

20.12 REPORT STUDY DEPUTIES – RECEPTIVITY OF PETITIONS OF PROTEST (Artt 86, 151, 243)

- A. Rev PW Kurpershoek delivers the Report.
- B. **Decision:** The Report is referred to Petition of Protest Commission 2.
- C. Rev PJ Venter reports on behalf of the Petition of Protest Commission 2.

D. REPORT

1. Assignment (Acta, 2006:57, 3.2.5)

Synod appoints Study deputies to investigate the issue mentioned in 3.2.1-3.2.2 and to advise the next Synod regarding this matter.

3.2.1 *The Commission dealt with the question of the scope of the decisions of Synods 1967, 1991 and 1994 (Acta, 1967:349-350, 1991:526-528 and 1994:51-55) on the right to direct access to any majority assembly.*

3.2.2 *Since 1994 (Acta, 1994:52-55) the Legal Commission has been struggling with unclarity regarding the interpretation and the relation between the different decisions as mentioned in 3.2.1.*

Decision: Note taken.

2. Matters for notice

2.1 Background

- 2.1.1 Synod 1955 (p35-37) states the question through the Moderamen of whether a uniform procedure should be drawn up for Petitions of Protest. Due to a lack of time the question is referred to Deputies for answering (1955:35-37).
- 2.1.2 Synod 1958 (101, 106-107, 116-117) receives the suggestion from the Deputies that each assembly should state its own interests with regard to Petitions of Protest. Ultimately the matter is referred to Deputies again.
- 2.1.3 Synod 1961 (512-517) handles a Majority and a Minority Report that both struggle with the question of whether an individual should submit certain queries **directly** to a majority assembly or not. No decision is taken and the matter is referred to Deputies again.
- 2.1.4 Synod 1964 (444, 446) receives two proposals regarding the procedure, of which one indicates that the church route should be followed and the other states that protests should be submitted directly to the majority assembly. Ultimately a separate procedure is determined for handling protests against existing decisions of majority assemblies. According to this Petitions of Protest should only be directed at the assembly that took the decision in question.
- 2.1.5 Synod 1967 (349-350) approves a Point of Description that CO, art 33 should be applied consistently and that only assignments of the Particular Synods should be handled.
- 2.1.6 Synod 1991 (1991:526-528) grants a protest against the decision of 1964. The essence of the protest is that a separate procedure is not needed for Petitions of Protest, since the Petition should be dealt with like any other matter.
- 2.1.7 Synod 1994 (52-54) indicates that the decision of Synod 1991 begs the question of whether there is only one way to deal with a Petition of Protest, namely testing the matter along the church route, or two, namely that a protest can also submit the matter to a certain majority assembly directly after failure (p52, 3.1). The decision is that the church route should be followed for all matters under CO, art 46 under normal circumstances (p52, 3.2). Yet it is also stated that the right of direct access to any majority assembly is not blocked for matters that are Scripturally justified (p52, 3.2).
- 2.1.8 Synod 1994's dual decision leads to uncertainty at the Legal Commissions of consequent Synods, which have to determine the receptivity of Petitions of Protests,

so much so that Study Deputies are appointed at Synod 2006 with the assignment as stated in 1.

2.2 *Essence of the problem*

2.2.1 The essence is the question regarding the procedure for submitting a protest according to CO, art 41.

2.2.2 Two alternative procedures are offered:

	Procedure 1	Procedure 2
2.2.3	A protest can, according to CO, art 46 be submitted <i>directly</i> to the assembly who made the decision, even when minority assemblies have rejected the protest. This is over and above the church route, and is valid for matters that are Scripturally justified.	According to CO, art 46 a protest can only in <i>extraordinary circumstances</i> be submitted to the assembly who made the decision. This is then over and above the church route, and is valid for matters that are Scripturally justified.

2.2.4 Practically the essence (and the consequent alternative procedures) is the following:

2.2.3.1 Is there something like *The right to direct access to a majority assembly* based on which it can be stated that a protest could be submitted directly to a majority assembly?

2.2.3.2 Can a protest still be submitted to a majority assembly if the church route has been followed and the protest has been rejected by a minority assembly?

2.3 *Factors that influence the choice in procedure*

In the discussion and study it has become clear that the following factors at least play a role in the choice of a specific procedure:

	Procedure 1	Procedure 2
2.3.1	Emphasis is on the fact that the assembly who made the decision should deal with the protest against the decision and should <i>conclude</i> it. Because the protest ultimately belongs with this assembly that made the decision, direct access can not be refused.	Emphasis is on the distinction between <i>handling</i> and <i>concluding</i> a protest. Protests can be handled by minority assemblies, and therefore the church route should be followed.
2.3.2	Appeal procedure is sometimes experienced/described as very tedious and tiring. With that the distrust of the church route is acknowledged. For the sake of the protest the church route is not followed, and the protest can be directly submitted or the Appeal procedure according to article 31 CO is set aside.	Even if the Appeal procedure and church route is experienced as negative, the sad reality of practicing the church route is not condoned by the change in procedure.

2.4 *Format of the Report*

2.4.1 The Deputies could not reach a unanimous recommendation during their study with regard to which procedure should be followed.

2.4.2 In order to make it possible for Synod to clearly distinguish the alternative procedures with their separate motivations, the argument is offered together below, with an indication of where differences arise.

Decision: Note taken of 2.1 to 2.4.2.

3. Arguments and recommendations that Synod should evaluate

3.1 *Place and task of majority assemblies*

3.1.1 Churches are one in Christ and have the command to experience, conserve and strengthen their unity.

- 3.1.2 Because all gifts and offices are granted by one Head, Christ, to his church as a whole, all gifts and offices can and must serve to strengthen the body as a whole (diaconological unity between churches).
- 3.1.3 When matters can not be concluded locally or the confessional unity of churches is involved, churches gather in majority assemblies in order to support each other and to minister the governance of Christ through Spirit and Word.
- 3.2 *Compiling the Agenda of majority assemblies*
- 3.2.1 A majority assembly's Agenda (specifically the General Synod) among other things consist of the following matters (CO, art 30):
- 3.2.1.1 Call on majority assembly in the case of Appeal (CO, art 31).
- 3.2.1.2 Assignments from minority assemblies (CO, art 33).
- 3.2.1.3 Reports from Deputies (CO, artt 45 and 49).
- 3.2.1.4 Matters presented for change (Petitions of Protest) (CO, art 46).
- 3.2.1.5 Church correspondence (CO, art 52).
- 3.2.1.6 Mutual confession of Three Formularies of Unity (CO, art 53).
- 3.2.1.7 Legal order of church (CO, art 86).
- 3.2.2 Assignments serving at majority assemblies specifically come from the assembly who sends delegates by delegates bringing the signed assignments along (CO, art 33).
- 3.2.3 In line with this Synod 1894 (Acta, article 118) stated:
Wanneer een lidmaat der Kerk iets belangrijks voor de Synode wenscht te brengen, wendt hij zich eerst tot zijn respectieven Kerkeraad of Algemeene Vergadering; word hij dan in ongelijk gesteld, dan volgens art. 30 der Dordsche Kerkorde, beroept hij zich op de Synode. Geene particuliere vragen zullen in het vervolg, toegelaten worden op de Synode, voor zij bij den respectieven Kerkeraad of Algemeene Vergadering beproefd zijn.
- 3.2.4 Synod 1967 (Acta:349-350) stated:
... to apply CO art 33 consistently so that only assignments for Particular Synods are included in the Agenda.
- Conclusion**
- 3.2.5 A majority assembly does not determine independently which assignments/matters are placed on the Agenda, but among other things compiles its Agenda from assignments as received from the relevant minority assemblies.
- 3.3 *Petitions of protest and assignments from minority assemblies*
- 3.3.1 What is the relation between a request for revision/protest against a standing Synod decision (CO, art 46) and the assignments from the minority assemblies (CO, art 33)?
- 3.3.2 Historically it seems that CO, art 33 in a specific regulation for Provincial Synod as established during Synod of Emden of 1571 (Chapter 3, 1), while CO, art 46 had its origin in a specific regulation for classis assemblies as established during Synod of Emden of 1571 (Chapter 2, 8).
- 3.3.3 The original intent with CO, artt 33 and 46 was that the Classis should consider the existing decisions in the formulation of the assignment to be sent along.
- 3.3.4 During the National Synod of Dordt of 1578 articles 33 and 46 was formulated as one article (Chapter 2, 20). In the formulation there is only mention of the *instructie* that should come along and ***de welcke niet eer en sulleen gheschreuen worden voor datmen de artykelen der voorgaende Synodaler versamelinghe ghelesen hebbe ...***
- 3.3.5 During the National Synod of Middelburg (1581) articles 33 and 46 are separated (into artt 25 and 33). This state of affairs continued until the formulation of the Church Order of Dordt of 1618,1619. However, it is noteworthy that the independent placement of article 46 (as article 33 in the Church Order of 1581) lead to the words *de welcke* being replaced with ***De instructie der dinghen die inden meerdere vergaderinghen te handelen zijn.*** The close relation between the two articles is thus conserved, now with the use of the same word, namely *instructie*.
- 3.3.6 In the original Church Orders in use within the GKSA both CO, artt 33 and 46 also referred to *instructiën*. However, during the revision of the Church Order in 1964 this word was changed to 'assignment' in CO, art 33 and 'matters' in CO, art 46 (Acta,

1964:70-71) – which means the two articles are much more separate and they are now often used as loose-standing entities.

	Procedure 1	Procedure 2
3.3.7	From this it can be deduced that CO, art 46 brings forth a different category of cases.	From this it can wrongly be deduced that CO art 46 brings forth a different category of cases. From the historical overview it seems that CO, art 46 (the resulting protests against existing Synod decisions) was historically speaking always seen as part of the assignments according to CO art 33, and not as a different category of cases.
3.3.8		The narrow link between CO, artt 33 and 46 comes to the fore in different recent Church Orders in the Reformed world. The GKN (v) and the VGKSA both link articles 33 and 46 with each other directly as articles 32 and 33 of their Church Order. The CGK refers to <i>instructies</i> in both CO, artt 33 and 46.
3.3.9		This close link was considered by the Commission Report of Synod 1991 (Acta:527-528) when they state as conclusion (about which no specific decision was made, but which does summarise the intent of both the Petition of Protest and the Commission Report): <i>The Church Order contains stipulations for “Appeals” (art 31) and “matters” (artt 33, 46). A “Petition of Protest” should be seen as a “matter” and should not be regulated.</i>

Conclusion

	Procedure 1	Procedure 2
3.3.10	According to CO art 46 protests are among the assignments referred to in CO, art 33 that should be brought to the majority assembly by the delegates.	According to CO, art 46 protests are among the assignments referred to in CO, art 33 and they should only be brought to the majority assembly by the delegates.

3.4 *Right to protest and Responsibility to conform*

3.4.1 A core principle in Reformed church law is that no act of a church assembly is untouchable because the people who are present are sinful people and only the Word contains the will of God fully (BC, art 7). Consequently decisions can be reviewed, either via Appeal (CO, art 31) or via the route of protest (CO, art 46).

3.4.2 Due to the possibility of revision of decision a right to protest can be deduced according to which any believer – in line with his general priesthood – has the responsibility to state his/her protests.

3.4.3 This right is not linked to a person as human being, but rather to the duty to stand up for the truth in Christ based on Scripture, confession and church order.

3.4.4 In CO, art 46 the right to protest is limited by the fact that a protest may only serve if it has not already served, unless it is necessary to change something.

3.4.5 It should furthermore be kept in mind that believers are fallible and sinful and should therefore not persevere forcefully with their own opinion – except when it is absolutely necessary. The unity of the church should be built in the sacrificing and humble attitude of Christ (Phil 2:1-11), tolerance should be expressed (Rom 14:1–15:13) and in so doing the unity should be conserved and promoted (BC, art 32).

3.4.6 As an expression of this tolerance the Synod of Emden in 1571 (Chapter 3, par 3) already determined that in handling a matter, there should be a first vote after a discussion to test the feeling of the majority. The intent of this was that the minority would conform to the view of the majority after this first vote, and that with the second vote there would be general agreement with the proposal – except when the absolute need would show from Scripture and Confession.

Conclusions

3.4.7 According to CO, art 46 protests should only be stated if the necessity for protest is solid and conformation is impossible.

3.5 *Summarising conclusion 1: Direct access ...*

3.5.1 The question was stated whether there is something like *the right to direct access to a majority assembly* based on which it can be stated that a protest could be submitted directly to a majority assembly.

	Procedure 1	Procedure 2
3.5.2		When dealing with the matter of direct access, there should be a distinction between that and the right to protest (see 3.6). The right to protest can still be expressed via the church route and the route of CO, art 31, even if there is not direct access to a majority assembly.
3.5.3	It should be stated as point of departure that a majority assembly among other things compiles its Agenda from the assignments as received from the different minority assemblies and that protests can, according to CO, art 46 also be part of the Agenda without it arriving as an assignment from a minority assembly. As a result the church route should be the usual, but not the only, route.	It should be stated as point of departure with regard to a possible right to direct access that a majority assembly compiles its Agenda from the assignments as received from the relevant minority assemblies and that protests should, according to CO, art 46 be part of the assignments. As a result the church route should be followed when dealing with protests (3.2 and 3.3).
		The Synod decisions of 1884, 1967 and 1991 all confirm the church route as the usual route for submitting protests in terms of CO, art 46.
		The declaration of 1994 links up with this when it states (Acta, 1994:54, 4.2): <i>All matters under CO, art 46 will be taken into consideration along the usual church route according to CO, art 33 in ordinary circumstances.</i>
		An exception to the church route could be made, but only when the need for this can be thoroughly motivated and not based on the right to direct access to a majority assembly (3.4).

3.6 *Summarising conclusion 2: Submission after rejection ...*

- 3.6.1 The question has been stated whether a protest can be submitted to a majority assembly in the church route is followed and the protest has been rejected by a minority assembly.
- 3.6.2 The point of departure is that majority assemblies bring together a majority of gifts to judge a protest (3.1) and that the judgement of the minority assembly that rejected the protest should be handled with great care and humble acknowledgement of the limitations of own insight.
- 3.6.3 With that there should be in-depth consideration of whether the responsibility to conform (3.4) does not exclude further action.

	Procedure 1	Procedure 2
3.6.4	If there is the persuasion that the minority assembly can not conform with the rejection of the protest, it can – with indication of necessity according to CO, art 46 – be submitted directly to a majority assembly who took the decision that the protest deals with (Acta, 1994:3.2).	If there is a persuasion that the minority assembly can not conform with the rejection of the protest, that injustice comes to the fore and that there is a subsequent need to take the protest further, the route of Appeal should be followed in terms of CO, art 31.
3.6.5		If the route of Appeal is not followed and the majority assembly considers the protest by first looking at <i>why there can not be conformation to the judgement of the minority assembly</i> (Acta, 1994:53), the actions of the minority assembly are evaluated (in her adjudication of the Protest), without the minority assembly being able to explain the actions. In doing so the <i>audi alteram partem</i> -principle of jurisprudence is not honoured.
3.6.6		If a majority assembly considers the already rejected protest and come to a different conclusion, there will be two verdicts on the same protest, both valid. The majority assembly can not revoke the actions of the minority assembly (see CO, artt 30 and 36) – except in the case of an Appeal in terms of CO, art 31.

Decision: Note taken of 3.1 to 3.6.6.

3.7 *Recommendations*

- 3.7.1 The following decisions of Synods 1967 and 1994 are maintained and set as point of departure:
- 3.7.1.1 *CO, art 33 is consistently applied so that only assignments of Particular Synods are included in the Agenda (1967:350).*
- 3.7.1.2 *All matters in terms of CO, art 46 are included under normal circumstances along the ordinary church route of CO, art 33 (1994:54, 4.2).*
- 3.7.2 All protests in terms of CO, art 46 should have reasons why it is necessary to use the right of protest according to CO, art 46.
- 3.7.3 When the usual church route is not followed, the circumstances leading to that should be motivated. The majority assembly decides on the weight awarded to the circumstances and the consequent acceptability of the Petition of Protest.

	Procedure 1	Procedure 2
3.7.4	All matters in terms of CO, artt 33 and 46 that have already served at a minority assembly and have been rejected, can be submitted to a majority assembly.	All matters in terms of CO, artt 33 and 46 that have already served at a minority assembly and have been rejected, can not be submitted directly to a majority assembly. If there is not agreement with the decision of the minority assembly, there should be an appeal in terms of CO, art 31.

Decision: The Report is referred to the same to-be-appointed Deputies [like at 20.11] to advise the Synod on the submission procedures for Petitions of Protest in light of the Synod decisions of 1967, 1991 and 1994.