

Objections against religious teaching or practices in private schools with a religious ethos

ICLARS – Delphi meeting – May 2025

Louis-Leon Christians

Université catholique de Louvain (Louvain-la-Neuve - Belgium)

1. Introduction: European diversity

1.1. Fields' Diversity

In many European countries, denominational religious courses are organized not only in fully private denominational schools, or in state-subsidized private denominational schools, but also in state schools.

In private schools, other specific questions may arise as to the extent of religious practices, even outside religion classes. Freedom of education is guaranteed by the Constitutions. The resulting autonomy of teaching is a major guarantee. It can, of course, be limited, like all public freedoms in a democratic society and in compliance with the principle of proportionality.

No European regime prohibits public subsidies for faith schools, not even the secular French Republic.

3 questions thus emerge : (a) what is the status of totally private, non-subsidized schools, legally referred in Belgium to a broad notion of "home schooling"; (b) for recognized and subsidized denominational schools, do these subsidies and recognition require certain conditions, limiting in terms of religious freedom? (c) finally, what is the status of denominational religious courses when they are provided within a public school system?

1.2. Diverse themes

The underlying themes are primarily **procedural**: they concern, for example, the authority of religious leaders, or the conditions for enrolment (and whether or not a non-believer student may be refused). Other issues are **substantial**: they emerge around themes such as creationism, gender issues, sex education, the status of women, and non-discrimination between Jews and Muslims. On the other hand, disputes concerning prayer in schools are rare.

1.3. Diverse national contexts

Europe is characterized by its political and legal diversity, from the 27-member European Union to the 46-member Council of Europe. National regimes vary enormously, ranging from a certain hostility to religious education networks, particularly those linked to Islam, to strong support for religious education networks, particularly those linked to Christianity. A vast typology of

this diversity could be undertaken. This text will draw its illustrations mainly from the case law of the European Court of Human Rights, and from national law in the case of Belgium, a country of 11 million inhabitants to the north of France.

2. Purely private schools with a religious ethos

Since 2001, several European countries (including France and Belgium) have been progressively limiting the freedom of purely private schools without subsidies (including home schooling within the same category). Controls are on the increase, and intermediate public examinations are being organized, which may oblige child failing this exam to return to a public or recognized school. Public authorities are concerned about the radicalization and ghettoization of some of these forms of education, and their distance from public education standards. Muslim and Jewish schools are targeted, as are the private structures of the most conservative Catholic groups. The Belgian Constitutional Court rejected all appeals lodged by both Jewish and Opus Dei schools. The general quality of education for all young people seems to take priority. The criterion of the "Open future" to be guaranteed to each child deserves particular scrutiny. Anyway, this evolution risks conveying ideological implicits far from neutral.

3. Recognized and subsidized denominational school networks

First of all, the case law of the European Court of Human Rights, from the outset, has indicated that the intensity of its control over public education depended on the existence of a plurality of subsidized alternative networks in the concerned country (e.g. in the Kjeldsen case, which concerned strong sex education in state schools).

In European countries that subsidize denominational educational networks, various legal conditions are issued, some of which prohibit any refusal of enrolment on the grounds of a student's beliefs, while others set minimum content and curriculum guidelines. These conditions vary according to the level of education. For schools with pupils of compulsory school age, the conditions are stronger than for higher education, where the requirements are lighter. In Belgium, for example, the Council of State has ruled that a subsidized denominational higher education institution, is authorized to refuse enrolment on the grounds that the student's convictions are incompatible with the establishment's project. More broadly, the Belgian Constitutional Court, to which numerous appeals have been lodged, has consistently held that Belgian legislation on content program conditions does not violate the principle of educational autonomy.

In any case, enrolment in a subsidized Catholic school in Belgium means that pupils are required to attend the only religious education class organised by that school network, namely Catholic religious education (the law prohibits subsidised Catholic schools from organising any other religious education classes, including Islamic religious education). No exemption scheme is provided for. No disputes have been reported to date. It should be noted that many Catholic schools in Belgium organise two Catholic religion classes, one for Catholic children and the other, purely informative, for non-Catholics.

What's more, the same Belgian Constitutional Court has ordered the State to equalize the amount of public subsidies between those allocated to public education and those supporting denominational education, so as to avoid any discriminatory disproportion. Another Belgian example is related to the introduction of a new “citizenship course” in 2017. In public schools, this course replaces 1 hour of religious instruction. Recognized denominational schools are obliged to offer a “citizenship education”, but the law has allowed them to organize the subject transversally across all courses in the curriculum, without creating a specific “citizenship course”. As a result, two very different ways of teaching citizenship has been built, while still respecting the autonomy of the program of subsidized denominational schools. The controversies surrounding the new sexual education program, also applicable to subsidized denominational schools, will be a future test (in Belgium as in France).

4. Denominational religious courses in public schools

Since 1959, Belgium has been one of the European countries with a specific system making several denominational religious courses compulsory in public education. Pupils' parents are responsible for choosing each year among the various recognized religious courses (Catholic, Protestant, Jewish, Muslim, Orthodox), in addition to a non-confessional humanist ethics course. Parents can also request total exemption from all these courses. In the latter case, children are obliged to take additional citizenship classes. The first specificity to note is that parents' choice is not legally constrained by their denomination: the law allows free enrolment in any of the courses, whatever the child's actual religion. For example, baptism is not required to enroll in a Christianity course, nor do you have to be a Muslim to enroll in an Islam course. It's a free "cultural" choice among courses that are, for their part, denominational and whose programs are subject to the approval of religious authorities.

To be appointed by the public authorities, the teachers of each religion course must hold specific authorization from the religious authority. Similarly, any dismissal of a teacher requires the initiative or agreement of the religious leader. In recent years, Belgian jurisprudence has

gradually tightened controls on these decisions by religious leaders, notably in terms of the right of defense and effective links with a specifically religious motive. The Constitutional Court refers to these teachers of religion as holding "hybrid" functions, linked both to the public service and to a religious function.

The only legal obligation explicitly imposed on teachers of religion and humanist ethics is the prohibition on "denigrating" the positions expressed by other teachers of religion or ethics. More heated disputes have arisen in connection with the cartoons representing the Prophet of Islam. Certain comments made by religion teachers on this subject led to their dismissal or suspension. This was not the case for comments linked to creationism, which did not give rise to any disputes. Resolution 1580 of the Parliamentary Assembly of the Council of Europe in 2007 explicitly states that creationist statements can be made in the context (and only in the context) of religion classes. Still in Belgium, a controversial issue concerns the wearing of religious symbols by public school religion teachers. While no public school are allowed to prohibit the wearing of religious signs by religion teachers *inside* their classrooms, disputes have arisen over the prohibition of such signs in the corridors and common areas of public schools. The Conseil d'Etat has overturned these prohibitions. Female teachers of the Islamic religion must be able to move around the school, while retaining their religious symbols.

Conclusions and discussions

European regimes for denominational schools show a wide variety, the very principle of which is recognized by the Council of Europe. This variety exists not only between European states, but also within each state. The internal diversity of school networks within each state further strengthens the case for granting these states a wide margin of appreciation and for lowering European controls. The more internal plurality is guaranteed, the more the diversity of European policies remains an accepted feature.

Belgium's constitutional origins are rooted in a pluralism which, since 1959, has led to the dual characteristic of a diversity of subsidized educational (confessional) networks, and a plurality of recognized religious courses within the public education network itself.

This dual principle of Belgian diversity is now being called into question by certain political parties who wish to abolish religion classes in public schools and merge the public and denominational education networks. These projects failed up to now. On the other hand, the case law of the highest courts is evolving to reinforce the principle of proportionality in all matters relating to religion in education, and to progressively attenuate a purely binary conception of religious autonomy in matters of general education by religious schools.

The autonomy of denominational schools seems in the final analysis, an issue that can only be dealt with in a hybrid and proportional way in Europe. There remains no strong dividing walls, either way. Any restriction on the autonomy of denominational schools will be subject to scrutiny as to the reality and scope of the religious motivations behind the claim to autonomy. It is therefore by examining this control of proportionality, in the 27 or 47 States and under the control of the two European courts, that we will be able to measure the current European stakes, more than by radically rejecting the enforcement of the principle of proportionality.

Louis-leon.christians@uclouvain.be