1. Introduction

1.1 Belgium – a changing religious demography

Religious demography in Belgium is, especially since the Second World War, heavily influenced by two important developments: (a) growing secularization and (b) immigration. Within a time span of only half a century the country changed from being majoritarian church-going Roman Catholic into a secularized (and still secularizing) multi-religious society. The still growing religious diversity is creating policy questions on a wide range of (sometimes new) issues, including the question on the applicability of religious norms (Christians (2013), Foblets (2011)).

Secularization - The position of traditional mainstream religion changed rapidly since the 1960ies. Research results, surveys and opinion polls prove the substantial and continuing weakening of the position of the Roman Catholic church within the religious landscape, and this in all domains and institutions, with a remarkable exception for their educational institutions, who take responsibility for more than 60% of the total school population (Torfs (2011), p. 63). In 1966, the level of ‘kerkshheid’ (participation level in religious practices, Sunday mass) was estimated on more than 50% of the Flemish population; in 2008 it had dropped to 6%. Traditional rituals (rites de passage as baptism, religious marriages and burials) follow this pattern. In 1967 94% of the population was baptized, in 2007 this proportion fell down to 55%, still a majority but a percentage still under pressure (Botterman, Hooghe & Bekkers (2009); Hooghe & Botterman (2009)).

Immigration - Important changes were caused by immigration. Between 1945 and the 1960ies a massive labour recruitment operation took place, strengthening the workforce in the coal industry with Italians, Turks, Moroccans and Tunisians. Labour immigration was followed by a process of ‘marriage immigration’ since the 1970s. As a result, two still growing immigrant religions, Islam and Orthodoxy, did cause a change in the institutional sphere by getting the status of “recognized religion” (Panafit (1999), Torfs (2000), Foblets & Overbeeke (2004)). Since 2008 Buddhism is involved in a similar process. The new recognized religions are all concentrated in the big agglomerations, leading to a visible transformation of cities as Brussels and Antwerp but also of the smaller former coal and steel industry districts. This report would be incomplete if a recent development would be left aside. A growing number of immigrating African
(Congolese and other) families and the influx of Roman Catholic and Orthodox from the newer EU-member states in Eastern Europe gave birth to numerous Christian local churches and parishes, mainly in the bigger agglomerations. The new communities are different in character when compared with the local parishes of traditional churches: they not only differ in that they have a special ethnic or national background, but also represent a wide variety of theological sub-traditions.

**Demography: an overview** - State institutions do not collect nor publish statistics on religious affiliation. For privacy reasons Belgium did not allow national religious statistics (based on the national Census) since 1856. The picture of religious demography is based on partial, sometimes contradicting data. For the Flemish community a 2008 estimation suggests the religious affiliations of the population is: 72.7% Roman Catholic, 15.8% nonbelievers, 7.7% humanists, 3.7% for the other denominations (2% Muslims included)(Botterman, Hooghe & Bekkers (2009), p. 12-13.). In 2011 the US Religious Freedom Report cited King Baudouin Foundation data that offered a different picture for the Belgian population: only 50% Roman Catholic, 32% no affiliation, 9.2% atheist, 5% Muslim, 2.5% other Christian denominations, 0.4% Jewish and 0.3% Buddhist.

### 1.2 historical and political processes

**A system influenced by earlier foreign regimes**

Since the foundation of an independent Belgian State the position of religion in society, the dominant Roman Catholic Church in the first place, was firmly safeguarded by the 1831 Constitution. The regulations for the relationship between church and state bear the imprint of the period immediately preceding Belgian independence in 1830; since 1795 the country was part of French territory and since 1814 integrated in the new United Kingdom of the Netherlands. The choices made at the time of Belgian Independence in 1830 in regard to the position of religion differed a great deal from the meddlesome state policies in the Dutch period (1815-1830). The separation between the Netherlands and Belgium was brought about inter alia by controversies on exactly these matters (Witte (2005), p.37-38, p.61-67, p.73 et seq ). In contrast with the Dutch regime and also different from other neighbouring countries, the Belgian constitutional regime did not only establish a regime of exceptional freedom (also on the level of the religious communities) but at the same time established a system of financial state support for different religions present in the country (Van Haegendoren & Alen (1992), Shelley (1990)).

(anticlerical) Liberalism & Roman catholic ultramontanism : culture struggles (19th – 20th Century)

The Belgian political construction in 1831 was based upon a strong liberal-catholic coalition, brought together by Dutch policies that opposed those two segments of society. Liberals and Roman Catholics in Belgium, when they were in power, took political measures (as they did in other countries on the European continent) that lead to and constantly fuelled a quasi-permanent struggle on issues related to church and state relationship. Liberal school policies were one of the best stimuli for the development of parallel school systems, ultimately leading to a strong Roman Catholic pillar in all possible life domains. It resulted, in the 20th Century in what was labelled as a pillarised society, with – and here is a remarkable difference when compared with Dutch pillarization - one powerful confessional Roman catholic pillar, strengthened by political emancipation (‘one man one vote’). The Christian democratic party, considered as the political arm of Roman catholic Christianity, slowly lost its position as an inescapable partner in political coalitions. This made the party powerless in its parliamentary opposition against changing legislation in some highly sensitive issues (abortion, euthanasia).

**Influence of international law (since 20th Century)**

The integration in broader international institutions - European Union, Council of Europe, United Nations - did affect the national legal framework that determines different aspects of state-religion relations. In the field of labour law or education law, important legislation in a society where faith based initiatives are traditionally important, international law is an important instrument for change. The changing position of religious organizations (still having a proportionally strong

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1 See the more than fifty Roman foreign Roman catholic communities in Brussels alone.
2 See the numerous African, Asian and South-American evangelical, Pentecostal, etc. communities in Brussels, Antwerp.
4 The last Catholic one party government dates back from 1950-1954.
position in some segments of the labour market) is a topic of discussion, in politics and society, but also in doctrine. At the same time, religious claims of individual believers, especially when their religion is considered as foreign, are on the discussion table. The debate on religious signs is increasingly an issue for the courts. The religious signs-issue is fuelling a debate on the meaning of the neutrality of the state, neutrality of state institutions in general and state schools in particular. In two pending cases the Council of State has to verify whether a Flemish State School authorities’ policy (banning religious dress even for religion teachers is in line with its policy to remain neutral) is acceptable in the light of both the Constitution and of Belgium’s international law obligations. In 2014 the Council of State asked the Constitutional Court to enlighten the Council on the issue of obligatory RE lessons in public authorities’ schools, not only by verifying this obligation in the light of the constitution but also in the light of the ECHR and ICCPR.

Effects of the evolving state form: a unitary state growing into a federation - Belgian politics have since long been influenced by language difficulties, given the fact that three (in demographic terms unequal) language groups live together in a relatively small country. Since the 70s-80s of the 20th Century in a series of ‘staathervormingen’ (=reforms in the state structure, transforming the unitary state into a Belgian federation) numerous policy domains are brought under the responsibility of the different sub-entities of the federation. This development has brought about some differences in religion and state relationship between these states. The measure of differentiation is however limited by some constitutional principles that have to be respected by all political entities of the Belgian federation. So, even if the three language entities are autonomous for education matters, they all have to include (denominational) Religion Education in the school programs of their state schools (see below, 2.1), a school subject that is nevertheless heavily debated in both the French and the Flemish communities (Loobuyck & Franken (2011), Torfs (2011)). Changing this form of religious plurality within the public authorities’ school systems requires constitutional revision.

1.3 the features of the national legal system, with particular reference to the existing systems of State – religions relationship - A system of separation and cooperation

Freedom – support. The State-religion relationship is – from the beginning, also in a reaction towards the earlier regimes – freedom oriented (Torfs (2013), Velaers & Foblets (2010), Overbeeke (2011)). Freedom is understood as to have both an individual and a collective dimension, guaranteeing a minimum protection against a too dominant position of the majoritarian Roman Catholic Church (see art. 20 Constitution). The legal system respects the organizational freedom of religious communities (enshrined in the Constitution, confirmed already in 1834 by the Cassation Court). The freedom is a supported freedom while the state budget yearly provides for the payment of the salaries of religious leaders. The law ‘recognizes’ the religions eligible for these state salaries (‘recognized’ are: Roman Catholicism, the Jewish faith, Protestantism, Anglicanism, Islam, Orthodoxy and the Humanist movement).

The notion of neutrality. The neutrality of the state is, as an important constitutional principle, not written down in the Constitution itself. The Council of State considers the principle to be linked to the non-discrimination principle, concluding “In the democratic rechtsstaat, state authorities have to be neutral, because they are having authority over and are the authority for all citizens alike; they have in principle to treat them equally, without discrimination on religious grounds (...)”©. So in principle all religions (traditional religions but also new religious movements) are equal for the law and equally protected. The neutrality principle is not discussed anymore, but the meaning of neutrality in different domains of state activity is.

A church & state regime open for new religions. Where the state operates as a facilitator for religious groups, the Belgian regime is (and has to be in the light of the neutrality principle) open to newcomers. The national legal system is not limited (by specific legal ties to specific religions) in broadening the opportunities the system offers to other religions and even – as was proven with the inclusion of the humanist movement in an equal position compared to the traditional ‘recognized religions’ – to nonreligious life stance movements. Since 2008 a union of Buddhist organizations entered a recognition-process as well.

Fundamental characteristics, safeguarded in constitutional law

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5 Given the fact that approximately two thirds of Belgian education facilities in primary and secondary education are faith based and belong with some exceptions (there are only a small number of Protestant, Jewish and Muslim schools) to the Roman Catholic faith.
6 Claims based also on art. 9 ECHR; see Council of State nr. 226.345, 5 February 2014; nr. 226.346, 5 February 2014.
7 See: Council of State, nr. 226.627 d.d. 6 March 2014.
8 Cassation Court, 27 November 1834, Pasicrisie 1834, I, 330.
9 Council of State (as advisor in the legislative process) in: Advice 44.521/AG, 20 May 2008, Parl. Doc. Senate 2007-08, nr. 4-351/2, p. 8. (authors’ translation)
Constitutional texts (see 2.1) reflect the choices made by the ‘founding fathers’ of the Belgian State (1830) and a number of important compromises made in the recent past (see constitutional changes in 1970, 1988 and 1993). Since the turn of the century the support regime is permanently under study and critique (Franken & Loobuyck (2013)), including important aspects of the constitutional model.

1.4 meaning of the expression “religious rules”
Belgian courts very often use the concept of “religious rules”, but its precise content remains undefined. Neither Belgian legislation nor Belgian case law are providing a clear definition of this concept, even if the legal system includes various references to general concepts as “cults”, “religions”, or “erediensten”, “godsdiensten”. Sometimes the concept of “religious rules” is very narrowly understood as an institutional and formal rule enacted by a religious authority. Sometimes the concept is largely open to include any individual feeling of religious duty. This report also chooses a very large understanding of the concept, while focusing it on traditional religions. Along this large continuum, three main issues may be addressed. On the first hand, Belgian courts do not seem to clearly distinguish culture and religion nor make a coherent distinction between cultural customs and religious traditions. Islam is one of the main fields which allow such an observation. For example, in addressing the wearing of a veil by pupils, some courts have tried to find some arguments referring to the national origin or the cultural background of the girl’s family history. Conversely, it is also possible to observe a strategy of balancing between a cultural understanding for previous dominant religious customs (e.g. Sunday rest) and an accentuation on religious aspects to describe any minority practices. This variation of either cultural or religious understanding pushes the judge to deem neutral the former but not the latter (Christians (1995)). On the other hand, “religious rules” are often (and even wrongly) referred to norms coming only from recognized religions. The legal concepts of “culte” or “eredienst” usually have a much broader meaning, but the judiciary seems to be reluctant to take into account religious “rules” affirmed by non-recognized churches or traditions. On the third hand, a “deference principle” is classically adopted by Belgian courts in order not to attempt any interpretation of a religious general rule, but to only defer to a religious authority decision which has had to previously interpret the controversial rule. Nevertheless, this “deference principle”, which mainly applies within the system of public recognition of churches, is sometimes extended to other fields of Belgian law which would have required a more individual and subjective approach, i.e. not to submit an individual religious freedom complaint to a collective or institutional church authority’s formal appraisal.

2. Legislation

2.1 religion, mentioned in the legal texts (constitution preambles, basic laws, other legal texts) which define the principles and values inspiring the State legal system
Terminology: ‘religion’ (and belief) in constitutional texts ((Christians (2009); Van Haegendoren & Alen (1992); Overbeeke (2007); Rigaux & Christians (2011)). The Belgian Constitution does mention “religion” in two different chapters. The chapter on fundamental rights contains four relevant sections, guaranteeing full religious freedom on both the individual and the collective level (the level of religious communities).

Art.19 “Freedom of worship, its public practice and freedom to demonstrate one’s opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.”
Art. 20 “No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion or to observe its days of rest.”
Art. 21 “The State does not have the right to intervene either in the appointment or in the installation of ministers of any religion whatsoever or to forbid these ministers from corresponding with their superiors, from publishing the acts of these superiors, but, in this latter case, normal responsibilities as regards the press and publishing apply.
A civil wedding should always precede the blessing of the marriage, apart from the exceptions to be established by the law if needed.”
Torfs summarized these old (unchanged since 1831\textsuperscript{11}) texts, the constitutional cornerstone for Church and State-relationship, as follows: “Both Church (implicitly quite often the Roman Catholic Church) and State are mutually independent. They are masters in their own fields. Regular penal law is applicable to all, but any form of balancing of religious freedom with other fundamental rights remains untouched. And finally, the church has to pay a (small?) price for its autonomy and independence: civil marriage must always precede the religious ceremony” (Torfs (2005), p. 641).

Religion is also mentioned in art. 24 §1 Constitution on educational freedom (a sensitive freedom that historically was guaranteed for the Roman Catholic religion in the first place (De Rynck (2005)), even if “religious” schools are not specifically mentioned) and education rights. Important in this respect are paragraphs (added in 1988) on the religious rights of parents, including a right to be offered denominational religious education included.

Art. 24 § 1 “Education is free; any preventive measure is forbidden; the punishment of offences is regulated only by the law or federate law. The community offers free choice to parents. The community organises non-denominational education. This implies in particular the respect of the philosophical, ideological or religious beliefs of parents and pupils. Schools run by the public authorities offer, until the end of compulsory education, the choice between the teaching of one of the recognized religions and non-denominational ethics teaching. (…) § 3 Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of compulsory education. All pupils of school age have the right to moral or religious education at the community’s [= public authorities’] expense.”

Financial state support for religion, already visible in the educational field (free schools are getting subsidies, religious education in primary and secondary education is state financed) is also present, in the constitutional chapter on the State’s finances. Article 181 § 1 is still the original version, proclaiming state wages and pensions for religious leaders, while 181 §2, introduced in 1993, opens the possibility to finance non-religious beliefs as well:

Art. 181 “§ 1 The salaries and pensions of ministers of religion are paid for by the State; the amounts required are charged annually to the budget. § 2 The salaries and pensions of representatives of organizations recognized by the law as providing moral assistance according to a non-denominational philosophical concept are paid for by the State; the amounts required are charged annually to the budget.”

This arrangement created in 1993 a constitutional basis for a further expansion of the already (on the basis of formal law) state supported humanist institutions, strengthening them in the ambition to offer the non-religious segments of the population a ‘moral assistance’ very parallel to the pastoral care of the recognized religions (Overbeeke (2011)). At the same time, this movement towards equal treatment of religious and non-religious beliefs probably did postpone a fundamental debate on the support system.

The constitutional texts still reflect the positive approach religion and religious freedom of the architects of the Belgian regime, but the application (in case law) and the appreciation (in doctrine and in political debate) of several aspects of this 19th Century model, especially on the topic of organizational freedom and religious education, prove that fundamental changes cannot be excluded.

The important place of religion in the context of the Constitution does not imply that religious laws as such belong to the sources of state law. They are distinct from it and in this respect Belgium should be ranged in the category of separationist regimes.

\textbf{2.2 religious laws/principles mentioned in connection with specific parts of the State legal system}

\textit{Introduction}. Belgian State legislation does not mention religious laws as legal sources. Religious ‘principles’ or religious ‘practices’ are however present or wilfully taken into account in legislation. In many cases the reasons for this are linked to the intention of the legislator to take (sometimes conflicting) religious

\textsuperscript{11} Art. 21, first sentence, Constitution, guaranteeing organisational freedom, is open for revision in the legislature 2014-2019: State Gazette 28 April 2014.
rights of the citizens seriously. In some cases religion is however considered to be a potential societal threat; so there legislation is meant to be a protection against religious manifestation. Both sides of the coin are, for obvious reasons, prominent in criminal law.

In almost all the domains discussed below, with an exception for only those domains where a regime of state support is enacted, the law does not differentiate between the religions involved. So recognized and non-recognized religions should be treated on equal foot.

**Family law** (see Christians (2010 pp. 291-296))

*Adoption.* The legislation on adoption explicitly includes religion and belief (the religious background of the child) into the elements to be taken into consideration when deciding on an adoption, in order to respect the best interest of the child and the child’s fundamental rights. 12

*Children’s religious upbringing after separation of the parents.* The Civil Code contains the exceptional possibility that, if both parents do not agree, a judge has the authority to make one parent responsible for major religious choices (for the child)13.

**Private international law (PIL):** Belgian PIL allows religious personal status created abroad through a local State recognition to have some indirect effects in Belgium through the mechanism of a simplified public order control. Through this mechanism, widows validly married abroad in a polygamous marriage get an equal and proportional share in survival pension rights (Alofs & Cuypers (2009), Francq & Mary (2013)). No express mention of a religious rule is provided: this is a common PIL mechanism at least implicitly accommodating religious norms.14 In 2014 this mechanism was applied in the case of 190 survivor’s pensions.15

**(criminal law on) religious marriages:** The Belgian Constitution contains in its art. 21 a paragraph on the position of religious marriages: “A civil wedding should always precede the blessing of the marriage (…)”. Here we find a ′negative′ reference to a religious principle (and for the Roman Catholic church a canonical law), the religious marriage. This requirement was included in art. 267 Penal Code as an offence (for the religious minister) requiring any religious “benediction” to be preceded by a civil marriage ceremony. Courts often hesitate between civil and religious interpretation of the concept of “benediction” : are the religious manifestations under scrutiny religious marriage, or only a betrothal for instance?16.

**Criminal law** (see: Brems (2013))

*Protection of certain religious activities and objects.* (Clesse & De Pooter (2012a)). The 1867 Penal code protects a series of religious manifestations, penalizing the disturbance of religious ceremonies17, insulting sacred objects used in religious ceremonies18, or insulting or attacking religious ministers acting in those ceremonies19; No formal reference to a religious rule is made in the Penal Code. Nevertheless, the public prosecutor’s office seems to act on the basis of notice by religious authorities even in a non recognised denomination. Some difficulties may arise from the lack of consensus between diverse religious authorities of a single denomination (for example, it seemed difficult to prosecute a photographic exhibition of a naked Virgin Mary organised in a church, morally condemned by the Holy See Nuncio but authorised by the curate, rector of the church where the exhibition is organized)20.

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13 Art. 374 §1 Civil Code.
14 Constitutional Court, nr. 96/2009, 4 June 2009.
17 Art. 143 Penal code: “They who, by the creation of disturbances or disorder, disrupt, hinder or interrupt the practice of a religion in a location that is designated or usually serves for religious activities or during public ceremonies of that religion, will be punished with a prison sentence of 8 days to 3 months and a fine (between 26 and 500 Euro)”.
18 Art. 144 Penal Code, penalising: “he who offends through acts, gestures or threats, the objects of a religion, either in places that are designated or usually serve for the practice of religion, or during public ceremonies of that religion”.
19 Art. 145 Penal Code, penalising “he who offends through acts, gestures or threats, insults a religious minister in the exercise of his functions”. Art. 146 Penal Code, penalising the “beating(of a minister) lead[ing] to bloodshed, injuries or illness”.
20 La Libre Belgique, 16 February 2006, www.blaspheme.be, bulletin de la label,n°38. See also on the same kind of exhibition, ECHR, 7 july 2009 (Skiba v Pologne), n°10659/03.
-protection professional secret 21; Article 458 Penal code protects the privacy of the individual believer by including religious ministers in the category of persons penalized for breach of professional secret. Only in exceptional cases the law obliges them to disclose these secrets (see also 458bis Penal Code). Before WWII, courts restricted this penal offence to the scope of the catholic sacrament of penance. The case law progressively broadened the scope of the offence in order to protect every religious confidence, without reference to any specific religious norm.

**-protection against religious pressure; against pressure that limits religious manifestation; against criminal acts committed with a religious intention.** The Belgian Penal code protects against pressure of a religious nature as well against pressure on a person who wants to manifest his religion or belief. 22. So both aspects of religious freedom (positive freedom and negative freedom) are guaranteed under penal law 23. Criminal law so translates freedom ‘from’ religion, protected in the art. 20 Constitution: “No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion or to observe its days of rest.”

-For quite a number of offences Belgian criminal law considers it to be an aggravating circumstance, provoking higher sentences, if the motive for which the criminal acts are committed are hate, contempt or hostility toward a person for, amongst other grounds, this persons religion or philosophical worldview (Brems (2013)) 24.

-Since 2001 an offence of female genital mutilation, understood as an intervention with a cultural and religious background, is introduced in art. 409 Penal Code (Wattier (2010)) 25. This offence does not include male circumcisions, as explicitly stated by the Parliament Drafting Committee.

-The Penal Code stipulates26 that religious ministers, when exercising their function in public, are prohibited to “directly” attack the government, an act of parliament, a royal decree or any other public authorities’ act. This ban on political speech for one specific category of the population – a limitation of ‘religious speech’ is considered to be incompatible with fundamental rights obligations (Brems (2013), p. 24 ; Clesse & De Pooter (2012b)).

-Belgian penal law gives the people’s jury (in a Court of Assizes) judging power in serious criminal cases, mainly murder cases. Exempted from the obligation (or even excluded, the law is introducing an incompatibility) to participate in a jury are the “ministers of a recognized religion and persons providing moral assistance according to a non-denominational philosophical concept” 27. This functional exemption (or incompatibility) did until 2009 apply to “ministers of the cult” in general, but is limited now to persons involved in recognized cults or humanist counsellors.

-Discrimination law is protecting religious groups (and their members). Federal discrimination law protects persons or groups against incitement to discrimination, hatred or violence on the basis a number of non-acceptable, problematic criteria. One of the forbidden discrimination grounds is ‘religion and non-religious world views’ 28.

-Since 2012 a new offence has been introduced in criminal law, intended to penalize abuses by sectarian organizations (Hanoulle & Marlier, (2014), Kuty (2012)) 29. To that end a new chapter on “Abuse of a person’s vulnerability” has been added to the Penal Code30, introducing article 442quarter, stipulating in §1: “Will be sentenced to a jail term going from one month to two years and a fine (...), anyone who, knowing the situation of physical or psychological weakness of a person altering seriously her capacity of discernment, has fraudulently abused of this situation so as to get that person to do an act or refrain from

21 Art. 458 Penal Code, penalizing “(...) persons who because of their function or profession have knowledge of secrets that have been confided to them, who, with an exception for witnessing in court (or for an enquiry commission in parliament)(...), when they disclose these secrets”.

22 Art. 142 Penal Code, penalizing “everyone who, by acts of violence of menaces, forces or hinders anyone to practice a religion, to attend religious services, celebrate religious feasts, respect days of rest and therefore to open or to close a workplace or shop or to perform work or to abstain from it”.

23 Negative religious freedom is already protected in the 20 Constitution.


26 Art. 268 Penal Code.


29 The intention was to criminalise “acts of mental destabilisation”, committed by sects. Parl. Doc. House of Representatives, Session 2010, nr. 80/1.

doing an act, this act or omission being highly detrimental to her physical or mental integrity or to her patrimony”. Some new aggravating circumstances are defined, two of which are important for the present report: (a) “the fact that the act or abstention mentioned in § 1 is the result of a physical or psychological destabilization by exercising serious or repeated pressures or specific acts aimed to impair the individual ability of discernment”; (b) “abuse referred to in § 1 constitutes an act of participation in the principal or secondary activity of an association”, a circumstance that can require a specific analysis by the courts of the association’s statutes. If “religious norms” are included in these statutes, they also could be put under judicial scrutiny. The Constitutional Court was asked to verify the constitutionality of the new legislation. In October 2013 the Court upheld the legislation31.

Civil procedure Law
The legislation on the seizure of goods of persons in debt contains a list of basic goods that are exempt from seizure. This list includes the “objects in use for religious manifestation”32.

Penitentiary law
Penitentiary law includes guarantees for religious freedom for detainees in penal institutions, including food regulations (Overbeeke (2005))33. The rising numbers of Muslim detainees necessitated a change in food policies (halal food on some occasions offered to all prisoners) and the introduction of a corps of state financed Muslim counsellors34.

Electoral legislation
The Belgian electoral system is based on a right to vote that is based on a civic duty. The obligation for the voter to present himself on election day is sanctioned by penal law. The different electoral Codes contain however an important exception for those voters not able to show up at the ballot bureau for religious reasons: “Has the right to mandate another voter to vote in his name: (…) 5° the voter who, for religious reasons, is unable to present himself at the ballot bureau. This inability has to be proven in a written document, issued by religious authorities” 35. This is one of the rare Belgian rules explicitly requiring a religious decision from religious authorities, even authorities from non-recognised religions.

Medical law, medical profession
In medical law, more precisely with regard to the medical professions, the introduction of new legislation on ethical questions that potentially come in conflict with certain personal religious viewpoints created room for conscientious objection, but this always without an explicit reference to religion. This is the case for the abortion issue (1990)36 and for the legislation on euthanasia (2002)37. Where medical professionals are confronted with religious objections of patients (or their surviving relatives, parents) against certain actions, there is an obligation to respect these objections. This is visible in legislation regarding autopsy38. In order to get a recognition as a general practitioner39 or other specific medical functions the professional skills include the knowledge of religious beliefs for their patients40. Male circumcision (see Meyer (2013)) is part of the ‘nomenclature’ of medical interventions but not labelled as being religious in nature41.

Disposal of the dead

31 Constitutional Court nr. 146/13, 7 November 2013.
32 Art. 1408 §1, 4° Code of Procedure.
35 Art. 147bis §1, (federal) Electoral Code. Art. 212bis, §1, 5°, Flemish Act on local authorities; Art. 205bis, §1, 5° Flemish Act on Provinces; Art. L4132-1 §1, 5° Code for local democracy and decentralisation (Wallonia).
36 Art. 350, lid 2, 6° Penal Code.
39 Ministerial Decree 1 March 2010 holding the criteria for the recognition of general practitioners, State Gazette 4 March 2010.
40 Ministerial Decree 28 January 2009 holding the criteria for recognition of nurses as nurses specialised in oncology, State Gazette 18 February 2009.
Burial legislation leaves some room to accommodate religious principles (Dehert (2006)) but not the Jewish religious norm concerning eternal rest (Evers (1998), p. 127), what explains the existence of cemeteries of Antwerp Jewish communities on foreign soil, namely in the Netherlands. Since 2004, new regional legislations progressively have allowed burials with linen cloth (shroud) instead of a coffin. The debates show the explicit ambition of parliament to accommodate Islamic burial requirements. The legal texts however do not explicitly mention the Muslim religion, nor limit the use of the shroud to a religious use. Legislation has the municipal communal cemetery as the general rule, but still leaves some room for burials in special religious cemeteries.

**Animal welfare legislation**

Animal welfare legislation gives religions, in fact Jewish and Muslim minorities, the opportunity to follow religious prescriptions for slaughter (Velaers & Foblets (2012)). A religious certification by a recognized religious authority is required to enter into the regime for ritual slaughter. On a parliamentary level, several proposals were tabled to ban slaughtering without stunning. The Council of State however advised to leave room for exceptions in order to respect religious freedom principles.

**Legislation on public servants (central, municipal)**

Religious belonging or identity may not be a reason not to appoint someone as a public servant (art. 10-11 Constitution). This does not answer questions concerning religious rights on the job, for instance the right to wear religious apparel. Here a conflict of interests is possible, and thus a balancing of interests, the appearance of government neutrality on the one side and freedom of religion on the other. Belgian legislation does not contain a general prohibitions to ban religious signs or dress by civil servants (Mathieu, Gutwirth & De Hert (2013)). In March 2014 an attempt to vote in the Walloon Parliament a general prohibition for civil servants failed.

For some specific religious occasions the right on a day off is well established in legislation. It is a component of general labour law. This legislation is however accommodating only a specific segment of the religious market, namely Roman Catholicism and Humanism. These accommodations are not built by a general reference to religious rules or humanist traditions, but through an exhaustive list of identified day-off causes specifically recognized by the law (example: on the day a family member is entering Roman catholic priesthood).

Legislation on the police force stipulates that objections against certain tasks “for philosophical or religious reasons” are a motive for an immediate dismissal.

**Education law**

Religious signs. Education law is, and this is all but exceptional in Europe, a legal battlefield when it comes to the accommodation of the wish to accomplish religious rules in the school environment. The focus in Belgian education law is on visible religious signs. Public school teachers in Flanders are submitted to an administrative general prohibition of wearing religious signs (Mathieu, Gutwirth & De Hert (2010); Overbeke, Foblets & Brems (2009)). Within the French speaking Community, each school is left free to decide itself on the adoption of a prohibitive measure (for teachers and even pupils). In the Flemish education system the ban on religious signs for teachers – even religion teachers - and pupils in Flemish government schools provoked many court cases, one of which is still waiting for final adjudication on the level of the Council of State, who has to decide on the constitutionality of a ban for Muslim religion teachers to wear the headscarf on the school premises.

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49 The objection has to be made in writing. See: Art. 81 Law 26 April 2002 holding the basic rules applicable on the police force, *State Gazette* 30 April 2002.

50 See Council of State, nrs. 226.345 and 226.346, 5 February 20014.
Religious education. Education law provides for denominational religious education in all government schools, including a course on humanist non-confessional ethics. In the Flemish educational system an exemption system exists, in order to respect the religious choices of the parents not belonging to the recognized religions (only recognized religions all are able to offer their denominational courses in government schools, see art. 24 Constitution, see 2.1).

In order to accommodate the different recognized religious groups, the law allows pupils from non-Catholic traditions to take holidays on special religious feasts (enumerated in the legislation).51

Media law

Public media are an important instrument for the State to protect, advance or even guarantee religious pluralism. The three (Flemish, French and German speaking) broadcasting regimes offer airtime to recognized religious groups on public channels. Guaranteeing access to radio and television channels does not, however, necessarily go hand in hand with full State funding. As things stand, national legislation provides for extremely poor airtime and limited budgets.52 The law offers a special protection to this category by banning commercial advertising during religious broadcasting programmes.53

Privacy law

Religious privacy has, due to historical (and religious demographic) reasons a strong position in Belgian law. Since 1856 the censuses had to leave aside questions on religion, due to a formal decision of the legislator, as a too sensitive issue. It is no surprise in the Belgian context to see religious data labelled as sensitive data in the Privacy Data Act of 1992.54 With an exception for religious organizations (who are in need of person-related information for religious purposes)55 all activities that include checking for or collecting data on personal religious (or belief) convictions is in general anathema. This is reflected by the legislation on the duties of the national statistics institute INS-NIS56, on the profession of private detectives57 and of private security agencies.58 Protection of religious data is also taken into account in legislation on the deployment of surveillance cameras.59 The Privacy Data Act itself also contains a number of limitations on privacy, in order to attain specific (legitimate) aims.60 Religious radicalisation (probably even leading to terrorism or assistance to terrorism) is a more recent topic, leading to a closer surveillance of some religious activities harmful sects.61


The Labour Act 1905 implicitly includes a Christian day of rest in Belgian labour law by having the Sunday as the regular day of rest for employees. The introduction of this legislation gave rise to debates on the question if this legislation did not force employers/employees to conform to a specific religious belief. In 1992 the Constitutional Court concluded that the legislator in 1905: “took into account the religious and
family traditions and also the importance of cultural an sport activities. The legislator could arguably suppose that employees had chosen for the Sunday, if they had the freedom to choose themselves. The religious aspect of the Sunday as a day devoted to religious activities has been pushed into the background (Cuypers, Kempen & Meeusen (1993), p. 254-255). Nevertheless, the choice for the traditional Christian day of rest is of course facilitating Christian churches (with an exception for the Seventh Day Adventists).

As for civil servants, general labour law includes a right on a day off for some specific religious occasions, a regime that is limited to a specific segment of the ‘recognized’ religious market. The discriminatory character of this regulation was put on the agenda in the Senate in 2007, initiated by the Muslim senator Pehlivan, who suggested a more inclusive regulation.

Religious groups often are in need for religious leaders (priests, rabbis, imams, pandits) coming from abroad. This is problematic for those religions who have to engage people who live outside the European Union. Belgian legislation facilitates religious groups in this respect, by exempting this category from having the obligation to apply for a work permit. Until 1999 this special regime was available for all religions, since then the legislation limited the scope to recognized religions only, creating problems for non-recognized religions employing people from other continents.

2.3 Personal law based on religious affiliation

The Belgian legal system does not include any religious personal status for Belgian nationals. Nevertheless, Belgian PIL allows application of a foreign “religious” personal status if the applicable foreign law provides this for their own citizens (Christians (2010), p. 276-280). Nevertheless, some exceptional cases may be found where Belgian court take into account the virtual possibility for religious rules to be applied to Belgian citizens, with potential civil recognition in Belgium. One famous example is about the effect in Belgium of an ecclesiastical sentence of matrimonial nullity hold in Italy between to Belgian citizens, previously married in Italy through a religious concordatarian marriage. The Court of Appeal of Brussels hold that any abusive financial pressure organized by the husband against his wife in order to influence her participation to the canon law nullity procedure, would be deemed illegal as a tort against the civil status of Belgian citizens (see Rigaux (1976) for a general analysis on indirect influence of the Italian concordat for Belgian citizens).

2.4 State law with a religious origin, applicable to all citizens

The legislation on the weekly day of rest (labour law, supra 2.2) and legislation on public holidays are examples of State law including rules that have a clearly identifiable religious origin/background, but nevertheless applicable to all citizens, independent from the fact that they profess a religion and also apart from their particular religious affiliation. The general application of these rules is defended with reference to tradition, not on religious grounds. In some circumstances, in order to accommodate the practice of religious festivities for minority religions, specific exemptions are present: this is the case, for instance, for ritual slaughtering on Sundays for Jewish and Islamic holidays or festivities. Also traditional heterosexual marriage has been discussed in public debates as being a civil norm with a strong religious background, but the legislator does not argue along this line. Same-sex marriages has been adopted as a part of equal treatment policies (banning discrimination on the basis of sexual orientation).

2.5 The right of a religious organization to apply its own rules in the internal sphere

Organisations owned or managed by (adherents of) religious groups in many cases are responsible for functions in society that relate strongly with the religious ethos of these institutions (schools, hospitals). In order to guarantee the religious identity, these ‘faith based organisations’ do have an interest to apply specific, religiously inspired rules in the internal sphere, not in the least with regard to personnel policies

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65 Proposal for a resolution Parl. Doc. Senate 2007-2008, nr 2018/1 (proposal to extend the system for a day off in order to end discriminatory treatment between the recognized religions).


69 Art. 1 Royal Decree 13 July 1988 allowing ritual slaughtering on the regular day of rest, State Gazette 17 November 1988.
(hiring and firing). The Belgian Anti-discrimination Law (2007) provides faith-based organizations, in order to enable them to maintain their religious ethos, with a specific status (art. 13) allowing for a difference in treatment based on religious principles\(^70\). The organization has also the right, in this context, to expect from employees, an attitude of “good faith and loyalty to the ethos” of the employer. The boundaries of this right are not clear cut, but in balancing the right of the employer against employees’ rights by the judiciary, the privacy rights of individual employees are gaining weight, under the supervision of the judiciary\(^71\). Churches (synagogues, Islamic communities) themselves did receive a stronger position in the art. 21 Constitution guaranteeing the institutional freedom, especially with regard to the selection of religious leaders, responsible for religious duties (see 2.1).

Within the public regime of recognized denominations, the right for these denominations to apply their own religious rules in the internal sphere is also specifically guaranteed, without any State control, but this right has also recently been transformed into a duty for any local recognized communities, as a condition whose disappearance would be penalized by the loss of public recognition of this local community at the request of the religious central authority (Flemish Government Decree of 14 February 2014\(^72\)).

2.6 Applicability of religious rules in the State legal system

No religious rules are neither applicable nor enforceable as such in the generally applicable Belgian legal system and will not be upheld as such by Belgian courts. Legislation that ‘translates’ rules with a religious origin into general rules is not per se intended to import any religious connotation. The legislation on the day of rest provides us with a good example of a norm that is considered to be ‘cultural’ in nature and not the acceptance of a specific (Christian) religious normative system\(^73\). Even through PIL foreign religious norms would be qualified as foreign state norms\(^74\).

Special treaties with the Holy See (mainly the 1801 French Concordat) were already revoked by the National Congress in 1831, as incompatible with the new constitutional order. Prenuptial agreements (based on religious norms) are not legally enforceable in Belgian legal systems. In 1982, the Belgian Supreme court of cassation hold that a purely religious jewish divorce, even agreed by both spouses, does not allow nor excuse adultery relations subsequently initiated by the husband, since their civil marriage was still in force\(^75\). At the best, religious agreements are considered as a matter of fact, and might be taken into account among other contextual characteristics of the case, at least if the law admits such a subjective approach.

While private autonomy is not applicable to personal status, some contractual references to religious rules would be held as valid in some other areas, such as association status or some for profit businesses (Christians (2010) 280).

One has however to make a distinction between the irrelevancy of religious rules in general and the fact that civil courts take into account decisions taken by religious authorities (e.g. dismissal of ministers, chaplains, religious teachers, in public institutions). The public regime of recognized religions makes this unavoidable in other (private law) matters, courts are more reluctant to take into account religious decisions. A definite conclusion is not easy to draw since Belgian case law remains unclear and heterogeneous.

2.7 Religiously motivated exemptions from laws of general application

Section 2.2. already shows the existence of religiously motivated exemptions in different fields of legislation: education law (exemption form religious courses), animal welfare legislation (exemption in order to accommodate Islamic and Jewish slaughter methods), electoral law (voting obligations on religious holidays). In medical law a general conscientious objection clause is present in the legislation on abortion (Christians & Minette (2010)) and euthanasia, leaving room for religiously motivated objections in the first place (Montero (2012)). A rather obvious exemption for religious organisation in privacy law concerns the registration of religious personal data.

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\(^{71}\) Privacy rights of employees, e.g. matrimonial religious status and rules, even within Catholic schools or hospitals, have been enforced by the Belgian Supreme Court of Cassation since 1976. Any immediate firing based on religious matrimonial status is deemed invalid (Demeester (1976)).


\(^{73}\) Constitutional Court decisions: nr. 70/92, 12 November 1992; nr. 45/93, 10 June 1993; nr. 19/94, 3 March 1994.

\(^{74}\) See for talaq: Barbe (2003).

All these conscientious objections have been progressively eased. Conditions have been alleviated in a subjective way: individual intent should be progressively considered as sufficient — provided that some neutral conditions are met (communication of refusal, respect of deadlines, alternative obligations, …). More specifically, no evidence is needed of religious obligations, rules or motivations, subject only to few exceptions (for example, the need of a religious certificate in electoral law in order to be exempted of the general voting obligation).

In exceptional cases legislation is putting a religious category under special obligations, thus creating a difference in treatment. This is the case notably for religious leaders coming from abroad (non EU nationals). Flemish integration policy legislation introduced an special obligation for religious leaders to enter citizenship courses (‘inburgeringscursussen’) on the grounds that religious leaders are key-figures in the lives of the members of the religious communities formed by their fellow-nationals and thus crucial in the integration success of the religious group as such (De Pooter (2005)). This exception to the ‘ministerial exception’ is connected (in fact, but not formally) with the policies regarding the Muslim minority in Belgium. This policy has been criticized by the Council of State (advisory section).

2.8 Reasonable accommodation (Alidadi (2013), Bribosia, Ringelheim & Rorive (2010), Christians (2006))

Belgian State law does not contain a general obligation requiring people in positions of authority (for example, employers) to accommodate religious needs of the individual who is in a subordinate position (for example, employees), neither in private law nor in public law. In labour law however already since a law of 10 March 1900 (and now: the 1978 Law on labour contracts) the employer has to offer his employee the time necessary to fulfill his religious obligations outside the firm building (Cuypers, Kempen & Meeusen (1993)). It is also worth noting a systemic interaction between labour law and unemployment law (Alidadi (2013), Trine (1982)). Whilst the former does not provide any general obligation of accommodation, such an accommodation seems to be provided in a earlier stage for unemployed. Since the sixties, Belgian unemployment regulations allowed any unemployed to refuse unreasonable job offer, including for religious reasons. If an unreasonable refusal is opposed, the unemployed could consequently be partially of definitely deprived of any unemployment benefit. Religious objections received by the Court include for example a job in a pork butchery offered to a Muslim, a job of religion teacher to an atheist, a job including work on Friday and Saturday offered to an Adventist etc. All religious objections were not admitted. For example, a Muslim woman refusing any workplace contact with male employees has been deprived of unemployment benefit. The judicial interpretation of the reasonability of the objection is largely open as a matter of fact, context and proportionality, but the general principle explained above remain in force here: whilst some religious rules and prohibitions have been accepted as factual arguments by the courts, no objective religious rule has to be explicitly evidenced as a formal condition.

In private law, it is worth to note that the Civil Code (art. 1135) classically obliges contractors to a “bona fide” implementation of their contractual duties. Case law and literature are divided on whether any more precise obligations facing religious rules might be required.

A strange example of reverse-accommodation may be observed where the Belgian Constitutional Court, in its Burqa case, pointed out that the Muslim female plaintiffs would perhaps have been able to find in their own religious traditions, some religious self-exception to the wearing of the burqa. The plaintiffs lost the case in part because they failed to evidence the lack of such a self-exception.

3. Adjudication

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77 Art. 20, 5° Law on Labour Contracts: “The employer has to: 5° allow the employee the time needed to fulfill his religious duties”
78 Labour Court Brussels, 15 January 2008, Journal des tribunaux du travail 2008, p. 140 (a bookshop branding charter defining the core “openness” of the bookshop may be interpreted as implicitly prohibiting employees to wear Islamic veil, but the reverse hypothesis is still controversial in the literature – i.e. the possible legal recognition of a branding charter imposing the wearing of some religious dress in a general bookshop).
3.1 Religious adjudication
The Belgian legal system does not allot formal jurisdiction to religious courts existing alongside State courts and does not recognize dispute resolution systems that act according to religious laws. At the same time there is no formal or penal prohibition of such courts.
No “individual option” to refer a dispute to religious courts has ever been explicitly allowed or even discussed before civil courts. In non PIL matters, for example in some dismissal cases concerning religious ministers, Belgian civil local courts seemed to take into account the existence of some internal religious review system in order to address the respect of due process requirements: if the plaintiffs did not appeal within their own religious system, this intentional abstention is understood as waiving every due process rights, even from a civil point of view. Anyway, the Belgian supreme Court of cassation refused to upheld such a specific solution.
The Court of cassation has until now confirmed an absolute hands-off principle when rules drawn by religious authorities (canon law for instance) play a role in a case brought before the courts: civil courts are prohibited to interpret religious rules — even on due process issues — when facing an internal religious issue, such as the dismissal of a minister of religion. This position, strongly influenced by the organisational freedom guaranteed in art. 21 Constitution, has been under doctrinal critique since the end of the 20th Century (Vuye (2009)).

In PIL matters, the exclusive jurisdiction of Belgian courts on the Belgian territory is classically confirmed and excludes any civil recognition of any Belgian religious authority whatsoever.

3.2 Criteria for religious adjudication set by State law
Religious court decisions are not bound to respect fundamental rules/principles adopted by the State legal system. Within the public law regime of recognized religions, it is unclear whether even general protection of privacy rights would be ensured by the Council of State as a test of validity or legal relevance. In private matters, such as labour law or tort law, privacy rights are progressively enforced even against a religious decision, at least as a cause for compensation.
State courts still don’t have any competence to review religious court decisions nor to impose a specific interpretation of a church’s decision. This lack of judicial power is still clearly affirmed within the public law regime of recognized denominations.

3.3 Religious courts/institutions : interpreting laws of the State / assessing their conformity to religious rules?
Religious courts/institutions do not benefit of any opposable authority to interpret the laws of the State and to assess by their own conformity to religious rules. In religious matters and within the public law regime of recognized denominations, State courts have no competence to review church decisions, even about legal rules. Outside these specific fields, other kind of compromises may arise between denominations and States. In 2010, during the sexual abuse crisis (within the Roman catholic church), the Prosecutor Office, confirmed by Parliament, decided, after a long time of hesitation, that no religious authorities may oppose their own understanding of the civil statute of limitations applicable on public penal sexual offences, and by consequence, religious authorities should have to inform the Prosecutor Office of all apparent offences, even if the infraction might reasonably be deemed to be time-barred.

4. Social implementation of religious rules (without any official recognition)
4.1 Citizens following religious rules in conflict with State law
Belgium is a very secularized country where religion, with an exception for Islamic oriented controversies, seems to become irrelevant in societal debate. The most prominent debate is on the visibility of Islam,
focusing on the wearing of the veil by Muslim women (and schoolgirls), a manifestation of belief that seems to be wide spread now in the Muslim communities. This is creating not only tensions but also many court cases (where new state law is banning visible religious signs), until now without a clear legal outcome. The right to wear religious symbols in public spaces and in public building as schools and government offices, in particular when civil servants are in contact with the public, remains heavily debated (Mathieu, Gutwirth & De Hert (2013)). In some cases legislation is banning certain religious garment. A small number of citizens contravenes the regulations and starts court cases. A famous example is the controversy regarding the law banning face coverings (and thus: the burqa). The law was reviewed and confirmed by the Constitutional Court in 2012.  

The Court based its decision on arguments of public safety and on a (controversed) link between the visibility of the face and human dignity (Vrielink, Brems & Ouald-Chaib (2013)).

4.2 Following religious rules that, although not forbidden by State laws, cause problems or hostility in everyday life

Religious behaviour in the public sphere is encountering growing societal hostility, especially where this behaviour has its source in Islamic traditions. In Belgium like in other European countries, one of the explanations being given consists of a misunderstanding of these dress codes, assigning to them a moral extremist aim. Along this line, the religious normativity attributed to these dress codes seems a more socially-friendly explanation than any controversy on cultural habits and facts.

4.3 Services provided by religious adjudication bodies that are devoid of any State recognition and civil effects or even forbidden by State law

Roman catholic ecclesiastical courts remain active in procedures regarding the validity of religious marriage, but their decisions do not get civil recognition. Sociological research / surveys are suggesting the existence of similar phenomena in Muslim or Jewish communities (Foblets, Deklerck & al. (2009)). Religious adjudication bodies seem able to pacify and regulate an important part of family litigation. These evolutions remain more or less unknown by mainstream media. Belgium is therefore not facing hostility against “sharia court” or “sharia rules” like in the US or the UK (Christians (2012), Foblets (2012)).

5. Conclusion

5.1 respect for human rights, particularly of religious liberty, equality, and non-discrimination?

The neutrality affirmed by the Belgian legal system was classically built on a pillarized pluralism, including the Roman catholic, socialist and liberal traditions and their institutions on a more or less equal basis. Secularization and an increasing uncertainty about the position of Islam (even a fear for “islamisation”) have progressively destabilized these traditional pluralist policies. This already came to the fore in the end of the 1980ies, when the first initiative to open a Muslim primary school was answered by negative reactions from politicians – Christian democratic party leader Herman van Rompuy for instance - who would otherwise have be in the defence for educational freedom wholeheartedly. With the growth of Islam and the weakening of traditional Christian traditions, things seem to be different. The legal relevancy or taking into account of any religious rules is tested through a kind of “as if it were an Islamic reality’ test. Islam lens seems to become a general methodological standard (Christians (2006b)). This “Islamic test” explains why even generalizing the application of facially neutral rules seems not able to fill the vacuum left by the process of depillarization of the Belgian system. For some politicians, it seems impossible to open to Islam in a non discriminatory way some common law rules or benefits previously opened to Christian traditions or rules. Rather than widespread applicability of such laws, these politicians prefer to propose abolishing these laws altogether.

We are convinced that such an evolution sheds light on more implicit discriminatory tensions (Saroglou et al. (2009)). In different domains (dress codes in schools, choice and qualities of ministers of religions, structuring of the religious communities, the conditions for ‘integration’ of religious communities in society) government

action, translated into legislation, could easily be interpreted as a form of Islam-policies, touching first and foremost this specific religion.

In general however the system in force is corresponding fairly with the rights and freedoms guaranteed in national constitutional law and with the international obligations based on human rights conventions.

There are also some remarks to be made in the light of equality and non-discrimination, when it comes to smaller religious communities, not belonging to the special category of “recognized” religions or non-religious life stance movements. There are three categories to be distinguished
(a) There are, in the first place, legislations creating a different treatment between religions on the basis of their “recognition” status, but not on purpose. (see: labour law: legislation on religious holidays)
(b) Then there is the possibility that legislation, initially treating all religions on an equal foot, was changed later, disfavouring non recognized religions (see: labour migration law: 1999 legislation on work permits for non-EU ministers of religion).
(c) And finally: legislation intentionally benefits the recognized religions only. In some cases there is no justification for the unequal treatment (Penitentiary law: 2005 legislation on the Prison regime (chaplaincies)).

The division of religions in the ‘recognized’ and ‘non-recognized’ categories was judged, in a recent study group of academics, to be too dualistic. The introduction of a new category of ‘registered’ was proposed, in order to close the gap between the existing categories (Magits, Christians, Sägesser & De Fleurquin (2010), p. 24 et seq.).

5.2 fostering inclusion or causing segregation?

Does the Belgian legal system foster inclusion of different religious communities (and particularly minority religious communities) in the social fabric or is it causing forms of segregation and communitarian isolation? The system has both inclusive and communitarian characteristics. The support system for religions has proven to be open to newcomers and was even applied to nontheistic belief systems (inclusion of Humanism). This aspect of the system is considered to be a quality. Improving the position of the Islamic religion – its formal recognition in 1974, on an equal foot with Christian and Jewish denominations – was considered to be one of the cornerstones of the integration of the second largest religious group in Belgian society. Formal recognition opened the door (in education law) to denominational religious education. The same pattern was followed for the Orthodox religion, a religious tradition that has its roots in immigration too. One could argue that the existing system (giving birth to the pillarization earlier on) also contains elements that could encourage forms of communitarian segregation. Freedom of education, financially accommodated to a large extent by the state, opened the door to parallel school systems for minorities. In fact, only the Jewish community, but this on a very small scale, was able to build a school system of its own.

5.3 Evenhanded attitudes or preferentialism?

Does the law promote an evenhanded and fair attitude of State institutions towards different religions or does it strengthen forms of preferential treatment of religious over non-religious individuals or of the members of a particular religious community over the members of other religious communities? (in general, exceptional?)

The Constitution guarantees individual and collective religious freedom, and does not permit discrimination on the basis of religion or belief (nonreligious belief included). State law has to respect the constitutional principles under the control of the Constitutional Court. A preferential treatment of the members of specific religious groups is, in this context impossible.

There is only one major exception: state supported religious pastoral care is only guaranteed for adherents of recognized religions. Individual members of non-recognized religions who are staying in penitentiary institutions are disfavoured, because they remain in a second class position when it comes to spiritual care (Overbeeke (2005)). A comparable situation is still existing in the French and Germans speaking communities, where religious education courses are part of the school program, without the possibility for adherents of non recognized religions to be exempted from these courses.