

# **Religious freedom, freedom of association, legal personality: the Belgian example of the ASBL** *(association sans but lucratif)*

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The Belgian Constitution, written in 1831 and considered as one of the most liberal constitutions of its time, and therefore a model for other constitutions, recognises the freedom of religion and the freedom of association. Although the recognition of those fundamental rights was and is very important, their practical application may encounter serious obstacles, namely when there are no instruments available for religious associations to participate as legal entities in the legal life.

In this contribution, we will examine how these obstacles prevent the realisation or the practical application of these abstract fundamental rights and how this is resolved in a Belgian context. Therefore, we will first present the framework offered by the Belgian constitution concerning religious freedom and freedom of association. In a second part, we will explain the popular concept of the *ASBL* and how this can be used in a religious context. Finally, we will also present the latest project on the reform of the law on the *ASBL*.

## **1.THE BELGIAN CONSTITUTION ON RELIGIOUS FREEDOM AND FREEDOM OF ASSOCIATION**

On the 4<sup>th</sup> of October 1830, the independence of Belgium was proclaimed, more as a coincidence than as a result of a natural evolution. Fifteen years earlier, the Congress of Vienna decided to separate the Belgian provinces from the French State and to join them with Holland, creating in this way the United Kingdom of the Netherlands (1815-1830) in order to cast up a dam against French expansionism. However, the discussion about religious freedom and the position of the Catholic Church on the one hand and the rejection of liberal freedoms on the other hand caused protests by both the Catholics and the liberals in the Belgian provinces, leading by coincidence to the independence of these provinces.

### **A. Belgian Independence, National Congress and Religious Freedom**

After the proclamation of independence, elections for a National Congress took place. The main task for this National Congress was to write a constitution for the newborn state, a constitution that would also pay attention to fundamental rights and freedoms, among which were the freedom of religion and the freedom of association. In a first draft of the constitution, the stipulations on religious freedom were very short. Although the situation was improved in comparison with the situation during the period of the United Kingdom of the Netherlands, the Archbishop of Mechelen, Mgr. de Méan, and his allies were not satisfied with the obtained result. The limitations on freedom of religion as described in the draft of the Constitution and based on the Fundamental Law of the United Kingdom of the Netherlands

were unacceptable for the episcopate: it would ultimately be possible for the government to forbid a religion<sup>147</sup>. An anonymous brochure<sup>148</sup> and a letter of the archbishop himself to the National Congress<sup>149</sup> were meant to change the draft of the articles on religious freedom. In his letter, Mgr. de Méan asked for constitutional guarantees in order to protect religious freedom. In exchange, the episcopate was willing to renounce the system of a privileged established religion. The ultimate purpose of the letter of the archbishop was to increase the constitutional protection of religious liberty. Therefore, he formulated five requests in his letter with the aim to amend the draft of the Constitution. A first concern was that the public practice of the Catholic worship would not be restricted or prohibited. He also asked the internal organisation of religions to be completely free, especially concerning the nomination and installation of the ministers and concerning the correspondence with the Holy See. A third demand was that the freedom of education would be guaranteed. Also the freedom of association must be surrounded with constitutional guarantees. And last but not least, the archbishop asked that the salaries and pensions of the ministers of public worship would be charged by the state.

### B. The Belgian Constitution and Religious Freedom

The National Congress agreed with the demands of the archbishop and adopted almost literally his suggestions<sup>150</sup>. The National Congress ratified the text of the Constitution by decree of 7 February 1831<sup>151</sup>. Four articles deal with the constitutional protection of

<sup>147</sup> H. VAN GOETHEM, "Het beginsel van verdraagzaamheid in de Belgische Grondwet: een historische duiding", in CENTRUM GRONDSLAGEN VAN HET RECHT UFSIA (ed.), *Recht en verdraagzaamheid in de multiculturele samenleving*, Antwerpen, Maklu, 1993, 42. Article 20 of the draft was as follows: "La liberté des opinions en toute matière est garantie." And article 21: "L'exercice public d'aucun culte ne peut être empêché qu'en vertu d'une loi, et seulement dans le cas où il trouble l'ordre et la tranquillité publique."

<sup>148</sup> H. WAGNON, "La condition juridique de l'Église catholique en Belgique", *Annales de droit et de sciences politiques* 1964, 63. The redaction of this anonymous brochure was in the hands of Rev. de Ram, future rector of the University of Leuven and was based upon notes written by Mgr. Van Bommel, bishop of Liège since 1829, and Rev. Sterckx, the successor of Mgr. de Méan on the archiepiscopal see of Mechelen. The three of them were members of the so-called "Groupe de Malines". See also A. SIMONS, *L'Église catholique et les débuts de la Belgique indépendante*, Wetteren, Scaldis, 1949, 27-28.

<sup>149</sup> Letter of de Méan, archbishop of Mechelen, to the members of the National Congress, 13 December 1830. For the text, see E. HUYTTENS, *Discussions du Congrès National de Belgique, 1830-1831*, I, Bruxelles, Société Typographique Belge, 1844, 525-527.

<sup>150</sup> R. GEORGES, "La situation constitutionnelle de l'Église catholique en Belgique", in *Études de droit et d'histoire. Mélanges mgr. H. Wagnon*, Leuven / Louvain-la-Neuve, Bibliothèque Centrale de l'U.C.L., 1976, 268.

<sup>151</sup> As set forward in the decree of 11 February 1831, the Constitution was promulgated in the *Bulletin officiel des décrets du Congrès national de Belgique et des arrêtés du Pouvoir exécutif (n° XIV)*. After the election of the head of state, the then articles 60 and 61 were promulgated by decree of 20 July 1831. The completed constitution was again entirely promulgated in the *Bulletin des lois et arrêtés du Pouvoir exécutif*, as a result of the royal decree of 1 September 1831. The Dutch text has been decreed on the occasion of the constitutional reform of 10 April 1967, *Moniteur belge* 3 May 1967, while the German text was decreed in 1991, *Moniteur belge* 31 October 1991. The Constitution was modified several times. Therefore, a coordinated version was promulgated on 17 February 1994. In this contribution, we use of course this version of the Constitution.

religious liberty: the first three guarantee the freedom to belong or not to belong to a religion, while the fourth article contains a financial arrangement in favour of religions. These four articles form the basis for Belgian Church-State relations<sup>152</sup>. The Constitution contains however no definition of religious freedom: only general basic principles are formulated. The *Cour de cassation* gave in its judgement of 27 November 1834 a definition of religious freedom<sup>153</sup>. Since 1831, no changes were brought to these constitutional articles. In 1993, a second paragraph was added to article 181 of the Constitution and since then, it is possible for the representatives of organisations recognised by statute to offer moral services on the basis of a non-confessional philosophy and to receive a salary and a pension from the State<sup>154</sup>. In 1830, the archbishop was aware of the fact that the acceptance and guarantee of religious freedom alone was not enough: you also need the freedom to associate and this explains his demand for freedom of association. And even the recognition of the freedom of association would not be enough: in order to fully participate as an organisation in the legal life of a society, this organisation must function as an independent entity, with legal personality. This can best be illustrated with the following example. Article 181 of the Constitution stipulates that the salaries and the pensions of the ministers of public worship are charged by the State. What does this mean? Does this mean that everyone who says he is a minister of public worship is entitled to receive a State salary or pension? The answer is negative. A system of recognition was therefore elaborated: a certain number of religions – until now six<sup>155</sup> – were recognised by or by virtue of a law. This recognition has a double consequence. On the one hand, the ministers of that recognised religion are paid by the state. On the other hand, legal personality is attributed to the ecclesiastical administration responsible for the temporal needs

<sup>152</sup> Here follows the text of the articles 19, 20, 21 and 181 of the Belgian Constitution:

“*Article 19.* Freedom of worship and its free and public practice, as well as the freedom to express one’s opinions on any and all matters, are guaranteed, save the punishment of crimes committed in the exercise of these freedoms.

*Article 20.* Nobody shall be forced to participate in any way in the acts of worship or the rites of any religion, or to respect its days of rest.

*Article 21.* The State has no power to intervene either in the nomination or in the induction of the ministers of any religion, or to forbid them to correspond with their authorities and to publish the decisions of these authorities, in the latter case with the exception of the ordinary responsibility concerning the use of the press and publications.

Civil marriage shall always precede the religious marriage ceremony, save in exceptional cases established by statute, if there be grounds for it.

*Article 181.* § 1. The salaries and pensions of the ministers of public worship are charged to the State; the necessary moneys for this purpose are mentioned in the budget on a yearly basis.

§ 2. The salaries and pensions of the representatives of organisations recognised by statute, which offer moral services on the basis of a non-confessional philosophy, are charged to the State; the moneys necessary for this purpose are mentioned in the budget on a yearly basis.”

<sup>153</sup> *Cour de cassation* 27 novembre 1834, *Pasicrisie* 1834, I, 332: “le droit pour chacun de croire et de professer sa foi religieuse sans pouvoir être interdit ni persécuté de ce chef; d’exercer son culte sans que l’autorité civile puisse, par des considérations tirées de sa nature, de son plus ou moins de vérité, de sa plus ou moins bonne organisation, le prohiber, soit en tout, soit en partie, ou y intervenir pour le régler dans le sens qu’elle jugerait le mieux en rapport avec son but, l’adoration de la divinité, la conservation, la propagation de ses doctrines et la pratique de sa morale”.

<sup>154</sup> Change to the Constitution 5 May 1993, *Moniteur belge*, 8 May 1993.

<sup>155</sup> The Roman Catholic religion, the Protestant religion, the Anglican religion, the Jewish religion, the Islamic religion and the Orthodox religion.

of that religion, under the conditions determined in the law on the temporal of the religions<sup>156</sup>. However, in spite of the constitutional guarantee of freedom of internal organisation, this does not mean that ecclesiastical entities all have legal personality: a diocese of the Roman Catholic Church or a parish has e.g. no legal personality<sup>157</sup>. Who is then the owner of the property of a religious association that is according to civil law a *de facto* association<sup>158</sup>?

### C. The Belgian Constitution and Freedom of Association

The freedom of association is laid down in article 27 of the Constitution<sup>159</sup>. In the eyes of the National Congress and also of the Archbishop of Mechelen – I refer here to one of his requests in his letter – freedom of association was important from a historical point of view<sup>160</sup>. For the French Revolution and its adepts, there was no place for other groups or institutions than the State and its parts. The State reacted very hard against existent groups, especially ecclesiastical organisations and professional associations: their properties were nationalised<sup>161</sup>. The so-called *loi d'Allarde* of 2-17 March 1791 guaranteed freedom of trade and industry, but abolished at the same time all professional organisations<sup>162</sup>. The *loi Le Chapelier* of 14-17 June 1791 explicitly forbade the formation of trade unions<sup>163</sup>. The French Penal Code of 1810, still in force during the period of the United Kingdom of the Netherlands, determined in article 291 that the establishment of associations of more than twenty persons needed the approval of the Government that could also determine specific conditions. The National Congress, and also the archbishop, wanted to react against these kind of preventive measures. Already by decree of 16 October 1830, the Provisional Government had proclaimed the freedom of association and decided that every preventive measure was forbidden, that associations had no privileges (legal personality) and that all contrary legislation – such as article 291 of the French Penal Code of 1810 – was abolished<sup>164</sup>. A law of 31 May 1866 abolished the articles 414-416 of the French Penal Code of 1810,

<sup>156</sup> Décret impérial du 30 décembre 1809 concernant les fabriques des églises, *Pasinomie* (1<sup>re</sup> série), 1806-1809, XIV, 437-446; Loi du 4 mars 1870 sur le temporel des cultes, *Moniteur belge* 9 mars 1870.

<sup>157</sup> Cons.d'État, Van Reusel, n° 78.465, 1 février 1999. See also: Projet de loi reconnaissant les modifications de l'archevêché de Malines et la création de l'évêché d'Anvers, *Documents parlementaires* Chambre, 1961-62, n° 296/1, 2-5 (advice of the Council of State) and K. MARTENS, "The Organisation of the Roman-Catholic Church in a Federal Belgium: Thoughts for the Future", *Ius Ecclesiae* 1999, 799-820.

<sup>158</sup> This problem was among others raised by A. GIRON, *Le droit public de la Belgique*, Bruxelles, A. Manceaux, 1884, p. 465-467, n° 395-396.

<sup>159</sup> "Article 27. Belgians have the rights to enter into association or partnership; this right cannot be liable to any preventative measures."

<sup>160</sup> R. ANDERSEN and J. HARMEL, "La liberté d'association et la fonction publique", *Annales de droit* 1980, 249-291.

<sup>161</sup> O. ORBAN, *Le droit constitutionnel de la Belgique*, III, *Libertés constitutionnelles et principes de législation*, Liège/Paris, Dessain/Giard & Brière, 1911, p. 573-577, n° 227; J. DE MEYER, *Staatsrecht*, Leuven, Wouters, 1985, 570.

<sup>162</sup> Décret du 2-17 mars 1791 portant suppression de tous les droits d'aides, de toutes les maîtrises et jurandes, et établissement de patentes, *Pasinomie* (1<sup>re</sup> série) 1790-1791, II, 230-234.

<sup>163</sup> Décret du 14-17 juin 1791 relatif aux assemblées d'ouvriers et artisans de même état et profession, *Pasinomie* (1<sup>re</sup> série) 1791, III, 22.

<sup>164</sup> Décret du 16 octobre 1830 concernant les associations, *Pasinomie* (3<sup>me</sup> série) 1830-1831, I, 35.

attaching a penalty to lockout and strike<sup>165</sup>. The same law however added an article 310 to the Penal Code, punishing those who used violence or threats during a strike. This stipulation was sharpened up later on and made it extremely difficult to exercise freely the right to strike.

In spite of all these developments, no special measures were taken to give legal personality to associations, although the first drafts of the constitution foresaw this<sup>166</sup>. A first step was set by law of 31 March 1898, by which legal personality was accorded to professional organisations<sup>167</sup>. But only in 1921, the freedom of association was completely recognised and made possible by three laws<sup>168</sup>. A first law of 24 May 1921 abolished the already mentioned article 310 of the Penal Code<sup>169</sup>. A second law of 24 May 1921 guarantees the freedom of association: nobody can be forced to associate or not to associate<sup>170</sup>. A third law of 27 June 1921 is the cornerstone of this trinity: this law creates the associations without lucrative purpose and the *établissements d'utilité publique* and determines under which conditions they acquire legal personality<sup>171</sup>. Almost ninety years after the promulgation of the Belgian Constitution, the constitutional freedom of association can be fully put into practice and associations can, as separate and independent entities, participate in the legal life of the society. What are now the conditions under which this law can be used?

## 2. THE ASBL ACCORDING TO BELGIAN LAW

The associations without lucrative purpose or the non-profit organisations (*associations sans but lucratif*) have legal personality if the conditions set forward in the law are fulfilled. Characteristic for this kind of association is that they do not have industrial or commercial activities and that they give no material profits to their members. Otherwise, it would be a commercial organisation, subject to other legal prescriptions. In this case, the use of the form of the *ASBL* would be a form of unfair competition. But already this requirement has given rise to a lot of jurisprudence. The *Cour de cassation* accepts however that an *ASBL* develops an economic activity and thus makes profits, on condition that this activity is necessary for the realisation of the non-profit aim of the association and on condition that all profits are used to realise this aim<sup>172</sup>.

The association enjoys legal personality from the day onwards that the statutes, the names, the first names, the profession and the residence of the managers, appointed in accordance with the statutes, are published in the annexes of the *Moniteur belge*. The statutes of the association must mention the following information, to be laid down in an authentic or private document:

<sup>165</sup> Loi du 31 mai 1866 portant des peines contre les infractions relatives à l'industrie, au commerce et aux enchères publiques, et abrogeant les art. 412 à 420 du code pénal, *Moniteur belge* 11 juin 1866.

<sup>166</sup> Cf. R. ANDERSEN and J. HARMEL, *l.c.*, 253.

<sup>167</sup> Loi du 31 mars 1898 sur les Unions professionnelles, *Moniteur belge* 8 avril 1898.

<sup>168</sup> However, already in 1919, international organisations with a philanthropic, religious, artistic or pedagogic purpose were granted legal personality. See Loi du 25 octobre 1919 accordant la personnalité civile aux associations internationales poursuivant un but philanthropique, religieux, artistique ou pédagogique, *Moniteur belge* 5 novembre 1919.

<sup>169</sup> Loi du 24 mai 1921 abrogeant l'article 310 du Code pénal, *Moniteur belge* 28 mai 1921.

<sup>170</sup> Loi du 24 mai 1921 garantissant la liberté d'association, *Moniteur belge* 28 mai 1921.

<sup>171</sup> Loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique, *Moniteur belge* 1 juillet 1921.

<sup>172</sup> Cour de cassation 3 octobre 1996, *Pasicrisie* 1996, I, 902.

- the name of the association and the place where the seat is vested;
- the aim or aims for which the association was created;
- the minimum number of members, a number that can not be lower than three;
- the names, first names, profession, residence and nationality of the members;
- the conditions for admission and resignation of members;
- the competencies of the general assembly, the way of convoking this assembly and the way in which its decisions are made public to the members and third parties;
- the way in which managers are appointed and their competencies;
- the maximum contribution due by members;
- the way in which an account is rendered;
- the rules for changing the statutes;
- the destination of the estate in case of dissolution of the association.

The law requires only in four cases the convocation of the general assembly, the democratic control organ of the *ASBL*: to change the statutes, to appoint and to dismiss the managers, to approve the budget and the accounts, or to dissolve the association. Changes of the statutes, and also appointments, resignations or dismissals of managers, are to be made public in the annexes of the *Moniteur belge*. Every year, a list of the members of the association must be deposited at the clerk's office of the tribunal of first instance of the place where the association has its see. The association cannot receive gifts without authorisation given by royal decree, unless those gifts are movables with a value not exceeding 10.000 EUR (from January 1, 2002 onwards). This principle sounds rather paternalistic, but can be understood from a historical point of view: the legislator of 1921 feared for the so-called *mainmorte*, an "evil" during the *Ancien Régime* where many goods remained for ever in properties without natural liquidation, such as the property of the Church<sup>173</sup>.

This is, more or less, a rough sketch of the legal framework within which the *ASBL* can function. It shows that a minimum of requirements gives in fact a maximum of advantages. The granting of legal personality to an entity is beyond any doubt the most important one. It gives certain groups the opportunity to function within society as a legal, independent unit. Those involved in the association can be secured: there is a difference between their personal private property and functioning and the property and functioning of the association. The flexibility of the instrument created by this law has given a lot of opportunities for religious associations to acquire legal personality, an advantage they had to miss in spite of the accordance of a broad constitutional religious freedom.

### 3. POSSIBILITIES FOR RELIGIOUS ASSOCIATIONS

We already mentioned that in spite of the constitutional recognition of freedom of religion and freedom of association, religious associations do not automatically acquire legal personality. Only those institutions responsible for the temporal needs of the recognised religions are public legal persons and have legal personality. They can however only act within the limits of their competence, described by law. The legal framework offered by the

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<sup>173</sup> Rapport de la section centrale de la Chambre (par M. Tibbaut, rapporteur), *Pasinomie* (5<sup>me</sup> série) 1921, XII, 369-370.

law of 1921 is the most suited instrument for all other religious associations to acquire legal personality. The requirements to be fulfilled are minimal and with some creativity a lot of advantages can be obtained. But this creativity is necessary to solve some problems that are closely linked with the structure of a religion. This can best be illustrated with an example, the example of the Roman Catholic Church.

Parishes, dioceses, religious congregations and all other Catholic organisations use the system of the law of 1921 to acquire legal personality for those aspects that are not covered by the institutions responsible for the temporal needs. Usually, parish priests or, on the diocesan level, the bishop and his vicars, are, together with reliable Catholics, members of the association. The structure is used for transactions of property, to distinguish the property of the organisation and that of its members, and finally to offer some guarantees for its members in case of liability questions. Until now, this system seems to work, although it is certainly not perfect. Moreover, the civil law structure is not identical to the canonical one. After all, the internal structure of the Roman Catholic Church can best be described as a hierarchical model, where the emphasis lies on the person of the pope for the universal church and on the person of the bishop – or the one equivalent to him – for the particular church. The structure of the *ASBL* is essentially democratic: on crucial moments – the change of the statutes; the appointment and dismissal of managers; the approval of the budget and the accounts; the dissolution of the association – an intervention of the general assembly is required. How can we reconcile the prescriptions of canon law with the civil law requirements? R. Torfs worked out a construction for Catholic health care institutions, but his solutions can be adapted to other situations<sup>174</sup>.

The starting point is this. In a Belgian context, religious congregations founded many health care institutions. These congregations are until now in most cases still involved in the health care institution founded by them. But for how long? In case they have to give up the idea of direct involvement, how can the Catholic character and, more important, the spirit of the congregation be preserved? Torfs sees three points to have in mind while looking for an adequate structure. In safeguarding the Catholic character of health care institutions – but also of other institutions and organisations – one must first of all take civil law as a departure point, and more in particular the law of 27 June 1921. A second point is the strategy: people have usually a more conservative attitude and want to leave things as they are. A restructuring has to consider this ‘wait-and-see’ attitude and to overcome the power of inertia. Therefore, a solution must be sought where the fewest possible structural changes are performed. A last point of strategy is that one should avoid centralisation: an organisation – and certainly a health care institution – is situated in a specific, local context. These three points are guiding principles in the quest for a solid structure.

The 1983 Code of Canon Law on the other hand guarantees also the freedom of association in canon 217. Three kinds of associations are possible: the public association, the private association and the *de facto* association. After an elimination process, it seems that the

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<sup>174</sup> R. TORFS, *Congregationele Gezondheidsinstellingen. Toekomstige structuren naar profaan en kerkelijk recht*, Leuven, Peeters, 1992, xx + 336 p.; R. TORFS, F. DEWALLENS and W. KENNES, *V.Z.W.-statuten. Nieuwe voorstellen voor doeltreffende statuten van een Vereniging Zonder Winstoogmerk*, Kalmthout, Biblo, 1993, 121 p.; R. TORFS, “De beheersorganen van de v.z.w. – standaarden en variaties”, in *1921-1996. 75 jaar Belgisch v.z.w. recht*, Gent/Brussel, Mys & Breesch/Procura, 1996, 17-33.

private association offers the best guarantees to preserve the Catholic character and can best be combined with the *ASBL* structure. The public association gives too many possibilities to the ecclesiastical authorities and moreover problems could rise when this type of ecclesiastical association has to be combined with the essentially democratic character of the *ASBL*. The *de facto* association has then again a loose structure and offers not enough guarantees to protect the Catholic character of the organisation. Based upon those two premises – the canonical private association on the one hand and the *ASBL* on the other hand – Torfs develops the idea of what he calls the *double structure*: one organisation – in this case the health care institution – is given as much as possible the same structure in civil and in canon law. Canonical elements are recuperated in the statutes of the *ASBL*, some articles of these statutes are made non-amendable and other technical ameliorations are inserted in the statutes.

This is a way of creative use of the structure of the *ASBL*, combining freedom of religion, freedom of association, canon law, etc. The *double structure* will not always be possible, but some aspects or ideas may be useful for other constructions where the *ASBL* is used. For example, a parish cannot be organised in completely the same way on the canonical and the civil field, but some ideas, such as non-amendable articles or clauses concerning alienation can be inserted in the statutes of this kind of *ASBL*.

#### 4. REFORM OF THE LAW ON THE *ASBL*

The law is however marked by its time. Certain formulations were typical for the twenties of the previous century. The application of the law during more than eighty years has shown not only its strengths, but also its weaknesses. The celebration of its eightieth birthday was, and is, an excellent opportunity to think about the future of this useful legal instrument. Even with a revision of the law, the creativity can still be present. A first draft was submitted to the House of Representatives on 2 December 1998<sup>175</sup> and approved by that House on 22 April 1999. The House of Representatives and the Senate were dissolved in the light of the legislative elections that would take place on 11 June 1999. After the elections, the Senate retook the work<sup>176</sup>, changed the original draft, approved an amended version on 14 June 2001<sup>177</sup> and sent the draft back to the House of Representatives<sup>178</sup>. The expectation was more or less that this House will approve the amended text<sup>179</sup>.

<sup>175</sup> Projet de loi modifiant la loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique, *Documents parlementaires* Chambre 1998-99, n° 1854/1.

<sup>176</sup> Projet de loi modifiant la loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique. Rapport fait au nom de la commission de la justice par M. Ramoudt, *Documents parlementaires* Sénat 2000-2001, n° 2-283/16.

<sup>177</sup> Projet de loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations. Texte amendé par le Sénat et renvoyé à la Chambre des Représentants, *Documents parlementaires* Sénat 2000-2001, n° 2-283/19.

<sup>178</sup> Projet de loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations. Projet amendé par le Sénat, *Documents parlementaires* Chambre 2000-2001, n° 1301/001.

<sup>179</sup> At this moment, the impression is that the legislative work concerning this project is not a priority of the House of Representatives. A number of amendments has been submitted: Projet de loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations. Amendements, *Documents parlementaires* Chambre 2000-2001, n° 1301/002 ; Projet de loi sur les



The changes brought about by the draft are not as spectacular as one could think. The first article with the definition of an *ASBL* is rewritten, but has still the same content. The draft precises also the law where it mentions what the statutes must contain. More important changes occur in the field of accountancy: every association will be obliged to observe some minimal rules concerning the accountancy of the association. Under certain circumstances, these accountancy rules can be even stricter. Special attention is paid to foreign associations without lucrative purpose: they have to depose a file at the clerk's office of the tribunal of first instance of the place where the association develops its activities. Legal novelties are the new stipulations concerning publicity: for every Belgian association without lucrative purpose, a file is kept at the clerk's office of the tribunal of first instance of the place where the association has its see. This file contains essential information, such as the statutes of the association, the acts concerning the appointment of the managers, the acts concerning the see of the association, a copy of the register of the members, the annual accounts, etc. In comparison with the current legislation, only extracts of the acts will be published in the annexes of the *Moniteur belge*.

The new law will – once approved in its current form – probably offer new possibilities for religious associations. A “new” institution is created, namely the private foundation. One or more persons can start a foundation. The main purpose of the foundation is to use a patrimony for a concrete ideal purpose. The foundation has no members and is governed by a board of at least three members. During the hearings in the Commission of the Senate, an expert warned for this new creation and said that in a sense, this would make the *ASBL* superfluous: a foundation has the same advantages as an *ASBL*, but there is less control<sup>180</sup>. For religious associations, the private foundation could eventually be the ideal organisation form in civil law.

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associations sans but lucratif, les associations internationales sans but lucratif et les fondations. Amendements, *Documents parlementaires* Chambre 2000-2001, n° 1301/003 ; Projet de loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations. Amendements, *Documents parlementaires* Chambre 2000-2001, n° 1301/004 ; Projet de loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations. Amendements, *Documents parlementaires* Chambre 2000-2001, n° 1301/005 ; Projet de loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations. Amendements, *Documents parlementaires* Chambre 2000-2001, n° 1301/006 ; Projet de loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations. Amendements, *Documents parlementaires* Chambre 2000-2001, n° 1301/007.

<sup>180</sup> Projet de loi modifiant la loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique. Rapport fait au nom de la commission de la justice par M. Ramoudt, *Documents parlementaires* Sénat 2000-2001, n° 2-283/16, 347-348 : “En ce qui concerne la fondation privée, un de mes collègues a déclaré, à titre de provocation, que la fondation privée rendrait l'*ASBL* superflue. Dans un certain sens, il a raison. Si nous voulons absolument instaurer une forme de fondation privée et le faisons de manière irréfléchie, nous introduisons le cheval de Troie dans le paysage associatif. En effet, cette fondation peut faire tout ce que peuvent faire l'*ASBL* et la fondation d'utilité publique mais avec un contrôle nettement moindre. Aucun contrôle de la part des membres n'est prévu, ni de la part des pouvoirs publics, ni de la part d'organes internes de contrôle – il n'existe en effet qu'un seul organe, le conseil d'administration.” See also J. VANANROYE, “De private stichting naar komend recht”, in *Nieuw vennootschaps- en financieel recht* 1999, Kalmthout, Biblo, 2000, 169-205.

## 5. CONCLUSIONS

With a firm determination, the National Congress recognised in 1830 a number of liberties, among which the freedom of religion and the freedom of association, and rooted these liberties in the constitution of 1831. However, the crowning piece was missing: freedom of association and, in a certain sense, freedom of religion, become only then effective when legal personality is given to associations and those can be distinguished from their members. The hesitation was partly inspired for the fear of the so-called *mainmorte*, during the *Ancien Régime* leading to a concentration of property forever in the hands of institutions.

Only in 1921, with the law on the *ASBL*, did freedom of association become a concrete reality. Although modified and adapted from time to time, this law is still the same as eighty years ago. With some creativity, the *ASBL* is a perfect instrument for religious associations to acquire legal personality, maintaining at the same time its identity. This is shown by the construction of the *double structure*. The announced changes will not modify radically the existent law. They will, on the contrary, probably create new and unexpected possibilities for religious associations with the new institution of the private foundation. But before this can be realised, the new law has to be approved.