

## FOR EXTERNAL USE ONLY? SOME THOUGHTS ON HUMAN RIGHTS AND CHURCH LAW<sup>1</sup>

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### Abstract

*Churches have a record of neglecting human rights in their internal lives, in spite of their history of advocating human rights in political life, and in spite of the theological value of human rights as such. How is this possible? Some major arguments in literature and church life against the indiscriminate acceptance of human rights in the church are listed, analysed and evaluated, including the understanding of: Law, Enlightenment, culture, world, tradition and ministry.*

**Key words:** Church law, Ecclesiology, Enlightenment, Human Rights

Churches have a decades long record of advocating human rights, especially within the ecumenical movement.<sup>2</sup> Human dignity has been an important concept in this respect, at least partly based on an *imago Dei* anthropology.

At the same time, churches have a centuries long record of neglecting human rights in their internal lives. Human rights seem to be okay, but “for external use only”. Even today, in my Dutch context (and not only there) churches successfully appeal to only one of the fundamental rights, i.e. religious freedom, in order to tread on other fundamental rights, like rights to equality of women or homosexuals.<sup>3</sup> My question in this contribution is: How come? The credibility of our churches is at stake here.<sup>4</sup>

Discussions on human rights in the church in the area of church law (or canon law), both on an academic level and in legislative practice, so far have produced certain improvements, but a lot still has to be done, as we will see. The overall picture has hardly changed: The relationship between human rights and internal church life as ordered through church law continues to be a tense one.

A reluctance to recognise the importance of human rights outside and within the church has been more characteristic of the Christian tradition than the more recent record the churches with regard to advocating human rights outside the church might suggest. Accord-

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<sup>1</sup> Paper read at a Stellenbosch University and Protestant Theological University Kampen consultation on “Human dignity at the edges of life”, 14-15 August 2006, Stellenbosch.

<sup>2</sup> Cf. my contribution “Human Dignity – An ecumenical understanding?” in this volume.

<sup>3</sup> In cases of “conflicting fundamental rights” Dutch case law nearly always decides in favour of religious freedom.

<sup>4</sup> “[E]en kerk die de mensenrechten predikt maar binnen de eigen muren met voeten treedt, is volstrekt ongelooftwaardig...”, JA van der Ven, JS Dreyer and HJC Pieterse, “Godsbeelden en mensenrechten. Positief of negatief verband.” *Tijdschrift voor Theologie* 41 (2001), 280-305, 304; the final report of the empirical research of the three authors has been published in JA van der Ven, JS Dreyer and HJC Pieterse 2004. *Is there a God of Human Rights? The Complex Relationship between Human Rights and Religion: A South African Case*. Leiden/Boston: Brill. Cf. also James A Corriden 1979. “Human Rights in the Church: A Matter of Credibility and Authenticity.” *Concilium* (International Journal for Theology), 1979/4, No. 124 (The Church and the Rights of Man), 67-76.

ing to Anton Houtepen churches (and religions) interpret human rights as a “hermeneutical key of faith and Gospel” now, but only after they have resisted the development of human rights in many cases for a century and a half.<sup>5</sup> I am afraid that the first part of his statement still is too optimistic. If human rights indeed would function unequivocally as a “hermeneutical key of faith and Gospel”, things would be different.

### An ‘Overlapping Consensus’

The well-known Belgian canon law expert Prof Rik Torfs has provided several publications on this issue.<sup>6</sup> In an article in 1996 he addresses the issue of the relationship between theology and law.<sup>7</sup> How do law and theology cooperate in establishing church law? According to his analysis a consensus is growing among church law experts that church law is based on ecclesiology. Parallel to the constitutional principles of common law as expressed in national Constitutions, it is possible to identify ecclesiological constitutional principles for church law. However, in practice these constitutional principles often are being applied to structures of church government only. In this respect principles like universality, unity, collegiality, participation etc. are under discussion.

Torfs notes that this is a one-sidedness in church law when compared to public law. Modern constitutions are characterised by two aspects: On the one hand there are the fundamental structures of the state, but on the other hand there are the rights and freedoms, the fundamental human rights: “Both aspects need to be well-balanced”.<sup>8</sup> Generally speaking, this is not the case in church law.

A most important argument in Torfs’ approach is his proposition that human rights have a decisive *theological* value. He does not leave room for human rights in church law only because of their secular political, cultural or legal significance. If this was not the case, the introduction of human rights in church law might be interpreted as a necessary adaptation – or even concession – to modern political culture. Therefore Torfs takes another step: Human rights are an area in which theology and law have real ground in common. Church and society not only have the *formal side* of constitutional thinking in common, they also share its *contents* in terms of human rights. Even if there are different opinions as to the philosophical roots of the concept of human rights, there is an “overlapping consensus” with regard to its importance: “Anyway, the at least formal, and possibly substantial consensus on human rights provides an interface between major movements in juridical and theological thinking of our days”.<sup>9</sup> I suppose that this is true on an academic level. But what about the impact of this overlapping consensus on church life and church law?

<sup>5</sup> Cf. A Houtepen 2006. *Uit aarde, naar Gods beeld. Theologische antropologie*, Meinema: Zoetermeer, 337.

<sup>6</sup> Cf. especially R Torfs 1995. *A Healthy Rivalry. Human Rights in the Church*, (Series: Louvain Theological and Pastoral Monographs, 20), Peeters: Louvain (Dutch version: id. 1993. *Mensen en rechten in de kerk*, Davidsfonds: Leuven), and id. 2003. “Rechtsbescherming in de kerk. Nabeschouwingen”, in R Torfs, K Martens, LJ Koffeman and P Coertzen 2003. *Recht op recht in de kerk*, (Series: Canon Law Monograph Series, 3), Peeters: Leuven, 259-284.

<sup>7</sup> R Torfs. 1996. “Liefde en recht gaan hand in hand. Een denkoefening over de verhouding tussen theologie en recht”. *Tijdschrift voor Theologie* 36(1996), 270-289.

<sup>8</sup> “Inmiddels is er toch het gegeven dat moderne grondwetten doorgaans twee facetten hebben: enerzijds zijn er inderdaad die fundamentele staatsstructuren, anderzijds echter ook de rechten en vrijheden, de fundamentele mensenrechten. Beide factoren dienen met elkaar in evenwicht te zijn”. R Torfs, “Liefde en recht gaan hand in hand”, 279.

<sup>9</sup> “(D)e op zijn minst formele, mogelijk ook inhoudelijke consensus over mensenrechten vormt hoe dan ook een raakvlak tussen belangrijke stromingen in het juridische en in het theologische denken van onze dagen”, R Torfs, “Liefde en recht gaan hand in hand”, 280.

## Controversial Issues

If there is a consensus like that on an academic level, what has made it so difficult for churches to give human rights a clear place in church life – and in church law? Let me remind you of some controversial issues in the area of church law.

- It is common knowledge that one of the most blatant violations of human rights principles of the 20<sup>th</sup> century, the inclusion of racial discrimination in state law in the apartheid system, was not forced upon the churches afterwards, at least as far as the Dutch Reformed Church (DRC) family was concerned. On the contrary, church governing bodies and church lawyers included the separation of racially different persons, congregations and finally separate churches in church law long before the South African political system adopted the same strategies.<sup>10</sup> Here, church law was at odds with equality as one of the most fundamental human rights. The struggle for the restoration of the original unity of the DRC family into one church continues up to this day.
- But what about the Netherlands? Equality of men and women seems to be a leading principle in the new (2004) *Church Order of the Protestant Church in the Netherlands*<sup>11</sup> (PCN). However, “things are seldom what they seem”. Indeed, in drafting the Church Order we have tried to avoid all gender specific terms like “he” or “she”, “his” or “her” – and we almost succeeded.<sup>12</sup> Nowhere the Church Order states that to qualify for church office – either as a minister or as an elder or deacon – one should be male. In this respect the PCN is different from, among others, the Roman Catholic Church and quite a few Reformed sister churches. However, practice in the PCN is different. Quite a few congregations in the more conservative part of the church have included an article in their *local* regulations which excludes women from office. Technically speaking, such local regulations are part of church law. I wonder what would happen if someone challenges a rule like this before a church court. However, at the moment in this context church law too is at odds with equality as one of the most fundamental human rights.<sup>13</sup>
- “Fair trial” as one of the pivotal human rights is another problematic issue in church order. According to international treaties, public law has to meet a set of detailed criteria in terms of procedures in order to provide adequate legal protection to people who, for whatever reason, feel deprived of what they see as their legal rights. But, so far churches have had major problems in implementing the same principles. Independent courts were not in place in the Reformed Churches in the Netherlands before the recent unification into the PCN in 2004. A lot has improved in this respect in recent years, but many churches still fail to keep up with fair trial standards which secular law sees as an absolute minimum.
- Another example of conflict between church law and human rights might be in the area of doctrinal discipline versus freedom of expression. This is a vital issue for us as church related theologians. How does the freedom of theological research, including the freedom to bring forward its results, relate to church law regulations regarding doctrinal

<sup>10</sup> Cf. CJA Loff 1998. *Bevryding tot eenwording. Die Nederduitse Gereformeerde Sendingkerk in Suid-Afrika 1881-1994* (diss.), Kampen.

<sup>11</sup> *Kerkerde en ordinanties van de Protestantse Kerk in Nederland inclusief de overgangsbepalingen*, Boekencentrum: Zoetermeer, 2003.

<sup>12</sup> In fact, we accidentally used “his” in at least two cases. One of them (ord. 13-10-3) is not very interesting, the other one, however, is pretty funny: Ord. 3-21-1 suggests in fact that only *male* ministers could serve a congregation so inadequately that they should not be afforded another opportunity to serve any congregation.

<sup>13</sup> The same would go for the discrimination against homosexuals in and under church law, but in this respect local regulations will not likely contain explicit articles that exclude homosexuals.

discipline? Particular cases in this respect have drawn attention not too long ago in the Netherlands as well as in South Africa.

- By the way, the issue of “human rights in the church” is not only a matter of adequate legislation. “Law” is more than legislation. It is a process which includes at least basic legal principles, legislation, the application of law (both laws and unwritten law), and the administration of justice (in court).
- *A Lex Ecclesiae Fundamentalis?*
- A Charter of Fundamental Human Rights or a Bill of Rights is a pivotal element in many Constitutions.<sup>14</sup> But what about church law in this respect? Should it not include the same? The *Codex Iuris Canonici* (CIC) of the Roman Catholic Church indeed contains such a list of “The obligations and rights of all the Christian faithful” (Cann. 208-223), followed by “The obligations and rights of the lay Christian faithful” (Cann. 224-231).<sup>15</sup> An extensive analysis of Cann. 208-231 would not fit in the framework of this contribution, but I do want to share the following few observations:
- Of course it is no coincidence that the CIC not only lists rights but also obligations. Especially in Cann. 224-231, which deal with the obligations and rights of lay Christian faithful, the obligations seem to outnumber the rights.
- We recognise parallels to well-known human rights as protected in state constitutions and international treaties: “Equality regarding dignity and action” (208); “the right ... to manifest ... their opinion” (212 § 3); “to found and direct associations ... and to hold meetings” (215); (for theologians especially) “a just freedom of inquiry and of expressing their opinion” (218); “privacy” (220), etc.
- Again and again restrictive clauses are included: Equality is a fundamental right, but “according to each one’s own condition and function” (208), which maintains the non-ordination of women; freedom of opinion for lay people is fine, but “without prejudice to the integrity of faith and morals” (212 § 3); there is freedom in theological research, but only “while observing the submission due to the magisterium of the Church” (218), etc. Such restricting clauses, stipulations, provisos (related to specific purposes, procedures and competences) are common in constitutional law as well. Nevertheless, in the CIC they are characteristic of the theological questions (and solutions) behind the issue of human rights in the church.

From a formal perspective the CIC is ahead of any other Church Order I know of. I am not aware of any Church Order besides this one which provides for fundamental rights. In the *Constitution* of “my own” church – which has a role in our Church Order comparable with that of a Constitution in state law – there is only one paragraph that at least comes a bit close: “All members of the congregation are called *and authorized* to use their gifts to fulfil the mandate which Christ gives to the congregation” (Art. IV-2; my italics). Of course many stipulations in the Ordinances (laws) specify rights of either all church members or specific groups: Voting rights, “fair trial” rights in the framework of supervision and of

<sup>14</sup> See *Grondwet voor het Koninkrijk der Nederlanden* (1983), Art. 1-23, *Constitution of the Republic of South Africa* (1996), Art. 7-39.

<sup>15</sup> The CIC, for the Western Church, was renewed in 1983, as a consequence of the Second Vatican Council. Oriental law was codified in a separate *Codex Canonum Ecclesiarum Orientalium*. Between 1965 and 1981 an effort was made to conceive a *Lex Ecclesiae Fundamentalis* on which both the Latin and the Oriental *Codex* would be based, and which would include the fundamental obligations and rights of the Christian faithful. In the end the project of conceiving a *Lex Ecclesiae Fundamentalis* failed, and the most relevant *canones* were included in the CIC. See: OGM Boelens 2001. *De “Lex Ecclesiae Fundamentalis” – een gemiste kans of een kansloze misser?* (diss.), Zeist, 16-32, cf. 310f.

“complaints and disputes”,<sup>16</sup> etc. But an overall “bill of rights” is lacking. One could imagine that it would be in place in the PCN Constitution, at the highest level of legislation, as a set of legal norms to appeal to against e.g. discriminatory lower legislation and practice.

### Areas of Discussion

Let me return to my main question. How is it possible that human rights seem to be okay in church life, but “for external use only”? How can we explain the churches’ long record of neglecting human rights in their internal lives? Let me give a survey of some major arguments in literature and church life against the indiscriminate acceptance of human rights in the church, in order to analyse and evaluate these arguments. I see a number of, partially overlapping, areas of discussion regarding the (im)possibility of fully respecting human rights within the church.<sup>17</sup>

#### *The Relation between Church and Law*

There is an ongoing discussion on the concept of (church) law as such. A negative attitude regarding formal law is not unusual, especially in Reformed circles.<sup>18</sup> It is not less than a neuralgic aspect of church life – and of theology. The famous words of Rudolf Sohm about the incompatibility of church and law – “The essence of church law is in contradiction to the essence of the church”<sup>19</sup> – are still reflected in an ongoing uneasiness (to say the least) about any combination of church and law.<sup>20</sup>

I already referred to Torfs’ analysis that *among church law experts* a consensus is growing that church law is based on ecclesiology, and that it is possible to identify ecclesiological constitutional principles for church law. I am not so sure that this is a widely accepted idea among theologians in other disciplines, and what is more important: It seems necessary

<sup>16</sup> A General Regulation on the administration of justice (Generale regeling kerkelijke rechtspraak) includes extensive procedural law in order to guarantee fair trial. Cf. Leo J Koffeman, “Rechtsbescherming in de kerken van de gereformeerde traditie in Nederland”, in R Torfs *et alii*, *Recht op recht in de kerk*, 103-169/198, and: idem, “De kerkelijke rechtspraak”, in LC van Drimmelen en T van der Ploeg (reds.). 2004. *Kerk en recht*, Utrecht, 315-333.

<sup>17</sup> JA van der Ven *et alii*, *Is there a God of Human Rights?*, presents the results of empirical research among South African students on “what actual effects religious attitudes have on human rights attitudes” (xix). However, there is no mentioning of the role of human rights *within* the church. Of course, the results of this empirical research should not be translated directly into general statements with regard to Christian faith and human rights. Nevertheless, some findings do raise serious questions, for example the following one: the more the interviewed students see religion as of general importance, the lower their support of human rights” (“naarmate de leerlingen het belang van religie in het algemeen onderschrijven, veroorzaakt dat een lagere graad van instemming met de mensenrechten”, JA van der Ven *et alii*, “Godsbeelden en mensenrechten”, 303, cf. JA van der Ven *et alii*, *Is there a God of Human Rights?*, 585).

<sup>18</sup> Cf. P Coertzen, “Rechtsbescherming in die kerk”, in R Torfs *et alii*, *Recht op recht in de kerk*, 199-231-258, 230: “In Gereformeerde kerkreg was en is dit by baie die oortuiging, uit vrees vir ’n kerklike wetboek, dat die beskerming van regte nie geformaliseer moet word nie. Daar is eerder teruggeval op ’n sogenaamde aangebore regsgevoel by mense”.

<sup>19</sup> “Das Wesen des Rechts steht mit dem Wesen der Kirche im Widerspruch”, R Sohm 1892. *Kirchenrecht I. Die historischen Grundlagen*, Leipzig, 1.

<sup>20</sup> It reminds me of an encounter shortly after my appointment to the chair for church law in Kampen (1993). A co-member of an ecumenical committee on church and society issues expressed his astonishment and even disappointment about me accepting this position. My reply – “I thought that I had come to know you as a strong advocate of justice!” – only increased his astonishment. As many others he did not at all associate “church law” with “justice”. Nevertheless, the links between “law” and “justice”, however complicated, seem to be strong in biblical thinking as well. Cf. for example **למשפט** – the king’s exercise of judicial powers – and **לדקדק** – justice as living in accordance with God’s intentions – in Ps. 72:1-2.

to reconsider the concept of “law” (not only church law) theologically. How is law related to the “justice of the Kingdom of God” (Mt. 6:33)? What about the place of human dignity and human rights in this respect? How are law and ethics linked? However, in my view with regard to the acceptability of human rights in the church and in church law, the burden of proof rests on those who oppose it. And even then this opposition could only concern *particular* consequences of *particular* human rights and certainly not the concept of human rights as such.

### *The Relation between Church and Enlightenment*

The concept of human rights is rooted in Western Enlightenment, and therefore not necessarily acceptable to the church. Even Western churches are still in the process of establishing a clear relation to Enlightenment, let alone non-Western churches.

I do not feel competent to make any general statement in this regard. But at least we have to be aware that the concept of human rights is very fluid in (secular) legal philosophy and political discourse as well. This already is the case because of the issue of so-called “generations of human rights”: The first generation of “civil and political rights” may be fully recognised<sup>21</sup> and the second generation of “social rights” may be well underway to similar recognition. However, the third generation of “collective rights” or “solidarity rights” is still highly disputed. Discussion also is still continuing for the simple reason that in juridical terms “law” is always “case law”: The particular consequences of legal principles and standards have to be found in specific cases; in the field of human rights the possibility of conflicting fundamental rights complicates this even more. Speaking too easily of *the* human rights – as developed thanks to *the* Enlightenment – insufficiently recognises that there is an ongoing legal, philosophical and political discussion on the precise contents of human rights.<sup>22</sup>

### *The Relation between Church and Culture*

Especially for non-Western churches the issue might as well be whether human rights are indiscriminately acceptable in terms of cultural inheritance. Could the need for inculturation (indigenisation) of the Christian faith be a valid argument against the inclusion of (at least some of the rights we call) “universal human rights” in church law? Since I refer to the issue of the universalism-relativism debate in another contribution in this volume,<sup>23</sup> I will not elaborate on it here. Discussion necessarily will continue. The “at least formal, and possibly substantial consensus on human rights” (Torfs) does not prevent ongoing disputes, but rather makes them possible – and necessary.

<sup>21</sup> However, discrimination regarding sexual orientation still is a hot issue, not only in church law but also in secular law.

<sup>22</sup> I sometimes wonder if, from a structural perspective, the concept of “human rights” plays a role within legal debate comparable with the role of the concept of *ius divinum* in church law: The concept suggests a measure of clarity and indisputability which hampers open discussion. Cf. in this volume: W Wolbert, “Human Dignity, Human Rights and Torture”.

<sup>23</sup> Cf my contribution “Human Dignity – An ecumenical understanding?” in this volume; cf. Leo J Koffeman 2006. “Universality and inculturation of religious human rights”, in E Noort en W Wischmeyer (eds.), *Europa, Minderheiten und die Globalisierung. Theologische Überlegungen zu der sich erweiternden Welt*, (Theologie zwischen Ost und West, Band 4), Groningen, 61-66.

*The Relation between Church and World*

A fundamental difference between the church and the world often is seen as decisive: Basically the church is good and the world evil.<sup>24</sup> Therefore, the church has the duty to advocate human rights in society, but there is no need to give human rights a comparable formal role within the church. Democracy may be a valid instrument to limit abuse of power in worldly relations, but the same does not necessarily go for the church. The Spirit will make up for the lack of written law. Sacramental life and faith restore the image of God in human life. Reborn Christians do not need human rights.

I see two problems here: The depreciation of the world *and* the too positive appreciation of the church. The depreciation of the world and more specifically of human values to a certain extent furthers distrust against the whole concept of human rights. But even more, the – often naïve – positive appreciation of the church might be one of the most fundamental problems in church life and in church law. We tend to maintain a rather idealistic view of the church. The church is the people of God, the Body of Christ, the communion of saints, etc. Of course we are aware of many negative aspects of the church and we may have had very negative experiences in church life. But they seem not really to affect our ecclesiology. We have all learned to live out of the *iustificatio impii* and we know we are *simul iusti ac peccatores*, but “sin in the church”, let alone “sin of the church”, does not play a constitutive role in most ecclesiological studies.<sup>25</sup>

However, church law – and the inclusion of human rights in church law! – is also necessary for the simple reason that Christians too are sinners, irrespective of their ecclesial positions. The church requires a system of law, including both administrative law (checks and balances) as well as disciplinary law to counteract the negative consequences of this fact and to protect human dignity in the church. You cannot trust Christians, including those serving the church in ordained ministry and/or as “church leaders” without a system of law! Here ecclesiological and anthropological arguments go together. Here also the issue of human dignity comes more to the forefront.

*The Relation between Church and Tradition*

Discussions on specific human rights in the church usually take place at another level. Theology and church leadership tend to focus on tradition. Not even Reformed churches or theologians nowadays maintain that a Church Order can be derived directly from Holy Scripture, but most of them do relate church law to basic confessional views. From a formal perspective this is not very different from what Roman Catholic canon law means with “divine law”: Certain aspects of church law are beyond discussion, because they are part of tradition. In all the specific cases I have mentioned above – apartheid church law, the women-in-office issue, the role of sexual orientation in the church, the fair trial issue, and doctrinal discipline – those who defend inherited policies did or still do so from such a theological perspective.

But what about this tradition, the Reformed confessions, divine law, Holy Scripture? As to the first example we are all aware of the struggle in South Africa and beyond against of

<sup>24</sup> An allusion to this approach can be recognised in Karl Barth’s characterisation of church law as “exemplary law” (cf. K. Barth 1955. *Kirchliche Dogmatik*, IV/2, Zollikon-Zürich, § 67, 4, IV).

<sup>25</sup> Cf. Leo J Koffeman 1994. “Zonde en Kerk”, in HPJ Witte (reds.), *Kerk tussen erfenis en opdracht. Protestanten en katholieken op weg naar een gemeenschappelijk kerkbegrip*, (IIMO Research Publications 39), Utrecht-Leiden: IIMO, 143-164; *idem*. 1998. “The Nature of Sin in the Church”, in ME Brinkman en H PJ Witte (eds.), *From Roots to Fruits* (European Studies of the World Alliance of Reformed Churches, Nr. 3), Geneva: WARC, 79-99.

the theological justification of apartheid which was condemned as “heresy” by the WARC assembly of Ottawa 1982. A comparable *status confessionis* has not (yet?) been formally assessed regarding the issues of discrimination based on gender or sexual orientation, but basically comparable theological views should lead to comparable judgments.

Torfs comes to a clear conclusion: “The interface *par excellence* where theology and law meet today are human rights. They should function as the motor of the system of church law, as its constitutional core, as both a juridical and an ethical minimum that other norms in the church cannot neglect, even if they are supposed to have their roots in natural law or in divine law. If they are at odds with human rights, one should really find out if it were not better to take away these overblown titles”.<sup>26</sup> “They should”, but is it really possible in our ecclesial contexts?

This is where I have to return to the issue of doctrinal discipline,<sup>27</sup> as the battlefield of church and theology. On the one hand, is it possible for the church to limit the freedom of expression of its church related theologians? Does not that as such constitute an unjust offence against the freedom of research and the freedom of expression? On the other hand, is it possible for the church *not* to do so? Is the whole concept of “church related theology” a paradox in itself? Is it really possible to separate theology and church, or to separate within ourselves the theologian and the minister? What about *our* human dignity?

There is no easy answer here. Let me make two observations. First, at least we have to be aware that no human right is absolute. In secular law too freedom of expression is never unlimited. State security, mutual relationships in a pluralistic society and so on set certain limitations. Other human rights, like privacy or freedom of religion may prevail, etc. Secondly, many of the problems involved in recent cases of doctrinal discipline were not only related to the contents of the theological question at stake, but also – or even more – to the procedures applied. Fundamental aspects of a fair trial have often been neglected in doctrinal discipline procedures. In the PCN Church Order procedures regarding doctrinal discipline differ from all other kinds of conflicts (complaints and disputes) in at least one decisive respect: Decisions are not in the hands of an independent court, but are part of the authority of the general synod.<sup>28</sup> This brings me to my final observation.

### *The Relation between Church and Ministry*

Especially the concept of ministry tends to be rooted in theological presuppositions. In the church those entrusted with ministerial authority have the responsibility to maintain biblical standards, if necessary against the will of the majority of church members. Therefore it seems obvious, that ministry is *per se* not to be subjected to “external” legal principles.

However, an emphasis on the pivotal role of ordained ministry in the church as such does not necessarily imply that human rights can only function in a limited way. Indeed, I see ordained ministry as a decisive theological category of church law. Ecclesiologically speaking the church – as *creatura Verbi* and *sacramentum gratiae* – cannot exist without

<sup>26</sup> “Het raakvlak bij uitstek waarop theologie en recht in onze dagen mekaar ontmoeten, zijn de mensenrechten. Zij dienen te fungeren als motor van het kerkrechtelijke systeem, als constitutionele kern, als zowel juridisch als ethisch minimum waaraan andere normen in de kerk niet mogen voorbijgaan, ook als er een oorsprong in natuurrecht of goddelijk recht aan wordt toegedicht. Indien ze haaks staan op de mensenrechten, moet men maar eens goed onderzoeken of hun die ronkende eretitels niet beter zouden worden afgenomen”, R Torfs, “Liefde en recht gaan hand in hand”, 288.

<sup>27</sup> Church discipline in a wider sense, i.e. regarding Christian lifestyle, implies its own questions. It is supposed to maintain the holiness of the church. But how exactly is holiness related to justice?

<sup>28</sup> Torfs pleads in favour of independent courts for doctrinal issues in the church as well; cf. R Torfs, “Rechtsbescherming in de kerk. Nabeschouwingen”, 259-284.



some form of ordained ministry, called to proclaim the Word of God and to administer the sacraments. But this does not at all mean that the rights (and obligations!) of all “Christian faithful” have to be limited to a larger extent than necessary in our political community. Defining the church for instance as “a Christocracy *instead of* a democracy” makes no adequate contribution to the necessary discussion;<sup>29</sup> it only confuses arguments on different levels. *As a Christocracy* the church can certainly maintain fundamental democratic principles. In terms of law the PCN is hardly less democratic than the Kingdom of the Netherlands. We do not elect our general synod directly, but the same goes for our government (let alone our queen). We can challenge decisions taken on the highest executive level of the church before independent church courts, etc.

### **Conclusion**

For the moment the question whether human rights are for external use only remains open. However, if churches continue to be reluctant to give human rights an adequate place in their internal law it could on the long run affect the advocating capacity of the church in its external relations as well.

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<sup>29</sup> In political life a constitutional democracy knows many mechanisms to prevent majority injustice and to safeguard higher principles of justice.