

## REGULATION AND ADMINISTRATION OF A MINISTER OF RELIGION'S OFFICE – A SOUTH AFRICAN EXPERIENCE

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### 1. INTRODUCTION

It is a well-acknowledged fact that the development of Labour Law established an important and sometimes controversial new field of contact between the Church and the State<sup>1</sup>. In South Africa the controversy is evident in a variety of contradictory approaches to the legal position of ministers of religion as are apparent from court findings<sup>2</sup>, theological discourses<sup>3</sup> and church practices<sup>4</sup>. In this confusion not even the so-called 'gereformeerde susterskerke' ('reformed sister-churches'; churches that share the same Reformed tradition and confessions but not one church community) are of the same opinion regarding the role of Labour Law according to the regulation and administration of a minister of religion's office<sup>5</sup>.

The *Nederduitse Gereformeerde Kerk* (Dutch Reformed Church) approach accentuate the importance and relevance of Labour Law for

<sup>1</sup> Cf. ROBBERS, G. (ed.), *State and Church in the European Union*, Baden-Baden, Nomos, 1996, 344 p.

<sup>2</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC); Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit e.a. 1999 20 ILJ 1936 (LC).

<sup>3</sup> KLOPPER, E., Die godsdienstige regte van predikante in kerke van gereformeerde belydenis, Referaat gelewer te Stellenbosch, 2002, Ongepubliseerd; OLIVIER, M., "The South African Constitution and freedom of religion: some labour law imperatives and implications", *Nederduitse Gereformeerde Teologiese Tydskrif*, 43:3/4(2002), 531-542; SMIT, J., "Die predikant – 'n werknemer van die kerkraad?", *Nederduitse Gereformeerde Teologiese Tydskrif*, 45:1/2(2004), 88-98.

<sup>4</sup> DU PLOOY, A. le R., Kerke se interne verbandsreg en die arbeidswetgewing. Advies aan die Konvent van Gereformeerde Kerke in Suid-Afrika, Ongepubliseerd, 2002, 1-6.

<sup>5</sup> Cf. COERTZEN, P., "Church Order or Labour Law. The Position of ministers and others who work in the Dutch Reformed Church", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 9(2002), 401-405.

the regulation and administration of a minister's office<sup>6</sup>. According to the Church the accommodation of Labour Law in the Church Order is a necessity because the Church cannot distance itself from good labour practices as an integral part of Christian mandate<sup>7</sup>. Labour Law was accordingly incorporated in the Church Order of the *Nederduitse Gereformeerde Kerk*<sup>8</sup>.

Respectively it seems that the *Gereformeerde Kerke in Suid-Afrika* (Reformed Churches in South Africa) do not plan to accommodate Labour Law in their Church Order. This view is based on a specific interpretation of Scripture as a profound acknowledgement of the Lord's governance over the church – also in relation to the minister's office<sup>9</sup>. The importance of Labour Law is therefore not disregarded, but viewed as not applicable to the relation between a minister of religion and a congregation. In this article I will like mainly to evaluate these approaches from a Reformed perspective with reference to the church's constitutional right to religious freedom.

## 2. THE SITUATION IN SOUTH AFRICA BEFORE THE ACCEPTANCE OF THE NEW CONSTITUTION IN 1996

Even before the acceptance of the Constitution of South Africa in 1996 it was clear that the courts did not approach the matter accordingly. With regard to churches of the Reformed tradition the court found that the church is a *societas*, a society established on a contractual basis<sup>10</sup>. In the light of the argument that the law of contract governs the church the court continued that the relationship between a congregation and a minister is also subject to the law of contract. The court pointed out that a

<sup>6</sup> Aanvullende Agenda van die Algemene Sinode, 1998, *Nederduitse Gereformeerde Kerk*.

<sup>7</sup> COERTZEN, P., "Church and state in South Africa in 1999. New Labour Relations", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 7(2000), 404-408.

<sup>8</sup> Cf. *Kerkorde van die Nederduitse Gereformeerde Kerk*, 1999, Wellington, Lux Verbi.BM, artikel 12.

<sup>9</sup> DU PLOOY, A. le R., "The keys of the Kingdom as paradigm for building up the church in reformed church government", *In die Skriflig*, 32:1(1998), 53-68.

<sup>10</sup> *Theron v Ring van Wellington, N.G. Sendingkerk in S.A.* 1976 2 SA 1 (A) op 25; *Van Vuuren v Kerkraad Mórelig Gemeente, NG Kerk* 1979 4 SA 548 (0) op 557; *Long v Bishop of Cape Town* 1963 4 Searle 162 op 176; *Du Plessis v the Synod of the DR Church* 1930 CPD 403 op 414, 417; *Odendaal v Van Loggerenberg en andere* 1961 1 SA 712 (0) op 717; *De Vos v Die Ringskommissie van die Ring van die NGK, Bloemfontein* 1952 2 SA 83 (0) op 93; e.a.

minister of religion entered into a legally binding contract with a congregation and that this contract should be read in light of provisions by the Church Order: ...aangesien dit duidelik is dat die appellant, as leer-aar (sic), 'n dienskontrak aangegaan het, wat onderhewig aan die kerko-rde gelees moet word, en dat wesentlik sy eis daarop neerkom dat die bepaling van daardie kontrak afgedwing moet word<sup>11</sup>.

The courts in South African have not followed the mentioned approach consequently. In 1985 the court found that a priest of the Anglican Church could not be deemed an employee of the church. In the judgement the court made it clear that the spiritual relationship between a priest and a church does not constitute a labour relationship on a contractual basis: "The picture which emerges is not one of employment. Rather, it is a picture of a spiritual relationship, commencing in formal terms with the applicant taking an oath of canonical obedience to the Bishop, being vested with the spiritual office of a priest, being licensed to officiate as a priest and authorized to administer the sacra-ments and perform various other ministrations and duties in accordance with the canons of the church ...<sup>12</sup>"

At the time neither the court's arguments in the *Theron*-case nor the finding in the *GG Paxton*-case caused any real dispute in the theological or the judicial arenas. The lack of interest in an issue that became one of the first barriers in the church-state relationship after 1996 was most probably the result of the good relationship between the Church and the State. Churches sometimes quite idealistically accepted that the state would not interfere in so-called 'internal' church matters.

### 3. THE SITUATION IN SOUTH AFRICA AFTER THE ACCEP-TANCE OF THE NEW CONSTITUTION IN 1996

The first free democratic election in South Africa (1994) and the acceptance of the Interim Constitution in the same year also brought an irrevocable change in the church-state relationship. The magnitude of the change was emphasized by the acceptance of the final Constitution<sup>13</sup> in 1996. The 1996 Constitution essentially protects the individual's right of religious freedom and does not elaborate much on the rights of

<sup>11</sup> *Theron v Ring van Wellington, N.G. Sendingkerk* in S.A. 1976 2 SA 1 (A) op 26.

<sup>12</sup> *GG Paxton v The Church of the Province of Southern Africa* (ongerapporteerde saak NH1 1/2/1985 (PE)).

<sup>13</sup> Constitution of the Republic of South Africa, Act 108 of 1996.

religious communities<sup>14</sup>. Not even the separation of church and state is explicitly guaranteed<sup>15</sup>. However, in a comprehensive study about religious freedom manifested in the South African Constitution, Gildenhuis<sup>16</sup> showed that the rights of religious communities are adequately protected. According to Gildenhuis it is an essential feature of religious freedom that the power to define a religious community, including the office of a minister, lies with the religious body only<sup>17</sup>.

A court of a secular state does not have the authority to create a labour relationship between a minister and a congregation<sup>18</sup>. In most circumstances it would be appropriate if a court determined whether the church or congregation acted procedurally unfairly or in contravention of their own church order and referred the matter back to the relevant religious authority<sup>19</sup>. In fact, the right of religious freedom gives the opportunity to churches to define itself and its institutions<sup>20</sup>. The right of religious freedom provides the opportunity to churches to decide either to accommodate labour law in their separate church orders or to decide against the use of Labour Law<sup>21</sup>. It should be clearly stated that the choice to churches in the light of religious freedom implies that the secular state is an 'unwilling' party for the regulation and administration of an exegetic-dogmatically founded office of the church<sup>22</sup>. By definition a

<sup>14</sup> Constitution of the Republic of South Africa, Act 108 of 1996 s. 15, 16, 31.

<sup>15</sup> GILDENHUIS, J., *An Assessment of Constitutional Guarantees of Religious Rights and Freedoms in South Africa*, LL.D. Stellenbosch, 2001, 221.

<sup>16</sup> GILDENHUIS, J., *An Assessment of Constitutional Guarantees of Religious Rights and Freedoms in South Africa*, LL.D. Stellenbosch, 2001, 337 p.

<sup>17</sup> GILDENHUIS, J., *An Assessment of Constitutional Guarantees of Religious Rights and Freedoms in South Africa*, LL.D. Stellenbosch, 2001, 242.

<sup>18</sup> *Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others* 2001, 11 BLLR 1213 (LC) par 31.

<sup>19</sup> GILDENHUIS, J., *An Assessment of Constitutional Guarantees of Religious Rights and Freedoms in South Africa*, LL.D. Stellenbosch, 2001, 241-242.

<sup>20</sup> GILDENHUIS, J., *An Assessment of Constitutional Guarantees of Religious Rights and Freedoms in South Africa*, LL.D. Stellenbosch, 2001, 242; SMIT, J., *Die regsposisie van die Gereformeerde predikant in die godsdiensneutrale staat van Suid-Afrika – 'n Gereformeerde-kerkregtelike studie*, PhD, Universiteit van Noordwes – Puk-Kampus, 2005, 116.

<sup>21</sup> OLIVIER, M., "The South African Constitution and freedom of religion: some labour law imperatives and implications", *Nederduitse Gereformeerde Teologiese Tydskrif*, 43:3/4(2002), 531-542.

<sup>22</sup> SMIT, J., *Die regsposisie van die Gereformeerde predikant in die godsdiensneutrale staat van Suid-Afrika – 'n Gereformeerde-kerkregtelike studie*, PhD, Universiteit van Noordwes – Puk-Kampus, 2005, 47 e.v.

secular state does not have the competence for the regulation and administration of a religious office<sup>23</sup>.

The Constitution also protects the concept of employers' and employees' rights as stated in article 23. The first right to be protected is that everybody has the right to fair labour practices<sup>24</sup>. The most important rights of employees are to form and join a trade union and to participate in the activities and programs of such organizations<sup>25</sup>. The most important rights of employers are to form and join an employers' organization and to participate in the activities and programs of the organization<sup>26</sup>. The Constitution also guarantees the right of every trade union, employers' organization and employer to engage in collective bargaining<sup>27</sup>.

The Labour Relations Act (LRA) 66 of 1995, the Basic Conditions of Employment Act (BCEA) 75 of 1997 and the Employment Equity Act (EEA) 55 of 1998 are the most important statutory initiatives to implement the provisions of the Constitution<sup>28</sup>. Above mentioned legislation introduced a new era regarding Labour Law in South Africa since 1994. Key concepts in South Africa's labour legislation are economic development, social justice and democratization of the work place. These concepts represent an important exponent of the state's effort to adjust the 'injustices of the past' in the work place, to accommodate new developments in Labour Law and to create a better future for all South Africans<sup>29</sup>. Labour legislation also aims at the diminution of control and inferiority that exists between an employer and an employee<sup>30</sup>. The Labour Relations Act defines an employee as: "any person other than an independent contractor who –

- (a) works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- (b) in any manner assists in carrying on or conducting the business of an employer, and 'employed' and 'employment' have corresponding meanings<sup>31</sup>".

<sup>23</sup> SMIT, J., Die regsposisie van die Gereformeerde predikant in die godsdienstreue staar van Suid-Afrika – 'n Gereformeerde-kerkregtelike studie, PhD, Universiteit van Noordwes – Puk-Kampus, 2005, 112-115.

<sup>24</sup> Constitution of the Republic of South Africa, Act 108 of 1996, 23(1).

<sup>25</sup> Constitution of the Republic of South Africa, Act 108 of 1996, 23(2).

<sup>26</sup> Constitution of the Republic of South Africa, Act 108 of 1996, 23(3).

<sup>27</sup> Constitution of the Republic of South Africa, Act 108 of 1996, 23(5).

<sup>28</sup> GROGAN, J., *Workplace Law*, Kenwyn, Juta, 2003, 2.

<sup>29</sup> GROGAN, J., *Workplace Law*, Kenwyn, Juta, 2003, 7.

<sup>30</sup> Cf. JORDAAN, B. & RYCROFT, A., *Handleiding tot die Suid-Afrikaanse Arbeidsreg*, Kenwyn, Juta en Kie, 1994, 23-26.

<sup>31</sup> Labour Relations Act 66, 1995, s. 213.

According to Coertzen the churches are here immediately confronted with the question to determine what the position of a minister is with relation to the Law<sup>32</sup>. Understandably, the answer can have far reaching consequences for the whole Church-State relationship in South Africa.

#### 4. PUTTING THEORY INTO PRACTICE: TWO CASES

The first case to be trailed under the new Constitution with regard to the relationship of a minister of religion and a congregation became known as the *Schreuder*-case<sup>33</sup>. Schreuder was a minister of the *Nederduitse Gereformeerde Kerk* in a rural community. He received a calling from the *Nederduitse Gereformeerde Kerk Wilgespruit* and was ordained as fifth minister of the congregation. Together with the other ministers Schreuder was responsible for the proclamation of the Word. He also received the responsibilities to equip members of the congregation with the Word, to initiate Bible study groups and to compose the weekly newsletter of the congregation. Schreuder upgraded the congregation's newsletter and was also known as a good preacher. Irrespective of Schreuder's contribution the other ministers were of the opinion that Schreuder wasted time on fatuities and did not sufficiently focused on his pastoral duties. Schreuder was then dismissed in terms of Church Order Article 12. Schreuder then turned to court on the basis of an unfair dismissal in terms of the new Labour Relations Act, 1995.

In court the *Nederduitse Gereformeerde Kerk* raised a point *in limine* that a minister of religion could not be regarded an employee of a congregation in terms of the Labour Relations Act<sup>34</sup>. Interesting as it may be, the church's right of religious freedom was never even mentioned by the defence. The court disregarded the point *in limine* on behalf of the evidence given by two specialized witnesses<sup>35</sup>. The evidence before the court can be summarized as:

<sup>32</sup> COERTZEN, P., "Church and state in South Africa in 1999. New Labour Relations", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 7(2000), 394.

<sup>33</sup> *Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit* e.a. 1999 20 ILJ 1936 (LC).

<sup>34</sup> *Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit* e.a. 1999 20 ILJ 1936 (LC) par. 14-28.

<sup>35</sup> *Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit* e.a. 1999 20 ILJ 1936 (LC) par. 14-28.

- The church is a *societas* governed by the law of contract<sup>36</sup>.
- A minister of the *Nederduitse Gereformeerde Kerk* entered into a legally binding labour contract with the congregation. The contract stipulates the congregation's responsibility towards a minister of religion regarding his stipendium. It also stipulates the responsibilities of the minister regarding his work in the congregation<sup>37</sup>.
- It was also pointed out that the Church Order uses words like 'n ander betrekking' (another occupation), 'in wie se diens' (in who's office) and 'die ander werkgewer' (the other employer) with regard to the regulation and administration of a minister's office<sup>38</sup>.

An important development during the *Schreuder*-case, and even a contradiction in view of the point *in limine*, was the decision of the Synod of the *Nederduitse Gereformeerde Kerk*. The Synod accepted a proposal to change several of the articles in the Church Order regarding the regulation and administration of a minister's office<sup>39</sup>. The most important change made was the reformulation of article 12. In 12.1 it is clearly stated that a minister henceforth should be regarded an employee of a congregation or church community in who's service he stands<sup>40</sup>. Because of the evidence before the court the defence's argument that the minister should be considered an independent contractor was also rejected<sup>41</sup>. The *Nederduitse Gereformeerde Kerk's* definition of the office of a minister gave the court in conclusion a clear indication to find that Schreuder was an employee of the church<sup>42</sup>.

A second case before the court was the *Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & Others*<sup>43</sup>. A priest of the

<sup>36</sup> *Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit e.a.* 1999 20 ILJ 1936 (LC) par. 22.

<sup>37</sup> *Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit e.a.* 1999 20 ILJ 1936 (LC) par. 26.

<sup>38</sup> *Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit e.a.* 1999 20 ILJ 1936 (LC) par. 16.

<sup>39</sup> *Nederduitse Gereformeerde Kerk, aanvullende Agenda van die Algemene Sinode 1998, Begeleidende Nota.*

<sup>40</sup> *Kerkorde van die Nederduitse Gereformeerde Kerk, 1999, Wellington, Lux Verbi.BM, artikel 12.1.*

<sup>41</sup> *Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit e.a.* 1999 20 ILJ 1936 (LC) par. 26.

<sup>42</sup> *Schreuder v Die Nederduitse Gereformeerde Kerk Wilgespruit e.a.* 1999 20 ILJ 1936 (LC) par. 27.

<sup>43</sup> *Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others* [2001] 11 BLLR 1213 (LC).

Anglican Church was dismissed after a disciplinary hearing. He then turned to the *Commission for Conciliation, Mediation and Arbitration* (CCMA) on the basis of an unfair dismissal. The commissioner of the CCMA rejected the point *in limine* raised by the Anglican Church that the relationship between the Church and a priest is not regulated or administered on a contractual basis. The commissioner found that a priest indeed is an employee of the Church. The Anglican Church appealed against the finding of the commissioner to the Labour Court. The Labour Court revised the case and reevaluated the point *in limine* rejected by the CCMA. The point *in limine* viewed two different matters:

- That the third respondent (the priest) was not an employee of the applicant (the Anglican Church)<sup>44</sup>.
- That, should the first respondent (the CCMA) assume jurisdiction over a decision made by the applicant, it would constitute unjustifiable infringement of the applicant's rights to freedom of religion and association, as set out in the Constitution of the Republic of South Africa Act 108 of 1996<sup>45</sup>.

The Anglican Church motivated the statement that a priest should not be considered an employee of the Church on the following grounds:

- A) No person can enter the priesthood within applicant's communion without being called by God, which calling is tested by the Church;
- B) That ordination does not guarantee office, yet an oath of obeisance is required before ordination;
- C) The licensing was ritualistic and merely confirmed, yet again, the oath taken when admitted to priesthood... entrusted the priest with the 'cure of souls' in respect of the licensed area;
- D) The rights, duties and obligations as contained in the constitution and canons, while regulatory, did not create rights outside its confines;
- E) That since the function of the priest is to spread the word of God; the priest is therefore not a 'servant' of the church, but a 'servant' of God<sup>46</sup>.

The learned Judge came to the conclusion that there was no contract of employment between the Church and a priest and therefore concluded

<sup>44</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 5.

<sup>45</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 5.

<sup>46</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 11.

that the relationship cannot be described as one of employment in terms of the Labour Relations Act<sup>47</sup>. The court's verdict was based on the finding that the parties involved did not have the intention to enter a legally binding contract of employment<sup>48</sup>. The court also found that the existence of a contract is necessary for purposes of establishing an employment relationship<sup>49</sup>. The court pointed out that the Anglican Church had led unchallenged evidence that, like Anglican churches throughout the world, it did not enter into contracts of employment with its clergy<sup>50</sup>. Therefore the relationship between a priest and the Church could not be described in terms of the Labour Relations Act as one of employment<sup>51</sup>. Because of the conclusion reached regarding the first ground the court did not indulge in the second question about an interference of the church's right of religious freedom<sup>52</sup>.

Thus it remains an intruding question how the courts would evaluate the regulation and administration of a minister of religion's office merely on the grounds of a church's appeal to the constitutional right of religious freedom. In the *Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & Others* the learned Judge made the following remark: "I may however add that had I not found that there was no contract of employment between the parties, I would not have interfered with the determination as made by the second respondent (the CCMA)<sup>53</sup>".

It is suggested that a court should evaluate the regulation and administration of a minister's office from a clear understanding of the limitations imposed on the court by the constitutional right of religious freedom. Gildenhuys stated: "It is improbable that, even on the extended principles of review of a decision of a religious body, a court would have substituted its opinion for the opinion of the religious body on the

<sup>47</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 39-40.

<sup>48</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 39.

<sup>49</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 40.

<sup>50</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 14.

<sup>51</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 30-40.

<sup>52</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 41.

<sup>53</sup> Church of the Province of Southern Africa (Diocese of Cape Town) v CCMA & others [2001] 11 BLLR 1213 (LC) par. 41.

merits of the matter to find that the religious body had made a wrong decision... A court would not be in a position to assess the abilities or shortcomings of the pastoral duties of a minister. To assume such jurisdiction and to define the ambit of a minister's responsibilities and moreover, to measure and to pronounce on his conduct or competence in terms would be unacceptable in the light of religious freedom. Furthermore, to reinstate such a minister (even if only in the employ of the presbytery or synod) would be to assume a jurisdiction the court does not have<sup>54</sup>.

However, in the mentioned cases ironically as it may seem, the regulation and administration of a minister's office were most probably based on a fair evaluation of the churches involved definition of the specific office.

## 5. ACCOMODATING LABOUR LAW IN A CHURCH ORDER

Once a church has decided to accommodate Labour Law in a church order with regard to a minister's office, every facet of the law is applicable on the relationship<sup>55</sup>. A church does not have the liberty to exclude parts of the law. Therefore any stipulation of the Church Order or decision of the church that are in conflict with the Law on Labour Relations would be regarded as invalid from a statutory point of view<sup>56</sup>. Churches should be exegetically and dogmatically sure if such an approach is valid in the light of the royal governance of the Lord over the church or if the mentioned scenario possibly implicates an exchange of church polity for the law of the state. Van't Spijker<sup>57</sup> asked a principally founded question that churches should adhere to confront with the accommodation or omission of Labour Law in a church order. He asked: "Kerklijke doctrine is een kwestie van belijdenis. Juridische doctrine een kwestie van

<sup>54</sup> GILDENHUYTS, J., *An Assessment of Constitutional Guarantees of Religious Rights and Freedoms in South Africa*, LL.D. Stellenbosch, 2001, 242.

<sup>55</sup> OLIVIER, M. "The South African Constitution and freedom of religion: some labour law imperatives and implications", *Nederduitse Gereformeerde Teologiese Tydskrif*, 43:3/4(2002), 531-542.

<sup>56</sup> COERTZEN, P., "Church Order or Labour Law. The Position of ministers and others who work in the Dutch Reformed Church", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 9(2002), 408.

<sup>57</sup> VAN 'T SPIJKER, W., "Proefschrift dr. Santing-Wubs behandelt twee uit elkaar gegroeide juridische werelden. Kerklid voor de burgerlijke rechter." *Reformatoisch Dagblad*, 19 Maart, 2003, 23.

literatuur. Kerklijke tucht is een genademiddel... Tuchtrecht voor de burgerlijke balie is van een ander gehalte. En het begrip analogie is theologisch te zeer geladen dan dat het gebruikt kan worden om een toetscriterium aan te leggen dat geldt binnen het koninkrijk der hemelen.... de burgerlijke rechter [kan] niet oordelen naar de Bergrede. Maar waar blijft het recht van Christus, ik bedoel de recht van de genade en der verzoening... wanneer slechts de 'civilitas' van het rijk van deze wereld beoordelingsnorm wordt in een geding tussen hen die zeggen dat zij tot de heiligen behoren<sup>58</sup>?"

Questions have also been posed to a definition of a minister's office that lead to the assimilation with that of an employee<sup>59</sup>. It has been argued that the office of a minister differs in material ways from an employment contract between an employer and employee<sup>60</sup>. The very basis of an employee's relationship with an employer is the provision of service for economic gain<sup>61</sup>. A minister engages in service of the Lord (and even the church) on the basis of a religious calling<sup>62</sup>. On behalf of his calling a minister does not devote his working life but his whole life to the church and religion<sup>63</sup>. It is subsequently incongruous to argue that the basis of a minister's relationship to the church is one of service for economic gain<sup>64</sup>.

Furthermore, the question should be asked if it is at all possible to reconcile the different, in fact even opposing presuppositions and procedures of Labour Law and Church Polity in view of the mandate and purpose of the church. At least since the Industrial Revolution labour legislation regulates a relationship between parties that have been

<sup>58</sup> VAN 'T SPIJKER, W., "Proefschrift dr. Santing-Wubs behandelt twee uit elkaar gegroeide juridische werelden. Kerklid voor de burgerlijke rechter." *Reformatorisch Dagblad*, 19 Maart, 2003, 23.

<sup>59</sup> GRANT, B., "Is a Priest an Employee for the Purposes of our Labour Legislation?" *Obiter*, 24:1(2003), 161.

<sup>60</sup> GRANT, B., "Is a Priest an Employee for the Purposes of our Labour Legislation?" *Obiter*, 24:1(2003), 161.

<sup>61</sup> GRANT, B., "Is a Priest an Employee for the Purposes of our Labour Legislation?" *Obiter*, 24:1(2003), 161.

<sup>62</sup> GRANT, B., "Is a Priest an Employee for the Purposes of our Labour Legislation?" *Obiter*, 24:1(2003), 161.

<sup>63</sup> GRANT, B., "Is a Priest an Employee for the Purposes of our Labour Legislation?" *Obiter*, 24:1(2003), 161.

<sup>64</sup> GRANT, B., "Is a Priest an Employee for the Purposes of our Labour Legislation?" *Obiter*, 24:1(2003), 161.

described as one of control and inferiority<sup>65</sup>. It is also clear that the exercise of 'control' would most probably always be part of a labour relationship<sup>66</sup>. The very basis of labour relationships creates the possibility of a revolutionistic approach to better the employee's position. On the other hand the church is defined by the Great Commandment to love the Lord your God and to love your neighbor as you love yourself<sup>67</sup>. The regulation and administration of a minister's office is not determined by the self-assertion of the involved parties but through immolation in the light of the Gospel<sup>68</sup>.

Practical problems that could arise in view of the cases discussed are manifold. In these cases the court looked at the question of whether a minister was an employee of the church in the limited context of unfair dismissal. If a minister is found to be an employee in terms of the Labour Relations Act s. 213 he would also be entitled to rely on other provisions of the Act<sup>69</sup>. These provisions provide the right to form and participate in trade unions<sup>70</sup>, the right to strike<sup>71</sup> and to engage in picketing<sup>72</sup>. Even more problematic may be the provisions of the Basic Conditions of Employment Act<sup>73</sup>. This Act has the same definition of an employee as the Labour Relations Act<sup>74</sup>. The Basic Conditions of Employment Act provides for additional payment for work on Sundays<sup>75</sup>, allowances for people who perform night work<sup>76</sup> and special provisions for people who work on public holidays<sup>77</sup>, which include Easter and Christmas holidays. Accommodating these provisions of Labour Law in South Africa would undoubtedly make it difficult to function as church in the light of the Gospel.

<sup>65</sup> GROGAN, J., *Workplace Law*, Kenwyn, Juta, 2003, 15.

<sup>66</sup> JORDAAN, B. & RYCROFT, A., *Handleiding tot die Suid-Afrikaanse Arbeidsreg*, Kenwyn, Juta en Kie, 1994, 23-26.

<sup>67</sup> Matteus 22:37-40.

<sup>68</sup> Romeine 12:1-2.

<sup>69</sup> GRANT, B., "Is a Priest an Employee for the Purposes of our Labour Legislation?" *Obiter*, 24:1(2003), 162.

<sup>70</sup> Labour Relations Act 66, 1995, artikel 213 s. 6.

<sup>71</sup> Labour Relations Act 66, 1995, artikel 213 s. 64.

<sup>72</sup> Labour Relations Act 66, 1995, artikel 213 s. 69.

<sup>73</sup> Basic Conditions of Employment Act 75 of 69.

<sup>74</sup> Basic Conditions of Employment Act 75 of 69 s. 1.

<sup>75</sup> Basic Conditions of Employment Act 75 of 69 s. 16.

<sup>76</sup> Basic Conditions of Employment Act 75 of 69 s. 17.

<sup>77</sup> Basic Conditions of Employment Act 75 of 69 s. 18.

## 6. OMISSION OF LABOUR LAW IN A CHURCH ORDER

The position of the *Gereformeerde Kerke in Suid-Afrika* with regard to this matter seems to be closer to that of the Anglican Church than that of the *Nederduitse Gereformeerde Kerk*. It has been suggested that the *Gereformeerde Kerke* do not have to accommodate Labour Law in their Church Order for the regulation and administration of a minister's office<sup>78</sup>. According to the tradition of church polity in the *Gereformeerde Kerke* the regulation and administration of a minister's office by the church is essentially part of the unique way the Church is governed by the Lord<sup>79</sup>. The aim of the Church Order is therefore not to prescribe or even suggest a way of governance for the state. The Church Order is a manifestation of the way in which the *Gereformeerde Kerke* understand the governance of the Lord over the church as the body of Christ in light of Scriptures and the Confession<sup>80</sup>.

In this regard it should be stated that the Church Order constitutes a new form of governance for believers; therefore also a unique form of governance for the offices of the church in accordance with Scripture<sup>81</sup>. The Church Order could not be considered a 'law unto itself', but is merely the practical implementation of the principles given to the Church in Scriptures for church governance – including the regulation and administration of a minister's office<sup>82</sup>. Nowhere does the Church Order mention the use of contracts for the regulation and administration of any of the internal offices of the church. On the contrary, it should be

<sup>78</sup> DU PLOOY, A. le R., Kerke se interne verbandsreg en die arbeidswetgewing. Advies aan die Konvent van Gereformeerde Kerke in Suid-Afrika, 2002, 1-6. Ongepubliseerd; SMIT, J., "Die predikant – 'n werknemer van die kerkraad?" *Nederduitse Gereformeerde Teologiese Tydskrif*, 45(2004), 88-98; SMIT, J., *Die regsposisie van die Gereformeerde predikant in die godsdiensneutrale staat van Suid-Afrika – 'n Gereformeerde-kerkregtelike studie*, PhD, Universiteit van Noordwes – Puk-Kampus, 2005, 230 p.

<sup>79</sup> DE BRES, G., Die Nederlandse geloofsbelijdenis, in *Die berynde Psalms*, Kaapstad, N.G. Kerk-uitgewers, 2001, artikel 31.

<sup>80</sup> SPOELSTRA, B., *Gereformeerde Kerkreg en Kerkregering. 'n Handboek by die Kerkorde*, Hammanskraal, Hammanskraalse Teologiese Skool van die Gereformeerde Kerke in Suid-Afrika, 1989, 23-26.

<sup>81</sup> SMIT, C.J., "A Governing of the heart. Mainly as seen by John Calvin", in Neuser, W. & Selderhuis, H.J., (red.), *Ordenlich und fruchtbar. Festschrift für Willem van't Spijker*, Leiden, Uitgeverij J.J. Groen en Zoon, 1997, 99-110.

<sup>82</sup> SMIT, C.J., "Kerkorde en belydenis", *In die Skriflig*, 18:70(1984), 41-46; SMIT, C.J., "Tot lof van die kerkorde... in sy dienskneggewaad", *In die Skriflig*, 18:71(1984), 37-44; SMIT, C.J., "Tot lof van die kerkorde... in sy dienskneggewaad". *In die Skriflig*, 18:72(1984), 21-28.

said that the Church Order functions for the Church as the *ius constitutum* and the *ius constituendum*<sup>83</sup>. The *ius constitutum* (Church Order) is the manifestation of the *ius constituendum* – the ideal view of church polity researched and still being explored in Scripture<sup>84</sup>.

Furthermore, a minister does not obtain rights and obligations by entering a contract of employment with a local congregation. The rights and obligations of a minister are determined by the public ordination<sup>85</sup>. In his Comment on the Church Order, Spoelstra<sup>86</sup> made it profoundly clear that a congregation does not employ a minister of religion in time of the ordination, but that the inner calling of a minister is confirmed by the ordination and that the congregation formally accepts the minister as a servant of God in the local church. Reformed church polity and the regulation and administration of a minister's office by the church are therefore regarded an *ius sui generis*<sup>87</sup>.

The Lord's governance over the Church is, *inter alia*, essentially manifested in the specific offices<sup>88</sup>. The Church Order emphasizes this fact by mentioning the offices as the first principle to maintain good order in the Church of Christ<sup>89</sup>. The different offices are those of the ministers, elders and deacons<sup>90</sup>. These offices were given to the Church by the Lord to administer the keys of the Kingdom of Heaven<sup>91</sup> and to provide for the needy<sup>92</sup>. No earthly 'offices' or 'services' have the same specific object and no other could be described as 'gracious gifts' bestowed upon

<sup>83</sup> VAN DER LINDE, G.P.L., *Grondbeginsels van die Presbiteriale kerkregeringstelsel*, Potchefstroom, Pro Rege, 1965, 123.

<sup>84</sup> VAN DER LINDE, G.P.L., *Grondbeginsels van die Presbiteriale kerkregeringstelsel*, Potchefstroom, Pro Rege, 1965, 123.

<sup>85</sup> SMIT, J., Die regsposisie van die Gereformeerde predikant in die godsdienstneutrale staat van Suid-Afrika – 'n Gereformeerde-kerkregtelike studie, PhD, Universiteit van Noordwes – Puk-Kampus, 2005, 142-149.

<sup>86</sup> SPOELSTRA, B., *Gereformeerde Kerkreg en Kerkregering. 'n Handboek by die Kerkorde*, Hammanskraal, Hammanskraalse Teologiese Skool van die Gereformeerde Kerke in Suid-Afrika, 1989, 52.

<sup>87</sup> VORSTER, J.M., *An Introduction to Reformed Church Polity*. Potchefstroom, Potchefstroomse Teologiese Publikasies, 1999, 1.

<sup>88</sup> DE BRES, G., Die Nederlandse geloofsbelijdenis, in *Die berymde Psalms*, Kaapstad, N.G. Kerk-uitgewers, 2001, artikels 29-31.

<sup>89</sup> Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika soos gewysig deur verskillende sinodes, Potchefstroom, Admin. Buro van die GKSA, 1998, artikel 1.

<sup>90</sup> Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika soos gewysig deur verskillende sinodes, Potchefstroom, Admin. Buro van die GKSA, 1998, artikel 1.

<sup>91</sup> Matteus 16:19.

<sup>92</sup> Handeling 6:1-7.

the church<sup>93</sup>. In St. Paul's Letter to the Ephesians the apostles are referred to as the foundation of the church<sup>94</sup>. It is widely accepted in reformed church polity that the elders continued the work of the apostles, and also, that the office of a minister is a specification of the office of the elders<sup>95</sup>. Therefore the Church Order deals first with regulations for the 'unique and important' office of ministers after the introductory articles<sup>96</sup>.

According to the Church Order the fundamental principle for the regulation and administration of a minister's office is the calling he receives from the Lord. Article 4 of the Church Order accordingly deals with a person who has not previously served in the office of the Word. The academic knowledge of a person is examined preparatively (*preparatoir*) at the Theological Seminary (together with the curators of the church) while a candidate's doctrine and life are examined *peremtoir* by the regional synod<sup>97</sup>. This examination by the regional synod is necessary to determine the authenticity of the inner calling. No one may enter the ministry if he cannot give proof of this calling<sup>98</sup>.

In the case of a minister that has been called from one church to another his name should be announced to the congregation for at least three consecutive Sundays<sup>99</sup>. If no objection has been tabled, the ordination should take place with advice of the claccis<sup>100</sup>. The time of approbation serves to confirm the calling of a minister that has been ordained before in a fellow church<sup>101</sup>. The letter of calling, that should be handed in at the congregation before the ordination, should therefore not be

<sup>93</sup> Efesiërs 4:1-16.

<sup>94</sup> Efesiërs 2:20.

<sup>95</sup> SILLEVIS SMITT, P.A.E., *De organiasie van de Christelike kerk in den apostolischen tijd*, Rotterdam, De Vries, 1910, 158 e.v.

<sup>96</sup> SPOELSTRA, B., *Gereformeerde Kerkreg en Kerkregering. 'n Handboek by die Kerkorde*, Hammanskraal, Hammanskraalse Teologiese Skool van die Gereformeerde Kerke in Suid-Afrika, 1989, 41.

<sup>97</sup> *Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika soos gewysig deur verskillende sinodes*, Potchefstroom, Admin. Buro van die GKSA, 1998, artikel 4.

<sup>98</sup> VORSTER, J.M., *An Introduction to Reformed Church Polity*, Potchefstroom, Potchefstroomse Teologiese Publikasies, 1999, 18.

<sup>99</sup> *Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika soos gewysig deur verskillende sinodes*, Potchefstroom, Admin. Buro van die GKSA, 1998, artikel 5.

<sup>100</sup> *Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika soos gewysig deur verskillende sinodes*, Potchefstroom, Admin. Buro van die GKSA, 1998, artikel 5.

<sup>101</sup> SPOELSTRA, B., *Gereformeerde Kerkreg en Kerkregering. 'n Handboek by die Kerkorde*, Hammanskraal, Hammanskraalse Teologiese Skool van die Gereformeerde Kerke in Suid-Afrika, 1989, 55.

considered a letter of service<sup>102</sup>. The letter of calling is a formal and orderly way to inform a minister that he has been called to a congregation by God<sup>103</sup>. The aim of the Church order is not to regulate and administer a relationship based on a contract, but merely to regulate a calling from the Lord<sup>104</sup>. The Church Order therefor regulates a religious or spiritual relationship and not a relationship in terms of a secular approach<sup>105</sup>.

Regarding the question of control exercised between a minister and a church council, the relationship is quite unique. The Church Order emphasizes the fact that the minister and the church council have to carry out their different duties and also carry out the same duties together with one another<sup>106</sup>. The equality of the offices, that also manifests in the same duties of the minister and the elders, should be founded in the office of the Lord<sup>107</sup>. This office is threefold as it manifests in the work of the Lord on earth as the highest Prophet, only Priest and internal King<sup>108</sup>. All believers are indeed prophet, priest and king in the Lord<sup>109</sup>. However, it is practically impossible with regard to the governance of the church for one person to fulfil these offices simultaneously<sup>110</sup>. Therefor the offices are formally distinguished but not separated from each other<sup>111</sup>. Consequently the equality between the different offices is that one office does not govern

<sup>102</sup> SMIT, J., *Die regsposisie van die Gereformeerde predikant in die godsdiensneutrale staat van Suid-Afrika – 'n Gereformeerd-kerkregtelike studie*, PhD, Universiteit van Noordwes – Puk-Kampus, 2005, 167-172.

<sup>103</sup> Cf. *Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika soos gewysig deur verskillende sinodes*, Potchefstroom, Admin. Buro van die GKSA, 1998, artikel 1.

<sup>104</sup> *Kerkorde van die Gereformeerde Kerke in Suid-Afrika*, artikels 16, 23.

<sup>105</sup> SMIT, J., *Die regsposisie van die Gereformeerde predikant in die godsdiensneutrale staat van Suid-Afrika – 'n Gereformeerd-kerkregtelike studie*, PhD, Universiteit van Noordwes – Puk-Kampus, 2005, 130.

<sup>106</sup> *Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika soos gewysig deur verskillende sinodes*, Potchefstroom, Admin. Buro van die GKSA, 1998, artikels 16, 23.

<sup>107</sup> VAN DER LINDE, G.P.L., *Grondbeginsels van die Presbiteriale kerkregeringstelsel*, Potchefstroom, Pro Rege, 1965, 58-65.

<sup>108</sup> URSINUS, Z en OLIVIANUS, C., *Die Heidelbergse Kategismus in, Psalmboek. Die Berymde en Omgedigte Psalms en ander Skrifberymings in gebruik by die Gereformeerde Kerke in Suid-Afrika*, 2001, NG Kerk-Uitgewers, HK Sondag 12 vr. & ant. 32.

<sup>109</sup> URSINUS, Z en OLIVIANUS, C., *Die Heidelbergse Kategismus in, Psalmboek. Die Berymde en Omgedigte Psalms en ander Skrifberymings in gebruik by die Gereformeerde Kerke in Suid-Afrika*, 2001, NG Kerk-Uitgewers, HK Sondag 12 vr. & ant. 32.

<sup>110</sup> VAN DER LINDE, G.P.L., *Grondbeginsels van die Presbiteriale kerkregeringstelsel*, Potchefstroom, Pro Rege, 1965, 55-58.

<sup>111</sup> VAN 'T SPIJKER, W., *De ambten bij Martin Bucer*, Kampen, Kok, 1970, 363.

over the other offices in the church for the governance of the church lies with the Lord only<sup>112</sup>. Pienaar<sup>113</sup> came to the conclusion that the relationship of control exercised between a minister and a church council does not at all constitute a labour relationship.

It is also noteworthy that the stipendium of a minister in the Gereformeerde Kerke could not be described as a salary or remuneration<sup>114</sup>. According to Brassey<sup>115</sup> remuneration is the *quid pro quo* for services rendered: "... it is what the employee receives for his labour or, as it has been put, something the expense of which has to be borne by his employer in order to procure his labour. Since remuneration supposes an exchange of entitlements the term cannot cover ... payments that are discretionary or made out of considerations of charity; but depending on the context, earnings can still be regarded as remuneration if they take the form of tips or gratuities and so depend wholly on the generosity of third parties ... in the Basic Conditions of Employment Act, for instance 'remuneration' means any payment in money and in kind that arises out of employment".

A minister of the *Gereformeerde Kerke* receives a stipendium that makes it possible to fulfil his office in the church<sup>116</sup>. It is widely acknowledged that a minister cannot be remunerated for his services because of the very nature and consequences of the preaching of the Word<sup>117</sup>. The stipendium also does not constitute an 'offer and acceptance' as is indicative to enter a legally binding contract. The principle of reformed church polity with regard to the maintenance of a minister is that the minister and the church council should consider each other to find a sufficient way to provide for the minister's needs<sup>118</sup>. The shared aim of both the minister and the church council should be the ongoing proclamation of the Gospel<sup>119</sup>.

<sup>112</sup> Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika soos gewysig deur verskillende sinodes, Potchefstroom, Admin. Buro van die GKSA, 1998, artikel 84.

<sup>113</sup> PIENAAR, G., *Die Regsposisie van die Gereformeerde Kerke in Suid-Afrika*, Potchefstroom, EFJS, 1986, 39.

<sup>114</sup> PEL, P.T., e.a., *Rechtsposisie en tractement van de predikant*, Zwolle, GMV, 1991, 15-17.

<sup>115</sup> BRASSEY, M., *Employment and Labour Law*. Volume I. Kenwyn, Juta & Kie, 1998, E1:6, 7.

<sup>116</sup> PEL, P.T., e.a., *Rechtsposisie en tractement van de predikant*, Zwolle, GMV, 1991, 15-17.

<sup>117</sup> VISSER, J., *Die Kerkorde in Praktijk*, Roodepoort, EFJS Drukkers, 1999, 52.

<sup>118</sup> VISSER, J., *Die Kerkorde in Praktijk*, Roodepoort, EFJS Drukkers, 1999, 53.

<sup>119</sup> SPOELSTRA, B., *Gereformeerde Kerkreg en Kerkregering. 'n Handboek by die Kerkorde*, Hammanskraal, Hammanskraalse Teologiese Skool van die Gereformeerde Kerke in Suid-Afrika, 1989, 87-88.

## 7. CONCLUDING REMARKS

Churches in South Africa have the right to define itself and the institutions of the church according to their understanding of Scriptures and the confession. The self-definition of a specific church community should be the decisive factor for the church to decide for or against the accommodation of Labour Law in a Church Order with regard to the regulation and administration of a minister's office. Therefore, it is not the responsibility of a church to accommodate Labour Law or even certain aspects of Labour Law in a church order to obtain legality for the regulation and administration of a minister's office. It is the sole responsibility of the state to acknowledge the church's unique way of governance and to provide for churches under the rule of law in which the church may regulate and administer its own affairs without fear of intervention by the state.

The state should acknowledge the fact that Reformed Churches in the Calvinistic tradition accept that the church, as such, has the right and the responsibility to govern itself in terms of Scripture<sup>120</sup>. Inter alia this view is based upon the fact that, according to Matthew 16 and 18, Christ gave the church the assignment to serve the keys of the kingdom. One of these keys is church discipline, or church government<sup>121</sup>. Because the doctrine of the church – the *doctrina* – and the government of the church – the *disciplina* – are inseparable, the church order must be drawn up precisely on the foundation of the Word in order to enable the church to truly display the marked signs of the true church, namely the pure proclamation of the Word, the ministration of the sacraments and church discipline<sup>122</sup>.

From Scripture as its source, together with the details of the confession of the church in which the church confesses its understanding of Scripture regarding church government, the churches then, in community with each other, formulate a church order according to which they agree to assist each other in church government upon such a basis<sup>123</sup>.

<sup>120</sup> COERTZEN, P., "Church Order or Labour Law. The Position of ministers and others who work in the Dutch Reformed Church", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 9(2002), 402.

<sup>121</sup> COERTZEN, P., "Church Order or Labour Law. The Position of ministers and others who work in the Dutch Reformed Church", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 9(2002), 402.

<sup>122</sup> COERTZEN, P., "Church Order or Labour Law. The Position of ministers and others who work in the Dutch Reformed Church", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 9(2002), 402-403.

<sup>123</sup> COERTZEN, P., "Church Order or Labour Law. The Position of ministers and others who work in the Dutch Reformed Church", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 9(2002), 403.

A part of this order then precisely deals with the proclamation of the Word, or the minister of the Word. The proclamation of the Word constitutes the church; therefore the ministry of the Word is principle to the church<sup>124</sup>. "In the church order, as the unique internal right of, and for, the relevant church community, there are sufficient and clear articles or stipulations that describe the commitment of the clergyman to his church; from his internal calling to his ordainment, as well as the supervision and discipline regarding the minister's service. Therefore, there are clear stipulations how the minister enters the service of the Word, how he should exercise it and how his service and commitment can be terminated, disciplinarily suspended, or unfrocked<sup>125</sup>".

According to Du Plooy<sup>126</sup> the principles of reasonability and fairness apply undiminished, as all decisions in the church must be taken in accordance with the Word of God and under the leadership of the Spirit. Churches support each other in this in order to ensure that Christ's royal law will apply primarily. And, if it happens, then no other laws, such as Labour Laws, should be applied to arrange church relations and commitments<sup>127</sup>.

It is at least unsatisfactory that churches of the same tradition and confession differ on a matter as important as the regulation and administration of a minister's office. It is therefore suggested that a capable body, such as the *Tussen Kerklike Raad* where the three sister churches are represented, or the *Convent of Reformed Churches in South Africa* where most of the churches of the Reformed tradition are accommodated, take the responsibility to clarify, and if possible, formulate a uniform point of view on the competence of the church or the state for the regulation and administration of a minister's office. The churches, if not the relationship between church and state, could only benefit from a clear formulated view on the matter.

<sup>124</sup> COERTZEN, P., "Church Order or Labour Law. The Position of ministers and others who work in the Dutch Reformed Church", *European Journal for Church and State Research – Revue européenne des relations Églises-État*, 9(2002), 403.

<sup>125</sup> DU PLOOY, A. le R., Kerke se interne verbandsreg en die arbeidsweggewing. Advies aan die Konvent van Gereformeerde Kerke in Suid-Afrika, Ongepubliseerd, 2002, 1-6.

<sup>126</sup> DU PLOOY, A. le R., Kerke se interne verbandsreg en die arbeidsweggewing. Advies aan die Konvent van Gereformeerde Kerke in Suid-Afrika, Ongepubliseerd, 2002, 1-6.

<sup>127</sup> DU PLOOY, A. le R., Kerke se interne verbandsreg en die arbeidsweggewing. Advies aan die Konvent van Gereformeerde Kerke in Suid-Afrika, Ongepubliseerd, 2002, 1-6.