

24.5 REPORT STUDY DEPUTIES: RETIREMENT AGE OF THEOLOGICAL PROFESSORS (Art 244)

- A. Dr EJ de Beer tables the Report.
- B. The Report will be concluded during the Synod session.

C. REPORT

1. Mandate

- 1.1 Acta 2012:493, 24.10, 2.1.
- 1.2 "The General Synod 2012 is requested to appoint Deputies to, in light of the Word and other relevant Church Order articles, as well as existing Synod decisions, recommend a clear stipulation to the General Synod 2015 regarding the retirement of theological professors. This stipulation must also take into account the contractual agreements between the GKSA and the NWU. Decision: Approved".

Decision: Points 1.1 and 1.2 noted.

2. Matters that the Synod take note of

2.1 *Scriptural grounding*

- 2.1.1 In Gen 1:28 God commanded all people to inhabit and cultivate the earth. This is a lifelong task. The task is closely linked to a person's right to compensation for his labour. This also applies to ministers of the Gospel (1 Cor 9). In the Bible there are several examples of people that stood in God's service into old age, for example, Moses (Deut 34:7), Joshua (Jos 24:29), Eli (1 Sam 4:15), Zechariah (Luke 1:7, 18) and Anna (Luke 2:36-37)
- 2.1.2 It is important to note that the church polity stipulation that a minister of the Word is bound to a lifelong service to the church, is based on the Scriptural principle that God calls and equips ministers (Hebrews 5:4, Ephesians 4:11). From the examples above, it is clear that it is usually a lifelong calling.
- 2.1.3 The Fall of man has a significant effect on the fulfilment of all people's calling to inhabit the earth and cultivate it (Gen 1:26, 28, 3:17-19, Ecclesiastes. 12:1-8). Leviticus 8:25 and 26 acknowledges this. When a Levite became fifty, he was exempted from certain laborious duties. The effect of the Fall also has an influence on the fulfilling of the calling of reverends (and professors) as servants in God's kingdom. The decrease of physical or emotional strengths is an example of this. The decline in ministers' (and professors') abilities to work and fulfill their calling, in practice means that they eventually have to retire from their service while they still have the calling to be a minister the Word. Seeing that the reduction of abilities is usually a gradual process, reverends (and professors) can, where opportunities present themselves, still perform (limited) activities according to the abilities they still have (eg leading worship services or performing support service).
- 2.1.4 The fall not only has an impact on a reverend or professor's ability to fulfil his calling. It also affects the circumstances in which he has to fulfil his calling with the result that the Scriptural principles can not always be fully executed. "Thorns and thistles" also affects the compensation and agreements relating to the execution of the calling of reverends and professors. In practice this means that the Scriptural principles can not always be fully adhered to.

2.1.5 Conclusion

- 2.1.5.1 The Scripture determines as a principle that a person has a lifelong assignment to work and live off the fruit of it.
- 2.1.5.2 As a result of the Fall, this principle can not always be fully realized, amongst others due to a decrease in abilities and imperfect work circumstances.

2.2 *Relevant Church Order Articles*

- 2.2.1 There are no separate Church Order articles dealing with the retirement of professors because there is a oneness in the church service of ministers and professors. Therefore the CO articles concerned ought to be regarded as applicable to both services. The calling and admission of ministers and professors are the same (CO, art 4, 5). The calling is also the same for both services.
- 2.2.2 CO, art 12: The calling to service for ministers and professors is for life, although the place and manner in which the calling is executed is not necessarily life-long. Like a reverend, a professor can be called again, but his last calling gives expression to the lifelong calling.
- 2.2.3 CO, art 11-14 deals with i.a. (1) the “labour relationship” between “employer” and “employee”, (2) both parties’ responsibilities in this relationship and (3) the release of such a relationship. Considering the equality between officers (CO, art 17), CO, art 11-14 makes no distinction between ministers and professors.
- 2.2.4 CO, art 13 then deals with the ‘normal’ and ‘honorable’ release and reasons there for:
 - 2.2.4.1 CO, art 13’s emphasis is on the concept of incapability. This can happen due to age, illness (physically/mentally) or “otherwise”. The article deals with the factors that would render someone incompetent.
 - 2.2.4.2 The intent of CO, art 13 is exceeded when a certain age (e.g. 65 years) is automatically connected to the Church Order’s principle of “incapable”.
 - 2.2.4.3 CO, art 13 gives its own methodology (and reasons) for the determination of the “incapability” as an interaction between the Church Council (employer) and the minister (employee) with the necessary objective control of the Classis and advice of the Deputies of the Regional Synod (cf. decision Classis Griqualand West, 1997).
 - 2.2.4.4 The decisions regarding the merits of the retiring of reverends and professors are not taken unilaterally. In the case of a reverend he himself and the Church Council are involved and in the case of a professor he himself and the Curators are involved. Any of the parties can, based on good evidence regarding capability or incapability, take the initiative that will lead to eventual retirement.
- 2.2.5 The Church Order does not make provision for reverends and professors to fulfil their calling in terms (other than CO, art 27). The careful wording of CO, art 13 must be seen in the light of Christ that calls.
- 2.2.6 Finding
 - 2.2.6.1 It seems that a rigid stipulation of a certain age for retirement (e.g. 65) does not meet the meaning of the term “incapable” of CO, art 13.

2.3 *Existing Synod Decisions*

- 2.3.1 Problem: The Report of the Curatorium to the National Synod 1994 formulated the problem regarding the retirement of professors as follows (Acta 1994:652-653, 3.4.2.2.2 and 3.4.2.2.3):
 - 2.3.1.1 “The background of the decision of Synod 1979 (Acta:193) must be taken into account: when being reviewed it seems that the decision of 1979 was made after a Petition of protest against the decision of Synod 1970 (Acta:389 ff) succeeded, and a study was done on it. The imperative character of the decision of 1970 was changed by the decision of 1979, which has a more indicative character.”

- 2.3.1.2 “Article 13 of the Church Order lays emphasis on incapability, where Synod decisions in general also lay the emphasis on age (eg. 65 years). This raises the question whether, and if so on which grounds, a Synod can prescribe a certain age limit as a mandatory time of retirement. Can a Synod make a decision regarding the application of a particular Church Order article that may possibly be in conflict with the content of the Church Order article? As a rule this is certainly not right”.
- 2.3.1.3 “Yet, it must be taken into consideration that it has become customary and habit in most Reformed Churches around the world to determine a certain age when it comes to the application of art 13. The question is to what extent normal physiological conditions of people over 65 years can be considered as reasons here. A further problem is that Synods didn’t make similarly worded decisions with regards to the retirement of professors at the HTS and the TSP. When a church can no longer financially sustain a minister of the Word/professors, CO, art 11 can be followed, and such a person can be made available for calling within in the fellowship of churches. The question is whether this is a possibility to be considered when churches are not financially able to care for so many professors. The resultant question is how it must be determined which professor(s) should be “discharged” in terms of CO, art 11.”
- 2.3.2 Synod 1961 decided that in the light of the actuarial calculation (Report item 4) and also where CO, art 13 mentions age, “age” is more closely declared by the honorable Synod as being 65 years and older (Acta 1961:227). Furthermore, the Curatorium recommended to the honorable Synod) that the retirement age of theological professors is to be determined at 65 years, with the provision that the service period in each individual case can thereafter be extended annually by the Curatorium until the age of seventy, where after the service period should be terminated. This is approved in principle (Acta 1961:238)”.
- 2.3.3 After the session of 1961 where professors brought their objections against the latter part of the decision to the attention of the Executive Committee of the Curatorium, Synod 1964 recommended that the Synod must decide as follows: This decision must be read in conjunction with another decision of the same Synod regarding CO, art 13 where “age” is stated as being 65 years and older (Acta:227, 3. e.). This means that the status quo is maintained and that a theological professor can request retirement at the age of 65 years or thereafter due to age, but must request retirement at the age of 70 years”.
- 2.3.4 “Synod 1967 decided that professors can request retirement due to age at the age of 65 years or thereafter, but must request retirement at the age of 70 years. Retirement comes into effect at the end of that year (Acta:1967:273, Appendix 1, 12)”.
- 2.3.5 “Synod 1970 decided that all professors that entered into service from January 1970 must retire at the age of 65 years; that the current professors who are already over the age of 65 years must retire at the age of 70 years; that the professors who are under 65 years must retire at 67 years (Acta 1970:388 ff)”.
- 2.3.6 “Synod 1973 appointed Study deputies to reflect anew according to CO, art 46 on the application of CO, art 13 in the light of the decision that the retirement age for a professor at the Theological School is compulsory and optional for a reverend” (Acta 1973:347-348, art 145)”.
- 2.3.7 “Synod 1976 decided that the Study report has been noted; that the Point of description (Acta 1973, art 146) be referred to the Curatorium to make a study of it anew and advise the next Synod. In this study particular attention should be paid to whether the principle of CO, art 13 has been brought into jeopardy, seen in the light of the current practice that professors of the Theological School Potchefstroom must retire at the age of 65 years, under a contractual relationship with the University; as well as the way to be followed if the principle of CO, art 13 is indeed in jeopardy to align principle and practice, in consultation with the University.

As an interim measure in any occurring cases of “retirement”, the Curatorium has been instructed to seek to maintain the principle of CO, art 13 in consultation with PU for CHE” (Acta 1976:449-450, art 140)”.

- 2.3.8 “Synod 1979 decided that the professors normally retire at the age of 65 years. Upon submission of satisfactory testimonials about health and working abilities the Curatorium, in consultation with the PU for CHE, can extend the length of service from year to year (Acta, 1979:192-193, 1).
- 2.3.9 Synod 1982 finds that the decision of 1970 was amended in 1979 after considerable attention was given to the principle of CO, art 13 since 1973. Also, that in view of the progress of the case up to the Synod of 1979, renewed judgement was given on the principle and the objector would have to show that the Synod of 1979 acted in conflict with Confession, Scripture and CO. Also, that if the objection against the decision of 1970 is upheld, the decision of 1979 still stands. The recommendation was that the objection is not upheld. This Report is accepted in its entirety (Acta 1982:217-218, 85)”.
- 2.3.10 “Synod 1985 decides that, according to CO, art 13, retiring means that a reverend is released from his service. Where CO, art 13 mentions age, for the purposes of this Rule it is stated to be 65 years and older (Acta 1985:701, art 171, 2.13)”.
- 2.3.11 Synod 1994 made the following decisions (Acta 1994:653-655, item G):
- 1.1 “CO, art 11-13, determines the principles that govern the service period of ministers of the Word, including the professors at the Theological School. Decision: Approved”.
- 1.2 “The National Synod 1979 made a decision on the application of CO, artt 11-13, w.r.t. the retirement of professors at the Theological School:
“The professors normally retire at the age of 65 years. Upon submission of satisfactory testimonials about health and working abilities the Curatorium, in consultation with the PU for CHE, can extend the length of service from year to year”(Acta 1979:193).
The context in which this decision was taken, includes the following:”
- 1.2.1 “In the light of the CO, two parties are involved in the calling, release and retirement of ministers of the Word. In terms of the contractual relationship between the two parties either of the two has the right to request that the agreement expires or is continued”.
- 1.2.2 “The intent of Synod 1979 was also to lay down a clear rule w.r.t. the retirement of professors”.
- 1.2.3 “The decision of 1979:193 also applies to “highly” exceptional cases for which the necessity (necessitas) for continued employment on a year to year basis of a professor that still possesses the required strength, and for whom there is no suitable replacement, can be determined by the churches”.
- 1.2.4 “The churches that are in a contractual agreement with the PU for CHE must also consider the rules and regulations that apply at such an institution – including the determining of a retirement age.
- 1.2.5 “In 1991 changing circumstances arose that directly affect the retirement of professors. Synod 1991 decided that the number of professors at the TSP must be reduced. The reduction only takes place by way of not filling vacancies (1991:736, 2.5.4.1-2.5.4.2).
- In addition, the PU for CHE decided that, based on financial consideration, the staff must retire at 60 years. This at once affected the service period of professors older than 60 years. This rationalization process has developed in such a way that since 1994 the PU for CHE only accepts full responsibility for the care of 4, 5 professors. Consequently, in the TSP’s scenario, no provision has been made for professors over the age of 65 years of age since 1995, and the TSP works from the assumption that the decision of 1979:193 w.r.t. the retirement of professors is applied”.

- 1.3 “This rationalization at the TSP and PU for CHE places the Curators before accomplished facts that are to be taken into consideration in the determination of retirement of professors. Within this given framework and circumstances, retirement at 65 years must be seen as a reasonable and fair stipulation that must be honored by both the churches and the professors of the Theological School”.
- 1.4 “Deviation from this stipulation of 65 years as normal retirement age can lead to unequal treatment of professors with equal status (cf. CO, art 17). Decision: Approved”.
- 1.5 “Deviation from this decision of 1979 regarding the retirement age can severely disrupt the general and financial planning at the Theological School. Decision: Noted”.
- 2 “If a professor over 65 years does not retire under CO, art 13, the Curatorium may decide to end the professor’s services as a professor (the fourth service) according to the principle of CO, art 11, on the basis of considerations such as essential rationalization, need, etc. at the TSP and PU for CHE. Decision: Approved”.
- 4.2 “The Synod decides to in future act according to the 1.4 and 1.5 regarding the retirement of professors. Decision: Approved”.
- 2.3.12 Synod 1997 decided that the National Synod will take the decision of Synod 1961 (regarding age as being 65 years and older) into review by amending the decision with “age in CO, art. 13 is to be determined by the Church Council, Classis and Particular Synod Deputies at the request of the reverend and Church Council”. The Synod adds the following note: “In the light thereof that both the “emiritaatsfonds” and pension fund presumes that reverends normally retire at the age of 65, Church Councils and reverends must take note that the care amount of reverends who are not medically unfit and who retire before the age of 65 will be reduced significantly in relation to the shortened years of service” (Acta 1997:370, 4).
- 2.3.13 Decision
- 2.3.13.1 See decision at 2.4.6.5 below.
- 2.4 *Contractual Agreement between GKSA and NWU regarding “emeritering”/retirement*
- 2.4.1 Ternary service agreement between NWU and GKSA.
- 2.4.1.1 Decision Synod 1994
Synod 1994 approved a service agreement between the GKSA and PU for CHE (Acta 1994:663-675). The following has been approved with regards to retirement: “You retire at the end of the year in which you’ve reached the age of 65 years” (Acta 1994:669).
- 2.4.2 Conditions of Employment Agreement - January 1999
- 2.4.2.1 According to a document provided by the University, the latest “Conditions of Employment Agreement for academic staff attached to the Theological School Potchefstroom” is dated 7 October 1998. This agreement shall come into effect on 1 January 1999.
- 2.4.2.2 In respect of retirement the agreement provides:
“20.1. Your normal retirement age is 65 years. You may retire voluntarily at the end of any month following the day on which your normal retirement age is reached, with the end of the year in which you reach the specified age as mandatory retirement date.”
- 2.4.2.3 Thus the conclusion from both of the above agreements (1994 and 1995) is that the NWU and the GKSA set the normal retirement age as 65. However, the agreement of January 1999 states that academic staff at the Theological School Potchefstroom (this certainly includes professors at the TSP) are obliged to retire at the end of the year in which they become 65.

2.4.3 Current service agreement between the NWU and lecturers

Current provisions for retirement of lecturers at the NWU are as follows:

“17. Termination of service

17.4. Your normal retirement age is 65 years. You may retire voluntarily at the end of any month following the day on which you reach retirement age, with the end of the year in which you reach the aforementioned age as mandatory retirement date.

17.4.1. You may apply at the UNIVERSITY for early retirement, which is the end of the month in which you reach the age of 55 or thereafter, by giving written notice to the UNIVERSITY at least 3 (three) months before the intended retirement.”

2.4.4 Agreement between the GKSA and the NWU

2.4.4.1 A new updated Agreement between the GKSA and the NWU was signed during Synod 2006. As in the past, this particular agreement has a different character than the conditions of employment agreements and specific issues such as retirement age is not incorporated in this agreement.

The following excerpt is indeed of importance regarding the service agreement or condition of employment agreement entered into between the GKSA, NWU and the called professors.

“2.4 In respect of a professor at the Theological School who is also appointed by the University as a lecturer at the University in accordance with 2.1, the University enters into a specific service agreement with such professor that is agreed upon between the Churches and the University and which must make provision for the special relationship that is established between such professors, the Churches and the University under this agreement.”

2.4.4.2 Thus it has been agreed that a specific service agreement must be entered into with the appointed professor. As already mentioned above, this service agreement determines that professors at the TSP retire at the age of 65 years (Synod 1994) and the service agreement of 1999 even determines that they are obliged to retire.

2.4.4.3 The conclusion is that the GKSA should, on the basis of the contractual agreement with the NWU, offset the stipulations of the NWU regarding retirement age. If the GKSA ignore these stipulations it will constitute a breach of contract.

2.4.4.4 A further problem emerges:

If the GKSA deviates from the above mentioned retirement stipulations in the service agreement for professors who are appointed to the TSP, discrepancies may arise between appointed professors on the one hand, and on the other hand professors appointed to the Faculty of Theology who are still reverends, as well as lecturers and Administrative- and support staff in the same Faculty

2.4.5 Finding

2.4.5.1 According to section 2.4 of the Agreement between the GKSA and the NWU, the NWU enters into a conditions of employment agreement with each called professor. This agreement must be signed by everybody who is called as well as all academic staff. This agreement determines that he/she will retire at 65 (Point 17.4 “Your normal retirement age is 65 years”). It is therefore clear that where the GKSA’s relationship with the NWU is concerned, theological professors retire at 65 – without exception.

2.4.6 Practical Circumstances

2.4.6.1 It is a given that the GKSA cannot afford the financial care of the professors and the staff at the TSP on their own. The agreement between the GKSA and NWU eases the burden on the churches for the financial care of the professors, by the NWU’s taking over of the responsibility of some of the professors’ salaries (partially or fully).

2.4.6.2 Actuarial calculations and planning by the churches and the NWU, requires that a retirement age for professors is determined.

- 2.4.6.3 At most of the Reformed Churches around the world it has become a customary and habit to indeed determine a certain age when it comes to the application of art 13.
- 2.4.6.4 In the “Emeritaatsversorgingstrust (EVT)” the churches agreed with the Stipulations to help each other with the care of retired reverends and professors. The EVT’s Stipulations maintains the retirement age of reverends and professors at 65 years (cf. Acta 1997:243-250).
- 2.4.6.5 Finding
From the decisions taken by various Synods in the past, it is clear that the age at which professors at our theological school can or must retire, is an issue that has been grappled with for years. At the core of the problem is the fact that the churches cannot maintain all the professors from their own funds. This has forced the churches to enter into a contractual agreement with the university.
- 2.4.7 Findings Summarized
The Word states as principle that a minister and professor is called for life. This principle is echoed in art 12 of the CO. Because of the brokenness of the world (because of the Fall), this principle cannot always be fully complied with. This applies to reverends in the ministry as well as professors. Article 13 of the CO and numerous Synod decisions testify to how laborious the pursuit to comply with the principle is. Some of the causes that prevent the churches from carrying out the principle of a lifelong vocation (and compensation there for), include the lack of finances and the necessary agreement with the NWU.

Decision: Points 2.1 to 2.4.7 noted.

3. Matters that the Synod decide on

3.1 Recommendation

In the light of the preceding study, your Deputies recommend the following stipulation:

- 3.1.1 That the called theological professors at the Theological School retire at the age contractually agreed upon between the churches and the NWU.
- 3.1.1.1 Motivation for this proposed stipulation: The Study report in its entirety and in particular points 2.1.5.1; 2.1.5.2; 2.2.6.1; 2.3.13.1; 2.4.5.1; 2.4.6.5 and 2.4.7 of the Study report.

Decision: Points 3.1 to 3.1.1.1 approved.