STATE AND CHURCH IN NORWAY

BY

JENS EDVIN ANDREASSEN

1. INTRODUCTION

Norway has a State Church, that is, a church which is organized by the State and whose organs are organs of the State. The official name is *Den norske kirke* (the Norwegian Church).

The Norwegian State Church dates back to the Reformation in 1536–37. The Church is organized by statutes,[1] but on the basis of some main principles adopted in the Constitution of 17th May 1814.

According to sec. 2 para. 2 of the Constitution, the Evangelical-Lutheran religion shall remain the official religion of the State. This provision has often been understood to give a general guideline for all the activities of the State.[2] But following the Supreme Court judgement of 1983 in *Børre Knudsen* v. *the State* it is quite clear that the provision is limited solely to church matters.[3]

On the other hand, sec. 16 of the Constitution provides that the King shall "ordain all public church services and religious worship, all meetings and assemblies dealing with religious matters, and ensure that public teachers of Religion follow the norms prescribed for them". The widespread understanding of this provision is that the King is the head of the Norwegian Church, and that this function, since the personal power of the King has been relinquished, now belongs to the Cabinet. The most extreme interpretation has been expressed by Frede Castberg. His opinion is that the King (*i.e.* the Cabinet) not only has the authority to administer the Church, but also legislative authority in matters of religious worship and the authority to interpret the Confession of the Church. In this connection Castberg maintains that even if it appears natural for the King to consult the bishops and other theological experts before resolving in important questions relating to the religion of the State, he has no judicial obligation to do so. "The Constitution has its own rules about how the authority of

[1] The most important of which is the Act of 29th April 1953 relating to the Organization of the Norwegian Church (*lov av 29. april 1953 om Den norske kirkes ordning*).

[2] See Section 2 below.

[3] 1983 NRt 1004. See Section 2 below.

the King is to be exercised in matters assigned to him by the Constitution".[4]

The present author considers this position to be untenable.[5] Castberg's understanding has never been subscribed to by servants of the Church, nor is it in accordance with modern principles of interpretation of the Constitution.

In this paper first, in Section 2 below, remarks will be made upon the interpretation of sec. 2 para. 2 of the Constitution and on what limitations this provision places on the activities of the State. In Section 3, the extent of the authority of the political organs of the State in church matters will be discussed. Section 4 will consider the relationship between the *Storting* (the Parliament) and the King (*i.e.* the Cabinet). Finally, in Section 5, the relationship between the King and other central organs of the Church on the one hand and local congregations on the other will be investigated.

2. LIMITATIONS PLACED BY SEC. 2 PARA. 2 ON THE ACTIVITIES OF THE STATE

As mentioned in the introduction, the provision in sec. 2 para. 2 of the Constitution that the Evangelical-Lutheran religion shall remain the official religion of the State has been widely understood to be a general guideline for all State activities. This understanding has been especially widespread in ecclesiastical circles,[6] but has had several adherents among politicians also. There remain politicians interested in maintaining the Norwegian Church as a State Church who adduce the argument that sec. 2 para. 2 of the Constitution must be abolished if the Church is to be separated from the State. In a debate as recently as October 1990 the Church Minister at that time, Alienor Bjartveit of the Christian Democratic Party (*Kristelig Folkeparti*), stated that a separation of the State and Church would be worst for the State. "The Church will surely be all right without the State, but it will be unfortunate for the State to lose the

[4] F. Castberg, *Statsreligion og kirkestyre* (Religion of the State and Rule of the Church), Oslo 1953, p. 34. See also F. Castberg, *Norges Statsforfatning* (the Constitution of Norway), Vol. II, 3rd Ed., Oslo 1964, pp. 43 ff. and pp. 139 ff.

[5] The same view has now been expressed by John Egil Bergem in a review of my book *Konge, rikskirke og lokalmenighet* (King, Central Church and Local Congregation) in *Lov og Rett* 1991, pp. 311 ff. at p. 313.

[6] See *e.g.* below regarding *Børre Knudsen's* argumentation in the case *Børre Knudsen* v. *the State* (1983 NRt 1004). See also R. Flemestad, "Signingen" (the Blessing), *Nytt Norsk Tidsskrift* 1991, pp. 315 ff. concerning various points of view expressed in connection with the blessing of King Harald V in 1991.

Church. ... It is important for the State to be founded on Christian values", she said.[7]

The question of the interpretation of sec. 2 para. 2 of the Constitution arose in *Børre Knudsen* v. *the State*. In this case Mr. Knudsen who since 1979 had refused to fulfil what he called the Parson's official duties to the State, for instance consecrating man and wife, trying conditions of marriage, keeping the official register of births, receiving post from the State, *etc.*, was sentenced to lose his office as Parson of Balsfjord Parish in Troms. His main defence was that the presuppositions for a State Church had been broken by the Act of Free Abortion enacted by the *Storting* in 1978.[8] This he maintained absolved him from his official duties to the State.[9]

A central link in Mr. Knudsen's argumentation was that the principle of free abortion stands in conflict with the provision in sec. 2 para. 2 of the Constitution.

Historically, several reasons can be given for this understanding. Sec. 2 para. 2 of the Constitution is modelled upon sec. 1 of the Royalty Act 1665. Sec. 1 of the Act *inter alia* imposed on the King the duty to honour, serve and worship the one and only right and true God and to keep the inhabitants of the country in the same pure and unadulterated Christian faith. There can be no doubt that this provision provided a general guideline for all activities of the State, and that the provision consequently also imposed restraints upon the exercise of secular executive and legislative power, both of which at that time belonged to the King.[10]

But even if sec. 2 para. 2 of the 1814 Constitution is modelled upon the provision in sec. 1 of the 1665 Royalty Act, it cannot be taken for granted that the two provisions must be interpreted in the same way. When interpreting an old Constitution such as the Norwegian, it is especially important to consider general political and cultural social developments since the Constitution was enacted. When the Royalty Act was passed in 1665, the King had absolute power, and the Evangelical-Lutheran religion

[7] See the newspaper *Vårt Land*, 19th October 1990, p. 1.

[8] The enactment of the Act of Free Abortion in 1978 took place by an amendment of *lov av 13. juni 1975 nr. 50 om svangerskapsavbrudd* (Act of the 13th June 1975 No. 50 relating to Termination of Pregnancy).

[9] For further particulars on the case, see *inter alia* T. Leivestad "Børre Knudsen til Strasbourg" (Børre Knudsen to Strasbourg), *Lov og Rett* 1984, pp. 179 ff., J.E. Andreassen, "Stat og kirke. Noen refleksjoner om forholdet mellom stat og kirke med utgangspunkt i Børre Knudsen-saken" (State and Church. Some Reflections on the Relationship between State end Church with Point of Departure in the case of Børre Knudsen v. the State), *Lov og Rett* 1984, pp. 183 ff. and J.E. Andreassen, *Konge, rikskirke og lokalmenighet* (King, Central Church and Local Congregation), Tromsø 1989, p. 24.

[10] Cf. M.T. Andenæs and I. Wilberg, *The Constitution of Norway—a Commentary*, Oslo 1987, pp. 17–18.

was the only permitted religion in Norway. Today Norway is a democratic society, and by a Constitutional Amendment in 1964 the principle of religious freedom was adopted, in sec. 2 para. 1 of the Constitution. Certainly more than 90 per cent of the Norwegian population still belong to the Norwegian Church. But it is obvious that many members of the Church have a rather passive relationship to religion. Modern Norwegian society is characterized by a pluralism of religions and other philosophies of life. In a society based on democracy and religious freedom and characterized by pluralism it is quite impossible to view a provision like that in sec. 2 para. 2 of the Norwegian Constitution as limiting the legislative and executive power in questions other than church matters.

Sec. 4 of the Constitution states that the King himself profess the Evangelical-Lutheran religion, and in sec. 12 the same is provided for at least half the members of the Cabinet. But the Constitution does not require members of the *Storting* to profess the Evangelical-Lutheran religion or any other religion. Therefore there can be serious doubt whether the provision in sec. 2 para. 2 was ever meant to limit the power of the *Storting*.

When the Constitution was adopted, the foundation of a Christian State was ensured without requiring the members of the *Storting* to profess the State religion. Most bills are proposed by the King (*i.e.* the Cabinet), and in any case every bill enacted by the *Storting* has to be approved by the King to be valid (sec. 78). In 1814 the personal power of the King was presupposed, and until a Constitutional Amendment in 1919 all Cabinet members had to profess the Evangelical-Lutheran religion.[11] With both King and Cabinet Evangelical-Lutherans, all acts in conflict with this religion should automatically be prevented at the proposal stage or at the approval stage.

But today there cannot on the basis of the provisions in sec. 4 and 12 of the Constitution be established any restriction for what acts the King can propose or approve. As the Supreme Court points out in its judgement in *Børre Knudsen* v. *the State*, a denial of assent in a parliamentary system is "unthinkable". And at all events in more important legislative matters the initiative of the King must depend on what the majority of the *Storting* desires. "A duty for the King in certain matters to exercise his power in the legislative process contrary to the majority of the *Storting* and even in such a way that neglect of this duty should lead to invalidity of the bill, is difficult to *reconcile* with our Constitutional System", it was stated.[12]

[11] For further particulars, see *inter alia* Andenæs and Wilberg, *op.cit.*, pp. 30–32.
[12] 1983 NRt 1004, at p. 1016.

In the judgement Mr. Knudsen's claim was not approved. The Supreme Court held that the duties sec. 2 para. 2 imposes on the King must be understood essentially to be directed to the King in his capacity of manager of the Church.[13]

Børre Knudsen also used as an argument that the Act of Free Abortion conflicts with the provision in Art. 2 of the European Convention on Human Rights. According to this provision every human being has the right to life. Mr. Knudsen maintained that this provision must also include unborn life.

The Supreme Court did not find it necessary to decide whether an unborn life is included by the provision in Art. 2 of the Convention. "At all events it must be supposed that the provision does not entail far-reaching limitations on the power of the legislators to regulate the conditions for abortion." According to the Norwegian Act of Free Abortion the final decision on abortion is taken by the woman herself when the abortion is to take place within the end of the 12th week of the pregnancy. The Supreme Court held that this adjustment has parallels in many other countries culturally similar to Norway—countries which have also ratified the European Convention on Human Rights. "This cannot be without consequences for evaluation of the question according to international law", it was stated.[14]

But even if the provisions of the Constitution relating to the Evangelical-Lutheran religion do not place any restraints on the exercise of the legislative and executive power in secular matters, it is emphasized by the Supreme Court that these provisions are not merely "empty words". The Supreme Court points out that the provisions *inter alia* entail that the King, in his capacity as head of the Church, is obliged to act within the limits of the Evangelical-Lutheran religion and to maintain and protect the is religion.[15]

Hence, the legal significance of sec. 2 para. 2 of the Constitution is first that the State is obliged to establish a Church which has the Evangelical-Lutheran religion as its basis of faith.[16] The King is responsible for a proper organization and adequate staffing of the Church.

Secondly the legal significance of sec. 2 para. 2 is that the provision imposes a duty on the organs of the Church to carry out their tasks loyally to the Evangelical-Lutheran religion, and on the clergymen and other

[13] 1983 NRt 1004, at p. 1015.
[14] 1983 NRt 1004, at p. 1017.
[15] 1983 NRt 1004, at p. 1015.
[16] See *inter alia* Andreassen, *Konge, rikskirke og lokalmenighet*, pp. 23–24.

public teachers to teach in accordance with this religion.[17] The contents of the Evangelical-Lutheran religion must be decided on the basis of the confessional scriptures of the Norwegian Church, which according to *Kong Christian V's Norske Lov*[18] 2−1, are the Holy Bible, the Apostles' Creed, the *Symbolicum Nicænum*, the *Symbolicum Athanasianum*, the *Confessio Augustana* and the Lutheran Little Catechism.

Since the Norwegian Church is founded on the Evangelical-Lutheran religion, the confessional scriptures of the Church are not only of importance in deciding what the Church shall teach in doctrinal questions. As maintained by the Supreme Court in its judgement in *Børre Knudsen* v. *the State*, these scriptures also are of significance in stating how the Church is to be organized.[19] The same view is expressed in a report from a commission appointed to propose procedures for dealing with doctrinal issues (the Doctrinal Commission).[20] However, even though the confessional scriptures may provide or presuppose some solutions in organizational questions,[21] their weight is not nearly the same in such questions as in proper doctrinal questions. This point is emphasized by the Supreme Court in its judgment in the *Liturgy Case* from 1987.[22]

The *Liturgy Case* was brought against the State by 22 members of Alta Parish, 20 members of Evenes Parish and 23 members of Porsanger Parish. In the litigation the author acted as attorney on behalf of the plaintiffs.

The central question was whether the King can impose on the local congregations of the Church the use of a new liturgy approved by the King, or whether the local congregations are entitled to continue to use the existing one.[23]

According to sec. 16 of the Constitution the King has the power to "ordain all public church services and religious worship". On the basis of this provision it is quite clear that a local congregation cannot make their own rituals for church activities such as divine service, baptism, *etc.* A local congregation cannot take into use a liturgy which is not approved by the

[17] See *inter alia* Andreassen, *Konge, rikskirke og lokalmenighet*, p. 24 and Andreassen, "Stat og Kirke", *Lov og Rett* 1984, pp. 183 ff., at p. 187.

[18] *Kong Christian V's Norske Lov av 15, april 1687* (King Christian V's Norwegian Code of 15th April 1687).

[19] 1983 NRt 1004, at p. 1016. See also *inter alia* Andreassen, "Stat og kirke", *Lov og Rett* 1984, pp. 183 ff., at p. 187.

[20] NOU 1985:21 *Den norske kirke og læren* (the Norwegian Church and the Doctrine), p. 84.

[21] See *inter alia* Andreassen, *Konge, rikskirke og lokalmenighet*, pp. 96 ff.

[22] 1987 NRt 473, at p. 481. See also Andreassen, *Konge, rikskirke og lokalmenighet*, pp. 96−97, p. 153 and p.161.

[23] For further details, see Section 5.3.

King. But in sec. 32 (b) of the Act relating to the Organization of the Norwegian Church it is stated that it is assigned to the Congregational Meeting in every local congregation[24] to decide *inter alia* on introducing a new approved hymn book or liturgy. The plaintiffs in the *Liturgy Case* argued on account of this provision that the King cannot impose on a local congregation the use of a new liturgy.

Interpreting sec. 16 of the Constitution and sec. 32 (b) of the Act relating to the Organization of the Norwegian Church the plaintiffs *inter alia* referred to the *Confessio Augustana*. They argued that the *Confessio Augustana* several places declares or presupposes that force not shall be exercised against a congregation in questions of ritual or ceremony.[25]

In its judgment the Supreme Court held that it found no guidance in the Confession of the Church, and referred to the fact that the theological experts who had given depositions to the Court, did not agree over the question of whether the confessional scriptures intend local congregations to be entitled to maintain the existing liturgy. Nevertheless, the Court stated that this question was "outside the area of so-called doctrinal questions in which the confessional scriptures have an especial weight for the comprehension of the provisions of the Constitution concerning the State Church".[26]

3. THE AUTHORITY OF THE POLITICAL ORGANS OF THE STATE IN CHURCHMATTERS

3.1 Some Points of Departure

The authority of the political bodies of the State in church matters is primarily regulated in sec. 16 of the Constitution. According to this provision the King (*i.e.* the Cabinet) "ordains all public church services and religious worship, all meetings and assemblies dealing with religious matters, and ensures that public teachers of religion follow the norms prescribed for them".

There is no doubt that the King on the basis of this provision must be looked upon as the organizational and managerial head of the Church. In this capacity it is assigned to the King to establish the necessary organs to carry out the tasks of the Church, to appoint clergymen and other officials and in other respects to arrange matters so that the Church is able to

[24] The Congregational Meeting consists of every member of the Church within the Parish qualified to vote in official elections, cf. note 65 below.

[25] See *inter alia* Art. VII, XV and XXVIII of the *Confessio Augustana*.

[26] 1987 NRt 473, at p. 481.

function according to its tasks. But it is not necessary to interpret sec. 16 to mean that the King also possesses the authority to make decisions regarding the contents of the rituals for divine service and how the confessional scriptures shall be understood.

In legal writing it has been widely held that the authority of the King encompasses the authority to regulate all kinds of Church activities, including the rituals for divine services, baptism, *etc.*, and to interpret the confessional scriptures.[27] But as mentioned in the Introduction, this understanding has never been subscribed to by the officials of the Church, nor is it in accordance with modern principles of interpretation of the Constitution. Neither has the traditional opinion in legal writing been followed in State practice.

Section 3.2 will concern the authority of the King in questions of establishing the rituals of the Church; Section 3.3 the authority of the King in questions of interpreting the confessional scriptures.

3.2 The Authority to Establish the Rituals of the Church

In practice new hymn books and rituals for divine service and other acts of the Church have always been prepared by ecclesiastical organs. The first step generally has been that an initiative to reform the existing hymn book or liturgy has been taken in ecclesiastical quarters. Thereafter a commission has been appointed to examine the matter and make a primary proposal. The commission's proposal has subsequently been circulated for discussion by various church bodies. In the hearings the Bishops of the Church have played a central role. The final proposal has been drafted on the basis of the declarations of the various bodies to which it has been referred. It has then been submitted to the Church and School Department. The role of this Department has in practice been limited to issues of a verbal character. Not even verbal amendments have been made by the Department without the approval of the Bishops.[28] The formal approval of a new hymn book or liturgy has been given by the King-in-Council, using language that has usually been in accordance with the real circumstances. The King does not "decide", "establish" or "resolve" the new hymn book or liturgy, but "authorizes", "approves" or "assents to" it.

By an Amendment of the Act relating to the Organization of the Norwe-

[27] Cf. *inter alia* Castberg, *Statsreligion og kirkestyre*, p. 34, Castberg, *Norges Statsforfatning*, Vol II, pp. 43 ff. and pp. 139 ff., J. Andenæs *Statsforfatningen i Norge* (the Constitution of Norway), 7th Ed., Oslo 1990, p. 291 and Andenæs and Wilberg, *op. cit.*, pp. 35–36.

[28] See for further particulars *St. meld. nr. 40 (1980–81)* (Report to the *Storting* No. 40 (1980–81)), p. 46.

gian Church in 1984, the Church Meeting has been established as an organ of the Church. The intention has been that the authority of the King to approve new hymn books, liturgies and other rituals for church acts from the establishment of the Church Meeting shall be delegated to this body.[29] By a resolution of the King in 1990 this intention has been partly fulfilled as the Church Meeting is given the authority to "establish liturgies for use in the Norwegian Church".[30] According to this resolution the Church Meeting also has the authority to "decide text series for the Norwegian Church" and to "decide special preaching texts for some days of worship in the Christian year".[31] But the authority to approve hymn books has not yet been delegated.

But even if the Church Meeting now has the power to establish liturgies for the Norwegian Church, it is still interesting to clarify the extension of the authority of the King based upon the Constitution. As far as the authority of the Church Meeting is based upon delegation from the King, the King has the authority to instruct the Church Meeting how to exercise the delegated power, and the King also has the right to rescind the delegation.

At any rate since the end of the 19th century, the King has in practice only exercised a formal approval-authority in questions relating to the introduction of new hymn books or liturgies in the Norwegian Church. This practice cannot be without legal consequences.

In addition to the practice of the King, attention must be paid to the opinion of "the Church itself". The main opinion of Church officials has been that the King cannot be deemed Master of the Church, but rather a Servant, who must arrange matters so that the Church is able to carry out its tasks. The opinion has been that the power of the King is limited to issues of an exterior organizational and managerial character (*res circa sacrum*), and that his power does not comprise matters of an interior ecclesiastical character (*res in sacris*).[32]

The Norwegian Church is not only a branch of the administration of the State, but also a religious community. As a religious community the Norwegian Church ought to have the same right as other religious communities to be protected from interference by the political organs of the State.[33]

[29] See for further particulars Andreassen, *Konge, rikskirke og lokalmenighet*, pp. 38–39.

[30] Resolution of 26th October 1990 No. 880.

[31] As the preceding note.

[32] See *inter alia* E. Berggrav, *Contra Castberg*, Oslo 1954, pp. 20–24 and A. Aarflot, "Jus in sacris", *Lov og Rett* 1983, pp. 200 ff., at pp. 206–207.

[33] Cf, the points of view expressed by the minority of the Church and School Committee of the *Storting* in *Innst. S. nr. 185* (1989–90). See also NOU 1989:7 *Den lokale kirkes ordning* (the Organization of the Local Church), p. 108.

The conclusion must be that the King primarily has the function of Chief Administrator of the Norwegian Church. According to sec. 16 of the Constitution the King also has the authority to approve hymn books and liturgies for divine services and other church acts, but the role of the King in the approval of a new hymn book or liturgy must be deemed to be limited to a check of the form and legality. The authority to decide the contents of a new hymn book or liturgy should be vested in ecclesiastical organs.[34] The ecclesiasticle organs necessary to deal with these issues can either be organized by the King in his capacity as the executive power or by the *Storting* as the incumbent of the legislative authority and the highest administrative power of the State.

At any rate the authority of the King cannot be so far-reaching as expressed by Frede Castberg. The King like other organs of the administration must follow the Act of Administration,[35] and according to sec. 17 of which the Administration shall ensure that the matter is investigated as thoroughly as possible before a decision is taken. As the Doctrinal Commission has stated:

> "It is difficult to see that this statutory duty of investigation can be fulfilled in essential matters relating to the Church without co-operation from the Church."[36]

This issue is also touched upon by the Supreme Court in its judgment in *Børre Knudsen* v. *the State*, where the Court presupposes that the King, in deference to justifiable handling of the case, cannot dismiss a parson without consulting the Bishops.[37]

3.3 The Authority to interpret the Confessional Scriptures

In addition to ordaining all public church services and religious worship the King according to sec. 16 of the Constitution *inter alia* also "ensures that public teachers of religion follow the norms prescribed for them".

The word "ensures" can be understood both in a narrower and in a wider meaning. More narrowly the authority of the King extends only to ensuring that there is a reaction if preachers of the Church deviate from the Doctrine or otherwise violate directions prescribed for them, and that the Church had adequate organs to deal with such issues. In the wider meaning "ensures" also comprises the authority in case of dispute, to

[34] This question is dealt with more thoroughly in Andreassen, *Konge, rikskirke og lokalmenighet*, pp. 36 ff.

[35] *Lov av 16. februar 1967 om behandlingsmåten i forvaltningssaker (forvaltningsloven).*

[36] NOU 1985:21 *Den norske kirke og læren*, p. 88.

[37] 1983 NRt 1004, at pp. 1021–1022. See also Andenæs, *op. cit.*, p. 291.

interpret and adopt the contents of the Doctrine of the Church and the other directions the officials of the Church must follow.

In Lutheran theology it is an important principle that neither the Pope nor Church Assemblies have power to act as authoritative interpreters of the Scriptures. Only the Holy Bible itself is authoritative. No ecclesiastical authority has the power to define what Christian truth is. In the last instance it is the responsibility of every single congregation to examine the sermons and investigate whether the preaching is in accordance with the Scriptures or not.

But even if no organ in a Lutheran church has the power to decide with binding effect what Christian truth is, there is also a need in Lutheran churches to settle doctrinal disputes. For a church it is important to protect the fundamental evangelical truths from being distorted. As the Doctrinal Commission puts it:

> "The care of Doctrine is anchored in the care of the Gospel. If the Gospel is lost, the Church has no tidings to bring. Then it has lost its right of existence."[38]

However, not all disagreements on the interpretation of the Confessional Scriptures can be looked upon as doctrinal disputes. If in a church there can only exist one understanding of every question, it will lead to unfortunate monotony. Only fundamental questions at the centre of the Christian faith can be considered as doctrinal.[39]

As a consequence of the view regarding the settlement of doctrinal disputes held in Lutheran theology, such disputes in Lutheran churches are always raised in concrete situations, for instance in connection with the enactment of new rituals for divine service or other church acts or in connection with the appointment or dismissal of a clergyman.

If a case implicating doctrinal issues is brought to Court, for example a case concerning the dismissal of a clergyman deviating from the doctrine of the Church, it is obvious that the Court cannot decide what is the right doctrine. What the right doctrine is, is a theological question, and cannot be the object of a legal trial.

But even if the Courts cannot try what the true doctrine is, they must be able to examine whether the handling of the case, for example by the dismissal of a clergyman, is justifiable. Likewise the Courts must have the authority to try whether fair and justifiable discretion has been exercised. If for example the discretion is arbitrary, or based on irrelevant considerations, *etc.*, the decision can be judged unvalid and be set aside.

[38] NOU 1985:21, p. 62.
[39] Cf. NOU 1985:21, pp. 47 ff. and p. 144.

The question is then, who shall decide what the right comprehension of the Evangelical-Lutheran religion is, if disagreement on a doctrinal issue is uncovered?

In practice questions regarding the settlement of doctrinal disputes in the Norwegian Church are resolved by the Church Doctrinal Committee. The Doctrinal Committee was established on the basis of sec. 56 a of the Act relating to the Organization of the Norwegian Church. This provision was added by an Amendment in 1987 and which runs as follows:

> "The Doctrinal Committee of The Norwegian Church shall consist of:
> a) the Bishops,
> b) three theological experts, whereof each of the three Theological Faculties appoints one,
> c) two theological experts, appointed by the Church Meeting,
> d) four lay members, appointed by the Church Meeting.
>
> The members of the Committee are bound by the Evangelical-Lutheran Doctrine. Members mentioned under b–d and their personal deputies are appointed for 4 years. . . . The Doctrinal Committee shall have members of both sexes.
>
> The Committee shall on request issue declarations in cases concerning the Evangelical-Lutheran doctrine.
>
> In service matters and in cases of appointments of clergymen and junior curates, and following more detailed provisions by the King also in corresponding cases concerning other groups of officials, declarations shall be issued at request of the King or a Bishop. In other cases the Church Meeting too can ask for a declaration. When dealing with cases of individuals the Committee shall be supplemented by a person with the right of utterance appointed by the defendant.
>
> The Committee lays down the detailed rules for the forms of its activity.
>
> The King shall promulgate supplementary provisions for implementing the rules in this Section, *inter alia* for dealing with cases of individuals.

This provision was prepared by the Doctrinal Commission with Supreme Court Judge Trond Dolva as its juridically competent member.

In its report the Commission points out that the Doctrinal Committee is not "formally assigned to other organs of the Church, but acts in administrative matters in relation to various organs".[40]

The Commission discusses in its report whether the establishment of the Doctrinal Committee will conflict with the provision in sec. 16 of the Constitution. The Commission does not draw any definitive conclusion on how sec. 16 of the Constitution shall be interpreted on this point. Yet the Commission not only discusses the question, but also argues against, and gives several critical remarks regarding, the traditional understanding of

[40] NOU 1985:21, p. 150.

the question in legal writing.[41]

Sec. 16 is also touched upon by the Church and School Department in its proposition to the *Odelsting*, which is a department of the *Storting* for the handling of bills. The Church and School Department declares that sec. 16 "entails that formally it is the King who has *the responsibility for doctrinal matters being handled in a justifiable manner*".[42]

It is not quite clear whether a declaration of the Doctrinal Committee is intended to be *formally binding* or whether the declaration is presupposed to be followed because of *the professional reputation* of the Committee.[43] But the legislators seems to have presupposed that declarations of the Doctrinal Committee will *in practice* be followed by the organ deciding in the case in question. This presupposition now also seems to be implied in the provisions relating to the Doctrinal Committee given by the King.[44] In sec. 15 of these provisions it is stated that the Doctrinal Committee, having dealt with a question, "shall make the necessary summing up and the final judgement of the doctrine".

It appears from the report of the Doctrinal Commission that the declarations of the Doctrinal Committee need not necessarily end in a conclusion. If there is for example disagreement within the Committee, it is presupposed that it will present the various views represented without putting the question to vote.[45]

That a doctrinal question disputed within the Doctrinal Committee is intended not be put to vote, is also expressed in the provisions relating to the Doctrinal Committee given by the King.[46] In sec. 13 para. 2 of these provisions it is stated:

> "If in a doctrinal case there is a disagreement within the Doctrinal Committee, the declaration of the Committee shall render an account of the various standpoints. Each member of the Committee is entitled to express his view in a written statement."

The interpretation of sec. 16 of the Constitution on which the institution of the Doctrinal Committee is based, is of considerable legal significance. By the establishment of this Committee the King is at any event presupposed to have no real authority to interpret the Confession of the Church,

[41] NOU 1985:21, pp. 87–88.

[42] *Ot. prp. nr. 50 (1986–87)*, p. 5.

[43] See more closely Andreassen, *Konge rikskirke og lokalmenighet*, pp. 52–53.

[44] *Forskrift av 19. februar 1988 nr. 159 om Den norske kirkes lærenemnd* (provisions of 19th February 1988 No. 159 relating to the Doctrinal Committee of the Norwegian Church). The provisions are given by the King according to sec. 56 a para. 6 of the Act relating to the Organization of the Norwegian Church.

[45] NOU 1985:21, p. 148.

[46] As note 44.

and the report of the Doctrinal Commission also argues against the traditional understanding that the formal authority to interpret the Confession is vested in the King.

Nor is the view on settlement of doctrinal disputes which has been expressed by the establishment of the Doctrinal Committee a new one. Corresponding points of view have earlier been expressed also by the Church and School Department in a report to the *Storting* regarding the Norwegian Church:

> "The Department has no competence, no tradition and no ambition to take independent positions in doctrinal disputes."[47]

The view expressed in this report is quite a good description of the practice followed by the political organs of the state.[48]

Certainly the King as a solution to the *Schjelderup* case in 1953–54 empowered the Church and School Department to answer Bishop Kristian Schjelderup that he had not by his utterances on the eternal punishments of hell violated the confessional duties imposed on him.[49] But this resolution was issued on the basis of declarations from the Bishops and the Theological Faculties. The conclusions of these declarations were not synonymous, and the Church and School Department had to answer against the background that Bishop Schjelderup had asked the Department whether he by his utterances had violated his doctrinal duties.

The background of the case was that Professor Ole Hallesby in a radio sermon had said that he did not understand how people who did not believe in God could dare to go to bed when they did not know whether the next morning they would awake in their beds or in hell. Following this radio sermon, Bishop Kristian Schjelderup wrote an article in the newspapers where he declared that there was a contradiction between the belief in a divine justice in the life of men and the doctrine of an eternal punishment in hell for people who do not believe in God. In his view "the doctrine of an eternal punishment and hell does not belong to the religion of love".[50]

The utterances of Bishop Schjelderup created several reactions, and in this situation he asked the Department whether he had violated his doctrinal duties. The Department consulted the Bishops and the Theological Faculties. Bishop Schjelderup himself declared that the felt "in a deep

[47] *St. meld. nr. 40 (1980–81)*, p. 48.

[48] Cf. also the views of the minority of the Church and School Committee of the *Storting* in *Innst. S. nr. 185* (1989–90), p. 3.

[49] *Kgl. res. 19. februar 1954* (Resolution of the King of 19th February 1954).

[50] See the newspapers *Aftenposten* and *Arbeiderbladet* 31st January 1953.

spiritual accord with the Gospel and the living Confession as it every Sunday sounds in our Churches". The legal questions were submitted by the Department to Professor Frede Castberg. The book *Statsreligion og kirkestyre* (Religion of the State and Rule of the Church) is his reply to the Department.[51]

In the present author's opinion the authority of the King in confessional matters is not so far-reaching that it includes the authority to take standpoints on the realities in doctrinal disputes. The authority of the King must be limited to ensuring that doctrinal matters are competently handled. The Doctrinal Committee must take a central place in judging doctrinal disputes.

4. THE RELATIONSHIP BETWEEN THE KING AND THE STORTING

The Norwegian Constitution is *inter alia* based upon a principle of separation of the legislative, the executive and the judiciary powers. When the Constitution was enacted, the separation of powers was intended to be a reality. But in practice the authority of the *Storting* has grown at the cost of that of the King (*i.e.* the Cabinet). The change in the separation of powers between the *Storting* and the King is mainly due to the implementation of the parliamentary system and the abolition of the personal power of the King. These changes in constitutional law have taken place without amendments of our written Constitution and are entirely based on the practice of the political organs of the State, *i.e.* the *Storting* and the Government.[52]

In legal writing the traditional opinion has been that the provisions of the Constitution which expressly assign a narrower defined authority to the King must be understood as prerogatives for him, *i.e.* an authority which cannot be taken from him by the *Storting*.[53] Following the establishment of the parliamentary system and the abolition of the personal power of the King, the separation of powers between the *Storting* and the King has, however, no reality.

Certainly there can be used as an argument to maintain the doctrine of prerogatives that even if the original reason for the provisions of the

[51] For more details concerning this case, see *inter alia* NOU 1985:21, pp. 30 ff. and Andreassen, *Konge, rikskirke og lokalmenighet*, pp. 75–76 with further references.

[52] Cf. Andenæs and Wilberg, *op. cit.*, pp. 9 ff. and pp. 21–23.

[53] See e.g. Andenæs, *Statsforfatningen i Norge*, pp. 265 ff.

Constitution assigning a more closely defined authority to the King no longer exists, the doctrine can be maintained to secure a central co-ordination of the execution of authority. If the King is in charge of the authority in a particular field, the execution of the authority in that field is subject to parliamentary and constitutional control by the *Storting*. But to this reasoning it can be objected that it is rather haphazard what authority the Constitution assigns to the King by an express provision. Originally the general provision in sec. 3 vesting the executive power in the King, was also understood as a prerogative.[54] But today there is no doubt that the authority of the King according to sec. 3 of the Constitution can be taken from him by the Storting and assigned to organs which are not subordinate to the King.[55] If only provisions expressly assigning a particular authority to the King are apprehended as prerogatives, it will be quite random what fields of authority this will concern.

Additionally, what authority is assigned to the King by an express constitutional provision, is decided on the basis of the social circumstances of 1814. In a parliamentary system there is no reason to protect the authority of the Government in relation to the *Storting*.[56] What fields of authority shall be subject to parliamentary and constitutional control ought to be up to the *Storting* itself to decide at any time.

As our constitutional system exists today, the best reasons support the understanding that the *Storting*, in ecclesiastical as well as in other matters, is constitutionally entitled to take from the King his authority and assign it to other organs. Surely it is time to throw the whole doctrine of prerogatives overboard and establish what in any case is a reality: the *Storting* organizes the apparatus of the State, while the fact that the Constitution assigns a more narrowly defined authority to the King creates no limitations to the authority of the *Storting*.[57] This is the situation in Sweden, which today is the Scandinavian country with the most modern constitution (from 1974).[58]

It is quite clear that the *Storting* has a central position as interpreter of the Constitution. This is especially true for the interpretation of provisions

[54] See e.g. T.H. Aschehoug, *Norges nuværende Statsforfatning* (the present Constitution of Norway), Vol. II, 2nd ed., Christiania (Oslo) 1892, pp. 130 ff.

[55] Cf. Andenæs, *Statsforfatningen i Norge*, p. 267. The decesive turning point came with Frede Castberg, see Castberg, *Norges Statsforfatning*, Vol. II, p. 60.

[56] Cf. E. Holmberg and N. Stjernquist, *Vår författning* (Our Constitution), 6th ed., Stockholm 1985, p. 154.

[57] For a further discussion of this question, see Andreassen, *Konge, rikskirke og lokalmenighet*, pp. 64 ff.

[58] See *e.g.* Holmberg and Stjernquist, *op. cit.*, p. 154 and H. Strömberg, *Sveriges författning* (the Constitution of Sweden), 12th ed., Lund 1989, pp. 93 ff.

concerning the division of power between various organs of the State.[59] If the *Storting* passes a statute which seems to interfere with the authority of the King according to the Constitution, the Courts can scarcely set aside the statute. In this field the authority of the Courts to determine whether the statute is in conflict with the Constitution, is strongly limited.[60]

Further there is no doubt that even though a particular authority is assigned to the King by the Constitution, the *Storting* can pass provisions on how the branch of administration in question is to be organized, how cases are to be handled, and also instructions on how the authority is to be executed. In legal writing as well as in State practice it has long been accepted that the *Storting* can also pass "regulating provisions" concerning the authority of the King according to the prerogatives.[61] There can scarcely be any limitation to how far the *Storting* can go in giving instructions to the King, as long as the instructions are given in a general form. Even if the function of the King is limiated to a mechanical application of provisions passed by the *Storting* on how the King shall execute his authority, this will hardly be in conflict with the Constitution. At all events for some of the fields of authority assigned to the King by the Constitution, the *Storting* can also give instructions on how individual cases are to be settled.[62]

The authority of the *Storting* must, however, in churchmatters be limited by the provision in sec. 2 para. 1 of the Constitution relating to religious freedom. As a religious community the Norwegian Church must be deemed to be protected from interference by the political organs of the State in interior ecclesiastical matters.[63] Hence the *Storting* cannot interfere in confessional questions or questions concerning the contents of new hymn books, liturgies and the like (*res in sacris*). But in matters of an exterior organisational or managerial character (*res circa sacrum*), the *Storting* must have the authority at least to instruct the King in the execution of his authority. The best reasons support the understanding that the instructions of the *Storting* can be given both as general instructions and as

[59] This point of view is expressed by the Supreme Court in judgments in 1952 NRt 1089 and 1976 NRt 1. Now the same point of view also has come to expression in a report by the Church and School Committee of the *Storting*, *cf. Innst. S. nr. 185* (1989–90), p. 3.

[60] For a more detailed discussion of this question, see Andreassen, *Konge, rikskirke og lokalmenighet*, pp. 59 ff. with further references.

[61] See for example Castberg, *Norges Statsforfatning*, Vol. II, p. 60. See also *Innstilling til lov om Den norske kirkes ordning* (Report relating to the Organization of the Norwegian Church) (1948), p. 18 and *Innst. S. nr. 185* (1989–90), pp. 2–3.

[62] For a more specific discussion of this issue, see *Andreassen, op. cit.*, pp. 70 ff. with further references.

[63] Cf. Section 3.2 above.

individual instructions, *i.e.* how the King shall act in an individual case concerning the introduction of a new hymn book or liturgy. In the present author's opinion the authority of the King also can be taken from the King and assigned to organs not subordinate to him.

5. THE POSITION OF LOCAL CONGREGATIONS IN RELATION TO THE KING AND OTHER CENTRAL ORGANS OF THE CHURCH

5.1 Introductory Remarks

In the preceding sections the division of authority between the King and specific ecclesiastical organs has been dealt with. In what follows the position of local congregations in relation to the King and other central organs of the Church will be discussed.

First, in Section 5,2, something will be said concerning the position of local congregations in administrative questions. Thereafter, in Section 5.3, the position of local congregations in questions concerning introduction of new hymn books and liturgies will be discussed. Finally, in Section 5.4, some remarks will be made concerning the position of local congregations in confessional questions.

5.2 The Position of Local Congregations in Administrative Questions

As mentioned in Section 3.1 above, there is no doubt that the King on the basis of sec. 16 of the Constitution must be looked upon as the Chief Manager of the Church. Certainly the *Storting* can pass provisions concerning the Organization of the Church, and in the present author's opinion the *Storting* must also be entitled to establish organs which are not subordinate to the King.[64] But regardless of this, the King must be recognized as the organizational and managerial head of the Church. In administrative questions the organs of the local congregations, the Congregational Council[65] and the Congregational Meeting,[66] must be deemed to be fully

[64] Cf. Section 4 above.

[65] According to Sec. 4 of the Act relating to the Organization of the Norwegian Church there shall be a Congregational Council in every Parish. The Congregational Council consists of the vicar and, according to decision by the Congregational Meeting, 4, 6, 8 or 10 other members elected for a period of 4 years at a time. Every member of the Norwegian Church who is living in the Parish, who during the year of the election reaches or has reached the age of 18 and has not lost the right to vote in official elections, is entitled to vote in the Congregational Council Election.

[66] The Congregational Meeting consists of every member of the Church within the Parish qualified to vote in official election, cf. Sec. 31 of the Act relating to the Organization of the Norwegian Church.

subordinate to the King, and they must also be subordinate to superior organs established by the King or the *Storting*.

But even if the organs of the local congregations be deemed to be subordinate to the King and other superior organs, this does not mean that the authority of the superior organs is unlimited. This must be limited by the purpose of the Church. Limitations can also be established by written or unwritten rules for the execution of the authority of the superior organs, or can follow from the confessional Scriptures.

According to sec. 1 of the Act of 3rd August 1897 relating to Churches and Churchyards, parish churches are the property of the parish,[67] and according sec. 26 of the Act of 29th April 1953 relating to the Organization of the Norwegian Church, the Congregational Council must look after the churches and churchyards and *inter alia* see to it that they are used in accordance with the rules established by statute or other valid provision.[68] Neither of these Acts contains any provision regulating the use of the churches: the provisions regulating the purposes for which the churches can be used are to be found in *Kong Christian V's Norske Lov* 2-21-65 and until 1st July 1992 in Resolutions of the King according to sec. 16 of the Constitution.[69] By a Resolution of the King of 25th October 1991 the authority to give provisions regarding the use of church buildings to other purposes than worship and church acts, was delegated to the Church Meeting. According to this delegation new rules for the use of churches were given by the Church Meeting in 1991, and these rules were set in force from 1st July 1992.[70]

Basically, church buildings can only be used for worship and other church acts and, lacking permission from the Congregational Council, only by the Bishop or by the vicar or other clergymen of the Parish. (*Norske Lov* 2-21-65).[71] According to the rules for the use of churches given by the

[67] Cf. NOU 1989:7 *Den lokale kirkes ordning* (the Organization of the Local Church), p. 67 and pp. 106 ff.

[68] Cf. NOU 1989: 7 *Den lokale kirkes ordning,* p. 78 and pp. 106 ff., *Innst. S. nr. 185* (1989–90), pp. 1–2 and K. Hansson, *Norsk kirkerett* (Norwegian Church-law) Oslo 1957, pp. 201 ff.

[69] Cf. Hansson, *op. cit.*, pp. 201 ff. and letter of 26th March 1990 from the Church and School Department to the Church and School Committee of the *Storting* quoted in *Innst. S. nr. 185* (1989–90), pp. 1–2. The plurality of the Church and School Department did not take a stand on the question whether the authority of the King to provide concerning the use of Churches, follows from Sec. 16 of the Constitution, cf. *Innst. S. nr. 185* (1989–90), p. 3.

[70] Cf. Hansson, *op. cit.* pp. 201 ff. and *Innst. S. nr. 185* (1989–90), p.1–2.

[71] *Regarding the precious rules, see Innst. S. nr. 185* (1989–90), p. 1. See also Hansson, *op. cit.*, pp. 203 ff.

Church Meeting in 1991, the Congregational Council can permit the church buildings to be used for other purposes, but such permission can only be given for purposes other than worship and other church acts, are limited to purposes which can be deemed to be connected with the goal of the Church.[72]

On the basis of sec. 16 of the Constitution the King must have the authority to give permission for use of church buildings without the assent of the Congregational Council.[73] But such authority must be deemed to be limited to purposes connected with the goal of the Church. The present author considers that the King is not entitled to permit church buildings to be used for purposes unconnected with ecclesiastic aims broadly defined.[74]

5.3 The Position of the Local Congregations in Questions of Ritual

The Act relating to Congregational Council and Congregational Meeting of 1920 assigned to the Congregational Meeting the authority to decide whether a new approved hymn book or liturgy for divine service should be introduced in the congregation. When the Act relating to Congregational Council and Congregational Meeting was replaced in 1953 by the Act relating to the Organization of the Norwegian Church, the provision on the introduction of new liturgies and hymn books was conveyed to Sec. 32 (b). The provision runs as follows:

> "The Congregational Meeting decides all cases . . . relating to the introduction of a new, approved hymn book or liturgy."

The wording of the provision clearly indicates that the right of the Congregational Meeting to choose between the new and the previous liturgy is independent of what the King has decided, and that this right cannot be taken from the local congregations by the King.

The previous history of the provision is no less clear. During the nineteenth century a practice developed for each local congregation to decide whether a new approved hymn book or liturgy should be introduced in its

[72] Compare letter of 13th March 1990 from the Church and School Department to the Church and School Committee of the *Storting* quoted in *Innst. nr. 185* (1989–90), pp. 1–2.

[73] The authority of the King can be limited by statutes or other provisions given by the *Storting*. It can be discussed, but in my opinion it is not natural to understand the provision in Sec. 26 of the Act relating to the Organization of the Norwegian Church as a limitation of the authority of the King to give Permission to the use of Church buildings without the assent of the Congregational Council. Cf. the discussion in *Innst. S. nr. 185* (1989–90) where this understanding seems to be presupposed.

[74] Cf. letter of 13th March 1990 from the Church and School Department to the Church and School Committee of the *Storting* quoted in *Innst. S. nr. 185* (1989–90), pp. 1–2. See also the standpoint of the minority of the Church and School Committee in *Innst. S. nr. 185* (1989–90), p. 3.

congregation. The legislator's aim in this provision was to legalise the practice which had developed.[75]

The *travaux préparatoires* to the Act also leave no doubt concerning the understanding of this provision, which is intended to prevent the Rule of the Church introducing new hymn books or liturgies by force. Such introduction should be left to each local congregation to decide.[76]

The facts given by the confessional scriptures, point to the same understanding as the wording and previous history of, and *travaux préparatoires* to, the provision. According to Art. VII of the *Confessio Augustana* it is "not necessary that there exist in all places similar human traditions or customs or ceremonies established by men". In several places in this confessional scripture it is emphasized that force should not be used against the congregations in questions concerning adjustments, traditions, ritual and the like.[77] A central concept in this connection is the doctrine of evangelical freedom, which is adopted in Art. XXVIII of *Confessio Augustana*. "It is necessary to maintain the chief idea that we obtain grace through faith in Christ, and not by certain customs or by divine worship introduced by men." The conscience shall therefore not be troubled by human adjustments.

In addition real arguments back up the understanding that congregations should have the right to choose in questions concerning the introduction of new hymn books and liturgies. Worship has a central place in the religious life of the congregation. It will be felt unjust if a congregation be forced to adopt a hymn book or liturgy which the plurality does not desire.

The Act relating to Church Council and Church Meeting was initially interpreted by the King so that congregations on the introduction of a new hymn book or liturgy had an independent right to choose to maintain the previous one without regard to what the King has decided.[78] But when introducing the new liturgy in 1977, the King did not follow this interpretation of the provision in sec. 32 (b) of the Act relating to the Organization of the Norwegian Church. Basically this liturgy was introduced through an order, but in such a way that each local Congregational Council was allowed to apply for a postponement of its introduction.

[75] For more details, see Andreassen, *op. cit.* pp. 83 ff. with further references.

[76] See especially Report IV of the Church Commission relating to the Organization of the Norwegian Church (1911), p. 160.

[77] See for example Art. XV and XXVIII, cf. Andreassen, *op. cit.* p. 97.

[78] This understanding is *inter alia* presupposed in the Resolution of the King of 1st October 1926 relating to the introduction of a additional hymn book, *cf. travaux préparatoires* to the resolution.

The introduction of the liturgy for divine service in 1977 was the object of the *Liturgy Case*.[79] The Supreme Court stated that the right of choice of the local congregations according to sec. 32 (b) of the Act relating to the Organization of the Norwegian Church could be taken from the congregations by Resolution of the King. The main argument for this understanding is that any other interpretation will bring the provision in sec. 32 (b) into a problematical relationship with the provision in sec. 16 of the Constitution. In its judgement the Supreme Court on the one hand states that there "scarcely can be doubt" that the purpose of the provision was "to give the congregations a right of choice as concerns a new approved liturgy", and that it "would hardly be in accordance with the intention of such a provision if the King, in connection with the transition to a new liturgy, could repeal the approval of the previous one, so that the right of choice of the congregations became no reality".[80] On the other hand the Supreme Court states that there is a "strong presumption" that the legislator by enactment of the provision in Sec. 32 (b) "would not give a provision which would create considerable problems in relation to the Constitution".[81]

The way the Supreme Court interprets sec. 16 of the Constitution can be seriously criticized. The Court does not *inter alia* pay attention to the provision in sec. 32 (b) of the Act relating to the Organization of the Norwegian Church and the precedent this provision creates for the interpretation of sec. 16 of the Constitution. Neither does it discuss the doctrine of prerogatives and to what extent the *Storting* can give regulative provisions for the execution of the authority assigned to the King by the Constitution.[82]

When the judgment in the *Liturgy Case* is compared with the practice otherwise followed by the Supreme Court in questions concerning the relationship between Acts and the Constitution, the judgment goes against the current.[83] In the judgement in the *Liturgy Case* it is queried preliminarily whether an interpretation of the Norwegian Church Organization Act entailing that congregations have the right of choice independently of what the King may have decided, must require that the provision of the Act be followed if it is not quite clear that the provision is in conflict with

[79] Cf. Section 2 above.

[80] 1987 NRt. 473, at p. 483.

[81] 1987 NRt. 473, at p. 483.

[82] Cf. Section 4 above.

[83] Cf. E. Smith, "Rettslig binding av politisk handlefrihet" (Legal Ties on Political Freedom of Action), in E. Smith (Ed.), *"Jus" og "politikk" i det norske statsliv* (Law and Politics in Norwegian Public Life), Oslo 1989, pp. 117 ff., at p. 119.

the Constitution. Although this is the view which is otherwise followed by the Supreme Court regarding the constitutionality of Acts regulating the mutual authority of the organs of the State, this in the judgment in the *Liturgy Case* is only mentioned as a "question" which "may . . . be raised". The question is not answered, and the judgement is based upon quite another and far more conservative interpretation of the Constitution.

Although there are several weak points in the argumentation of the Supreme Court in its judgement in the *Liturgy Case*, this judgement creates a precedent for the interpretation of sec. 32 (b) of the Act relating to the Organization of the Norwegian Church. The right of the Congregational Meeting to choose between the new and the previous hymn book or liturgy, which was adopted in this provision and in its forerunner in the Act of 1920 relating to Congregational Council and Congregational Meeting, is by the judgment of the Supreme Court abolished.

However, for the interpretation of sec. 16 of the Constitution, the *Liturgy Case* judgement cannot create a precedent. The Constitution is there only used as an argument in the interpretation of the Act relating to the Organization of the Norwegian Church, not as a restraint on the authority of the legislator. Furthermore the judgment was made by the Supreme Court in a department of five judges, and not in a plenary meeting, which sec. 2 of the Plenary Meeting Act[84] requires if the Supreme Court is to declare an Act unconstitutional. Additionally, as seen above, the discussion of the constitutional questions is rather deficient. The arguments of the Supreme Court are also based on the presupposition that the legislator has the same understanding of the constitutional questions as the Court. If the *Storting* takes a clear standpoint on the constitutional questions and again enacts a provision such as sec. 32 (b), this presupposition will fail, and the outcome would then be different.[85]

5.4 The Position of the Local Congregations in Doctrinal Questions

The local congregations are the confessional unit of the Church.[86] It is there that members of the Church meet to worship. Coming together in community is an important part of Christian life. In worship the means of grace have a central place—the Word, Communion and Baptism. A Christian is a person who has let himself be called and gathered to life in the

[84] The Act of 25th June 1926 relating to amendments in the legislation regarding the Supreme Court *(lov av 25. juni 1926 om forandringer i lovgivningen om Høyesterett)*.

[85] Cf. *Innst. S. nr. 185* (1989–90), p. 3.

[86] Cf. O. Skjevesland, "Liturgi og kirkerett" (Liturgy and Church-law), *Luthersk kirketidende* 1981, pp. 253–254 and NOU 1985:21 *Den norske kirke og læren*, p. 122.

Congregation of Christians, where the Holy Ghost works through grace to create and build faith.

But in spite of the central place life in the local congregations plays in Christian life, it is quite clear that the various local congregations of the Church cannot be independent in doctrinal questions. If a local congregation spiritually and legally is to be connected with a wider ecclesiastical organization, fundamental questions of faith cannot only be a congregational matter. A presupposition for ecclesiastical unity must be that there is agreement on doctrinal questions. As Art. VII of the *Confessio Augustana* puts it:

> "Likewise they teach that there always will be one Holy Church. But the Church is the assembly of the Saints, where the Gospel is taught purely and the Sacraments are administered properly. And to a true unity of the Church it is sufficient to agree on the Doctrine of the Gospel and on the administration of the Sacraments. But it is not necessary that there in all places are similar human traditions or ceremonies established by men. As Paul says: 'One Faith, one Baptism, one God and the Father of all' and so forth."

Following the establishment of the Doctrinal Committee, it must be maintained that doctrinal disputes must be handled by this Committee. If a local congregation cannot agree with a declaration from the Doctrinal Committee, the congregation must eventually take the consequences of this disagreement and leave the Church. In a Church there cannot exist different understandings of fundamental questions at the centre of the Christian faith.