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11 Recent Developments in Belgian Case Law on the Regulation of Relations between the State and Religions

Stéphanie Wattier

Abstract

After highlighting the constitutional framework governing the relations between the State and religions in Belgium, the chapter aims to analyse major recent case law in that ambit, and, more particularly, the issues of “Belgian *laïcité*”, the ban on the full veil in the public space, religious and moral courses in public schools, the Covid crisis, and ritual slaughter. In a context of secularisation of Belgian society, the number of rulings on religious matters is paradoxically increasing, especially where the Islamic and Jewish religions are concerned.

Keywords

Belgium; constitutional framework; case law; courts; Constitutional Court; Council of State; recent evolutions; secularism; *laïcité*; burqa law ban; religious courses; Covid crisis; ritual slaughter

11.1 Introduction

A series of preliminary observations are necessary in order to propose an assessment and to understand the scope of the legal decisions handed down in recent years on the regulation of relations between the State and religions in Belgian case law.

The first observation can be presented in the form of a paradox: while Belgian society is becoming more secular – as is the case in most European countries – there is a growing tendency to go to court invoking the violation of religious freedom. This can also be seen in the case law of the European Court of Human Rights, which has become increasingly abundant since 1993, when the *Kokkinakis v. Greece*¹ judgement was handed down and considered to mark a major turning point in that area.

1 *Kokkinakis v. Greece*, 14307/88 [1993], ECLI:CE:ECHR:1993:0525JUD001430788.

The second finding – connected to the first one – is quantitative: the decisions handed down by Belgian courts on matters of religion and belief in recent years number in the hundreds. They affect all types of courts, i.e., all the judicial courts, the administrative courts (mainly the Council of State) and the Constitutional Court.

The third observation relates to the religions involved in the cases dealt with by the judges: in recent years, a very large number of court decisions concern Islam – and to a lesser extent Judaism – compared with other religions (like Catholicism, which was the largely dominant religion when Belgium became independent in 1830). In this respect, it should be noted that a recent study by researchers at UCLouvain revealed that Islam has become the second religion in Belgium, after Catholicism.² Moreover, according to a research of the Pew Research Center, it is estimated that by 2030, there will be more than 10% of Muslims in Belgium,³ which means an increase of 80% compared to 2010 (638,000 Muslims in Belgium at that time, itself based on an estimation). The difficulty with these figures is that, as in a number of other European countries, censuses are prohibited in Belgium, so they are highly imprecise. Several sociologists of religion therefore urge caution when using these figures.⁴

In the light of these observations, this chapter focuses on some of the major decisions handed down in recent years concerning the regulation of relations between states and religions in Belgian case law (Section 11.3), insofar as it is impossible to analyse all the jurisprudence handed down. Before doing so and to contextualise the analysis, it briefly reviews the constitutional framework governing these relations (Section 11.2).

11.2 Constitutional Framework Governing the Relations between the State and Religions

Adopted on February 7, 1831, the Belgian Constitution⁵ does not expressly specify the type of relations to be maintained between religions and the State. However, four articles of the Constitution can be used to characterise these relations: Articles 19, 20, 21, and 181.

2 It was a survey on values and the quest for meaning carried out by Olivier Servais (UCLouvain) and Justine Vleminckx (UCLouvain), conducted by Sonecom among a sample of 650 French-speaking Belgians aged 16 and over between May and July 2019. For more details, see A.-F. de Beaudrap, “Les Belges sont croyants, mais pratiquants peu réguliers”. <https://www.cathobel.be/2021/02/les-belges-sont-croyants-mais-pratiquants-peu-reguliers>. Accessed December 6, 2023.

3 “Event Transcript: The Future of the Global Muslim Population”. <https://www.pewresearch.org/religion/2011/01/27/md2-event-transcript/>. Accessed December 13, 2023.

4 C. Torrekens, “La présence musulmane en Belgique”. <https://www.laicite.be/magazine-article/la-presence-musulmane-en-belgique/>. Accessed December 13, 2023.

5 The Belgian Constitution, Legal Affairs and Parliamentary Documentation Department of the Belgian House of Representatives, D/2021/4686/04. https://www.dekamer.be/kvcr/pdf_sections/publications/constitution/GrondwetUK.pdf. Accessed October 27.

More precisely, Article 19 of the Constitution guarantees freedom of religion, stating that “freedom of worship, its public practice and freedom to demonstrate one’s opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished”. Article 20 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, first paragraph 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 concerning the new numeration of the Constitution that took place in 1994. The three principles they contain apply to all religions, whether or not they are recognised by the Belgian State. In 1831, Articles 19, 20 and 21 very well reflected the position of the Parliament and the population vis-à-vis religions. In broad terms, the Constitution of 1831 was a compromise between Catholic members of the National Congress – who wanted freedom of religion and autonomy of churches (Articles 19 and 21) – and Liberals who wanted the right not to be obliged to believe in or manifest membership of any religion (Article 20) and the priority of civil over religious marriage ceremonies (Article 21(2)).⁶

As far as the funding of recognised religions is concerned, Article 181 of the Constitution mandates the State to finance their ministers. Concretely, 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”. Six religions are currently recognised and financed by the Belgian State: Catholicism, Protestantism, Judaism, Anglicanism, Islam, and Orthodoxy.

Catholicism and Protestantism have been recognised ever since the independence of Belgium (18 Germinal year X and April 18, 1802, Act). Judaism was organised by three decrees of 17 March 1806 and Anglicanism by the royal decrees of 18 and 24 April 1835. For a century and a half, there were only four recognised religions, before the Belgian legislator decided to recognise Islam and Orthodoxy. To understand why Islam and Orthodoxy have been recognised, we need to remember that the 1960s saw a massive influx of immigrants in response to the labour shortage experienced by Belgium at the time following the two World Wars. Most immigrant workers

⁶ Art. 21(2) of the Belgian Constitution (https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf. Accessed October 26, 2024) states that “a civil wedding should always precede the blessing of the marriage, apart from the exceptions to be established by the law if needed”.

came from the Mediterranean Basin: mainly Morocco,⁷ Turkey, Greece, Spain, and Italy. Unlike the Italian and Spanish workers, who were able to benefit from the services of ministers of Catholic religion (as most of them were Catholics), immigrant workers from Morocco, Turkey, and Greece did not have this option. As the majority were, respectively, Muslim and Orthodox, they practised religions that were not recognised by the Belgian legislator and therefore had no ministers or places of worship funded by the State. The legislator was then convinced that recognition of their religion would enable Muslim and Orthodox immigrants “to feel more integrated”⁸ since this recognition would mean that they would have ministers and places of worship funded by the State. The legislator therefore recognised the Islamic faith in the law of July 19, 1974, and the Orthodox faith in the law of April 17, 1985.

As regards the constitutional principles, Articles 19, 20, 21, and 181 of the Constitution taken together govern “church-state relations” and are

an early example of Belgian political tradition of consensus. Though the 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 to go unheard.⁹

The Belgian Constitution is unique in that it henceforth recognises and funds non-denominational philosophical organisations in addition to recognised religions. More precisely, in 1993, a second paragraph was added to Article 181 of the Constitution. The adoption of this paragraph was the result of a political evolution that had begun in 1980. Article 181 of the Constitution had been opened for revision in 1978, in 1981, and in 1987 without being effectively revised. Then, a new proposition had been introduced on the basis of Resolution 36/15 of the United Nations General Assembly of October 28, 1981, relative to the elimination of all forms of intolerance and discrimination based on religion or conviction. This proposition showed the importance of pluralism in Belgium and the necessity to finance non-confessional organisations. After being discussed for years in the Parliament, new Article 18, § 2, of the Constitution was adopted with a quasi-unanimity in 1993. Quickly after

7 See H. Bousetta, M. Martiniello, “L’immigration marocaine en Belgique: du travailleur immigré au citoyen transnational”. In: K. Bichara, C. Roosens (eds.), *Belges et Arabes. Voisins distants, partenaires nécessaires* (Louvain: Presses Universitaires de Louvain, 2004): 67–81.

8 Report by the Commission of Justice on the proposition of law of 11 December 1973 recognising the Islamic faith and secular philosophy, ord. sess. 1973–1974, no. 104, p. 2.

9 R. Torfs, “Church and State in France, Belgium, and the Netherlands: Unexpected Similarities and Hidden Differences”, *Brigham Young University Law Review* no. 4 (1996): 949.

this vote, the so-called organised *laïcité* asked to be recognised as a non-confessional organisation. This recognition took place through the June 21, 2002, Act. For the time being, it is the only recognised organisation. For many years now, the Belgian Buddhist Union has asked to be recognised on the basis of Article 181 § 2, of the Constitution. Although preliminary projects have been passed on several occasions by the relevant minister of justice, none of them has yet come to fruition.¹⁰

11.3 Major Recent Case Law on the Regulation of Relations between the State and Religions

Over the past 15 years, certain decisions handed down by Belgium's supreme courts (essentially the Council of State and the Constitutional Court) have had a greater impact on the jurisdictional landscape than others concerning the relations between the State and religions. We propose to focus on five issues in particular – namely, Belgian *laïcité* (secularism; Section 11.3.1.), the ban on the full veil in the public space (Section 11.3.2.), religious and moral courses in public schools (Section 11.3.3.), the Covid crisis (Section 11.3.4.), and ritual slaughter (Section 11.3.5.). The decisions are presented in chronological order.

11.3.1 The Belgian *Laïcité*

The French *laïcité* and the Belgian *laïcité* are often confused. A ruling by the Belgian Council of State on December 21, 2010, is useful in trying to better understand the difference between these two concepts. More specifically, in a case that initially concerned the wearing of the Islamic veil, the Council of State stated that “the Belgian Constitution has not established the Belgian State as a *laïc* State. The concepts of *laïcité*, a philosophical conception among others, and neutrality are distinct”.¹¹ In other words, the French *laïcité* (secularism) can be described as political secularism insofar as it is a principle of constitutional rank. Article 1 of the French Constitution states that “France shall be an indivisible, secular (*laïque*), democratic and social Republic”. In Belgium, by contrast, *laïcité* is best described as “philosophical” because *laïcité* or *organised laïcité* (those two are words synonyms) is an organisation that is defined as

a non-denominational community [...] recognised and organised by law [...] for those who do not participate in any religion, who do not wish

10 The last preliminary project for its recognition was adopted by the Council of Ministers in March 2023, but Buddhism is still awaiting a vote by the Federal Parliament, which is competent to recognise new religions and philosophies.

11 Ruling of Belgian Council of State, 210.000 [2010], 6.7.2 (unofficial translation).

to establish a privileged relationship with a deity in their way of life, and who therefore wish to organise certain aspects of life that are usually regulated by a religion, excluding any reference to religion.¹²

This definition can also be applied to any non-confessional philosophical organisation, such as Buddhism, which is currently awaiting recognition by the legislator.

The Belgian *laïcité* is an organisation recognised by the law – in this case that of June 21, 2002 – which receives public funding from the State in the same way as the other six recognised religions. In 1993, the Constitution was revised to include a second paragraph in Article 181, which now allows non-confessional philosophical organisations to be recognised by law and to have their “delegates” funded by the State in the same way as ministers of religions.

The ambiguity that exists between the political *laïcité* of France and the philosophical *laïcité* of Belgium regularly raises the question of inserting the principle of *laïcité* – this time political – in the Belgian Constitution.¹³ However, Belgium remains legally very different from France on one important point that seems difficult to reconcile with the political version of *laïcité*, – namely, the public funding of recognised religions. While the Belgian States funds six recognised religions, the 1905 French law of separation prohibits direct public funding of any religion (with the exception of Alsace Moselle, which remains under the Concordat regime).

11.3.2 *Ban on Wearing Full-Face Veils in the Public Space*

Following in the footsteps of its French neighbour a few months earlier, the Belgian legislator passed a law on June 1, 2011, “prohibiting the wearing of any clothing which totally or mainly conceals the face”. Even if the law does not expressly say so, a reading of the preparatory work reveals that the intention was to ban the wearing of the full Muslim veil and, more specifically, the burqa and the niqab. In the same sense, the law also states that it does not apply to

12 Project of law of December 10, 2001, on the Central Council of Non-Confessional Philosophical Communities in Belgium, delegates and institutions responsible for managing the material and financial interests of recognised non-confessional philosophical communities, Doc. parl., Ch. repr., sess. ord. 2001–2002, n°1556/001, p. 4.

13 An entire dossier was devoted to the specific nature of Belgian *laïcité*, how it differs from the French system and whether the principle of political *laïcité* should be – or not – enshrined in the Belgian Constitution. See X. Delgrange (ed.), “Les débats autour de l’inscription du principe de laïcité politique dans la Constitution belge”, Cahiers du CIRC vol. 4 (2020). <https://www.circ.usaintlouis.be/wp-content/uploads/2018/09/Cahier-du-CIRC-3-3.pdf>. Accessed October 27, 2024.

festive events, such as carnivals. The law was quickly nicknamed “anti-burqa” or “anti-niqab” law.

More concretely, this law inserted the following new Article 563*bis* into the Belgian Criminal Code:

Persons who, unless otherwise provided by law, appear in a place that is accessible to the public with their faces completely or partially covered or hidden, such as not to be identifiable, shall be liable to a fine of between fifteen and twenty-five euros and imprisonment of between one and seven days, or only one of those sanctions. However, paragraph 1 hereof shall not concern persons who are present in a place that is accessible to the public with their faces completely or partially covered or hidden where this is provided for by employment regulations or by an administrative ordinance in connection with festive events.¹⁴

Immediately after its publication in the *Official Journal (Moniteur belge)*, the Law was challenged before the Constitutional Court. The Muslim applicants sought to have the Law annulled on the grounds that it was contrary to Article 19 of the Constitution (freedom of religion) read in conjunction with Article 9 of the European Convention on Human Rights. In its ruling no. 145/2012 of December 6, 2012, the Constitutional Court ruled against the applicants and validated the law, deeming it to comply with the Constitution. The Court validates the threefold legitimate objective of “public safety, equality between men and women and a certain conception of ‘living together’ in society”. According to the Court, “[s]uch objectives are legitimate and fall within the category of those enumerated in Article 9 of the European Convention on Human Rights, namely the maintenance of public safety, the prevention of disorder and the protection of the rights and freedoms of others”.¹⁵ It should be noted, however, that the European Court of Human Rights, in its landmark decision *S.A.S v. France* – concerning the French law banning the wearing of the full veil, in which Belgium was an intervening party – held that only “living together” could be considered a legitimate objective relating to the protection of the rights and freedoms of others.

14 This traduction of new Art. 563*bis* of the Criminal Code comes from: *S.A.S. v France*, 43835/11, § 41, ECLI:CE:ECHR:2014:0701JUD004383511.

15 Belgian Constitutional Court, 145/2012 [2012], B.18 (unofficial translation).

Like the ruling of the European Court of Human Rights, the Belgian Constitutional Court's decision has been commented by many authors,¹⁶ and it would be impossible to summarise the content of the doctrinal differences on this subject here. The main highlight to remember is that the wearing of the full veil in the Belgian public space is now a criminal offence, with the sole exception of places of worship, about which the law said nothing but which the Constitutional Court considered should be subject to a reservation of interpretation. It is hard to imagine that the full veil could be banned from places of worship, especially Muslim ones.

To complete the analysis of the Belgian "burqa ban Law", it is interesting to note that the concept of *vivre ensemble* was initially used by the French government to emphasise that "voluntary and systematic concealment of the face is problematic because it is quite simply incompatible with the fundamental requirements of 'living together' in French society".¹⁷ Then, this notion was taken up by the Belgian legislator and affirmed by the Belgian Constitutional Court, which held that

the individuality of every subject of law (*sujet de droit*) in a democratic society is inconceivable without his or her face, a fundamental element thereof, being visible. [...] [I]t was entitled to take the view that the creation of human relationships, being necessary for living together in society, was rendered impossible by the presence in the public sphere, which quintessentially concerned the community, of persons who concealed this fundamental element of their individuality.¹⁸

Even if the *vivre ensemble* is not a legal concept that would be listed among the legitimate aims of Paragraph 2 of Articles 8 and 9 of the European Convention on Human Rights to justify a limitation to freedom, the Court finds that the "burqa ban Law" can be regarded "as proportionate to the aim pursued, namely the preservation of the conditions of 'living together' as an element of

16 See, among many others, L.-L. Christians, S. Minette, S. Wattier, "Le visage du sujet de droit: la burqa entre religion et sécurité", *Journal des Tribunaux* (2013): 234–245; N. Renuart, "Brevet de conventionnalité pour l'interdiction du port du voile intégral dans l'espace public. Commentaire de l'arrêt de Grande Chambre rendu dans l'affaire S.A.S. contre France (1er juillet 2014)", *Chroniques de droit public* (2013): 440–450; S. Ouald-Chaib, "Grote Kamer EHRM velt arrest over boerkaverbod", *Tijdschrift voor Mensenrechten* (2014): 15–16; C. Ruet, "L'interdiction du voile intégral dans l'espace public devant la Cour européenne: la voie étroite d'un équilibre", *La Revue des droits de l'homme. Actualités Droits-Libertés* (2014). <https://doi.org/10.4000/revdh.862>; Y. García Ruiz, "Convivencia y símbolos religiosos en Europa tras la sentencia 'SAS c. Francia' del Tribunal Europeo de Derechos Humanos", *Revista general de derecho europeo* no. 35 (2015): item 415712.

17 See *Exposé des motifs*, Assemblée nationale de France, projet de loi n° 2520 (May 10, 2010), quoted by *S.A.S. v. France*, 43835/11 [2014] § 25.

18 Belgian Constitutional Court, 145/2012 [2012] B.21 (unofficial translation).

the ‘protection of the rights and freedoms of others’¹⁹ in the same vein as the Belgian Constitutional Court.

Incidentally, after several years of the coronavirus crisis and the imposition of the wearing of masks in many public places, we might also wonder about the consistency of the restrictions in a law such as the burqa ban on human rights.

11.3.3 Religious Courses and Moral Lessons in Public Schools

Ruling no. 34/2015 of March 12, 2015, handed down by the Constitutional Court²⁰ is undoubtedly an important ruling of those recent years since it is at the root of a revolution in official education in the French Community. On this subject, it should be briefly recalled that Belgium is made up of three communities (Flemish-, French-, and German-speaking) and that since 1988 they have had sole competence for education. This judgement of 2015 was handed down at the start of a preliminary question put to the Constitutional Court on the orientated nature of “lessons in morality inspired by the spirit of free examination” that pupils may follow at public school instead of religious classes. In fact, by virtue of Article 24 of the Constitution, schools run by the public authorities must offer, until the end of compulsory education (18 years), the choice between the teaching of one of the recognised religions and non-confessional organisations. For the moment, only one philosophical organisation is recognised and funded in Belgium: the so-called “*laïcité organisée*” (“organised secularism”), which is a kind of humanist non-religious organisation. In its judgement, the Constitutional Court considered that “lessons in morality inspired by the spirit of free examination” involve the dissemination of information or knowledge in an “objective, critical and pluralistic” manner, in accordance with the case law of the European Court of Human Rights. The Constitutional Court was in particular referring to the judgement *Folgerø and others v. Norway*, in which the Grand Chamber of the Strasbourg Court considered that

19 This point of view was not shared by all the 17 judges of the Grand Chamber. The Court holds by 15 votes to 2 that there has been no violation of Arts. 8 and 9 of the Convention. One dissenting opinion is formulated by two judges (Judges Nußberger and Jäderblom). According to those two judges, “the very general concept of ‘living together’ does not fall directly under any of the rights and freedoms guaranteed within the Convention” and that is the reason why they doubt that “Law prohibiting the concealment of one’s face in public places pursues any legitimate aim under article 8 § 2 or article 9 § 2 of the Convention”.

20 About this decision, see, among others, L.-L. Christians, M. El Berhoumi, “De la neutralité perdue à l’exemption du cours de morale. Commentaire de l’arrêt 34/2015 de la Cour constitutionnelle”, *Journal des Tribunaux* vol. 20, no. 6606 (2015): 437–444. https://dial.uclouvain.be/download/download.php?pid=boreal%3A177470&datastream=PDF_01&disclaimer=3c365ed91f08af495a717898813c787fbb5708e6a3af3c7dc766a860c6404f19. Accessed October 27, 2024; J. Lievens, “Grondwettelijk Hof maakt komaf met verplichte keuze tussen godsdienst en zedenleer”, *Die Juristenkrant* no. 306 (2015): 3.

the second sentence of article 2 of Protocol No. 1 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an *objective, critical and pluralistic manner*. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. *That is the limit that must not be exceeded* (§ 84).

Noting that the current system in the French Community only authorises parents and children to choose between “courses of religion” and “moral courses inspired by free spirit”, the Constitutional Court considers that the French Community only offers “orientated” courses and, therefore, does not comply with the Strasbourg case law. According to the Constitutional Court, it must be possible for the students to be exempted from religious and moral lessons.

To meet this requirement of the Constitutional Court, the legislator of the French Community decided to create a new course called the Philosophy and Citizenship Course.²¹ Since September 2016, all public school pupils have been obliged to take one hour of this new course. For the second hour, pupils²² can choose between a course in one of the recognised religions, non-confessional organisation, or one additional hour of philosophy and citizenship. As consequence, in practice, there is no longer any obligation to take religion classes in public schools in the French Community.

11.3.4 *Religious Freedom, Places of Worship and Covid-19 Crisis*

Not a single country in the world escaped the Covid-19 crisis. From an infectious disease that appeared in Wuhan in China in November 2019, it quickly became a pandemic, and the UN declared a global public health emergency at the end of January 2020.²³ Every state in the world took measures to restrict freedoms in an attempt to contain the pandemic. Some of these restrictions inevitably affected religious freedom. In Belgium, numerous laws and royal and ministerial orders were adopted, and a number of them have been challenged in court on the grounds that they would contravene human rights.²⁴ Among this

21 About this new course, see, among others, X. Delgrange, “La Belgique francophone accouche douloureusement d’un cours de philosophie et de citoyenneté non désiré par tous”, *Revue du droit des religions* no. 5 (2018): 107–132. <https://www.doi.org/10.4000/rdr.397>.

22 In fact, the choice is made by their parents by virtue of Art. 24 of the Belgian Constitution.

23 D. Cucinotta, M. Vanelli, “WHO Declares COVID-19 a Pandemic”, *Acta Biomedica* vol. 91, no. 1 (2020): 158.

24 For a general overview of those measures, see F. Bouhon, E. Slautsky, S. Wattier (eds.), *Le droit public belge face à la crise du COVID-19. Quelles leçons pour l’avenir?* (Paris: Larcier, 2022).

case law, a ruling by the Council of State (the country's highest administrative court) is particularly noteworthy. Handed down on December 8, 2020, this decision concerns restrictions on the freedom to meet in places of worship, which the Jewish community complained about and won before the High Administrative Court.

To understand the scope of the ruling, it should first be remembered that collective exercise of religious freedom was banned during the “first wave” of the pandemic in Belgium, from March 14 to June 8, 2020. It was then reauthorised during the summer of 2020 with strict health rules and a limited number of people. As the situation once again gave cause for concern in early autumn, a new Ministerial Order of October 18, 2020, restricted religious freedom to meetings of 40 people. Due to a “second wave” of the epidemic confirmed in the end of October, several other ministerial orders were adopted. More precisely and chronologically, the Ministerial Order of October 28, 2020, introduced major restrictions on freedom of religion. This decree was subsequently amended by a Ministerial Order of November 1, 2020, followed by a Ministerial Order of November 28, 2020. These measures initially applied until November 19 under the Ministerial Order of October 28, 2020, then were extended until December 13 by the Ministerial Order of November 1, 2020, and until January 15, 2021, by the Ministerial Order of November 28, 2020. These various decrees were challenged before the Council of State, as discussed in the ruling of December 8, 2020.

The applicants criticised the rules contained in the ministerial orders according to which religious ceremonies could, for health reasons, only take place with a maximum of ten people for recording purposes with a view to broadcasting via all available channels, that funerals and cremations could bring together a maximum of 15 people, and that weddings could only take place with the presence of the spouses, witnesses, the civil registrar, or the minister of religion, all in compliance with strict hygiene and distancing measures.

The applicants claimed a violation of Article 19 of the Constitution, read in conjunction with Article 9 of the European Convention on Human Rights²⁵ and Articles 18 and 27 of the International Covenant on Civil and Political Rights²⁶. According to them, the Ministerial Order entailed a national ban on religious freedom, with only a few exceptions that were “tailor-made” for the Roman Catholic faith and prohibited collective religious freedom by the Jewish

25 European Convention on Human Rights [1950], CETS No. 213.

26 International Covenant on Civil and Political Rights [1966]. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>. Accessed October 27, 2024.

community. In its ruling of December 8, 2020,²⁷ the Council of State ruled that the measures in the Ministerial Order were disproportionate to the legitimate objective of protecting public health. In its reasoning, the Council of State considers that “by simply authorising the same exception for religious weddings and funerals, the opposing party has not, *prima facie*, taken sufficient account of what the religions themselves consider to be important ceremonies”.²⁸ In view of the relaxation of certain measures – and in particular the reopening of so-called non-essential shops from December 1, 2020 – the Council of State considered that the severe restriction on freedom of religion resulting from the ban on collective worship was not proportionate to the objective pursued and that the plea was serious. The Council of State considered the measures an obstacle for two of the applicants who had planned for a long time to organise their Jewish wedding and that the measures had a particularly serious impact on the religious ceremonies that would take place at the end of the year. Therefore, the Ministerial Order was annulled.

But the reason why the ruling is remarkable is not only that the Ministerial Order was annulled but also that the Council of State enjoined the minister of justice to enter into dialogue with the recognised religious denominations in order to write and adopt his new order. More precisely, the Council of State enjoined the Belgian State to replace the Ministerial Order “with regulations that do not disproportionately restrict the collective exercise of worship” and stated that “the replacement must be carried out in consultation with representatives of religious and non-confessional communities”.²⁹ Otherwise said,

27 About this ruling, see S. Wattier, F. Xavier, “Les restrictions à la liberté de religion durant la deuxième vague de coronavirus: analyse des arrêts du Conseil d’État”, *Journal des Tribunaux* no. 6851 (2021): 241–246 ; M. Servais, “Des mesures provisoires au secours de la liberté de culte ou de la santé publique ? Note sous C.E. 8 décembre 2020”, *Administration publique* (2021): 511–517; J. Bernaerts, A. Overbeeke, “Case Law on the Freedom of Religion During the COVID-19 Crisis in Belgium”, *Journal of Church and State* vol. 64, no. 4 (2022): 663–682. <https://doi.org/10.1093/jcs/csac073>; L.-L. Christians, “La déstabilisation sanitaire de la liberté de culte en droit belge. Entre troisième vague Covid-19 et postmodernité”. In: L. Danto, C. Burgun (eds.), *L’Église en état d’urgence. Droit canonique et gestion de la pandémie de la Covid-19* (Paris: Les Editions du Cerf, 2021): 151–179; L.-L. Christians, A. Overbeeke, “Le droit belge des cultes au défi de la crise sanitaire de la covid-19. Légistique de crise entre vieux réflexes et nouvelles réalités”, *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* vol. 54, no. 1 (2020): 1–23; L.-L. Christians, “COVID-19, Law and Religion in Belgium”, *Fides & Libertas* (2021): 67, <https://www.doi.org/10.5281/zenodo.570190>; F. Judo, “De Raad van State, de COVID-maatregelen en de eredielen – een consistent verhaal?”, *Rechtskundig Weekblad* no. 34 (2021): 1357–1360; F. Judo, “De Geest is niet gehaast (note sur C.E., 28 mai 2020 – Covid – Cultes)”, *Juristenkrant* (2020): 12; P. Minsier, “La religion au temps du Corona : une liberté comme les autres”. In: S. Parsa, M. Uyttendaele (eds.), *La pandémie de Covid-19 face au droit. Vol. 2 Analyse et perspective d’une crise et de ses lendemains* (Limal: Anthemis, 2022): 389–402.

28 *Congregation Yetev Lev Dsatmar Antwerp Limited e.a.*, no. 249.177 [2020] (unofficial translation).

29 *Congregation Yetev Lev Dsatmar Antwerp Limited e.a.*, no. 249.177 [2020] (unofficial translation).

the administrative court required that the State to enter into dialogue with representatives of religious and non-confessional organisations to review the health regulations. In doing so, the Council of State asked the federal government to ensure that the content of the new order met the demands of religious and non-confessional organisations. For the time being, there is no dialogue between public authorities and religious and non-confessional communities institutionalised under Belgian law. By comparison, this is the case at European Union level, where Article 17 of the Treaty on the Functioning of the European Union (TFEU)³⁰ states as follows: “Recognising their identity and their specific contribution, the Union shall maintain an *open, transparent and regular dialogue* with these churches and organisations”.³¹

In Belgian law, the beginnings of an institutionalisation of such a dialogue emerged three days after the “march against terror” held in Brussels on April 17, 2016, in tribute to the victims of the terrorist attacks of March 22, 2016, when the prime minister and the minister of justice received all the representatives of recognised religions and non-confessional organisation. The outcome of this meeting was the desire to create “a permanent body for consultation with representatives of recognised religious denominations”.³² The 2016 initiative aimed to create a dialogue with representatives of recognised religious and non-confessional organisations only. In its ruling of December 8, 2020, the Council of State called for dialogue with “representatives of religious and non-confessional communities”, without specifying if these communities must be recognised or not.

The new Ministerial Order adopted on the basis of the dialogue that took place authorised a maximum of 15 people for any ceremony, not including the registrar and the minister of religion. It allowed religious ceremonies to be held at the end of the year (such as Christmas mass, Hanouka, etc.) in strict

30 Treaty on the Functioning of the European Union (consolidated version) [2012] OJ C 326/47.

31 About Art. 17 TFEU, see L.-L. Christians, “Droit et religion dans le Traité d’Amsterdam : une étape décisive ?”. In: Y. Lejeune (ed.), *Le Traité d’Amsterdam. Espoirs et déceptions* (Bruxelles: Bruylant, 1998): 195–225; L.-L. Christians, “La condition juridique du religieux dans la construction d’une Europe post-nationale. Du Traité d’Amsterdam au Projet de Constitution européenne”, *Annales d’études européennes* (2004): 117–133; J. Duffar, “Les relations entre l’Union européenne et les organisations religieuses et non confessionnelles? Réflexions au départ de la décision du Médiateur européen du 25 janvier 2013”, *Cahiers de droit européen* (2015): 535–556. <https://pure.unamur.be/ws/portalfiles/portal/54166030/D1107.pdf>. Accessed October 27, 2024.

32 About this initiative of dialogue in the press, see A. Belga, “Attentats: Charles Michel veut une concertation permanente avec les représentants des cultes”, <https://www.rtbf.be/article/attentats-de-bruxelles-charles-michel-veut-une-concertation-permanente-avec-les-representants-des-cultes-9275004>. Accessed December 8, 2023.

compliance with health measures. About this dialogue that took place, it is interesting to stress that the minister of justice limited his meetings to representatives of recognised religious and non-confessional organisations, even though the Council of State ruling did not specify that these meetings should be limited to them.

This experience shows that the scope of “consultation” and “dialogue” between the public authorities and religious and non-confessional organisations need to be clarified. It seems that guidelines should be put in place, including identification of the parties concerned. Indeed, the question remains whether those organisations need to be recognised to access the dialogue but also whether or not this “dialogue” needs to be institutionalised, as is the case under European Union law under Article 17 of the TFEU and, if so, in what form, with what frequency, how often, etc.

11.3.5 *Ritual Slaughter and Animal Welfare*³³

It is impossible to discuss recent developments in Belgian case law on relations between the State and religions – especially Judaism and Islam – without analysing the issue of ritual slaughter and animal welfare. Insofar as a contribution to the present work is devoted in its entirety to this issue,³⁴ we will limit our comments to the central elements that should be retained from this case.

33 About this issue in Belgian law, see also L.-L. Christians, “Bien-être animal et protection des minorités religieuses en Belgique. Le test de l’abattage rituel entre écarts régionaux et attente constitutionnelle”, *Revue du droit des religions* no. 12 (2021): 79–99. <https://doi.org/10.4000/rdr.1704>; S. Wattier, “Ritual slaughter case: The Court of Justice and the Belgian Constitutional Court put animal welfare first”, *European Constitutional Law Review* vol. 1, no. 2 (2022): 264–285. <https://doi.org/10.1017/S1574019622000189>; A. Detting, “Entre contrainte et ressource: la régionalisation du bien-être animal comme opportunité politique”, *Revue interdisciplinaire d’études juridiques* (2022): 217–252. <https://shs.cairn.info/revue-interdisciplinaire-d-etudes-juridiques-2022-1-page-217?lang=fr>. Accessed October 27, 2024; see also M. El Berhoumi, “Abattage rituel: faut-il sacrifier la liberté religieuse sur l’autel du bien-être animal?”, <http://www.justice-en-ligne.be/rubrique366.html>. Accessed December 8, 2023; M.C. Foblets, J. Velaers, “Rituele slachten: recente ontwikkelingen in het debat”. In: D. De Ruyscher, P. De Hert, M. De Metsenaere (eds.), *Een leven van inzet. Liber amicorum Michel Magits* (Mechelen: Kluwer, 2012): 375–402; M.C. Foblets, J. Velaers, “In Search of the Right Balance. Recent Discussions in Belgium and the Netherlands on Religious Freedom and the Slaughter of Animals without Prior Stunning”. In: B. Schinkele, R. Kuppe, S. Schima (eds.), *Recht Religion Kultur. Festschrift für Richard Potz zum 70. Geburtstag* (Wien: facultas.wuv, 2014): 67–85; D. Plas, J. Petersen, R.O. Karpiel, M. Leloup, C. Jenart, “Het verbod op onverdoofd slachten gered van de slachtbank?”, *Rechtskundig Weekblad* vol. 85, no. 34 (2022): 1330–1343. <https://hdl.handle.net/10067/1875840151162165141>. Accessed October 27, 2024; G. van der Schyff, S. Sottiaux, “Debating Ritual Slaughter in Belgium: A Multilevel Fundamental Rights Perspective”. In: K. Lemmens, S. Parmentier, L. Reyntjens (eds.), *Human Rights with a Human Touch: Liber Amicorum Paul Lemmens*, (Cambridge: Intersentia, 2019): 715–735.

34 See G. van der Schyff, “Ritual Slaughter and Religious Freedom: A Critical Analysis of the 2020 CJEU Judgment Regarding the Belgian Preliminary Reference”. In: this book.

As is well-known, the issue of ritual slaughter is particularly sensitive, as it requires balancing the protection of animal welfare on the one hand and freedom of religion on the other. It mostly concerns Judaism and Islam, which, respectively, require the food to be *kosher* and *halāl*. The central problem remains in relation to the requirement of consciousness of the animal at the time of its death. While it seems relatively clear that the animal must be conscious at the time of slaughter in the Jewish religion³⁵, it is less clear for Islam. More precisely,

there are essentially two main interpretations dealing with industrial halal slaughter, with two groups of opinions about the licitness, or acceptability, of meat in relation to the mode of slaughter. The first is based on a verse of the Koran (5:5) that considers Christian and Jewish traditions of industrialised countries are adequate to render their slaughter methods acceptable to Muslims. [...] [T]he second interpretation considers that meat has a status peculiar to Islam. Meat and meat products are recognised as licit for Muslims only under certain conditions specified by Islamic sources. This interpretation is based on a verse in the Koran that explicitly forbids the consumption of meat deriving from an animal slaughtered in the name of any other being than God.³⁶

As regards national legislations, the decision to ban or allow ritual slaughter has highly challenged most European policymakers in recent years.³⁷ In Belgium, the situation is even more complex, as animal welfare has been a

35 For more details, see F. Bergeaud-Blackler (ed.), *Les sens du Halal: Une norme dans un marché mondial* (Paris: CNRS editions, 2015).

36 F. Bergeaud-Blackler, "New Challenges for Islamic Ritual Slaughter: A European Perspective", *Journal of Ethnic and Migration Studies* vol. 33 no. 6 (2007): 972–973. <https://doi.org/10.1080/13691830701432871>; see also: M. Hodkin, "When Ritual Slaughter Isn't Kosher: An Examination of Shechita and the Humane Methods of Slaughter Act", *Journal of Animal Law* no. 1 (2005): 134.

37 G. van der Schyff, "Reviewing the Recent Ban on Ritual Slaughter in Flanders", *Recht, Religie en Samenleving* (2017): 5. In that sense, see among others: J.A. Rovinsky, "The Cutting Edge: The Debate Over Regulation of Ritual Slaughter in the Western World", *California Western International Law Journal* vol. 45 (2014): 79 ff; C.E. Haupt, "Free Exercise of Religion and Animal Protection: A Comparative Perspective on Ritual Slaughter", *Georg Washington International Law Review* vol. 39 (2007): 839 ff; M. Valenta, "Pluralist Democracy or Scientific Monocracy: Debating Ritual Slaughter", *Erasmus Law Review* vol. 5, no. 1 (2012): 27. <https://www.doi.org/10.5553/ELR221026712012005001003>; G. van der Schyff, "Ritual Slaughter and Religious Freedom in a Multilevel Europe: The Wider Importance of the Dutch Case", *Oxford Journal of Law and Religion* vol. 3 no. 1 (2014): 76 ff. <https://doi.org/10.1093/ojlr/rwt046>; P. Lerner, A.M. Rabello, "The Prohibition of Ritual Slaughtering (Kosher Shechita and Halal) and Freedom of Religion of Minorities", *Journal of Law and Religion* (2006) vol. 22, no. 1: 1–62; E. Howard, "Ritual Slaughter and Religious Freedom: Liga van Moskeen", *Common Market Law Review* vol. 56, no. 3 (2019): 803–824.

regional matter since 2014 (sixth reform of the state) and as regionalisation is “almost concomitant”³⁸ with the evolution of European law in this area.

Since 2018, the Walloon and Flemish legislations have been identical: they prohibit any slaughter of animals without prior stunning, which means even when it is a religious slaughter. Both legislations have been the subject of an annulment appeal to the Constitutional Court, which first referred a preliminary question to the Court of Justice of the European Union. The Brussels Region, which has the largest Muslim population in Belgium, has not yet legislated on the matter: ritual slaughter without stunning is therefore still allowed in slaughterhouses.

The preparatory work of the Flemish decree explains how the legislator has tried to find a balance between animal welfare and religious freedom, especially as regards the Jewish and Islamic requirements:

Flanders attaches great importance to animal welfare. The objective is, therefore, to eliminate all avoidable animal suffering in Flanders. The slaughter of animals without stunning is incompatible with that principle. [...] The gap between eliminating animal suffering, on the one hand, and slaughtering without prior stunning, on the other, will always be very considerable, even if less radical measures were taken to minimise the impairment of animal welfare. Nevertheless, a balance must be sought between the protection of animal welfare and freedom of religion. Both Jewish and Islamic religious rites require the animal to be drained of as much of its blood as possible. Scientific research has shown that the fear that stunning would adversely affect bleeding out is unfounded. Furthermore, both rites require that the animal be intact and healthy at the time of slaughter and that it die from bleeding [...]. Electronarcosis is a reversible (non-lethal) method of stunning in which the animal, if it has not had its throat cut in the meantime, regains consciousness after a short period and does not feel any negative effects of stunning.³⁹

If reversible stunning is in accordance with some Muslim authorities – but not all of them – who accept that the animal is stunned just before its throat is slit, it is more complex within the Jewish religion, whose requirements for the slaughter of the animal are much stricter.⁴⁰ Besides, under religious rules, any devout Muslim can slaughter an animal, which is not the case in Judaism, where the slaughter must be carried out by a devout and technically qualified

38 L.-L. Christians, “Bien-être animal et protection des minorités religieuses en Belgique”: 82 (free translation).

39 *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, C-336/19 [2020] § 13.

40 About the precise differences between *kosher* and *halal* meat, see J. Zurek, M. Rudy, M. Kachel, S. Rudy, “Conventional Versus Ritual Slaughter—Ethical Aspects and Meat Quality”, *Processes* no. 9 (2021): 1–18.

man, the *shohet*.⁴¹ As consequence, an action for annulment of both decrees was lodged with the Constitutional Court by Muslim and Jewish religious communities and by the representative body of Muslims in Belgium.⁴² In its judgement 53/2019, the Constitutional Court decided to refer three questions on the ban on slaughter without stunning to the Court of Justice of the European Union for a preliminary ruling. The judgement of the Court of Justice is the subject of a commentary in this book, to which the reader is referred.⁴³ In its judgement *Centraal Israëlitisch Consistorie van België and Others* of December 17, 2020, the Court of Luxembourg considers that the ban on ritual slaughter without prior stunning complies with European Union law – contrary to what was suggested by the advocate-general⁴⁴ – and therefore, after a careful balancing of the interests involved, gives priority to the promotion of animal welfare over religious freedom.

None of the violations claimed by the applicant were retained by the Constitutional Court, which validated the compliance of the Walloon and Flemish decrees with the European Regulation 1099/2009 on the protection of animals at the time of killing, with freedom of religion,⁴⁵ with the principle of the separation of church and state, with the right to work and the free choice of a profession, the freedom of enterprise and the free movement of freedom of enterprise, and the free movement of goods and services, and with the principle of equality and non-discrimination.

The Muslim and Jewish applicants to the Belgian Constitutional Court have then decided to lodge an appeal with the European Court of Human Rights, which has just handed down its ruling – *Exécutief van de Moslims van België and others v. Belgique* – on February 13, 2024.⁴⁶ The judgement, which will certainly be commented on by many authors, concludes that Belgium did not violate Articles 9 and 14 of the Convention. The Court explained that the case was different from the only precedent it had had to deal with in the area of ritual slaughter (namely, *Cha'are Shalom Ve Tsedek v. France* of 2000), which concerned the granting of authorisations to bodies

41 C. Sägerser, “Les débats autour de l’interdiction de l’abattage rituel”, *Courrier hebdomadaire du Crisp* no. 2385 (2018): 6.

42 In Belgium “the Constitutional Court is competent to review legislative acts. By legislative acts are meant both substantive and formal rules adopted by the federal parliament (statutes) and by the parliaments of the communities and regions (decrees and ordinances). All other regulations, such as Royal Decrees, decrees of governments of communities and regions, ministerial decrees, regulations and decrees of provinces and municipalities, and court decisions fall outside the jurisdiction of the Court” (see “Jurisdiction of the Constitutional Court. Jurisdiction of the Constitutional Court”. <https://www.const-court.be/en/court/presentation/jurisdiction>. Accessed October 27, 2024).

43 See G. van der Schyff, “Ritual Slaughter and Religious Freedom”.

44 Opinion of Advocate General Hogan in case *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, C-336/19 [2020].

45 Council Regulation (EC) No 1099/2009 of September 24, 2009, on the protection of animals at the time of killing (text with EEA relevance) [2009] OJ L 303.

46 *Exécutief van de Moslims van België and others v. Belgique*, 16760/22 et al. [2024], ECLI:CE:ECHR:2024:0213JUD001676022.

authorised to carry out the killing of animals, whereas in the present case, the measure at issue had the effect of prohibiting ritual slaughter not preceded by stunning of the animal. Unlike the *Cha'are Shalom Ve Tsedek* judgement, in which the Court had found that there had been no interference with the applicants' freedom of religion, the Court held that the ban on slaughter without stunning did constitute an interference, which was provided for by law, in this case by the Walloon and Flemish decrees (§ 89). As regards the question of legitimate aim, the Court emphasised that this was the first time that it had had to rule on the question of whether the protection of animal welfare constituted a legitimate aim within the meaning of Article 9 § 2. The Court pointed out in that regard that the list of exceptions to that freedom contained in the second paragraph of Article 9 was exhaustive and that the definition of those exceptions was restrictive (§ 91). More specifically, the Court had to determine whether the protection of animal welfare could be linked to one of the aims referred to in paragraph 2. The Court emphasised at the outset that, unlike European Union law, which elevates animal welfare to the rank of an objective of general interest, Article 9 of the Convention does not refer to it. However, "the Court has already recognised on several occasions that the protection of animals is a matter of general interest protected by Article 10 of the Convention".⁴⁷ It stated that "the protection of public morals, to which Article 9 § 2 of the Convention refers, cannot be understood as aiming solely at the protection of human dignity in relations between individuals".⁴⁸ The High Court stressed that "public morality" is an evolving concept and reiterated its doctrine of the living instrument, emphasising that a practice that may have been accepted in the past may no longer be accepted in the future. It noted that, according to the Belgian Constitutional Court, promoting the protection and welfare of animals as sentient beings can be considered a moral value shared by many people in the Flemish and Walloon Regions and underlines that the decrees were adopted by a very large majority in the two regional parliaments. In this sense, the Court "considers that the protection of animal welfare can be linked to the concept of 'public morals', which constitutes a legitimate aim within the meaning of Paragraph 2 of Article 9 of the Convention".⁴⁹ In this respect, one may wonder whether the Court did not deliberately avoid the question of the legitimate aim of "protecting the rights and freedoms of others", which could have opened up a "Pandora's box" as to whether or not animals can be considered as subjects of rights.

As regards proportionality, recalling the subsidiary mechanism of the Convention and the importance of the role of the national decision-maker on

47 *Executief van de Moslims van België and others v. Belgique*, 16760/22 et al. [2024] § 94 (free translation).

48 *Executief van de Moslims van België and others v. Belgique*, 16760/22 et al. [2024] § 95 (free translation).

49 *Executief van de Moslims van België and others v. Belgique*, 16760/22 et al. [2024] § 101 (free translation).

issues that may differ widely from one country to another, the Court observed that “the contested prohibition contained in the two decrees at issue stems from a deliberate choice made by the federal legislatures at the end of a carefully considered parliamentary process”.⁵⁰ It noted that “when animals are slaughtered using special methods required for religious rites, the stunning process applied is reversible and does not result in the death of the animal” and that “based on scientific studies and extensive consultation with interested parties, the parliamentary work concluded that no less radical measure could sufficiently achieve the objective of reducing the harm to animal welfare at the time of slaughter”.⁵¹ As regards the argument that it was impossible for the applicants to obtain meat in accordance with their religious requirements, the Court emphasised that the Flemish and Walloon Regions did not prohibit the consumption of meat from elsewhere and that the applicants had not shown before the Court that access to meat slaughtered in accordance with their religious convictions had become more difficult following the entry into force of the contested decrees. Although not expressly referred to, this position is similar to that adopted by the Court in the *Cha’are Shalom Ve Tsedek* decision. Considering the analysed elements, the Court concluded that there had been no violation of Article 9 of the Convention.

As regards the alleged violation of Articles 9 and 14 combined, the Strasbourg Court held, in line with the Court of Justice of the European Union, that “since ritual slaughter is carried out on farmed animals, their killing takes place in a context distinct from that of wild animals slaughtered in the context of hunting and recreational fishing” and that “the same cannot be said of the fishing of farmed fish, which takes place in an aquatic environment that is fundamentally different from slaughterhouses”.⁵² The Court concluded that the applicants were not in a situation comparable to that of hunters and fishermen and that there had therefore been no violation of Articles 9 and 14 of the Convention.

The position adopted by the European Court of Human Rights in favour of animal welfare will therefore have an important impact on the rights of Islamic and Jewish religious minorities. The Court’s rulings apply to all 46 member states of the Council of Europe, and animal welfare is a growing concern in Europe. In Belgium, some political parties are even talking about the possibility of recognising in the Constitution that animals are sentient. Furthermore, the pre-electoral context in Belgium in spring 2024 was marked by the debate on the ban on slaughter without stunning in Brussels,⁵³ which is

50 *Executief van de Moslims van België and others v. Belgique*, 16760/22 et al. [2024] § 105 (free translation).

51 *Executief van de Moslims van België and others v. Belgique*, 16760/22 et al. [2024] § 118 (free translation).

52 *Executief van de Moslims van België and others v. Belgique*, 16760/22 et al. [2024] § 118 (free translation).

53 See among others in the press: J. Thomas, “A Bruxelles, l’abattage rituel plane sur la campagne électorale”. <https://www.lesoir.be/576343/article/2024-03-22/bruxelles-labattage-rituel-plane-sur-la-campagne-electorale>. Accessed October 27, 2024.

currently the only one of the three regions where the ban does not apply. In the end, the ban was not voted through, probably due to the context of the forthcoming elections⁵⁴ and the large Muslim population living in Brussels. In the Brussels-Capital Region, slaughter without stunning remains authorised for the time being, and the Strasbourg Court emphasised in its judgement that the fact that

the Brussels-Capital Region has not, at the date of adoption of the present judgment, abolished or limited the exception provided for the ritual slaughter of animals, and thus differs from the Flemish and Walloon Regions [...] cannot call into question the importance attached to animal welfare in Belgium.

It remains to be seen whether, under the new legislature (2024–2029), the members of the Brussels Parliament will decide to ban ritual slaughter without stunning.

11.4 To Conclude

The large number of judgements handed down by Belgian courts concerning relations between the State and religions does not allow us to offer a systematic analysis. By focusing on the major decisions handed down in this area, a slightly clearer picture can already be presented. While Belgium continues its secularisation process, like many of its European neighbours, religious issues are paradoxically at the heart of an increasing number of major rulings. There are a number of noteworthy developments in this context: the Constitutional Court's, and then the European Court of Human Rights', validation of the ban on wearing the full veil in the public space; the fact that religious education has been made optional in the French Community's official education system; the ban on slaughtering animals without stunning, including as part of a religious rite; etc., as analysed in this chapter.

These various significant elements also show that the religious phenomenon is increasingly regulated by the Belgian legislator, whether at the federal or federated entity level. This illustrates how difficult it is for the public authorities to define a space in which the religious freedom and beliefs of everyone can coexist with the other fundamental values of our democratic societies.

In this contribution, the choice was made to focus on decisions handed down by the Belgian supreme court. However, by way of conclusion, it is also important to report on a major judgement handed down by the European Court of Human Rights condemning Belgium. The appeal concerned a Brussels ordinance of 2017 stipulating that, from now on, exemption from property tax (which has been a regional tax since the fifth reform of the State) would only be granted to religious communities that belong to a recognised

⁵⁴ The European, federal and regional elections took place in Belgium on June 9, 2024.

religion. As the applicant religious congregations are Jehovah's Witnesses, they could no longer benefit from exemption from property tax because they are not recognised by the Belgian legislator. They therefore brought an action for annulment of the ordinance before the Constitutional Court, but the Court, in judgement no. 178/2019 of November 14, 2019, found no discrimination and held that the recognition criterion was "objective" and "relevant".⁵⁵ Unlike the Constitutional Court, the European Court of Human Rights ruled that the Brussels ordinance created a discrimination. More specifically, in its judgement *Assemblée chrétienne des Témoins de Jéhovah d'Anderlecht and others v. Belgium* of April 5, 2022,⁵⁶ the Strasbourg Court ruled that Belgium's system for recognising and funding religions violates Articles 9 (freedom of religion) and 14 (equality and non-discrimination) of the European Convention on Human Rights. According to the Court, "neither the criteria for recognition nor the procedure leading to recognition of a religious denomination by the federal authority were laid down in an instrument satisfying the requirements of accessibility and foreseeability" (§ 51). This judgement confirms that the Belgian system for recognising religions has largely run its course and that the historical legacy⁵⁷ is no longer sufficient to maintain it as it is.⁵⁸ A coherent and in-depth reform has become necessary in order to make the system more objective, more transparent, and more respectful of the principle of equality and non-discrimination.

55 Belgian Constitutional Court, 178/2019 [2019] (unofficial translation).

56 About this judgment, see S. Wattier, "La Cour de Strasbourg remet en cause tout le système belge de reconnaissance des cultes (obs. sous Cour eur. dr. h., arrêt Assemblée chrétienne des Témoins de Jéhovah d'Anderlecht et autres c. Belgique, 5 avril 2022)", *Revue trimestrielle des droits de l'homme* vol. 133, no. 1 (2023): 265–283; S. Van Drooghenbroeck, B. Garcia Da Silva, "La reconnaissance des cultes: une copie constitutionnelle (de plus) à revoir", *Journal des Tribunaux* no. 6916 (2022): 681–687.

57 On this subject, see C. Sägerser, *Le temporel des cultes dans la Belgique du XIX^e siècle: législation, réglementation, jurisprudence et pratiques*, PhD thesis (Brussels, Université libre de Bruxelles, 2013).

58 The idea of reforming the public funding of religious and non-confessional organisations in Belgium has been analysed by a number of authors since the late 1990s. Among others, see C. Sägerser, V. De Coorebyter, "Cultes et laïcité en Belgique", *Dossier du Crisp* no 51 (2020) 1–36. https://dipot.ulb.ac.be/dspace/bitstream/2013/108611/3/Dossier_51_Cultes_et_laicite.pdf&ved=2ahUKEwi-0qDqq6-JAxXMKRAIHuLUKisQFnoECBgQAQ&u sg=AOvVaw00F4z8Ew03TUW1SLXdys_H. Accessed October 27, 2024; J.-F. Husson, "Un autre mode de financement des cultes et de la laïcité est-il possible?". In: J.-F. Husson (ed.), *Le financement des cultes et de la laïcité: comparaisons internationales et perspectives* (Namur: Editions Namuroises, 2005): 183 ff. <http://hdl.handle.net/2078.1/139686>. Accessed October, 27, 2024; M.-F. Rigaux, F. Mortier, J. Drijkoningen, J.-F. Husson, K. Leus, N. Smets, *Le financement par l'Etat fédéral des ministres des cultes et des délégués du Conseil central laïque*, Rapport de la Commission des Sages à la demande de la ministre de la Justice Laurette Onkelinx (Bruxelles: Commission des sages, 2006); L.-L. Christians, M. Magits, C. Sägerser, L. de Fleurquin, *La réforme de la législation sur les cultes et les organisations philosophiques non confessionnelles*, Rapport du Groupe interuniversitaire à la demande du ministre de la Justice Stefaan De Clerck (Bruxelles: Groupe de travail, 2011); S. Wattier, *Le financement public des cultes et des organisations philosophiques non confessionnelles. Analyse de constitutionnalité et de conventionnalité* (Bruxelles: Bruylant, 2016).