cf. ECHR practice and judgements and other international case law, presented for instance in *Nowak 1993, van Dijk/van Hoof 1997, and Martin Scheinin in: Eide/Alfredsson 1999.*

different religious groups in certain areas, for example with regard to number of members of the different faith communities. Also at the individual level, the principle of non-discrimination puts limits to the state priorities and arrangements. It would, for instance, be in conflict with this principle if only members of specific faith communities could be civil servants, elected to the parliament etc.

The present development within the European Union and The Council of Europe – with the suggestions of giving the principle of non-discrimination a stronger legal protection – makes it particularly important to discuss the meaning of this principle in relation to religious freedom. One of the challenges is to define the extension of the sphere in which groups of the civil society (for instance the family or the faith communities) can determine and practice their own rules as a consequence of the right to religious freedom, and where this right must be limited because of other rights, values or principles emphasised by the state or by a super-national entity.

II. TOWARDS CHURCH AUTONOMY IN NORWAY

We shall now take a closer look on the Norwegian state church system and ecclesiastical law, especially focusing on the articles and practice that are meant to secure self governance for The Church of Norway (the state church) and for other churches and faith communities. The legal sources for status and rights of The church of Norway (hereafter some places mentioned as “the church”) and for other faith communities are – in addition to the Constitution and the general laws – statutes, governmental notices, precedents from the Supreme Court, customary law and the vaguer source; the so-called “nature of the case”. There is a law stating the right to organise faith communities, regulating the financial support to faith communities and setting up criteria for registration of faith communities. This law on faith communities from 1969 (no. 25) is also treating questions that affect the church as a faith community (rules for registration of church members etc). In addition to being a faith community, the church has a status as a public institution because the King is formally the head of the church as a result from the state church system (articles 2, 4, 12 and 16 of the Constitution). In the following we shall focus on the paragraphs relevant to the state church system in the Norwegian constitution of 1814 and on the law that treats the status, structure and affairs of the church in particular – the Church Law of 1996 (no. 31) – and pay only little attention to the other laws that have

impact on the church and its autonomy. Then we shall look closer at the rights and status of the other faith communities in Norway, taking the already mentioned 1969 law as a starting point.

1. THE CONSTITUTION AND THE CHURCH REFORMS

The article 2 of the Constitution of Norway states as we have seen in the introduction to this paper that the Evangelical-Lutheran religion remains the “official religion” of Norway. It is, however, other articles of the constitution that lines out the more concrete foundations of the Norwegian statechurch system.

According to the Norwegian Constitution it is “the King” as the head of the church (article 4)⁸ that has the right and responsibility to provide statutes for the church liturgy and see to that the teaching of the church is in accordance with the Evangelical-Lutheran confession and doctrine (article 16)⁹. Church matters are to be discussed by the members of the government that are “confessing the state religion” (article 27), which in practice means those who are members of the Evangelical-Lutheran church. Because of this clause, the constitution also decides that at least half of the government should be members of the church (article 12). The constitutional provisions stating that the King/the government is the head of the church in certain matters (cf. §16), also limits the power of the parliament to interfere with ecclesiastical affairs of the church in this area¹⁰. Most of the King`s power as

⁸ The power of the King in person in matters that he should decide according to the written constitution (of 1814) has in practice become rather limited as the Norwegian constitutional law and political regime has developed over the last centuries. These matters are – with very few exceptions – instead interpreted to be the responsibility of the government. The article 4 of the constitution is interpreted to refer to the King in person as head of the church, while the article 16 refers to “the King” as the government, limited here to the part of the government that are members of the Evangelic-Lutheran Church (cf. also article 12).

⁹ The wording of this article states that the King has an overall responsibility for all church meetings and sermons, and for that all preachers and teachers of the state church follow the proscribed norms of the Evangelical-Lutheran religion. It is clear that this article neither by intention nor interpretation gives the King any competence in supervising the teaching of other (Christian) communities or churches than The church of Norway.

¹⁰ This has been seen as one important principle in the Norwegian statechurch system, securing some degree of “church” autonomy, as the parliament can not be seen as a “church organ” in the same way as the King and his ministers when they make decisions on the ground of the § 16 of the constitution. Nevertheless, the dilemmas

head of the church after § 16 has, however, been delegated to the Church Synod, as we shall see.

The historical foundation of the statechurch system is this close relationship between the King in person and the rest of the church body. One could say that the paragraphs demanding that the King and the ministers governing the church affairs belong to the church, give the public government of the Church of Norway some church legitimacy. As we shall see, these paragraphs also are the legal foundation of some of the power that church bodies such as the Church synod is possessing. At the same time, they constitute – both from a legal, theological and political point of view – a challenge for the legitimacy of the other church bodies such as the Church Synod as “autonomous” ecclesiastical entities. Also, they create tensions with the principles of religious freedom and equal treatment of persons belonging to different faith communities as we shall come back to later. First we shall look closer at how the state church system in Norway is established, and how it reflects the attempts to secure the right to religious freedom both for members of the statechurch and for other citizens.

The church reforms in Norway during the last years have had as their overall aim to extend the independence of the church in relation to the state. As a result from these reforms, a Church Synod – meeting once a year – and a permanent Church Council have been developed. The eleven Diocesan Councils (consisting of the bishop, a priest and five lay people) are delegates at the Church Synod, electing candidates for the Church Council and the Council on International and Ecumenical Affairs at the annual Church Synod. More and more power to make decisions in matters affecting the inner life of the church have been delegated to these new church structures over the last years. Both the authority to decide the content of the church liturgy and the right to give statutes on the use of the church buildings have been delegated to the Church Synod.

The Church Synod’s power to make decisions is of course limited by the general laws and decisions made by the government. Also, the formal possibility and right of the King to restrict the self-governance of the church in these matters is still there as long as the article 16 of the constitution remains unchanged. But the practice of the governments and general tendency over the last years show that the political will to secure independence for the church bodies in these matters is strong. One might say

related to the position of the King as head of the church remains.

that because of the delegation of authority and the will to secure independence for the church bodies, it is mostly the financing of the church, the appointing of the bishops and the responsibility for the state employees in the church (mostly the priests and bishops and workers at the Diocesan Offices) that are the main administrative tasks of the King (the government) as the head of the Church.

There are different interpretations of the article 16 of the Constitution and the limits of the King's power to decide in matters affecting the inner life of the church. Some would say that the relationship between the state and the church in Norway today is in fact build upon trust and shared commitments, and that the state church system still exists because the state does not misuse its possibilities to decide in church matters. They would also stress the fact that with the latest church reforms, the church in practice has its autonomy to almost the same extent that it could have had without the close ties to the state. Others would stress the point that the church has no real legal autonomy as long as its power is delegated from the state and does not follow legally from its status as faith community. What is clear is that the article 16 of the Constitution – by giving The King the right to decide in matters affecting the church doctrine and liturgy – puts limits to the power of the Parliament to decide upon the church in these matters. In this way, one might say that the system makes it possible to secure some of the church's autonomy vis-à-vis the parliament and general laws as long as the government protects this right by respecting the decisions of the Church Synod as well as the position of the bishops in matters concerning the church doctrine.

2. THE CHURCH LAW

The church law of 1996 is in many ways expressing the results of former debates on church autonomy and state church relations in Norway. It goes further than the former church law of 1953 in securing the self-governance of the church at all levels, especially at the local level. In article 24 of the 1996 law it is stated that the Church Synod

- gives statements on changes in laws affecting the church,
- gives statutes on church equipment,
- suggests statutes for the organisation of parishes,

- develops plans and guidelines for the church education, social work, church music and ecumenical affairs,
- decides the qualification criteria and rules for the church employees in these fields, and appoints councils and committees with mandate to implement the overall aims and strategies of the Synod.

Besides this, the article 24 in its fourth paragraph states that the Church Synod is obliged to do the tasks that are given by the King (the government) and the Ministry for church affairs. This statement gives the legal basis for the delegation of authority from “the King” as head of the church to the Church Synod.

The Church Council, appointed by the Synod, consists of 10 lay people (of which one shall be a church employee) and 4 priests (all diocesan councils shall be represented in the church council), and one bishop appointed by the bishop’s conference. According to article 25 of the church law, the responsibilities of the Church Council are to prepare the issues that shall be discussed by the Church synod, implement the decisions made by the Synod and lead the work of the church between the annual church meetings. The Church Council has a secretariat with about 40 employees to help out with fulfilling these tasks. From 1989 the authority to employ the priests of the church has been delegated to the Diocesan Councils, but the employment of rural deans and bishops has remained a governmental responsibility.

As a result of the church reforms, also a Doctrinal Commission of the Church of Norway has been appointed. The church law article 27 states that the Doctrinal Commission – consisting of all the bishops, five theological experts and four lay people – shall on request express its view in matters that affects the doctrine of the Evangelical-Lutheran church and confession. The committee shall also give statements in matters concerning i.a. firing priests, catechises and deacons, if this is requested by the government or a bishop. Also the Church Synod can ask for a statement from the Doctrinal Committee. The Doctrinal Committee decides the rules and forms of its activity in general, and the government gives further statutes for the committee according to the law, particularly in doctrinal matters affecting the state employed personal of the church.

The church law of 1996 also gives more power to the parishes, and by this strengthens the self-governance at the local level of the church. The church law explicitly states that the parishes as the central entities of the church are

legal persons, having rights and duties, with possibilities to act as such in establishing contracts with private and public authorities and in relation to courts and other public institutions (§2). In accordance with the new “autonomous” status of the parishes, the employment of other church staff at the local level and the local church administration in general are now a task for the newly developed regional church councils (consisting of two elected members of each parish council in the region, one representative for the municipal authority, and one rural dean or priest appointed by the bishop), and no longer the responsibility of the municipal authority. But the provision of financial resources for the activity of the local church, church buildings, graveyards and for the church staff at the local level that is not employed by the state, remains a responsibility for the municipal authorities (cf. § 15).

The church law hence gives the church at the local level far more legal autonomy than the national church bodies. This makes it interesting to discuss the theoretical question of whether the Church of Norway – as a corporation existing of parishes being legal persons – might deliver a complaint on the state before the court, demanding the right to religious liberty in a certain case, or if this would not be accepted referring to that the church as such is at the same time a part of the public administration because of the constitutional provisions introduced above. If one argued that the parishes as legal persons at the municipal level might go to court accusing the state for interfering with their affairs, one would have to cope with the fact that the church law also states that the parishes can not be separated from The church of Norway (cf. §2). If one then comes to that a complaint before the national courts – and hence also before the Human Rights Court of Strasbourg if necessary – would not be possible, the legal identity of The church of Norway as a faith community is severely challenged as these kind of corporations have a right to have their cases tested at the Strasbourg court according to the established case law in the field of religious freedom after the article 9 of the ECHR (cf. i.a. Canea Catholic Church vs. Greece).

The reform process has continued also after the law reforms in 1996, giving more power to the different elected bodies of the church at all levels. For instance is now the authority to fire the priests delegated to the Diocesan Council. At present, there is a debate going on in Norway about the statutes for how the state should proceed in appointing of bishops, and whether or not the right to appoint the bishops should also be delegated to a church organ.

What characterises the Norwegian state church system compared to the systems in other Nordic countries or countries with close connection between church and state, is particularly the financial arrangements. There is no church tax. The church gets its funding over the state and municipal budgets. Further, a compensatory system is developed so that the other faith communities shall enjoy the same support as the church receives per member.

3. THE LAW ON FAITH COMMUNITIES

In 1969 the new Law on faith communities replaced the former law on Christian free churches¹¹ which had been regulating the freedom of religion of these Christian faith communities since 1845. The law on faith communities of 1969 underlines the right of individuals of all confessions to free exercise of the right to religious freedom, alone or in community with others. By stressing the universality of this right, the law takes into account the growing religious pluralism in Norway¹². It also follows up the first paragraph of the Constitutions article 2 which states that all citizens should enjoy the right to free exercise of religion. The 1969 law further emphasises the collective or corporate dimension of religious freedom, and stresses the equal status of faith communities, including the church of Norway. In addition to this formal equality, the law gives regulations that are supposed to secure factual equality between the different faith communities in order to secure equal treatment between the church and its members and the other faith communities and their members. By including provisions also for the

¹¹ The development towards better protection of religious freedom for all groups of believers has been very slow in Norway. The paragraph stating the general right to religious freedom (article 2) was added to the Constitution first in 1964 at the 150th anniversary of the constitution. The paragraph preventing Jews from settling in Norway was removed in 1851 and the paragraph excluding Jesuits in 1956.

¹² In year 2000 about 85 % of the Norwegian population are members of the state church. The secular humanist association of Norway (The Norwegian Humanist Association) has about 67 000 members. The Islam community has about 49 000 members. There are several Christian confessions and free churches outside the state church with between 5000 and 40 000 members each in addition to the smaller communities of Buddhists, Jews and Hindus. In 1996 a Cooperation Council for Communities of Religion or Belief was established in Norway. Representatives of the different faith communities – including the Church of Norway – as well as the secular Humanist Association are members of this council. The increased plurality of faith communities the last decades marks an important change in the Norwegian religious landscape.

Church of Norway in this law, it is clearly stated that the state church is also a faith community.

In its first chapter, the law of 1969 gives rules for the registration of members in the church and other faith communities (art. 3 to 9), and underlines the principle that no one can be forced to join or stay a member of a faith community against their will (art.2 and 10). For the church of Norway some of these articles are also included in the Church law of 1996. The second chapter of the law on faith communities, gives rules regulating the rights and duties of other faith communities. The faith communities can decide if they want to be registered by the state. Non-registered faith communities enjoy most of the same rights as those who are registered. The law decides i.a. that both registered and non-registered faith communities can receive state funding for their activities every year that equals the amount of money that the state church receives per year. This subsidy is calculated from the subsidies that the state church receives per member each year (articles 19 and 19a). The churches and faith communities that receive such state support can also apply for financial support from the municipal level, also calculated from the support per member to the state church at the municipal level (art. 19, second paragraph). Some rights are reserved the registered faith communities. The law of faith communities of 1969 states the right of registered faith communities to have their own graveyard (art. 18). There is a law from 1981 (no. 64) on financial support to organised communities of secular humanists. In this law it is stated that these communities should enjoy same rights to financial support as the faith communities are given in the 1969 law, both at the state and municipal level. In practice it is so far only the secular Humanist Association that has received funding with reference to this 1981 law¹³.

¹³ The Norwegian Humanist Association is the only registered community of secular humanists. Since the establishment of the organisation in 1956 it has had a strong influence on the public debate and on the politics of fields like public education. In 1974 a subject teaching secular-philosophical world views was introduced in the public school due to the efforts of the secular Humanist Association. This subject was an alternative to the subject giving traditional religious education with a focus on Christianity. The parents could choose between these two subjects until 1997 when a new subject was introduced that should be obligatory for children of all confessions, teaching about different religious but with a particular focus on Christianity and with “Christian and humanistic values” as a foundation (Plesner 1998). The lack of possibilities to exempt from the subject has been criticised by human rights experts and representatives from different faith communities. Parents that are members of the

The principle of church autonomy can be seen as the foundation for some articles concerning faith communities in particular in the other general laws of Norway. The law on marriages from 1991 gives in its article 12 an opening for that registered faith communities might get authority to conduct marriages, when the community fulfils the criteria for registration etc for faith communities given in the law of 1969, articles 12 to 17. Further, the law of 1978 on equal treatment between the sexes (no. 45) states in its article 2 that the law does not regulate the “inner affairs” of faith communities, referring to the law on faith communities of 1969. This means i.e. that there might be exceptions for faith communities from general rules about non-discrimination in case of employment. Also in the Labour law of 1977 (no. 4), the paragraph 55 A provides an exemption for religious institutions (including The church of Norway) to ask for opinions in religious matters when hiring a person for a position in the institution. There is a similar exemption in § 55 A for religious institutions to reject to hire persons who live in homosexual relationships.

III. CONCLUDING REMARKS

Our main aim in this paper has been to see whether – or to what extent – religious freedom can be secured with a state church system, looking at the case of Norway in the light of international human right conventions. The international human rights conventions do not say that the state parties have an active and positive duty to support the religious life of its citizens. It is hence not a human right to receive financial support from the state to religious activities. Therefore, in some ways one might say that the law on faith communities of 1969 goes further than the demands of international conventions by stating that the faith communities should get active support by the state. Also the equality principle is underlying the provisions of this law.

Humanist Association and some that are members of the Islamic Council have both claimed before the court the right to take their children out of the subject, but have both lost at the first level of the national court system. The two organisations and the parents they represent have stated that they are prepared to go all the way to the Human Rights Court in Strasbourg to have their case tested if necessary. In its response of June 2000 to the Norwegian report on children’s rights in Norway the UN Committee on the Conventions on the Rights of the Child recommended that the state of Norway reconsiders both the content of the subject and the limited right to exemption.

On the other hand, one might say that the state church system is giving a particular position to the Church of Norway in a symbolic sense, and that this conflict with the principle of equality and non-discrimination of other faith communities, and that it reduces the legal autonomy of the church because of the power of the King as head of the church according to paragraph 16 of the Constitution as well as other implications of the state church system (cf. above). Still, taking the judgements of the European court on human rights into consideration (cf. the already mentioned Darby case of 1990), one should first and foremost look at how the state interprets and secures the principles of individual religious freedom, church autonomy and equal treatment in practice both through legal provisions and in practice.

The present practice with state employment of priests mostly from the Evangelical-Lutheran confession to offer religious services in public institutions such as hospitals, prisons and military might for instance be evaluated and discussed from the perspective of religious freedom and the principle of non-discrimination of citizens on grounds of i.a. religious belongings and the principle of equal treatment of faith communities. Also, certain paragraphs in the Constitution could be discussed in the light of these principles, as we have pointed at in chapter II above. There are – at least on a principal level – a tension between the individual right to religious freedom and the constitutional provisions demanding a certain church belonging for the King and for half of the ministers of the government. Also one might say that there is a tension between the principle of corporate autonomy for communities of believers on the one hand and the state church system as such on the other. Nevertheless, none of these sides of the Norwegian religio-political system have so far been evaluated by the UN Human Rights Committee to violate the international human rights standards. The Constitution includes, however, a demand that the parents belonging to the state church should raise their children according to the same religion (article 2, 2nd paragraph). Even though this demand is being interpreted to be a moral and not a legal obligation, the UN Committee on Human Rights has twice (in 1994 and 1999) in their responses to the Norwegian reports to the Committee underlined that this constitutional provision about the obligation of parents belonging to the state church to raise their children in the same belief is in a clear contradiction to the principle of religious freedom as it follows from the human rights conventions.

The analysis of international provisions lining out the different dimensions of religious freedom and the analysis of the Norwegian religio-political system gives reasons to conclude that a state church system in itself is not necessarily in conflict with the principle of religious freedom from a strict legal point of view, but that it creates certain tensions both in relation to the rights of member of the statechurch and members of other faith communities. Further, we might conclude that a state church system makes it necessary to be particularly aware of the possibilities for violations to the basic right to religious freedom of all human beings in general. This right is primarily protected by the right of all members to leave the church. In the Norwegian system there are, as we have seen, arrangements that attempts to secure the principles of equal treatment and some church autonomy, even though the tensions and dilemmas remains. On the other hand, a religio-political system without a state church does not necessarily guarantee “full” freedom of religion either, even though it protects against some of the dilemmas that follows from a state church system¹⁴. To characterize the Norwegian statechurch system, it might be fruitful to compare it to other religio-political systems.

As pointed out in the introduction, the Norwegian politics of religion with its active financial support to faith communities and the close bonds between the state and the majority church, surely can be seen as an example of the religio-political model that is based on the principles of the communitarian *welfare state* approach, as separate from the liberal *laissez-faire* approach. When looking at the Norwegian religio-political system in relation to the systems of other countries¹⁵, we find that it is not so different from the systems of the other Nordic countries with their close relations between the state and the majority churches that are officially *established* as “national” churches, “folk” churches, “state” churches, and the active support to these

¹⁴ It has been stated in comments to the UN practice on freedom of religion (Nowak 1993:317) that “...the system of a state religion or a state church does not conflict with the passive freedom of religion as long as the state permits other religions alongside the official one and does not exercise direct or indirect coercion to join the latter. This has been made clear by the travaux préparatoires and is basically recognised in the literature as well. However, states with an official religion often tend to link benefits or privileges to membership in this religion, which places other persons at a disadvantage due to their religion in contravention of the prohibition of discrimination in article 2 (1)”.

¹⁵ For closer presentation on state church relations in some European countries, see for instance *Gerhard Robbers* (ed.), *State and Church in the European Union*, Nomos Verlagsgesellschaft, Baden-Baden 1996.

churches as well as to other faith communities¹⁶. Further, it has some similarities with the German system where there are several arrangements providing a basis for (close) *cooperation* between the state and churches or other faith communities, for instance in the field of religious education in public school, church taxes and the provision of religious services within the public institutions. One important difference is that this system of co-operation takes the religious neutrality of the state as a point of departure, and that it in principle opens for the same kind of co-operation and relations between the state and churches or faith communities with different size and status. Finally, the Norwegian religio-political system can be seen as a system in clear contrast to the system of countries like France and the USA where there are no formal or official ties between the state and particular churches, and where the principle of *separation* between the domain and responsibilities of the state and the churches or faith communities are both practised and legally manifested in a more strict sense than in for instance Germany.

Also when it comes to degree of state support, the French and the American system of (strict) separation differs from the Nordic and the German ones: There are fewer or no arrangements for public financial support to the faith communities, little or no provision of religious service as a part of the public system or institutions and limited legal possibilities for co-operation between the state and the faith communities in different fields. This brief summary of the religio-political systems in different countries, makes it possible to distinguish between some idealtypical “religio-political models” which together with the dichotomy of the welfare state and the laissez-faire approach¹⁷ makes it possible to line out the following figure:

¹⁶ This system of active support and close relations continue after the changes in the constitutional relations between the state and the majority church in Sweden from the 1st of January and a long prepared similar change in the relations between the state and the two majority churches in Finland, one could argue that the situation in these countries could still be understood in the light of the welfare state approach, even though the bond between the state and the majority churches are getting looser.

¹⁷ In the project “Religio-political models and contexts” (Plesner 2000), this dichotomy of approaches in the state politics in general is seen in relation to distinctions between different models for state relation to religion in general and faith communities in particular; “The confessional state model”; “The established state model”; “The cooperation model”; “The (strict) separation model” and “The atheistic state model”. The idealtypical models are used in the empirical analysis of the religio-political systems and challenges of different countries, particularly looking at different

RELIGIO-POLITICAL MODELS AND APPROACHES

Degree of support Character of relations	ESTABLISHED CHURCH MODEL	COOPERATION MODEL	(STRICT) SEPARATION MODEL
WELFARE STATE APPROACH	Norway	Germany	
LAISSEZ-FAIRE APPROACH			France USA

We have argued that it is the “established church model” that might be seen as the most proper description of the Norwegian religio-political system. As we have seen through the analysis of the Norwegian system, this system is both challenged by the quest for church autonomy for the majority church and by the quest for minority rights and equal treatment by the other faith communities. The experiences of different states with different models of state church relationship makes it reasonable to conclude that any such model should be continuously evaluated from the point of view of freedom of religion in general and the principle of church autonomy in particular.

It is an ongoing debate about the state church system in Norway. The debate relates i.a. to the growing religious plurality in Norway, even though 85%

systems for religious education in public schools. In this paper, only three of these idealtypical religio-political models are presented. The distinctions between different forms of state approaches to religion in general are i.a. derived from the comparative analysis and terms used in Campenhausen 1996 and in Robbers (ed.)1995, and are in the project related to different conceptions of religious freedom as well as positions and approaches in the socialphilosophical debate between liberals and communitarians.

are still members of the statechurch. In 1998 the national Church Council of The church of Norway appointed a committee which has as its mandate to look into different models for state church relationships, taking the results of the former church reforms as well as the present situation for the church and other faith communities into consideration. The challenges related to religious freedom – both for the church members and for the members of other faith communities – are also important items in the work of this commission. The committee shall deliver its report in the year 2002.