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Abstract

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**THE LEGAL REGIME OF RELIGIOUS CULTS
IN BELGIUM**

TABLE OF CONTENTS

ABBREVIATIONS

INTRODUCTION

1. The legal constitutional framework of religious rights and freedoms in Belgium
2. Explaining certain preliminary notions
3. Argument
4. Proposed scope and objectives
5. Sources and additional bibliography used
6. Methodology of scientific research

CHAPTER I:

Religious freedom in Europe and right to religion

Privileges and discriminations in the European constitutional system

1. Human rights. Evolution of the concept
2. General context and international documents
3. Constitutions of certain European countries and the guarantee of religious rights and freedoms
4. Privileges and discriminations of religious policies of European states. A comparative study
 - a. *Historical evolution of European religious policy*
 - b. *European rights, privileges and discriminations in religious matters. The case of Belgium*
 - c. *The system of treaties*
5. Religious rights and freedoms in Belgium. Specificity of the Belgian system, religious privileges and discriminations in the Belgian regions.
 - a. *Religious life and federalism in Belgium. Advantages and limitations*
 - b. *Recognised cults and organised secularity. Constitutional and legal criteria regarding*

public financial support

6. The regime on cults according to Belgian regional legislation in the context of regionalisation. The cases of Flanders and Wallonia
 - a. *The Flemish case*
 - b. *The Walloon case*

CHAPTER II:

The recognised religious cults in Belgium. Legislation, organisation and functioning of cults

1. Legal-historical aspects on the place and role of cults in United Europe
2. Religious organisations and security. Problems of sectarian deviations in Belgium
 - a. *European context. Comparative approach*
 - b. *Sectarian deviations in Belgium and security*
3. Recognised cults in Belgium, Constitution of 1831 and state support
 - a. *Regime on cults after the 1831 Constitution.*
 - b. *State support for recognised cults after the state's independence (1830)*
4. Organisations and functioning of legally recognised cults
 - a. *Catholic majority cult.*
 - b. *Evangelical-Protestant cult.*
 - c. *Jewish cult.*
 - d. *Anglican cult.*
 - e. *Islamic cult*
 - f. *Orthodox cult*

CHAPTER III:

Principle of mutual independence or autonomy of cults

State legislation regarding religious cults in Belgium

1. Establishment of the principle of autonomy of cults and religious freedom
 - a. *Public order and morality in the European context*
 - b. *Models of expressing relationship of cults and state in the European Union*

<p>2. State legislation regarding cults in Belgium</p> <p><i>a. Evolution of legislation on religious cults</i></p> <p><i>b. Establishment of a legal status for recognised cults</i></p> <p><i>c. Cults, philosophical non-confessional organisations and education</i></p> <p><i>d. Cult and labor law</i></p> <p><i>e. Public bodies and spiritual assistance. The regime of cults and organised secularism.</i></p> <p><i>f. Matrimonial law. Civil legal recognition of religious marriage</i></p> <p>3. State legislation regarding regionalisation, transfer of competence and principles on financing of recognised religious cults in Belgium</p> <p><i>a. Regionalisation and local transfer of competence. Advantages and disadvantages</i></p> <p><i>b. Current problems on recognition and financing of cults and philosophical non-confessional organisation (organised secularity) and their representative bodies.</i></p>	
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CHAPTER IV:

ECHR jurisprudence on religious freedom in Belgium

1. Religious freedom and ECHR jurisprudence
2. Limits of religious freedom of cults and legal protection of fundamental rights
3. Freedom of opinion, conviction and religion, ECHR jurisprudence and its application in fundamental legislation in Belgium
4. The position of the Roman-Catholic Church – Majority cult in Belgium – compared to religious liberty

CONCLUSIONS.

BIBLIOGRAPHY

ANNEXES

TABLE OF CONTENTS

My doctoral thesis project has four chapters, which are in fact four well-structured parts. These are homogenous in nature with respect to content and scientific approach. The chapters are naturally preceded by an introductory part and followed by conclusions.

In the introductory part, I sought to familiarise the reader with the subject matter, with notions and principles conveyed throughout the document for which I have provided etimological explanatory details.

It is well known that no country can afford to ignore the importance of the Churches and the balance which it can bring to religious life in all types of society. Furthermore, the Churches of the European Union as a whole and in each of its member states have an entirely unique importance, as these represent the cradle of European culture and spirituality.

The member states of the European Union therefore need to take into account “common constitutional and cultural traditions, their national identity, as well as the principle of subsidiarity, and further need to respect and protect the balance of the relationships between Church and State” (M. Merle).

In a united Europe, no person can disregard the fact that the Churches, and in general religious cults, have a well defined legal status and role, hence the necessity for the European and national legislator to respect religious freedom and to protect the balance of relations between State and Church.

For this reason, I felt it necessary to set out the legal and constitutional framework of the religious rights and freedoms in Belgium in the introductory part of my doctoral thesis, emphasizing that the relations between State and Religions govern the legal protection of religious freedom as well as their organisation and functioning. This requires legislators of each European Union member state to know EU law and to incorporate such law in their constitutional text and laws on religions.

In the introductory part I also stressed that religious freedom is set out in the constitution and that in Belgium statistics relating to religious membership are forbidden, as their disclosure is prohibited in light of article 20 of the Belgian Constitution which further states that no one can be obliged to participate to religious ceremonies or to respect days of rest.

Because of the lack of such statistics, it is impossible to know the exact percentage of the members of the legally recognised religious cults in Belgium. Nevertheless, it is estimated

that approximatively 75% of the population are Catholic, 3-4% are Muslim, and the rest are Protestant, Anglican, Orthodox, Jews and non-confessional (about 18%)

The Belgian Constitution guarantees so-called positive religious freedom on the Belgian territory, recognising the public exercise of religion both in places of worship as well as outside of these, for example in case of processions or funerals.

In this respect, article 19 of the Constitution expressly states that religious freedom, its public exercise and freedom of expression on all aspects associated therewith are guaranteed, with the exception of repression of crimes committed through the use of such freedoms.

Freedom of religion is also guaranteed by the Criminal Code. Articles 142-146 condemn criminal acts which touch upon religious freedom. This negative freedom of religion is also constitutionally guaranteed (art. 20 of the Constitution).

In Chapter I “Religious freedom in Europe and the right to religion”, I set out the privileges and discriminations that appear in the European constitutional system, based on the constitutional text of certain European countries. I further also mention the religious rights and obligations provided for in their respective fundamental laws.

With respect to the privileges and discriminations noted in the religious policy of some European states, the reader will learn that discriminatory regimes exists in certain states, albeit in a form of privileges, and which form the basis of religious cults’ status and their relationship with public authorities.

By referring to a privileged regime, we refer to the granting of certain rights, advantages or facilities which are outside of common law. Discrimination is exactly the opposite, being a policy through which a category of citizens or legal persons do not enjoy fundamental rights on the basis of certain ethnic, religious, cultural, racial and other considerations.

The relationship between state and religious cults differs considerably on certain aspects from country to country within the European Union, which leads to the existence of certain privileged regimes, but also of certain discriminations when it comes to religious practice.

Should there be a permanent supervision of internal legislation by the European Union, in principle there should no longer be any favourable treatment excluding privileges or discriminations, positive or negative derogations from common law being determined by the

constitutional traditions and the historical relations between Church and state, alongside religious and moral values which states have themselves adopted over the centuries.

Looking at the constitutional texts of certain EU states, we can determine that this discriminatory regime, albeit a regime of privilege, is a reality. For example, the Irish Constitution of 29 December 1937 refers to the state's obligation not to grant subsidies to any religion (art. 44, par. 2), although in reality the Roman-Catholic Church benefits from support by the public authorities for the organisation of confessional state schooling.

An interesting fact is that the Irish state recognises certain civil legal effects of religious marriages concluded in accordance with the procedures of the respective religions, with a clear reference to the provisions of the Latin Canon Code, which is applicable within the Roman-Catholic Church, the majority Church in Ireland, and which is thus supported by the public authorities. Moreover, taking into account the religious configuration of the population, it is obvious that the vast majority of religious marriages that have civil legal effect are those performed in the Roman-Catholic Church.

Similarly, the Danish Constitution of 1953 states that the Evangelical Lutheran Church is the national Church, thereby benefiting from state subsidies (article 4).

The Danish fundamental law also recognises a system of privileges for the Evangelical Lutheran Church, stating that the status of the other religious communities will be governed by law (article 69).

Therefore, the Lutheran Church, being the national Church, is not subject to the principle of separation from political power, being constituted as an administration of the state and in the state.

Its priests carry out several administrative functions and keep the civil registry, whereas other religious communities often have no other choice but to organise themselves as non-governmental associations under common law. Nevertheless, religious cults had, until 1970, the possibility to seek recognition in accordance with article 69 of the Constitution. However, as this regime did not provide for any particular benefits, with the exception of the keeping of the civil registry as is the case for the national Church, it was abolished by the authorities.

Another state in which the Lutheran Church is privileged is Sweden, where the relations between Church and state entered into a new phase as of the year 2000. The Lutheran

Church, being the traditional Swedish Church, was granted a greater autonomy for its self-administration.

Until then, the religious legislative competencies belonged to the Synod, but following a delegation received by Parliament the state ceased to maintain control in determining the status of the Lutheran Church on 1 January 2000.

Consequently this implies the sovereign power to govern one's own internal administration. In parallel with this process of separation, Swedish society insists on the implementation of the principle of religious equality, so that all recognised religions could benefit from access to the system of contributions, which, until now was the prerogative of the Swedish Lutheran Church.

When examining the relationship between state and Church in Great Britain and Northern Ireland, and of the state's policy regarding religious freedom, it is very useful to refer to the insular constitutional tradition, whose beginnings can be traced back to the 12th century.

One of the oldest legislative acts that deals with religious freedom is the Charter of Stephen I, a document dated 1136 and which proclaims that the Church be free and that bishops need to enjoy the right to administer church life and implicitly the clergy and Church property.

The Magna Carta of King John of 1215 again confirms the freedom of the Church of England, at the time still a member of the Roman-Catholic Church, as well as its ability to enjoy its rights and liberties. The Charter expressly mentions that the sovereign recognises the freedom of elections, which he considers rightfully necessary and essential for the proper functioning of the Church.

With the Reformation, the privileges that had in the past been granted to the Roman-Catholic Church were acquired by the Anglican Church.

It must be mentioned that the Anglican Church functions in accordance with Church and canon law, it being understood that in Great Britain canon law is considered an integral part of the countries' legislative system.

Canon law is the exclusive competence of the Anglican Church's Synod, which only needs to present it to the Queen in her capacity as head of the Church. The Queen exercises her authority as the head of the Anglican Church through the appointment of bishops and archbishops.

In the framework of the Treaty between Spain and the Holy See, the only religion subsidised by the state is the Roman-Catholic Church. Only the chaplains of the army and the public health care system that belong to that Church benefit from public financing.

The Constitution of 1978 explicitly foresees that the Spanish state shall in the first place maintain relationships with the Roman-Catholic Church, and also with other religions (article 16).

The constitutional text itself established a privileged regime for the Roman-Catholic Church, with the other Churches together being referred to as religions. However, it must be said that in Spain all religious marriages, regardless of the Church in which these take place, enjoy the benefit of legal effect under civil law.

Italy, another large country of Catholic tradition, has a multi-level system of recognition of religious cults. Certain religious cults function pursuant to treaties with the Republic's authorities, while others function on the basis of recognition by virtue of the law of 1929.

This recognition is also the first step for a religion to initiate negotiations with the state and to eventually be able to conclude an agreement with the state, placing that religious cult in a higher tier.

With regard to the other religious groups that were not granted recognition within the framework of the above-mentioned law, these are organised as associations under common law.

Also, in Italy the only Church in the full legal sense is the Roman-Catholic Church, being mentioned in article 7 of the Constitution of December 1947, where it is further mentioned that the relationship between that Church and the state are governed by the provisions of the Lateran Treaty.

The legal effects of religious marriage are only recognised for acts celebrated in the framework of religious cults that have concluded treaties with the state or are recognised pursuant to the law of 1929. Therefore, in the absence of a treaty – the only one ever having been concluded is with the Roman-Catholic Church – no other religion benefits from the effect of civil recognition of religious marriage.

The Constitution of Belgium states that the freedom of religious cults and their public exercise is guaranteed (article 19). The fundamental law also specifies that the state cannot interfere with the election, appointment and consecration of the clergy, a prohibition that in fact confirms the principle of autonomy of religions. The state is therefore barred from having any

form of interference in the public operation of religious cults, including through the appointments of their respective ministers (article 21 of the Constitution).

Furthermore, the Belgian authorities are obliged by the fundamental law to organise an education system that safeguards neutrality with regard to the philosophical, ideological or religious beliefs of students and their parents.

Of course this neutrality also implies the respect of such beliefs. What is interesting is that the Belgian legislation greatly values the moral education of students. Until the end of the compulsory education, students are benefiting from compulsory moral education, having the option to either choose between religious or conventional moral lessons, as decided by the parents. (article 24 of the Constitution).

The Belgian state therefore in principle safeguards its neutrality with respect to any religion, encourages spirituality and allows parents to choose the type of education they consider to be most appropriate for their children, as long as the latter are guaranteed a certain level of moral education.

In this part I have presented the case of Flanders and Wallonia (p. 81-87), where it can be ascertained that there are discriminations in religious matters in both regions.

In the second chapter, called “The recognised religious cults in Belgium. Legislation, organisation and functioning of cults”, I studied, analysed and presented the legal regime of recognised religious cults in the framework of the Constitution of 1831, as well as the organisation and function of the established religions, being Catholicism, Protestantism, Judaism, Anglican, Islam and Orthodoxy.

The reader will note that the Orthodox religion in Belgium was only recognised in 1985, and that its parishes or local communities exist in jurisdictions that are different from its autonomous sister religions.

The reader will further learn that Orthodoxy appeared in Belgium towards the beginning of the 20th century. Initially there were only two places of worship for the Orthodox in Belgium, being a chapel near the Russian embassy in Brussels and a Greek church in Antwerp (for the sailors and tradesmen). Following the two World Wars, many Russians and Greeks immigrated to Belgium where they established Orthodox communities. The growth in numbers of Greeks in Belgium resulted in the establishment of the Archbishopdom of Belgium in 1969, under the jurisdiction of the Patriarchate of Constantinople. The organisation of the Orthodox community

under the canonic authority of the Greek Metropolitan of the Ecumenical Patriarchate allowed the recognition of the orthodox religion by the Belgian state by virtue of the law of 17 April 1985, which law extended the application of the law of 4 March 1870 to the Orthodox religion. The administration of the Orthodox churches is organised through the royal decree of 15 March 1988. The church councils ('fabrique d'église' in French or 'kerk fabriek' in Dutch) of the Orthodox communities are generally under the jurisdiction of the Ecumenical Patriarchate and are composed of a priest and a number of members appointed, at present, by the Metropolitan on the basis of a list of members of the parish, submitted by the parish priest. The afore-mentioned royal decree also states that the Greek Metropolitan Panteleimon or his representative is the representative of the Orthodox cult in Belgium. The Greek Metropolitan is also responsible for religious schooling, for audiovisual matters and for spiritual assistance at airports and prisons. Alongside the Greek Metropolitan who is under the jurisdiction of the Ecumenical Patriarchate, there are also other bishops residing on the Belgian territory: Archbishop Simon of Brussels (Patriarchate of Moscow), Bishop Maxim (Ecumenical Patriarchate, Episcopal Vicar of Metropolitan Panteleimon), Bishop Athenagoras of Sinope (Episcopal Vicar of Metropolitan Panteleimon) and Bishop John of Parnas (Ecumenical Patriarchate, retired Bishop, formerly responsible for the Ukrainian parishes). Other Bishops that have jurisdiction on the Belgian territory do not reside in Belgium, such as Archbishop Gabriel of Comane (Ecumenical Patriarchate), Bishop Lucas (Serbian Patriarchate) and Archbishop and Metropolitan Iosif (Romanian Patriarchate).

In this context, the Greek Orthodox community became the most important one in numbers as well as the most representative one for Orthodoxy in Belgium. At the same time, the Serbian, Ukrainian, Bulgarian and especially the Romanian community has grown in the last decenia, in particular after the recognition of the Orthodox cult in 1985. The Romanian community is currently the largest Orthodox community in Belgium.

The territorial organisation of the Orthodox cult, like the Islamic cult, is established on a provincial basis and not on that of the borroughs ('commune' or 'gemeente'). After the regionalisation of 2000, the relevant legislation did not modify the organisation of the Orthodox cult on the level of the provinces. Therefore, as at 1 January 2011, there were 38 recognised Orthodox parishes in Belgium, or 10 more than in 2001, with about half of these parishes located in the Brussels Capital Region. Most of the Orthodox parishes in Belgium belong to the

Ecumenical Patriarchate. Only three Romanian Orthodox parishes are recognised (two in Brussels and one in Antwerp), although there are ten Romanian Orthodox parishes and a monastery of nuns (5) in Vedrin near Namur.

Since the Orthodox cult is recognised in Belgium, it can organise Orthodox religion lessons in all the public schools of Belgium, with the exception of confessional schools. The lessons of religion are available to all students, whether in primary school as in secondary school, who wish to follow the lessons of Orthodox faith. In order to follow these courses, the request needs to be submitted by the parents to the school's board before 15 September. Students can choose to follow Orthodox religion classes in public highschools, technical schools, or autonomous schools, whether provincial or local. In the event the parents' request is not taken into account, they have the possibility to write to the school's board or to the Education Service of the Orthodox Church. Religion courses are organised differently for primary or secondary schooling, having a programme based on biblical and sacramental theology.

In addition to the right of schooling, the Orthodox cult, through its legal representative, also has the right to organise religious assistance at airports or prisons. The Brussels national airport has two chapels, which are under the care of Bishop Athenagoras of Sinope. The Belgian penitentiary system only has four places for the Orthodox that are recognised by the Ministry of Justice. As a result, the Belgian prisons are divided into four groups, allowing prisoners to ask for religious assistance.

To conclude, it would like to mention that the oldest Romanian Orthodox parish is in Antwerp, established in 1993 and recognised by royal decree in 1996.

In Chapter III, I analysed legislation pertaining to cults in Belgium. I started by referring to the way in which cults exercise their autonomy. The way in which religious freedom, as foreseen by the constitutional text, is expressed in Belgian society was emphasised in this Chapter. I finally addressed the way in which the relations between cult and state exist within the European Union.

Concerning national legislation on cults in Belgium, the reader will learn from my thesis that the cults' relations with the Belgian state are defined by a system that is favourable to the religious factor, and based on mutual independence and not that of a strict separation. Although in theory all cults enjoy the same rights, important legal differences remain between two categories of cults, those that are recognised and those that are not. Among the recognised

cults, it has become clear that the Roman-Catholic Church is considered as being “*primus inter pares*” among the cults. The process of secularism was and is irreversible however, and its consequences are evident from analysing civil church law. The gradual loss of autonomy of cults in certain fields is a sign of the secularisation of Belgian society. This can be seen from the influence of labor law and also from the increased control by the state with regard to the internal procedures of churches.

The reader will equally learn that in Belgium it is impossible to determine the religious faith of Belgian believers. It is said that an eventual declaration and knowledge of the actual figures would be contrary to religious freedom. On the basis of existing statistics, it can be considered that of the 10 million inhabitants of Belgium, about 60% are Catholic, whereas the Muslim population, which is increasing in number, was about 4% of the total population in the 1960's. The Orthodox are approximatively 80,000, the Anglicans 21,000, the Jews 60,000 and the Protestants between 70,000 and 100,000. What is worrying is the increasing number of non-believers in Belgium, estimated to be 1,5 million, or 15 percent of the population. Secular associations to which belong about 100,000 people and enjoy at least the same rights and benefits as the recognised cults. This includes payment by the state of the salaries of their staff for their gatherings and for teachers of secular moral lessons in public schools and access to free broadcast on public radio and television. All secular associations are subsidised by the state, whereas not all Orthodox or Muslim parishes are recognised and benefit from the same treatment. This shows again, as is mentioned by Professor Rik Torfs, that Belgium is characterised by an important part of secularism, which, according to the opinion of many experts, is more extensive than in other European countries. Religion nevertheless continues to be an extremely important phenomenon. The relationship between state and cults has become a common feature, being brought up more and more frequently on a political and scientific level, often raised in the discussions pertaining to the integration of Islam in Belgian society. It is this process that provokes many reactions, expressing fear of an expansion of Islam in the traditionally Catholic Christian Belgian tradition which even influences public institutions.

In Belgium, by virtue of the Belgian Constitution, one cannot claim that there is a true separation between state and cults. Although the expression of separation of Church and State is often used, it is an inadequate use of the term to refer to the Belgian system of the relations between state and cults.

If there were a true separation between state and cults, it would be impossible to explain the existence of article 181 of the Constitution which foresees the obligation for the state to finance the salaries and pensions of ministers of cults from the state budget.

A term used to better reflect the legal and constitutional reality of such relations in Belgium is that of the mutual independence of the Churches from the state, a term with expresses tolerance and respect between two different institutions both in nature and in scope (state-Church).

In the framework of this mutual independence and religious pluralism in Belgium, it is imperative for the Belgian state to have a neutral position, it being understood that this is a positive neutrality since the state supports the development of religious and institutional activity without interfering with their independence.

In the last Chapter of my thesis, called “European Court of Human Rights jurisprudence on religious freedom in Belgium”, the reader will note cases where freedom of religion and conviction were infringed. Such infringements were ruled on by the European Court of Human Rights.

In the Conclusions of my doctoral thesis, I endeavoured to show that in Belgium there is a lack of clear legislation when it comes to cults and the organisation of secular non-confessional organisations.

The relations between cults and the Belgian state can be characterised as being a system that is favorable to the religious element, of reciprocal or mutual independence and that is not subject to a separation in the strictest sense, as is the case in neighboring country France.

From a constitutional and legal perspective, all cults enjoy the same rights, although certain important legal differences exist between the recognised and the non-recognised cults. But between the cults that are recognised there remain differences. For example, not all parishes of the Orthodox cult are recognised by the state.

Among the recognised cults, the Roman-Catholic Church is considered by lawyers and canon law experts as being the first among equals of the recognised cults. The progression of secularism which affects Belgium is irreversible and its consequences can be seen by analyzing civil church law.

The gradual loss of autonomy of cults in certain areas is a sign of the increasing secularisation of the Belgian society. This can be seen in the provisions of labor law and the

state's attempts to control the organisation and functioning of cults, thereby impinging on their autonomy.

In the Conclusions, I reiterated the fact that of all six recognised cults in Belgium on the basis of minimum criteria and administrative jurisprudence, the main cult, and hence the most important one for Belgian society, is the Catholic one.

In the legal system of cults, the Catholic cult does not enjoy a privileged position with respect to the other cults, although there are certain differentiating factors, especially concerning religious practice. The current legal framework of cults in Belgium is one that is shaped according to the way in the Roman-Catholic Church operates. An example is the right for ministers of cults to be remunerated by the state, but only when the respective cult has a well-structured hierarchy and is established on a territorial basis. This negatively affects certain cults, such as Islam, leading to a situation whereby not all ministers of the Islamic cult are remunerated by the state. The same phenomenon exists for the Orthodox cult. The status of the Catholic cult as being the first among equals continues to be evidenced through its extensive public religious ceremonies in Belgium, as national events are accompanied by Catholic religious ceremonies.

I also stressed the effects of the 1988 constitutional changes on the Belgian education system, as a result of amendments due to community legislation. This reform process affected both public as well as independent schools. The Flemish, French and German-speaking communities organised their own education system in which they succeeded to implement their own laws and principles. In accordance with article 24 of the Constitution, such education needs to protect all ideological tendencies. Its aim is the organisation of a neutral education; free of influence from any special ideology and allowing parents freedom of choice.

According to the Belgian Constitution, the principle of neutral education implies respect of philosophical, ideological and religious opinions of parents and students. Schools are required to guarantee their right to choose, throughout mandatory schooling, from one of the recognised religions and non-confessional moral lessons. Students have the right, with the appropriate support from the state, to follow a religious or moral education (art. 24 §3, Constitution).

Regarding the involvement of recognised cults in providing spiritual assistance in prisons, there is a real concern by the public authorities to ensure religious aid for every person that is denied his freedom, in accordance with individual conviction, but which nonetheless

favors the Catholic cult. Catholic clergymen can, as opposed to the other recognised cults, organise days of retreats and also benefit from considerable material aid from the state. In 2001, the special service of priests and moral advisors that provided spiritual assistance was terminated, as it was considered by some that such service did not differ from the one provided by any other staff members that offered support.

A selective and varied bibliography, which refers to publications in the French, Dutch, English, Romanian, Italian and Latin language offers the reader first-hand documented information regarding the legal regime of religious cults in Belgium. I am therefore convinced that our work will remain a reference in this field.

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