



COVID-19, LAW AND RELIGION IN BELGIUM

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ABSTRACT: The Belgian regime of recognized religions has presented very few advantages during the COVID-19 crisis, apart from maintaining the salaries of priests. On the contrary, we have observed a number of challenges during this time, including, a lack of empathy by public authorities, including in their public speeches; a high level of conformity by religious authorities working together in an interreligious way; and a high degree of uncertainty as to future actions before the courts by conservative Christians.

KEYWORDS: COVID-19, Religious freedom, public authorities, Belgium

INTRODUCTION

Belgium is a small European country, but it has been one of the most affected by the COVID-19 crisis. By December 2020, there were more than seventeen thousand deaths for eleven million inhabitants, which would be equivalent in the USA to five hundred thousand deaths. Belgium is divided into two linguistic regions, one French-speaking and the other Dutch-speaking, with the Brussels-Capital as a region with special status. The proportion of COVID-19-related mortality between these regions confirms the long-standing disparities between them, since there have been approximately twice as many deaths among French-speakers as among Dutch-speakers.

The Belgium Church-State regime is a system of recognized religions, i.e., state-subsidized religion, with wages for ministers. Religious instruction is provided for one hour per week within the public-school curricula. Within this system, six religions are recognized by the State: Roman Catholicism, Judaism, Anglicanism, Evangelical Protestantism, Islam, and Orthodox Christianity. In addition to these, a seventh recognized philosophy (organized secularism) was added in 1993. This is an originality of Belgium by comparison with neighboring France. Whilst in France, laicity is a constitutional characteristic of the Republic, in Belgium, laicity is one of its recognized religions.

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Returning to the management of COVID-19, three characteristics are worth noting and will constitute the content of our short discussion. First, we can observe that health measures restricting religious freedom are supported by the religious leaders, who have made efforts to provide theological legitimization for the temporary prohibition of collective celebrations. They insist on the role of individual prayer and support for neighbors, the poor and those in suffering, as an essential means of pleasing God.

The second characteristic is the inter-religious dimension of the positions taken by the religious leaders: they have worked together on common reactions, common protocols and common negotiations with public authorities, at least when they are called upon. Further, one Catholic bishop was heard to say that the Catholic Church would not demand the resumption of collective celebrations in churches until mosques could be allowed to do so as well.

The third observation is the apparent religious illiteracy of the public authorities not only with regards to their own Belgian legislation on worship, but also with regards to Belgian religious realities and their diversity. How can this be explained? By the principle of neutrality, through religious ignorance, or by a contempt for religions? It remains uncertain, but we lean towards the second hypothesis: that of religious illiteracy on behalf of the public authorities.

RELIGIOUS LEADERS AND THEIR COMMON POSITION OF LEGITIMIZATION

During the first progressive deconfinement in mid-May 2020, religious groups had to wait a month before being allowed to organize collective celebrations. During this month, the leaders of the recognized religions negotiated health protocols with the government. Limitations on the number of people in places of worship gradually eased from 40 to 200 in August. In early October, as the health situation worsened, the limitation on the number of worshippers returned to 40, and finally collective celebrations were completely banned from the end of October. This ban was just extended at the end of November until mid-January. Christmas Mass was banned in the churches and festive meals in families were limited to only one guest per house.

During the first and second confinement, all collective religious celebrations were prohibited, with only three exceptions: weddings,



with 5 people permitted to attend; funerals, with 15; and live-streamed religious services, with 10 people permitted on-site. In the first confinement, public compliance with restrictions was high, despite very harsh measures. These included prohibition on all car and pedestrian traffic on public thoroughfares, parks, the countryside, or the woods, farther than an hour away by foot. During the deconfinement in May, social activities were not all re-authorized at the same time. This resulted in a broad social protest with a strong feeling of discrimination between different professions. Several lawsuits were filed by different organizations, although not by the churches. The Catholic bishops and other religious leaders adopted together a religious discourse of support for the government's measures, legitimizing them theologically in the name of defending the weak and the sick, with a sense of responsibility in the face of a crisis that was so deadly in Belgium.

Following media coverage of the efforts of conservative Catholics to repeal restrictions in France, similar groups of laity in Belgium followed suit in May 2020, taking their case to the Belgian courts on their own initiative, without the support of the bishops. But, unlike in France, the Belgian Council of State rejected their request. The argument of the Belgian Council of State is noteworthy. Part of their ruling rested on the lack of expertise regarding the health risks specific to religious gatherings; but more surprisingly, the Council of State recalled that the Catholic faithful have to defer to the position of their bishops and that these bishops were the first to ban religious celebrations on their own initiative. Moreover, it was noted, these bishops, with the other religious leaders were in the process of negotiating with the government the protocols for reopening churches and places of worship.

In response to one of the petitioners who invoked the urgent need for the baptism of their newborn child, the State Council invoked a similar line of argument, noting that the bishops themselves had taken the initiative to ban all the baptism ceremonies and to postpone them *sine die*. This is a classic form of case law concerning religious autonomy in Belgium in which the State Council continues to employ the formula "spiritual sovereignty" to defer to the religious authority of recognized denominations. But here this classical argument was reinforced by the fact that bishops were precisely negotiating this issue with the government.

Thus, in Belgium, the limitation of freedom of religion has been severe over the past year, including the banning of collective celebrations.



On November 27, the Belgian government decided to partially reopen non-essential shops to facilitate the purchase of Christmas gifts, but did not suspend the ban on religious ceremonies including Christmas Day. Most troubling for a part of the population was the speech delivered by the Prime Minister of Belgium on this occasion in which he pronounced the word “Christmas” more than a hundred times without ever evoking the religious dimensions of this holiday nor evoking the harshness represented by the ban on religious ceremonies.

On November 30th 2020, the French Council of State condemned the limitation of collective celebrations to a maximum of 30 worshippers, considering this to be discriminatory compared to the less severe limitations imposed on various kinds of businesses. This case before the French Council of State included conservative Catholics as well as the bishops of France. One may wonder whether this case will have an effect again in Belgium.²

The situation in Belgium is therefore under tension between a new French case in favor of religious freedom and a Belgian government which banned religious worship without any empathy in its public pronouncements. This is surely the indication of a very high secularization of the Belgian society, but that is not enough to explain the lack of empathy of the government towards religions even if they are minorities. A further explanation could perhaps be found in the fact that this Christmas issue is attached to a long dominant Catholic Church, and that it would have been discriminatory to manage this holiday differently from others.

In any case, after the November 30th ruling by the Council of State in Paris, with support by the French bishops, and after this unempathetic speech by the Belgian Prime Minister, the Belgian bishops took a stand in a press release on December first. In this release, they expressed their disappointment, but also their willingness to resume negotiations with the government, their support for the health measures taken by the public authorities, and finally the importance of joining the national efforts in the field of public health. They did not opt to take legal action. However, we do not know what will happen with isolated followers who are opposed

2. This text was composed and submitted prior to the 8th of December 2020, when the Council of State ruled in favor of a petition lodged by a Jewish group on the grounds that the restrictions were disproportionate in light of the religious obligations of certain Jewish denominations. Following this, on the 22th of December 2020, the Council of State rejected an application to further ease restrictions, lodged by members of the Catholic clergy; the Council arguing that its decision of 8th December was motivated by the specific discrimination against the Jewish community.



not only to the government limitations on the freedom of worship, but are also opposed to their own religious leaders, whom they consider as too soft and cowardly in the face of State restrictions.

RELIGIOUS ILLITERACY AMONGST BELGIAN PUBLIC AUTHORITIES

Of course, the impact of the COVID-19 pandemic has not been limited to recognized religions: a virus is deaf and blind to legal distinctions. And the government knows this very well. By consequence, the first lockdown orders, from mid-March to mid-May, stipulated that churches and places of worship may remain open, but that any collective celebration is totally prohibited *for all religions*, recognized or not.

This highlights the poor quality of the legislation rolled out during this period and, notably, the poor translation between the French and Dutch versions of the term “religious celebration:” it was not clear whether restrictions concerning kinds of collective activities or formal ritual celebrations. This is a recurrent difficulty in a country that has several national languages. A second issue was the initial absence of any reference to the collective activities of organized secularism, i.e., philosophical organizations recognized by law in 1993 and 2020 as analogous to a religion. This error was later corrected by the government, but the damage was done.

Indeed, this oversight bore witness to tensions within the Belgian regime in which recognized secularism now wishes to be freed from this analogy with religions in order to ideologically seize the public authorities themselves. Strategically, I see this option as prejudicial against religions: religions would be the crucible of irrationality and uncontrolled emotion, while philosophies would be the place of rationality. It is important here to insist on how the government repeatedly evoked the Christmas holiday without mentioning its religious dimension.

Finally, an observation that would be comical if it did not reveal racial ignorance and even animus, concerns the penal prohibition in Belgium of covering one’s face under the law of 2011. No health exception was foreseen by this norm of the penal code intended to prohibit the wearing of the Islamic niqab. During the health crisis, it took several weeks before a government order clarified such an exception and stated that the mask could only be worn for health (not religious) reasons.



CONCLUSION

In our discussion, we have explored three characteristics of the Belgian experience during COVID-19: the lack of empathy demonstrated by public authorities towards religions, the legitimizing efforts on the part of religious leaders to support the government's sanitary restrictions, and the close collaboration observed between recognized religions. In the background to the pandemic, we can see the ambiguity of the status of organized secularism, the absence of reflection regarding unrecognized minority religions, the religious illiteracy of public authorities, and finally, the tensions created by movements of conservative religious groups. Olivier Roy has noted that in France a part of Catholics appear to have become religious consumers, characterized by their claim to access religious services rather, than by an expression of spirituality. The situation seems quite different in Belgium, where the position of the bishops is less consumerist, and the recalcitrant faithful are less numerous. But perhaps this is also a sign of a deeper secularization of Belgian society.