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Translating the Belgian Civil Code

Developments after 1961

Willem Possemiers

Abstract

Since the 30 December 1961 Act, the Belgian Civil Code has had an official Dutch text, superseding the previous non-authentic translation. This achievement of the Van Dievoet Commission, which oversaw the translation, is impressive. The commission worked from 1954 to 1961 on the revision of the translation of a previous commission, also presided by Emiel Van Dievoet, which worked on the Civil Code from 1923 to 1939. The final result is a Dutch text of very high quality, based on an in-depth study of legal history and comparative law, in which the terminology is almost always consistent, with the legal language in the Netherlands used as the prime example. Unfortunately, even though the commission existed until 2008, it was rarely asked to give advice on amendments of the Civil Code after 1961. It cannot come as a surprise that the quality of the Dutch text of new acts of Parliament rarely came up to the 1961 standard. Over the years, this has led to an eclectic Civil Code: the pre-1961 articles being of excellent quality as far as the Dutch text is concerned, the post-1961 articles sometimes, though certainly not always, being marked by poor grammar, spelling mistakes, and the re-introduction of obsolete terminology. In this chapter, examples are given of some of the novelties used by the legislators in post-1961 articles and of how these have been problematic for the consistent 1961 terminology used throughout the Civil Code. The current practice of hasty translations shows a lack of interest by the government in a well-drafted Dutch (and French) text of the law. However, poorly written law diminishes its prestige and leads to a great loss of time for students, academics, lawyers and judges alike, all of whom need to understand the meaning of the law texts.

1 Introduction

This chapter starts with a short overview of the development of the Dutch translation of the Belgian Civil Code. A brief discussion of the 1961 Dutch text follows. An analysis of some of the developments regarding the quality of the Dutch text after 1961 concludes this chapter. The main argument is
that, while the linguistic quality of the 1961 Dutch text was excellent, most of the amendments to the Civil Code are not of the same quality, as the legislators did not consult the commission that prepared the 1961 Dutch text when amending the Civil Code. This shortcoming tends to result in an eclectic Civil Code, where the articles predating 1961 form an excellent text, with a uniform terminology and without language mistakes, whereas the succeeding amendments are often mediocre at best.

2 Translating the Civil Code into Dutch

Following the annexation by France in 1795, the Southern Netherlands and the Prince-Bishopric of Liège were reorganized into nine departments which formed the northern corner within the so-called “natural borders of France” (Sahlins 1990, 1443–1446). New French laws applied within this new ‘Greater France’, and the Civil Code was no exception.

The French text of the Civil Code was the only authentic one, and after having been promulgated in the form of thirty-six different laws, the entire French Civil Code was published on 30 ventôse year XII (21 March 1804) (Heirbaut and Baeteman 2004). This *Code civil des Français* was republished by the law of 3 September 1807 under a new name, the *Code Napoléon*, and the terminology was updated, seeing as France had been an empire since the new Constitution of 28 floréal year XII (18 May 1804) (Van Dievoet 2004). From the viewpoint of Belgian law, this was the last time the entire Civil Code had been promulgated and this version, though heavily amended in the past two hundred years, is still applicable in Belgium, being the French text of the Civil Code (Heirbaut and Baeteman 2004, lii). In 1814–1815, the Southern Netherlands reunited with the Northern Netherlands. For the Civil Code, however, the Dutch period is irrelevant as it was not amended in these years (Van Dievoet 2004, XIV).

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1 The original thirty-six laws were promulgated in the then-occupied Southern Netherlands, but the Civil Code of 21 March 1804 was not. Most likely, this was simply an oversight by the occupying French government. In France, the Civil Code was promulgated again in later years, but at that time the Southern Netherlands did not belong to France anymore. Neither the Dutch nor the Belgian government has ever promulgated the Civil Code in full again (Van Dievoet 2004). However, the French Civil Code was replaced by a Dutch Civil Code in 1838 and has been replaced in Belgium by a Belgian Civil Code since 2020.
Belgium declared independence on 4 October 1830,\(^2\) and French was swiftly declared the official language of legislation. The decree of 16 November 1830\(^3\) established French as the sole authentic language of the decrees of the National Congress, the constitutional assembly. This choice was confirmed by the law of 19 September 1831 concerning the sanctioning and promulgation of laws.\(^4\) At this time, the Civil Code had not changed at all since 1807; even the references to France and the French Empire remained in the Civil Code (they would only be corrected in 1949; Van Dievoet 1949–1950).\(^5\)

A definitive and authentic ‘Dutch’ text of the Civil Code, however, took much more time to materialize (Heirbaut 2004a). In 1804, alongside the thirty-six different laws, a Dutch or, to be more precise, a “Flemish” translation was published in the bilingual edition of the official journal, the *Bulletin des lois*;\(^7\) the quality of the translation was nevertheless very poor. Commercial translations of a somewhat higher quality were prepared and published. In the Northern Netherlands, an excellent translation of the Civil Code by Joannes van der Linden saw the light of day. This translation was commonly used in the Southern Netherlands as well, when they were part of the Netherlands. After the creation of the independent Belgian state, a translation was prepared by Karel Lodewijk Ledeganck, which became the standard translation in Belgium for the decades to follow. Ledeganck’s translation, however, was also flawed in several ways, especially its lack of consistent terminology and its use of uncommon words. Most importantly, it had never been granted government approval, as this was a purely private initiative.\(^8\)

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3 *Arrêté du Gouvernement provisoire: Le Bulletin officiel des lois restera publié en français: les gouverneurs des provinces où le flamand et l’allemand sont plus en usage que le français, sont autorisés à faire traduire* (Decree of the Provisional Government: The Official Bulletin of Laws will remain published in French: the governors of the provinces where Flemish and German are more in use than French, are authorized to have it translated) of 16 November 1830, *Bulletin officiel* 20 November 1830.
4 *Loi concernant la sanction et la promulgation des lois* (Act concerning the sanction and promulgation of laws) of 19 September 1831, *Bulletin officiel* 1831 No. XCIII.
6 It was common to refer to the Dutch language spoken in the South as “Flemish” and in the North as “Hollandic”, a usage which disappeared in the twentieth century, at least in formal speech.
7 Not to be confused with the *Bulletin holländais* that existed in the Netherlands after its annexation by France (D’hulst 2015).
8 See the commission’s report, which can be found in the parliamentary proceedings. *Wetsontwerp tot invoering van de Nederlandse tekst van het Burgerlijk Wetboek*, Parl.St. Chamber of Representatives 1959–1960, No. 507/1, 5–9.
The real turning point was the Law of Equality of 18 April 1898. From then on, the entire legislative process would be completely bilingual, from the work in Parliament until publication in the official journal. This meant that the new laws that changed the old Civil Code would be authentic in both languages, implying that those changed articles would be authentic in both languages, but that the other articles, predating 1898, remained authentic in French only. In other words, the 1898 law changed nothing for the Civil Code, except for the articles that were changed after 1898. This situation was unsustainable in the long term, and demands grew for an official Dutch translation of the laws predating 1898.

The issue was first tackled by a short-lived commission, set up by the German occupier during World War I. A more serious attempt was made by the Belgian government by royal decree of 18 September 1923, which instated a commission first chaired by Hendrik De Hoon and, from 1932 on, by Emiel Van Dievoet; their task was to translate the Constitution, the codes and the laws predating the 1898 Law of Equality. The commission prepared a translation of the Civil Code, promulgated part by part, which was to be the only one to be used for the purpose of education and the drafting of future legislation. As the translations made by the commission were published by royal decree and not voted in Parliament, they were not authentic. The commission did not survive World War II, but a new commission was set up to replace it in 1954 (Van Haver 1990, 601–620). Unlike the 1923 commission, this commission, again presided by Emiel Van Dievoet, was authorized to

9 Wet betreffende het gebruik der Vlaamsche taal in de officiëele bekendmakingen (Act concerning the use of the Flemish language in official publications) of 18 April 1898, Belgisch Staatsblad 15 May 1898.
10 At least in theory. In practice, almost all parliamentary work was done in French for decades to come (Doms 1965).
11 The government preferred not to vote on these texts in parliament, as, at that time, it was assumed that Article 41 of the Constitution required such texts to be voted on article by article, which would take too much time (Victor 1935, 96–7). Interestingly, the translations prepared by the commission at the Ministry of Colonies, which translated the decrees dating from the time of the Congo Free State, were authentic in both languages. This means that those parts of the Civil Code for which an official translation had been published already had an authentic text in both languages in Belgian Congo long before this was the case in Belgium. However, court proceedings in Belgian Congo remained in French only until the decree of 15 February 1957 regulating the use of the French and the Dutch language in judicial cases, which, according to Article 3 of the Colonial Charter, would already have been promulgated by 1913 (Meeuwis 2015, 59).
12 For the royal decree, see Koninklijk Besluit houdende oprichting van de Commissie belast met de voorbereiding van de Nederlandse tekst van de Grondwet en de voornaamste wetten en besluiten (Royal Decree establishing the Commission charged with the preparation of the Dutch text of the Constitution and the most important laws and decrees) of 5 April 1954, Belgisch Staatsblad 5 April 1954.
prepare an ‘authentic’ Dutch text of laws predating 1898, which had to be passed in Parliament before taking effect.\(^{13}\)

This difference is of utmost importance. Until then, for texts predating 1898, only the French version was authentic; the Dutch translation was not. This distinction meant that, in case of any uncertainty about the meaning of the text, only the French version would be taken into account.\(^{14}\) The new commission, however, would not prepare a Dutch translation but instead a Dutch ‘authentic’ text of the laws it was working on. Now, the French and the Dutch text would be of equal status.\(^{15}\) The commission first finished its work on the Constitution,\(^{16}\) immediately followed by the Dutch text of the Civil Code. In 1961, the text approved by the commission was passed in Parliament and published in the official journal on 18 May 1962.\(^{17}\)

### 3 The Dutch text of the Belgian Civil Code of 1961

The Dutch text of the Civil Code is generally praised as a masterpiece.\(^{18}\) The 1954 Van Dievoet Commission was composed of some of the finest experts in both the legal field and the linguistic field (Van Haver 1990). The commission was chaired by former minister Emiel Van Dievoet, a renowned law professor with an excellent knowledge of legal history\(^{19}\) as well as a great interest in

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13 In rare cases, there were exceptions to these rules. This was the case when post-1898 laws were closely linked with pre-1898 laws, or if it was necessary to change the terminology of old laws to the new terminology established in, for example, the new Dutch text of the Civil Code.  
14 This situation still exists in Belgium with regard to the German translation, which is still not authentic, with the exception of the German text of the Constitution (Muylle and Stangherlin 2006).  
15 For the importance of the difference, see Herbots (1973).  
16 The Dutch text of the Constitution was written in a relatively short period of time, yet was only enacted in 1967. From 1954 until 1958, the Christian People’s Party blocked any amendment to the Constitution to protest the government’s education policy; in 1959, the text was approved by the Chamber of Representatives but rejected by the Senate, and no agreement could be reached until the government fell over the Unitary Law in 1961. From 1961 until 1965, the Chambers lacked the competence to amend the Constitution (see Article 131 of the Constitution). It was only after the 1965 elections that an agreement on the Dutch text could be reached.  
18 In general, all the translations prepared by the Van Dievoet Commission have been extremely well received. Only very rarely did some of the texts it produced give rise to some mild criticism, such as the text of the Criminal Code (Leliard 2007–2008).  
19 He was the author of the standard work of comparative Belgian-Dutch legal history (Van Dievoet 1943).
legal language. He was a man with excellent political connections and an important proponent of Belgian-Dutch cooperation.

Among the members were other important jurists and high-ranking civil servants, as well as Emiel Van Dievoet’s son, Guido Van Dievoet, who would become chairman of the commission in 1967 until his death in 2008, when the commission was disbanded. The commission did not lack well-known linguists, either, like Edgard Blancquaert, Jan Lodewijk Pauwels and Willem Pée. Not only did the commission ensure a balance between jurists and linguists: it also harmonized the four different universities in Belgium at the time.

In preparing the Dutch text of the Civil Code, the commission consulted previous translations, including the translation made by Joannes van der Linden and, most importantly, the translation by the 1923 commission, which had been published by royal decree in various phases between 1932 and 1939. The commission also took into account the 1838 Dutch Civil Code, as well as the draft of the new Dutch Civil Code by Eduard Maurits Meijers. It consulted doctrine from the North and, occasionally, the commission had a look at the terminology used in Germany or in the legal history of the Northern and the Southern Netherlands themselves, which had a rich tradition of customary law. For more specific topics, the commission was expanded with a temporary member, always an expert in the field, usually a university professor (Victor 1960–1961). Of course, dictionaries were also consulted, including general dictionaries (Van Dale), legal dictionaries (Fockema Andreae, Verdeyen/Moors) and the Woordenboek der Nederlandsche Taal (Dictionary of the Dutch Language, the world’s largest dictionary). Last but not least, the remarks of a short-lived mixed Belgian-Dutch commission, which had existed from 1938 to 1941, were also taken into account (Van Dievoet 1997).

One of the major points of contention was the influence of the legal language of the Netherlands. Though some had proposed a more “Flemish” translation (e.g., Paul Bellefroid), it was generally agreed that the

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20 From 1919 until 1936, Emiel Van Dievoet was a member of the Chamber of Representatives for the Catholic Party. He was the Belgian agriculture minister in 1931–1932 and justice minister in 1939.

21 Emiel Van Dievoet and Eduard Maurits Meijers were the driving forces behind the Association for the Comparative Study of the Law of Belgium and the Netherlands (Victor 1947–1948).

22 For the composition of the commission at the time of the Dutch text of the Civil Code, see Wetsontwerp tot invoering van de Nederlandse tekst van het Burgerlijk Wetboek, Parl. St. Chamber of Representatives 1959–1960, No. 507/1, 3.

23 This practice is also explained in the commission’s report in the parliamentary proceedings. Wetsontwerp tot invoering van de Nederlandse tekst van het Burgerlijk Wetboek, Parl. St. Chamber of Representatives 1959–1960, No. 507/1, 10–11.
Netherlands were the model to follow.\textsuperscript{24} This conviction was already shared by Herbert De Hoon\textsuperscript{25} and Emiel Vliebergh in the 1930s, and also by Emiel Van Dievoet, who explained the commission’s methodology in the following way:

Dat de Nederlandse rechtstaal in België en in Nederland één dient te zijn vloeit reeds voort uit de taaleenheid van het Nederlands sprekende volk in Noord en Zuid. Voor de rechtstaal gezien als technische taal, is zulks des te meer noodzakelijk omdat het gebruik van twee uitdrukkingen voor een zelfde begrip misverstand en verwarring kan teweegbrengen.

(The Dutch people in North and South speak the same language and the legal language, as a technical language, requires uniformity, as the use of two different expressions for one term would produce misunderstandings and confusion.) (Van Dievoet 1964, 13).

This was not easy, however, as the language of the Dutch Civil Code at the time, which dated from 1838, was already considered archaic by the 1950s,\textsuperscript{26} and, of course, Dutch law and Belgian law had developed differently since North and South separated in 1830.)

The commission worked on the translation for several years, convening six hours per week; a quick calculation demonstrates that this equals just a few articles per session. Discussions in the commission were extremely lengthy, and the research produced before cutting the knot on a particular topic is

\textsuperscript{24} The insistence on following the Dutch model did sometimes lead to remarkable situations. For example, Lodewijk De Hondt, who translated the Criminal Code and was a staunch proponent for the unity of Dutch legal language, translated the French \textit{prévenu} with the Dutch \textit{beklaagde} (English: “the accused”), a word borrowed from the 1838 Dutch Criminal Code but completely unknown in Belgium at the time. In 1921 however, a new Criminal Code was promulgated in the Netherlands, which replaced \textit{beklaagde} by \textit{verdachte}. Since then, the term \textit{beklaagde} only continues to exist in the Dutch legal language as used in Belgium (Bellefroid 1933–1934, 140). This is also explained in the commission’s report.

\textsuperscript{25} De Hoon famously said in this regard: “De Nederlandsche rechtstaal bestaat in Holland; niet noodig veel te zoeken, er valt maar over te neemen wat ze daar hebben.” (“There is no need to draw up a Dutch legal language as it already exists in Holland.”) (Bellefroid 1933–1934, 138)

\textsuperscript{26} See the commission’s report in the parliamentary proceedings. \textit{Wetsontwerp tot invoering van de Nederlandse tekst van het Burgerlijk Wetboek}, \textit{Parl.St.} Chamber of Representatives 1959–1960, No. 507/1, 11–12.
remarkable. The result was an excellent translation of the French original, or, more precisely, a new Dutch text of the Civil Code, with a consistent terminology throughout the text. The translation was universally praised, both by contemporary sources and by more recent doctrine (Victor 1961–1962; Hendrickx 2003, 25–28).

4 Developments after 1961

The tragedy of Dutch legislative language in Belgium is that the almost fanatic work by the Van Dievoet Commission has never been followed up by the legislators. Amendments to the Civil Code after 1961 were rarely, if ever, sent to the Van Dievoet Commission for further review. The Belgian Council of State thus became the only official body to examine the linguistic quality of new laws, but due to its increasing workload and the lack of time granted to the Council to advise on new legislation – often as little as a few days – this aspect of its work has become less and less important (Hendrickx 2003). This lack of interest in the quality of legal language is part of a broader phenomenon, which includes the partial recognition of separate Dutch language standards in Belgium and the Netherlands, especially in spoken language, and the decline of linguistic purism in Flanders.

Nevertheless, the general structure of the 1961 Civil Code text has been preserved, and the terminology used in the Civil Code is now widely used by the Dutch-speaking legal world in Belgium. However, occasionally, the legislators has decided not to stick with the terminology. A striking example is the

27 The report made by the commission concerning the translation of the Civil Code, which is seventy-three pages long, provides excellent testimony of this attitude. Wetsontwerp tot invoering van de Nederlandse tekst van het Burgerlijk Wetboek, Parl.St. Chamber of Representatives 1959–1960, No. 507/1, 3–75.

28 This did happen in the early years of the commission (e.g., the Motor Vehicles Compulsory Insurance Act).

29 The main commercial dictionary of the Dutch language, the Van Dale Groot woordenboek van de Nederlandse taal, famously introduced the terms ‘Dutch Dutch’ (Nederlands-Nederlands) alongside the already existing ‘Belgian Dutch’ (Belgisch-Nederlands) in its 2015 edition. In fact, the term ‘Belgian Dutch’ itself was unthinkable up until only a few decades ago, when all Belgian Dutch words and expressions were simply classified as ‘regional’ (gewestelijk) in all major dictionaries. Furthermore, for example, in the 1950s Standard Dutch was widely used throughout the Dutch language area in film and popular music, radio and television. Now, the usage of more informal speeches such as tussentaal (language register between Standard Dutch and Belgian Dutch dialects) or Polder Dutch (informal language register used in the Netherlands, especially in the western part of the country) are more accepted, the opposition to the use of loan words has diminished, etc.
translation of the French word *adoption*. When the 1923 commission had to translate this word, there was no legal term available in the Netherlands, as the North had no adoption law until 1956. Two Dutch alternatives were proposed: *adoptie*, or *aanneming van kinderen* (“taking up children”).30 (Interestingly, the Civil Code of Belgian Congo translated *adoption* with *aanneming van een kind*.) The latter was more similar to the German terminology *Annahme an Kindesstatt*.31 The commission opted for the latter one, probably for reasons of linguistic purism. The exact reason will never be known, as the commission did not keep minutes. However, as noted, the commission’s translation was not authentic. Interestingly, on 22 March 1940 a new Belgian Adoption Law was adopted, altering the Civil Code but keeping the term *aanneming van kinderen*. As its text was authentic in both languages, this became the official legal term. Unfortunately, in 1956, when the Netherlands introduced its own adoption law, the choice was to opt for the Latin-derived term *adoptie*.32 When preparing the authentic text of the Dutch Civil Code, the Van Dievoet Commission decided to keep the old Belgian terminology – a rare instance where it did not follow the Dutch model. As such a decision was inevitably going to be controversial, it was justified in a seven-page note attached to the report made by the commission.33 In this note, the commission explained the two different possible terminologies; then, it examined the terms used in Dutch during the Ancien Régime – for example, an edict by Albert and Isabella of 14 December 1616; the *costumen* (customs) of the town of Oudenaarde of 27 March 1615; a decision by the States of Guelders of 27 September 1653, and so on – all of which used the term *adoptie* or *adoptatie*. The first use of the term *aanneming van kinderen* seemed to stem from Hugo Grotius, well-known for his habit of ‘inventing’ Dutch legal terms. After consulting different dictionaries, including the *Middelnederlandsch Woordenboek* (Dictionary of Middle Dutch) and the aforementioned *Woordenboek der Nederlandsche Taal*, the commission decided to choose *aanneming van kinderen* for pragmatic reasons: it had been the official Dutch term in Belgium since 1940.

30 The word *aanneming* also has a completely different meaning in the Civil Code, being the translation of *entreprise* in *entreprise d’un ouvrage* (Article 1794) or *marché* (Articles 1711, 1779 and 1787) (Moors and Theissen 2015, v° aanneming).

31 § 1741 BGB. Now *Annahme als Kind*.


Adoption law, however, was a field of law which was quickly evolving at the time, and the 1940 law was already seen as outdated by the time the Dutch text of the Belgian Civil Code was enacted. In 1962, a new adoption law was proposed, again altering the provisions of the Civil Code. In the original proposal, the 1961 terminology would be retained. However, the Justice Committee of the Chamber of Representatives decided to switch the terminology from *aanneming van kinderen* to *adoptie* when it convened in 1965, without giving any reasoning behind it. After the adoption of the new law, *adoptie* became the legal term in Belgium.

The new Adoption Law was closely connected with the law of 8 April 1965 on the protection of youth. Both laws were criticized for their lack of consistency with the 1961 authentic text. Baert gave a few examples of this inconsistency in an article in the *Rechtskundig Weekblad* (Baert 1967–1968, 1636): the translation of *quinze ans* as *vijftien jaar* (“fifteen year”, singular, whereas the 1961 text always translates as plural *vijftien jaren*, “fifteen years”), *en tout cas* as *alleszins* (“fully”, instead of *in alle gevallen*, “in all cases”), and the translation of *spécial* as *speciaal* (“special”) instead of the preferred translation *bijzonder*. Baert notes: “Wanneer de wetgever op die manier verder gaat zal binnen korte tijd zeker een nieuwe taalcommissie aan het werk moeten gezet worden.” (“If the legislature will continue this way, it will only take a short time before a new language commission will have to be set up”).

In one case, the legislators, when drafting amendments to the Civil Code, even reverted to a translation predating the 1961 translation. In 1970, the 1951 Commercial Lease Act, which is incorporated in the Civil Code and thus received an authentic Dutch text in 1961 as well, was amended, and its Article 13 was rewritten on the basis of the Dutch text of the original 1951 Act, even though it was completely rewritten by the Van Dievoet Commission in the 1961 text (Heirbaut 2004b, lvi–lvii).

Another example is the translation of the French terms *défunt* (“deceased”) and *testateur* (“testator”) in Belgian inheritance law. In 1961, the Van Dievoet

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34 The proposal was made by three Flemings and three Walloons, one from each of the three important political parties. *Wetvoorstel tot wijziging van het eerste hoofdstuk van Titel VIII, eerste Boek, van het Burgerlijk Wetboek*, Parl.St. Chamber of Representatives 1961–1962, 436/1.


37 The change was not discussed in the plenary meeting either. *Hand*. Chamber of Representatives 1964–1965, 11 February 1965, 23–38.

38 Geert Baert would join the commission in 1978 and remain a member until the end of the commission in 2008.
Commission was very clear: *défunt* is translated as *overledene*, *testateur* as *erflater*. However, already in the 1970s the legislators did not seem to pursue this logic anymore: the 19 September 1977 Act\(^{39}\) amended Article 720, writing *défunt* in the French text and *erflater* in the Dutch text. The Act, however, was implementing the Benelux Agreement on Comorrientes and stuck with its terminology (Puelinckx-Coene and Perrick, 1978). Article 1 of the annex to this agreement used the word *de cujus* in French, which is not used in the Belgian Civil Code. Apparently, the legislators replaced this term in the French text with the correct term *défunt*, yet did not take the Dutch text into account when making this change, which still used the word *erflater*. Had the legislators taken a look at the Dutch text, they would have noted that the correct Dutch translation of *défunt* would have been *overledene*.

Another peculiar case was the 1987 law\(^{40}\) that also reformed the rules on paternal power, from then on to be known as “parental authority”. Interestingly, this change in the French text of title IX of book I of the Civil Code, from *De la puissance paternelle* (“paternal authority”) to *De l’autorité parentale*, was already partially foreshadowed by the 1961 Dutch text of the Civil Code, which used the term *ouderlijke macht* instead of *vaderlijke macht*, thus translating it as “parental power”. As a matter of fact, in the authentic Dutch text of the Congolese Civil Code before the colony’s independence in 1960, *de l’autorité paternelle* (paternal authority, not paternal power) was already translated as *ouderlijk gezag* (parental authority).\(^{41}\) Apparently, the translators at both the Ministry of Justice and the Ministry of Colonies were not that fond of the idea of paternal power or authority.

Even though the general terminology of the Van Dievoet Commission has been largely preserved up to the present day – partially because key parts of the Civil Code, such as the law of obligations, have hardly been amended at all in subsequent decades – the Civil Code reform currently proposed in Belgium will cause further deviation from the original. For example, if the reform for the law of obligations is implemented, the terms *convention* (*overeenkomst*, “agreement”) and *contrat* (contract) would be unified into the single term of *contrat* (contract). This move is somewhat unfortunate, as the

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40 Wet tot wijziging van een aantal bepalingen betreffende de afstamming (Act amending a number of provisions on filiation) of 31 March 1987, Belgisch Staatsblad 27 May 1987.

Dutch term overeenkomst is the one normally used in Dutch law, as well as in European Union law, which always has only one Dutch text for both Belgium and the Netherlands. Furthermore, in other fields of Belgian law, the term overeenkomst is preserved, as in arbeidsovereenkomst (“labor agreement”, but in French contrat de travail). Interestingly, the 2018 reform of matrimonial property law retained the term huwelijksovereenkomst (convention matrimoniale, “marriage contract”), except in the new Article 1469/2, § 4, where it uses the term huwelijkscontract (contrat de mariage). Why a different term is used here is not clear. The fact that another article, Article 299, uses contrat de mariage in the French text, but huwelijksovereenkomst in the Dutch text, seems to prove that the legislators did not really pay attention when drafting this law.\(^\text{42}\)

Another interesting term is the French term faute. The Van Dievoet Commission almost never translated this word by the most obvious translation fout (“error” or “mistake”), as, in most cases, this translation is considered incorrect (or ‘Belgian Dutch’); the correct translation in those cases is schuld (“fault” or “guilt”). The commission did seem overly sensitive toward this issue, as in some cases the translation schuld proposed by the commission is not the most appropriate. However, the proposed reform of the Civil Code tends to go to the other extreme, simply translating faute with fout and replacing schuld by fout everywhere, no matter what is meant exactly. Apparently, the rationale is that the mistake is so common in Belgium nowadays that it makes no sense to oppose it anymore. Though most Flemings would effectively suggest that faute can always be translated by fout, even in the meaning of schuld, it is certainly strange that the legislators would impose a linguistic error throughout the Civil Code.

The Dutch text of the new Civil Code can be criticized, because, even though all of the members of the commissions which prepared the texts were among the best jurists of the country, they did not have the time nor the responsibility to draft a text at the level of the one prepared by the Van Dievoet Commission; not only do the new commissions lack linguists, but they also had less time to write a new Civil Code than the Van Dievoet Commission had to translate the old one.

\(^{42}\) Wet tot wijziging van het Burgerlijk Wetboek en diverse andere bepalingen wat het huwelijksvermogensrecht betreft en tot wijziging van de wet van 31 juli 2017 tot wijziging van het Burgerlijk Wetboek wat de erfenissen en de giften betreft en tot wijziging van diverse bepalingen ter zake (Act amending the Civil Code and various other provisions as regards matrimonial property law and amending the Act of 31 July 2017 amending the Civil Code as regards inheritances and gifts and amending various provisions in this regard) of 22 July 2018, Belgisch Staatsblad 27 July 2018.
In fact, other recent law texts are even more problematic. An excellent example is the 2017 reform for inheritance law. Before the reform, most of the provisions of Belgian inheritance law had not been changed since 1804 (Heirbaut and Baeteman 2004, 2254). In particular, the insistence on differentiating movable and immovable property was considered outdated. Though the reform retained the general framework of the Civil Code, the sheer number of amendments to the Code is impressive.

However, from a language point of view, the reform is rather disappointing: the consistent translation by the Van Dievoet Commission in 1961 has basically been nullified. This can come as no surprise; even for new legislation of this importance, the Council of State was only given thirty days to provide its recommendations. Despite the poor Dutch (and French) text of the act, the Council of State only gave two remarks related to the quality of the texts.

For example, the legislators still mix up défunt (overledene) and testateur (erflater). Where the new Article 843 correctly translates défunt as overledene, the new Article 205bis translates the same word as erflater. Even stranger is the use of new terminology in the new Articles 922 and 922/1, where testateur is not translated as erflater, but as testator. Notable, too, is the heavy use of the word verzaken as a translation of the French renoncer (“to renounce”); two times in the matrimonial property law reform, and no less than thirty-three times in the inheritance law reform. Renoncer was normally only translated as verwerpen. However, in this meaning, verzaken is Belgian Dutch, which is why it was never used in this sense by the Van Dievoet Commission. This is not a surprise, as, with very few exceptions, the commission always used terms the same way as they are used in the Netherlands.

A typical example is the new Article 205bis of the Civil Code, which speaks of bloedverwanten in opgaande lijn (“relatives in ascending line”) as a translation of ascendants. In the Civil Code of 1961, however, ascendants is always translated as bloedverwanten in ‘de’ opgaande lijn, as it is in the Netherlands, for example, in the Articles 747, 750, 907 and 935 of the Civil Code. The same mistake is made several times with the translation of the term descendants, for

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43 Wet tot wijziging van het Burgerlijk Wetboek wat de erfenissen en de giften betreft en tot wijziging van diverse andere bepalingen ter zake (Act amending the Civil Code as regards inheritances and gifts and amending various other provisions in this regard) of 31 July 2017, Belgisch Staatsblad 1 September 2017.


45 Moors and Theissen 2015, *v° verzaken*. See also the *Woordenboek voor correct taalgebruik* and the *Van Dale Groot woordenboek van de Nederlandse taal*. 
example, in the new Articles 843 and 1100/7. The new law is very consistent in this mistake; however, the old articles in the Civil Code remain unchanged, so both translations will now inevitably have to co-exist.

Article 10, 1° of the 2017 law, amending only the Dutch text of Article 745quater, is also interesting, replacing *vorderen* with *vragen* (both meaning “to demand”). This seems logical, as the French text uses the word *demander*, which is closer in meaning to *vragen*. However, even though the French word *demander* is usually translated as *vragen* (see Articles 878, 881, 921, 1143 and 1184), it is also sometimes translated as *vorderen* (for example, in Articles 826, 1004, 1006 and 1011). In this way, the purpose of this amendment is not very clear. Another typical detail is the translation of the French *alinéas 4 à 6* in the same article, which is translated as *vierde tot en met zesde lid*, whereas elsewhere in the Civil Code, *vierde tot zesde lid* is consistently used (for example, in Article 353–4bis). Moreover, in Article 745sexies, in the French text we read *il en va de même* (normally: *il en est de même*), translated as *zo ook* (normally: *hetzelfde geldt*46) meaning “the same applies to”. In Article 817, the French text is correct (*il en est de même*), but the Dutch translation is here *zo ook* instead of *hetzelfde geldt*.

Article 816 translates *mede-erfgenamen* as *héritiers* (“heirs”) instead of *cohéritiers* (“co-heirs”); perhaps a typographical error, but in that case it should have been corrected before the vote in Parliament (even if the Council of State did not notice it either). Another peculiarity is Article 820: *avant de* is translated as *vooraleer* (“before”) instead of *alvorens*. In Article 835, it is translated as *vóór*.

Vooraleer is a common word in Belgium, but not in the Netherlands; in the North, it is seen as very formal and not used in the Civil Code.

Another potential typographical error can be found in the new Article 820. In the old text, the French *le numéraire, les comptes en banque et les valeurs de portefeuille* were translated as *het gereed geld, de bankrekeningen en de beleggingswaarden aan toonder*. In the new article, the Dutch text is *het gereed geld en de bankrekeningen*, the French text *les comptes en banque et les valeurs de portefeuille*. Clearly, different words were deleted in both texts; in this case, the Dutch text is correct, as it clearly reflects the will of the legislators.

On a different note, we encounter strange expressions in a legal context, such as in Article 822 *in principe* instead of *en principe* (“in principle”) and *er wordt naar gestreefd* (“it is being pursued”). A common spelling mistake can be found in Article 855, writing *teniet gedaan* (“negated”) as two words instead of one. In Article 823, *une disposition conventionnelle* is translated as

46 Except for Article 1042, where the Van Dievoet Commission wrote “Hetzelfde heeft plaats”, probably because the 1923 commission wrote it that way.
een conventionele bepaling (“contract clause”). Conventioneel, however, was not used in this sense in the Civil Code; conventionnel was translated as uit overeenkomst or as bedongen. And in Article 858 and 1100/7, we find a mistake against the classic hen/hun-rule (two forms for ‘them’): in Dutch, hen should be used as an accusative or in connection with a preposition, hun should be used as a dative. The text uses hen as a dative in both cases, which is incorrect.

It must be said that the legislators did implement two small points of criticism from a language point of view made by the Council of State, which, unfortunately, only had thirty days to give its recommendations. The Justice Committee of the Chamber of Representatives also did correct a few mistakes, though mostly when the Dutch and the French text clearly did not have the same meaning. A striking example can be found in the same report, which summarizes the problem of the current translation practice in Belgium. In the Dutch text of Article 823, the wording ten bezwarende titel (“for valuable consideration”) was present, whereas the French equivalent à titre onéreux was not. Therefore, the Judiciary Committee decided to add these words to the French text. Unfortunately, nobody noticed that the Dutch ten bezwarende titel is in fact incorrect; it should have been onder bezwarende titel. The Judiciary Committee only had to look at Article 1106 of the Civil Code, which defines a contract onder bezwarende titel, to know the correct terminology.

The 2018 matrimonial property law reform, which is closely related to the inheritance law reform, both being in force since 1 September 2018, is equally inconsistent. For example, the new Article 299 translates sauf conven tion contraire (“notwithstanding any clause to the contrary”) as behoudens overeenkomst in tegenovergestelde zin, whereas Article 301 still translates it as tenzij de partijen anders overeenkomen and Article 1449 as tenzij anders is bedongen. In short, the linguistic quality of the text has some serious defects, especially in the Dutch text.

Some expressed hope that these two acts of parliament would be an exception, as the government was preparing a new Civil Code which would replace the old code entirely anyway. So far, two books of the new Civil Code have been published in the official journal. However, the text of the new Civil Code is not unproblematic either. For example, in many articles of the old


Civil Code (e.g., Article. 3 CC, 838 CC, 966 CC, 1244 CC, 1595, 2° CC), the structure même + adjective is used (même meaning “even”); since it is not possible to translate such a construction literally into Dutch, the Van Dievoet Commission translated the sentences in which this construction is used in a way that is appropriate for the Dutch language. However, in Art. 8.3 of the new Civil Code, we can read Le droit, même étranger, ne doit pas être prouvé translated as Het recht, zelfs buitenlands, moet niet bewezen worden. Literally this means “the law, even foreign, does not have to be proven”; a very unnatural-sounding wording in Dutch. In fact, even the French text of the law has some issues. For example, the word entrainer (to entail) is spelled without an accent circonflexe on the i (otherwise, it would be entraîner); this alternative spelling has been allowed since the French spelling reform of 1990. Interestingly, however, Book 7 of the Civil Code is titled Les sûretés (Securities) instead of Les suretés, which would be the recommended spelling when implementing the 1990 reform.

5 Conclusion

While it is impossible to summarize the entire development of the Dutch text of the Belgian Civil Code in this chapter, the examples mentioned above do give us a good general overview. None of the Dutch translations of the Civil Code predating 1961 were authentic, and especially the nineteenth-century translations had major flaws. However, the quality of the 1961 text was excellent, prepared by extremely skilled scholars in both the legal and the linguistic field. Unfortunately, after the enactment of this text, amendments to the Civil Code were generally no longer reviewed by the Van Dievoet Commission.49 The linguistic quality of amendments was already criticized in the 1960s, but the most recent reforms of the Civil Code are of particular concern. As the Van Dievoet Commission does not exist anymore, only the Council of State still offers some healthy criticism on the legislature’s proposals; however, throughout the years, the Council has been offering less and less linguistic advice due to time constraints (Hendrickx 2003; Van Damme and De Sutter 2013, 184–186).50 At present, neither the quality of the Dutch and the French

49 In fact, during its later years, even the translations prepared by the Van Dievoet Commission of laws predating 1898 were completely ignored by the government and by the legislature. As such, 128 translations were made, but never implemented (Leliard 2008–2009).
50 According to Article 84 of the Council of State Act and to the Council of State’s own Vademecum adviesprocedure voor de afdeling wetgeving 2018, the Council often only reviews the language used by the proposal if it does not have a limit to give its advice, which rarely happens.
text nor the equivalence of both texts is thoroughly checked by any official government body. Still, at a time when more and more scholars advocate a new Law of Equality for the German text of the law, addressing this issue should be the first priority.

References


