EDITING AND TRANSLATING THE CODE CIVIL IN BELGIUM,
1804–2004

by

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1. – Introduction: similarities of the French and Belgian experiences

Belgium still has the French Code civil in spite of some efforts to replace it with a new codification. Strange as it may sound these have declined with time, there being more enthusiasm for a new, original and Belgian Civil Code in the 19th century than at the beginning of the 21st1. Thus, as far as private law is concerned, Belgium will remain a ‘French province’2 for a long time, though changes to the Code have gradually weakened the influence of French law. The best example of these is to be found in family law where from the end of the 19th century the Napoleonic patriarchal view of the family was challenged and replaced by a family with a more ‘democratic’ organisation3. Interestingly enough, the new legislation, at times, was inspired by research into legal history4, which showed that many regions of the Southern Netherlands, later to become Belgium, had known a more democratic family structure before the introduction of the French Code civil. The speed of this process of change should not be exaggerated. In fact, most of the major changes only took place in the last decades of the 20th century5,

* For a summary see below, p. 228.
** This article was written as a complement to the previous article by A. Wijffels (supra, p. 195–214). It is based on the experiences of the author in directing, together with prof. em. dr. G. Baeteman, former president of the Belgian Conseil d’état, a cumulative edition of the Code civil in Belgium for the Tijdschrift voor privaatrecht, the leading review of private law in Belgium, containing the original 1804 text and all later changes to it in Belgium, in both French and Dutch. Needless to say this article could not have been written without the discussions with and help received from A. Wijffels, G. Baeteman and the collaborators to the edition: G. van Dievoet, K. Swerts, X. Lesage, S. Brouwers, G. Verschelden, J. Gerlo, F. de Bock, F. Swensen, R. Barbaix, M. Coene, J. Bueck, F. Bruloot, Y. Leleu, F. Stevens, E. Stassijns, K. Marchand, S. Stallaert and M.E. Storme.
Abbreviations used: B.S.: Belgisch Staatsblad; M.B.: Moniteur belge.
and it is telling that, for the last one, Belgian lawyers had to wait until 2001, when the family council, a typically French institution, which had never taken root in Belgium\(^6\), was finally abolished\(^7\).

Belgium’s close links with France and the fact its Civil Code was French, means that Belgian tampering with the Code civil ran along the same lines as in France, the main difference being, that Belgium, most of the time, lagged behind France. The best example of this is the régime dotal in matrimonial property law, abolished in France in 1965\(^8\), but in Belgium only in 1976\(^9\), even though it had been typical for southern France and no one in Belgium had ever used it\(^10\).

If possible, the Belgian legislator has been even more creative, innovative, and most off all, inconsistent than his French counterpart. The Belgian cumulative edition of the Code civil, containing all changes to it in Belgium since 1804, was closed off at the 1st of January, 2004\(^11\). To the dismay of the editors, the website of the Belgisch Staatsblad / Moniteur belge (the official government publication for new laws, which since the 1st of January, 2003 no longer has a paper version) published in its first edition of the 31st of December 2003, two Acts containing changes to the code. The first was an Act of the 3rd of May, 2003 about the protection of the goods of disabled persons\(^12\), changing the articles 488bis, b to 488bis, g. The second was a ‘programme Act’\(^13\) of the 22nd of December, 2003\(^14\), containing:

- an art. 382 which added one sentence to art. 488bis, b, §2, al. 3, as changed by the Act of May,
- an art. 383 which added an art. 15 to that Act stating that it would come into effect on the date of its publication in the Belgisch Staatsblad / Moniteur belge,
- an art. 384 stating that art. 383 would come into effect on the date of its publication in the Belgisch Staatsblad / Moniteur belge.

As this example shows Belgium has little, if anything, to learn from France.

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10. See the statistics in J. Gilissen, Historische inleiding tot het recht, Antwerp 1981, p. 547 which make clear that before its abolition the système dotal was chosen by a maximum of one couple a year. Keeping in mind that in the years for which Gilissen gives data about 70,000 couples married, this amounts to nothing.
13. ‘Programme Acts’ in Belgium are Acts containing all kinds of measures which are meant to enable the government to reach its economic, social and financial goals as laid down in the budget. Traditionally, as part of a package deal or as a matter of convenience, a lot of items which are not related to all this are smuggled into this text.