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CHURCH AUTONOMY IN BELGIUM

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I. INTRODUCTION

Of course churches and religious movements are autonomous in Belgium. So also could be a first reaction of lawyers dealing with the problem of church autonomy in Belgium. Arguments to illustrate this viewpoint can easily be found. Article 19 of the Belgian constitution guarantees the freedom of worship together with its free and public practice.[1] Article 21 is more specific and outspoken. It forbids the state to intervene in the appointment of ministers of any religion. The state is not allowed to prevent them from corresponding with their superiors or from publishing their acts.[2]

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1 I quote the text in Dutch and in French.
Artikel 19 Gecoördineerde Grondwet: "De vrijheid van eredienst, de vrije openbare uitoefening ervan, alsmede de vrijheid om op elk gebied zijn mening te uiten, zijn gewaarborgd, behoudens de bestraffing van de misdrijven die ter gelegenheid van het gebruikmaken van die vrijheden worden gepleegd."
Article 19 Constitution Coordonnée: "La liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions en toute matière, sont garanties, sauf la répression des délits commis à l'occasion de l'usage de ces libertés."

2 Artikel 21 Gecoördineerde Grondwet:
"De Staat heeft niet het recht zich te bemoeien met de benoeming of de installatie der bedienaren van enige eredienst of hun te verbieden briefwisseling te houden met hun

Article 21 of the Belgian constitution always has been perceived as a *pars pro toto*. It does not exclusively deal with correspondence or with the appointment of ministers. On the contrary, free internal organisation and autonomy as a whole are at stake. Could one conclude therefore that church autonomy in Belgium is a complete success, that it is in no way problematic? Obviously not. Article 21 includes the idea that church autonomy exists and that it should be taken seriously. Yet, it does not indicate its content or its limits. Even abstract tools or techniques that could be useful in the discussion are not offered. This means that the exact content of church autonomy has to be developed elsewhere than in the constitution. In this regard the ordinary legislator plays a role, and so does jurisprudence. Doctrine also could exercise some influence. In theory, underlying philosophical ideas could be taken into account as well, but such an approach is not very Belgian, a country preferring pragmatism and compromise to deep and highly elaborated theoretical constructions. And ultimately political balancing plays a role in how church autonomy is legally developed.

Bearing all this in mind, the structure of my paper will not be determined by the application of theoretical frameworks on church autonomy in Belgium. It starts from some answers given to every day questions related to church autonomy. Together they offer a global picture on how church autonomy is in Belgium, where recognition as a principle is not questioned and slowly evolves into new directions. Five ranges of questions will be asked, starting from rather formal ones, ending up with a more principle debate.

Firstly, I shall discuss how churches and religious groups can participate in Belgium's legal life. As *autonomy* is an empty shell without real possibilities

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overheid en de akten van de overheid openbaar te maken, onverminderd, in laatstgenoemd geval, de gewone aansprakelijkheid inzake drukpers en openbaarmaking. Het burgerlijk huwelijk moet altijd aan de huwelijksinzegening voorafgaan, behoudens de uitzonderingen door de wet te stellen, indien daartoe redenen zijn."

Article 21 Constitution Coordonnée:

"L'État n'a le droit d'intervenir ni dans la nomination ni dans l'installation des ministres d'un culte quelconque, ni de défendre à ceux-ci de correspondre avec leurs supérieurs, et de publier leurs actes, sauf, en ce dernier cas, la responsabilité ordinaire en matière de presse et de publication. Le mariage civil devra toujours précéder la bénédiction nuptiale, sauf les exceptions à établir par la loi, s'il y a lieu."

to develop one's own policy, this question remains essential. It could be seen as a preliminary question (I).

The second range of questions deals with another seemingly rather formal problem: to what extent can a state judge control religious matters? When and how is he authorised to intervene? How far does his power reach (II)?

Once these questions are asked, the field of rights of others as well as subtler balancing between governmental interests have to be covered. Here church autonomy is not directly aimed at, yet changes in society and in political choices do influence the scope and content of church autonomy. In domains such as labour law, environmental law, tax law, more legislation than ever before is issued. In the past, choices were left to individuals; today they are made by the state. For instance, individuals are not free to agree on the existence of a labour contract or not: such a contract is just there in case a few objective criteria are fulfilled (III).

A fourth field is completely financial. In a European system where state subsidies remain important – even if the free market is gaining field – the fact of granting or not granting financial support does affect the real scope of church autonomy, although perhaps not at every level. The link between financial options taken by the state and church autonomy has to be analysed anyway (IV).

Finally, a last question should not be forgotten. Could one say that, apart from formal control, protection of rights of others or financial limits, church autonomy is *directly* endangered in Belgium today? Here we leave the field of balancing and making choices: restrictions directly contradict the principles set forward in article 21 of the Constitution (V).

II. Participation of Churches in Legal Life

Although churches and religious movements in Belgium are autonomous, they do not enjoy any juridical personality. This means that a church, a diocese, a religious congregation, a parish can not introduce a court case, nor can they be sued. They are not entitled to own property, nor are they in a position to buy or sell. In the past, this situation caused a real problem, especially in fields such as property or civil liability. To a large extent,

problems were solved by the law of 27 June 1921 concerning non-profit associations.[3] This law, which really concretised the freedom of association as guaranteed by the constitution, was tremendously successful from its inception onwards. Already in 1921, the very year of the issuing of the new law, 2819 non-profit associations were constituted.[4] Among them, many can be situated in the field of churches and religious movements.

Although the law of 1921 resolved most of the problems connected with the absence of juridical personality for churches, two questions remained and still remain today.

Firstly, although constituting a non-profit association is fairly easy, it still requires an effort as well as a small financial contribution. To a certain extent, this could limit full church autonomy.

Secondly, the law of 27 June 1921 implies indirectly a limitation of how freedom of religion is exercised and how churches function. Indeed, choosing for a non profit association as it is described in the 1921 law, hardly can be seen as a real choice. In order to participate in the legal system, and *a fortiori* in order to apply for subventions and other advantages, organising religious groups through a non-profit organisation is almost inevitable. In other words: although the 1921 law concretises the freedom of association and of religion as promulgated in the constitution of 1831, it limits these liberties at the same time. Indeed, the law of 27 June 1921 contains some compulsory requirements concerning the way non-profit associations as aimed at in the law should be internally structured. Among other things, certain principles of *democracy* can not be avoided. This requirement entails the need for religious groups to organise themselves democratically in order to be able to function as a non profit organisation with juridical personality[5], although internally, according to religious law, their structure may as well be very hierarchical and fundamentally non-

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3 Moniteur belge, 1 July 1921. Cf. X., "Associations sans but lucratif", Revue de l'administration et du droit administratif de la Belgique 1922, 469-478.

4 *R. Verheyden*, "Het gebrek aan overheidscontrole in het belang van derden op de VZW", Rechtskundig Weekblad 1977-78, 482.

5 Cf. *R. Torfs*, Congregationele Gezondheidsinstellingen, Leuven, Peeters, 1992, 296-297.

democratic[6]. If churches had enjoyed juridical personality in the civil sphere just because of the fact of being churches, there would not have been a need to go through the 1921 law and its requirements, which are de facto slightly limiting the autonomy of churches.

In this regard the law of 27 June 1921 creates a problem at the very level of Church and State relationships as well as at the level of religious freedom. This problem can be systematically described in four stages:

① The autonomy of churches as described in article 21 of the constitution implies or should imply the right to participate in the legal life of the state.

② This participation, in a Belgian context, *de facto* is only possible through the 1921 law on non-profit associations.

③ This law, positively, makes the freedom of religion and of association more concrete. At the same time however it limits internal autonomy of religious groups, as it imposes a democratically structured model of associations.

④ The fact that real participation in legal life requires such democratic structures, at least formally, causes a problem with regard to church autonomy.

In conclusion of this first range of questions, one can say that at the very level of participation in legal life, the requirements of the 1921 law on non-profit associations cause some problems regarding church autonomy.

III. Secular Courts and Church Autonomy

A second point of discussion concerns the role that state tribunals can play with regard to internal church matters. Or, to put it in another way, does church autonomy protect churches from every possible form of control exercised by secular courts? Of course, autonomy is not limitless. But where can the borders be found?

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6 Cf. *J. Lindemans*, Verenigingen zonder Winstoogmerk, in Algemene Praktische Rechtsverzameling, Gent, Story-Scientia, 1958, p. 43-46, n° 44-49.

After a long period of silence and stability, a clear evolution seems to take place over the last few years and decades. One can, at least, distinguish two different eras, and perhaps we are on the eve of a third one.

(a) **Traditionally**, the control exercised by secular courts remains exclusively formal, which means that the civil judge only has the right to determine whether a challenged decision has been taken by the competent ecclesiastical authority.[7] This was a generally accepted approach throughout the nineteenth century, a tendency that was confirmed by the *Cour de Cassation*, the Belgian Supreme Court, in 1975.[8] In this decision, the court had to analyse a decision issued by the Court of Appeal of Liège on 5 June 1967.[9] An argument put forward in order to attack the 1967 decision was formulated in a subtle way: the argument said that the Court of Appeal had controlled whether a challenged nomination had taken place in accordance with the norms and statutes of the evangelical church, whereas the control exercised by secular courts should remain more restricted and limit itself to the question whether the nomination really took place and whether it had been pronounced by the competent religious authority.

The *Cour de Cassation* avoided the dilemma, which traditionally is considered to be an elegant approach in such legal matters. Indeed, the *Cour de Cassation* did not say that the court in Liège had the right to verify the internal procedure of the religious group. Instead of making a rather abstract statement of that kind, the *Cour de Cassation* started by describing in detail what the Court in Liège really did: it tried to discover whether the synod of the evangelical church had, according to its proper statutes, a mission of control concerning the existence of a pastoral inscription or of a similar formal requirement, before a nomination can be confirmed. By doing so, and by concluding that the synod used the rights as established by the norms and statutes, the court limited its control to a strictly formal one: it just verified the competence of the ecclesiastical authority.

In a way one could conclude that the *Cour de Cassation* still upholds the old theory, allowing a control of the competence of the authority

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7 Tribunal of Liège 29 July 1848, Belgique Judiciaire 1848, 1078; Court of Liège 22 March 1883, Pasicrisie 1883, II, 157.

8 Cour de Cassation 25 September 1975, Pasicrisie 1976, I, 111.

9 Court of Liège 5 June 1967, Jurisprudence de la Cour d'Appel de Liège 1967-68, 138.

which took the measure. And yet, there is an implicit evolution: this merely formal control is interpreted more extensively than before. It includes some control of the internal procedure, but this control is not *qualified* as such. The qualification remains as it was: determining whether the competent ecclesiastical authority has taken the challenged decision. But in practice, if somewhat slowly, a control of the internal procedure seems to become possible. In this regard the 1975 decision of the *Cour de Cassation* marks a turning point: on the one hand, it confirms the old jurisprudence, but then again through a both creative and extended qualification of what formal control means, it creates openings for the future.

(b) **A turnabout**, although cautiously formulated, can be found in a decision issued by the *Cour de Cassation* on 20 October 1994. In a subtle way the Cour goes beyond its viewpoint as reflected in 1975. The turnabout has, in a certain sense, been prepared by the Court of Appeal of Liège in the already mentioned decision of 5 June 1967. The court literally says that the judicial power has the right to investigate whether a measure has been issued by the competent religious authority, acting in its sphere of independence, within the norms and statutes of the group. The latter is new: *within the norms and statutes of the group*. The Court in Liège, by doing so, goes further than the traditional perspective. Yet at the same time it clearly points out that this control takes place in a context of *independence* of the religious group. In other words, no contradiction is discovered between a more extensive control and this principle of independence, a notion coming close to that of *church autonomy*.

This reasoning formulated in Liège in 1967, and in a skilful way not confirmed neither denied by the decision of the *Cour de Cassation* in 1975, has been developed more in detail by the same *Cour de Cassation* in 1994. A starting point for the latter decision is a judgement by the Court of Appeal in Mons of 7 January 1993.[10]

In this judgement, the Court of Appeal in Mons not only requires the correct observance of the internal procedure as prescribed by the concerned religion itself, but also insists on the respect of the right of

[10] Court of Mons, 7 January 1993, Revue de jurisprudence de Liège, Mons et Bruxelles 1993, 242, with observations by *L.L. Christians* and Revue de droit social 1993, 69 with observations by *R. Torfs*.

defence and of other principles formulated by article 6 §1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Definitely, this is a far-reaching viewpoint. Not only the competent authority is verified (first step), and the internal procedures have to be followed (second step, as accepted by the Court of Liège in 1967), but also some minimal standards as to the content of these procedures are required. This is a third, new and daring step, on which the *Cour de Cassation* had to pronounce. In its judgement of 20 October 1994, the *Cour de Cassation* revoked the innovative judgement issued by the Court in Mons.[11] Yet, the revocation took place in a way that opens certain perspectives.

Firstly, the *Cour de Cassation* remembers the principle of autonomy as formulated in article 21 of the Constitution. This means that on the one hand, the nomination and revocation of religious ministers can only be decided upon by the competent religious authority within the norms of this religion, and on the other hand, that church discipline and jurisdiction over these ministers can only be exercised by the same authority making use of the same norms.

In this regard, the *Cour de Cassation* remarks that the bishop being the ecclesiastical authority can withdraw from a member of the catholic clergy the jurisdiction as well as the pastoral charge that were conferred to him. Hence, given the principle of non-intervention by the state in church matters as guaranteed by article 21 of the Constitution, the Court of Mons had no right to evaluate the equitable character of the procedure leading to the episcopal decision. This is a good enough reason to revoke the judgement as issued by Mons.

Which conclusions can be derived from what precedes? At last two:

- The *Cour de Cassation* rejects the position taken by the Court of Appeal of Mons evaluating the equitable character of the internal ecclesiastical procedure.

[11] Cour de Cassation 20 October 1994, Arresten van het Hof van Cassatie 1994, 861, Rechtskundig Weekblad 1994-95, 1082 and Recente Arresten van het Hof van Cassatie 1995, 57.

- The *Cour de Cassation* does not pronounce itself directly on the question whether or not the religious authority should follow its proper norms, whether or not the maxim *patere legem quam ipse fecisti* is applicable. Unfortunately, the plaintiff has not asked this question. But then again the *Cour* says, in its argumentation, that the revocation of ministers of religion should take place within the norms of the concerned religion. Although the *Cour de Cassation* does not explicitly say whether or to which extent these norms can be submitted to secular judicial control, it at least seems to suggest such a possibility. Slowly, a less restrictive jurisprudential attitude seems to emerge.

  After the revocation pronounced by the *Cour de Cassation* in 1994, the *Mons*-case was submitted to the Court in Liège, which issued a provisory decision on 4 November 1997.[12] In this judgement, the Court mentions again –as the Court in Mons already did before- article 6 §1 of the European Convention and the guarantees it offers, although in a more general and abstract way than the Court in Mons used to formulate this matter. Additionally, the Court in Liège states that the protection offered to the pastor by the code of Canon law had not entirely been granted by the bishop. The pastor could not defend his rights properly. As a provisional measure he was re-established in his rights.

  On 3 June 1999, the *Cour de Cassation* had to pronounce itself on the Liège-judgement. The supreme court confirmed the viewpoint that it formulated while evaluating the Mons-judgement: article 6 §1 of the European Convention is not applicable within the framework of free internal organisation of religions as formulated in article 21 of the Constitution. Again, the question as to whether religions should apply their own norms, was not asked by the plaintiff. However, the Cour de Cassation repeated what it already suggested in its 1994 decision: the revocation of ministers of religion should take place within the norms of the concerned religion.[13]

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[12] Court of Liège 4 November 1997, Revue de jurisprudence de Liège, Mons et Bruxelles 1998, 680, with observations by *M. Westrade*.

[13] Cour de Cassation, 3 June 1999 (United Chambers), Chroniques de droit public. Publiekrechtelijke kronieken 2000, 214; *K. Martens*, "Het Hof van Cassatie en de interpretatie van artikel 21 G.W.: de verhouding tussen Kerk en Staat dan toch niet op nieuwe wegen?", (note under Cassation 3 June 1999), 215-218.

(c) A last question today is whether control by secular judges stops at this point. Or can it go further? It remains striking that not only the Court of Mons but also the Court of Liège, even after the revocation of the *Mons*-judgement by the *Cour de Cassation*, insist on the right of defence and the right to be heard in an equitable way. As the 1999-judgement of the Cour de Cassation was a second intervention in the same dossier and thus was pronounced by united chambers, it has to be applied in this particular case. But what does the future bring?

Will secular judges, sooner or later, not only control whether churches followed their proper procedures (*patere legem quam ipse fecisti*), but also whether the *quality* of these procedures is satisfactory as seen from a secular law viewpoint? Probably not immediately. Obviously, any form of quality control remains problematic: for instance, what if religious groups see a contradiction between *due process*-norms and the will of God? Whose autonomy should ultimately be protected? The autonomy of all religious groups? Of most religious groups? Or just the autonomy of mainstream "white collar" religious groups? All this could lead to a balancing between the *quality* of due process and the *quality* of religious freedom...

Anyway, at this stage, the situation concerning secular courts and church autonomy can be summarised as follows:

(a) Church autonomy was very extended up until some years ago. The civil judge could only control whether a church decision really had been taken and whether the competent religious authority had issued it. Such a control remains strictly formal.

(b) Today, control seems to go slightly further, including also the question whether the competent religious authority stayed within the internal religious norms and statutes. Although this control still can be qualified as formal, it requires a thorough investigation of internal religious norms by secular judges.

(c) Tomorrow, control could become even more all encompassing, focusing in addition to the previous, also on the *quality* of the procedure as worked out and presented by religious groups. Does it meet with the standards set forward by the European Convention on Human Rights? This control is no longer formal but examines the *content* of religious procedural norms. It is clear that it restricts the scope of church autonomy, even if it protects, in a more convincing

way than ever before, church members against their religious authorities. However, after the 1999-judgement of the Cour de Cassation, this last step is no longer a very plausible one.

IV. Increasing Importance of Secular Norms and Less Restrictive Attitudes in Applying the Existing Legislation.

Church autonomy can be analysed in a rather direct way. This led to the first range of questions concerning the participation of churches in legal life and the second cluster dealing with the secular judge and religious matters. Yet, the real significance of church autonomy can also be analysed in more oblique ways. In these cases, the scope of the discussion is not church autonomy, but ongoing discussions concerning other matters indirectly affecting church autonomy. Some trends in society and in legal life are quite striking in this regard.

Firstly, one has to admit that secular legislation covers considerably more fields and domains than it did in the past. A clear example of this trend is offered by labour law that covers much more working situations than it used to do some decades ago.

A good illustration of this trend is offered by the legal position of catholic lay pastoral workers who can be appointed, since 1997, as *ministers of religion* in the sense of article 181 of the Belgian constitution. This article affirms that the salaries and pensions of the ministers of religion are chargeable to the state. It also states that the sums necessary for this purpose are included in the annual state budget. Before 1997, the catholic church could propose only clerics as ministers of religion. So the opening to lay people in 1997 was considered to be an important step. Yet it also led to a quite important question: do these lay pastoral workers enjoy the same *sui generis* legal position as clerics in the same position do, or -another possibility- is their situation governed by a labour contract? Two tendencies can be distinguished.

A first group of observers, among them the Belgian bishops, are in favour of a legal position for pastoral workers, which is similar to that of others ministers of religion. Basically this implies that canon law governs the juridical relationship. Labour law, which tends to be more favourable to the

employee than to the employer, is put aside, whereas religious freedom and church autonomy are highlighted. In this debate, bishops and others in favour of a merely inner church legal position, openly refer to article 21 of the Constitution.

A second group, including most experts in labour law, holds a position favourable to the existence of a labour contract. The leading idea behind their reasoning can be summarised as follows: once three conditions objectively constitutive of a labour contract are fulfilled, the latter comes into existence automatically. These conditions are (a) achievement of a performance; (b) payment of salary as a result of the former; (c) pursuing the performance under the authority of an employer. As one can see, this second approach starts from another angle, which this time is not religious freedom but protection of employees through the mechanisms of labour law.

The question has not been decided upon yet.[14] It can take many years before congruous judgements have been made by tribunals and courts, and finally by the *Cour de Cassation*. Clarity may not emerge at an early stage. In the meantime, a lack of certainty dominates. And yet a solution has been found, which finds its remote origin in the striking differences between the various diocesan statutes governing the legal position of lay pastoral workers. Several bishops came to the conclusion that local differences between dioceses are hardly understood by the faithful: secular law offers to citizens a consistent legal framework, whereas church law is characterised by differences due to accidental borders between regions and people hardly differing one from another. So several bishops in Belgium developed similar legal norms, which should be adopted by each bishop separately, because that is how catholic canon law wants it to be.[15]

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[14] *R. Torfs* m.m.v. *K. Martens* (ed.), Parochie-assistenten. Leken als bedienaar van de eredienst?, in: *R. Torfs* (ed.), Scripta Canonica, I, Leuven, Peeters, 1998, x + 142 p.; *R. Torfs*, "Les assistants paroissiaux rémunérés par l'État en Belgique", Quaderni di diritto e politica ecclesiastica 1998, 255-268; *C. Engels*, "De parochie-assistent en het Belgische arbeidsrecht, zoals vuur en water?", Rechtskundig Weekblad 1997-98, 1040-1047.

[15] Can. 455 § 1: "The conference of bishops can issue general decrees only in those cases in which the common law prescribes it, or a special mandate of the Apostolic See, given either *motu proprio* or at the request of the conference, determines it." This principle entails that in all other cases, the diocesan bishop is competent.

The main ideas underpinning this unified set of norms are interesting, as they combine in a somewhat surprising but interesting way both the growing influence of labour law and the preservation of church autonomy. The ideas start from two basic principles, namely (a) the conviction that *sui generis* legal norms essentially governed by canon law remain possible and (b) the necessity of *reconstructing* as much as possible requirements and characteristics of labour law within the framework of the legal position of pastoral workers. Or, to put it in another way, the *set of norms* governing the legal position of pastoral workers remains *sui generis*, yet its *content* differs only slightly from the content of a labour contract. This approach can be illustrated by one example: canon law neither automatically foresees a term of notice nor a financial compensation at the end of the labour relationship. Labour law does. But nothing prohibits canonical legislators from freely introducing similar guarantees.The idea of reconstruction has at least two noteworthy advantages.

It first of all helps to avoid financial disasters in case, one day, secular judges qualify the working relationship of the pastoral workers as a labour contract. Indeed, both notice and financial compensation will be canonically guaranteed.

Secondly, the canonical protection of advantages similar to those offered by labour law, will certainly not stimulate pastoral workers to sue church authorities. Indeed, from this approach no considerable benefits can be expected.

The solution may be a creative one, yet it shows at the same time the seriousness of today's limits to church autonomy. It offers a strategy of *adaptation* as opposed to the idea of *confrontation*. In the meantime the fact that church autonomy is less limitless than in the past can hardly be denied.

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But even more is at stake. Apart from the fact that a growing process of regulation tends to endanger or at least limit church autonomy, another upcoming phenomenon can be distinguished. Long existing legal institutions and constructions, which in the past did not seem to have an impact on churches and religious movements, tend to interfere more and more with

However, diocesan bishops individually can issue similar norms.

church matters. It is as if some kind of *metus reverentialis* towards churches is gradually evaporating.

The most striking example of this evolution concerns possible civil liability of bishops for sexual abuse committed by a parish pastor. In a judgement of 25 September 1998, the Court of Appeal of Brussels reformed a decision issued by a lower tribunal in Brussels, which was stating that the archbishop as well as an auxiliary bishop were civilly liable for the indecent assault of young boys by a priest.[16]

The central question could be formulated as follows. Article 1384, al. 3 of the civil code formulates the presumption that a *commettant* (which is a broader notion than just an employer) is liable for faults committed by a *préposé* working for him. The notion of *préposé* goes further than the more technical and limited notion of employee.

In order to establish this liability, three elements are required. Firstly, a fault doing harm to a third party should have been committed, which is an element that nobody challenged. Secondly, the fault should have been committed by the *préposé* while exercising his functions, which is already more debatable. Finally, and also logically, the relationship *commettant-préposé* should be established. The Court of Appeal in Brussels focused on the last requirement. In order to establish the relationship *commettant-préposé*, the latter person should be in a position of *subordination* towards the former. This position is characterised by the power to give directives and by the authority exercised by the *commettant* over the *préposé*.

In order to decide upon the existence of such a relationship of subordination, the Court of Appeal scrutinised in detail the juridical position of the pastor in the Code of Canon law of 1983. This clearly is, for a secular lawyer, a hazardous undertaking, which the Court, to my feeling as a canon lawyer, failed to resolve in a canonically correct way. According to the Court in Brussels, the bishop exercises *authority* over the pastor, yet there is no *subordination* of the latter. Why this subtle difference? In canon 519 of the 1983 Code, the parish priest is defined as the *proper pastor* of the parish. Moreover, canon 522 grants to the parish priest the benefit of stability. Some

[16] Court of Brussels 25 September 1998, Journal des Tribunaux 1998, 712, Revue de jurisprudence de Liège, Mons et Bruxelles 1998, 1436, Algemeen Juridisch Tijdschrift 1998-99, 189 and Le Journal des procès 1998, n° 357, 24.

other arguments are added... Eventually the Court concludes, and I repeat, in my eyes erroneously, that the bishop has *authority* over the pastor, that he offers him a legal framework by issuing general guidelines and disciplinary measures, yet without having the right to formulate direct commands concerning the way of exercising his very ministry.

However, what matters with regard to the scope of church autonomy is this: the civil liability of the bishop is waived by involving the absence of a relationship of subordination between the pastor and the bishop in canon law.

The interest of this judgement does not lie in the fact that is based upon canon law. The analysis of the latter, in this case, hardly could be avoided. Yet the judgement is remarkable for two other reasons.

Firstly, the fact that churches, and more specifically the roman catholic church, are less separate from society than in the past, the fact that they are no longer operating in their own protected world, means that more questions will be asked as to how internal church relationships lie to traditional institutions and structures of secular law. Up until only a few years ago, the relationship between article 1384, al. 3 of the Civil Code and the catholic church was never asked. Some kind of reverential fear prohibited such an approach. Today, the situation has changed, which means that, in order to avoid a combined application of the Code of Canon law together with article 1384, al. 3 of the Civil Code leading to the bishop's civil liability, a "creative" canonical analysis of the relationship between the bishop and the parish priest turned out to be necessary. Probably, the discussion concerning church autonomy will take place, even more than before, at this level. The level of a detailed analysis of concrete relationships will be more important than abstract considerations concerning freedom of religion and church autonomy. This shift in the discussion illustrates clearly that, less than ever before, church autonomy can be considered to be a clearly established or just even a legally safe notion.

Secondly, the increasingly "offensive" approach of secular law when scrutinising internal religious problems will certainly influence the way in which religions organise themselves. Of course, in theory, they remain as autonomous as ever before. Yet, they hardly can ignore the influence secular law exercises on their own internal structures. All this could lead to

transformations within religious groups. It also entails changes in viewpoints, changes that seldom are provoked as a result of merely internal discussions. For instance, in the *Brussels*-case of 1998, the two bishops denied on their own initiative the existence of a relationship of subordination between the parish pastor and themselves. Such an argument hardly would be imaginable in an internal church discussion, where, conversely, hierarchical structures are always firmly underlined.

V. CHURCH AUTONOMY AND MONEY

Most European countries have a social system characterised by a rather generous system of state subsidies. Yet, the system tends to become less generous than it used to be in the past. Free market is gaining field. In the meantime many social and cultural undertakings hardly can survive without this support. This is, in many countries, also true for churches and religious movements, no matter how exactly concrete financing may look like. In this regard, one thing is clear: a political system characterised by generous subsidies entails difficulties in the field of religious freedom. It transforms the notion of *neutrality*, as such already hard enough to grasp, into a very elusive and problematic principle. Of course, granting subsidies is not neutral. This is equally true for financially supporting theatre companies. By helping company A and not company B, a quality label is delivered. Thus granting subsidies is rather problematic from a viewpoint of neutrality. And yet – and here a difference with the United States-system may emerge – *not* granting subsidies is also far from constituting a neutral approach. Indeed, *not* financing theatre company B in a cultural environment where public subsidies are part of the global picture, is not neutral, it expresses an openly negative attitude.

This game of granting or not granting subsidies, influences church autonomy in the way it is worked out practically. It does so in both a direct and an indirect way.

Directly, only six religious denominations[17] as well as a non-confessional humanist movement receive financial support by the Belgian state. The wages and salaries of their ministers of religion are on the state budget. Several other financial advantages are granted[18]. One could ask the question: why only six? And which are the criteria used for this support? Although the government tries to use objective criteria for recognition leading to financial support (the main criterion is the number of faithful), complete objectivity remains hard to achieve. In the meantime, it is clear that financial support has an important impact on the organising and financing of church activities. An exclusively *materialistic* analysis of religious freedom would be too one-sided, but ignoring that financial support has a link with church autonomy would be equally naïve.

Obviously, direct financial support is the most striking example of how public money can affect church autonomy. The discussion here takes place at the level of holy principles and outspoken ideas on separation of Church and State or religious freedom. Yet, at this very moment, the discussion concerning church autonomy and money takes place at a more *indirect* level. Separation ideas as well as models of Church and State relationship are only implicitly involved. The issue can be summarised as follows. In the past, the Belgian government used to finance various social and economical activities and institutions at a rather small scale. Schools with only few pupils could receive subsidies rather easily. The same was true for health care institutions with a limited number of beds. This low threshold made it possible to finance various different institutions in the same town or region. And very

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17 The roman-catholic and the protestant religion were recognised by law of 8 April 1802. The anglican and the jewish religion were recognised by law of 4 March 1870, Moniteur belge 9 March 1870. The islamic religion was recognised by law of 19 July 1974, Moniteur belge 23 August 1974. Finally, the orthodox religion was recognised by law of 17 April 1985, Moniteur belge 11 May 1985.

18 Legal personality is attributed to the ecclesiastical administrations responsible for the temporal needs of the Church. Any deficit incurred by ecclesiastical administrations for temporal goods must be paid by the municipalities. The Church may request State subsidies for the construction or renovation of its buildings. Pastors and bishops must be given appropriate housing and any expenditure for this purpose is chargeable to the municipalities or provinces. Recognised religions get free public radio and television broadcasting time. Recognised religions may also appoint army and prison chaplains, whose salaries are carried on the State budget. Cf. *R. Torfs*, "State and Church in Belgium", in: *G. Robbers* (ed.), State and Church in the European Union, Baden-Baden, Nomos, 1996, 15-36.

often, the differences between these institutions were situated at a religious or ideological level. For instance, in one town a private, catholic hospital and a public hospital existed side by side, both enjoying public subsidies. Yet more recently, a clear tendency emerged focusing on more rational financing criteria. The size of institutions and organisations has to be increased in case they still want to qualify for subsidies.[19] The new policy leads to more or less forced mergers, sometimes involving also groups with different religious and ideological backgrounds.

This trend is interesting, as at first glance it could seem to be neutral from a perspective of religious freedom. Indeed, subsidizing only larger entities gives the impression to be a perfectly legitimate governmental option. But then again, under the surface, hidden ideas concerning pluralism and religious freedom undoubtedly do play a role. The option for financing only larger institutions departs form the implicit assumption that religious motives are no longer convincingly dominant in areas such as schools (especially at a superior level)[20] and hospitals. In these fields, pluralism seems to be more accepted than in the past. With regard to the field of church autonomy, one could say that the scope of this autonomy is somewhat narrowed. Church autonomy will not be openly questioned when it comes to the hard core of churches as institutions. Yet it becomes more problematic when it also covers some other, more specific, activities in society, such as education and health care. This is why the viewpoint could be advanced that church autonomy, as a notion, is increasingly limited to those fields defined by the government as being subject to church activities. It is clear that the implicit government idea of church activities focuses more on private and ceremonial matters than on more general, public areas. It is equally clear that the state will not prohibit churches from being active in the fields of education, caritas, and health care. But then again, as a result of budget constraints, the *real* possibilities in these fields tend to become smaller.

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19 Secondary schools that undertake a voluntary merger, are entitled to more staff. Cf. article 60 Decreet Vlaamse Gemeenschap 14 juli 1998 houdende diverse maatregelen met betrekking tot het secundair onderwijs en tot wijziging van het decreet van 25 februari 1997 betreffende het basisonderwijs, Moniteur belge 29 augustus 1998.

20 At a secondary school level, some very specific sports options are available. In this context, religious or ideological motives were not taken into account.

The relationship between money and freedom will be one of the major political and legal discussion topics on the agenda of the coming decades. Especially with regard to a historically and deeply rooted fundamental right such as religious freedom, this discussion could become quite fascinating.

VI. Church Autonomy Directly Endangered

Church autonomy can be put under pressure in various ways. In this paper, I first investigated rather technical problems, such as the tools religious groups have in order to cope with legal life. Gradually, more serious limitations to church autonomy where taken into account. But in none of the cases analysed up until now, church autonomy was attacked head on. It always entered into a process of balancing with other rights, protection mechanisms, financial options. Roughly speaking, one could say that, every time church autonomy was limited in one way or another, a *good reason* was available. Perhaps not always a fully convincing reason, yet a reason which, after having been submitted to a process of balancing with church autonomy, for the time being turned out to be stronger. The relative weakness of church autonomy in this balancing may well be the sign of a creeping secularisation of society, perhaps also of a diminishing governmental interest in religious matters. Yet is does not express any intrinsic scepticism to the phenomenon of religion.

This peaceful image of real church autonomy, yet characterised by some forms of smooth decline, recently has been seriously disturbed in Belgium. The way of dealing with new religious movements or sects offers a clear illustration of changing standards.

In 1997, a parliamentary commission issued a report on sects, which, both in its approach and in its tone, turned out to be highly sceptical.[21] Among other things the report proposed the voting of a new penal law trying to prohibit the proliferation of erroneous ideas in a position to harm the rights of other

[21] For practical reasons, I quote this report only in French: Enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge. Rapport fait au nom de la commission d'enquête par mm. Duquesne et Willems, Documents parlementaires Chambre 1996-97, n^{os} 313/7 (partie I) et 313/8 (partie II).

people.[22] Eventually, the report contained a list of "sects", which finally was not approved as such by parliament[23], but was nonetheless used as a working tool in a brochure published by the French community in March 1999, entitled *Gourou, gare à toi*[24].

The parliamentary report, which is just a report and, as such, has no legal value, was followed by the law of 2 June 1998[25] creating both a Centre of

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22 Enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge. Rapport fait au nom de la commission d'enquête par mm. Duquesne et Willems, Documents parlementaires Chambre 1996-97, n° 313/8, 224, note 1: "Seront punis d'un emprisonnement de deux à cinq ans et d'une amende de … francs belges ou d'une de ces deux peines seulement, ceux qui, par voies de fait, violence, menaces ou manœuvres de contrainte psychologique contre un individu, soit en lui faisant craindre d'exposer à un dommage sa personne, sa famille, ses biens ou son emploi, soit en abusant de sa crédulité pour le persuader de l'existence de fausses entreprises, d'un pouvoir imaginaire ou de la survenance d'événements chimériques, auront porté atteinte aux droits fondamentaux visés au titre II de la Constitution coordonnée et par la Convention de sauvegarde des droits de l'homme et des libertés fondamentales."

23 Enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge. Motion adoptée en séance plénière, Documents parlementaires Chambre 1996-97, n° 313/9 :
"La Chambre des Représentants, après avoir entendu l'exposé des rapporteurs et la discussion concernant l'enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge:
1. prend connaissance du rapport de la Commission d'enquête;
2. approuve les «conclusions et recommandations» telles que reprises dans la sixième partie (des pages 208 à 226);
3. décide que le «Tableau synoptique» ne fait pas partie de ces conclusions et ne fait donc pas l'objet d'une quelconque approbation ou désapprobation par la Chambre."

24 This brochure had to be withdrawn as a result of a Court decision of 23 April 1999. Summary Judgement Tribunal of Brussels 23 April 1999, Algemeen Juridisch Tijdschrift 1999-2000, 94. This judgement was reformed by the Court of Appeal: Brussels No. 1999/KR/175 R.No. 2000/290, 20 January 2000, not published. See also *K. Martens*, "De overheidsaanpak van het sekteprobleem: een stiefmoederlijke behandeling?", (note under Summary Judgement Tribunal Brussel, 23 April 1999), Algemeen Juridisch Tijdschrift 1999-2000, 96-102.

25 Loi 2 juin 1998 portant création d'un Centre d'information et d'avis sur les organisations sectaires nuisibles et d'une Cellule administrative de coordination de la

Information[26] and an Administrative Co-ordination Unit[27]. Especially article 2 of this new law can be qualified as being highly debatable and could even be seen as potentially very dangerous. A definition is given of what a *harmful sectarian organisation* is, namely a group with a philosophical or religious vocation, or pretending so, which, in its organisation or practice, delivers itself to harmful illegal activities, harms individuals, or damages human dignity.[28]

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lutte contre les organisations sectaires nuisibles, Moniteur belge 25 November 1998; Arrêté royal 8 novembre 1998 fixant la composition, le fonctionnement et l'organisation de la Cellule administrative de coordination de la lutte contre les organisations sectaires nuisibles, Moniteur belge 9 December 1998.

[26] Le Centre d'information et d'avis sur les organisations sectaires nuisibles est chargé des missions suivantes:
1° étudier le phénomène des organisations sectaires nuisibles en Belgique ainsi que leurs liens internationaux;
2° organiser un centre de documentation accessible au public;
3° assurer l'accueil et l'information du public et informer toute personne qui en fait la demande sur ses droits et obligations et sur les moyens de faire valoir ses droits;
4° formuler soit d'initiative, soit à la demande de toute autorité publique des avis et des recommandations sur le phénomène des organisations sectaires nuisibles et en particulier sur la politique en matière de lutte contre ces organisations. (Cf. article 6, § 1 de la loi).

[27] La Cellule administrative de coordination de la lutte contre les organisations sectaires nuisibles est chargée des missions suivantes:
1° Coordonner les actions menées par les services et autorités publics compétents;
2° Examiner l'évolution des pratiques illégales des organisations sectaires nuisibles;
3° Proposer des mesures de nature à améliorer la coordination et l'efficacité de ces actions;
4° Promouvoir une politique de prévention du public à l'encontre des activités des organisations sectaires nuisibles en concertation avec les administrations et services compétents;
5° Établir une collaboration étroite avec le Centre et prendre les mesures nécessaires afin d'exécuter les propositions et recommandations du Centre. (Cf. article 15 de la loi).

[28] Article 2, alinéa premier: "Pour l'application de la présente loi, on entend par organisation sectaire nuisible, tout groupement à vocation philosophique ou religieuse, ou se prétendant tel, qui, dans son organisation ou sa pratique, se livre à des activités illégales dommageables, nuit aux individus ou à la société ou porte atteinte à la dignité humaine."

The second paragraph suggests some tools in order to discover which activities could be harmful[29], but anyway, the discretion margin of the Centre of Information remains very large. Among the serious questions that can be asked with regard to this new law in general, and article 2, in particular, one could select the following ones.

① The fact that *illegal* activities are controlled and punished, is acceptable and even fully in harmony with article 19 of the Constitution[30] which guarantees religious liberty exception made for crimes committed in the framework of exercising this freedom. But what to say about *harmful* activities which are not illegal? According to the Belgian government, the harmful character should be seen within the existing legal framework. But what does this mean? Controlling harmful activities looks like a preventive measure, limiting church autonomy, and going far beyond repressive measures perfectly fitting within the framework of religious liberty as constitutionally guaranteed.

② Who is going to define the *harmful character* of these activities? The *Centre of Information* itself, seemingly. But then again, on which criteria can the Centre base its value judgements? Article 2, al. 2 only offers very general guidelines. At least the *Centre* can not invoke divine inspiration without itself becoming a harmful sect on its own.

③ How to justify from a legal standpoint that the law only aims at groups with a *philosophical* and *religious* vocation? This leads to a discrimination in society between believers and non-believers.

Other problems, concerning for instance the protection of privacy, also can be highlighted. Yet, even the three quoted questions show the difficulties playing at the very level of religious freedom. Especially the idea that a state

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[29] Article 2, alinéa deux: "Le caractère nuisible d'un groupement sectaire est examiné sur base des principes contenus dans la Constitution, les lois, décrets et ordonnances et les conventions internationales de sauvegarde des droits de l'homme ratifiées par la Belgique." It is clear that this norm does not only include the legal texts as they are mentioned, but also the principles they are based upon. This offers to the Centre a large and dangerous margin of appreciation.

[30] Article 19 accepts the punishment of crimes committed in connection with the practice of religious freedom. Yet, the same constitution does not describe the possibility of any form of preventive action.

organisation can decide whether certain *legal* activities should be defined as harmful and therefore be controlled seriously endangers religious freedom.

Almost all political parties supported the new law. Yet, at the very deadline, the *Société anthroposophique belge* challenged the new law before the Court of Arbitration, invoking among other arguments the violation of several articles of the Belgian Constitution, including article 11 (non-discrimination) and article 19 (freedom of religion). The Court of Arbitration, in a decision of 21 March 2000, rejected the recourse and did not perceive any violation of the principle of non-discrimination or of religious freedom.[31] In the poorly motivated decision one can read that precisely the (so-called) religious character of certain groups makes them attractive to a part of the population. Precisely for this reason the legislator should be particularly vigilant. In other words, the distinction made between harmful organisations and harmful sectarian organisations is based upon an objective criterion.

However, it should be noted that the 1997 Parliamentary Report and, more concretely as well as more severely, the law of 2 June 1998, clearly and dangerously affect church autonomy. *Harmful activities* are not forbidden, yet reported and recorded. The fact that the 1998 law could be issued, that it was not heavily challenged in parliament and that criticism was more vociferous abroad than in Belgium, perfectly illustrates the current climate concerning religious movements, very often including the dominant catholic church: religious freedom is possible, church autonomy is acceptable, as long as a high degree of conformist behaviour remains present. Especially the autonomy is defended of those groups who do not need much protection as they come close to mainstream options in society.

VII. Concluding Remarks

Concluding remarks concerning church autonomy in Belgium can be divided in three observations and three underlying causes.

As a start, the brief overview offered in this paper leads to three *observations*:

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[31] Court of Arbitration n° 31/2000, 21 March 2000, role n° 1685, Moniteur belge, 22 April 2000.

1. In Belgium, *no real theory* concerning church autonomy has been developed. Although article 21 of the Constitution establishes the principle of autonomy, its content, limits and concrete application still are open to a lot of debate. In some discussions, church autonomy is directly at stake. This is true for control exercised by the secular judge over church decisions. Yet more common are the cases in which church autonomy definitely is involved, without however being clearly identified as such. Some examples could illustrate this thesis: the growing influence of labour law in church matters is very often exclusively seen as an issue of labour law; extended interpretations of civil liability affecting churches are considered as interesting evolutions within the context of civil law. The church component is often overlooked or just taken into account very indirectly. Given this somewhat indirect, rather practical approach, it is an illusion to analyse church autonomy problems from an existing framework established by and departing from article 21 of the Constitution. Of course, this article can be included in any discussion. Yet it fails to offer a tailor made framework that careful lawyers can apply more or less everywhere.

2. A thesis commonly accepted among scholars concerning Church and State relationships in Europe suggests an *increasing independence* of both players in the current legal context. This picture does not seem to be confirmed in my contribution. And yet, the idea of growing independence is not fully untrue. There *is* a growing autonomy and independence, but this independence should be situated at the level of government, authority, public policy. It is true, also in Belgium, that the state and – in our case – the catholic church, are less connected than they used to be in the past. All kind of political and tactical cross-connections, which, for instance in the *interbellum,* thoroughly coloured Belgian political life as well as society as a whole, clearly weakened themselves. Without any doubt, this evolution led to an increasing autonomy of churches – especially of the catholic church – in public speech and political life. Churches can be critical towards political choices in society without disturbing any delicate equilibrium involving confessional political parties.

3. Increasing autonomy at the level of political options goes together with a *reduced church autonomy* when it comes to every day life and concrete problems entailing a religious component. This became clear when analysing the various topics I have been dealing with in this essay. Secular judges exercise more control. New fields of regulation

such as labour law tend to restrict church autonomy. Less reverential fear towards churches leads to a growing application of existing legal figures such as civil liability. Public policy on finances, in a European context, is able to influence the real significance of church autonomy. And finally, more than ever before, church autonomy finds itself directly attacked, as the new legislation on sects sadly demonstrates. One could summarise this evolution as follows: whereas church autonomy at a *macro level*, the level of politics and debate in society, tends to grow, it conversely suffers and clearly diminishes at the *micro level* of every day problems, where church options and requirements set forward by society meet each other, and where the latter choices increasingly seem to prevail.

It is not easy to explain exactly the underlying causes of this development. Trying to discover hidden causes is not merely a legal activity. But then again, some impetus can be given, as a possible start for further investigation. Three causes partly explaining the three observations described above can be formulated.

1. A first cause explaining decreasing church autonomy at the micro-level could be a shift in *thinking about democracy*. In a recent book, the French author Marcel Gauchet writes that the focus in democracy is not any longer on the sovereignty of citizens, but much more on the protection of individual rights.[32] In a way, such an evolution is quite understandable. Concerning large options in society, differences between political groups become less important. Even *possible* differences eclipse: the death of ideologies or alternatives to the free market makes that political life in Western democracies is limited to esthetical differences and slightly unconventional accents. Yet the large direction into which society moves, remains untouched. In this framework, a lack of real political choices has to be attenuated by a better protection of rights. Or, to put it in another way, if power as such can not be avoided, then at least try to *weaken* it, try to protect people within a framework they can not influence thoroughly any longer. Protection of rights includes a debate focusing on every day problems, not on abstract political or economical options. In the middle of this debate on protection of rights, conflicts with church autonomy also do raise. The more autonomy churches have, the easier fields of tension

[32] *M. Gauchet*, La religion dans la démocratie. Parcours de la laïcité, Paris, Gallimard, 1998, 70.

with *individual* rights emerge. And as protection of individual rights may constitute the major point of attention of current democracy, it could well be that from time to time churches have to pay a price for this, by losing some autonomy.

2. Another explanation for the restricted church autonomy as it exists today in Belgium, could be lying in the *moral role* that the state still exercises. Human rights are recognised and protected, of course. But they are very seldom situated in the heart of political or legal debate. Clearly, abstract protection of fundamental rights is also a moral option, and it could well not be as abstract as it seems. Sometimes abstract ideas are just covering up more concrete options and in that regard they may contain some hypocrisy.[33] Yet in Europe, more specifically in Belgium, the state has not abandoned all moral aspirations. For instance, protecting innocent citizens against dangerous sects, and doing so *directly*, without making use of the fundamental right of religious freedom and its limits, obviously is a very moral or moralistic option. In Belgium, moral options taken by the state are less explicitly present than for instance in France where the notion of *laïcité* is worked out ideologically in a way that sometimes astonishes foreigners. Yet, it is clear that in an era when ethics are often perceived as being both complex and dispersed, the Belgian state assumes not less, and even perhaps more, than before a moral role. It can not be denied that a moral role going beyond the formal framework of protecting fundamental rights is not free of risks, as it often stimulates conformist behaviour as being morally superior.

3. Finally, decreasing church autonomy at a micro-level is influenced by a very empirical phenomenon, namely the growing gap between moral options taken by the state and viewpoints held by the leaders of the majority religious group, the roman catholic church. On various issues in society, such as abortion, homosexuality, position of women, compulsory celibacy of priests, euthanasia, divorce… the gap between mainstream thinking in society and church option grows. This seems to diminish tolerance for the ideas of the church, leading to more state interventions in the various fields described above. Here, we are confronted with a very typical characteristic of fundamental rights in Western democracies. These fundamental rights do not so much protect

[33] I thank Bob Destro for the discussion on this topic, especially concerning differences in this field between Europe and the U.S.A..

> the very mainstream thinking, as it does not need to be protected: it seldom is endangered and very often it is even applauded by society. Neither do fundamental rights protect very extreme ideas. Already in an early stage they find themselves stopped by the usual borders always attenuating unlimited freedom: public health, security, and public moral etceteras. What fundamental rights do protect, are the ideas situated in between, middle of the road between conformist behaviour and extreme originality, namely those ideas that are *moderately original*. At this stage of Belgian history, options held by the catholic church slowly evolve from *moderately original* to *extremely original*, at least in the eyes of the intellectual mainstream thinking that, of course, itself is continuously in motion. Anyway, this slow and almost hidden shift leads to a less generous acceptance of church autonomy as a whole, as well as to an increasing number of limits imposed by state authorities.

So far, a list of three observations and three underlying causes. Is the final impression concerning church autonomy a negative one? Is the authoritarian state nearby? I would not say so. And yet, watchfulness is necessary concerning two very specific points.

Firstly, when protecting rights of individuals, when taking political options, one should never forget that religious freedom is also a fundamental right and that real religious freedom includes church autonomy. It should at least be taken into account, be it that it might not always emerge as the winner at the outcome of a process of balancing.

Secondly, *direct* limitation of church autonomy, without any balancing, just in order to protect people against harmful ideas, should be banned. Here, notwithstanding good intentions, the state goes too far. Even unattractive, poor, simplistic religious groups should receive a chance. And while illegal activities should be prosecuted on a penal law basis, mediocrity and bad taste tend to destroy themselves without any external help, although it may take a long time. Yet patience is a beautiful virtue.