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Religions and Prisons in Belgian Law

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Summary

A major change has occurred in Belgium, like in other European countries. Religion and Prison legal practice and literature are less and less focused on individual religious freedom (of inmates). Instead, they are oriented as addressing radicalization issues and providing some specific tools for “deradicalization”. Islam, instead of Christianity, has become the main religion to be dealt with in prison administration and correlated case law. However, emphasis is no more only on individual, even radicalized, prisoners. A new importance is given to the figure of Muslim chaplains. Their ability to communicate with the (even radicalized) inmates, and to transform them, becomes primary again for the public authorities. The (control of the) training of the chaplains has become one of the major issue for the Government. All religious accommodations are now re-read against this security background.

Introduction

In Belgium, the regulation of religion in prison has deeply changed over the past twenty years. Two major challenges have emerged: the first is the growing number of Muslim prisoners in Belgian prisons; the second is the question of the radicalization of some of these detainees. The terrorist events in Europe and Belgium have exacerbated these two challenges, which in turn have had repercussions on the prison regulation applied to all religions. The increase in the number of Islamic ‘chaplains’ led to a regression in the number of Catholic chaplains. The strengthening of the security rules has been done in a transversal and “non-discriminatory” way, which uniformly affects all religions. Free access to cells, formerly usual for Catholic chaplains, is today subject to strict limitations through individual and ad hoc authorizations for all religions. Food and other accommodations are now re-read against this security background more than in the context of international religious freedom requirements. Religious issues are no more really about religion.

Freedom of religion in prisons: legal aspects

Since January 12th 2005, Belgium has adopted a Law on Principles of prison administration and the legal

status of prisoners¹: the so-called “Dupont Law”. Before, there used to be a royal decree from 21st May 1965 bearing on the general rules of procedure², as well as a multiplicity of ministerial circulars, for penal institutions. In its current state of affairs, Belgian penal law still regards the royal decree of 21st May as applicable inasmuch as the exhaustive list of articles foreseen by the new law haven't entered into force yet due to political, social and budgetary difficulties. This legislative latency illustrates the difficulty of implementing principles, be it from a political or budgetary and organisational point of view.

Up until 2005, prisoners were invited, upon their entry into prison, to declare the religious services they wished for if any (it was not mandatory); these declarations consigned in a registrar were made available to chaplains, according to the so called “religious ticket” system³. This is no longer the case. The prisoner can only contact one or more chaplains according to his wishes, by reiterating sporadic requests. The “religious ticket” system had already been severally criticised in the final report of the reforming commission “Law on Principles of prison administration and the legal status of prisoners”, which “wondered rightly whether such practice weren't contrary to article 8 of the European Convention on Human Rights, that guarantees the right to privacy (..) In the framework of the standardisation principle (= in society as a whole) and by reference to the existing pluralism in a free society, it seems fair to give up the religious ticket system and offer the prisoner the freedom to express his/her wish for consulting at any point in time, either a chaplain or any moral counsellor of his choice. Just like in normal life you may simultaneously be in contact with several religious or philosophical trends, without necessarily excluding yourself from an interest in a totally opposite direction”⁴.

As far as the practice of religious freedom in jail is concerned, article 71 of the Law on Principles stipulates that “the prisoner has the right to live and practice in accordance with his religion or philosophy individually or communitarily, within the limiting respect of that others' same right” and that he is entitled to religious, spiritual or moral assistance from a representative of his religion or philosophy, detached to the prison to that avail.”

Article 74 for its part, guarantees in its first paragraph, that “[1]the prisoner is entitled to take part without restriction and according to the exercise of his own free will, in the religious or common activities thereto related, as well as encounters and activities organised by the moral counsellors.” In a second paragraph, it is seen to that “[1]the prisoner communicates to the chaplain (that is counsellors belonging to recognised denominations) or to the moral counsellor, his intention to take part in the activities mentioned in §1, and is

¹ *M.B.*, February, 1st 2005, p. 2815.

² *M.B.*, May, 25 1965, p. 6272.

³ Formerly defined in a Royal Decree, May 21st, 1965, article 16 (abrogated).

⁴ Final Report, Commission « loi de principe concernant l'administration pénitentiaire et le statut juridique des détenus », *Doc. parl.*, Ch. Repr., sess. ord. 2000-2001, n°50-1076/1, p. 146.

authorised to do so, as long as he commits to abiding by the conditions of order, dignity and tolerance unalienable from these activities.” Article 74 further specifies that “the organisation of common activities in the context of a non-denominational religion or philosophy can be subject to concertation in the sense of article 7. In which case, the chaplains (counsellors from recognised denominations) or moral counsellor should be associated in this consultation process”⁵. Finally article 74, §4, arranges for a special place dedicated to worship-related activities “meeting the prisoner's right to live and practice freely his religion or philosophy” to be fitted in every prison.

The Law on Principles also looks after the prisoners' nutrition by enouncing in its article 42 that “[1]food should be sufficient in quantity, respect the modern sanitary standards and, if need be, take into account his state of health”. A collective letter from the general management of Correctional Establishments (SPF Justice) n°107 of 16th June 2011 accompanying the entry into force of this text completes its interpretation by stating that, “[1]freedom of religion includes the observance of related dietary rules; this implies that the administration should, within reasonable limits, take the necessary dispositions enabling prisoners to respect this aspect of their practice. The term reasonable is to be assessed with respect to the need to acquire specific ingredients, prepare or serve them in a particular way without obstructing the smooth organisation of the penitentiary establishment”.

Furthermore, article 87 of the ministerial decree of 12th July 1971 on general instructions for penitentiary establishments, as modified by the ministerial decree of 15th April 2002, prescribes that “[if] their convictions demand it, the prisoners shall receive meals meeting the requirements of their religion, as long as these need not be prepared according to ritual forms, and are of the same general standard as those served to other prisoners”; secondly, “[if] required by their religious convictions, the prisoners receive their meals at other times than the normal ones on request”; thirdly “[if] required by their religious convictions the prisoners may have their meals prepared according to ritual forms and delivered externally. These meals would be delivered through the intercession of the chaplains or Islamic counsellors, and should be of the same general standard as those provided to all other prisoners. The financial contribution of the Treasury for these meals may not exceed the maximum daily rate fixated for prisoners' food by specific instructions”; and fourthly, “[if] required by their religious convictions and not compromising the order and security of the establishment, prisoners may keep on demand some worship-related objects in their cells. Treasury does not intervene for that”.

According to an extensive field study carried out by Divine Uwiwese in 2014, “in the current state of

⁵ Art. 7 : « [i]n each prison, we will try to establish a climate of consultation. To this end, a consultation body will be set up in each prison to enable prisoners to express themselves on issues of Community interest for which they can contribute”.

Belgian Law, prisoners are given the choice between a pork-free diet or one “with pork”. On the other hand, in some penal institutions, prisoners are given the option to buy meals at the canteen, befitting their religion related dietary constraints. Two out of three establishments we visited had a canteen with halal as well as vegetarian menus. On the other hand, the “*Consistoire Central Israélite*” of Belgium which represents the Jewish penitentiary community of rabbis, cooperates closely with Belgian penal institutions. Some Jewish prisoners would indeed register for *kosher* meals on entry; and the management would then resort to the *Consistoire Central Israélite* to provide for their meals as prescribed by Jewish principles, according to §3 of article 87[...]. During the fasting period of Ramadan, some prisons even accommodate their timetable and distribute the food in the evenings to fasting prisoners, still according to article 87 §3. Others provide their prisoners with cooking rings so as to allow them to eat their meals after sunset. We can attest that allowance is indeed made for the Ramadan’s orchestration in Belgian prisons. Despite the carceral living conditions (of promiscuity, over population etc.), it can be said that the religious practice retains a prominent role in the prisoners’ life”⁶.

It should also be added that prisoners belonging to a non-state-recognised religion are no less authorised by penitentiary managers to practice their religion including in terms of dietary and fasting constraints⁷.

Regime of state-recognised religions in prison: the prison chaplains' status

The regime for state-recognised religions applies to prison chaplains⁸: each recognised religious authority has the right to suggest the appointment of a fixed number of chaplains, in a proportional way defined by the law for each recognised religion. A public legal framework ensues therefrom in terms of heads of religious designations: Catholic chaplains are distinguished from the Protestant, Orthodox, Jewish, Muslim respectively counsellors or chaplains, and from lay humanist counsellors too.

The specific legal status of prison chaplains (social security, holiday, healthcare, unemployment and pensions etc..) has been subject to arduous negotiations for about a decade, particularly due to challenges posed by the Islamic religion (national languages capacity, specific training, security issues, representativity of all Belgian Islamic communities by national origin, etc.). For instance, since 2007, chaplains have lost their free access to cell keys; except on ad hoc requests.

The non-recognised religious advisors used to enjoy intermediate rights until the law of 2006 of 20th July,

⁶ D. UWIZEYE, *La liberté de religion en prison : les droits du détenu*, Louvain-la-Neuve, Faculté de droit et de criminologie, Université catholique de Louvain, Master Thesis, Dir. L.-L. Christians, 2014, 149 pp.

⁷ A.M. du 12 juillet 1971 portant instructions générales pour les établissements pénitentiaires, *M.B.*, Aug. 10th, 1971, art. 91.

⁸ Loi du 4 mars 1870 sur le temporel du culte, *M.B.*, March, 9th 1870.

bearing on miscellaneous⁹, which included the abandon of a principle stemming from European recommendation “for reasons of security in order to ensure a protection against potential sectarian actions”¹⁰. They are now covered only by ordinary law for routine visits: with a visiting right restricted to the parlour room.

Number of chaplains and volunteers

There are 64 equivalent full-time chaplains or counsellors for 11,000 prisoners.

Article 72, §1 of the Law on Principles of 12th January 2005 stipulates that “chaplains and counsellors belonging to recognised denominations as well as moral counsellors from organisations in charge of non-denominational moral services recognised by law, should be appointed in prisons according to rules to be determined by the King.”

A royal decree determining the framework in which chaplains and Islamic or moral counsellors should operate in prisons as well as their salary scales was first adopted on 25th October 2005. According to article 1 of this decree, chaplains nominations worked out as follows: one chief chaplain for 24 chaplains of the Catholic church; one chief Islamic counsellor for 17 Islamic counsellors in the Islamic religion; 9 moral counsellors of non-denominational philosophy; 6 chaplains for the Protestant religion; 4 chaplains representing the Orthodox religion; 2 for the Jewish religion; 1 for the Anglican church. Article 2 of this royal decree of 25th October 2005 specifies that “only full-time equivalents are referred to in article 1 of this law”. However, certain chaplain services have opted for an increase in the numbers fixated by this legal framework, cutting down on their full-time equivalent. Such is the case for the Catholic, Protestant or Evangelical as well as lay non-religious philosophical organisations (Belgian Humanist Association).

On 11 March 2015, following the attack on the Jewish museum in Brussels of May 2014, the Minister of Justice adopted an action-plan against radicalism in prisons. Among the ten measures foreseen by this plan, the need for increasing the number of religious representatives in prisons was listed. The royal decree of 25th October 2005 was modified by a new royal decree of 10th April 2016; article 1 of which applies the following full-time equivalent appointment ventilation henceforth: one chief Catholic chaplain and 24 chaplains for the Catholic religion; 9 for the Protestant religion; one head Islamic counsellor for the Islamic religion and 26 Islamic counsellors; 5 Orthodox chaplains; 2 Jewish counsellors; 2 Anglican counsellors; 9 moral counsellors for the organised secularism. In other words, four denominations saw the number of their representatives in prisons raise: namely the Protestant one going from 6 to 9 full-time equivalent chaplains;

⁹ *M.B.*, July 28th 2006.

¹⁰ *Doc. parl.*, Ch. repr., projet de loi portant des dispositions diverses, sess. ord. 2005-2006, n° 1 2518/001, p. 44.

the Orthodox denomination with 4 to 5 chaplains; the Anglican with 1 to 2 and the Islamic denomination with 17 to 24 counsellors ¹¹.

In its annual report, the general management of penitentiary establishments gives a, overview of all staff working in Belgian establishments. The last of such reports dates back to the year 2015 and was released in June 2016. Religions represent a total of 106 members of staff corresponding to 59.05 full-time equivalents¹².

Inside prisons, volunteers work alongside with the chaplains or designated counsellors. These volunteers represent an essential support, all the more so that in the framework of the royal decree of 25th October 2005, chaplains and religious advisors are not allowed to serve in all French and Dutch-speaking prisons of the country, both totalling since 2009 more or less a stable amount of 11,000 prisoners - whose religious convictions are no longer registered since 2005¹³. Some members of the Parliament interested in the number and proportion of Muslim prisoners regularly ask indirect questions to the Minister on the number of halal menus available to prisoners in order to better evaluate the proportion of Muslim prisoners. The Minister of Justice gave the Parliament on 14th January 2011 the following reply:

“1. Not every penitentiary institution has a halal menu to offer. Among those offering it, the percentage of halal menus served differs according to establishments and their present population. This percentage varies between 20 and 60%. Moreover, certain prisons only offer occasional halal menus (during Ramadan for instance)” ¹⁴.

In her field study, Divine Uwiwese reports that as far as she is concerned, on 28th June 2014, 212 prisoners out of 616 declared they were observing Ramadan in the prison of Forest (which is the largest one in Brussels)”.

On 13th February 2009, the Minister of Justice had also provided a reply listing the nationalities represented in prison population:

“1. The average daily population for 2008 was of 9,890.6 prisoners. 2. in 2008, 57.6% of prisoners on average possessed the Belgian nationality; including those naturalised Belgian or possessing a double nationality, who are not kept on separate registers of the DG EPI. On average, 10.7% of prisoners had the

¹¹ Royal Decree April, 10th 2016 « modifiant l'arrêté royal du 25 octobre 2005 fixant le cadre des aumôniers et des conseillers islamiques appartenant à l'un des cultes reconnus ainsi que des conseillers moraux de philosophie non confessionnel du conseil central laïque auprès des établissements pénitentiaires et fixant leurs échelles de traitement », *M.B.*, April 19th, 2016, art 1.

¹² Department of Justice, Direction générale des Établissements pénitentiaires, Annual Report, 2015, p. 51, http://justice.belgium.be/sites/default/files/2016-06_epi_rapport_annuel_2015_fr.pdf

¹³ See <http://statbel.fgov.be/fr/statistiques/chiffres/population/autres/detenu/>

¹⁴ *Bull. Q.R.*, 53 – 013 (2010), n° 0128, p. 53.

Moroccan nationality; 4.7% of them the Algerian; 2% the Turkish nationality; 1.1% the Congolese; 0.7% the Russian; 0.1% the American; 0.1% the Chinese; 0.6% the Indian nationality. It is hardly possible to reflect faithfully which one is the inmates' mother tongue. And, since the Law on Principles, it is no longer possible to hold statistics on the religions practised by each prisoner in the databases”¹⁵.

Rules of conduct for chaplains

Article 73,§1 of the Law on Principles foresees that [chaplains and counsellors] ”have the right to pay a visit within the living zone of the prisoners who apply for it, and to correspond freely inside the prison's walls with them without any check. Within limits set by security they meet the prisoners who so wish and prioritarily the prisoners who were confined following a particular security arrangement, an individual regime or a disciplinary sanction”. The second paragraph of article 73 reads that chaplains, counsellors from recognised denominations as well as moral counsellors from recognised organisations “enjoy the use of an appropriate space for receiving the prisoners, contriving a confidentiality propitious atmosphere”.

The royal decree of 21st May 1965 bearing as general rules of procedures for penitentiary establishments¹⁶, and the ministerial decree of 12th July 1971 bearing as general instructions of procedure for penitentiary establishments¹⁷, list a series of behavioral rules, which chaplains and prison counsellors have to obey. Article 44 of the general ROP stipulates that “the religious ministers and moral counsellors should refrain from mixing political allusions with the instructions they provide, or from personal appreciations on the opinions or behaviours of the administrative agents”. Besides, article 48 forbids, among others, chaplains and prison counsellors to “reveal facts that they would have been made aware of on account of their function; and they remain liable to this interdiction after being discharged”, “to accept on account of their function, gifts, gratifications or any sort or perks excepting the retribution, allocations or indemnities paid to them by the Treasury”, “to infiltrate in the establishment alcohol, spirits or any nefarious products”, “to promise the prisoners any pardon, sentence reduction, parole or other favorable measures”, “to influence the prisoners in their choice of legal adviser or counsellors” [..] In other words, they are bound by professional secrecy.

Chaplains and counsellors can organise community-based activities or common celebrations once a week in any priorly warned establishment. The enquiry carried out in 2014 by Divine Uwiwese shows for example in the case of the Forest prison of Brussels, religious and community activities organised as follows: Tuesday is dedicated to the Anglican denomination, Wednesday to the Protestant denomination, Thursday

¹⁵ *Bull. Q.R.*, 52- 062 (2009), p. 273.

¹⁶ *M.B.*, May 25th 1965.

¹⁷ *M.B.*, 10 août 1971.

to the Islamic denomination, Saturday or Sunday to the Catholic denomination, etc.

On top of that, article 80 of the general instructions for penitentiary establishments sees to it, that “unless the security and order of the establishment run the risk of being compromised, the director allows third parties to take part in masses or non-denominational celebrations”. Divine Uwiwese observed that in most penitentiary establishments, the worship room has a maximum number of seatings allowed, for security reasons. She explains on this account, that “limitations range from 15 to 40 prisoners per religious or community service. Due to the fear of agents that gatherings in the place of worship could be the kick-off point for fomented movements, management usually limit the number of participants to a community-based worship activity. Prisons being over-populated, the surveillance staff does indeed apprehend inmates' potentially harmful movements against the order and security of the establishment. That is why from an attendance of 30 prisoners upwards, security setup is usually reinforced; a minimum of two, rather than a single agent, are necessary for escorting and looking after the group; and if the number of required agents cannot be made available, worship or activities are suspended. Our observers also stressed the lack of surveillance staff, which accounts for the fairly frequent suppression of those activities.”

Last, management must organise at least once a year a concertation meeting with the denominations and the recognised non-denominational organisations' representatives¹⁸.

Ongoing debates

Besides the recurrent debates on prison overpopulation (11,000 actual prisoners for an official capacity of 9,000), and the slow but discreet negotiations concerning the chaplains' status, it is essentially Islam which finds itself in the limelight of political attention and of the media. Four debates are at stake respectively on : (a) the proportion of Muslims among the prisoners (cfr supra), (b) prison security issues during Ramadan, (c) proselitism and radicalisation of the Muslim prisoners in prison, as well as (d) the specific roles and training of licensed Islamic counsellors or imams.

On 18th November 2013 the Minister of Justice instructed the Parliament as follows:

“It is true that during Ramadan some Muslim prisoners prayed in the covered courtyard. These particular Muslims are prisoners with no record or trace of possible Salafist radicalisation trend. The reason they were allowed to pray there is simply that at the hour of the last prayer of their daily ritual, their timetable placed them at this place. The “leader” described in the article is unknown to us; no prisoner matches his physical description. Thus, there are no exacerbated tensions. The director of the Mons prison summoned the

¹⁸ See a circular by the Directeur général EPI : « Cultes et conditions de travail ».

prisoners to let them know that the covered courtyard was meant to be a recreation place and not a place of worship for any confession. The message came across. The director had asked for pictures to be taken in order to identify the prisoners who were praying. In his annual reports of 2010 & 2011, State security services indicated that there was no major reason for concern in terms of fundamentalism throughout the various Belgian penitentiary establishments, apart from a few exceptions connected to individuals rather than groups. This being said, we must remain vigilant. Prison population is indeed a vulnerable population, some elements of which are, under certain circumstances, at risk of surrendering to radicalisation opportunities. Over the last years, due among others to a number of legal actions, the proportion of prisoners held on the basis of terrorism has increased, which does require further measures on our behalf, inasmuch as these prisoners may exert a certain fascination in the eyes of younger inmates. The penitentiary administration and local managements are aware of this risk and do take the necessary measures whenever appropriate, by applying specific detention regimes for instance. Training and sensitisation campaigns to this issue are also organised. Besides operational initiatives in the prisons themselves, limiting contacts between prisoners and potential recruiters, a cooperation protocol between the State security services and the general management of penitentiary establishments has been concluded, whose purpose it is to facilitate exchanges both ways. State security is also activated within Plan R, involving concertation with different partners on this phenomenon. Plan R for radicalisation, is coordinated with the OCAM (Body coordinating the Threat's Analysis), and has been approved by the ministerial commission for intelligence and security (CMRS). The process was launched in 2007 with the training and sensitisation of penitentiary staff on the issue of radicalisation among prison populations. This subject was also at the heart of a permanent concertation process with European partners (from intelligence departments and others) in order to draw lessons from everyone's initiatives in this field. The situation is therefore being carefully monitored by every stakeholder”¹⁹.

A few months later, inside the Justice commission of 3rd December 2014, the Minister of Justice declared this time:

“Mr Chairman, in the light of the present circumstances, there are radicalisation risks. These last years, due to various judiciary actions, the number of prisoners held on terrorism-related grounds has risen. This requires a specific attention on your behalf, given the aura enjoyed by the latter in the eyes of several younger inmates. The penitentiary administration and local managements are well aware of this risk and do take the necessary measures wherever appropriate, by applying specific detention regimes. Training and sensitisation campaigns to this issue are also organised. Besides operational initiatives in the prisons themselves limiting contacts between prisoners and potential recruiters, a cooperation protocol between the

¹⁹ Ch. Repr., *Bull. Q.R.*, 53 - B131, n°1059.

State security services and the general management of penitentiary establishments has been concluded, whose purpose it is to facilitate exchanges both ways. State security is also activated within Plan R, involving concertation with different partners on this phenomenon. Plan R -for radicalisation-, where concertation is carried out with various partners touched by the same phenomenon. The plan was approved by the ministerial committee of intelligence and security. The process was launched in 2007 with the training and sensitisation of penitentiary staff on the issue of radicalisation among prison populations. The Ministry of Justice will pay due attention to it, in accordance with the governmental agreement. This topic also lies at the heart of a permanent concertation process with European partners, in order to draw the lessons from everyone's initiatives in this field. Furthermore, let me refer you to the governmental agreement which foresees that intelligence services and the OCAM take a particular interest in the radicalisation phenomenon inside prisons. To that avail, a solution shall be sought, including among others in the framework of the “prison masterplan”. Thus, attention is paid to the situation with due diligence by all stakeholders”.

On 12th January 2015, the Minister of Justice Koen Geens proclaimed his intention to “plan a *smart distribution* of prisoners across the various prisons in the country, according to their respective radicalisation risks, thereby planning to resort increasingly to Islamic counsellors”.

Furthermore, after the *Charlie Hebdo* attacks in France, the Minister acknowledged that certain people came out of prison converted to a more fundamental religious trend than they had entered it, as secular people or non-fundamentalists. According to the Minister, Islamic counsellors have a crucial role to play inside prisons to fight radicalisation. In his action-plan of 11th March 2015 to cut down fundamentalism inside prisons, he therefore planned an increase in the number of Islamic counsellors. When the royal decree of 10th April 2016 was adopted, Islamic denomination shot up from 17 to 24 chaplains or full-time equivalents²⁰.

Besides this increase, the Geens plan against fundamentalism in prisons structures itself around four major pillars. The main one concerns prisoners likely to opt for a fundamental path or those condemned for terrorist acts without being deemed potential recruiters as such. The idea is to let them evolve in a “normal” environment, but monitor them individually or with Islamic counsellors. The most worrisome category - of those capable of attracting others into the jihadist vocation - are jailed in a specific section dedicated to them in prison. One of such sections will be created in Ittre (26 places) and another one in Bruges (16 places). They are not to be considered high-security zones but rather sections where personal accompaniment is to be

²⁰ Royal Decree April 10th 2016 « modifiant l'arrêté royal du 25 octobre 2005 fixant le cadre des aumôniers et des conseillers islamiques appartenant à l'un des cultes reconnus ainsi que des conseillers moraux de philosophie non confessionnel du conseil central laïque auprès des établissements pénitentiaires et fixant leurs échelles de traitement », *M.B.*, April 19th 2016, art 1^{er}.

more “targeted”. As for prisoners suspected of fomenting terrorist acts, they shall be detained in maximum security cells.

In practice, reminds us researcher François Xavier, after analysing the last circulatoires of April 2016²¹, the prisoners considered to have a link with “radicalisation” or “fundamentalism” are put into one of four categories by administrative authorities. The first one (category A for “terrorists”) groups “all prisoners who are defendants, sentenced or interned for deeds relating to terrorism”; the second (category B for said “assimilated”) one, is for “prisoners who have a clear link to terrorism on their commitment order and/or who, by their acts or words display their belonging to a group of violent fundamentalists”; the third one (category C) covers prisoners deemed “foreign terrorist fighters” and the fourth one (category D) concerns prisoners “who show radicalisation signs or present the risk of radicalising other prisoners”.

In addition to this, members of prison staff are prepared for the detection of radicalisation through their basic training for new recruits, or through e-learning courses for agents already in place. Finally, the last major pillar of the Geens plan against radicalisation in prisons aims at optimising contacts between the penitentiary establishments.

It should also be noted that the issue of training Muslim ministers and religious counsellors has recurrently come to the fore over many years. Various initiatives have been taken since 2001. A parliamentary exchange of 25th April 2007 between a deputy and the then Minister of Justice clearly reflects the stakes and obstacles:

Parliamentary question:

“Mrs Chairman, Minister, in 2000, the Muslim Executive for Belgium (EMB) organised in collaboration with the federal government, a four-month long training destined to Muslim chaplains. The application conditions are quite strict: an A2 level degree and five years of residence on Belgian territory are, among others, required. Candidates should also pay a 25€ subscription. The training is organised in direct collaboration with prison managements. Criminology, law, human and religious sciences classes are provided as well as miscellaneous curricula. Out of 50 candidates, 18 passed the examination. This training cost about 20,000 €. After being screened by the State Security services, about 15 out of the lot met the criteria to be appointed prison chaplains on 4th November 2000. By the end of March 2007, Brahim Bouhna, chairman of the general assembly of the Belgian Muslims (EMB) released to the press the list of the 24 chaplain names, appointed by the Ministry of Justice and paid by the Treasury. Only one name matched

²¹ Instructions, « Directeur général de la direction générale des Etablissements pénitentiaires, le 23 janvier 2015, le 2 avril 2015 et en avril 2016 aux directions des prisons », cited by Fr. XAVIER, « Le radicalisme en prison », Droit belge & culte, Blog de la Chaire de droit et religion de l’UCL, April 17th 2017, <http://ojurel.be/2017/04/17/le-radicalisme-en-prison/>

the list of graduates. No explanation was given to the remaining graduates. The 24 chaplains were meant to follow a further training after their appointment. Two conditions were added for recruitment: the recommendation letter, already required in 2000, must now come from a mosque, and cumulative mandates are now forbidden. The rules seemed to change abruptly. The disallowed graduates tell us however that a vast majority of the chosen chaplains nonetheless cumulate many functions on the one hand, and on the other hand that some of the chosen chaplains are religion teachers who failed graduation for lack of language proficiency. If all of this is indeed the case, Minister, one can only marvel at this new example of bad governance from the head of the Belgian Muslim Executive's chief who, after cashing in subscription rights, will have monopolised the time of dozens of applicants and public services, taking part in that training, for nearly four months. This Muslim Executive Council seems oblivious to the continuity principle in public affairs management matters. Indeed, it is not because an executive changes that it has a right to make close-cropped table of the sum of previous commitments taken by the previous executive before a number of people or institutions. Are you able to confirm to me that the 2000 examination graduates were excluded from the list put forward by the EMB for the chaplain offices' list in a legal way?"

Answer from Madam the Minister of Justice:

"[...]I consider all religious and non-denominational philosophies on an equal plane. By virtue of the separation of powers between the State and the recognised denominations, I cannot interfere with the internal organisation of these denominations and this includes the choice of persons assuming the roles of chaplains in prisons. The Belgian Muslim Executive has, just like the other recognised religions and secular movements, put forward to me a list of applications for the chaplaincy and after security check, I appointed the suggested people who had obtained a security accreditation"²².

To try and find a solution to the training of Islamic ministers and counsellors²³, we should take note of the fact that the government of the Belgian French Community has created in 2015 a committee meant to focus on the "training of Muslim religious executives and licensed programs". It was set up on 18th March 2015 and drafted its report on 4th December 2015. In its report, the Committee emphasises how "paramount and urgent it is to reinforce the training measures for Muslim religious executives " and that these should be understood in the broadest sense, including: "imams, male and female preachers, professors, Islamic prison counsellors, army members, hospital staff, and youth protection public institutions as well as

²² CRIV 51 COM 1290 25/04/2007, Commission Justice Chambre, Moslim executieve van België, nr. 15192.

²³ See S. WATTIER, *Le financement public des cultes et des organisations philosophiques non confessionnelles. Analyse de constitutionnalité et de conventionnalité*, Bruxelles, Bruylant, 2016: 377-389.

socio-cultural actors or Muslim intellectuals”²⁴.

Once this report handed in, eight concrete proposals were adopted by the Minister of Superior Education and Media of the French Community, in order to create a “Belgian Islam”. One of these proposals aims specifically at prison counsellors, as it deals with “the organisation of theological and/or societal trainings for moral counsellors intervening in penitentiary environments [...]”²⁵ These eight concrete proposals are both for short and mid-term horizons: half a million budget's worth has been allotted by the French Community to reach them.

The Ministry of Superior Education and Media insisted that “it is about ensuring that the development of a modern Islam in the Wallonia-Brussels Federation, enshrines itself within the respect of the democratic values of tolerance, freedom, equality and free will. It is in this mindset that the training of religious leaders should be framed. It will in the long run be useful to all religious ministers, chaplains, educators and professors alike”. He also claimed to have been fully convinced, since long ago and well before the Paris and Copenhagen attacks, of the need to reach for a “Belgian- and European type of Islam, not an imported one”. He intends to explain his approach to the Moroccan and Turkish Ambassadors in Belgium, whose support is sought: “the ambition is to allow the second and third generations as well as new converts to take their destiny in their own hands”. And, last but not least, the Minister stressed the importance of “recognising” this modern form of Islam. This implies letting personalities emerge to the forefront of the public stage, including in the media. According to him, “nothing justifies that Islam, being the second main religion of the country, to this day, still has no access to the dedicated broadcasting programs licensed by

²⁴ Commission deputed by Ministre Jean-Claude Marcourt, « Propositions au Gouvernement en vue de favoriser un islam de Belgique en Fédération Wallonie-Bruxelles, rapport concernant la formation des cadres musulmans et les émissions concédées », December 4th, 2015, p. 5.

²⁵ The eight proposals are:

1. Creation of an "Institute for the Promotion and Coordination of Training Initiatives on Islam";
2. Creation of an "Interuniversity Chair of Practical Islamology" aiming at the reflective and critical analysis of Arab-Muslim thought in its historical and contemporary dimensions;
3. Organization of language courses for imams recognized by the Executive of the Muslims of Belgium;
4. Organization of theological and / or "societal" training for moral counselors who work in prisons and in hospitals;
5. State Support for the "University Teaching Certificate of Religious Education" organized by the Catholic University of Louvain and the Executive of the Muslims of Belgium (EMB) - certificate which is now compulsory for new teachers of Islamic religion in function;
6. Support for continuing education in "Religious and Social Sciences devoted to Islam in the contemporary world" organized by the Catholic university of Louvain and the Saint-Louis University - Brussels;
7. The Minister will transmit to the Government of Wallonia and the Brussels-Capital Region the proposal which aims to promote greater involvement of women among Muslim counselors. This measure will involve imposing a female representation in the committees responsible for the management of the temporal worship of local Islamic communities, through the conditions of recognition of these by the regions;
8. As Minister of Media, Jean-Claude Marcourt finally hopes that a program conceded to the Muslim religion will be broadcast, as soon as possible next September, on RTBF. (...)».

public broadcasting authorities”²⁶.

Conclusion

It is difficult to anticipate future developments in Belgium. In any case, the training of (Muslims) chaplains and counselors will become a central and complex issue. The growing individualization of religious beliefs, along with a widespread suspicion opposed to state-trained agents, will complexify the role of official chaplains and imams in prison. Rebuilding collective trust will be the main challenge, not only between inmates and society in general, but also between believers and their own religious authorities...

Recent and/or major publications on this topic:

Brion, F. 2019. Qui sème le vent... Vers une évaluation du plan d'action contre la radicalisation dans les prisons. In : L'effet radicalisation et le terrorisme. Etat des pratiques et des recherches, Cahiers du GEPS, Politeia Editions : 57-83.

Christians, L.L. 2015. La religion des jeunes placés en IPPJ. *Droit belge & culte, Blog de la Chaire de droit et religion de l'UCL*. 23 February 2015, <http://ojurel.be/2015/02/23/la-religion-des-jeunes-places-en-ippj/>

Decroix, V. 1989. Les rapports de l'Eglise et l'Etat au XIXe siècle. La place du religieux dans l'institution pénitentiaire. *Rev. pénit. et de droit pénal*: 301-377.

Dupont-Boucha, M.S. 2001. Moraliser les détenus. Le rôle des religieux dans les prisons, *L'Eglise en Luxembourg de Pie VII à Léon XIII (1800-1880). Le choc des libertés*. Bastogne : Musée en Piconrue: 207-214.

El Asri, F. 2015. An Outline of the Construction of the Islamic Council for Prisons in Belgium. In *Religious Diversity in European Prisons Challenges and Implications for Rehabilitation*, eds. I. Becci I., O. Roy, Springer: 47-59

Ketelaer, A.F. 2000. Naar een nieuw wettelijk kader voor de morele bijstand in de gevangenis. *UVV-Info*: 35-39

Nouncke, J. 2013. Régime pénitentiaire et religion. *Droit belge & culte, Blog de la Chaire de droit et religion de l'UCL*. <http://ojurel.be/2013/11/07/regime-penitentiaire-et-alimentation-religieuse/>

²⁶ *Belga*, « Marcourt pose les jalons d'un “islam moderne” en Belgique francophone », March, 18th 2015.

- Overbeeke, A. 2005. God achter de tralies. Vrijheid van godsdienst en levensovertuiging in detentiesituaties, In *Vrijheden en vrijheidsbeneming. Mensenrechten van gedetineerden*, eds. E. Brems, S. Sottiaux, P. Vanden Heede, W. Vandehole. Intersentia: Antwerpen: 123-150.
- Overbeeke, A. 2007. Veiligheid voor alles? Inperking van het recht op geestelijke verzorging van gedetineerde aanhangers van niet-‘erkende’ levensovertuigingen [Security for all. Delimiting the right to spiritual assistance for detainees pertaining to ‘non-recognised’ denominations]. *Panopticon* 4 : 23-40.
- Overbeeke, A. 2019. Godsdienstvrijheid en deradicalisering. Het 'forum internum' is niet meer zo heilig, *Nieuw Juridisch Weekblad* 399 : 230-239.
- Uwizeye D. 2014. *La liberté de religion en prison : les droits du détenu*. Louvain-la-Neuve : Faculté de droit et de criminologie, Université catholique de Louvain, Master’s thesis (L.-L. Christians), 149 pp.
- Van Geyt, K. 2012. De religieuze overheid en het ontslag van haar bedienaren. Soeverein in een slinkend rechtsgebied ?. *Rechtskundig Weekblad* 13: 61-65.
- Xavier, Fr. 2017. Le radicalisme en prison, *Droit belge & culte, Blog de la Chaire de droit et religion de l’UCL*. 17 April 2017, <http://ojurel.be/2017/04/17/le-radicalisme-en-prison/>
- Wattier, S. 2016. *Le financement public des cultes et des organisations philosophiques non confessionnelles. Analyse de constitutionnalité et de conventionnalité*. Bruxelles : Bruylant.
- Wattier, S. 2015. Le prosélytisme n’est pas un abus en soi, *Droit belge & culte, Blog de la Chaire de droit et religion de l’UCL*. 6 July 2015, <http://ojurel.be/2015/07/06/proselytisme-non-abusif-et-prison/>
- Wattier, S. 2016. Le rôle des représentants des cultes dans la lutte contre la radicalisation religieuse au sein des prisons. *Chroniques de droit public - C.P.D.K.* 4 : 611-622.