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## Chapter 3

# Funding of Religious and Non-confessional Organizations: the Case of Belgium

Louis-Léon Christians and Stéphanie Wattier

### Introduction

State funding of religions has been part of the Belgian constitutional system since its beginning in 1830. It has never been questioned since, as it is considered the heart of the Belgian principle of State neutrality. Started in the nineteenth century for the diverse religious denominations historically located on the territory (Catholic, Anglican, Jewish, Protestant), the funding scheme was expanded in the twentieth century to Islam (1974–2005), to Orthodoxy (1985) and finally to non-confessional philosophical groups (1993–2002), who were before 1981 the most active minority opposed to State funding of religions. While State support has continuously been reaffirmed, after the Second World War, however, new controversies arose focusing on the ‘opacity’ of allocation methods, the historical inertia of administrative criteria used for distributing funds and, finally (perhaps mainly), the Catholic Church’s disproportionate share of State funding. There is no doubt that the Belgian administrative and legal structure – based on a stability-oriented policy – is unable to provide adjustments as promptly as required by the secularization of the Belgian Catholic population, coupled with the diversification of minority religions. Despite a large consensus in favour of these findings, huge controversies remain about the best way to improve the flexibility and the fairness of the system, without endangering the specificity of Belgian active pluralism.

### Sociological Approach

Since the Second World War, the secularization process in Belgian society has been progressively increasing. Catholic religious practice has been gradually declining and religious indifference growing rapidly (Table 3.1). Nevertheless, sociological data is complex: when parents have to choose between religious or non-confessional courses for their children at school, they continue to predominantly choose the Catholic ones, with only one exception in favour of Islamic courses in Brussels (Table 3.2). Between 1964 and 1984, Islamic immigration was encouraged. In 2012, from a global population of 11 million inhabitants, more than 450,000 are Muslim, mainly based in central Brussels and other main Belgian

Table 3.1 Catholic religious practices in Belgium (compared to the global population, 1980–2006)

%	Wallonia			Flanders			Brussels			Kingdom				
	1980	1990	2006	1980	1990	2006	1980	1990	2006	1967	1980	1990	1995	2006
	Baptisms	82.3	74.2	70.6	89.0	83.1	67.8	44.9	36.9	17.1	93.6	82.4	75.0	70.9
Marriages	73.4	58.1	55.1	81.5	64.5	29.7	44.7	28.1	25	86.1	75.7	59.1	52.0	28
Funerals	78.2	76.8	75.1	90.7	88.8	86.0	64.2	60.4	29.8	84.3	83.0	81.6	78.6	63
Attendance	21.5	14.6	11.2	32.2	21.3	15.2	12.0	8.8	6.2		26.7	17.9	13.1	7

Source: *La Libre Belgique*, 30 June 1997 and 9 July 2008, survey by the Catholic University Leuven and the Bishops' Conference.

Table 3.2 Choice of religious/non-confessional courses at school (2010–2011)

%	Catholicism	Islam	Protestantism	Orthodoxy	Judaism	Non-confessional ethics
Wallonia	71.8	4.7	1.1	0.1	0.04	22.2
French-speaking Brussels	55.2	23.7	2.2	1.1	0.8	17.1
Flanders	82.6	4.1	0.5	0.1	0.3	11.6
Flemish-speaking Brussels	62.5	25.8	1.7	0.5	0.04	8.8

Source: Caroline Sagesser (2012), 'Les cours de religion et de morale dans l'enseignement obligatoire' (2012) 2140–41 *Courrier du CRISP*.

cities. The relative importance of atheism or secularity is very controversial, because of the ambiguity of the individual meaning of 'religious indifference' in different surveys. The Humanist movement has a relatively low membership (1 per cent–13 per cent), but claims to represent all the indifferent people. Judaism, Protestantism, Orthodoxy, Buddhism and Hinduism are also active minorities in Belgium, but represent a very small part of the population.

### Historical Approach

Looking back in history is certainly one of the best ways to understand the present legal system of Church funding. When choices were being made by the Belgian First Parliament (*le Congrès National*) in 1830 during the adoption of the Constitution, Belgian society was predominantly Catholic, although a very active, liberal, political minority was also significant.

The political compromise in favour of a regime of mutual independence between the Church and the Belgian State is important to our understanding of the funding mechanisms pertaining to religious and non-confessional organizations.

### *Influences of Previous Regimes (before Independence)*

First of all, Belgium was dominated by the Austrian Netherlands (until 1795) and was regulated by innumerable customs. There were two funding systems *vis-à-vis* recognized religions: (1) using income from property distributed to religious institutions over the course of history and (2) collecting tithes.<sup>1</sup> At that time, the ambition of the Habsburgs was to transform 'the Church of the Austrians into a nationalized "Belgium Church" with the loosest possible ties to Rome'.<sup>2</sup>

After being annexed by the French Republic in 1795, Belgium became subject to French legislation. In 1797, presbyteries and churches were put under sequestration. Then, they were reopened thanks to Napoleon's *coup d'état*.

In 1801, Napoleon signed a convention – called 'Concordat' – with the Holy See.<sup>3</sup> This Concordat is considered as one of the historical bases for the funding of recognized religions in Belgium, because it ended the conflict between State and Church that was born during the French Revolution and because the aim of the Concordat would be transposed into the Belgian Constitution.<sup>4</sup> Indeed,

1 Jean-Pierre Delville, 'Le financement des cultes en Belgique: approche historique' in Jean-François Husson (ed.), *Le financement des cultes et de la laïcité: comparaisons internationales et perspectives* (Editions namuroises 2005) 79–80.

2 Hervé Hasquin, 'Is Belgium a *laïque* State?' in Fleur de Beaufort et al. (eds), *Separation of Church and State in Europe* (European Liberal Forum 2008) 92.

3 Delville (n 1) 80–81.

4 Francis Delpérée, 'Les aspects constitutionnels, budgétaires et fiscaux du financement des cultes' (2001) 61, 4 *Les Annales de Droit de Louvain* 447.

the French Revolution having suppressed most Church revenues – such as the dime – and confiscated its lands and properties, the Concordat was also compensating this in a way, by providing financial support paid for by local authorities (municipalities and departments) for church councils (or *fabriques d'églises*), cathedrals and seminaries, whenever their income was insufficient to maintain buildings and organize the [religion].<sup>5</sup>

In 1808, there was much tension surrounding religion. In fact, opposition to the regime was strong and 'revived by the Imperial Catechism and the virtual deification of the Emperor; the "war" between Napoleon and the Pope from 1808 onwards precipitated the rupture, especially with an increasing number of bishops and priests who were being arrested'.<sup>6</sup> Therefore, the fall of the imperial regime was interpreted as deliverance.

In 1815, the United Kingdom of the Low Countries (today, the Netherlands and Belgium) was founded and 'the Church entertained hopes of winning back its former freedom and even of regaining the right to collect tithes: there was no better way to escape financial dependency on the Government'.<sup>7</sup> Those hopes did not last for long: they vanished in 1817 when the autocratic sovereign, King William I, decided to create special training for priests. Then, in 1825, the King 'closed a string of episcopal seminaries and established a state-controlled philosophical college intended to cast all future priests from the same mould'.<sup>8</sup>

In 1827, King William I signed a convention with the Church. This Concordat contained the same principles as that of 1801.<sup>9</sup>

After the Belgian Revolution (1830), the State became independent. Globally, Belgian independence was the result of a coalition of Liberals and Catholics.<sup>10</sup> When writing the Constitution, its Belgian authors were faced with two different tendencies: on the one hand, the Liberals wanted the principle of separation between State and Church to be adopted; on the other hand, Catholics wanted a specific dependence between state sphere and religious sphere.<sup>11</sup> They were politically obliged to build an original compromise into the Constitution. Finally, there would be some continuity between the old Netherlands and the new independent

5 . Jean-François Husson, 'New policies with old instruments? Financing religious and philosophical communities in Belgium' in M Moravcikova et al. (eds), *Financing of Churches and Religious Societies in the 21st Century* (Bratislava: Institute for Church-State Relations 2010) 148–9.

6 Hasquin (n 2) 92.

7 Hasquin (n 2) 92.

8 Hasquin (n 2) 92.

9 Stéphanie Wattier, 'Le financement des cultes au XXI<sup>e</sup> siècle: faut-il réviser l'article 181 de la Constitution?' (2011) *Revue Belge de Droit Constitutionnel* 28.

10 Alois Victor Jacques Marie Simon, 'Le Saint-Siège et l'Union Catholico-Libérale (1828–1846)' (1962) 34 *Bulletin de l'Institut Historique Belge de Rome* 595–615.

11 Emile Huytens, *Discussions du Congrès national de Belgique*, tome 1 (Bruxelles: Société typographique belge 1834) 525.

Belgian State. For that reason, Article 117 of the Belgian Constitution of 1831 (now Article 181) mandated – and still mandates – the State to fund ministers of recognized religions. This article specifies that 'the salaries and pensions of ministers of religion are paid for by the State; the amounts required are charged annually to the budget'.

But it would be wrong just to conclude that Belgium simply re-assumed its previous obligations towards religious organizations during the French and Dutch regimes. These existing obligations were linked with a new liberal approach to Church autonomy in its own sphere. They were no longer justified through formal concordats.<sup>12</sup> Independent Belgium has never signed a Concordat with the Holy See. In fact, a 'Concordat regime' would have meant reciprocal rights and obligations between State and Church. As mentioned above, it is only the principle of funding of recognized religions that was transposed into the new Belgian Constitution in 1831. In short, the funding of the salaries of ministers of recognized religions was maintained, but linked to a new formal ban on political control over religious issues.

#### *A Regime of Mutual Independence*

Adopted on 7 February 1831, the Belgian Constitution did not explicitly refer to *laïcité* of the State, or to a *séparation* between State and Church.<sup>13</sup> Three articles of the new Constitution were – and are – important as far as freedom of religion and Church autonomy are concerned.

Article 19 of the Constitution<sup>14</sup> guarantees freedom of religion; Article 20<sup>15</sup> specifies that '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'; Article 21 § 1<sup>16</sup> stipulates that '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'.

Those three articles have never been modified since 1831 – except for the new numbering of the Constitution that took place in 1994.

As far as the funding of recognized religions is concerned, Article 181<sup>17</sup> of the Constitution mandates the State to fund their ministers. Concretely, this article

12 Henri Wagnon, 'Le concordat de 1801–1827 et la Belgique indépendante' in *L'Eglise et l'Etat à l'époque contemporaine – Mélanges dédiés à la mémoire de Mgr Alois Simon* (Facultés universitaires Saint-Louis 1975) 547–63.

13 Hasquin (n 2) 93.

14 Article 14 of the Constitution of 1831 (since 1994, Article 19).

15 Article 15 of the Constitution of 1831 (since 1994, Article 20).

16 Article 16 § 1 of the Constitution of 1831 (since 1994, Article 21).

17 Article 117 of the Constitution of 1831 (since 1994, Article 181).

specifies that 'the salaries and pensions of ministers of religion are paid for by the State; the amounts required are charged annually to the budget'. Article 181 has only been modified once, in 1993, in order to extend the funding obligation for the benefit of non-confessional organizations (like the Humanist movement).

Fundamentally, the combination of Articles 21 § 1 and 181 of the Constitution is considered as the main rationale that justifies the assertion that Belgium represents a *regime of mutual independence or active neutrality* between Church and State. As such, it is a combination of State funding and Church autonomy. It has been clear since 1831 that control of public order and the enforcement of criminal law may and must be imposed by the State on all religions, but precisely without formalizing more intrusive lowering of autonomy for *funded* religions.

In 1859, Jules Bara, a famous Belgian legal scholar, Senator and Minister of Justice, explained that the salaries granted to ministers of religions

are an exception with no influence on the constitutional system. No special power of control resulted from this public funding. The State's power and rights remain independent from these salaries, and the equality of religions affirmed by our Basic Law would break down if greater powers were exercised over ministers. Salaries do not justify any special obligations nor privileges for the clergy *vis-à-vis* the State.<sup>18</sup>

For Rik Torfs,<sup>19</sup> Articles 19, 20, 21 and 181 of the Constitution 'governing Church-State relations are an early example of the Belgian political tradition of consensus. Though bright, young, liberal and sometimes anticlerical politicians wanted to propagate modern freedoms, they also wanted to retain absolute governmental supervision of the Church. Catholic politicians and the Belgian Church, however, were unwilling to allow their voices go unheard'. Torfs concludes that 'the final constitutional articles have produced an equilibrium which, although not perfect, has remained unchallenged'.<sup>20</sup>

18 Hasquin (n 2) 96.

19 Rik Torfs, 'Church and State in France, Belgium, and the Netherlands: Unexpected Similarities and Hidden Differences' (1996) *Brigham Young University Law Review* 956.

20 On the other hand, some very narrow public limitations of Church autonomy have been allowed by the National Congress and enacted by the Constitution: Article 21 § 2 stipulates that 'a civil wedding should always precede the blessing of the marriage, apart from the exceptions to be established by the law, if needed' (without distinction as to whether the religion is funded or not by the State). This shows the incorrectness of any idea of radical separation. In 1831, the argument used to sustain this principle was fear of family disorder. In fact, in support of the precedence of civil marriage, 'several speakers have referred to abuse reported to have been suffered by women and children between October 1814 and January 1817, a period during which Napoleon's legislation had been held in abeyance'. Hasquin (n 2) 94-5.

### Justifications for the Funding of (Recognized) Religions

From the beginning, in 1830, justification for the State's financial support has been a mix of (mainly Catholic) history and new liberal trends, both united in common opposition to the intrusive policies used by previous regimes.

Defenders of the Catholic religion considered that payments made to (Catholic) ministers were *compensation* 'for the nationalization of Church assets that had occurred under the French regime and the effects of which had lasted throughout the Dutch regime between 1815 and 1830'.<sup>21</sup>

Liberals finally reached a compromise with Catholics to guarantee a *status quo* via the Constitution, i.e. the State's obligation to fund ministers of religion. In other words, the funding of Catholic ministers in Belgium is founded on 'reparation for the despoilment of Church assets for the benefit of the Nation which occurred at the end of the eighteenth century'.<sup>22</sup> Nowadays, this argument is still used by Catholic authorities to justify their salaries.

The first draft of the Belgian Constitution narrowed this support to '*already funded religions*' or to '*Christian churches*',<sup>23</sup> but, at the request of Jewish communities, it was finally agreed to include Jewish rabbis in the State support regime. The phrasing of the Constitution changed in consequence into a new, broader formula referring to 'ministers of *all* religions' ('*ministres de tous les cultes*'). This phrasing was however criticized as a formula that went too far and was finally replaced by the words 'ministers of religions' ('*ministres des cultes*'), designed to allow the legislator some choice.

The rationale for this expansion was to respect the new constitutional trends of freedom and liberalism towards religions,<sup>24</sup> but also to free the State from the systematic obligation to fund any new religions. Very early on, constitutional literature proposed a new criterion: the concept of 'reasonable' ('*sérieuses*') religions.<sup>25</sup> As far as non-Christian religions were concerned, allocated salaries were – and still are – progressively founded on the principle of *social utility* within society. This more recent criterion has been criticized by some Catholic scholars,<sup>26</sup>

21 *ibid.*

22 *ibid.*

23 Isidore Van Overloop, *Exposé des motifs de la Constitution belge* (H. Goemaere 1864), tome 4, 106.

24 Huytens (n 11), tome 2, 280. See also Van Overloop (n 23) 222: 'Quant aux cultes et aux communions dissidentes, c'est une conséquence de la liberté accordée aux opinions religieuses, c'est à ce seul titre que l'Etat peut leur devoir un traitement: la justice exige qu'il soit alloué à ces communions les sommes nécessaires aux frais de leur culte; passé cela, nous ne leur devons rien' (Baron de Sécus).

25 For example, Philippe Vandevivere, 'Du culte et du clergé sous l'empire de la constitution belge' (1851) *Belgique judiciaire*, tome 9, 1265.

26 For an early use of the criteria of 'social utility': cf. Joseph Daris, *La liberté de la religion catholique et le projet de loi sur le temporel des cultes* (H. Dessain 1865), *spec.* p. 26 ('Ce sera donc à la législature à apprécier si le nouveau culte qui sollicite la

but finally accepted in the main and applied to the funding of Catholic ministers. As Vincent De Coorebyter explained, 'the social value given to ministers of religion is above all, not their acts of charity (which are primarily a matter of congregations and associations), but their contribution to maintaining public order, a critical issue in the aftermath of a revolution'.<sup>27</sup> During the twentieth century, ministers of religions were progressively considered as providing not only a form of social control, but also a true social solidarity and moral support throughout life (birth, marriage, death...). In this regard, guaranteeing an adequate social status to ministers was also important: 'These salaries must also correspond to the needs of life and the necessities inherent to the social position of ministers of religion'.<sup>28</sup>

It is worth noting that, since the beginning, the concept of 'recognized religion' was used by scholars, in keeping with the vocabulary of the French regime, but was formally ignored by the Belgian Constitution until 1988. As already mentioned, the system was intended to be formally open to all religions. However, according to Article 117 (now 181), a law is necessary to determine the budget each year. Consequently, the legislator might decide each year which denominations are to be funded. No general legislation has ever been enacted to define criteria or general rules on 'recognition'. Extending State funding to new denominations remains a 'sovereign' and unilateral decision of the Belgian Federal Parliament, confirming the result of previous governmental negotiations with denominational representatives. What is usually called 'legal recognition' involves simply *introducing the new denomination's name* onto the existing list of denomination names, within the phrasing of different particular acts and laws (namely, laws on salaries, budget, administration, religious broadcasting, religious education in public schools, chaplaincies, and so on).

Since 1974, some Members of Parliament have questioned the Minister of Justice about the Government's recognition policy. The regularly reiterated answer given by the Minister mentions five criteria: (1) having a relatively large number of followers (several tens of thousands); (2) being structured in such way that there is a representative body that can represent the religion in question in its relations with civil authorities; (3) having been established in the country for a fairly long period; (4) having a social interest for people; (5) not having any

personification civile, le mérite réellement par son utilité sociale'). This criterion was, however, controversial: see Anonymous, *Mémorial belge des conseils de fabriques, du contentieux des cultes, des bureaux de bienfaisance, des hospices et de l'administration en général* (Verhoven-Debeur 1860) 4, 247: 'L'Etat n'est-il pas constitutionnellement incompétent pour connaître de la vérité ou de la fausseté d'un culte et par conséquent de son utilité sociale?' For a contemporary reference to this criterion, see, for example, written parliamentary question no. 219 of 25 October 1996 by Alain Destexhe to the Minister of Justice, Sénat sess. ord. 1996-7, *Q.R.* 1-34, p. 1708.

27 Vincent De Coorebyter, 'Retour sur la naissance d'un système paradoxal', in Jean-François Husson (ed.), *Le financement des cultes et de la laïcité: comparaisons internationales et perspectives* (Editions namuroises 2005) 91.

28 Hasquin (n 2) 95.

activity that is contrary to public order.<sup>29</sup> It is important to underline that 'the basis for such recognition is not religious content – such a basis would directly violate religious freedom – but a religion's social value as a service to the population'.<sup>30</sup> Ministers have never provided further explanation. Up to now, these criteria have remained a mere administrative custom. In 2004, the Minister of Justice launched a new dialogue with religious leaders and proposed to enforce these criteria with a specific law. More recently, the proposal formally to enforce these criteria (by a general administrative decree) was also supported by two Expert Committees appointed by the Minister (2006 and 2011). Both of these committees confirmed the importance of a 'social utility' test as the central justification of a State support policy.

### From Formal Federal Recognition to Local and Regional Implementation of Objective Funding

To obtain this specific funding, it is not sufficient to become a 'recognized' denomination. The Belgian funding system has never been a global subsidy system. Recognized religions do not obtain a global amount of public money, nor any privilege to become discretionary administrators of any funds. The administration retains complete control over the payment of salaries and other specific financial aid.

The federal recognition of a religious denomination only enables subsequent local application in diverse fields (worship, education, chaplaincies etc.) via several administrative levels (federal, regional and local) and specific additional conditions.

Since 2001, the local objectivity of the funding, linked to the numbers of recognized local communities, ceased to be federal and became a matter of regional legal competence. This very important reform resulted in the establishment of four different regional systems for the recognition of local communities in Wallonia, the German-speaking region, Flanders and Brussels-Capital. The results were so complex that, in 2004 and 2008, the four regions and the federal Government signed a special 'cooperation agreement' in order to coordinate the concrete cross-influences of all these competencies and norms.

Each of these norms defines concrete objects and timely intervention, which are not interchangeable at the discretion of religious authorities. For example, each priest or religious minister involved in a recognized local community receives his or her individual salary directly from the State, and not through a global fund managed by religious authorities.

The Belgian system of sub-recognition may be compared to a kind of 'Russian doll' system. Each sub-recognition may be understood as a test of local objectivity and proportionality. For example, in order for a priest to obtain a public salary,

29 [20.02.2004], *Q.R.* 51/20, 2843.

30 Torfs (n 19) 957.

it is required that, after recognition of his global denomination, his specific local community is also (sub)recognized by regional authorities through specific regional conditions and, finally, that his name is put forward by religious authorities and not refused for public order reasons by the Government.

This 'Russian doll' system has transformed the 'social interest' test from a socio-political appreciation to a concrete, quantitative and local test.<sup>31</sup> For example, the number of priests paid by the State depends on the number of religious territorial units, which have to reach a certain demographic level to be recognized and provided with a corresponding number of salaried offices for the religious ministers to be appointed in each unit (for example, a parish). The actual justification of the global level of funding is nothing more than the addition of all this local data. Due to its grass-roots approach, the system seems transparent enough to compare the level of public funding for each religious denomination and to test their proportionality.

Although this system was quite objective in a stable society, such as in nineteenth-century Belgium, some problems occurred with the growing sociological complexity of Belgian society during the twentieth century. The political stability of this very segmented system was high. This was convenient for the objectivity of a non-evolving society and also for the autonomy of well-established religions (whose local communities had long been recognized). But for new insiders, this system was seen as too slow and unresponsive. Moreover, since 2001, recognition of each new local community is subject to an additional stage of negotiation between federal and regional governments and this is precisely of special concern for new Muslim communities.

Another problem was due to an outdated legal difference between the demographic evaluation of Catholic communities (based on the number of *inhabitants*) and that of minority communities (based on the number of *believers*). Such a legal system facilitated (too) high a stability and even inertia in respect of Catholic funding. This inertia was further reinforced by the lack of periodical review of demographic evolution within already recognized local communities. Only competent religious authorities can submit an application to end the recognition of an old and depopulated parish.

It is worth noting that, instead of reforming the system (as undertaken by the Flemish Parliament),<sup>32</sup> the Federal Parliament chose in 2002 to extend the Catholic 'privilege' to the Humanist movement (recognized since 1993): instead

31 See Louis-Léon Christians, 'Le financement des cultes en droit belge: bilan et perspectives' (2006) *Quaderni di diritto e politica ecclesiastica* 83–107.

32 Flemish Decree of 20 September 2005 (concerning religious communities in Flanders): Catholic communities too are now evaluated in Flanders according to their member numbers. Moreover, this Decree also provides for new requirements relating to the 'social utility' test: it requires that the local community itself has to describe (in the application for recognition) its own understanding of its social utility. This Decree also requires that, inter alia, the local community use the Flemish language and declare its

of requiring a precise number of 'Humanist members' in order to determine the number of Humanist counsellors to be paid by the State, the new law simply has no other criteria than a number of administrative districts, that is to say, indirectly a number of unqualified *inhabitants*.<sup>33</sup> The potential bias of the Belgian system is due to its inability to evolve and to take into account variations in member numbers (i.e. fewer Catholics) in each local community. In fact, for a long while, this bias did not impede objective evaluation of decreasing Catholic dynamism in Belgium, because of an alternative system of evaluation: the decreasing number of Catholic vocations to priesthood and, consequently, the decreasing number of Catholic priests to be paid for by the State. This parallel between the decreasing dynamism of members of Catholicism and the decreasing dynamism of vocations to priesthood was nevertheless upset in the mid-1990s. In 1996, Catholic bishops successfully negotiated with the Belgian Government that lay pastoral actors obtain a salary from the State. Even if the Socialist Party contested the possibility for non-priests to be appointed as Catholic ministers by the Church and paid for by the State, a specific law finally allowed this new practice in 2008, for a limited, fixed number (360) of lay ministers. Another decision by (French-speaking) Catholic bishops also aggravated the same problem: a growing number of *foreign priests*, mainly from the Congo and Poland, had been appointed to fill vacant positions (to be paid for by the State) and this artificially counterbalanced the reduction in local priests.

Both of these developments completely upset the sociological soundness of the system. It resulted in an *increasing* number of new 'lay' ministers and foreign priests, breaking the parallel between declining local Catholic practice and decreasing numbers of Catholics, which had until then been linked to the decreasing number of *Belgian priests* paid for by the State.

New controversies arose in Belgium precisely at that time, but it is worth noting that criticisms did not address the *principle* of State support, but were only intended to improve the *fairness* and proportionality of the system. One of the main reasons of such limited criticism may be explained by a historical coincidence: the State recognized, supported and included since 1981, 1993 and most recently 2002 the main opponent to State support – the Humanist movement. It is clear that, ever since this recognition of the Humanist movement, debates have only focused on *distributive* issues.

These criticisms have become almost unanimous. They cover not only the differences between Humanism and religions but also between the religions themselves. Professor (and Liberal Minister) Hervé Hasquin perfectly summarized these kinds of criticisms limited to technical aspects: 'While the basic clergy

'commitment to exclude anyone who would call upon to violate the Constitution or the European Convention on Human Rights'.

33 There are no such difficulties in the funding system for teachers of religion in public (state) schools, because teacher numbers are determined in proportion to the numbers of pupils choosing each denomination's class.

(priests and vicars, auxiliary pastors, Orthodox archpriests, officiating Jewish ministers, Islamic imams) receive the same salaries, there are, on the other hand, significant disparities among the high clergy, with considerable advantage being given to Catholicism'.<sup>34</sup>

### Recognized Denominations

Six religious and two non-confessional denominations have been recognized and funded by the State.

#### *Recognized Religious Denominations*

Catholicism and Protestantism have been recognized ever since the independence of Belgium (Laws of 18 Germinal Year X and 18 April 1802). Judaism was organized according to three Decrees of 17 March 1806. Then, three other religions were recognized: Anglicanism (by royal Decrees of 18 and 24 April 1835), Islam (Law of 19 July 1947) and Orthodoxy (Law of 17 April 1985).<sup>35</sup>

#### *Non-Confessional Recognized Denominations*

In 1993, a second paragraph was added to Article 181 § 1 of the Constitution. This new paragraph mandates the Belgian State also to fund non-confessional organizations. The adoption of this paragraph was the result of a political evolution that had begun in 1980.

Article 181 of the Constitution had been open for revision in 1978, 1981 and 1987 without being effectively revised.<sup>36</sup> Then, a new proposition was introduced on the basis of Resolution 36/15 of the United Nations General Assembly of 28 October 1981 on the elimination of all forms of intolerance and discrimination based on religion or conviction.<sup>37</sup> This proposal showed the importance of pluralism in Belgium and the necessity to fund non-confessional organizations. After being discussed for years in Parliament, new Article 181 § 2 of the Constitution was adopted with quasi-unanimity in 1993.

Soon after this vote, the Lay Central Council asked to be recognized as a non-confessional organization. This recognition took place in the Law of 21 June 2002.

Recently, the Belgian Buddhist Union has asked to be recognized on the basis of Article 181 § 2 of the Constitution. The legislator has not yet accepted or

34 Hasquin (n 2) 98.

35 *ibid* 97.

36 Caroline Sägerser et al., 'La reconnaissance et le financement de la laïcité organisée' (2002) *Courrier hebdomadaire du CRISP* 1756, 26.

37 *ibid* 26.

refused this demand, but has formulated some preparatory measures to structure this non-confessional organization.<sup>38</sup>

### The Extent of Belgian State Support

Of all the different kinds of support, only a few are guaranteed at constitutional level. The Constitution narrows its guarantee to the funding of *salaries and pensions* of ministers of religion and non-confessional philosophies (Article 181); another constitutional provision (Article 24) guarantees the salaries of teachers of religious instruction provided by recognized denominations in public (State) and subsidized schools, but these expenses are usually not included in the debate about State funding of religions.

Other funding is provided by the federal legislature and regional (since 2001) or local authorities, without being required to do so by any constitutional obligations: housing for ministers, church councils (*fabriques d'églises*) in charge of local communities, maintenance of religious buildings are all supported by municipalities and provinces under four regional legal jurisdictions (Wallonia, Flanders, Brussels, German-speaking communities). Other public support is provided on a linguistic basis (French-speaking, Flanders, German-speaking): religious and Humanist radio and TV broadcasts, religious and Humanist education in public schools etc.

Finally, we can also mention that Belgian Law incorporates a specific tax regime for religious buildings.

#### *Salaries*

In Belgium, 'salaries are directly paid by the Ministry of Justice' and are paid to local ministers of religion and Humanist delegates working for local communities, but also to some staff who may include lay administrative staff (except for Anglicans).<sup>39</sup>

However, some differences exist between ministers of religion and Humanist delegates. As Belgian economist and expert Jean-François Husson explains, '[f]or instance, salaries for Humanist delegates are higher than those of ministers. Unlike the latter, they have also regular, planned salary increases during their career'.<sup>40</sup>

Such increases are logical: Humanist delegates are subject to employment contracts, which is not the case for ministers of religion, who cannot be considered as employees of either Church or State.<sup>41</sup>

38 Loi du 24 juillet 2008 portant des dispositions diverses [07.08.2008] *M.B.*, 41186.

39 Husson (n 5) 150.

40 *ibid*.

41 Patrick De Pooter, *De rechtspositie van de erkende erediensten en levensbeschouwingen in Staat en maatschappij* (Larcier 2003) 316–18.



Furthermore, most ministers of religion 'have housing provided by local authorities and Catholic ministers can add an extra 50 per cent to their salary, if they are assigned to more than one parish'.<sup>42</sup>

Finally, Humanists argue that their delegates necessarily hold a university degree, i.e. higher than spiritual training.

In 2008, Humanist delegates' salaries cost the Belgian State €11 million and ministers of religions €90.7 million (including €81.2 for Catholic ministers, as in 1996).<sup>43</sup> Spread across the entire Belgian population, the cost is about €10 per capita.

### Pensions

Pensions for ministers of religion and Humanist delegates are paid by the Pensions Administration.

Pensions cost the federal State approximately €35.5 million each year.<sup>44</sup> This amount mainly goes to the Catholic Church, 'as other groups are either smaller and draw a limited number of pensions (Protestants, Anglicans, Jews) or are more recently recognized (Muslims, Orthodox Christians, Humanist organizations)'.<sup>45</sup> Spread across the Belgian population, this costs about €3 per capita.

### Local Establishments

Church councils (*fabriques d'églises*) receive money from the regions (approximately €7.9 million per year) and municipalities (approximately €100 million per year). The basis for this is anchored in Article 6, § 1, VIII, 6° of the Law of 8 August 1980 on institutional reforms. Spread across the Belgian population, the cost is about €10 per capita.

As has been mentioned, this funding is based on historical grounds, with Belgium perpetuating such a mechanism via the Law of 30 December 1809 on local establishments.<sup>46</sup>

It is important to underline that 'buildings dedicated 1. to religious services (such as churches, cathedrals, mosques, temples) and to presbyteries and 2. to supporting Humanism are free from property tax'.<sup>47</sup> It is worth noting that non-recognized religions *may also* benefit from this specific tax exemption.

42 Husson (n 5) 150.

43 *ibid.*

44 *ibid.*

45 *ibid.*

46 Caroline Sägeser, 'Les rapports entre l'Eglise et l'Etat au XIXe siècle: l'application de la Constitution de 1831' in Brigitte Basdevant-Gaudemet et al. (eds), *Le droit ecclésiastique en Europe et à ses marges (XVIII-XXe siècles)*, Symposium of Research Center Droit et Sociétés Religieuses, Université de Paris-Sud, 12-13 octobre 2007 (Peeters 2009) 38.

47 Husson (n 5) 153.

### Other Kinds of Funding

Several other types of funding can be identified.

Religious *radio and TV broadcasters* receive money from the French, Dutch and German communities – because of their legal competence in related matters. Currently, only Anglicanism and Islam do not benefit from this system.<sup>48</sup> Furthermore, 'in all three communities, airtime is allocated to religious and Humanist groups'.<sup>49</sup>

As far as *education* is concerned, the French and Flemish communities pay the salaries of teachers performing their duties in classes of religion and ethics. Those salaries were estimated at €290 million in 2000, 'of which 19.5 per cent are going to non-confessional ethics' teachers and 68.2 per cent to teachers of Catholic religion'.<sup>50</sup> Spread across the Belgian population, this costs about €30 per capita. But, as already said, it is unusual in Belgium to include the education budget in the debate on funding religions.

### Particular Tax Regime

Belgian Law organizes a special tax regime for goods and services of a religious nature. Here are several examples to illustrate this reality.

Firstly, religious communities – recognized or not – are exempt from property tax (*Code d'impôt sur les revenus*, Article 12).

Secondly, bodies with a religious aim are exempt from value-added tax (VAT) with regard to the services they provide and the goods they supply (*Code de la taxe sur la valeur ajoutée*, Article 44, § 2, 11°). This means that religious activities, such as marriages, baptisms, funerals, and religious ceremonies in general,<sup>51</sup> are exempt from VAT.

Thirdly, goods used for a community's religious activities cannot be seized by State authority (*Code judiciaire*, Article 1408, § 1, 4°).

### Global Evolution (2001–2008)

Between 2001 and 2008, the Catholic faith continued to be allocated a relatively high proportion of salaries in the Belgian State budget for *salaries* for religions and philosophies, but decreased from 84.1 per cent to 76.6 per cent. If we compare this to other kinds of support (mainly local buildings or churches), the drop is not so sharp – from 94 per cent to 89.2 per cent. The explanation is trivial: the falling number of priests has no influence on the number of buildings and churches to

48 Hasquin (n 2) 102.

49 Husson (n 5) 153.

50 *ibid.*

51 Frans Vanistendael, 'Financiering van religie' (2012) *Recht, Religie, Samenleving* 11.

Table 3.3 Public financing for recognized denominations in Belgium – synthetic distribution

Total million €	Global Support (2001 and 2008)		Catholic	Protestant	Anglican	Jewish	Orthodox	Islamic	Humanist
	2001	2008							
Salaries	91.5	106.0	84.1	2.7	0.27	0.66	0.93	0.66	10.7
			76.6	4.1	0.37	0.8	1.2	4.1	12.5
Other aid	192	178.4	94	1.5	0.08	0.27	0.24	0.1	4
			89.2	1.7	0.08	0.17	0.8	1.5	7.0

maintain. Moreover, older and less populated local Catholic communities have stable (or even increasing) fixed costs. This fact is very often pointed out in the political debate, especially by the municipalities, which have to partially contribute to building maintenance.

Another comparison between State support for Secular Humanism and Islam shows that the relative share allocated to Secular Humanism since 2002 has been increasing more rapidly than that of Islam since 1974. A first explanation is already clear – the difference in criteria for recognition of local communities: with no minimal number of members being requested from Secular Humanists, it is easier for this organization to receive growing support without any discussion about a potential growth in concrete member numbers. A second explanation relates to the difficulties Muslim communities have in organizing themselves so as to be able to select a unique representative as requested by the State, thereby enabling them to file applications for recognition of local communities.

### Must the Belgian System be Reformed?

The Belgian Church–State regime – in effect since 1831, with the only major difference being the admission of non-confessional organizations in 1993 – has never really been disputed. Apart from a tough political controversy in 1865 on the monitoring of local budgets, no important political debates had taken place before 1999. As mentioned above, after the recognition of Secular Humanism, political discussions were mainly devoted to the more objective issue of distribution between the different communities. To resolve that problem, a number of proposals were introduced to Parliament and some working groups were invited by the Minister of Justice to suggest some reforms.

It is also important to analyse the emergence of new questions and new issues, as far as religion is concerned.

#### *Reform Proposals by Members of Parliament*

Some authors and members of the Belgian Parliament have criticized the regime concerned with the funding of religious and non-confessional organizations. They have formulated some proposals to reform this regime, but none has ever been followed up by the legislator.

The most important of those proposals can be summarized as follows:

#### *Proposal to transform the regime into a secular state*

In recent years, several proposals were introduced to insert the principle of secularity (*laïcité*) into the Belgian Constitution.<sup>52</sup> Those proposals seemed to be inspired by

<sup>52</sup> Proposition de déclaration de révision de l'article 1er de la Constitution, en vue d'y inscrire le principe de la laïcité de l'Etat fédéral, Doc. parl., Sénat, sess. ord. 2008–2009,

the French Republican regime. In France, there is indeed a clear separation between Church and State. Article 1 of the French Constitution states that 'France shall be an indivisible, *secular*, democratic and social republic', but it is amazing that even these principled propositions were not aimed at ending the funding systems of religious and non-confessional organizations, but only at discouraging any mechanism of reasonable accommodation, particularly in favour of Islam.

Transforming the Belgian regime into such a secular State seems to be contrary to Belgium's aim: the Belgian State is characterized by neutrality, by mutual independence between Church and State and cannot be assimilated to the regime of the French Republic.

#### *Proposal to create a 'philosophically dedicated tax'*

At the end of 1998, some members of the Senate proposed that taxpayers would indicate in their tax form what religion or non-confessional organizations of their choice they wanted the State to subsidize using a part of the taxes they pay. Such a system would be inspired by the 'philosophically dedicated tax' – also called 'tax assignment' – in place in Italy and Spain.

This proposal was never adopted, probably for two main reasons (pointed out during the political debates). Firstly, it denies the principle of 'the right to respect for private and family life' (Constitution, Article 22), because believers would have to reveal their beliefs in a file which would be read by the public administration. Secondly, this proposition would be problematic for people who do not want to fund any religion or non-confessional organization.

#### *Proposal to organize a specific and regular referendum*

Some other proposals were inspired by the Secular Humanist Central Council and were aimed at organizing a kind of legal referendum to ask each citizen which religions or non-confessional organizations the State should fund. Every five years, the referendum results would have directly determined the funding allocation for each organization.

In Belgium, such a method is not allowed by the Constitution. Article 33 of the Belgian Constitution forbids using any plebiscite at regional or federal level, stating that 'all the powers emanate from the Constitution'. It is only authorized at local level (provinces and municipalities). No revision of the Constitution has ever been proposed to repeal this prohibition.

#### *Proposals of reform by expert workgroups*

Two successive Ministers of Justice appointed their own expert workgroups in 2005 and 2008 in order to proceed with an overall scientific analysis of the funding system.

No. 4–782/1, and Proposition de déclaration de révision de l'article 1er de la Constitution, en vue d'y inscrire le principe de la laïcité de l'Etat fédéral, Doc. parl., Sénat, sess. ord. 2006–2007, no. 3–2134/1.

*The first workgroup: The mission of the first workgroup (2005) was to establish the main principles and weaknesses of the funding system. The final report recommended continuing the system, but also eliminating all forms of discrimination through greater transparency of recognition criteria and legal controls* Besides a number of technical improvements, two main issues were addressed by the report:<sup>53</sup> (a) how to impose additional duties on subsidized churches – in terms of democratic training for ministers, internal programmes on non-discrimination and churches' greater loyalty to human rights (and especially due process in internal procedures); (b) how to reconcile these new requirements with the constitutional and international guarantees of Church autonomy. The report considered that a specific public funding programme could justify specific duties being imposed on subsidized churches, both in terms of special training and in terms of respecting due process requirements.

The report also suggested new methodology in order to improve the fairness of funding each religion and non-confessional organization: conducting a sociological survey of the level of religiosity and religious practice of the population. This proposal was different from the previous proposals on mechanical computation of individual wishes of taxpayers or voters. The new objectivity test would not be based on individual wishes, but on actual practices and religiosity. The State would be required to organize such a survey through objective and anonymous inter-university research, conducted every five or ten years and, afterwards, take the results into account when allocating funds. This survey would have no direct or mechanical effects on the budget allocation, but should be taken into account by the Government through specifically justifying and explaining the reasons for increasing or decreasing relative allocations for each religion or non-confessional organization.

*The second workgroup: The mission of the second workgroup, appointed by another Minister of Justice, was to review and to implement the report of the first workgroup and to propose concrete solutions to improve the system* Published in February 2011, the report by this inter-university workgroup recommended that the legislator create a special procedure to recognize new religions.<sup>54</sup> First, there would be a largely open procedure of *registration*, and then a successive procedure of *recognition*, opening the door to some State support. This step-by-step procedure would bring transparency to religions and non-confessional organizations and to

53 Marie-Françoise Rigaux et al., *Le financement par l'Etat fédéral des ministres des cultes et des délégués du Conseil central laïc*, Rapport de la Commission des Sages à la demande de la Ministre de la Justice Laurette Onkelinx (2006).

54 Léon-Louis Christians et al., *Rapport du groupe de travail interuniversitaire chargé de la réforme de la législation sur les cultes et sur les organisations philosophiques non confessionnelles au nom du Ministre de la Justice Stefaan De Clerck* (2011) <<http://belgianlawreligion.unblog.fr/2012/04/05/rapport-sur-le-regime-des-cultes/>> accessed 15 August 2014.

the public. This workgroup has also proposed some adaptations of Articles 19, 21, 24 and 181 of the Belgian Constitution to make them more precise in respect of conflicts between human rights, such as Church autonomy *versus* due process.

Besides a number of technical improvements, the main principles included in the first report have been accepted. The second report confirmed regular inter-university sociological surveys as a better tool for improving the objectivity and transparency of the system. The scope of this survey was more precisely defined in order to combine different kinds of approaches: items should address three types of questions: (a) on individual beliefs and belonging – ‘How do you identify yourself? As a member of a religion, a world view, or nothing at all?’ (b) On Church attendance and concrete contact with religious or non-confessional spiritual counselling services – ‘Do you do this in practice?’ (c) On individual wishes for the allocation of public funding – ‘Which world view should be supported by the State?’<sup>55</sup>

The proposal to limit the effects of the surveys to only *indirect* effects was also confirmed: the Government would only have to take into account and justify its decisions by discussing the results of the survey. To implement the objectivity of this procedure, the second report suggested the creation of a new inter-denominational advisory board whose mission would be to prepare a first, thoughtful analysis of the survey results and to put forward some advice to the Government about the objectivity and normative consequences of these surveys. The composition of this advisory board would include church and non-confessional representatives, civil servants, university professors and international experts. This board would have to work by consensus and not through a formal decision-making procedure.

Another proposal suggested by the first workgroup has also been retained and improved. Up to now, for each recognized local community, the number and level of salaries is determined by the recognition decision (for example, one curate and three vicars). The system is not very flexible. Both reports suggested that religious authorities might be allowed to manage local human resources more autonomously. Moreover, it is suggested that, in the Belgian Ecclesiastical Salaries Act, descriptors for different religious functions should be modified: up to now, the religious vocabulary used to describe each religious function was inscribed in the law itself (bishop, priest, rabbi, imam, and so on). The proposal is to limit the law to the indication of anonymous scales (A1, B2...).

55 For the Belgian political philosophers, Leni Franken et al., ‘Is Active State Support for Religions and Worldviews Compatible with the Liberal Idea of State Neutrality? A Critical Analysis of the Belgian Case’ (2012) *Journal of Church and State*, first published online 25 April 2012, the proposed survey should, besides the three questions mentioned above, ‘contain another more fundamental question: “Do you think worldviews should be supported by Government?” This question is needed because the State’s choice for a system of active support for worldviews is already a non-neutral choice. Therefore, citizens should also be able to decide whether they actually are in favour of such a system or not. A neutral, liberal state can only support specific options if civil society is in favour of support’.

A last important point from a non-discriminatory perspective was to address the legal status of religious or non-confessional duties of ministers and delegates paid for by the State. Up to now, delegates of non-confessional organizations were appointed as employees on a contractual basis, while religious ministers were always considered as holding a ‘*sui generis*’ public office. The second workgroup’s report finally suggested that labour law would presumably be applied, but only if religious authorities refrained from choosing an alternative solution and another way to guarantee minimal social rights for their ministers or delegates.

### *New Religious Issues*

As underlined by many authors, ‘globally, despite the fact that Belgium has long been a predominantly religious Catholic country, the system has proven able to adapt itself by recognizing “new” religions, Humanism and recently Buddhism’.<sup>56</sup>

However, new issues concerning the funding of religious and non-confessional organizations have recently come to light. Nowadays,

it seems that any current policy regarding religious and non-confessional communities should include debate on public order questions (which may concern some religious communities as well as new religious movements and sects), uneven availability of resources among communities, fair treatment of religious and/or philosophical communities, demands from the population in terms of religious/moral assistance, women’s status as ministers of religion and the large, crucial and difficult question of equality.<sup>57</sup>

It is also striking to see that the status of women (for example, Catholic parish assistant) remains worse than the status of the priests. Still based on the nineteenth-century figure of the Catholic priest (man), Belgian legislation needs to be adapted to principles of non-discrimination.

Recognizing Humanist organizations also raises unresolved questions. Many difficulties are due to the attempt to address ‘specific questions of comparability with religious communities, the latter already having differences in practices among them’.<sup>58</sup>

While Economist Jean-François Husson underlines that ‘financial instrument analysis and evaluation, *ex ante* and *ex post*, appears crucial in getting a balanced, legitimate and efficient system’,<sup>59</sup> social recognition issues, perhaps apparently more symbolic, seem to be decisive for tomorrow. If public policies on funding religions continue to reinforce the conditions for entry into the system, the use of private funding will expand, with new, even greater problems.

56 Husson (n 5) 162. See also Franken et al. (n 55) 19.

57 Husson (n 5) 162.

58 *ibid.*

59 *ibid.*

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