

# NATIONALISM AND THE RIGHT OF RELIGIOUS COMMUNICATIONS

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## I. INTRODUCTION.

During the middle of a vacation, on a warm summer's evening in the south Spanish city of Motril, on the 31st of July 1993 as twilight approached, Boudewijn I, King of the Belgians, died far from his country and his people. Within 24 hours nearly every man and women in Belgium had heard the news. By that evening hundreds of thousands watched television as the body was loaded in Granada and later, again, as the plane bearing the body of King Boudewijn landed in Brussels.

A week later, on the 7th of August 1993, almost half of the ten million Belgians, along with six million viewers in neighbouring countries such as Holland, France and Germany watched hour upon end as Cardinal Danneels conducted a religious funeral. Beyond Europe thousands viewed the ceremony via direct satellite communications. From Canada to Japan

the world was able to watch. In Belgium the funeral was the impetus for a unique and singular collaboration of all private and public radio and television facilities. All of Belgium watched; the streets were empty and shops were closed as people stayed at home. Many millions were able to watch and hear, if not even be moved by the homily of Cardinal Danneels, in which he spoke of Boudewijn as being like King David of the bible, a King-Shepherd. I can think of no example which better illustrates the importance and influence of the media than that of the funeral of King Boudewijn.

Bearing in mind the subject of this International Symposium, many questions can be formulated. Problems arise. How do churches and religions use their right of religious communications, especially as it pertains to Church-State relations ? What's the legal framework in European countries for the exercise of the right of religious communications ? Can religion be used as an element of nationalist ideology in broadcasting programs ?

Admittedly, the right of religious communications is more than the audiovisual media and includes papers, theatre and film, but I limit myself. More specifically, I shall deal with religious programs in public broadcasting, that is to say, broadcasting where the role of the state is either exclusive or dominant<sup>1</sup>. After an overview of the space and facilities for religious programs provided by law ( part II ), it will be possible to formulate some conclusions (part III).

## **II. THE RIGHT OF RELIGIOUS COMMUNICATIONS IN THE AUDIOVISUAL MEDIA, SPECIFICALLY IN PUBLIC BROADCASTING.**

### **§ 1. INTRODUCTION.**

Geographically and culturally my country, Belgium, is located at the crossroads of Western Europe. Although a small country, Belgium cable

<sup>1</sup> Cf. DEOM, D., *Origine et développement des services publics organiques dans l'audiovisuel*, in JONGEN, F. (ed.), *Médias et service public*, Bruxelles, Bruylant, 1992, p. 37-48 ; DELPEREE, F., *L'avenir du service public de l'audiovisuel*, in JONGEN, F. (ed.), *o.c.*, p. 339-345.

television has twenty to thirty channels in six languages from eight different countries. Maybe this situation might be rather exceptional, but there is no-one who can deny the importance of the media in our society today<sup>2</sup>.

I propose to outline the juridic norms of programming and religious programming in particular of a number of countries. A comparison between different systems can draw attention to the complexity and proposed solutions to this problem. Religious programming in audiovisual communication must conform to the legislation of the countries<sup>3</sup>. There is a great diversity of possible approaches. Two extremes can be identified with different middle positions in many European countries.

The one extreme can be called a monopoly; this can either be direct state control or the responsibility can be delegated to an independent or quasi-independent institution. This is the case in Italy, Switzerland, The Netherlands, Spain, Portugal and Luxembourg. It can even be that the monopoly is given to a private company. The other extreme is a pluralistic approach which can either be completely market oriented or with some degree of limitation. Here Great Britain, Belgium, the Federal Republic of Germany and France can be mentioned. It might be informative to examine, briefly, these paradigmatic examples.

## § 2. MONOPOLISTIC BROADCASTING SYSTEMS.

### A. Direct state control.

In communist countries, because of the leading role of the party, no other political association or religious group could establish or direct a broadcasting system. Radio and television programs were first and fore-

<sup>2</sup> VOORHOOF, D., *Actuele vraagstukken van mediarecht. Doctrine en jurisprudentie*, Deurne, Kluwer, 1992, p. 578-584 ; HENAU, E., *God op de buis. Over religieuze uitzendingen in de openbare omroep*, Leuven, Davidsfonds, 1993, p. 50-71.

<sup>3</sup> WHITE, R.A., *The State of Religious Broadcasting Today. An International Perspective*, in LEVER, F. (ed.), *I programmi religiosi alla radio e in televisione. Rassegna di esperienze e prospettive in Italia e in Europa*, Torino, Elle Di Ci, 1991, p. 59-88.

most intended as a powerful propaganda tool of the government, which excluded all other opinion. In some Asian countries, for example China, this juridic organisation of the media is still common.

The tremendous upheavals in the countries of the former Soviet Union and in Eastern and Central Europe has brought about a corresponding shift within the legal or juridic organisation of the media. The Federal Republic of Germany has witnessed the most dramatic of these changes. Integrating the five new *Länder*, with their corresponding broadcasting system, into the single German Republic naturally brought with it fundamental legal changes.

Let us not forget the many examples in the developing world of direct state control in the media. How many times have we heard the first news of a coup only after the national broadcasting system has been captured? In countries where transport is often difficult, where illiteracy is common, television and radio are crucial for the effectiveness of state authority.

## B. Indirect state control through public or semi-public broadcasting institutions.

### **1.- Italy.**

The state monopoly in Italy was founded on the *Codice Postale* and the law of the 14th of April 1975. These two fundamental documents establish that broadcasting is the state's exclusive responsibility. Several decisions of the Constitutional Court have upheld this position. It is felt in Italy that a public service as important as broadcasting must not be subject to economic or financial powers. Since the middle of the seventies, however, there has been a noticeable trend towards a relaxation of this position. With the famous decision of the 16th of July 1974, the strict and total state monopoly was ended. It was felt that the fundamental right of freedom of expression demanded that people be allowed to establish broadcasting systems, but - and this is important - only on a local or regional level. The Roman Catholic Church did not hesitate to make good use of this new opportunity.

This is not to say that the official broadcasting institution, the RAI, does not broadcast religious programs<sup>4</sup>. Indeed, the RAI has made contracts with the Italian Conference of Bishops, the Jewish Community and

the Evangelical Churches in Italy. The Jewish Community and the Protestant Churches are allotted one half hour of air-time every fortnight to be broadcast Sunday evenings on RAI-due. These two communities bear full responsibility for the content of the programs.

Concerning the situation of the Catholic Church, the RAI allows the broadcasting of the gospel every Saturday, of a Sunday eucharist, followed by a short information program and of a longer program Monday afternoons. The technical personal and the equipment are provided by the RAI, with the bishops being wholly responsible for the speakers and Sunday celebrations.

Contrasting with the expensive start up cost of a private television company, the small radio stations are enormously popular in Italy. There are over 4.000 private radio broadcasting companies reaching millions of people. More than 450 of these companies, over half in Northern Italy, are run by the Roman Catholic Church, even on a parish level. The importance and influence of these radio stations is often underestimated.

From a strictly monopolistic system Italy has evolved to a more pluralistic structure. Relations between the private and the public companies were clearly defined in the law of the 6th of August 1990. Because of the system of concessions, priority still rests with the state. The new private companies have been very quick in finding and developing a commercial identity, but the public broadcasting system RAI still has yet to define its role within a changed system. Perhaps it is, as several authors have pointed out, that the political parties are not effective in their control, because broadcasting itself is beyond a merely political evaluation<sup>5</sup>.

## 2.- Switzerland.

According to art. 55-bis of the 1984 constitution, the Swiss confederation is responsible for radio and television broadcasting<sup>6</sup>. The P.T.T. had

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<sup>4</sup> LEVER, F., *Programmi religiosi alla radio e in televisione in Italia*, in LEVER, F. (ed.), o.c., p. 89-120.

<sup>5</sup> VOTANO, G., *La RAI et les contrôles politiques*, in JONGEN, F. (ed.), o.c., p. 145-163.

<sup>6</sup> BARRELET, D., *Droit suisse des massmedia*, 2nd ed., Bern, Staempfli, 1987, p. 71-87, 311-332.

its legal monopoly transferred to the *Société suisse de radiodiffusion et télévision* (S.S.R.) or the *Schweizerische Radio und Fernsehgesellschaft* (S.R.G.) on the 27th of October 1964. This a good example of a public service formally under government control been given to a private association and hence, under private law. Recent legislation, dealing with broadcasting was passed on the 21st of June 1991 and became binding on the 1st of April 1992. This law takes into account the federal structure of Switzerland, its democratic institutions and its generally free market orientation<sup>7</sup>.

Due to the multicultural character of Switzerland, the afore mentioned national private broadcasting corporation is divided into three regional broadcasting corporations : the German language service called *Deutsche und Rätoromanische Schweiz* (D.R.S.), the French language service *Radio Télévision Suisse romande* (R.S.R.) and finally the Italian language service *Radiotelevisione della Svizzera italiana* (R.S.I.). Further private companies may establish radio stations, but only on the local level.

Both Catholic and protestant religious programs are broadcast in the case of the French speaking cantons by the RSR. For the Catholic Church the programs are developed by an autonomous organisation called *Centre Catholique de Radio et Télévision*. This organisation is recognised by both the Catholic Church and RSR. Religious programming attempts to be fair and well integrated. There is parity between confessions as well as ecumenical collaboration and dialogue. Sponsorship is strictly forbidden for all informative and religious programs.

From Monday through Saturday there is, each day, a minute of reflection, just before the seven A.M. news, which is heard by many people. On Sundays and feastdays there is a larger program concerning the Church and society. Every Sunday and feastday, the second radio station transmits a eucharistic celebration followed by a protestant ceremony. In total RSR broadcasts over 233 hours of religious programming every year. On television the eucharist is celebrated fifteen times with the same number of protestant ceremonies. In all there is more than 43 hours of religious pro-

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<sup>7</sup> DISERENS, D., *La nouvelle loi sur la radio-télévision suisse : perspectives et mutations*, in JONGEN, F. (ed.), o.c., p. 191-201.

gramming broadcast on Swiss television in French every year.

The German language service is modeled after the system in the Federal Republic of Germany. The programs are under the redactional supervision of the DRS while the specific eucharistic and catechetical programs are the responsibility of the churches. In a year there are more than 86 hours of religious programming on the radio, while on television, there are 9 eucharistic services and two ecumenical services in a year. Very important is the popular Saturday evening program *Wort zum Sonntag*. Following the Saturday evening news, over 600.000 German speaking Swiss watch this prelude to Sunday worship. Noteworthy is the diverse and almost eclectic nature of the Swiss religious programming. From the *Minute of reflection to Wort zum Sonntag*, the Swiss maintain an appealing level of creativity.

### 3.- The Netherlands.

The legal organisation of broadcasting in The Netherlands is based upon a distinction between the technical infrastructure, i.e. the equipment used in broadcasting, and the creation or production of the specific programs. Thus in Holland religious, political and social groups organise themselves into *zendverenigingen*, transmitting associations or broadcasting foundations, which are responsible for the production of programs to be broadcast on one of Holland's three state run stations<sup>8</sup>. Originally protestants, socialists and Catholics each established their own transmitting associations between 1924 and 1926. Each foundation received, at the governments discretion, a set number of hours per week in which to broadcast their programs.

A provisional statute of the 11th of November 1965 was replaced by the now well known law of the 1st of March 1967. The new law, which became binding in 1969, attempts to provide the best possible conditions for transmission by as many philosophical and religious groups as is possible. These foundations must respect a number of conditions. They must have juridic personality and their main objective must be to create radio and

<sup>8</sup> JURGENS, E.C.M., VAN LINGEN, N., *Omroeprecht en auteursrecht. Nieuwe ontwikkelingen in informatie- en communicatierecht*, Zwolle, Tjeenk Willink, 1986, p. 11-44.

television programs of general interest. It is not allowed to produce a single type of program, but they must be wide ranging : cultural, sporting, entertainment as well as religious, educational and philosophical. The foundations may not strive to make a profit and must respect public order and general morality.

Such foundations must have a minimum of 150.000 members of eighteen years and older who contribute a membership fee to the foundation. Taking into account the number of memberships the foundations, of which there are now eight, are divided into three categories A, B, C. with each categorie having a diminished number of hours allotted for broadcasting. The coördination of the different foundations is the responsibility of the N.O.S., the Dutch Foundation for Radio and Television<sup>9</sup>, established on the 29th of May 1969.

Roman Catholic religious programs are mainly prepared by the KRO foundation, which in its statutes states that human foundational and educational programs are to be based on the doctrine of the Roman Catholic Church<sup>10</sup>. Here too, the foundation must produce more than religious programs as mentioned above.

Apart from this the government gives directly to the churches, outside of any foundation a set number of hours based upon their number of church members. The Roman Catholic Church asks that its programs be prepared by the KRO. In terms of religious programming, this means that the KRO has, in addition to its 25 hours of television and 40 hours radio per year, an additional 70 hours of television and 160 hours of radio per year as a result of the Roman Catholic Church's contribution of hours.

Outside the hours used by the foundations for religious programming, the direct government contribution amounts to 182 hours for churches with 53 being for philosophical organisations. The humanists and the Islam each have 26 hours per year. In total religious programs on the radio

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<sup>9</sup> DOMMERING, E.J., *La représentation des tendances philosophiques à la N.O.S. et la crise du système néerlandaise*, in JONGEN, F. (ed.), o.c., p. 165-175.

<sup>10</sup> TER STEEG, M., *I programmi religiosi alla radio e alla TV in Olanda*, in LEVER, F., o.c., p. 234-241.



amounts to some 645 hours per year given directly to the churches.

Holland is a country whose population has a highly developed appreciation about the use of the media. Indeed, they exhibit a great deal of maturity and fairness in their reasoning of public life.

#### 4.- Spain and Portugal.

Art. 20 of the Spanish constitution of 1978 confirms the freedom of expression and leaves it to the legislators to determine regulations vis à vis radio and television. The specific law as regards broadcasting was promulgated on the 10th of January 1980<sup>11</sup>. The state maintains a monopoly over broadcasting, but as with Italy, in recent years there has been a weakening of the monopoly by private initiatives. Further, although the RTVE is governed in the name of the state, it is also institutionalised in the seventeen Autonomous Communities. Funding comes from state subsidies as well as the income from advertisements. Several of the Autonomous Communities have also established regional television channels. Examples are TV-3 in Catalonia, ETB in the Basque region, TVG in Galicia and the *Canal Sur* in Andalusia<sup>12</sup>.

All of these public broadcasting systems, regional and national, are more and more being complemented by private initiative. Since the law of the 3rd of May 1988, a concession has been made possible allowing for three privately operated television channels to transmit on a national scale with a minimum of 4 hours a day and 32 hours a week.

Portugal is much the same. The television broadcasting system, the *Radiotelevisão Portuguesa (R.T.P.)*, was until recently a national monopoly with the necessary legislation enacted on the 2nd of December 1975. There are, however, for a variety of reasons, some historical, over 700 private radio stations, organized according to the law of 1988. It is here that

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<sup>11</sup> IBÁN, I.C., PRIETO SANCHÍS, L., MOTILLA DE LA CALLE, A., *Derecho eclesiástico*, Madrid, McGraw-Hill, 1997, p. 156-157.

<sup>12</sup> With regard to legislation in religious affairs issued by regional authorities, see : OLMOS ORTEGA, M.E., *La regulación del factor religioso en las Comunidades Autónomas Españolas*, Salamanca, Universidad Pontificia, 1991, p. 43-60.

religious programs are most active. Listeners are invited to support their preferred station. One of the more popular radio stations, on the national level, is *Radio Renasença*. Portugal as well has recently established a fourth television station which is financed mainly by the Catholic Church and called *Televisão Independente*. This television station is a private one, made possible by a change of legislation on 7 September 1990<sup>13</sup>. Not long before another new law, nr. 58/90, reorganized the religious programs in the public television channels. Publicity for religious groups or confessions on payment in private television is considered illegal since 1995<sup>14</sup>.

In Spain the cost being so great, the private radio is a popular medium of the Roman Catholic Church. On the national level Radio *COPE* is financed mainly by the Conference of Bishops, as well as individual dioceses, religious orders such as Jesuits and Dominicans, and a small percentage from the Spanish state. Just as with the foundations in Holland, the goal of this radio station is more broad than exclusively religious programming. Programming includes entertainment, sporting, etc., all of which contributes to a greater cultural awareness for the listener<sup>15</sup>.

Spanish public television, the TVE, also includes some religious content. Eucharist is televised on TVE-1 every Sunday as well as a weekly program called *El día del Señor*. There is also, every Monday, a program called *Pueblo de Dios* and on every Friday after the last news broadcast there is a short reflection called *Palabra de vida*. The national TVE-2 broadcasts every week a program dealing with the more general questions of faith. The personnel of TVE collaborate in technical matters. The direc-

<sup>13</sup> TELES PEREIRA, J.A., *La liberté religieuse et les rapports entre les églises et l'état au Portugal dans les années 90*, in *European Journal for Church and State Research / Revue européenne des relations Eglises - Etat* 2 (1995), p. 110.

<sup>14</sup> TELES PEREIRA, J.A., *Les églises et l'état au Portugal. Récents développements*, in *European Journal for Church and State Research / Revue européenne des relations Eglises - Etat* 3 (1996), p. 110.

<sup>15</sup> Cf. GAGO DEL VAL, J.L., *Programmi religiosi alla radio. Radio COPE: la catena radiofonica cattolica in Spagna*, in LEVER, F., o.c., p. 208-215; RUIZ CIRIZA, L.J., *Cenni storici sulle trasmissioni religiose alla televisione spagnola*, in LEVER, F., o.c., p. 216-220.

tor-general has the right to establish a special Advisory Committee dealing with religious programs.

Cable television is rather limited in Spain. More and more satellites are being utilized by the Spanish. But because of the plethora of stations, both public and private broadcasting companies are experiencing financial difficulties. There has been in recent years in Spain a growing appreciation and respect in the media for other languages spoken within the country<sup>16</sup>.

### 5.- Luxembourg.

In the above section we have dealt with monopolistic systems. To be complete however I must mention one further example. There is the example of Luxemburg, where the right to broadcast is a complete state monopoly, yet it is given to a private company, which is established according to the law of Luxemburg. The *Compagnie luxembourgeoise de télédiffusion (CLT)*, or more commonly known as *RTL / Radio Télé Luxembourg* is wholly responsible for broadcasting within the territory of the Grand Duchy of Luxemburg. Programs include broadcasts in *luxembourgeois*, English, German, French, Italian and Dutch.

The specific problems of religious programming are included in art. 7 of the *cahier de charges* of 1930 which makes provisions for programs directed towards different social, political and economical groupings in the country such as *tribunes libres*, *tables rondes* and *face à face*.

## § 3. PLURALISTIC BROADCASTING SYSTEMS.

### A. Total pluralism.

A legal system which is completely pluralistic in broadcasting exhibits a maximum of respect for free opinion and circulation of information. In some countries the possibilities of broadcasting are only limited by the availability of frequencies. Often, it is private companies or, in some cases, private companies in cooperation with a public institution which are responsible for broadcasting. Total pluralism is generally considered to

<sup>16</sup> MORALES, P.V., *L'audiovisuel en Espagne et le respect des particularismes linguistiques*, in JONGEN, F. (ed.), *o.c.*, p. 203-210.

exist in the United States, Australia and Japan. In the United States radio and television are quasi exclusively private companies limited in some small fashion by state norms.

This is not the format to work out the problem, but one cannot help but mention the phenomena of 'television evangelists'. Here we find a very specific mentality in religious broadcasting. The relationship between God and man is exclusively vertical. These are the electronic churches, where the community never meet but simply sit at home and watch the television. The methods of evangelisation are very commercial and often sensationalistic. Inevitably this leads to a so called privatized consciousness of people without a larger community to correct exaggerations or limit personal ambitions. I mention this not to propose a solution, but simply to draw attention to one result of complete pluralism in broadcasting. This is a great danger for the religious socialisation of the coming generations.

## B. Limited pluralism.

### **1.- Great Britain.**

In Great Britain the pluralism is mainly financial in origin. The British Broadcasting Company started with the first program on the 14th of November 1922. Later, the name was changed by Royal Charter on the 17th of December 1927 to the British Broadcasting Corporation. It was until 1954 a complete monopoly for the BBC in both television and radio. The Television Act of 1954 established an Independent Television Authority. With this act the door was opened to non governmental broadcasting companies. The reason for this pluralization can be traced to the method of financing broadcasting companies. To-day the BBC still maintains the monopoly in radio while regulated competition is allowed in television. There were a number of acts implemented between 1954 and 1981, one of which changed in 1970 the name of the Independent Television Authority to Independent Broadcasting Authority.

The BBC is a public corporation with a juridic personality licensed by the state, more specifically the Post Master General. It must respect a number of limitations dealing with both technical matters as well as programming. It is, for instance, forbidden for the BBC to broadcast commercial programs. As well, it must provide programming for both domes-

tic and foreign viewers. And finally, being at least semi official, it must transmit certain government communications.

The Independent Broadcasting Authority is the public corporation which is responsible for the administration of commercial television; it acts as a compliment to the non-commercial BBC. The regulations can be found in the Act of the 25th of March 1964. The programs are, in principle, produced by others and broadcast on a contractual basis. Since 1980 the Independent Broadcast Authority, recently re-named the Independent Television Commission, has owned and operated Channel Four (ITV-4). Cable television, which has been in Britain for some time, is regulated by the Cable and Broadcasting Act of 1984.

Neither the BBC's Charter nor the Broadcasting Acts oblige the BBC to produce religious programs. The impetus for the production of such programs is that religion is an important aspect of human existence. The BBC is assisted in its religious programming by the churches in the form of a Central Religious Advisory Committee. This Advisory Committee has formulated a number of basis goals of religious programs. The first is to maintain public awareness of the most important religious traditions in Britain mostly, although not exclusively, the various christian denominations. The second goal is to present ideas and experiences which have to do with the religious interpretation of various dimensions of life. Finally, the BBC is also to provide religious information to marginal christians or those living completely outside the christian churches. Additional criteria deal with a number of people in the various religions as well as the role of the Anglican Church in the country. A specific role is reserved for those making programs which reflect upon what religion is, how it is celebrated, and the personal consequences of religious conversion<sup>17</sup>.

The commercial television channels have religious programming as well. In fact, the Independent Television Commission mandates a minimum of two hours per week of religious programs for the commercial stations. Albeit the definition of religious programmes is rather broad<sup>18</sup>.

<sup>17</sup> Cf. ALEXANDER, H., *This is the Day*, in LEVER, F., o.c., p. 174-185.

<sup>18</sup> SHEGOG, E., *Policy for Religious Broadcasting in the United Kingdom*, in LEVER, F., o.c., p. 266-274. - E. Shegog is head of the department Religious Broadcasting in the IBA/Independent Broadcasting Authority.

Britain demonstrates a great variety in both radio and television religious programming. The system of different financing, with state money for the BBC and income from advertisements for the commercial channels, seems to work well. Both broadcasting areas derive their finances from different sources and thus there is little problem of income.

Broadcasting in Britain seems to be well regulated with not only negative norms, but positive criteria about the quality and diversity of programs. We must wait and see how this bipolar form of limited pluralism continues to function<sup>19</sup>.

## 2.- Belgium.

Belgium also exhibits a form of limited pluralism. Whereas in Britain the motivation is financial, there are various other reasons in Belgium for broadcasting pluralism. The first of these reasons is Belgium's multicultural and multilingual composition. With three languages, - Dutch, French and German - , each constituting a unique cultural entity, diversity in broadcasting is essential. Another reason is that, although Belgium is known as a Catholic country with over 80 % of the children baptised, the society is highly secularised respecting many diverse philosophical and religious opinions. Finally, the very structure of the state makes broadcasting pluralism an inevitability. Over recent years the Belgian state has made a fundamental, yet non-violent transition from a highly centralised state to a federal system. Since broadcasting is an important element of cultural identity, the traditional state responsibility has been completely transferred to the three Communities and their governments : the Flemish, the French and the German Communities.

Because of a lack of private investment, Belgian broadcasting was originally a state monopoly. The creation of a national radio institute ( N.I.R., I.N.R. ) on the 18th of June 1930 was supposed to be limited to technical aspects. Private as well as public initiative was to be responsible for the creation or production of programs. This was all changed on the 18th of May 1960 with a more democratically pluralistic composition of adminis-

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<sup>19</sup> PRAGNELL, A., *Le duopole britannique, modèle exportable ?* in JONGEN, F. (ed.), *o.c.*, p. 139-143.

trators and personnel. The law of the 16th of July 1973, called the Cultural Pact, further realised the expression in broadcasting of various religious, philosophical and ideological currents in Belgium. But this simply confirmed an on-going evolution in the administration of public institutions in my country. This evolution was definitively realised in the beginning of the nineties with the total *communautarisation* of the broadcasting system<sup>20</sup>. There still are to-day public television and radio systems in the various languages along side commercial television and private radio stations<sup>21</sup>.

As far as religious programming is concerned, typical for Belgium is what we call *le droit à l'antenne*. This is the right for private associations, representing political, socio-economic, as well as philosophical and religious groups to broadcast via public systems in the interest of their members as well as of the general public. Art. 23, § 1 of the Flemish Community's decree on broadcasting of the 27th of March 1991 establishes specific 'guest programs' on the public radio and television. Thus political parties, churches and the humanists, as well as trade unions and other professional associations receive a limited time in which to broadcast. For television this time must be 2 % of the total hours of television broadcast in a year up to a maximum of 100 hours. In radio the 'guest programs' receive 80 hours per year. In addition to the allotment of air-time the community governments also make financial contributions to assist in the production of the programs.

Finally, I mention as an interesting curiosity that all of these associations are not permitted to broadcast four weeks previous to elections, be they local, regional, national or European. Thus religious programs are not possible in the four weeks previous to any election.

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<sup>20</sup> DE GROOF, J., PEETERS, P., VERMEIRE, J., *Mediawetgeving. Algemeen normatief kader. Administratieve en technische normen*, Brussel, CEPES, 1993, p. 31-48 and 93-196.

<sup>21</sup> Cf. VOORHOOF, D., *De la B.R.T. à la B.R.T.N. : développements récents dans l'audiovisuel flamand*, in JONGEN, F. (ed.), o.c., p. 177-190.

### 3.- Federal Republic of Germany.

The pluralism of German broadcasting is a consequence of the federal state structure. It is important to note that the legislation dealing with broadcasting falls under the responsibility, generally speaking, of the *Länder*. Thus each *Land* has the possibility public broadcasting institutions, such as the *Westdeutscher Rundfunk (Köln)* organised according to the very recent law of the 31st of March of 1993<sup>22</sup>, or the *Bayerischer Rundfunk (München)*, or *Radio Bremen*, etc.. For television it is also necessary to mention the *ARD* or *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland*, and later the *ZDF* or *Zweites Deutsches Fernsehen*.

The basic problem facing broadcasting in Germany is the division of powers. That is to say whether the federal government or the government of the *Land* is competent in areas of broadcasting. On the 28th of February 1961, the *Bundesverfassungsgericht* or Federal Constitutional Court in Karlsruhe ruled that radio and television broadcasting is essentially a public responsibility. Since the federal constitution makes no mention of broadcasting, the *Länder* are competent to establish public institutions and to legislate vis à vis broadcasting. There is however one exception, the federal government has jurisdiction over areas relating to international broadcasting. In terms of actual programming, while the state maintains responsibility of technical matters, it is often left to private initiative to develop the programs.

In 1973 one of the *Länder*, the *Freistaat Bayern*, legislated a strict state monopoly of broadcasting. On appeal, the *Land's* constitutional court decided that this government monopoly was justified in order to protect the general interest of the population. It is a specific responsibility of the state to prevent a situation wherein a small, limited and exclusive private group dominates broadcasting for financial gain.

Of course it is impossible to discuss broadcasting in Germany without mentioning the effects of the recent re-unification of Germany, and especially art. 36 of the Treaty of re-unification. To execute the principles of

<sup>22</sup> *Gesetz über den Westdeutschen Rundfunk Köln (WDR-Gesetz) vom 31.3.93*, in *Funk-Korrespondenz* 41 (1993), nr. 23, Beilage : Dokumentation Rundfunkrecht, p. 1-15.



art. 36 a Treaty concerning broadcasting was signed on the 31st of August of 1991. With regard to ARD two new companies and various other public institutions for radio and television were established in the five new *Länder*. The *Mitteldeutscher Rundfunk (MRD)* as well was created and based in Leipzig<sup>23</sup>.

It became clear that here again there was general agreement that radio and television were too important to be left to powerful private groups. The option here is obvious; the state has responsibility to create a positive order. It is however unfortunate that the integration of the broadcasting systems in the enlarged Federal Republic was not used as an occasion to reflect seriously upon the role of radio and television to-day. The structure of the ARD was not reviewed, nor was there any discussion about program quality. Television and radio as being either economic or cultural or perhaps somehow both is an important area of discussion which, regrettably, was not developed on this occasion.

In function of religious programming, one should not forget that the norms issued for the *Rundfunkrat* dictate a composition which is sensitive to political, cultural as well as religious composition of German society<sup>24</sup>.

Both ARD and ZDF, as public broadcasting companies, carry religious programs<sup>25</sup>. ARD has several types of programs among which are a five minute Saturday evening program, called *Das Wort zum Sonntag*, as well as the *Vespergottesdienst*, a protestant program appearing 13 time per

<sup>23</sup> For more details, cf. KLEINWÄCHTER, W., *L'audiovisuel public dans le processus d'unification allemande : développement dans les nouveaux Länder*, in JONGEN, F. (ed.), o.c., p. 211-227.

<sup>24</sup> For a study in depth, cf. LINK, C., *Der Anspruch der Kirchen auf Präsenz in den öffentlich-rechtlichen und privatrechtlichen Massenmedien des Rundfunks und des Fernsehens*, in LISTL, J., PIRSON, D. (eds), *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, Zweiter Band, 2nd ed., Berlin, Duncker & Humblot, 1995, p. 251-284 ; LINK, C., *Die gesetzlichen Regelungen der Mitwirkung der Kirchen in den Einrichtungen des Rundfunks und Fernsehens*, in LISTL, J., PIRSON, D.(eds.), o.c., p. 285-313.

<sup>25</sup> Religious programs and private broadcasting companies, cf. REUHS, N., *L'église catholique romaine et les radios privées en Allemagne*, in *Praxis juridique et religion* 10 (1993), p. 127-143.

year. ZDF carries, among other programs, weekly alternating protestant and Catholic liturgical celebrations on Sundays.

#### 4.- France.

In France a complex evolution of the media law has occurred in recent decades. Here too a shift from monopolistic state control to a more pluralistic situation, often characterised by commercial competition, can be discerned. Initially there was a more liberal interpretation of the state monopoly. But between 1926 and 1945 there was a gradual constriction to a very strict state monopoly. The advent of television did not initially change that general trend, and an important law of the 27th of June 1964 fixed the statutes the O.R.T.F. company.

The production of programs was not completely state controlled. There was a number of legal exceptions which facilitated the private production of programs. More recently we have seen an increasing number of further mitigating elements. Why is this ? Certainly the single most important factor is the development of new technologies, cable distribution and the growing success of satellite television.

With the law of the 29th of July 1982 a serious reform of the existing legislation was initiated. There was a definite end of the state monopoly and the emergence of a partially market oriented pluralistic system. The law also confirmed the principle of freedom of communication, both audio and visual, but with limitations for the common good. The so called *loi Léotard*, a law of the 30th of September 1986, definitively established and regulated the co-existence of public and private broadcasting. It was felt that in a democracy a free exchange of information is essential. But such free exchange of information requires supervision. Thus the law provided for the establishment of a *Commission nationale de la communication et des libertés (CNCL)*, re-named by the law of the 17th January 1989 as *Conseil supérieur de l'audiovisuel (CSA)*. Competition to-day continues between private and public broadcasting. Recently the television station TF-1 has been privatized further strengthening the commercial sector. The public broadcasting company *France 2*, formerly *Antenne 2*, is obliged by art. 56 of the afore mentioned law of the 30th September 1986 to present religious programs of the most important religions in

France every Sunday morning. The cost of the programming is borne by *France 2*.

For the Catholic Church the programs are prepared by the *Comité français de Radio-Télévision (CFRT)*, which was established on the 2nd of June 1950. Every week, CFRT produces one and a half hours of religious programming. The director is responsible to the Conference of Bishops, the administrators of *France 2*, as well to the board of the CFRT. The CFRT presents three types of programs : eucharistic celebrations, a series of short ten minute programs and a weekly informative program concerning christian communities in France<sup>26</sup>.

Together Catholic, protestant, Orthodox, Jewish and Islamic religions constitute a total of 110 hours of information, debates and documentaries, with 58 additional hours devoted to religious celebrations.

### III. RELIGIOUS BROADCASTING PROGRAMS AND NATIONALIST IDEOLOGY.

As we have seen public broadcasting remains very important in all European countries. It is generally the strong conviction of specialists that the state must maintain a role, in some form, in broadcasting. Because the impact of radio and television is so great, and passive consumption so strong, the state authorities bear the specific responsibility to be present in the world of electronic media.

Public broadcasting is important to provide an opportunity for different philosophical and religious groups to present their values. The state itself can not develop these values, but has the obligation to provide for a positive environment and the opportunities so that values can be developed. Other obligations of public broadcasting include the active promotion of cultural development as well as the continuing education of the people. Along with these, there should be a commitment to quality entertainment. Although an element of competition is necessary, market forces, commercial success and popularity generally do not serve as an adequate measure to consider a program as needed or indispensable.

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<sup>26</sup> NISSIM, G., *Le Jour du Seigneur*, in LEVER, F., o.c., p. 151-161.

The Catholic Church made an explicit option to be present in the media. As a general rule, it is preferable that this presence be realised through the public broadcasting facilities; the realisation of its values does not occur in a vacuum or in isolation. In our increasingly global community it is essential for the Church to maintain and develop an ongoing dialogue with every culture, through the responsible use of radio and television.

The technological and historical circumstances are changing with increasing rapidity, accompanied by corresponding changes in legislation. Especially during the eighties the changes in Europe were fundamental and nearly overwhelming. The examples I outlined provide a deeper insight into the complexities of the problems and the variety of responses.

Can the exercise of the right of religious communications be abused? Can it be used as an element of nationalist ideology?

When people make use of a right, they also can abuse it. Ideally, using the right of religious communications churches and religious communities ensure a trustworthy transfer of religious thoughts and values. Broadcasting programs can also be excellent instruments to develop public relations as well<sup>27</sup>. But it is also possible to abuse this right, promoting fundamentalism, suspicion, mistrust, orthodoxism or the sacralizing of a human culture<sup>28</sup>. When fundamentalism becomes a strategy of survival, in many cases it might be a social crisis transferred to the domain of religion<sup>29</sup>. Is fundamentalism not a latent danger in every religion, a potential energy in every person?<sup>30</sup> Therefore a careful analysis of the use

<sup>27</sup> With regard to a well elaborated theoretical approach of public relations in the Church, cf. IRIBARREN, J., *Introducción a las relaciones públicas en la Iglesia*, Madrid, Biblioteca de Autores Cristianos, 1995, 301 p. ; regarding radio and television, p. 249-254.

<sup>28</sup> Entering into details, cf. LATHUILLIERE, P., *Le fondamentalisme catholique. Signification et ecclésiologie*, Paris, du Cerf, 1995, p. 334 p. ; particularly p. 173-177 : *L'autorité sacralisée d'une culture*, and p. 203-211 : *De l'orthodoxisme à l'orthodoxie*.

<sup>29</sup> WITTE, H., *Zondebokken gezocht ! Afgrenzen als fundamentalistische overlevingsstrategie*, in BECK, H.L., MERKS, K.-W. (eds.), *Fundamentalisme*, Baarn, Ambo, 1994, p. 21.

<sup>30</sup> WITTE, H., *o.c.*, p. 25.

of the mass media has to be a permanent concern for churches<sup>31</sup> and secular authorities as well.

Undoubtedly religion is one of the fundamental forces to increase the coherence in a human society and to build up a national state. Christendom was a unifying factor, among many, in the Roman Empire, especially in the East. The same can be said for European nations over and over again for centuries<sup>32</sup>. Some historians and political scientists consider all religious conflicts as political conflicts. At the same time they do not hesitate to declare that the political history of Europe has been determined in great measure by the relations between ecclesiastical and secular authorities<sup>33</sup>.

Starting from this assumption, the question can be asked again : can religion be used or abused as an element of nationalist ideology in broadcasting programs ? To my mind, there is not much chance of anything of that kind happening in Europe to-day.

First, how could churches and religious communities seize this opportunity within the framework of an extensive and detailed legislation - and of judicial control - , not only on the national level but also on the regional level in most of the European countries ?

Secondly, how could churches and religious communities work out such a plan within the stringently limited number of hours available for liturgy, meditations, musical programs, special programs for children and adolescents, documentaries and general religious information ?<sup>34</sup>

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<sup>31</sup> Cf. ANGELINI, G., *Universo mediatico, opinione pubblica e confessione della fede*, in ANGELINI, G. (ed.), *La Chiesa e i media*, Milano, Glossa, 1996, particularly p. 35-38 ; also : JOOS, A., *Le chiese cristiane accolgono la scommessa. Documenti ecclesiali sulla comunicazione mediatica*, in ANGELINI, G. (ed.), *o.c.*, p. 41-107.

<sup>32</sup> POMIAN, K., *Europa en de Europese naties*, Amsterdam, Wereldbibliotheek, 1993, p. 148-149.

<sup>33</sup> PORTELLI, H., *Les régimes politiques européens*, Paris, Librairie Générale Française, 1994, p. 149 : " Tous les conflits religieux étaient de toute façon des conflits politiques - et ce, jusqu'au XIX<sup>e</sup> siècle -, et l'histoire politique de l'Europe (constitution et forme des Etats) a été conditionnée par les rapports avec les Eglises ... ."

<sup>34</sup> cf. HENAU, E., *o.c.*, p. 67-71.

And finally, not only the actual dechristianization of public and social life but also, as a consequence of the free circulation of people, the multi-religious composition of the population in our countries brought about fundamental changes of mind within and outside churches and religious communities. Our future and our challenges will be determined increasingly by a European citizenship in a cosmopolitan perspective<sup>35</sup>. This might be the only possible context for the exercise of the right of religious communications and the best protection against improper use of it.

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<sup>35</sup> Cf. VAN GERWEN, J., *The European Union as Part of Our Future*, in SWENEY, J., VAN GERWEN, J. (eds.), *More Europe ? A Critical Christian Inquiry into the Process of European Integration*, Kampen, Kok Pharos, 1997, p. 263-284.