

RELIGIOUS INSTRUCTION IN PUBLIC EDUCATION IN BELGIUM

RIK TORFS

I. DESCRIPTION AND HISTORY

In Belgium, public education is statistically less important than catholic education. Almost 60 % of secondary school pupils attend classes in catholic schools. In Flanders, the situation is even more prevalent with 75 % of pupils making that choice. The reason for this phenomenon is a mix of tradition and standards in terms of quality.

As far as catholic schools are concerned, catholic religious instruction is always given. However, several years ago, some debate took place on this issue. In fact, why not offer Islam classes for Muslim pupils? This question has been asked as some devoted Muslims felt more comfortable in catholic schools than in public education. Some experiments were allowed in certain dioceses, including the diocese of Hasselt. Nevertheless, under the influence of the previous archbishop of Malines, Godfried Danneels, who left office in 2010, the experiments were discontinued.

Obviously, religious instruction in public education is an entirely different matter. Public education in Belgium is organised in various ways. It can be offered by the three communities (French, German or Dutch), or by provinces, local villages and towns. But then again, what are the concrete obligations of public schools with regard to religion?

Serious questions concerning schools and their neutral character have emerged twice in Belgian history. A first confrontation took place in 1878-1879, and a second one followed in 1954-1959. During the latter conflict, two groups found themselves opposed to each other. Liberals and socialists defended public education, whereas perhaps

unsurprisingly Catholics propagated free, almost exclusively catholic education.

A long and demanding conflict ultimately led to the so called *pacte scolaire* of 1958, a compromise typical for 20th century Belgium, always in search of pacification. The *pacte scolaire* accepted equality between public and free schools with regard to subsidies and salaries of personnel. A compromise was also reached with regard to the construction of school buildings.

II. THE *PACTE SCOLAIRE* AND ITS CONSEQUENCES

The *pacte scolaire* was introduced by a law of 29 May 1959. This law has been modified several times since, yet it remains the cornerstone of the ideological and religious equilibrium in public education in Belgium. Article 8, regarding religious classes, and article 9, concerning teachers and inspection, are of utmost importance. I shall not analyse article 9 in detail, but shall concentrate on article 8.

Article 8 starts with the announcement of a basic principle. In public education, two hours of religious or ethical instruction have to be scheduled every week. The concrete choice is left the pupils or their parents. By religious instruction, the legislator means instruction in a religion (Catholicism, Protestantism, Judaism, Islam, Orthodoxy and Anglicanism) as well as ethics inspired by this religion. By teaching of ethics is meant teaching of non-confessional ethical principles.

Clearly, the choice between religions, in which pupils can be instructed, is not without limits. Six religions are mentioned explicitly. These six happen to be the so-called ‘recognized religions’.

Notwithstanding the fact that religious liberty is guaranteed for any religious group, recognized or not, recognition entails, according to article 181 of the Belgian constitution, the payment of salaries and pensions of religious ministers by the state. Yet, other advantages are also granted, including the monopoly of recognized religions with regard to religious instruction in public education. Currently six religions are officially recognized. First of all, there is the Catholic church, which is recognized by tradition and whose organization serves

as an implicit model for the system as a whole. The recognition of Anglicans, Protestants and Jews also dates from the independence of Belgium in 1830, yet has been formally established by the law of 4 March 1870. Islam has been recognized by the law of 19 July 1974. Finally, Orthodoxy obtained its recognition by the law of 17 April 1985.

III. BELGIUM AS A FEDERAL STATE

Starting from 1970, Belgium was transformed gradually, through various revisions of the constitution, into a federal state. One of the effects of this process happened to be the *communautarisation* of education through the revision of the constitution on 15 July 1988. As a result of this, linguistic communities organize their own education. This evolution led to some concerns with regard to the equilibrium as established by the *pacte scolaire*. In Flanders, catholic education is extremely powerful. Hence non-Catholics, especially non-believers, feared marginalization. The opposite was true in Wallonia, where the Parti Socialiste is extremely powerful. However, problems have been solved by including the main ideas of the law of 29 May 1959 in the current article 24 of the constitution guaranteeing freedom of education. This article is conceived as follows:

§ 1. Education is free; any preventative measure is forbidden; the repression of offences is only governed by law or decree.

The community offers free choice to parents.

The community organizes neutral education. Neutrality implies notably the respect of the philosophical, ideological or religious conceptions of parents and pupils.

The schools organized by the public authorities offer, until the end of obligatory schooling, the choice between the teaching of one of the recognized religions and non-denominational moral teaching.

§ 2. If a community, in its capacity as an organizing authority, wishes to delegate competency to one or several autonomous bodies, it can only do so by decree adopted by a two-third majority vote.

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§ 3. Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of obligatory schooling.

All pupils of school age have the right to moral or religious education at the community's expense.

§ 4. All pupils or students, parents, teaching staff or institutions are equal before the law or decree. The law and decree take into account objective differences, notably the characteristics of each organizing authority that justify appropriate treatment.

§ 5. The organization, the recognition and the subsidizing of education by the community are regulated by law or decree.

Article 24 can be considered as the beginning of a new era. Not only is it very sensitive to non-discrimination on an ideological or religious basis, but it also puts an end to widespread uniformity as a guiding principle with regard to religious education in Belgium. Certainly, article 24 guarantees the safeguarding of some important principles. Yet, the concrete organisation is entirely left to the competency of the communities. The same is true for possible administrative consequences of decisions issued by the Council of State - the latter, however, remaining Unitarian. But then, uniformity with regard to case law does not necessarily lead to uniformity with regard to administrative measures. Yet another important consequence should not be overlooked. Today, the *pacte scolaire* can be modified by a decree of a community. Consequently, the uniformity of the formerly national legislation will slowly evaporate. As a matter of fact, it has already done so to a large extent.

IV. PRACTICAL PROBLEMS

The choice as foreseen by Article 24 of the constitution did not lead, for a long time, to many conflicts. However, this equilibrium was broken by a decision issued by the council of State on 14 May 1985. Saskia Sluijs was a girl not interested in the message of the recognized religions but was not an atheist. Consequently she was not prepared to attend classes

of religious instruction organized by one of the recognized religious groups. Yet, classes in ethics were also a problem to her, as these ethical classes were explicitly non-confessional. Her problem made clear that the existing legislation did not have a solution for religiously inspired people not belonging to recognized groups and not wanting to be confronted with non-confessional humanism as a possible alternative. Moreover, a detailed examination of the non-confessional classes revealed the non-neutral character of the latter. The council of state decided that Saskia Sluijs had the right to be instructed in a more neutral ethical programme as has been confirmed by two circular letters of 26 July 1985 and 15 September 1988.

A second decision by the council of state was taken on 10 July 1990 in the Vermeersch case. Vermeersch was a Jehovah Witness confronted with the same difficulty as Saskia Sluijs - this time from an openly denominational perspective.

Another problem emerges with regard to religious instruction in public education. What happens with pupils (or their parents) refusing to attend any of the classes offered? Can they be dispensed from attending them? Here, a clear evolution can be identified. In Flanders, the minister of education offered a dispensation if the request was duly motivated. Yet the fact that the question had to be asked of the minister was seen as a considerable hurdle. A circular letter of 8 July 1992 was the beginning of a new era. It allowed school directors to grant the dispensation themselves. No intervention by the minister is needed any longer. This evolution shows a paradigm shift. The first concern of the authorities is no longer the guarantee of a free choice between instruction in various religions and philosophies. Today priority is given to the individual conscience of pupils and parents. Rather than the organisation, the individual comes to the fore.

A further issue concerns the designation of teachers of religion. Indeed, at what level is responsibility for the appointment of teachers fixed? Here, the influence of the ongoing regionalization and *communautarisation* of Belgium is clearly present. The recognition of a religion as a recognized religion remains a privilege of the federal government. In that regard, communities are bound by this federal

decision. Yet, the authorities accepted as representatives of the recognized religions by the federal government are not necessarily the authorities accepted by the various ministers of the regions and communities. In other words, it is possible that the federal minister of justice recognizes as interlocutor of, for instance, the protestant churches, someone other than that recognized by the Flemish minister of education does. In this regard, a decision by the then court of arbitration (today: constitutional court) of 4 March 1993 is relevant. The underlying difficulty is the following. The Catholic church, the implicit model for the recognized religions system in Belgium, is very hierarchically structured. The pope appoints the bishops, the bishops indicate ministers of religion or teachers offering religious instruction. Both federal and other authorities stick to this simple model. Until now, nobody thinks of recognizing any other entity than the bishops or their representatives as interlocutors of the Catholic church. This is not necessarily the case for other religious groups. Islam has a more horizontal structure. Various groups exist side by side and each one represents trends or tendencies belonging to their religious tradition. Protestants find themselves in a similar situation. As theologians will confirm, there is no all-encompassing protestant church. Lutherans, Calvinists, Evangelicals, Pentecostals, Baptists, etc, all fit in one way or another into the protestant tradition. Yet, the Belgian government only recognizes one protestant church - which is no more than an external structure in which various groups collaborate with one sole purpose: being an interlocutor to the state. In case of disagreement, it is very possible that a federal minister follows different pieces of advice or opinions than those followed by a regional one.

The authorities of the various religious groups are also responsible for the approval of the teachers, and for inspection, controlling the programme, and personnel. This situation leads to a dual relationship: with regard to discipline and the functioning of teachers in the framework of the school, the headmaster is responsible. Yet, with regard to the content of the classes, the religious or non-confessional entities are in charge. This double relationship leads to sometimes unexpected consequences. In the event that a teacher in religion loses the confidence

of his hierarchical religious authority, public schools are obliged to dismiss him, at least as a teacher of religion. This leads to the somewhat awkward situation that the school is financially responsible for a decision taken by a religious entity that they do not control. This principle has already been established by a decision by the Council of State of 29 April 1975, the Van Grembergen case. Later, decisions of 22 February 1984 (Petit) and 20 December 1985 (Van Peteghem) confirmed this approach. Of course, the school can also dismiss the teacher, for instance on disciplinary grounds. In that case, the agreement of the religious authorities is not required.

A point of concern is also the dress code. Here, religious classes are different from the dress code required by the school as a whole. Even if a headscarf is not allowed during regular classes, an exception is made for religion, as religious instruction is offered under the control of religious authorities. Decisions with regard to the headscarf in general are taken by the headmaster of the school. Yet, more general decisions are becoming increasingly common, with a one town policy in Ghent (more favourable to the headscarf) and another in Antwerp (the opposite). On 8 November 2010, the *Comité de pilotage* of the *Assises de l'Interculturalité* organized by the federal government proposed to allow the headscarf from the fourth year of secondary school onwards, and not earlier. Yet, the outcome of this recommendation remains doubtful, as education is a matter for the communities.

V. CONTENT OF RELIGIOUS INSTRUCTION

More so than in the past, the content of religious classes - which is determined by religious authorities - is the subject of public debate. Catholic schools in Flanders follow a programme which is not so much based on cognitive knowledge as on experience. The teacher of religious education has a triple function. First, he is supposed to be a *witness*. This means that he himself should be one of the faithful. He includes his personal life experience in his teaching. Many teachers perceive this approach as an intrusion into their personal lives, especially when they grow older. It is very possible that in a later stage of their lives, their

religious fervour evaporates somewhat. Moreover, their personal situation, including married life, may be less flourishing than at the beginning of their careers. Unlike the situation before the law of 3 July 1978, religious teachers with a stable appointment will normally not be dismissed for difficulties in their personal and marital situations. However, the idea of compulsory witnessing in one's personal life is seen by many as burdensome and problematic.

Secondly, the teacher should be a specialist. Here, his role mirrors the traditional role of other teachers offering instruction at school. This aspect of religious instruction is hardly seen as problematic.

Thirdly, the teacher should also act as a moderator in discussions and debates concerning religion and conceptions of life. The cognitive role of the teacher is overshadowed by his role as a catalyst of various opinions and sensitivities coming from the pupils.

VI. FUTURE PERSPECTIVES

Current programmes of catholic instruction lead to a cognitive deficit. Increasing numbers of people insist on organizing a class dealing both with comparative religions and concepts of life, instead of, or in addition to, the programmes offered today. The second option particularly would necessitate a revision of article 24 of the constitution, the latter requiring special majorities. Yet, the demand illustrates some important changes in Belgian society over the last few decades.

First, the traditional clashes between Catholics and non-believers are not as vigorous as they used to be in the days of the *pacte scolaire*. Secondly, the lack of cognitive knowledge of European culture and tradition, largely coloured by its religious sources, is increasingly experienced as problematic and leading to intolerance vis-à-vis other cultures. Thirdly, the rapid decline of official Catholicism offers a perspective for change. Indeed, the year 2010 turned out to be especially dramatic for the previously very powerful Catholic church. A high number of sexual abuse cases, including acts committed by the bishop of Bruges, Roger Vangheluwe, combined with the appointment of the conservative and controversial André Léonard as archbishop of

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Malines-Bruxelles, led to endless difficulties which could qualify as some form of implosion. No doubt that this evolution will, in the long run, also have an influence on the legal position of Catholicism and of religions in general. In the future, it will certainly also affect the position of religious instruction in public education.