

INTERNATIONAL CONFERENCE ON THE UNIFICATION OF EUROPE AND THE RELATIONSHIP OF SOCIETY, STATE AND CHURCH

AUGUR PEARCE

Solicitor

Under the auspices of the Wolfsburg Catholic Academy, invited delegates from England and Wales, France, Germany, Poland, Hungary and Spain assembled in Canterbury for three days in September 2000 to consider the present state of the Church/nation relationship in their home jurisdictions and the possible implications of a variety of European developments.

Two instruments in particular overshadowed the conference: the European Convention of Human Rights and Fundamental Freedoms (particularly topical for British delegates in the light of its imminent direct applicability in the courts of the United Kingdom¹), and the draft Charter of Human Rights now under consideration in the institutions of the European Union.

The conference gained its impetus from the reflection that with the emergence of such instruments as these having the potential to regulate, or at least influence, the rights and duties of religious institutions in the nations of Europe, a certain 'convergence' between the varied systems relating such institutions to national law and governmental organs could well be desirable, if not inevitable. The first step to this was for those affected by such systems in their own country to understand those of others.

With this in view, four national presentations on 'mutual expectations and existing preconditions' in the Church/nation relationship formed the heart of the conference. These were flanked by a keynote address from Professor Gerhard Robbers (Trier) which spoke of the 'straining of established forms' of this relationship, and by an enlightening description of the work of the agency that keeps national Roman Catholic hierarchies up to date on developments in Brussels and ensures that their voice does not go unheard. A panel discussion concluded the formal business.

The picture emerging from the national presentations was a spectrum of models between the French at one extreme and the English at the other, French *laïcité* (outside Alsace-Lorraine) treating religious bodies as private organisations of citizens and seeing no role for national organs in their government, while England retains clear traces of the identification of national Church and Christian nation whereby ecclesiastical legislation derives its force from Parliament and the sovereign is supreme governor of the realm in its ecclesiastical as in its temporal affairs.

In between these extremes, Poland and Germany appear in their different ways to meet the aspirations of religious bodies in a way that at least the hierarchies of those bodies must welcome. While national organs claim little or no influence over Church government, religion is treated as a matter of public interest to an extent that exempts religious bodies from many of the controls that would affect other associa-

¹ See Mark Hill's article, 'The Impact for the Church of England of the Human Rights Act 1998' (2000) 5 Ecc LJ 431. The Human Rights Act 1998 came into force on 2nd October 2000.

tions. Church hierarchies, or institutions closely associated with them, relieve governments of substantial responsibility for social welfare and health care and are free to apply their own criteria in employment, although the public funding that supports such activities comes from taxpayers of all religions and of none, whose own freedom as employers would be more restricted. In Poland, religious education and university theology are also publicly-funded but Church-controlled. In Germany public coercion can assist Churches to exact such regular financial contribution as they require of their members.

In reaction to experiences of the People's Republic and the Third Reich, the courts of Poland and Germany have shown considerable sympathy with the wish of Churches to maintain their distinctive features while participating fully in public life. Some fear that supra-national institutions, representing a Europe with a wider range of experience (and in places a more secular tradition), may prove less willing to let religious bodies have it both ways.

In England, for example, ignoring for a moment the national Church, voluntary religious bodies have been given most of the concessions that they desire: exemptions from sex discrimination law in admission to the Roman Catholic priesthood; animal slaughter regulations facilitating the production of *kosher* and *halal* meat; and the freedom for Church school governors to apply religious and moral criteria in certain appointments. But these were specific statutory exceptions, individually negotiated and deriving from governmental goodwill; they did not follow from a constitutional guarantee of 'religious freedom', and continental Churches—perhaps with good reason—do not always expect similarly gentlemanly behaviour from their own or European institutions.

'Convergence', therefore, to many speakers, appeared to mean the elevation of a Polish or German model of constitutional guarantees to the European plane. The appeal of such thinking to the Roman Catholic mind, accustomed to thinking in supra-national terms, was particularly apparent. A certain reticence on the part of some British delegates to enter into this area of discussion, however, might be explained by the fact that they represented neither the nationalities spearheading the drive for continental unification nor one in candidature for EU membership. The inevitability of European regulation spreading into the religious field and supplanting national settlements was perhaps less clear to them, the possibility of simply saying 'No' correspondingly more real. (Maybe a lesson should be learnt from the Westminster Parliament's reintroduction of private ecclesiastical patronage into Scotland within a few years of the Treaty of Union!)

It may also be worth making the point that any religious body with its own completely distinct corpus of law will tend to produce its own practitioners and academic experts, stamped by their commitment to that law and to the interests of ecclesiastical authority as thereby constituted. A delegation of ecclesiastical legal specialists from such jurisdictions is unlikely to represent the viewpoint of wider society, or even of individual believers in disagreement with their governing hierarchies. But where, as in England, ecclesiastical law is part of the law of the land and draws its practitioners from the mainstream of the legal profession, it is perhaps easier for such practitioners to see the argument for religious bodies to comply with the norms that a wider society has seen fit to impose upon all its members, both individually and collectively.

Notwithstanding such differences of approach, the conference provided an invaluable forum for the exchange of information and ideas. New international contacts

were made, and a convivial buffet reception hosted by the Ecclesiastical Law Society (whose Vice-Chairman had earlier welcomed delegates but whose President, sadly, was prevented by the petrol blockades from reaching Canterbury with any prospect of return!). The importance of our shared worship—at Choral Evensong in the Cathedral—was commented on by several in the closing remarks. And the hard work of the German organisers and the very adequate facilities of Christ Church University College combined to ensure an enjoyable as well as successful event.