



Muslim burial practices and Belgian legislation and regulations: a comparative literature review

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ABSTRACT

Belgian burial regulations are challenged by a growing Muslim population. In this review, we first provide an overview of Muslim burial practices. Second, we describe how Belgian public policies have addressed the topic of Islamic burial. Third, we compare Belgian burial regulations and their impact on Islamic burial with those of the neighbouring countries. Literature published between 1997 and 2016 has been included. Repatriation to the country of origin seems to be a result of a number of factors (religious and financial barriers; ...). Differences are observed between policy levels and countries due to different interpretations of neutrality and religious freedom.

KEYWORDS

Burial practices; Muslims; Islam; burial regulations; Belgium

1. Introduction

European countries are increasingly challenged by the integration and ageing of their Muslim population. In Belgium, Muslim migration began in the 1960s, with large-scale settlement of guest workers mainly from Morocco and Turkey. In a few decades, Islam has become the second largest religion in Belgium and even the fastest growing religion in Europe (Shadid & van Koningsveld, 2008; Pew Research Center, 2015). In 2013, sociologist Jan Hertogen estimated that Muslims counted for 6,5% of the Belgian population (Hertogen, 2013). Today, Belgian society is confronted with the ageing and dying of its first generation of Muslim citizens. Given that Muslims as well as policy-makers held the assumption that their settlement in Belgium would only be temporary, policies consisted mainly in providing suitable housing and payment. The establishment of Islamic cemeteries did not fall within the scope of this policy (Kadrouch-Outmany, 2014). It's only up till the 90s, that discussion on burial legislation and Muslim burial rituals emerged on the political agenda. This is a vast contrast compared with neighbouring countries, including the Netherlands, Germany and France where as a result of this early attention a significant amount of literature is available on Muslim burial practices, which is not the case in Belgium.

The aim of this literature review is threefold. First, it seeks to provide an overview of Muslim burial practices in Belgium. As this is a crucial issue and the (only) topic dealt with in the available literature, our focus is primarily on Belgian Muslims' choice of burial location and the underlying reasons for this choice. Second, it aims to identify the way in which Belgian

public policies have dealt with the topic of Islamic burial. Third, it seeks to compare Belgian burial regulations and their impact on Islamic burial with those of the neighbouring countries.

2. Methods

For this review, literature relevant to the Belgian context published between 1997 and 2016 in Dutch, French and English has been included. Several databases including PubMed, LIMO, JSTOR and Google scholar were consulted, though the majority of literature has been located through hand searching and reference list searching. The main keywords guiding our search were: Muslim, migrant, Islam*, religion, religious. These terms were crossed with: funeral, burial practices/rituals, policy, legislation, law, regulation, Belgium, Flanders, Wallonia, Netherlands, France, United Kingdom, Germany. Our search yielded 47 references of which 24 theoretical studies, 9 legal/policy documents, 6 empirical studies, 5 reports/essays and 3 news articles. Large-scale empirical or legal studies are lacking to a great extent. Grey literature (reports etc.) proved to be an important source of information.

3. Results

3.1. Muslim burial practices in Belgium

Today only a very small minority of the Muslims in Belgium choose to be buried in Belgium. Indeed, approximately 90% of Muslims prefer to be repatriated and buried in the country of origin – for the vast majority this is Turkey or Morocco (Jonker, 2004; Kadrouch-Outmany, 2014; Seuntjens, 2012). No detailed figures exist on the preferences of Muslims regarding choice for burial locations nor on the effective number of Muslim burials in Belgium or repatriations at national, regional or local level. According to the study of Kadrouch-Outmany (2014), the assumption of being repatriated at death to the country of origin, is also shared by younger generation Muslims (75%). In the literature, the following four aspects have been identified as the underlying reasons for repatriation: religious barriers, financial constraints, a lack of knowledge of burial facilities and a sense of belonging. In what follows, we briefly discuss each of these factors.

3.1.1. Religious barriers

Religious aspects of burial seem to be the key reason for the choice of being buried in the country of origin where an Islamic burial is guaranteed. First, Muslims are traditionally buried in a separate Islamic cemetery with each body in a separate grave facing Mecca. The construction of the grave consists of a niche dug out at a side of the grave into which the body is placed (*lahd*) or of a deep vertical grave in which a trench is dug out in the middle (*shaqq*). According to Kadrouch-Outmany's research (2014, 2016), the use of *lahd* is not common in Belgium as the soil is not always stable enough. Second, Muslims are buried in shrouds, whereas in Belgium this is not allowed everywhere. Kadrouch-Outmany (2014, 2016) observed that in Flanders, where burial in shrouds is permitted, Muslims are often buried in a coffin given that the soil is often not stable enough. Third, deceased Muslims are expected to lie undisturbed in the grave till the end of time. Precisely for this reason, many Muslims wish to be buried in the country of origin or ancestors (de Ley, 2004; Jonker, 2004;

Kadrouch-Outmany, 2014, 2016; Renaerts, 1997; Seuntjens, 2012). However, this idea of perpetuity in the country of origin has to be nuanced, as graves are also cleared out in big cities after a long amount of time (Kadrouch-Outmany, 2014, 2016). Nevertheless, graves in perpetuity seem to be more assured in country of origin than in Belgium, where often graves are cleared out after a certain amount of time. Consequently, many Muslims seek to be buried in their country of origin. Fourth, burial takes place as soon as possible, preferably within 24 h as recommended by the Islamic tradition. However, this prescription seems also to be an issue with regard to repatriation, as a burial within that amount of time cannot be met by legal and administrative formalities. Fifth, Muslims themselves traditionally lower the deceased in the grave, whereas in Belgium this is not possible everywhere (Kadrouch-Outmany, 2014; Seuntjens, 2012). As a result of the aforementioned issues, the Muslim ritual of burial had to adapt itself to the Belgian juridical rules (de Ley, 2004; Renaerts, 1997). For a large majority of Muslims, repatriation is still the best answer.

3.1.2. Financial constraints

Financial aspects too seem to have a deciding impact on burial practices of Muslims in Belgium. Burial in Belgium involves high costs and a large majority of Muslims is already insured to be repatriated (Jonker, 2004; Kadrouch-Outmany, 2014; Kanmaz & Zemni, 2005; Seuntjens, 2012). Kadrouch-Outmany's study (2014, 2016) highlighted that the majority of Muslims opt for repatriation since they have been paying a small annual fee for decades, which assures them that all burial costs are covered but also because of the idea that graves are practically free of cost.

3.1.3. Social aspects

According to Jonker (2004), Kadrouch-Outmany (2014, 2016) and Seuntjens (2012), Muslims have a stronger sense of belonging to their country of origin in matter of burial, contrasting to a sense of belonging to Belgium in everyday matters. Returning to one's roots was frequently mentioned in Kadrouch-Outmany's study (2014, 2016), as an important element in Muslims' choice of where they wanted to be buried, even if they themselves were not born in the country of their ancestors. According to this author, this choice seems also to be fuelled by the growing discussion about dual nationality, the alleged lack of loyalty of Muslims and the failed integration of Muslims into Belgian society (Kadrouch-Outmany, 2014, 2016). With regard to the latter, Kadrouch-Outmany (2014, 2016) and Kanmaz and Zemni (2005) argue that Belgian policy and policy-makers have not given sufficient attention to enhancing the integration of Muslims as full Belgian citizens as they assumed their settlement would still be temporary.

3.1.4. Lack of knowledge of burial facilities

The low rate of burial in Belgium among Muslims might be explained by the insufficient knowledge Muslims have of existing burial facilities in Belgium. Studies (Kadrouch-Outmany, 2014; Seuntjens, 2012) pointed out that a majority of Muslims is not aware of the existence of Islamic or Mecca-oriented plots. Furthermore, Kanmaz and Zemni (2005) argued that this lack of knowledge might be explained by a lack of involvement and active efforts of the Muslim community itself, as well as of the Muslim Executive of Belgium, the official Muslim interlocutor with the Belgian Federal government. In line with this statement, Seuntjens study (2012) stated that mosques do not provide information on existing burial facilities.

The fact that a majority of Muslims expect to be repatriated to the country of origin at death, does not imply that this practice is not accompanied by a number of issues. First, dealing with grief becomes more difficult for the bereaved due to the distance between the deceased and the bereaved (de Ley, 2004; Kanmaz & Zemni, 2005; Seuntjens, 2012). Second, in any case the burial cannot take place in a fast pace as recommended by the Islamic tradition (Kadrouch-Outmany, 2014). Third, high costs are involved, though to a lesser extent when compared with the cost of concessions in Belgium, certainly when the deceased is not insured (Kanmaz & Zemni, 2005; Seuntjens, 2012). Fourth, this option encompasses complex administrative formalities which seem to be time-consuming (Jonker, 2004; Seuntjens, 2012).

The practice of repatriation is certainly not a static fact. The scarce available literature suggests that a shift is taking place in the burial landscape of Belgian Muslims. A minority of Muslims is buried in Belgium including children, political refugees and Belgian converts (Kadrouch-Outmany, 2014, 2016; Kanmaz & Zemni, 2005). Additionally, in the future generations of Muslims, an increase is expected in the number of burials (de Ley, 2004; Jonker, 2004; Kadrouch-Outmany, 2014; KMI, 2013; Renaerts, 1997; Seuntjens, 2012). Though no hard data are available on the effective burials in Belgium as well as on the preferences of burial location among older and younger Muslim generations. This assumption is based upon the expected increase of this population, alongside the assumed weakening bond with the country of origin. Given the fact that later generations were born and raised in Belgium, an increase in demand for burial in Belgium is expected (de Ley, 2004; Jonker, 2004; Kadrouch-Outmany, 2014; KMI, 2013; Renaerts, 1997; Seuntjens, 2012). According to Jonker (2004), Kadrouch-Outmany (2014) and Seuntjens (2012) younger Muslim generations think about burial in Belgium, but at the same time this idea generates a quandary of loneliness and not sharing the same ground of ancestors.

3.2. Belgian regulations regarding cemeteries and corpse disposal

Actual Muslim burial practices cannot be seen separately from the existing legal and organisational framework. Until recently, Belgian authorities devoted little attention to the issue of Islamic burial in this country. It was the disappearance of the young Loubna Benaïssa, or rather the subsequent discovery of her remains in 1997 which brought the issue of Islamic burial under attention and led to several legal proposals in this regard (de Ley, 2004; Kadrouch-Outmany, 2014, 2016; Kanmaz & Zemni, 2005; Seuntjens, 2012). As a result, regulations have been revised at several policy levels in order to meet Islamic burial requirements. In order to understand these revisions, some background information regarding the history of cemeteries in Belgium is necessary.

3.2.1. At federal level

The strong emphasis on neutrality of Belgian law and policy and its reticence regarding the creation of separate religious cemeteries and plots cannot be seen separately from the history of cemeteries in Belgium (Kadrouch-Outmany, 2014). In the nineteenth century, the code of Napoleon was still in force and more specifically, article 15 of the decree of Napoleon in 1804 (23 Prairal an xii) permitted the establishment of separate cemeteries and plots for religious communities (Catholics, Protestants, Jews) with different entrees (Christians, De Pooter, & Tilkin, 2011; Kadrouch-Outmany, 2014, 2016; Lamberts, 1986; Morelli, 2008).

However, this seemingly pluralistic approach did not cover or include those who were not adhering to a specific church and those who were denied a Christian burial for canonical reasons (Kadrouch-Outmany, 2014; Lamberts, 1986; Morelli, 2008). At that time, most of the cemeteries were Catholic but fell under the authority and supervision of the municipalities. Catholic cemeteries established many separate plots where those deemed 'unworthy' were buried. These were situated on the outskirts of the cemetery (Lamberts, 1986). In 1873, tensions between Catholics and liberals led to 'the cemetery war' (Christians et al., 2011; Kadrouch-Outmany, 2014, 2016). Liberals advocated for a secularisation of cemeteries arguing that everyone should be buried next to each other (Kadrouch-Outmany, 2014; Lamberts, 1986; Morelli, 2008). In 1879, the decree of 1804 was revised. The further establishment of separate plots for the 'unworthy' was prohibited; the property of cemeteries had to be reverted to the municipalities (Lamberts, 1986). From then onwards, people were buried on cemeteries without distinction upon the basis of religion or faith (Christians et al., 2011; Kadrouch-Outmany, 2014, 2016; Morelli, 2008).

In 1971, the burial law was revised (Burial Law, 1971). This revised law stipulated the general conditions for the organisation of burials and abolished three elements. First, the controversial article 15 was abolished meaning that cemeteries could no longer be submitted to confessional rules, but had to be subject to the principle of neutrality (Christians et al., 2011). Second, the establishment of new private cemeteries was no longer possible (de Ley, 2004; Kadrouch-Outmany, 2016). Burial is only possible in municipal and intermunicipal cemeteries administered by local authorities (art. 16§1). Therefore, cemeteries fall under the authority and supervision of the local municipality and police (art. 4). Nonetheless, private cemeteries that already existed before this law was promulgated, for instance monasteries, could be still maintained (Christians et al., 2011). Third, the eternal concession was abolished. Concessions are only granted for a maximum term of 50 years (art. 7). This decision was based upon the fact that less people were demanding an eternal concession, but also the result of an increased shortage of space in the cemeteries (Kadrouch-Outmany, 2014, 2016; Seuntjens, 2012).

The topic of Islamic burial emerged with the discovery, in the wake of the Dutroux affair, of the remains of Loubna Benaïssa in 1997. Loubna, a nine-year-old Moroccan Muslim girl from Brussels, was kidnapped in 1992 and it was only after five years that her body was found in the basement of a gas station, near her parental home. The bereaved family found out that it was not possible for Loubna in Brussels to be buried according to Islamic burial rituals. Thus Loubna had to be repatriated to the country of origin (de Ley, 2004; Kadrouch-Outmany, 2014; Kanmaz & Zemni, 2005; Seuntjens, 2012).

As a result of this public attention, in May 1997 the topic of Islamic burial was raised during debates in the Belgian Senate. More specifically, issues related to Islamic burial facilities were addressed including the question of separate cemeteries with graves facing towards Mecca, burial without coffin and graves in perpetuity (Christians et al., 2011; Kadrouch-Outmany, 2014, 2016; Kanmaz & Zemni, 2005; Renaerts, 1997). During this debate, the Minister of Interior, Vande Lanotte (1994–1998), made it clear that the realisation of plots for Muslims, defined as graves elevated towards Mecca, could be possible under certain conditions, however, no exception were to be made to the legal articles of Burial law of 1971 regarding the obligation of burial in a coffin (art. 12) and the abolition of graves in perpetuity (art. 7). The Minister went on to state that 'an exception for private cemetery only exist for monasteries. Some have thought mistakenly that a separate cemetery for the Islamic community could

be established based upon this exception'. (Senate, 1997). In other words, the Islamic community was not allowed to set up private cemeteries; this right was reserved to monasteries only. The discussion led to a circular issued by the Council of Ministers in 2000 dealing also with the setting up of Islamic plots in public cemeteries (Christians et al., 2011; Kadrouch-Outmany, 2014, 2016). First of all, this circular strongly stressed that burials are only possible on municipal and intermunicipal cemeteries. However, it was mentioned in the circular that based upon article 16§3 'an exception to the obligation of a burial in a municipal cemetery (art. 16§1) could be made upon religious and philosophical reasons. [...]. This possibility was created with the aim to avoid extensive exhumations as burials in private places were once common among the monastic orders. The establishment of private cemeteries can only be authorised by the Minister of Public Health under certain conditions'. (Federal Ministerial Circular, 2000). An exception for the Muslim community was thus not provided (Christians et al., 2011). Second, this circular also emphasised three fundamental principles that should characterise cemeteries; (a) a municipal character meaning that burial is only possible in public cemeteries (viii, 1); (b) a neutral character meaning that no distinction is made based upon religion or philosophical belief (viii, 2); and (c) the municipal authority should not decide who is and who is not to be buried in the cemetery (viii 3) (Federal Ministerial Circular, 2000). The circular stated that the earlier burial law (1971) did not exclude the arrangement of separate plots for adherents of a specific religion or philosophical conviction, by which graves with similar external characters can be grouped together. Nevertheless, three conditions were linked to this provision. First, the plot must not be physically isolated from the rest of the cemetery but may be separated by a hedgerow. Second, a separate access to the plot is possible under the condition that it remains within the confines of the cemetery. Third, burials must be in compliance with the regulations with regard to hygiene and public health (viii, 3) (Federal Ministerial Circular, 2000). Despite the possibility of creating this space, it is mentioned explicitly that municipalities are not obliged to provide this arrangement (Christians et al., 2011).

Another important development related to Islamic burial, was the revision of the burial law of 1971 in 2001 in what has become known as the Lambermont agreement, i.e. the collective name for three political agreements made in 2000–2001 on the further adjustment of the federal constitution. Regarding our topic, this agreement stipulated that the authority responsible for cemeteries and corpse disposal is not anymore the federal but the regional government (Christians et al., 2011; de Ley, 2004; Janssens, 2015). Therefore, the regional governments are authorised to develop their own regulations.

3.2.2. At regional level

A consequence of the fact that the regions now have the final authority over cemeteries and corpse disposal is the fact that there are important differences between the regions (Flanders, Wallonia, Brussels Capital) in the way they accommodate the burial needs of Muslims (Christians et al., 2011; Kadrouch-Outmany, 2014).

In 2004, the Flemish region was the first to create its own rules regarding cemeteries and corpse disposal that replaced the federal burial law (Christians et al., 2011; de Ley, 2004; Hudson, 2016; Jonker, 2004; Kadrouch-Outmany, 2014; KMI, 2013). The Flemish decree of 2004 made two important adjustments that had a direct impact on Muslim burials, i.e. the possibility of burial in shrouds and the adjustment of the concession. This decree created the possibility to renew a concession for a period of maximum 50 years (art. 7§1). Nevertheless,

a renewal can be refused when it is proved that the grave has been neglected (art. 7§2). The second adjustment is related to the corpse disposal: it is no longer legal obliged to be buried in a coffin (art. 11) (Flemish Decree, 2004). For the latter decision, ecological and not religious reasons were given (Kanmaz & Zemni, 2005).

The Flemish ministerial circular (Flemish Ministerial Circular, 2006) regarding the application of the decree of 2004, which dealt with the corpse disposal of a deceased that followed a certain religion or belief adopted the same three fundamental characters of cemeteries regarding Islamic plots that were included in the federal circular of 2000.

In 2009, Wallonia issued a decree (L-1232-2&4) that replaced the federal law and went in force in 2010 (Wallonian Decree, 2009). The content of the federal law as well as the three fundamental characteristics of cemeteries that were included in the federal circular remained the same in the decree of Wallonia. With regard to the use of shrouds, Wallonia still prescribes a coffin and does not mention shrouds in her decree (art. L-1232-17&18) nor in the circular of 23 November 2009 of the Minister of Wallonia. Nor was any adjustment made regarding the duration of the concession (Christians et al., 2011; Wallonian Ministerial Circular, 2009).

In contrast with Flanders and Wallonia, the region of Brussel-Capital has not issued yet an ordinance that replaces the federal law nor did it decide upon the theme of confessional plots (Christians et al., 2011; Kadrouch-Outmany, 2014). In an ordinance of 26 July 2013, this region has accepted burial without a coffin (Brussels Capital Ordinance, 2013), though this possibility has not been operative yet (Hudson, 2016; Le Soir, 2015).

3.2.3. *At local level*

At local level, municipalities enjoy great freedom in the organisation and management of cemeteries as no legal obligation exists (Hudson, 2016; Janssens, 2015; KMI, 2014). Nevertheless, policies must be in accordance with Belgian law and constitution and with regional regulations. Due to the neutral character of the government, municipalities are urged to treat everyone equally and to guarantee the freedom of worship (Federal Ministerial Circular, 2000). Despite the existing legal apparatus, Kanmaz and Zemni (2005) argue that Muslim communities feel dependent on the goodwill of the local authorities. The terms of concession depend from municipality to municipality. Municipalities are free to decide in their municipal acts the length of the period graves may be granted. According to Kadrouch-Outmany's research (2014, 2016), more than half of Belgian municipalities' cemeteries offer an extension period of 30 or 50 years for graves with concession. Another example is that in Belgium, permission of burial by the municipality can be granted only 24 h after death, but since no federal law is regulating this matter, several municipal acts offer an exemption to this rule, allowing a speedy burial (Kadrouch-Outmany, 2014, 2016). Concerning Islamic mourning and grave rituals, these can be implemented in all freedom in several municipalities. For example in Ghent, Muslims can seal the grave themselves under the supervision of a municipal officer (Seuntjens, 2012).

From the literature, a clear diversity can be identified among municipalities in the way they arrange cemeteries to meet the needs of Muslims. This diversity can be divided in three groups.

The first group are municipalities who explicitly reject the establishment of an Islamic plot. A few municipalities and politicians resisted vehemently against this provision emphasising its contradiction to the principle of neutrality of cemeteries, while referring to ghettoising and desecularisation of cemeteries (de Ley, 2004; Kadrouch-Outmany, 2014, 2016;

Kanmaz & Zemni, 2005). Arguments of lack of space and the financial cost too have been brought up as counterarguments to the establishment of Islamic plots (Kadrouch-Outmany, 2014).

The second group are municipalities who are not willing to create a plot for Muslims solely, based upon the conviction that every person, regardless of nationality, race and religious or philosophical belief should be buried fraternally next to the other (KMI, 2007). Hence, they found a solution in creating Mecca-oriented plots, i.e. graves facing towards Mecca which are not reserved for Muslims exclusively, but are individual graves for Muslims and non-Muslims. This is the case in Mechelen and Ghent (Jonker, 2004; Kadrouch-Outmany, 2014; Seuntjens, 2012). In this respect, it must be noted that although the discussion on a Mecca-oriented plot in Mechelen has been ongoing since 2004, the effective implementation of this establishment has only been accepted in September 2016 by the council meeting of Mechelen (De Morgen, 2016; De Standaard, 2016). According to Jonker (2004), these municipalities adopt the secular (*laicistic*) principle of neutrality. They want to meet the expectations of Muslims on the one hand and not take a step back in the liberalisation of death in which equality and inclusion is guaranteed on the other hand.

The third group are municipalities that established Islamic plots to accommodate the needs of Muslims. According to Kadrouch-Outmany's research (2014), about 17% of the Belgian municipalities included in the research ($n = 267$) realised an Islamic plot in their cemetery in the conviction that this establishment is in accordance with the neutrality and equity principle. Today, there are 33 Islamic plots of which the majority are located in Flemish municipalities (Christians et al., 2011; Hudson, 2016; KMI, 2014).

3.3. Islam and burial legislation in neighbouring countries

Not only Belgium, but several European countries, including the Netherlands, the United Kingdom, Germany and France are challenged by the issue of Islamic burial. In what follows, we briefly discuss burial regulations and burial organisation and their impact on Muslim burial practices in the neighbouring countries.

3.3.1. The Netherlands

The first law on burial and cremation of 1869 secured religious communities the right to denominational cemeteries (art. 14), with own rules and regulations (art. 37), and to parts in public cemeteries (art. 19) which made the creation of Islamic cemeteries and plots possible (Van den Breemer & Maussen, 2012; Kadrouch-Outmany, 2016). In the beginning of twenty-first century, the representative body of Dutch Muslims (CMO) was created. It plays an advisory role in representing the interests of Islamic communities in relation with the Dutch Government (Szumigalska, 2015). Several commissions were established to advise the Dutch Government in matters related to the integration of Muslims, including the facilitation of Islamic burial in the Netherlands such as Platform Islamic Burial Amsterdam (2004) and the study group Islamic Cemeteries Brabant (2005) (de Jong, 2012). In 1991, the law of 1869 was revised. The new Burial and Cremation Act of 1991 removed a number of obstacles for Muslims and adherents of other religions (Dessing, 2001; Shadid & van Koningsveld, 2008; Szumigalska, 2015). This act no longer requires the deceased to be buried in a coffin and makes shrouds legally possible in all Dutch municipalities. In addition, burial within 36 h became possible as well as burial on Sundays and holidays (de Jong, 2012; Kadrouch-Outmany, 2014, 2016).

In this respect, however, Szumigalska (2015) points out that a burial within 36 h is not automatically guaranteed but can be made if permission is granted by both mayor and public prosecutor. Despite the fact that the Netherlands accommodated several prescriptions of Islamic burial, public cemeteries do not offer graves in perpetuity. Thus, public graves are only granted for a maximum of 10 years contrary to a private grave which can be granted for a minimum of 10 years to an unlimited period (de Jong, 2012; Dessing, 2001; Kadrouch-Outmany, 2014, 2016). Two kinds of cemeteries are distinguished in the burial law – the municipal and special cemeteries. Special cemeteries refer to cemeteries held by, for example, religious communities. The law does not explicitly regulate the conditions of the establishment of Islamic cemeteries or delimited areas of municipal cemeteries (Szumigalska, 2015).

Today there are 70 Islamic plots within public cemeteries – the first was established in The Hague (1932) – and one private Islamic cemetery in Almere (2007). Some Dutch municipalities also even take into account the existing diversity within the Islamic community and thus provide Islamic plots for different religious denominations. For example, the Islamic plot of the municipal graveyard of Westduin in The Hague, established in 1994, is internally divided into seven subplots separated by hedgerows. It is divided among seven different Islamic organisations belonging to three different Islamic denominations, i.e. Sunni, Shia and Ahmadiyya Muslims (Dessing, 2001; Kadrouch-Outmany, 2014, 2016).

3.3.2. *The United Kingdom*

The authorities respond more inclusively and more positively to the burial needs and demands of Muslims (Ansari, 2007). Furthermore, Muslims have successfully negotiated accommodation of religious practices in a range of public spheres and arenas of policy including burial arrangements (Gilliat-Ray, 2015). The provision of Islamic plots and the allowing of Islamic cemeteries are based upon the equity principle, which implies that Muslims are entitled to the same rights as others in creating denominational structures based upon religious freedom. Additionally, burial with shrouds has been made possible since the Burial in Wool Act of 1667 (Jonker, 2004). Moreover, additional measures have been taken to accommodate the needs of Muslims by making weekend burials possible (Wolfe, 2000). With regard to concession in public cemeteries, two general types of graves are offered, on the one hand an unpurchased grave which is granted generally for maximum 14 years and on the other hand, a purchased grave which can be rented for a maximum of 100 years. Nevertheless, non-municipal burial grounds can make up their own rules and provide graves in perpetuity (Home Office, 2004). A growth of British Muslim funeral services and burial grounds is observed (Gilliat-Ray, 2015). Several Islamic plots in public cemeteries as well as private Islamic cemeteries exist today in the UK, including in cemetery of Brookwood, the Muslim cemetery in Glasgow and Gardens of Peace in London (Hunter, 2015; Hussain, 2014; McLoughlin, 2012; Mustapha, 2016). Also, a range of Islamic organisations has been established to facilitate an Islamic way of dealing with life and death including the national Muslim Council of Britain and the Muslim Burial Council of Leicester (Hussain, 2014).

3.3.3. *Germany*

In Germany, only churches and religious communities have the legal status of public law corporation (*Körperschaften des öffentlichen rechts*) and can establish denominational cemeteries. However, this is difficult to obtain (Rohe, 2014). Germany is a federal state that consists of 16 states that are responsible for their burial legislation. Laws thus vary from state to state.

The role of religion in the public sphere is slightly different between the states too. The German constitution provides that State and religion are separate, even though this separation does not prevent cooperation between religious communities and the State (Spielhaus, 2015). In Germany, several umbrella organisation have been founded that control and support Muslim communities including the *Koordinationsrat der Muslims in Deutschland* (Council of Muslims in Germany) and *German Islam Konferenz* (German Islam Conference) (Ferrari & Bottoni, 2015; Rohe, 2012; Spielhaus, 2015). A few Islamic public and private cemeteries exist; there are also more than 70 Islamic plots in cemeteries run by the state or by Christian churches (Rohe, 2012). Till today, Islam is still not recognised as a corporation of public law and thus cannot own any cemeteries. Muslim burial sites are in nearly all cases parts of municipal cemeteries (Rohe, 2016). The state of North-Rhine Westphalia modified its funeral law code in 2014, now allowing funerals without coffins – also permitted in Hesse since 2013 – burial 24 h after death and facilitating the establishment of cemeteries by religious communities which no longer requires the particular status of a corporation under public law (Jonker, 2004; Rohe, 2014, 2016). The possibility of a grave for more than the usually permitted period of 10–20 years are broadened but are not assured in perpetuity (Rohe, 2014).

3.3.4. France

Today France embodies a system of strict separation between public authorities and religious groups that would entail very limited if any relation between state and religion. The state does not recognise any religious groups but they are submitted to a regime of private law. The French Council of Muslim Faith (CFCM) – which is the representative body of Islam – has been established in order to address and discuss aspects of Muslim religious practices (Fornerod, 2016). Cemeteries in France are regarded as a neutral public space where French citizens are united and where individual freedom, equality and neutral treatment for every person is guaranteed. Since 1804, the Napoleon Decree has abandoned confessional cemeteries with the exception of some Jewish and Protestant cemeteries and only in 1881 were separate confessional parcels legally prohibited (Van den Breemer & Maussen, 2012). Article 28 of the 1905 law on the separation of Church and State prohibits religious symbols on the public parts of the cemetery, though symbols are permitted on individual graves (Fornerod, 2016; Van den Breemer & Maussen, 2012). Given the French principle of *laïcité*, there is theoretically no legal possibility of religious burial places in public cemeteries (Zwilling, 2016). The laws of 1881 and 1884 prohibited the establishment of confessional divisions in municipal cemeteries and stated that cemeteries, are public, mandatory and *laïc* (Selby, 2015). In other words, managing cemeteries and burials is a public service and falls under the authority and supervision of the municipality. Although the courts have recognised the ability to maintain existing denominational cemeteries, no new religious privately run cemetery can be created (Fornerod, 2016). Fornerod (2016) states that the regulation of denominational burial places is marked by uncertainty from a legal point of view. Although it is constrained by *laïcité*, France does have two Islamic cemeteries (l'île de Reunion in 1857 and Bobigny in 1937) as a result of historical circumstances as well as 75 Islamic plots (*carré*) on public cemeteries with the permission of the Ministry of Interior (Aggoun, 2006; Fregosi, 2012; Zwilling, 2016). In 1975, 1991 and 2008, the Ministry of Interior Affairs published a circular in which mayors were encouraged to create Islamic plots, but it did not oblige it as it would be regarded as a rupture with the constitutional principle of *laïcité* (Aggoun, 2006; Fornerod, 2016; Van den Breemer & Maussen, 2012). The result is a plot without legal and formal status

described as a grouping of graves according to confessional lines as the sum outcome of individual choices (Van den Breemer & Maussen, 2012). Burial without a coffin is still forbidden. Inhumation within 24 h is not possible nor are unlimited leases of graves provided. An exception is this regard, is the region of Alsace – where the law on recognised religion is still applicable – that inaugurated its first municipal Muslim cemetery in Strasbourg in 2012 (Fornerod, 2016; Fregosi, 2012; Zwilling, 2016). Although a strong *laïcité* is emphasised, it does however not mean that no cooperation exist. Indeed, the French State does subsidise for instance chaplaincy and does permit private initiatives including Islamic schools (Fornerod, 2016; Zwilling, 2016).

In the following table, we offer an overview of the possibilities of Islamic burial according to the regulations in Belgium and its neighbouring countries (Table 1).

Table 1. An overview of the possibilities of Islamic burial according to the regulations in Belgium and its neighbouring countries.

Burial regulations	Islamic plots in public cemeteries	Public Islamic cemeteries	Private Islamic cemeteries	Burial with shrouds	Graves in perpetuity	Renewal of concession
Belgium	✓	–	–	✓*	–	✓*
The Netherlands	✓	✓	✓	✓	–	–
The United Kingdom	✓	✓	✓	✓	–	–
France	✓*	–	–	–	–	–
Germany	✓	✓*	✓*	✓*	–	✓*

*Variety within country (from region/state to region/state).

4. Discussion

In Belgium, burial regulations have been revised several times in order to accommodate Islamic burial. Importantly, this sensitive discussion seems to be inherently linked to the conception of the relation between State and Church and the interpretations of neutrality but also of the principles of equality and of religious freedom.

The notions of neutrality and equality are, however, ambiguous and can and are interpreted in different ways. Differences are observed between municipalities upon the basis of their interpretation of neutrality. Basing itself on the equity principle the Belgian burial regulation stipulates that every person has a right to a similar piece of ground in Belgian public cemeteries (Federal Ministerial Circular, 2000). But this can be interpreted in two ways. On the one hand, every person has the right to be buried in a municipal cemetery and is equal in death; no distinction is to be made upon the basis of religion or faith, in order to counteract discrimination and ghettoisation in cemetery and burial (de Ley, 2004; Seuntjens, 2012). Therefore, allowing Islamic burials and plots is considered a regrettable backward step as far as the secular neutrality of public institutions is concerned (Kanmaz & Zemni, 2005). According to this interpretation of neutrality, separation between Church and State means that any religious concept must be relegated to the private sphere and thus no adjustment can be made upon the basis of religion. According to de Ley (2004), this interpretation of laicity harms the fundamental right of religious freedom.

On the other hand, neutrality in the cemetery can be interpreted as citizens buried in the same burial area, but each with its own characteristics in which religious freedom is respected. This more 'open' interpretation of neutrality implies a certain guarantee of religious freedom.

In this respect, Kanmaz and Zemni (2005) argue that the request for a separate burial ground is not a question of apartheid but a question of religious sensitivity and equality. The integration of Muslims into Belgian society as full citizens requires also the possibility of being buried according to their own rites in the country where they have been living. If not, Muslims are expelled or obliged to send their deceased loved ones to the country of origin or country that they have barely known, and thus are deprived of the possibility to visit regularly the graves of their deceased loved ones (de Ley, 2004; Kanmaz & Zemni, 2005). In conclusion, these different interpretations of neutrality were clearly remarkable among municipalities in their decision (not) to establish Islamic or Mecca-oriented plots.

Burial regulations also seem to differ from region to region. Hence, it is remarkable that Wallonia and Brussels-Capital have made less efforts to meet the burial needs of Muslims (e.g. shrouds, graves in perpetuity) when compared to Flanders (Flemish Decree, 2004). In contrast with Flanders, Brussels-Capital has not yet issued its own burial regulation nor has this region and Wallonia dealt extensively with the issue of Islamic burial. In Wallonia and Brussels burial in shrouds and graves in perpetuity are still not possible. It is a striking observation that the region of Brussels-Capital, though it has the largest Muslim population in Belgium, still has not succeeded in accommodating the burial needs of Muslims. Nonetheless, the changes that were made in Flanders, were only applied when they were beneficial for everyone. In other words, no adjustment was made upon a religious or cultural basis. According to Kanmaz and Zemni (2005), the use of shrouds for example has been permitted upon an ecological basis. The possibility of providing specific plots has to be seen within a larger picture in which this option is not new but had already been provided for war veterans, children and the monastic community and subsequently for urn fields and columbaria too. So it could be argued that no exception was made for Muslims. It is also worth mentioning, with regard to this possibility of reserving plots for certain groups that unlike the federal document the Flemish document did not mention the Islamic faith specifically but referred in general to 'religious and ideological groups' (Christians et al., 2011). In other words, Flanders seems to avoid any specific ideological or religious note in their regulations, which gives a glimpse of their rather strict interpretation of neutrality.

Closely related to the Church and State relation, the integration and institutionalisation of Islam seem also to affect the discussion on Islamic burial. Belgium adopts the system of 'recognised religions' by which ecclesiastical administrations are responsible for the temporal needs of the religious communities (Fadil, 2012). Islam was recognised in 1974 and only in 1999 the representative organ of Islam (Muslim Executive of Belgium) was established (Janssens, 2015). The representation issue and the lack of a hierarchically structured religious ecclesiastical administration seem also to have dominated and impeded the discussion on Islamic burials (Kadrouch-Outmany, 2014).

Belgium and its neighbours all have established plots for Muslims in its public cemeteries, though differences exist in status and form of these plots (cf. Islamic/Mecca-oriented plot, *carré*). An Islamic plot is defined as a separate plot with graves into the direction of Mecca, exclusively for Muslims, whereas in a Mecca-oriented plot, e.g. in Belgium, graves are faced towards Mecca, but are considered individual graves meaning that Muslims and non-Muslims are buried next to each other. In contrast, a *carré*, which exists in France, is not considered officially a Muslim section nor as an official part of the cemetery. With regard to the establishment of Islamic public cemeteries, the Netherlands, the United Kingdom and a few states

in Germany – unlike Belgium and France – do recognise and allow the establishment of confessional public cemeteries.

In contrast with Germany, the United Kingdom and the Netherlands, Belgium and France seem not be in favour of the establishment of private Islamic cemeteries as this seems to intervene with their interpretation of neutrality. In this regard, it seems that Belgium prefers an inclusive policy in which every person is buried in public cemeteries without the creation of categorical structures. However, it must be noted that this establishment is only possible in some states in Germany. Also, a few exceptions exist in Belgium and France which are solely related to historical cemeteries and which leave thus no room for private Islamic cemeteries. A few historical private (confessional) cemeteries are still maintained after the amendment of the law stating that cemeteries are a municipal matter. With regard to the use of shrouds, France is the only country who does not allow this practice at all. However, it is important to mention that variety exist in the allowing of this practice among regions or states within one country, including Belgium and Germany. Regarding graves in perpetuity, in none of these countries Muslims can find eternal peace. In contrast with France and Belgium, Germany, the Netherlands and the United Kingdom do allow private Islamic cemeteries to create their own regulations and thus enable them to provide graves in perpetuity. Belgium and Germany sought to find a solution for this issue by providing the possibility of concession renewal.

Legal possibilities for Islamic burial thus differ considerably from country to country. In an important way, these differences reflect different approaches regarding State/Church relations. Of course Belgium and its neighbours share the principle of religious freedom and of equality. However, the precise way in which these principles are interpreted and applied to Islam depends largely on historical traditions concerning the relation between State and religion.

In the Netherlands, the separation of Church and State was introduced in 1848 (Kadrouch-Outmany, 2014). The Netherlands aims to achieve governmental neutrality by a principled pluralism that welcomes and supports all religious and secular structures of belief (Berger, 2015; Van den Breemer & Maussen, 2012). For the Dutch Government, freedom of religion includes adapting laws of burial in order to accommodate specific religious practices (Berger, 2015). Similar to the Netherlands, the United Kingdom is shaped by an established Church and at the same time adopts multiculturalism as the appropriate model regarding public sphere. There is no written constitution governing the status of religion. The English legal tradition and Human Rights Act (1998) guarantee religious freedom and religious practice within the limits of public order (McLoughlin, 2012). In opposite, in France, under the separation regime established by the 1905 law, no religion is officially recognised nor funded, as such all religious communities are to be treated equally. The Republican citizenship model and *laïc* separation of religion and politics significantly shape the lives of French Muslims. Burial grounds have been a point of discussion given that *laïc* laws dictate that there should be no separate or specially marked plots areas. In contrast, the establishment of private Islamic schools and institutes is, however, possible based upon the freedom of education (Fornerod, 2016; Selby, 2015). Though, a notable exception exists in department of Alsace and Moselle, where the law on secularism is applicable and thus where religions can be officially recognised and receive public funding (Selby, 2015; Van den Breemer & Maussen, 2012). The French regime exemplifies a more strict separation model with the constitution stipulating that France is a secular Republic (Van den Breemer & Maussen, 2012). In contrast

with the Netherlands and the United Kingdom and similar to Belgium, Germany sees itself as neutral in religious belief (Rohe, 2012).

According to Fadil (2012) and Kanmaz and Zemni (2005), the Belgian Constitution of 1831 emphasises equality, religious freedom and neutrality. Neutrality is often defined as religion that is put into the private sphere and does not interfere with the public domain. The Belgian Government seeks to maintain the neutrality principle by which every person is treated equally without making distinctions between people upon the basis of religious or ideological affiliation (de Ley, 2004; Kanmaz & Zemni, 2005). Yet, Belgian law does allow public authorities to recognise and finance various religions (Fadil, 2014).

However, it is worth noting that though in Belgium this strict, exclusive and rather French interpretation of neutrality may be present in the laws and regulations regarding cemeteries, this is certainly not the case for many other domains. Not only in the Netherlands, but in Belgium too (especially Flanders), the so-called pillarisation system has been known for creating powerful denominational structures in many fields including health care, education, labour unions, finance, etc. This pillar system is defined as an establishment of (state-subsided) functions or structures based upon philosophical or religious beliefs (Dobbelaere & Laermans, 1998). This comprehensive system – in Flanders the Catholic ‘pillar’ was (and to a lesser degree still is) very powerful – does however not cover cemeteries and inhumation.

How then to explain the rather exclusive neutrality regarding cemeteries if it was a more inclusive understanding of neutrality, based upon the constitution, which has made the pillarisation in most other domains possible? For an answer we have to look to the specific historical context of the nineteenth century regarding cemeteries in which the power over cemeteries fell completely in due course from the hands of the church into those of the municipalities which led to their secularisation as we discussed earlier. Lamberts (1986) argues that in that period Catholics did succeed in establishing a net of Catholic schools, though a pillarisation of cemeteries was not realised. Lamberts (1986) explains this development by stating that Catholics gave the priority to education rather than cemeteries as it was from a legal point of view easier to establish schools based upon the Constitution than to maintain cemeteries as article 17 of the Constitution (1831) explicitly defined the freedom of education (“Education is free”).

We can thus basically distinguish three different interpretations of neutrality and religious freedom in the public sphere. The first type are countries like the Netherlands and the United Kingdom, which appears to be characterised by an active pluralism regarding the expression of religion in the public sphere. Religious freedom and equity are guaranteed by meeting the needs of the diverse groups and individuals in society and thus also by providing a burial that is in line with the characteristics and identity of the deceased. In these countries, public and private Islamic cemeteries are allowed. It seems that in these countries, the institutionalisation of Islamic burial places is the strongest in contrast with other countries. However, it must be noted that a stronger institutionalisation of other domains (cf. media, education, chaplaincy) has been observed in Belgium, France and Germany, whereas the domain of burial has received little attention till today (Fornerod, 2016; Hudson, 2016; Rohe, 2014; Zwilling, 2016). The second type is characterised by a strict secular attitude towards any religious expression. The secular neutrality relegates religion out of the public sphere as a way to guarantee equity. To this type belongs France, which guarantees religious freedom, but not at the expense of its *laïcistic* principle. As such, France seeks to accommodate the burial needs of Muslims without compromising or hazarding its strict secular neutrality. Therefore, the establishment

of private Islamic cemeteries nor burials in shroud seem to be possible. The third type, to which Germany and Belgium seem to belong, takes up a middle position between religious pluralism – embracing religious freedom – and strict secular neutrality. According to De Pooter (2010), Belgium indeed fluctuates between the two dominant interpretations of neutrality (inclusive vs. exclusive). Nonetheless, it is important to note that this typology cannot be regarded as black-and-white, given also the fact that an important variety exists between states or regions within these countries for example regarding to renewal of concession.

In sum, significant differences, linked to different interpretations of neutrality and religious freedom in the public sphere, can be perceived between on the one hand the Netherlands and the United Kingdom which have accommodated their regulations to meet the burial requirements of Muslims in a larger extent and on the other hand France that only made minor adjustments for Muslim burial practices, whilst Germany and Belgium take a position in between.

5. Conclusion

The studies found and discussed in this review focus mainly on repatriation to the country of origin as a result of a number of factors including religious barriers (e.g. burial in shrouds, grave in perpetuity etc.), financial constraints, lack of knowledge of the existing burial facilities and a sense of belonging. Till today, no Islamic burial is guaranteed in the Belgian context that is completely in accordance with their religious and cultural beliefs. Only recently, several measures have been taken at different policy levels to accommodate the Islamic burial practices such as the establishment of Islamic plots, the permission of burial in shrouds and the renewal of concession. Nevertheless, the current status differs from region to region and from municipality to municipality. The extent of adapting regulation and arranging cemeteries is dependent of the adopted interpretation of neutrality and religious freedom. Different interpretations have led to different options provided by Belgian municipalities. This is also true when we compare Belgium to its neighbours: differences in the way countries deal with Islamic burial are closely related to different conceptions of Church/State relations.

In our review, we observed a great lacuna in the literature regarding the specific burial practices of Muslims in Belgium. For this reason, and in order to provide and guarantee a dignified burial, more research is needed. Research that covers a.o. the beliefs and attitudes of Muslims regarding death, dying and the afterlife is needed in order to understand its impact on the attitudes and practices of Muslims regarding burial, but also exploring actively the needs and wishes of Muslims regarding the existing funeral infrastructure in the Belgian context.

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