

PAÍSES NÓRDICOS

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Como ya anticipábamos en la crónica legislativa del año pasado (2005), en **NORUEGA** la Comisión estatal creada para estudiar las relaciones entre el Estado y la Iglesia nacional (evangélico-luterana de Noruega) publicó su informe el 31 de enero de 2006. (El texto del informe de esta Comisión estatal se incluye como Anexo).

Esta Comisión¹ creada por Real Decreto de 14 de marzo de 2003 estaba formada por 20 miembros (representantes de los partidos políticos, representantes de las confesiones religiosas, representantes de la Asociación humanista, representantes del pueblo sami y expertos juristas). En el informe de esta Comisión se recogen las siguientes recomendaciones:

La separación entre el Estado y la Iglesia nacional, eso sí la Iglesia evangélico-luterana de Noruega seguirá manteniendo un estatuto especial y privilegiado.

¹ Esta Comisión estatal es consecuencia de otra Comisión creada por la propia Iglesia de Noruega que emitió un informe señalando la necesidad de establecer la separación entre el Estado y la Iglesia, vid. Crónica de los Países Nórdicos, 2002, p. 517.

La Iglesia nacional se debe convertir en una Iglesia popular estatutaria (de carácter plenamente democrático). Este estatuto marco deberá recogerse, de forma breve, en un nuevo artículo de la Constitución.

La modificación del artículo 2.2. de la actual Constitución de Noruega de 1814 que dispone que: “todos los habitantes que profesen la religión evangélico-luterana vendrán obligados a educar en ella a sus hijos”², por otro que incluya una especial referencia a los valores cristianos y humanistas.

El mantenimiento de la financiación pública de la Iglesia de Noruega que incluiría los gastos de personal para todos los empleados de la Iglesia de Noruega y subvenciones municipales que cubrirían la construcción y mantenimiento de los lugares de culto.

Los servicios funerarios pasarían a ser responsabilidad pública asumida por los municipios.

Se realizan una serie de sugerencias sobre el patrimonio histórico perteneciente a la Iglesia nacional.

Será, finalmente, el Parlamento noruego (Storting) el que decidirá en el año 2008 el estatuto jurídico de la Iglesia nacional. Dicha decisión tomará como punto de partida el informe de esta Comisión. Además, se ha planteado que dicha norma sea sometida a referéndum³.

Este Informe de la Comisión estatal proclama el principio de separación entre el Estado y la Iglesia pero se queda muy lejos del reconocimiento del principio de neutralidad religiosa.

Otra de las cuestiones que merecen especial atención es la asignatura denominada “Nociones de cristianismo y educación

² A este respecto, el Comité de Derechos Humanos de Naciones Unidas, en un informe de 14 de marzo de 2006 ha manifestado que este párrafo es incompatible con el artículo 18 del Pacto Internacional de Derechos civiles y políticos de 1966.

³ Vid. diario AFTENPOSTEN, de 28 de diciembre de 2005 y de 27 de enero de 2006.

religiosa y moral”⁴, que fue incorporada al sistema educativo noruego en 1997. Esta asignatura tiene carácter obligatorio para todos los alumnos. En este punto, conviene recordar el pronunciamiento del Comité de Derechos Humanos de las Naciones Unidas de 23 de noviembre de 2004 sobre esta asignatura⁵. Este Comité declara que esta asignatura vulnera el artículo 18.4 del Pacto Internacional de Derechos civiles y políticos de 1966 por dos motivos⁶: uno, el contenido de esta asignatura no es impartida de manera neutral y objetiva pues no sólo el cristianismo ocupa el mayor porcentaje de tiempo sino que también se adoctrina en el cristianismo y, dos: las exenciones para no recibir esta asignatura son parciales y no totales además los criterios que se utilizan para la concesión de exenciones son tan estrictos que hacen prácticamente inviable su concesión, por todo ello el Comité de Derechos Humanos considera que esta asignatura no garantiza el derecho de los padres a que sus hijos reciben una educación compatible con sus propias convicciones.

El Estado noruego después de esta decisión del Comité de Derechos Humanos ha modificado la normativa sobre esta asignatura, sin embargo, la realidad sigue siendo la misma; de ahí que el Comité de los Derechos del Niño de las Naciones Unidas en el examen del Informe presentado por Noruega (21 de septiembre de 2005) siga alentando al Estado noruego a que realice las modificaciones realmente necesarias para cumplir la Comunicación del Comité de Derechos Humanos de 2004.

En todo caso, este asunto sobre la asignatura: “Nociones de cristianismo y educación religiosa y moral” está pendiente de ser resuelto por el TEDH.

⁴ Sobre el contenido de esta asignatura, vid. Crónica legislativa de los Países Nórdicos, 2002, pp. 518-519.

⁵ CCPR/C/D/1155/2003.

⁶ Ya la Comisión Europea contra el Racismo y la Intolerancia del Consejo de Europa en un dictamen de 27 de junio de 2003 abogaba por la supresión de esta asignatura.

Por último, el Ayuntamiento de Oslo ha solicitado al Ministerio de Educación la prohibición del uso de pañuelos islámicos y burkas en las escuelas y que dicha prohibición se iniciase en el curso escolar 2006-2007⁷. No tenemos conocimiento de que el Ministerio de Educación noruego haya realizado las mencionadas modificaciones en ese sentido.

En **FINLANDIA**, destacan tres cuestiones. Primera, el Ministerio de Educación ha denegado, durante el año 2006, a cinco grupo religiosos cristianos la creación de centros educativos, justificando dicha decisión en que no es apropiado que las escuelas se dediquen a promover una única verdad religiosa. Estos grupos han recurrido la decisión gubernamental⁸.

La segunda cuestión hace referencia al proyecto de Ley sobre la Iglesia ortodoxa. La Iglesia ortodoxa junto con la Iglesia evangélico-luterana de Finlandia son las Iglesias nacionales en Finlandia. Según este proyecto de Ley, la Iglesia ortodoxa de Finlandia seguiría gozando de su estatuto jurídico especial como religión oficial si bien se introducirían una serie de cambios para asegurar una mayor independencia entre el Estado y la Iglesia ortodoxa en temas administrativos, económicos y organizativos⁹.

Por último, la tercera cuestión que creemos más importante, es la financiación económica de las confesiones religiosas. Durante el año 2005 el Comité designado para examinar las ayudas estatales a las confesiones religiosas dio a conocer su informe¹⁰. Este informe recoge las siguientes recomendaciones:

⁷ Vid. International Religious Freedom Report, U. S. Department of State, 2006.

⁸ Vid. International Religious Freedom Report, U. S. Department of State, 2006.

⁹ Este proyecto se puede encontrar en finés en las publicaciones del Ministerio de Educación y en la siguiente dirección:

www.minedu.fi/OPM/Julkaisut/2004/ehdotus-laiksi-ortodoksisesta-kirkosta

¹⁰ Este proyecto se puede encontrar en finés en las publicaciones del Ministerio de Educación y en la siguiente dirección:

www.minedu.fi/OPM/Julkaisut/2005/rekisteroityjen-uskonnollisten-yhdyskuntien-valtionavustustyöryhmänmietintö

Se establece un sistema de ayudas públicas a todas las confesiones religiosas registradas conforme a la Ley de Libertad Religiosa de 6 de junio de 2003.

Se excluyen de estas ayudas públicas a las confesiones religiosas con menos de cien miembros o confesiones que tengan una escasa actividad.

La subvención estatal oscilará entre 5 y 7,7 euros por miembro de la confesión religiosa.

Este sistema de ayudas públicas se va a incluir en el presupuesto estatal para el año 2007¹¹.

En **ISLANDIA**, se pueden reseñar tres cuestiones. La primera, es el recurso presentado por la Asociación Pagana Islandesa (Asatuarfelagith) por la financiación económica estatal que sólo recibe la Iglesia Nacional (Iglesia evangélico-luterana de Islandia)¹².

La segunda cuestión hace referencia a que el Ministerio de Educación islandés publicó en diciembre de 2005 una serie de ofertas para ampliar los estudios de cristianismo, ética y otras religiones en las escuelas de educación primaria con la finalidad de conseguir una educación más multicultural y se espera que se ponga en marcha esta iniciativa educativa a finales de 2006¹³.

Por último, una encuesta realizada en octubre de 2005 da como resultado que dos terceras partes de la población islandesa se manifestaba a favor de la separación entre el Estado y la Iglesia nacional¹⁴.

Una de las cuestiones más polémicas suscitada durante este año en el panorama internacional ha tenido a **DINAMARCA** como protagonista: se trata de las viñetas publicadas en el diario

¹¹ Vid. International Religious Freedom Report, U. S. Department of State, 2006.

¹² Vid. International Religious Freedom Report, U. S. Department of State, 2006.

¹³ Vid. International Religious Freedom Report, U. S. Department of State, 2006.

¹⁴ Vid. International Religious Freedom Report, U. S. Department of State, 2006. Igualmente, ya dimos cuenta de los intentos parlamentarios para la elaboración de una ley de separación, vid. Crónica de los Países Nórdicos, 2004, págs. 482-483.

danés *Jyllands Posten* sobre el profeta Mahoma consideradas ofensivas por los musulmanes. Las caricaturas fueron publicadas el 30 de septiembre de 2005 como reacción a la denuncia pública del autor de un libro infantil sobre la vida de Mahoma sobre las dificultades para encontrar un ilustrador del mismo. Este hecho es valorado por el periódico como una situación de censura por lo que el responsable de la sección de cultura del mismo decide solicitar a distintos caricaturistas daneses que enviaran un dibujo sobre su visión de Mahoma. Fueron doce las viñetas recibidas y reproducidas en el diario y que suscitaron, como es bien conocido, una fuerte reacción en el mundo árabe a raíz de su difusión internacional cuatro meses después. Las viñetas se consideraron una ofensa al Islam que prohíbe la reproducción de imágenes del Profeta. En particular, indignó la imagen que presentaba a Mahoma con una bomba en el turbante al entender que se asimilaba al Profeta y con él a todo el Islam, con el terrorismo. Las comunidades musulmanas danesas instaron una acción criminal contra el periódico por blasfemia y racismo que, no admitida a trámite en primera instancia, fue desestimada definitivamente el 15 de marzo de 2006 tras el examen de cada una de las viñetas y considerar que no existía en las caricaturas ilícito penal¹⁵. Se instó, entonces, por parte de las comunidades musulmanas una acción por injurias contra los responsables del periódico que ha concluido con la absolución de los demandados. La sentencia, publicada el 26 de octubre de 2006, afirma que *no se puede descartar que las caricaturas hayan ofendido el honor de algunos musulmanes, pero no existen fundamentos para suponer que los dibujos son, o fueron concebidos, como un insulto o que el propósito de los dibujos fue presentar opiniones que pueden desestimar a los musulmanes*". Por otro lado, el fallo destaca que los propios demandantes reconocieron durante el juicio que representar a Mahoma no es un insulto en sí mismo.

¹⁵ Existe un website sobre esta cuestión en la página Web del Ministerio de Asuntos exteriores danés, donde se recoge la decisión del Fiscal General del Reino, <http://www.drawings.um.dk/en/>

No obstante, el Tribunal señala como *incorrecta* la apreciación del periódico de que la libertad de expresión también comprende la burla, la mofa y el escarnio¹⁶.

Estos hechos no son ajenos al deterioro del clima de convivencia entre las comunidades musulmanas y el resto de la población que han denunciado tanto la Federación Internacional de Helsinki para Derechos Humanos (IHF) y la Comisión Europea contra el Racismo y la Intolerancia del Consejo de Europa (ECRI) en informes publicados en marzo y mayo de 2006 respectivamente y en los que se responsabiliza a parte de los medios de comunicación de los sentimientos negativos hacia los musulmanes¹⁷. Las autoridades danesas han promovido en este sentido distintas acciones para fomentar el diálogo y la integración de las comunidades musulmanas en Dinamarca. Entre ellas destacan los numerosos encuentros y reuniones que han sostenido con los representantes de las Comunidades musulmanas en Dinamarca y los llamamientos que se han hecho desde el Gobierno danés condenado los ataques basados en razones de religión o creencias así como el llamamiento a un ejercicio

¹⁶ <http://www.jp.dk> página Web del diario Jyllands Posten donde se recogen las noticias relativas a esta cuestión.

¹⁷ Vid. International Religious Freedom Report, U. S. Department of State, 2006.

El informe de la ECRI puede consultarse en:

http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/denmark/Denmark%20third%20report%20-%20cri06-18.pdf.

Las consideraciones que recogemos en pp. 25-29. Por su parte el informe de la IHF puede también consultarse en su página web, http://www.ihfhr.org/documents/doc_summary.php?sec_id=3&d_id=4255, y las consideraciones que recogemos en las pp. 144 y ss. En ambos Informes se abordan las consecuencias de la crisis de las caricaturas y se mencionan algunas manifestaciones de representantes del Partido Popular danés contra la presencia de musulmanes en Dinamarca (especial repercusión ha tenido un video difundido en un campamento estival de las juventudes del partido popular danés en el que se grabó un concurso para hacer la peor representación de Mahoma, video difundido en Internet y que ha suscitado el rechazo expreso del Primer Ministro danés que volvió a reunirse con los embajadores árabes para dar explicaciones), o el cierre de una emisora de radio y la posterior condena del conductor del programa en el que se alentaba al odio racial y al enfrentamiento para expulsar a los musulmanes del país.

responsable de la libertad de expresión¹⁸. Igualmente, se recuerda que Dinamarca fue el primer país en aprobar una ley de Integración así como las numerosas iniciativas públicas emprendidas en este sentido¹⁹. Por otro lado, Dinamarca ha patrocinado un Conferencia Europea sobre Participación activa de los jóvenes pertenecientes a minorías étnicas, en la que se puso el énfasis en la mejora de la educación y el acceso al empleo como condiciones para la igualdad de oportunidades de estos jóvenes y la prevención del radicalismo y la violencia²⁰. Finalmente, es posible incluir dentro de las medidas adoptadas para mejorar el clima de relaciones con la comunidad musulmana danesa la aprobación, por parte del Ministerio de Asuntos Eclesiásticos, de la construcción de un cementerio exclusivamente musulmán que había sido largamente reclamado²¹.

En **SUECIA** la novedad legislativa ha sido la publicación de la ley (2006:67) de 16 de febrero de 2006, sobre Prohibición de la discriminación y otros tratos degradantes de los niños y estudiantes, (en el Anexo de esta Crónica). La ley tiene como

¹⁸ Estas iniciativas se recogen en el documento *Dialogue at all levels* que puede consultarse en: http://www.nyidanmark.dk/en-us/Integration/dialogue_at_all_levels/dialogue_at_all_levels.htm.

¹⁹ Al respecto Vid “Crónica Países Nórdicos” en *Laicidad y libertades*. Escritos jurídicos. num.5 (II), pp.241-256. Diciembre 2005 donde se detallan tales acciones. Igualmente se refieren en el documento *A comprehensive integration initiative and better integration* en http://www.nyidanmark.dk/en-us/Integration/a_comprehensive_integration_initiative/a_comprehensive_integration_initiative.htm.

²⁰ El programa de la Conferencia celebrada el 8 de septiembre en Copenhague puede consultarse en:

http://www.nyidanmark.dk/resources.ashx/Resources/Publikationer/Konferencer/UK/final_conferenceprogram.pdf y un resumen de sus conclusiones más importantes en http://www.nyidanmark.dk/en-us/News/Press+releases/ministry_refugee_immigration_integration_affairs/2006/September/prm05092006.htm.

²¹ <http://www.drawings.um.dk/en/menu/News/FirstMuslimCemeteryToBeApproved.htm>.

objetivo prevenir y combatir los casos de discriminación por razones de sexo, origen étnico, religión o creencias, orientación sexual o discapacidad así como cualquier otro trato degradante que se produzca en el ámbito de la educación (Sección 1). La ley define los deberes de los responsables de las distintas actividades educativas y que comprenden tanto las acciones positivas de promoción de la igualdad entre los estudiantes con independencia de las condiciones antes mencionadas, la prevención de las conductas discriminatorias o vejatorias de los mismos en las actividades educativas como la investigación y denuncia de los casos o daños producidos (Sección 5 a 8). Los estudiantes podrán reclamar ante las autoridades competentes que están obligadas a promover la acción administrativa y judicial que proceda para prevenir y combatir estos comportamientos en el ámbito de la educación (Sección 19 a 22).

Por otro lado, podemos destacar algunas cuestiones más planteadas en Suecia este año en nuestro ámbito de interés. La primera se refiere a la previsión de la legislación sanitaria sueca que exige que la circuncisión masculina sólo pueda ser realizada por un licenciado en Medicina o, en el caso de menores de dos meses, ante la presencia de un profesional autorizado por el Servicio sueco de Salud. Dicho Servicio ha autorizado a los Mohel judíos a realizar la intervención pero siempre bajo la supervisión de un médico o enfermero anestesista. Algunos miembros de las comunidades musulmana y hebrea han reclamado ante las autoridades sanitarias suecas esta disposición por entender que interfiere sus tradiciones religiosas. Sin embargo, el Servicio sueco de Salud, después de revisar dicha legislación, ha recomendado que siga aplicándose²².

La obligación del uso de anestésicos en el sacrificio de animales que eviten sufrimientos innecesarios, también ha sido objeto de controversia entre las comunidades hebrea y musulmana. Los primeros reclaman que dicha práctica impide que puedan adquirir carne Kosher es Suecia y deban importarla

²² Vid.. International Religious Freedom Report, U. S. Department of State, 2006.

desde otros países. Entre las comunidades musulmanes las posturas no son unánimes ya que para algunos el uso de anestésicos es contrario a las exigencias halal y para otros no. El gobierno sueco presentará los resultados de su investigación sobre esta legislación el 30 de abril de 2007²³.

Finalmente, recogemos la polémica originada en Suecia como consecuencia del procesamiento de un pastor Pentecostal por sus sermones en contra de la homosexualidad. El Reverendo Ake Green fue el primer condenado en Suecia tras la modificación de la legislación penal que tipificó como delito la agitación contra los homosexuales, bisexuales y transexuales de ese mismo año. El Reverendo en sus sermones había calificado las “anormalidades sexuales como un tumor que infectaba la sociedad” recurriendo a su propia interpretación de las Escrituras. La Corte de apelación absolvió a Green decisión confirmada por el Tribunal Supremo en Noviembre de 2005. El Tribunal entendió que las manifestaciones del Reverendo se habían producido en el ejercicio de su libertad religiosa al hacerse dentro de un templo y en un acto de culto. Sus sermones son expresión de sus convicciones religiosas y no pretendían incitar al odio contra los homosexuales. Utilizando el principio de proporcionalidad de la jurisprudencia del TEDH consideró que la condena penal no era una medida proporcionada en orden a los límites de sus derechos. Esta sentencia ha servido para absolver posteriormente a cinco jóvenes miembros de un partido radical condenados en primera instancia por distribuir propaganda en contra de la homosexualidad al considerar la Corte de apelación que la expresión de sus ideas sólo constituye delito de agitación al odio si incluye la incitación a la violencia contra los grupos protegidos. La decisión ha sido confirmada por el Tribunal Supremo en marzo de 2006²⁴. Sobre este tema existe otro caso pendiente de resolución por parte del Tribunal Supremo relativo a la condena de un individuo por estos mismos delitos en primera

²³ Vid. International Religious Freedom Report, U. S. Department of State, 2006.

²⁴ Vid Informe citado de la IHF, pp.415-416.

instancia, condena que ha sido parcialmente revocada en abril de 2006 por la Corte de Apelación que le absuelve del delito de incitación al odio pero le condena por la violación de la legislación sobre contenidos en la Web ya que permitió que se colgaran contenidos ofensivos contra los homosexuales en su página web²⁵.

²⁵ Vid.. International Religious Freedom Report, U. S. Department of State, 2006

ANEXO

ON THE RELATIONSHIP BETWEEN THE NORWEGIAN STATE AND THE CHURCH OF NORWAY

Recommendation of the State-Church Committee

The committee

The State-Church Committee was appointed by Royal Decree on 14 March 2003. The committee consisted of a wide range of representatives from all the political parties in the Norwegian parliament, church bodies, the Sami population, the Norwegian Council of Free Churches, the Norwegian Humanist Association, different religions, and representatives with special expertise.

The Government appointed the following members of the committee:

County Governor Kåre Gjønnes, Orkdal (chairman)

Pensioner Marit Tingelstad, Gran (deputy chairman)

Staffworker Jorund Andersen, Kristiansand

Dean Per-Otto Gullaksen, Fredrikstad

Pastor Jens-Petter Johnsen, Oslo

Group leader Helge Kolstad, Trøgstad

Bishop Per Oskar Kjølaas, Tromsø

Housewife Hildur Larsen, Sveio

Project leader Lena Larsen, Oslo

Project leader Vibeke Limi, Bærum

Member of the Storting Inge Lønning, Oslo

Director Kjell Nordstokke, Oslo/Geneva

Secretary General Dag Nygård, Notodden

Special Adviser Ingar Samset, Trondheim

Manager, Lifestance/political issues, Bente Sandvig, Bærum

Adviser Hege Fjellheim Sarre, Karasjok

Lawyer Fredrik Sejersted, Oslo

Special Adviser Anfin Skaaheim, Asker

Churchwarden Hege Steinsland, Haram

College Lecturer Pia Svensgaard, Tromsø (until November 2003)

High School Lecturer Tone Løwe, Hegra (from November 2003)

The committee's secretariat was based in Trondheim and operational from 1 June 2003. Until 6 April 2005 it has headed by Johannes Ulltveit-Moe, with Kristin Grimstad as his assistant. After that date the secretariat was headed by Kristin Grimstad, with the assistance of hired consultants.

Mandate

The purpose of the study was to provide a basis for determining whether the state church system should be continued, reformed or discontinued. The mandate was based on the premise that the Church of Norway will continue to be a confessional, missionary, serving and open popular church.

In addition to the question of the system itself, the committee was asked to consider financing arrangements, funeral administration and arrangements for listed and protected churches. The mandate also included consideration of ownership rights to churches, churchyards and the Norwegian Church Endowment if the state church system were to be discontinued.

The recommendation of the committee

The future church system

A majority, consisting of 18 of the committee members, recommend that the current state church system be discontinued and that a new system be established for the Church of Norway.

A majority of these members, 14 persons, recommend that the Church of Norway be organised as a statutory popular church. A minority of these members, 4 persons, recommend that the Church of Norway be organised as an independent popular church. Two members recommend that the current state church system be continued within the current provisions of the Norwegian Constitution.

A statutory popular church

The majority proposal for a statutory popular church entails revoking the current articles relating to the state church system in the Norwegian Constitution and making the Church of Norway an independent legal entity with its own governing bodies and independent responsibility for all matters relating to the Church's faith and activities. Bishops would be appointed by the Church's own bodies on the basis of broad-based arrangements for nominations and elections. The Church of Norway would continue to have a special relationship with the State pursuant to a Church Act adopted by the Storting. The majority recommends that the Church Act be formulated as a brief framework statute based on a new article in the Constitution.

The majority believes that a statutory popular church would preserve the position of the Church of Norway in the country's history and emphasise the continuity between the present system and the new church system. At the same time, this system would express the fact that the Church is a belief community with unique characteristics that are different from those of the State. The majority stresses the importance of the Church of Norway continuing to be a nation-wide church with a broad range of contacts and room for differing degrees of religious commitment and activity among its members.

In recent years, the democratic structures of the Church have been developed at all levels. The Church has its own bodies that are capable of taking over the tasks for which the King (the Government) is currently responsible. The majority nevertheless

emphasises that there is a need for measures to strengthen both electoral participation and representativeness.

The majority takes the view that the relationship between Church and people is far more important than the relationship between Church and State. In the majority's view, this relationship depends primarily on whether the Church manages to communicate its message in a way that arouses the commitment of the population. The majority believes that it is not the way in which the relationship between church and state is organised that will be decisive for the future of the Church, but people's sense of belonging to congregations. However, to the extent the church system is significant in this context, the majority believes that a statutory popular church will give the Church of Norway the best foundation for strong ties between Church and people. The majority regards it as an advantage that a statutory popular church can challenge church members to participate and exert influence.

The majority believes that a statutory popular church has a clear advantage because it entails full freedom of religion and belief and safeguards the right of people to express their religion and their belief in the public arena. An arrangement of this nature can prevent religion and belief from being reduced to a purely private matter.

An independent popular church

A minority of the committee, consisting of four of the twenty members, recommends an independent popular church as a model for a new church system. This means that the Church of Norway would no longer be part of the state administration but would be established as an independent religious community on a par with other religious and belief communities. Its activities would be regulated through legislation common to all religious and belief communities. This minority finds it crucial to ensure that the Church of Norway is regarded and treated as a religious community and that political bodies are not able to determine anything relating to the church's foundation, works and conduct resulting from its unique nature. In the view of this minority, this

is the church system that would make this most clear, and would also be the best way of meeting the demand for equal treatment of all religious and belief communities.

A constitutionally-based popular church

The other minority of the committee, consisting of two members, recommends that the current state church system be continued within the current articles of the Norwegian Constitution. This minority believes that the current state church system is the best way of ensuring that the Church of Norway is there for everyone who wants it, and is the best system for ensuring that the threshold is low enough for everyone to feel at home in the church, regardless of their religious commitment. This minority believes that it is extremely important to uphold the articles relating to the Church in the Norwegian Constitution and fear that removing the articles that concern the Lutheran faith and associated arrangements would create a constitutional vacuum of which it is impossible to envisage the ramifications.

Values article

As a consequence of the proposal for a statutory popular church, article 2, paragraph 2, of the Constitution would be revoked. This article of the Constitution is not a values article for the nation in the legal sense, but many people believe it to be so. In its mandate, the committee was asked to propose solutions that ensure that the nation's value base is not weakened. A majority of 13 members recommend that a new values article be incorporated into the Constitution which would contain a special reference to Christian and humanist values. One member of the minorities recommends that the new values article be confessionally independent and refer to recognised common values or human rights, one member recommends that the amendment of article 2 be limited to the consequences of the transition from a state religion to a statutory popular church, while five members take the view that there is no need for a new article that refers to the historically-based values of the nation.

State policy relating to religion and belief

If the current state church system is discontinued, the foundation for current state policy relating to religion and belief will change, and this policy must be reconsidered. A majority of 13 members recommend that the State's responsibility for pursuing a policy of active support for religion and belief be incorporated into the Constitution. The majority believes that this would provide constitutional protection for all religious and belief communities and would emphasise that these activities are especially important for the nation. A minority takes the view that it is neither necessary nor desirable to adopt a constitutional article of this nature because freedom of religion and belief are safeguarded by other rules.

Financing

The committee takes the view that it is a public responsibility to contribute financially and in other ways towards facilitating the activities of religious and belief communities, as is the case today.

If the church system proposed by the majority, a statutory popular church, is adopted, a majority of 15 committee members recommends that official allocations provide the main financing, with state grants covering personnel costs for all church employees and municipal grants covering the construction, maintenance, management and operation of church buildings. This would be combined with a small contribution from members to cover the financing of the congregation's other activities.

A minority of four persons recommends providing basic state financing for the Church of Norway and other religious and belief communities to cover defined minimum services for members. Apart from this, it would be up to the Church of Norway and other religious and belief communities to make arrangements for ensuring their own revenues.

One member recommends that the main financing should come from membership fees, which would be supplemented by official grants for special purposes.

Funeral administration

A majority of 17 of the 20 members recommends amending the Funeral Act to the effect that the main principle would be that the municipality is responsible for funeral administration because funerals are a public responsibility that should be assumed by public authorities. The municipality is a neutral body with respect to religion and belief, and the distinction between the legal and practical aspects and the religious and ceremonial aspects of funerals would be clearer.

The minority of the committee recommends that the Joint Council of Churches retain this responsibility, both because the vast majority of funerals take place according to the rituals of the Church of Norway and because church buildings and churchyards constitute an integral whole in most places. The minority points out that no desire has been noted on the part of the population to transfer this responsibility to the municipal authorities, and that most people are satisfied with the way the Joint Council of Churches fulfils this responsibility.

The committee recommends that, in legislation, the term churchyard (*kirkegård*) be replaced by the neutral term graveyard or burial ground (*gravlund* or *gravplass*). Consideration should be given to the possibility of replacing the consecration of an entire graveyard with the consecration of individual areas in order to make it clear that some parts of the graveyard are used by several religious and belief communities.

In the view of the committee, there is a growing need to meet different religious and belief-related needs and accommodate different funeral customs in a satisfactory manner. The committee therefore recommends that an expert forum be established in each bishopric/county to provide advice for the Joint Council of Churches/the municipality.

Listed and protected churches

In the light of cultural policy considerations, the committee takes the view that special financing arrangements must be established for listed and protected churches, regardless of the future relationship between the State and the Church of Norway.

The committee recommends that, in addition to the current support schemes, a special state grant scheme for historical churches be established, similar to the Swedish scheme. The grant scheme would be triggered automatically when a church building is listed or protected. The committee recommends that a grant scheme of this nature, regardless of the future church system, be administered by the central church authorities, who would award grants on the basis of applications from congregations and/or the Joint Council of Churches. The Directorate for Cultural Heritage would give an opinion on each application.

A majority of 17 of the 20 members also emphasises the need for immediate additional funding under the current grant schemes to prevent further deterioration and decay of church buildings.

The committee takes the view that all churches must be able to serve their purpose as parish churches, regardless of their protected status. It must be possible to invest in and upgrade churches to achieve this. The committee proposes that the State assume ownership of listed and protected churches that are no longer used for church purposes.

The committee recommends that a resource centre with cultural heritage expertise be established within the Church of Norway. This centre should be established in connection with existing centres of expertise.

Property rights in the event of a different church system

Churches and church funds

The majority of the committee (17 members) recommends that properties and church funds that are not owned by private

individuals or by parishes be transferred in their entirety to the Church of Norway.

A minority of three persons recommends that a total settlement of the estate be carried out because church buildings, church infrastructure and property were built up by the community over centuries, among other things through taxation.

The Norwegian Church Endowment (OVF)

A majority of 18 out of 20 members of the committee recommends that the OVF be transferred to the Church of Norway, based on the assumption that such transfer does not give other religious and belief communities the right to similar financial compensation.

A minority of two members regards the OVF as state property and a national asset. Property that is currently used by the church would be transferred to the Church of Norway, while the rest would be retained by the State or sold.

SWEDISH CODE OF STATUTES
ACT PROHIBITING DISCRIMINATION AND OTHER
DEGRADING TREATMENT OF CHILDREN AND
SCHOOL STUDENTS (2006:67)

Issued: 16 February 2006

In accordance with a decision¹ by the Riksdag, the following is enacted.

Purpose and scope of the Act

Section 1

The purpose of this Act is to promote equal rights for children and school students and to combat discrimination on grounds of sex, ethnic origin, religion or other belief, sexual orientation or disability. This Act also has the purpose of combating other degrading treatment. This Act is applicable to education and other activities referred to in the Education Act (1985:1100).

Definitions

Section 2

In this Act the following terms have the meaning set out in this section.

school student: a person being educated or applying for an education under the Education Act (1985:1100),

child: a person taking part in or applying to a pre-school activity or school-age child care under the Education Act,

staff: employees and contractors in education and other activities,

ethnic origin: the condition of belonging to a group of persons who have the same national or ethnic origin, race or skin colour,

sexual orientation: homosexual, bisexual or heterosexual orientation,

disability: permanent physical, mental or intellectual limitations of a person's functional capacity that, as a consequence of injury or illness, existed at birth, have arisen since then or may be expected to arise,

harassment: conduct that degrades a child's or school student's dignity and that

1. is related to

- ethnic origin (ethnic harassment)
- religion or other belief (harassment on grounds of religion or other belief)
- sexual orientation (harassment on grounds of sexual orientation),
- disability (harassment on grounds of disability),
- sex (harassment on grounds of sex) or

2. is of a sexual nature (sexual harassment),

other degrading treatment: conduct that otherwise degrades a child's or school student's dignity.

Responsibility for employees and contractors

Section 3

The organiser of an activity referred to in Section 1, second paragraph is responsible for the employees and contractors in this activity complying with the duties specified in this Act when they act in their post or within the framework of their contract.

Mandatory provisions

Section 4

Terms in an agreement that restrict duties under this Act have no legal force.

Active measures

Goal-oriented work

Section 5

The organiser of the activity shall ensure that it is conducted in a goal-oriented manner in order to promote the purposes specified in Section 1, first paragraph. Special provisions on this are set out in Sections 6–8.

Equal treatment plan

Section 6

The organiser of the activity or the person designated by the organiser shall ensure that there is an equal treatment plan for each individual activity. The plan shall aim to promote the equal rights of children and school students irrespective of sex, ethnic or national origin, religion or other belief, sexual orientation or disability and to prevent and hinder harassment and other degrading treatment. The plan shall set out the measures planned. The plan shall be followed up and reviewed each year.

Duty to prevent and hinder harassment and other degrading treatment

Section 7

The organiser of the activity or the person designated by the organiser shall take measures to prevent and hinder children and school students from being subjected to harassment and other degrading treatment.

Duty to investigate and take measures against harassment and other degrading treatment

Section 8

If the organiser of the activity, the head teacher or some other person with a corresponding management function or some other staff member becomes aware that a child or a school student in the activity considers that he or she has been subjected to harassment or other degrading treatment in connection with the

conduct of the activity, the organiser or the person designated by the organiser shall investigate the circumstances and, where necessary, take the action that can reasonably be required to prevent the continuation of the harassment or other degrading treatment.

Prohibition of discrimination

Direct discrimination

Section 9

The organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member must not disadvantage a child or a school student by treating the child or school student worse than the representative of the activity treats, has treated or would have treated some other child or school student in a comparable situation if the disadvantageous treatment is related to sex, ethnic origin, religion or other belief, sexual orientation or disability.

Indirect discrimination

Section 10

The organiser of the activity, the head teacher or some other person with a corresponding management function or some other staff member must not disadvantage a child or a school student by the application of a provision, a criterion or a procedure that is apparently neutral but that in practice particularly disadvantages children or pupils of a particular sex, ethnic origin, religion or other belief, sexual orientation or disability. This does not apply, however, if the provision, criterion or procedure can be motivated by a legitimate aim and the means are appropriate and necessary to achieve the aim.

Harassment

Section 11

The organiser of the activity, the head teacher or some other person with a corresponding management function must not subject a child or a school student to harassment.

Instructions to discriminate

Section 12

The organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member must not give orders or instructions to discriminate against a child or a school student in his or her activity under Sections 9–11.

Prohibition of other degrading treatment

Section 13

The organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member must not subject a child or school student to other degrading treatment.

Prohibition of reprisals

Section 14

The organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member must not subject a child or school student to reprisals because the child or school student has reported or complained that someone in the activity has acted contrary to this Act or because the child or school student has taken part in an investigation under this Act.

Damages

Section 15

If the organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member sets aside his or her duties under Sections 6-14, the organiser shall both pay damages to the child or school student

for the degrading treatment and pay compensation for any other damage caused by the setting aside of the duty. However, damages for degrading treatment in cases other than discrimination or reprisals are not payable if the degradation is minor. If there are special reasons, the damages for degrading treatment can be reduced or cancelled.

Supervision

Section 16

The Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation, the Disability Ombudsman and the National Agency for Education shall each ensure that this Act is followed in their areas of responsibility. At the request of an Ombudsman or the National Agency for Education the organiser of the activity, the head teacher or some other person with a corresponding management function is required to supply the information on circumstances in the activity that can be of importance for the supervision.

Legal proceedings

Section 17

Cases concerning damages under this Act shall be dealt with in accordance with the provisions of the Swedish Code of Judicial Procedure concerning procedures in civil cases where conciliation in the matter is permitted. In such cases it may, however, be ordered that each party shall bear its litigation costs, if the party that has lost the case had reasonable grounds for bringing the dispute to court.

Burden of proof

Section 18

If a child or a school student who considers that he or she has been discriminated against under Sections 9–12, subjected to other degrading treatment under Section 13 or subjected to

reprisals under Section 14 presents circumstances that give grounds to presume that he or she has been discriminated, subjected to other degrading treatment or subjected to reprisals, the organiser of the activity shall show that the discrimination, other degrading treatment or reprisals have not taken place.

Section 19

If a child or school student shows that he or she has been subjected to harassment or other degrading treatment by another child or school student in connection with the conduct of the activity, then, in order to escape liability for damages, the organiser shall show that every reasonable measure had been taken to prevent or hinder such treatment.

Right to bring an action

Section 20

In a dispute on damages under this Act, the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation, the Disability Ombudsman or the National Agency for Education may bring an action as a party for a child or school student who consents to this. For children and school students under 18 years who are not married the custodians shall give consent. If an Ombudsman or the National Agency for Education brings an action under the first paragraph, the Ombudsman or the Agency may also bring another action in the same proceedings as the representative of the child or school student. The provisions of the Swedish Code of Judicial Procedure concerning parties with respect to disqualification, personal appearance and examination on oath as well as other questions relating to evidence shall also apply to the person on whose behalf an Ombudsman or the National Agency for Education brings an action under the first paragraph.

Statutory, limitation, etc.

Section 21

Legal proceedings in a case on damages under Section 9, 10, 12 or 14 shall be initiated within two years from the date of the action complained about or from the last date on which a duty should have been fulfilled. Otherwise the right to initiate legal proceedings is forfeited.

Section 22

An action brought by the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation, the Disability Ombudsman or the National Agency for Education is treated as if it had been brought by the child or school student himself or herself.

(Transitional provisions) 2006:67

This Act enters into force on 1 April 2006 and is applicable to cases of damage that take place after its entry into force.

Additional copies can be ordered from the Ministry of Education, Research and Culture by

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