ARTICLE

Religion and State in Belgium

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ABSTRACT *This article focuses on the complex question of state-religion relations in Belgium and examines definition of laicism/secularism in the constitutional or juridical texts to show the main characteristics of official discourses. It also looks at how the state manages religious institutions and education in a secular context with reference to public funding and curriculum issues. This article comes to a conclusion by analysing the position of Islam and Muslims in Belgium.*

Church and State relationships in Belgium are largely governed by the Constitution of 1831, an historic compromise between Catholics and Liberals. Constitutional rights and liberties also apply to various religious matters, for example freedom of education (Article 24) or freedom of the press (Article 25). The Belgian constitution of 1831 does not define the relationships between religion and the State. But the Constitution does specifically provide for the freedom of religion as such. Four specific articles are devoted to this topic.

Freedom of worship and its free and public practice are guaranteed under Article 19 of the Constitution, with an exception allowing for the punishment of criminal offences committed in the exercise of these freedoms. The negative counterpart of Article 19 is contained in Article 20: no person may be forced to participate in any way in the acts of worship or rites of any religion or to respect its days of rest. Article 21 stresses that the State has no right to interfere with the appointment or induction of the ministers of any religion, or to forbid them to correspond with their Church authorities or to publish the latter's

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Insight Turkey
Vol. 17 / No. 1 / 2015, pp. 97-119

Of the six recognised religions, Roman Catholicism is the most important in terms of Belgian history and number of adherents

acts, subject to the ordinary rules of liability concerning the use of the press and publications. The article is generally interpreted as an affirmation of the freedom of internal ecclesiastical organisation. It contains at the same time an exception to this principle by providing that civil marriage must always precede the religious marriage ceremony, except in specific cases established by law. Finally, Article 181 says that the salaries and pensions of the ministers of the cult should be borne on the State budget.

It is not unusual for the term 'separation of Church and State' to be used as a description to sum up the relationship between the two bodies. This is probably a somewhat unfortunate choice of terminology.[1] Much depends, of course, on what exactly is understood by "separation."[2] If this term gives the impression that Church and State have absolutely nothing to do with each other, then it is not an adequate one. Separation in such a sense cannot be reconciled with Article 181 of the Constitution, in which it is stated that the payment of wages and pensions to ministers of the cult is to be met by the State. Nonetheless, the question arises whether "separation" necessarily entails an absence of all contact between the two parties.

There is another term, however, which probably brings more clarity to the issue: a number of writers speak of the "mutual independence" of Church and State.[3] This term not only emphasises the freedom, which exists, but also the mutual consideration, which, of course, demands at the very least the notion of accepting each other's existence. This all continues to be a delicate affair.

Unlike France, Belgium never defines itself as a laicist or secularist state. These concepts are perceived as highly ideological notions. They are not compatible with the typical Belgian spirit of pragmatism. Moreover, the Belgian constitution of 1831 was a measured compromise between the leading religious and political factions of the day, namely liberal Catholics and tolerant Liberals. The compromise did not focus on ideological constructions but on a keen balance between liberalism and religious traditions.

That being said, both the independence of Church and State and the prevalence of pluralism in Belgium compel the State to take up a *neutral* position in regard to religion.[4] The neutrality of the state is considered an important constitutional principle in Belgium, albeit not explicitly laid down in the Constitution itself. The Belgian Council of State (the country's highest administrative Court and advisory body) considers the principle to be intimately associated with the principle of non-discrimination and equality, particularly on religious grounds (Council of State 20 May 2008, no. 44.521/AG). Neutrality implies

that the State itself does not adhere to or identify with any one religion in particular. This means, among many other things, that religious symbols (such as crucifixes) in public buildings and courts are unthinkable, except in cases in which they are part of the historical architecture. More generally, neutrality entails that the state ought also to refrain from interpreting religious rules and practices.

At the same time, neutrality, as interpreted and applied in Belgium, does not imply that the State needs to be seen as 'unbelieving' in the face of the phenomenon of religion. Indeed, the government bestows support and protection to both churches and non-confessional organisations, which only serves to show their importance to society. The State positively promotes the free development of religious and institutional activities without interfering with their independence. In that sense, one might call this positive neutrality.[5]

The Belgian constitution itself does not refer to a particular religion or church. However, as ministers of religion are remunerated by the State, the law makes a distinction between recognised religions obtaining state financing and other religious groups that merely enjoy religious freedom without obtaining any material support.

Several religions have obtained official recognition by, or by virtue of, a law. The main basis for such recognition is the social value of the religion as a service to the population.[6] Currently, six denominations enjoy this status: Catholicism, Protestantism, Judaism, Anglicanism (Law of 4 March 1870 on the organisation of the temporal needs of religions),[7] Islam (Law of 19 July 1974 amending the said law of 1870) and the (Greek and Russian) Orthodox Church (Law of 17 April 1985 amending the same law of 1870).

A change to the Constitution on 5 June 1993[8] ensured that certain groups of non-believing humanists[9] are financed.[10] Since the turn of the century, a union of Buddhist organizations has been seeking to be recognized as well. Although this request has not yet resulted in a full formal recognition, things are progressing in that direction. Already, the Belgian state is providing funding to the Buddhist applicants in order to enable them to fulfil the structural requirements for recognition.[11]

In addition to the modest salaries (designated by Article 181 of the Constitution) for the ministers of religion of a government approved parish or bishopric[12] provided in the State budget, recognition also entails a few other benefits for the religions concerned.

Legal personality is attributed to the ecclesiastical administrations responsible for the temporal needs of the Church.[13] The Church and Church struc-

Non-recognised religions or religious groups are more likely than recognized ones to clash with concepts like public order and good practices within the state order

tures themselves do not enjoy any legal personality. A striking point is the fact that State municipalities must pay any deficits incurred by the ecclesiastical administrations for temporal goods. This safety net does not always encourage proper responsibility on the part of said administrations.[14] Another advantage: the Church may request State subsidies for the construction or renovation of its buildings.[15] Moreover, pastors and bishops must be given appropriate[16] housing and any expenditure for this purpose is chargeable to the municipalities or provinces.

In addition to these benefits, recognised religions get free public radio and television broadcasting time (known as *le droit à l'antenne*, which literally translates as 'the right to the antenna').[17] This principle was first established by the federal government in 1964. Since then radio and television have become regional matters. Currently, the Flemish, French and German speaking public broadcasting regimes all offer airtime to recognized religious groups. In Flanders, for instance, this amounts an annual maximum of 50 television hours for all religious and non-religious groups. Notably, however, the time it takes to broadcast the Roman Catholic Sunday mass (every Sunday), is not included within this maximum.

Finally, religions may appoint army and prison chaplains, whose salaries are paid for by the State budget.[18] Moreover, one of the aspects of Article 24 of the constitution, as mentioned, entails that schools organized by public authorities must offer a choice between instruction in one of the recognized religions and instruction in non-religious ethics for the duration of compulsory education, and the State must pay for this instruction as well

Of the six recognised religions, Roman Catholicism is the most important in terms of Belgian history and number of adherents. The figures provide indisputable proof of this. The Roman Catholic Church's predominance has not resulted in its having a privileged position, *de jure*. However, that is not entirely true *de facto*. First of all, one cannot escape the conclusion that the legal status of religions in Belgian law really finds its source of inspiration in the structure and functioning of the Roman Catholic Church. Here is an example: to be able to make an actual claim for State payment of religious ministers, a clearly hierarchically structured religious community is necessary, as is one which works on a territorial basis. The Catholic Church obviously fulfills both of these requirements, but this is not as clear for the Islamic faith. As a result, Islamic religious ministers did not receive State pay up 2007, despite Islam

Sikh immigrants protest on October 28, 2014 in Brussels against the closure of the Guru Nanak Sahib Sikh temple in Vilvoorde.

AFP PHOTO / BELGA / KRISTOF VAN ACCOM

having been recognized since 1974. Recognition of mosques, likewise, took a significant amount of time.

In addition to its position as a standard setter in terms of State recognition, the Roman Catholic Church plays a bigger role than other religions when it comes to public expressions of faith. This role may be seen when the military services are drawn up at the salute at the playing of a 'Te Deum' on the occasion of the Belgian National Day.[19] The Catholic Church also had a prominent role at the funeral of King Baudouin on 7 August 1993. More generally, the royal family has a reputation of deeply rooted Catholicism. In 1990, most notably, parliament passed a law legalizing abortion. King Baudouin, constitutionally obliged to sign all legislation, asked the Prime Minister to find a way out. This led to Parliament declaring the King, with his own consent, "temporarily unfit to reign".[20] Summarizing, it might be said that among the recognized religions, the Roman Catholic faith is the *primus inter pares*.

As well as the six recognised religions, Belgium hosts a whole range of unrecognised ones. They include Jehovah's Witnesses, Hindus, Mormons, Sikhs, Hare Krishnas, Jains, and Scientologists. These movements do not always have a legal status which could be said to be enviable. Not only do they not enjoy the advantages the recognised religions can lay claim to, but they are sometimes not even regarded as religions, pure and simple.

As mentioned above, there is no legal definition of the term "religion" in Belgian law. Therefore, the decision as to whether a certain group is to be con-

The State has no right whatsoever to intervene in the internal structure of churches or other religious organisations

sidered a religion is left to the courts of law. In view of the freedom of religion and the relationship between church and state as exists in Belgium, when a judge has to determine whether a movement is a religion, he or she normally is not allowed to fall back on arguments concerning their content.[21] For a judge who, for example, looks at the criminal law or tax exemption files to establish whether he is dealing with a religion,[22] this entails having to work out whether the group concerned looks as though it is serious and in all reasonableness may be called a "religion."[23] When making such a determination, a judge generally bases the decision primarily on external aspects, such as the existence of temples, prayer texts or ritual acts. Sometimes, however, even this does not yield sufficient clarity and a certain amount of analysis of what is contained within the movement is still necessary. Jurisprudence takes the view that for a group or movement to be regarded as a religion, there needs to be a cult of a deity.[24]

Non-recognised religions or religious groups are more likely than recognized ones to clash with concepts like public order and good practices within the state order. Up until the abolition of compulsory military service, the problems the Jehovah's Witnesses encountered were very well known. Not only did they refuse to do military service, but they also refused the alternative to it: civic service. On the basis of Article 46 of the military penal statute book, the person concerned was classified as a deserter, and this generally led to a two-year prison sentence.[25]

Furthermore, it is worth pointing out in this regard that Belgium has been among those countries strongly concerned about so-called harmful sectarian organizations. A parliamentary report on this issue was submitted to the Chamber of Representatives on 28 April 1997, which contained a list of such organizations. Publication of the report stirred much commotion, causing the Parliamentary commission that had issued the report to officially state that the presence of a certain movement on the list did not imply that the group was a sect, let alone that it was considered dangerous. After examination of the report, an 'Information and Advice Center concerning Harmful Sectarian Organizations' (IACSSO) was founded in 1998 (law of 2 June 1998). The Center and its functioning also led to controversy, both within Belgian and abroad. An Antroposophical organization challenged the Center's founding law before the Belgian Constitutional Court (*Grondwettelijk Hof* or *Cour Constitutionnelle*). The Court declined to annul the legislation, suggesting that harmful sectarian organizations may be treated more strictly than harmful organizations in general. In other words, religious groups, paradoxically, (may) enjoy less protection, in this context, than ordinary associations. The Court did state that the

Center may not prevent or forbid the expression of an opinion by a philosophical or religious minority. The Center can only inform the public with regard to activities of particular associations and groups, in order to enable people to evaluate potentially harmful opinions and beliefs with greater accuracy (Constitutional Court 21 March 2000, no. 31/2000).

To put it briefly, having taken everything into consideration, three categories of religion can be differentiated: (a) Those legally recognised, in real terms, the major Catholic church; (b) The five other legally recognised but, in real terms, minor religions as well as the non-believing humanists; (c) The unrecognised movements, whether or not they fulfil the requirements which the law lays down on the concept of religion.

The basic norm with regard to freedom of education can be found in Article 24 of the Belgian constitution. Article 24 §1 goes as follows: "Education is free; any preventative measure is forbidden; the repression of offences is only governed by law or decree. The community offers free choice to parents. The community organizes neutral education. Neutrality implies, notably, respect for the philosophical, ideological or religious conceptions of parents and pupils. The schools organized by the public authorities offer, until the end of obligatory education, a choice between one of the recognised religions and non-denominational moral teaching."

Clearly, two important points can be underlined. Firstly, free education is very important in Belgium. Today, more than half of the pupils of primary and secondary schools attend the classes of catholic schools. At the same time, only two third of the Belgians are baptised in the Catholic Church and approximately 8 to 15 percent attend Sunday mass.[26] This means that many Catholic schools are *de facto* highly secularised. General trends in society are also highly visible in the field of education.

Secondly, for those who opt for education offered by public authorities, there is a compulsory choice between various forms of religious education and nondenominational moral teaching. Increasingly however, pupils ask for and obtain exemptions, which may be granted by school directors. The current model of choice finds its origin in fierce battles between Catholics and free thinkers. Today, the discussion is elsewhere. The main issue concerns the choice between religious or highly ideological value systems on the one hand and more individualistic thinking on the other hand. Given this new paradigm, the increasing demand for exemption of any religious or philosophical teaching becomes understandable.

A last point of attention: unlike education in general, professional training of religious ministers is not financed by public authorities. Rather, Catholic priests

have always been educated at seminaries financed by the bishops. Today, there is an ongoing discussion with regard to the possible public financing of the training of imams. This issue is not just a matter of philanthropy. By financially supporting the education of imams, authorities hope to gain some control over their thinking about democracy. Moreover, more imams educated in Belgium could lead to fewer imams educated in countries having little experience with the position of religion in a democratic society under the rule of law.

The basic principle with regard to church matters can be found in Article 21 of the Belgian constitution, which has always been considered to be a solid legal basis for the self-government of religious communities. Under this Article, the freedom of internal organisation is guaranteed. The State has no right whatsoever to intervene in the internal structure of churches or other religious organisations. The latter does not mean that there is no public policy at all with regard to religion. The whole issue of recognition of religious groups, including their financial support, falls under the competency of the federal ministry of justice. Since 2001, the ongoing regionalisation of Belgium, entailing the attribution of more and more competencies to the regions, has generated consequences affecting religious policy as well.[27] This means, for instance, that the practical implementation of religious education is organised by the regions. The same is true for the broadcasting of religious programs on public television as well as for the management of the temporal goods of recognised religious groups.

The bottom line is this: the public administration has no power at all with regard to religious groups. Only when religious groups are recognised and thus qualify for public support, does the administration have some competencies with regard to the practical organisation of this financing. Altogether, civil servants dealing with religion at both the federal and regional level are very limited and have a merely technical competency.

Article 181 of the Constitution clearly affirms that the salaries and pensions of the ministers of religion are chargeable to the State. It also states that the sums necessary for this purpose are to be included in the annual State budget.

On 5th April 1993, a second clause was added to Article 181 of the Constitution: "The wages and pensions of representatives of organisations recognised by law who extend moral services, on the basis of non-confessional philosophy of life, are to be paid by the State; the sums required for this purpose are to be drawn out of the National Budget on an annual basis."

A global evaluation of the Belgian financial system shows us that religions are almost exempt from setting their own budget policy: religious personnel are almost completely salaried by the State, deficits for material administra-

tion are taken care of by others, and various indirect advantages make life easier. This "automatic" finance system is topped by income derived from Church-owned property. The property of religious congregations sometimes turns out to hold considerable value. However, since the French Revolution, dioceses are no longer land- or property-owners of great importance. Finally, there is the phenomenon of fundraising. Unlike the Netherlands for instance, Belgium has almost no tradition in this field. This lack of financial support by the faithful is largely due to the State finance and the idea people have that they are already indirectly contributing to Church finance by paying their taxes.

The relationship between politics and religion has always been informal, but important

The current Belgian system is fairly well accepted by the population. Nobody can deny that it functions rather well. From time to time however, some criticism is heard. In 1992 the "official" secular-humanist movement *Humanistisch Verbond* published a pamphlet arguing that the financial support given, especially to the Catholic Church, was too large.[28] The authors suggest two possible options for the future, the first being a system of complete separation with an entirely neutral State: a nineteenth century dream! The second possibility consists in continuing State finance of religious and secular movements, but on a basis of strict equality, given the fulfilment of three conditions, namely that (a) the proper will of the relevant organisation is taken into consideration, (b) a minimal number of members is required and (c) the acceptance of a contemporary pluralist democracy by the State financed institute is a *conditio sine qua non*.[29]

In spite of this and other documents, the current system is functioning well and is not likely to change in the near future. Moreover, as mentioned, a constitutional amendment in 1993 ensured full recognition of the secular Humanist movement itself, which probably contributed to postponing the debate over the support system that was initiated in 1992.

The current system also includes other advantages for recognized religions and their personnel. For instance, the town in which a parish is situated has to provide either housing for the pastor or a financial compensation.[30] The local town is also bound by several other financial obligations.[31] Chaplaincies are also financed, and the same is true for various other activities including the restoration of historical buildings owned by Churches.

Two principles are very important. The first principle is that recognised religious groups receive direct financing for their activities. The second principle concerns the full financing of certain activities regardless of their religious or

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nonreligious origin. In Belgium, free education is financed in a way very similar to public education. Social and cultural activities are financed because of their content and not because of the provider of those activities. Monuments are restored with funds from the state budget when they are valuable in terms of cultural heritage. The question whether they have a religious aim or not is irrelevant. In practice however, many Belgian monuments do have a religious origin, given the Christian history of the country.

The existing system offers tax benefits, including an exemption from taxation on income derived from property ownership for buildings (or parts of buildings) that are used for worship. Here, we have to make a distinction between two situations. In the case of private institutions, in many cases this means Catholic institutions, the autonomy of the religious group is complete (albeit subject, to varying degrees, to general rules and regulations, including discrimination law).

However, where public institutions are involved, a double relationship exists. The public authority is the formal employer, but the religious authority has to give the green light at the moment of the appointment of the employee. This happens through a so-called 'mission'. This mission can be withdrawn in a later stage because of various ideological or religious reasons. This latter situation can have unpleasant consequences for employers, as they may have to pay indemnities. Indeed, the employer is responsible for the labour contract, yet if employees lose the support of the church authority, the employer cannot maintain them in a religiously coloured position. Of course, if the employee commits mistakes directly related to the technical aspects of the job (e.g. working hours or internal discipline), sanctions can be imposed without the approval of the religious authority.[32]

The relationship between politics and religion has always been informal, but important. For many years, the Catholic or Christian Democratic Party has played a key role in Belgian politics. After World War II, it was continuously in power, in various coalition governments, with the exception of the period 1954-1958. In the late sixties, the Christian Democrat party split into two parts, a Dutch speaking party (CVP) and a French-speaking one (PSC). This phenomenon was by no means specific to the Christian Democrat Party, as the same schism occurred within the two other main political families, the socialists and the liberals. Until 1999, both factions of the Christian Democrats remained in the government, but then they lost the elections and became, for the first time in more than forty years, opposition parties. Currently, (as of

2015) they are represented, once again, both in the federal government, as well as in (most of) the regional governments.

In the meantime, the link between the Catholic Church and the Christian Democrats gradually weakened. The influence of church leaders became less outspoken, and is today no more than marginal, and in many cases, non-existent. The Belgian abortion law, approved by parliament in 1993, was not supported by the Christian Democrats, but they left the matter to the free decision of the parliament while they were in government.[33] The Christian Democrats were in the opposition when the very liberal euthanasia law was up for vote in 2002, but their resistance focused merely on technical points and was far from fierce.[34] Finally, in 2003, homosexual marriage was approved, without Christian Democratic opposition on the level of principles.[35]

To sum up: although Christian Democratic parties still are present in Belgium, their link with the church has considerably weakened. French-speaking Christian Democrats have even removed any reference to Christianity in the name of their party. Today, Christian Democratic parties are open to non-believers and/or adherents to other faiths.

Finally, there are no seats reserved for representatives of churches or religious groups in the federal or regional parliaments. Obviously, religious people are free to run for parliament. Currently an imam and a catholic priest are both MP. However, Article 51 of the Constitution does prescribe that having "any salaried position other than that of [governmental] minister," whose salary is paid by the federal government, cannot be combined with being a Member of Parliament: this includes ministers of religion in the sense of Article 181 of the Constitution *to the extent that they receive payment by the State* (cf. supra). Such persons may, however, hold positions on committees or in lower level representative bodies, such as municipal councils.

Belgium clearly emphasizes religious education. However, increasingly, religious education offered under the control of religious authorities has become much more open to other religious (and non-religious) traditions.

At first glance, two rather opposing approaches seem to emerge. Firstly, one can focus on the confessional component of religious education by redefining religious education as a form of *witnessing*. This is what happened to the new religious education program in Flanders, my own region. The religious teacher does not offer cognitive information, and does not even try to offer catechesis to his pupils any longer. He just tries to be a witness of his faith. He clearly outs himself as a Catholic and, by talking about his personal life, shows the way to pupils who may choose to become Catholics themselves. This approach starts from the correct presupposition that not all pupils in

a catholic religious class are religious in orientation. They may choose to study Catholic religion out of tradition or because the alternatives, including non-confessional humanism, are perceived as even less attractive. However, the witnessing character of the instruction offered can be very problematic for three reasons.

The first reason concerns the rupture between religion and other courses offered by the school. The non-cognitive character of religious education isolates both the subject and its teachers from ordinary school life and work.

The second reason deals with the personal position of the religious teacher, who, often in the remote past, was accepted by church authorities as a competent and reliable teacher. Very often the teacher, although a qualified theologian, lives a life as burdensome and as hazardous as the life of any other person. The teacher may divorce or he may lose his faith. He may feel unhappy or lack the religious enthusiasm that used to be a continuous source of joy during his youth. Often, he remains an acceptable, and at times even a good or an excellent teacher. But perhaps he cannot be a credible witness any longer, because of the many wounds and disappointments that life brings to human beings. In other words, one can hope that religious teachers are able to witness, yet one cannot expect and certainly not enforce it as a matter of generalized policy. A final reason for scepticism deals with the problematic character of explicitly witnessing people in a rather individualistic society in which bringing a message, in order to be successful, should be much more subtle and implicit.

Currently in Belgium we have a relatively small number of minority religious schools, for instance, Protestant, Muslim or Jewish schools

The second approach to religious education may be considered exactly the opposite of "witnessing." Here, the cognitive character of religious education is highlighted. Religion becomes a subject like any other school subject, and the courses include a strict and solid examination. A negative consequence of this approach could be that religion becomes no different from any other school subject and thus risks losing its traditional, critical role. Yet, there are also very positive connotations associated with this second model.

In the first place this approach recognises the important cultural role played by religion in Western society. It is not without reason that many people consider it unacceptable that representatives of the younger generation feel equally lost while looking at the wall paintings of the *Scrovegni-chapel* in Padova as while visiting a temple in Sri Lanka. In other words, under this model, the churches can focus on their cultural role in what may be seen as a necessary, cognitive

step, towards a possible interest in the religious message represented through artefacts of the cultural heritage.

In the second place this 'rational approach' increases the social prestige of both the subject of religious education as such, and its teachers, in a school environment highly sensitive to issues such as prestige and credibility. For young people, perception and the idea of belonging to a group are important.

The financing of recognized private schools differs very little from the financing of public schools. Teachers are paid by secular authorities 100 percent. Only on the level of logistic support, small differences remain in place. On the level of recognized universities, there is no difference at all between the financing of public and the financing of private institutions.

In principle, the State funds all free schools fulfilling the necessary technical criteria with regard to compulsory educational programmes, qualifications of teachers, norms with regard to the number of pupils etc. The question whether the provider of this education is religious or not, belongs to a majority or not, is irrelevant. Currently in Belgium we have a relatively small number of minority religious schools, for instance, Protestant, Muslim or Jewish schools.

Here again, the principle is that religious authorities are responsible for the scrutinising of the teachers and the elaboration of the programmes. All recognised religions can be taught, on the request of the pupils and their parents, at public primary and secondary schools. The fact that the selection of the teachers is in the hands of religious authorities, does not exempt the latter of selecting people who meet with the necessary pedagogical qualifications needed for teachers in general.

There is no constitutional or legal text offering a definition of the concept of minority. Concerning the issue of 'sects', all recognised religious groups have the right to obtain public funds. Strikingly, there are no *legal* criteria with regard to the recognition of religious groups. However, there are some policy guidelines used by the administration in an unofficial, non-compulsory way.

The most objective criterion is certainly the number of the faithful. In order to be recognized, a religious group should have at least some ten thousands of members. An interesting question concerns the counting of the faithful. Should states themselves count the faithful or rely upon the statistics as offered by religious groups? The latter seems to contain some risks. Will the religious group be honest? On the other hand, according to some, the mere fact of controlling statistics as offered by religious groups already endangers religious freedom. In Belgium, authorities do not check statistics related to membership as they are offered by religious authorities.

A student attends a course on religion at the public middle school.

AFP PHOTO / JEAN-CHRISTOPHE VERHAEGEN

A second criterion is that the religious ground may not pose a threat to the social or public order, and –more specifically– requires the absence of criminal activities. At first glance, such a requirement is nothing but logical. The state should not subsidise groups that do not observe the rules of the game as set forward by a democratic state. Yet two remarks can be formulated.

Firstly, one should distinguish between crimes committed as a result of the doctrine and behaviour of a religious group, and crimes committed by members of such a group, possibly without implications for the group as a group. For instance, if a Jehovah witness refuses a blood transfusion for his child, does he act as an individual or is he obliged to act the way he does because of compelling religious reasons? And what about a member of the Scientology Church involved in fraud in connection with commercial activities? In any case, the link between membership of a religious group and the involvement of the latter in the criminal activity should not be made without careful analysis.

Secondly, the State should avoid promulgating new laws directly aiming at limiting certain religious activities. Especially in countries where the fear of new religious movements is strongly present, such a danger can be very real. In Belgium, for instance, the parliamentary report on so-called sects, proposed the introduction of a new crime that was specially meant for groups trying to convince weaker people of the real character of non-existing facts. Such an approach contains many dangers. One of them is that the reasoning is no longer taking place in a *rebus sic stantibus* context. In other words: more crimes

lead to more religious groups being at odds with criminal law.

In theory, all religious groups enjoy the same scope of religious freedom. Yet, one cannot deny that the general framework in which this freedom is exercised remains highly coloured by Christian values and tradition

A third criterion, intrinsically more debatable than the previous one, is the duration of the presence of the religious group in the country concerned. In Belgium, religious groups obtain recognition only after some decades of presence in Belgian territory. The criterion is more understandable when it focuses on the *structural stability* of the religious group concerned. A group, in order to be in a position to establish relationships with the state, should be more than an ephemeral phenomenon. But then again, it is perfectly possible that a religious group has proven its stable character elsewhere, abroad, while its presence in the country is rather recent. In other words, structural stability can be required, but it should not be mixed up with a long-standing presence in the territory of the country.

Finally, a fourth criterion deserves some attention. Religious groups entering into particular relationships with the state should share with the latter a set of democratic values. At first glance, this requirement is only fair, and yet, some questions can be asked. Which democratic values have to be shared? All of them? Then they should at least exhaustively be defined. An alternative viewpoint can be that the *basic* democratic values need to be shared. Even then, drawing the line can be difficult. Moreover, some tension is possible between sharing democratic values on the public forum and the internal situation within the religious groups themselves. Sharing democratic values, in the eyes of some, could imply accepting minimal standards *within* the groups concerned as well. For instance, what about the application of the *due process of law* standard within internal church structures? Last but not least: democratic values include religious freedom, a safeguard which remains an empty shell if moderate forms of deviant religious behaviour are not tolerated.

Islam has been recognised in Belgium since 1974. However, the full consequences of this recognition have been slow to be realised. Islamic religious ministers had, for instance, not been in the State's pay until 2007. Effective recognition of mosques, likewise, took a significant amount of time.

What is the reason for this delay? Since 1974, the government has attempted to identify a reliable interlocutor among the Muslim community. This is important because this interlocutor has to designate the imams qualifying for remuneration. Until today, only two elections for a Muslim council leading

to the establishment of an executive committee being the official interlocutor have taken place, namely in 1999 and 2005. Yet, internal differences have occurred rather often. The last election held in 2005 was characterised by a partial boycott by electors of Moroccan origin. This means that the Turkish minority currently enjoys a slightly artificial majority position in the Muslim council and in the executive committee.

In theory, all religious groups enjoy the same scope of religious freedom. Yet, one cannot deny that the general framework in which this freedom is exercised remains highly coloured by Christian values and tradition. Particularly, the notion of *public order* as a limiting factor for religious freedom is cited more often in cases where Muslims attempt to exercise religious freedom than in cases where Christians do. Key issues in that regard include ritual slaughtering, burial, polygamy, and urbanism connected with the construction of mosques. Let me illustrate this thesis. Ritual slaughtering enters into conflict with binding norms regarding health care and animal protection. The burial of Muslims including all necessary religious requirements sometimes finds itself at odds with binding norms concerning cemeteries. Polygamy goes against the non-discrimination principle between men and women, even if polygamy is certainly not common in all Muslim countries. Finally, constructing a mosque with outspoken architectural characteristics can be problematic from a perspective of strict policy with regard to urbanism.

Obtaining an exact overview of religious adherence in Belgium is difficult. Censuses no longer exist, and when they did, questions with regard to religion were perceived as incompatible with religious freedom and privacy. As such, reliable statistics are notoriously difficult to come by, and estimates of the relative and absolute sizes of religious groups vary widely, and are often based on questionable and mutually contradictory sources.

Bearing that in mind, some estimates do exist. Today, approximately 50 to 60% of the population are members of the Roman Catholic Church. The number of Protestants is estimated between 80,000 and 110,000, in any case less than 1% of the global Belgian population, which is slightly more than 11 million. Muslims, only present in Belgium since the 1960s, represent approximately 3.5 to 8% of the population. All the other religious groups are much smaller. There are some 21,000 Anglicans, and Jews and Orthodox are believed to range between 30,000 and 50,000 each.

With regard to the non-believers, there is a lot of discussion. Representatives of official movements of non-believers esteem their number at 1.5 million.[36] The government, however, estimates they are only 350,000, 110,000 of whom consider themselves part of organized secular humanism or *laïcité*.[37] This difference can be explained by the fact that although many people do

not believe or have agnostic convictions, they do not want to be part of an official or structured group of non-believers.

It is clear that the relationship between religion and the state will remain a national matter

In practice, Belgium is characterized by a wide degree of secularisation, which is, according to various experts, more widespread than in countries such as the Netherlands and Germany. But in spite of all this, religion remains an extremely important social phenomenon. As a result of the prominent presence of Islam and the integration process of "new Belgians" in the current society, religion is increasingly an issue on the political agenda.

No general data are available on these issues. It is clear, however, that the number of Roman Catholic ministers is declining quickly. Just to take one example, in the diocese of Gent, there were 1,360 priests in 1965; 1,215 priests in 1975; 994 priests in 1985; 794 priests in 1995; and 598 priests in 2004. As may be extrapolated from these figures, the global number has declined by more than 50 percent in 40 years.

There is absolute freedom in this regard. No supervision or inspection is allowed unless: (a) the centre involved wants to obtain financial support from public authorities; (b) there is a suspicion of a crime committed under the umbrella of the aforementioned activity.

Children legally come of age at 18. Yet, from 16 onwards they have a voice with regard to the religious instruction they want to follow at school. With regard to courses organised by religious groups outside of class, some form of parental authority remains until the age of 18. In case of conflicts, a judge can decide. After the age of 18, the young adult can do what he or she wants.

There is no national census anymore. When it still existed, no questions were asked with regard to religious adherence, as questions of that type were perceived to contradict the principles of religious freedom and privacy (cf. supra question 22).

An important evolution has been taking place in the relationship between employment law and the church.[38] A distinction needs to be made between religious people on the one hand and ordinary lay people on the other. As far as the religious are concerned, it is possible to break it down into three stages.

The first stage saw the religious element dominate the relationship of religious with their churches. Accordingly, there could not be said to be an employment

contract in force, and that is how those involved wanted it. One reason was that it meant that no social security contributions needed to be paid. The reverse side of the coin was that the religious were not entitled to a retirement pension.

The balance was disturbed when a number of religious persons submitted requests for entitlement to a pension. To settle this matter, there needed to be verification of whether an employment contract was in force, and it was this that started the second stage.

A "presumption" emerged in the second stage, that the religious relationship dominates the entire working situation and that there is no employment contract. The special nature of religious life entails for those involved, in view of their vows, that they are no longer regarded as employees or self-employed. So the notion of belonging to a religious community was given a very wide significance and pre-empted all the later issues in labour relations.[39] This position was slowly refined. After some time, case law rejected the false opposition between the relationship the religious had with his or her order and the employment contract.[40]

Although much remains to be determined, the EU does have competences that touch (sometimes in a far-reaching manner) upon religious matters, including that concerning non-discrimination

This, however, did not mean that the Court of Cassation found the recognition of an employment contract easy. Besides the traditional elements associated with employment contracts (authority, management, supervision and remuneration), effective proof of the existence of an employment contract was demanded.[41] This created an additional condition to be met before the employment contract could be recognised, a condition difficult to satisfy in practice.[42]

In the third stage, which is the present one, this presumption in favour of the religious relationship has been dropped. After being given the initial impetus by the Labour Courts of Appeal at Brussels and Antwerp,[43] the Court of Cassation changed its mind in a judgement of 25th January 1982.[44] This turnaround in the law's position, based on the presumption of tacit consent for there to be an employment contract - at least when the employer itself is not the religious order - had become unavoidable. This is because society no longer considers labour in a religious context as manifestly different from other work.[45]

The three-stage evolution sketched here came into being as a result of the pension files of religious. But the question of the position of secular clergy in

employment law was being raised more and more often. Although generally speaking it is possible to follow the theory developed for religious here also,[46] there are a few important differences.

For the present, there are many clergy active as church ministers in the manner which Article 181 of the Constitution sets out, and who receive state salaries for their work. The relationship between these clergy and the Church authorities is controlled exclusively by the internal laws of the religion involved. As far as the Catholic Church is concerned, the incardination principle of the canons 265 and seq. can be referred to in particular, as well as canon law in general.

When the church authorities give clergy a different function, such as a teaching job in a school, it was clearly stated by the Court of Cassation in a judgement of 13 January 1992 -after an initial jurisprudential trend in favour of the church[47]- that if the objective characteristics of an employment contract are present, it does indeed exist.[48] Neither Article 21 of the constitution nor the fact that a bishop can withdraw his licence (*mission*) with regard to the teaching to be given have led to the secular priest being unable to perform the job with which he has been entrusted in the scope of an employment contract.

The Court of Cassation judgement of 13 January 1992 has had far-reaching consequences. From that date onwards, a clear distinction has existed between clergy working within the Church and clergy who are sent to work elsewhere by the Church authorities and who may subsequently come to be working under the conditions of an employment contract.

Moreover, together with religious persons and clergy, an increasing number of lay people work for the Church. Some of them do so as ministers of religion financed by the State as a consequence of Article 181 of the Constitution. The possibility of having lay people qualified as ministers of religion has existed since 1997, as a result of a "gentlemen's agreement" between the Belgian bishops and the ministry of justice.[49] The notion *ministre du culte* has never been defined, and before 1997 lay people were supposed not to qualify, a situation which changed, albeit to a limited extent, in 1997.

The main question with regard to the legal position of lay *ministres du culte* is whether or not they work under a labour contract. The alternative is the mere existence of a *sui generis* position, under the control of the church authorities and without any effect in the field of labour law. That is exactly the position enjoyed by clerics who are *ministre du culte*.

A clear answer to the question with regard to the presence of a labour contract cannot yet be given. Case law will offer the answer one day. However, several

arguments plead in favour of a labour contract.[50] Firstly, lay people work in a relationship of subordination and receive a wage. Objectively speaking, they fulfil the conditions of a labour contract. Secondly, unlike clergy, lay people are not incardinated in a diocese, which means that no underlying relationship with the bishop offers them any material guarantee once their function as *ministre du culte* ends.

Article 11 of the Declaration to the Final Act of the Amsterdam Treaty (1997), for the first time in the history of the European Union, *directly* evokes the legal position of religious groups.[51] It is formulated as follows: "The European Union respects and does not prejudice the status under national law of churches and religious communities in the Member States. The Union equally respects the status of philosophical and non-confessional organisations." Article 11 confirms the importance of national law, which is a defensive move. At the same time, it underscores the presence of religions on a European level.

The cornerstone of the position of religions in the draft text of the European Constitution can be found in Article I-51, which is conceived as follows: (1) The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. (2) The Union equally respects the status of philosophical and non-confessional organisations. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

Conclusion

It is clear that the relationship between religion and the state will remain a national matter. At the same time, some European policy with regard to the dialogue with religions will emerge. Finally, the European Convention on Human Rights will, at the level of the Council of Europe, remain a very important factor of implicit unification.

Although much remains to be determined, the EU does have competences that touch (sometimes in a far-reaching manner) upon religious matters, including that concerning non-discrimination.

The main topics of discussion today are: (1) should religious groups respect human rights within their internal structures; (2) should religious groups be subsidised and if so, what techniques should be used; (3) how can the government foster the inter-religious dialogue; (4) what attitude should be taken with regard to new religious movements? A new issue is, of course, the struggle against radicalisation.

Endnotes

1. Cf. on this topic H. Wagnon, "Le Congrès national belge a-t-il établi la separation de l'Église et de l'État?", *Études d'histoire du droit canonique dédiées à Gabriel Le Bras*, Paris: Sirey, No. I (1965), p. 753-781.

2. The notion *separation* was used by eminent older authors, e.g. A. Giron, *Le droit public de la Belgique*, Brussels: A. Manceaux, (1884), p. 342.

3. Cf. P. Errera, *Traité de droit public belge*, Paris, Giard et Brière, (1918), p. 87, "indépendence mutuelle"; F. Laurent, *L'Église et l'État en Belgique*, Brussels/Leipzig: Lacroix Verbroeckhoven, (1862), p. 351. Additionally, others refer to this as 'positive neutrality' or 'active pluralism.'

4. Comp. Ph. Braud, *La notion de liberté publique en droit français*, Paris, L.G.D.J., (1968), p. 383.

5. J. De Groof, "De bescherming van de ideologische en filosofische strekkingen. Een inleiding." in A. Alen and L.P. Suetens (ed.), *Zeven knelpunten na zeven jaar staatshervorming*, Brussels: Story-Scientia, (1988), p. 312. H. Wagnon uses the notion *protected liberty, liberté protégée*. Cf. H. Wagnon, "La condition juridique de l'Église catholique en Belgique," *Annales de droit et de sciences politiques*, (1964), p. 70.

6. For the concrete criteria with regard to State recognition of religious organizations, see *Questions and Answers*, Chamber, 1999-2000, 4th September 2000, 5120, (Question nr. 44, Borginon); *Questions and Answers*, Chamber, 1996-1997, 4th July 1997, 12970 (Question nr. 631, Borginon). The religious group should be: (a) considerably large; (b) well structured and organized; (c) established in the country for a sufficiently long period of time; (d) represent a certain social interest and importance; (e) and not constitute a threat to social or public order. Strikingly, these (policy) criteria have no basis in formal legislation or in the Constitution. See, more extensively, infra question 18.

7. This law is not the only source. The recognition of Catholicism is a direct result of the Concordat of 1801, confirmed by the law of 18th Germinal X (8th April 1802). Protestantism also obtained recognition as a result of the law of 18th Germinal X, whereas Judaism found its recognition through the decrees of 17th March 1808. Finally, Anglicanism obtained recognition through the decrees of 18th and 24th April 1835. All this was confirmed by the law of 4th March 1870.

8. For an overview of the evolution leading to the change of the Constitution, see J.-P. Martin, "La Belgique: de l'affrontement laïques-confessionnels au pluralisme institutionnel," in J. Bauberot (ed.), *Religions et laïcité dans l'Europe des Douze*, Paris: Syros, (1994), p. 29-39.

9. Their representative bodies are the Centrale Vrijzinnige Raad/Conseil Central Laïque.

10. For an overview of all the financial consequences, see P. De Pooter, *De rechtspositie van erkende eredienst en levensbeschouwingen in Staat en maatschappij*, Brussels: Larcier, (2003), p. 207-214.

11. A. Overbeeke (2011), "Kerk en Staat in België: scheidingsregime én state support" in A.B. Terlouw & J.L.W. Broeksteeg (eds), Overheid, recht en religie, Deventer, Kluwer, p. 129-158; J. Velaers and M. –C. Foblet (2014), "Religion and the State in Belgian Law," J. Martinez- Torron and C. Durham (eds.), *Religion and the Secular State. La religion et l'Etat laïque,* Washington/Madrid: Brigham Young University/Complutense University of Madrid (Fac. of Law), p. 99-122.

12. Around 1.000 euro a month for a Catholic pastor.

13. The legal basis for these "kerkfabrieken" "fabriques d'églises" was for a long time constituted by the Imperial Decree of 20th December 1809 and by the Law of 4th March 1870, *Moniteur belge*, 8th March 1870. After the regionalization of the topic, a new Flemisch decree is expected soon. For possible evolutions, see F. Amez, "Un aspect oublié de la réforme de l'État: le régime des cultes," *Journal des Tribunaux*, (2002), p. 509-537.

14. In Wallonia, the municipalities spend 1.2% of their average expenses for religion, cf. R. Collinet, "À propos des fabriques d'églises, des secours communaux et de quelques subsides," in *Le Semeur sortit pour semer. Grand Séminaire de Liège 1592-1992*, Liège-Bressoux: Éditions Dricot, (1992), p. 407.

15. The legal sources are: article 92, 3° of the Imperial Decree of 30th December 1809; the law of 4th March 1870 (*Moniteur belge*, 9th March 1870) and the law of 7th August 1931 (*Moniteur belge*, 5th September 1931), as well as the Royal Decree of 2nd July 1949 and 1st July 1952.

16. "Appropriate" means: in accordance with his social status. See e.g. Council of State, 2nd April 1953, *Rechtskundig Weekblad*, (1952-1953), p. 1691.

17. See E. Henau, *God op de buis. Over religieuze uitzendingen in de openbare omroep*, Leuven: Davidsfonds, (1993), p. 112.

18. *Pandectes belges*, Aumônerie : Aumôniers, nr. 1-16.

19. According to Cass, 18th June 1923, *Pasicrisie*, (1923), No. I, p. 375 this was not contrary to article 15 of the Constitution and the negative religious freedom expressed by this article. However, recently, the *Te Deum* lost ground. Although it remains present in its old form on the 21st of July (National Day), it is no longer officially programmed on 15th November (the Feast of the King).

20. P. Loobuyck and R. Torfs, *The World and Its Peoples: Europe*, (2009).

21. See G. Van Haegendoren, "Sekte of kerk: de niet-erkende erediensten in België," *Tijdschrift voor Besturswetenschappen en Publiek Recht*, (1986), p. 390.

22. See e.g. the example of Stévinisme, Court of Appeal Gent, 14th January 1885, *Pasicrisie*, (1885), No. II, p. 121; of Salvation Army, Corr. Tribunal of Gent, 4th December 1890, *Pasicrisie*, (1891), No. III, p. 117 and Corr. Tribunal of Brussels, 6th February 1891, *Journal des Tribunaux*, (1891), p. 204; of Baha'i, Court of Appeal of Brussels, 12th October 1960, quoted by *Commentaar W.I.B.*, 157/28; and of Jehovah's Witnesses, Court of Appeal of Brussels, 24th January 1962, quoted by *Commentaar W.I.B.*, 157/29.

23. See the jurisprudence quoted by P. Mahillon and S. Frederic, "Het regime van de minoritaire erediensten," *Rechtskundig Weekblad*, (1961), No. 62, p. 2376.

24. Cf. Court of Appeal of Liège, 21st November 1949, *Pasicrisie*, (1950), No. II, p. 57. Antoinism is a cult limited to its members themselves. Consequently it was considered by the authorities to be an "oeuvre philantropique," without the quality of a religion.

25. Cf. R. Torfs, "L'objection de conscience en Belgique," in European Consortium for Church-State Research (ed.), *Conscientious Objection in the E.C. Countries*, Milan: Giuffrè, 1992, 217 e.s.

26. Cf. M. Hooghe, E. Quintelier and T. Reeskens, "Kerkprkatijk in Vlaanderen. Trends en extrapolaties: 1967-2004," *Ethische Perspectieven*, (2006), p. 113-123.

27. R. Torfs, "Il federalismo e il diritto delle religioni in Belgio," in G. Cimbalo and J. I. Alonso Perez (ed.), *Federalismo, regionalismo e principio di sussidiarietà orizzontale. Le azioni, le strutture, le regole della collaborazione con enti confessionali*, Torino: G. Giappichelli Editore, (2005), p. 45-59.

28. W. Calewaert and L. De Droogh, *Voor meer gelijkheid in onze democratie. Een pamflet*, Antwerpen, Humanistisch Verbond, (1992), p. 72.

29. Calewaert and De Droogh, *o.c.*, p. 70-71.

30. Imperial decree of 30th December 1809, article 92, 2°.

31. See M. Coppens, "Les différents cultes reconnus en Belgique et les obligations communales à leur égard," in *Les relations entre la commune et les établissements du culte*, Louvain-la-Neuve, U.C.L., (1993), p. 44.

32. Council of State, 29 April 1975, nr. 16.993, Van Grembergen; Council of State, 20 December 1985, nr. 25.995, Van Peteghem.

33. Law of 3rd April 1990, *Moniteur Belge*, 4th April 1990.

34. Law of 28th May 2002, *Moniteur Belge*, 22nd June 2002.

35. Law of 13th February 2003, *Moniteur Belge*, 28th February 2003.

36. Cf. *Questions and Answers*, Chamber of Representatives, 2000-2001, 13th August 2001, 1003 (Question nr. 373 Van Den Eynde).

37. See: www.state.gov/g/drl/rls/inf/2001.

38. See R. Torfs, "Les églises et le droit du travail," in European Consortium for Church-State Research (ed.), *Churches and Labour Law in the E.C. Countries*, Milano/Madrid: Giuffrè/Facultad de Derecho, (1993), p. 35-59.

39. See e.g. Conseil d'Etat, 25th October 1961, n° 8.883, decision Closset and R. Verstegen, "Arbeidsovereenkomsten voor geestelijken: een beslissende stap," *Tijdschrift voor Sociaal Recht*, (1983), p. 74.

40. See e.g. Labour Tribunal of Brussel, 7th December 1971; Labour Tribunal of Tournai, 13th February 1973; Labour Tribunal of Gent, 16th January 1976, all quoted by R. Verstegen, *Geestelijken naar Belgisch Recht. Oude en nieuwe vragen*, Berchem-Antwerpen/Amsterdam: Maarten Kluwer, (1977), p. 37-39.

41. See Cour de Cassation, 21st November 1977, *Pasicrisie*, (1978), No. I, p. 317; *Arresten van het Hof van Cassatie*, (1978), p. 331; *Tijdschrift voor Sociaal Recht*, (1977), p. 479, observation H. Demeester. A similar skepticism characterizes other decisions by the same supreme court, Cour de Cassation, 7th February 1973, *Pasicrisie*, (1973), No. I, p. 541; *Arresten van het Hof van Cassatie*, 1973, 568; Cour de Cassation, 5th January 1977, *Pasicrisie*, (1977), No. I, p. 485; Cour de Cassation, 21st November 1977 (another decision than the one quoted above), *Pasicrisie*, (1978), No. I, p. 316; *Arresten van het Hof van Cassatie*, (1978), p. 330; Cour de Cassation, 23rd February 1981, *Rechtskundig Weekblad*, (1981-1982), p. 2152.

42. H. Demeester, observation on Cour de Cassation, 21st November 1977, *Tijdschrift voor Sociaal Recht*, (1977), p. 485.

43. Labour Court of Appeal of Brussel, 23rd March 1978, *Tijdschrift voor Sociaal Recht*, (1978), p. 521; Labour Court of Appeal of Antwerpen, 19th November 1980, *Tijdschrift voor Sociaal Recht*, (1983), p. 95.

44. Cour de Cassation, 25th January 1982, *Tijdschrift voor Sociaal Recht*, (1983), p. 85.

45. R. Verstegen, "Arbeidsovereenkomsten...," *Tijdschrift voor Sociaal Recht*, (1983), p. 79-80.

46. Labour Tribunal of Tournai, 13th December 1985, *Journal des Tribunaux du Travail*, (1987), p. 37.

47. E.g. Labour Tribunal of Tournai, 13th December 1985, *Journal des Tribunaux du Travail*, (1987), p. 37; Labour Court of Appeal of Liège, 26th November 1986, *Journal des Tribunaux du Travail*, (1987), p. 411.

48. Cour de Cassation, 13th January 1992, *Journal des Tribunaux du Travail*, (1992), p. 225; *Rechtskundig Weekblad*, (1992-1993), p. 121.

49. For a detailed analysis, see R. Torfs (ed.), *Parochie-assistenten. Leken als bedienaar van de eredienst?*, Peeters, (1998), x+142 p.

50. C. Engels, "De parochie-assistent en het Belgische arbeidsrecht, zoals vuur en water?" in R. Torfs (ed.), *Parochie*-assistenten. *Leken als bedienaar van de eredienst?*, Peeters, (1998), p. 23-39.

51. Cf. on this declaration G. Robbers, "Europa und die Kirchen, Die Kirchenerklärung von Amsterdam," *Stimmen der Zeit*, (1998), p. 147-157.

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