

Being church and freedom of religion – the function and ambit of religious freedom²

ABSTRACT

This article is about the function and ambit of religious freedom for churches specifically with regard to the constitutional situation in South Africa. Constitutions that guarantee freedom of religion allows churches, and of course also other religious institutions, a certain space under certain conditions, in which to exercise their religious freedom. This firstly means that churches have to be very certain about their own faith identity, secondly what religious freedoms means and thirdly how far that freedom goes. The article endeavors to answer all three these questions in order to help churches to make the fullest use of freedom of religion.

1. INTRODUCTION

This paper wants to address the function and ambit of religious freedom with regard to churches. It asks the question what churches must do to make the fullest use of freedom of religion. Not much has been done in this regard from the side of churches or theology. Rik Torfs discusses the rights and obligations of Christians within the Roman Catholic Church in his book ***Mensen en Rechten in de Kerk***³ and in a joint publication ***Recht op Recht in de Kerk***⁴ Rik Torfs, Kurt Martens, Leo Koffemans and Pieter Coertzen scrutinise the state of procedural rights within Reformed Churches and the Roman Catholic Church. One of the conclusions is that there is a lot of work to be done. In 1981 Peter Krämer wrote about ***Religionsfreiheit in der Kirche. Das Recht auf religiöse Freiheit in der kirchliche Rechtsordnung***⁵.

1.1 In order to address the theme and question of the paper attention will firstly be given to what we can understand under religion and freedom of religion. Freedom of religion can never be seen loose from the other human rights. In this paper it will be done within the context of the Bill of Rights in the Constitution of South Africa⁶.

1 Pieter Coertzen is extraordinary professor of Ecclesiology at the University of Stellenbosch (South Africa) as well as at the University of Leuven where he teaches Comparative Church Law. He has published both in the field of church history and church law.

2 This article was evaluated and accepted for publication in the series *Studies in Reformed Theology*, published by Brill.

3 Rik Torfs, *Mensen en Rechten in de Kerk*. (Leuven: Uitgeverij Davidsfonds, 1993).

4 Rik Torfs, Rik; Kurt Martens, Leo J. Koffeman, Pieter Coertzen, *Recht op Recht in de Kerk*. Canon Law Monograph Series 3. (Leuven: Peeters, 2003).

5 Peter Krämer, *Religionsfreiheit in der Kirche. Das Recht auf religiöse Freiheit in der Kirchlichen Rechtsordnung*. Canonistica – Beiträge zum Kirchlichen Recht. (Trier: Paulinus Verlag, 1981).

6 *Constitution of the Republic of South Africa*, Law 108, 1996.

1.2 In the second place attention will be paid to the church in order to try and determine what it is that constitutes or helps to constitute the uniqueness of the church. Churches need to know their own identity in order to make the fullest use of freedom of religion and so to be able to also contribute to the rest of society. In 2005 Max Stackhouse wrote that there is a great need for the social embodiment of human rights “ --- particularly in the institution of the church.”⁷ This of course is also a need with regard to freedom of religion which is seen as the most basic human right. This paper argues that it is exactly for this reason that churches need to know what their own identity is and what the function and ambit of freedom of religion means for them. If these questions are not answered satisfactorily churches can be delivered to an embodiment of freedom of religion which is in contrast with uniqueness of the church.

1.3 In a third section an attempt will be made to determine the function and ambit of religious freedom with regard to churches as unique institutions – this will be done against the background of the Bill of Rights. Not long ago the report **Exclusionary policies of voluntary associations** was published by the Human Rights Commission of South Africa providing guidelines and principles that can accommodate associational rights within the legal order of South Africa. The report states the following “The value of the document is that it allows voluntary associations to assess existing policies and documents, in order to bring their practices and policies in line with the Bill of Rights.”⁸. It is conceded that if the constitutional rights that the associations seek to protect, promote and enhance relate to religion, culture and language then the reach of the State may be more circumscribed.” It is one of the aims of this paper to try and identify those constitutional rights which churches may seek to protect, promote and enhance so that they can make optimum use of the guaranteed right of freedom of religion.

2. RELIGION

About religion there are many contrasting opinions. Some see it as a mere private sentiment. Others see it as an ideological expression of group identity, with very powerful social and political might which has in the past and still is being used to legitimate egoism, war, misogyny, colonial exploitation and violence. It is not being said that religion alone is responsible for all the violence and sorrow in the world and not also “the legal advisors to kings who threw religious saints and martyrs into dungeons, the judges who tried witches against the advice of the clergy, the lawyers who wrote the slave laws, the jurists who drafted the justifications for the division of the world among colonial powers, or the legal bureaucracies that enforced Hitler’s’ or Papa Doc’s or Stalin’s or Mao’s edicts.”⁹ – not to name any of the contemporary names of whom we are aware. But it can nevertheless not be denied that “Religion is high voltage; it can energize much or electrocute many.”¹⁰.

7 Max Stackhouse, Max, L. “Why Human Rights Needs God: A Christian Perspective” In: Elizabeth M. Bucar & Barbra Barnett, *Does Human Rights Need God?* (Grand Rapids: Eerdmans, 2005), 33.

8 Report Human Rights Commission of South Africa, 2006, *Report: Public Inquiry Exclusionary Policies of Voluntary Associations: Constitutional Considerations*. South African Human Rights Commission. <http://www.sahrc.org.za>, Lourens M du Plessis, *Religious Human Rights in South Africa*. In Johan D van der Vyver, John Witte, *Religious Human Rights in Global Perspective. Legal Perspectives*. (The Hague: Martinus Nijhoff Publishers, The Hague, Boston, London), 452-457.

9 Stackhouse, *Why Human Rights Needs God*, 26-27..

10 Stackhouse, *Why Human Rights Needs God*, 27.

Many attempts through time has also been made to describe or define religion¹¹ a Description of religion which I personally find very useful is that of John Witte. He writes “religion ---- embraces all beliefs and actions that concern the ultimate origin, meaning, and purpose of life, existence. It involves the responses of the human heart, soul, mind, conscience, intuition, and reason to revelation, to transcendent values, to what Rudolph Otto once called the “idea of the holy”¹² He then goes on to refine this description with the following: “---- religion embraces a **creed**, a **cult**, a **code of conduct**, and a **confessional community**. A **creed** defines the accepted cadre of beliefs and values concerning the ultimate origin, meaning and purpose of life. A **cult** defines the appropriate rituals, liturgies, and patterns of worship and devotion that give expression to those beliefs. A **code of conduct** defines the appropriate individual and social habits of those who profess the creed and practice the cult. A **confessional community** defines the group of individuals who embrace and live out the creed, the cult and the code of conduct, both on their own and with fellow believers.”¹³.

3. RELIGIOUS FREEDOM

Just as is the case with religion there are also different opinions on what religious freedom entails¹⁴. In his attempt to define the essential rights and liberties of religion Witte distinguishes (i) freedom of conscience, (ii) the free exercise of religion, (iii) religious pluralism, (iv) religious equality, (v) the separation of church and state and (vi) the disestablishment of religion by the state as essential elements of religious freedom¹⁵. They are indeed handy distinctions to understand what freedom of religion is and to supply a working definition for freedom of religion.

4. THE CHURCH

The following Scriptural directives¹⁶ regarding the Church must be kept in mind if we want to realize the church as a creedal, cultic, orderly and confessional community able to claim and realize freedom of religion.

The kingdom of God

The kingdom of God forms the context for the church – the church is part of the kingdom of God. Herman Ridderbos calls the kingdom of God the most theocentric concept which Scripture offers

11 Stackhouse, *Why Human Rights Needs God*, 27. Blei, K, *Freedom of Religion and Belief: Europe's Story*. (Assen: Koninklijke Van Gorcum BV, 2003), 1.

12 John Witte, *Religion and the American Constitutional Experiment. Essential Rights and Liberties*. (Westview Press), 230.

13 (Witte, *Religion and the American Constitutional Experiment*. 230.

14 Ben Vermeulen, *Kerk en Staat en de Mensenrechten*. In: L C van Drimmelen & T J Van der Ploeg, *Kerk en Recht*. (Utrecht: Lemma: 2004), 76-77. J W Sap, *Kerk en Staat vanuit het Staatsrecht. Meer respect voor de publieke dimensie van godsdienst*. In: L C van Drimmelen en T J van der Ploeg *Kerk en Recht*. (Utrecht: Lemma, 2004) 114-117.; K Blei, *Freedom of Religion and Belief: Europe's Story*. (Assen: Koninklijke Van Gorcum BV, 2203) 2-3. L C van Drimmelen, *Kerk en Staat*. In: W van't Spijker, W & L C van Drimmele, *Inleiding tot de Studie van het Kerkrecht*. (Kampen: J H Kok.sa), 199.)

15 Witte, *Religion and the American Constitutional Experiment*. 37.

16 Erik Wolf, *Ordnung der Kirche. Lehr und Handbuch des Kirchenrechts auf ökumenischer Basis*. (Frankfurt am Main: Vittorio Klostermann, 1960), 466.

for our understanding of creation, man, world, present and future times¹⁷. The kingdom of God and the royal sovereignty of the Lord Jesus Christ cover the entire creation. Where the Kingship of Christ applies and is acknowledged as such, something of God's kingdom becomes visible, and individuals not only become liberated, but the whole pattern of their life also changes (Ridderbos, 1960, 303). The State is also part of the kingdom of God and although it often does not recognize the sovereignty of God, it nevertheless remains a servant of God for the benefit of mankind.

The Church

Within the context of the kingdom are those who are gathered into a unity through the proclamation of the Gospel, gathered into a creedal, cultic, orderly and confessional community – the church¹⁸. One can say that the church is a community of people who are organized, and must be organized as regards confession, cult, institution, teaching, discipline, pastorate, diaconate, mission, social calling, etc. As such the church is an image of the kingdom of God that simultaneously points to the kingdom of God and is also the place where the kingdom of God is supposed to be revealed in this world¹⁹.

Jesus Christ

Very important with regard to the church and freedom of religion is that Jesus Christ is the only Lord and Head of the Church. Christ is always the primary Subject in relation to the church as the secondary subject, in the church it is always a Christological – ecclesiological relationship of existence. This truth is taught in different places in Scripture, one of the most important being Ephesians 1:20-23. Christ is the head of the whole of creation but after His resurrection from the dead He was given as the Head of the Church. His Headship refers to His leadership and government of the church²⁰. That the church is described in Ephesians 1:23 as "... the fullness of Him who fills everything in every way" brings to the fore a very particular characteristic of Christ's Headship over the church and of the very uniqueness of the church. "Fullness" refers to the area over which sovereignty is exercised²¹. The church is the body of Christ and, as the fullness of Him it means that the church is the "area" where there is, or at least ought to be, a demonstration of perfect submissiveness to the Him as the Lord²².

The Word, the Holy Spirit and the offices

Christ governs His church through His Word, the Holy Spirit and the offices. This is also a very unique characteristic of the church. The proclamation of the Word in its diverse forms like preaching, teaching, deeds of mercy, prophetic addresses, healing and comforting etc can be seen as the unique task of the church - offices and members. In the Word the church listens to

17 Herman Ridderbos, *Studies in Scripture and its authority*. (Grand Rapids: Eerdmans, 1978), 1.

18 Herman Ridderbos, *De Komst van het Koninkrijk: Jesus' prediking volgens de Synoptische Evangelien*. (Kampen: J H Kok, 1972), 296-308.

19 Johan Heyns, *Die Kerk*. (Pretoria: N G Kerkboekhandel, 1977), 23-26. A A Van Ruler, *De Kerk is ook doel in zichzelf*. In: *Verwachting en Voltooiing*. (Nijkerk: G F Callenbach, 1978), 64.

20 I Jdu Plessis, *Christus as Hoof van kerk en kosmos*. (Kampen: Proefskrif, 1962) 71-72.

21 H Berkhof, *Tweërlei Ekklesiologie*. *Kerk en Theologie* 13 (1962) 154.

22 Du Plessis, *Christus as Hoof*, 76.

the voice and the way of the Lord. Through the Curiological²³ work of the Holy Spirit the church hears the voice of the Lord for the time in which it lives and through the calling and work of office bearers Christ looks after and cares for His body like shepherds take care of and look after the flock entrusted to them. It is the task of the office bearers to equip – feed, discipline and stimulate - the believers for their task in the world/in the kingdom of God, bind them together and guide them to function as the body of Christ in this world²⁴.

The upbuilding of the believers

This entails that it is the task of the church to build up the believers – both quantitatively and also qualitatively. Quantitatively by proclaiming the message of the Gospel of Jesus Christ to all people and bringing them to acknowledge the headship of Christ over them, teaching them to be members of the Kingdom of God and of the church the body of Christ. Qualitatively by helping the members of the church to become more and more what they are in Jesus Christ, to grow deeper and deeper into Him until they reach the full maturity which they have in Him. To become more and more the house of the Holy Spirit who's Curiological work it is to let Jesus Christ be the Lord²⁵. It is also important for the church to always remember that it exists:

Between the indicative and the imperative

– between that which it has and is in Christ and that what it has to be and become in Christ. The church is holy but it is also called to be holy²⁶.

The above mentioned characteristics are not the only ones that characterize the church. They are however very important if we want to realise the uniqueness of the church in its own government, in its participation in society and in its relationship to the state under who's laws the church has to exist and participate in the legal traffic of the country. Especially in its relation to the state the church needs to be very sure of its own identity because it can happen very easily that the church can start to see itself as the state does. "a Frontier will always be perceived which it (the church) has to guard in virtue of its own self-understanding and beyond which it cannot accept either the commands or the prohibitions of the state."²⁷ Given this proviso it is very important for the church (s) to avail itself of its own identity as well as its guaranteed right to freedom of religion within the context of human rights as portrayed in the Bill of Rights.

5. ON THE FUNCTION AND AMBIT OF FREEDOM OF RELIGION

A Wide variety of human rights are addressed in the Constitution of the Republic of South Africa²⁸.

23 J Versteeg, *Christus en de Geest: Een exegetisch onderzoek naar de verhouding van de opgestane Christus en de Geest van God volgens de brieven van Paulus*. (Kampen: J H Kok, 1971), 211-213.

24 J H Roberts, *Die opbou van die Kerk volgens die Efese-brief*. (Groningen: VRB, 1963) 140.

25 Pieter Coertzen, *Decently and in Order. A Theological reflection on the Order for and the Order in the Church*. (Leuven: Peeters, 2004) 112 –118.

26 Coertzen, *Decently and in Order*, 118-121.

27 K Barth, *Church Dogmatics*, vol IV, part 2. (Edinburgh: T & T Clark, sa) 689.

28 *Die Grondwet van die Republiek van Suid-Afrika*, 1996; Ian Currie & Johan de Waal, *The Bill of Rights Handbook*. Fifth Edition. In association with Lawyers for Human Rights and the Law Society of South Africa. (Juta & Co, 2005). Lourens du Plessis, *Religious Human Rights in South Africa*, 457-465 Currie, & De

The Bill of Rights in the Constitution starts off by confirming the protection of the democratic values of human dignity, equality and freedom (art 7 (1)). It is applicable to the total system of law of the country and binds natural as well as juristic persons (a,8 (1 & 2); The rights are about equality and that neither the state nor any person may directly or indirectly discriminate unfairly against another person on the grounds of i.e. race, gender, pregnancy, marriage, ethnic or social descendent, colour, sexual orientation, age, handicappedness, religion, conscience, opinion, conviction, culture, language or birth (a 9 (1 – 4); Art 10 is about human dignity and the right that dignity be respected en protected (a 10); Each person has a right to life (a.11); the freedom and security of the person is protected through art 12. Nobody may be subjected to slavery, servitude and forced labour according to art 13. Article 14 determines the person's right to privacy and article 15(1) each person's right to freedom of conscience, religion, thoughts, conviction and opinion. Article 15 (2) allows for the exercise of religion at state and state aided institutions given certain conditions while art 15 (3) allows for laws through which marriages according to certain traditions, systems of belief, person – or family law can be recognized given that such laws must be compatible with the Constitution of the country. Article 16 protects the right to freedom of expression; article 17 the right to assembly, demonstration, picketing and petition and article 18 the right to freedom of association. Article 19 is about political rights, 20 about citizenship and 21 about the right to freedom of movement and residence. Article 22 deals with the rights of freedom of trade, occupation and profession and article 23 with labor relations. In articles 24 and 25 the rights with regard to the environment and property are dealt with. The socio-economic rights of housing, healthcare, food and water are dealt with in arts 26 and 27. Children's rights and education are addressed respectively in arts 28 and 29. Article 30 is about the rights of each person regarding language and culture while art 31 addresses the rights of cultural, religious and language communities. The access to information and the access to courts are the rights which are dealt with in articles 32 and 34 while art 33 is about the right to just administrative action. The rights of arrested, detained and accused persons are dealt with in article 35. The limitation of rights are dealt with in article 36 while states of emergency are addressed in art 37.

A broad distinction that can be made between the different rights mentioned, is that between the fundamental rights of equality, human dignity, and non-discrimination on the one hand and the associational rights, which include the freedom of association, freedom of religion, freedom to practice and use one's language and culture and the right to associate in cultural, religious and linguistic communities, on the other hand ²⁹. The Report on Exclusionary Policies³⁰ points out that the reach of the State regarding associations that relate to religion, language and culture who wants to protect, promote and enhance a certain constitutional right often need to be more circumscribed than for instance in the case of associations for trade, occupation and profession in which case the State will have greater latitude in reaching into the domains of these associations.

When churches assess their existing policies, rules and conduct with regard to the requirements of the Constitution and the constitutionality of the exclusionary policies, rules and conduct which they use to protect their integrity as an organisation the following guidelines/principles can be kept in mind³¹: The rights or interests that the church or religious body wants

Waal, *The Bill of Rights Handbook*.

29 *Report: Exclusionary Policies*, 3. see also Du Plessis, *Religious Human Rights*, 451.

30 *Report: Exclusionary Policies*, 3.

31 *Report, Exclusionary Policies*, 3 Du Plessis, *Religious Human Rights*, 452-457.

to protect must be identified; the right that could be infringed by the existing policy or proposed new policy must also be identified; alternative ways of achieving the proposed objective must be considered and if possible be determined. The alternative that achieves the desired objectives must be adopted without unreasonably and unfairly limiting or restricting rights. Reasons must be given as to why a particular method or means was adopted and why other alternatives were discarded or disregarded³². It must also be considered whether reasonable steps were taken to address the disadvantage associated with one or more of the prohibited grounds and to accommodate diversity, substantive equality and respect for the dignity of persons. An assessment must also be made on the extent to which churches interact with the broader community or whether it is restricted to exclusively serving the interests of its members³³.

It all comes down to the following that must be considered (a) does the associational right upon which the church relies in a particular instance fall within sections 18 (the right to freedom of association), 30 (the right to use the language or culture of choice) or 31 (the rights of cultural, religious or language groups) of the Constitution or any other right which includes associational rights, such as for instance the right to fair labour practices. (b) Does the assertion of the associational right infringe upon any other provision of the Bill of Rights? (c) If so, is it reasonable and justifiable in an open and democratic society as provided for in section 36 of the Constitution?³⁴.

Churches must also remember that with regard to issues of equality- jurisprudence in South Africa, discrimination is deemed where there is differentiation on a prohibited ground – for instance the grounds mentioned in art 9(3) of the Constitution. In such a case the onus shifts to the respondent to establish that the discrimination is not unfair³⁵. It can thus only be to the advantage of churches to try and avail themselves beforehand of the reasons, in other words to justify themselves, why they have certain rules and policies with which people are prohibited from exercising certain rights in the church – such as why certain people cannot exercise membership rights in the church or in a specific local church, why the parties in disciplinary hearings do not have the right to be legally represented; the reason why certain people are not allowed to be office bearers in the church and why ordinary labour law rights cannot always be exercised in the church etc³⁶.

It can also only be profitable for churches to compare their own order, rules, policies and conduct with that of similar and other churches in other democracies in order to establish whether the comparable rules of the other churches are consistent with the Constitutions of their countries.

In practice this would firstly imply that churches have to determine where in their church order, policies, rules and conduct there can be talk of discrimination / differentiation, secondly they have to determine whether the identified discrimination / differentiation is unfair and thirdly if they determine that there is discrimination / differentiation in certain instances they must be able to show that the discrimination / differentiation is not unfair because it is grounded on the legitimate objectives or grounds of faith of the church as a religious association – in other

32 *Report: Exclusionary Policies*, 40

33 *Report: Exclusionary Policies*, 41-42.

34 *Report: Exclusionary Policies*, 28.

35 *Report: Exclusionary Policies*, 33.

36 *Kerkorde van die Nederduitse Gereformeerde Kerk met Reglemente, Kerkordelike Riglyne en Funksionele Besluite soos vasgestel deur die Algemene Sinode van 2004.* (Wellington: Lux Verbi.BM).

words a claim can be made to freedom of religion. This can bring about that discrimination / differentiation which can be seen as unfair in terms of the Constitution can, on grounds of the legitimate aims and faith convictions of a church be seen as necessary for the protection of the legitimate aims and religious nature of the church. This can have the effect that a church can have restrictive rules and policies on matters like membership; admittance to the offices; the conduct of disciplinary hearings; the conduct of appeal hearings; dispute solving; labour relations etc., because in all of these policies – and also others – it can be necessary to protect the specific faith nature of the church. Restrictive policies in a church can also be necessary to save guard a church against what is called “capturing”. Capturing takes place when new members of the church, existing members or even outside parties move to fundamentally distort the purpose, character and function of the church, sometimes to the extent that the very existence of the body is at risk – including both its physical and religious property³⁷.

The following can be elements in the life of churches - their policies, rules and conduct - that need to be assessed with regard to the requirements of the Constitution and the constitutionality of exclusionary policies. It can be rules, policies and conducts which churches might wish to use in order to protect their integrity as churches in the light of freedom of religion. It can refer to the anthropology and view of society that churches work with; churches and their related institutions as juristic persons³⁸. The church and unfair discrimination; requirements for membership. The church and freedom of conscience, religion, thought and opinion. The church and religion in state and state aided institutions. The church and freedom of expression. The church and freedom of association. The church and property and the church and income tax³⁹. Labour relations in the church; rules of procedure for the meetings of church assemblies, disciplinary hearings, the hearings of appeals and the resolution of conflict within the church. Requirements for office bearers and their functions; theological training and religious education, the policy of the church on education. The policy of the church with regard to social and ethical issues such as abortion, homosexuality, marriage, gay marriages and the conducting of such marriages; gender issues etc. The relationship between the church and state institutions such as welfare homes, hospitals, prisons, protection services, the army, air force and fleet. All of the above mentioned and many more are matters that churches have to consider with regard to their freedom of religion.

It will of course also be necessary for the church to assess its whole relationship to the State as such⁴⁰

6. IN CONCLUSION

On the one hand religion has the more general aspects of embracing all beliefs and actions that concern the ultimate origin, meaning, and purpose of life involving the responses of the human heart, soul mind, conscience, intuition and reason to revelation, to transcendent values, to the

37 S Woolman, *Association*. In: Currie, & De Waal, *The Bill of Rights Handbook*. 423 – 424.

38 Du Plessis, *Religious Human Rights*, 445.

39 Du Plessis, *Religious Human Rights*, 445. *The Law on non Profit Organisations*, Law 71 of 1997; and the latest *Income Tax Law*

40 Du Plessis, *Religious Human Rights*, 445 – 446; P Coertzen, *Kerk en Staat. Die Optimum Verhouding vir Godsdiensvryheid. Nederlandse Gereformeerde Teologiese Tydskrif*, (Sept – Des 2005); Van der Vyver, Introduction, XVIII–XLIV.; J van der Vyver, *Constitutional Perspectives on Church-State Relations in South Africa. Brigham Young University Law Review*, Volume 1999, number 2 (1997).

idea of the Holy. On the other hand religion is always a **specific creed (s)** i.e. an accepted cadre of beliefs and values regarding the deepest origins, meanings and aims in life; a **specific cult** – rituals, liturgies, patterns of worship and dedication, a **specific code of conduct** - accepted by individuals and the community as a whole as a code of conduct for them who confess the faith, practice the cult and act in accordance with it; and a **specific confessional community** of people who accept the creed, the cult and the code of conduct and also practice it. Remembering especially the last distinctions are very important if we want to understand the ambit and function of religious freedom within the context of a constitution and a bill of rights.

Given the reality of the South African Constitution, with the Bill of Rights that guarantees freedom of religion and compels the state to always keep it in mind together with the Christian view that the authority of the state must be accepted it is very important for churches and also other religious bodies to assess their existing policies, rules and conduct, consider whether changes are necessary and make such amendments as required, in order to bring their policies and practices in line with the requirements of the Constitution⁴¹ but also to avail themselves of the relationship between their nature as a church and their order, policies, rules and conduct. Doing this will of course entail that churches know what the ambit of freedom of religion is and what the requirements with regard to freedom of religion are, given their identity as a church.

If churches do not take freedom of religion in its ambit and function seriously they can end up in a situation where they will of necessity be compelled to follow and act according to the laws of the State even if those laws are in contradiction with the spiritual nature of the Church. They can find themselves in a situation where they as churches allow the state to govern the church through its laws. It is clear from documents such as the *Report: Exclusionary Policies* of the Human Rights Commission that such a situation is not necessarily the desire of the State in South Africa. It is also clear from the scope which the Bill of Rights allows for churches to function as associations in accordance with their deepest convictions, their order and their policies. If churches fail to use their freedom of religion and function within that ambit they will of necessity have to function according to the laws of the State and history has shown that such a situation can have devastating results for the church⁴².

KEY WORDS

Churches

Religious freedom

Ambit of religious freedom

Function of religious freedom

Religion

Prof PC Coertzen

Faculty of Theology

University of Stellenbosch

pc@sun.ac.za

41 Report: Exclusionary Policies, 3)

42 Barmer Theologische Erklärung, 29/31 Mai 1934. In: Adelbert Erler, *Kirchenrecht. Ein Studienbuch.*, München: Verlag C.H. Beck, 1975), 206 – 208.