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# Federal techniques for protecting the rights of linguistic minorities: the Belgian model

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## **ABSTRACT:**

As one of the few countries in the Council of Europe, Belgium has not ratified the Framework Convention for the Protection of National Minorities as well as the European Charter for Regional or Minority Languages. The reason for this can be found in the fact that both major language groups – i.e. French- and Dutch-speakers – do not reach agreement on the (necessary) interpretation of the concept of "minority".

Of course, minorities are being protected. *Firstly*, the Constitution guarantees in general the principle of equal treatment and non-discrimination. *Secondly*, last four decades Belgium has evolved from a unitary to a federal State. The three (language)communities are each, on their territory, organically responsible for Cultural Affairs (including language protection measures, radio and television in the (minority) language, ...), education including the choice of the language of instruction and second/third language teaching, creation and management of welfare institutions; this autonomy even implies that each community - on the aforementioned policy domains - can close treaties with other States. However, mechanisms must be developed within each community for the protection of philosophical and religious minorities, in particular in education (by means of teaching in a minority language and education of a recognized religion) or in the area of governance (insured representation of philosophical minorities in the Administration, but no quota system). *Thirdly*, at the federal level (national) linguistic minorities are double protected. At the institutional level the Federal Council of Ministers must include seven and seven French-speaking Flemish ministers and in the Federal Parliament a guaranteed presence of each language group is constitutionally assured. The federal Legislative can only adopt language laws (for legal procedures and the army) as well as the basic laws on the Federal State structure than with a qualified majority in each language group; for approving other laws a language group can temporarily suspend the legislative process.

## **A SHORT BIO-NOTE ON THE AUTHORS**

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# 1 Introduction

1. Belgian history and state reforms are characterized by the particular language character of the country. According to the European study, 'Europeans and their languages'<sup>1</sup>, there are 56% Dutch speakers, 38% French speakers and less than 1% German speakers in Belgium, followed by those who speak Spanish (1%), Italian (2%), Arabic (1%), Polish (1%) and Turkish (1%). Given that the leaders of the unitary state of Belgium had been French, had the evolution of the Belgian state structure been characterized by the recognition of the oppressed Dutch language? In recent decades, however, it has mainly been French speakers, a minority in the country, who have been fighting for recognition of their language rights. The struggle for the protection of language rights is one reason for why Belgium has evolved from a unitary to a federal state, as a federal state structure does more to protect minorities.

This paper begins by providing an overview of the historical evolution of the state of Belgium and its relationship with the struggle for the recognition of language rights. In this way, a clear understanding of how language rights have emerged and evolved into what they are today will be presented. Furthermore, the paper describes the constitutional mechanisms designed to protect language rights. This includes general constitutional provisions that are applicable in the protection of language rights. Secondly, a federal state structure contains linguistic regions that in themselves affect the protection of language rights and the paper provides an overview of the Belgian system in this context. Thirdly, there are also linguistic protection techniques that are related to the specific federal structure of Belgium. In conclusion, the paper offers a description of the protection of the linguistic rights in the Brussels-Capital Region, since they exhibit the specific character of this bilingual region.

## 2 The Belgian background

### 2.1 *The historical context: a struggle for equal cultural rights*

2. *The dominance of the French language.* After annexation by the French Republic from 1795 to 1814 and the separation from the Kingdom of the Netherlands in August 1830, the initial Belgian Constitution of 1831, which was written only in French, since the leaders of the Belgian Revolution were French, contained a general principle of equality and non-discrimination<sup>2</sup>, as well as the principle of the freedom of language.<sup>3</sup> Article 30 of the Belgian Constitution reads, 'The use of languages spoken in Belgium is optional: only the law can rule on this matter, and only for acts of the public authorities and for judicial affairs'. The freedom of language could therefore be restricted by the law, as voted on by a normal majority (*infra*, n.11). For example, the Laws of 27 November 1830, 19 September 1831 and 28 February 1848 stated that Dutch translations of the promulgated laws and decrees were not possible. This inequality ended only with the introduction of the so-called 'equality law' of 18 April 1898.<sup>4</sup>

In practice, the principle of freedom was a protection for the French-speaking majority; the constitutional provision was interpreted in such a way that the Francophones had the right to be monolingual, while the Flemish could not enforce any language obligation for public services or impose the use of Dutch within the administration. Although Belgium was a bilingual country, the working language in both parliaments, the government, the courts and tribunals, the army, higher education institutions and public administration had been French at the time; this was equally the case in Dutch-speaking areas of the country. Similar to several other countries, the French language also dominated Belgium culture.

3. *Dutch as an equal language.* The struggle for equality through the rising Flemish movement and the social emancipation of the working class initially resulted in multiple (1892-94) and later single voting rights (1920-22) for adult men and entailed the Dutch-speaking population, the largest group in Belgium, also obtaining a majority of MPs in both national parliamentary assemblies. However, in spite of the representation of Dutch-speaking politicians in the Chamber of Representatives, the Senate and to a rather limited extent, in the government, the dominant French-speakers, as well as the reconstruction of the country being of paramount importance overshadowed the call for the creation of a federal state structure.

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<sup>1</sup> European Commission, 'Europeans and their languages', [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_243\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_243_en.pdf), visited on 24 September 2014.

<sup>2</sup> Former art. 6, now art. 10 Belgian Constitution (henceforth: BC): "No class distinctions exist in the State. Belgians are equal before the law: [...] Equality between women and men is guaranteed." (the last sentence was inserted by constitutional revision of 21 December 2002).

<sup>3</sup> See Ludo Veny et al., *Fundamentals on Public Law* (Brugge: Vanden Broele, 2009), 351-356; André Alen and Koen Muylle, *Handbook on Belgian Constitutional Law* (Mechelen: Kluwer, 2011), 302-303.

<sup>4</sup> André Alen and Koen Muylle, *Handbook on Belgian Constitutional Law*, 303-308.

An initially small Flemish party again put the idea of federalization on the political agenda in the second half of the 1960s; although the traditional political parties were still organized on a national basis (and therefore understood Dutch- and French-speaking politicians), both language groups continued to grow further apart. This led to a declaration of revision of the Constitution in 1967, with a view to granting autonomy to the three linguistic communities and the introduction of various protection mechanisms for minorities.<sup>5</sup>

## 2.2 *The federal state structure: the technique for ensuring cultural rights*

4. *From a unitary state to a federal state structure in four decades.* Belgium has a complex political state structure. Unlike the normal origin of a federation, Belgian federalism was caused by the erosion of an original decentralized unitary state and not as a result of uniting regions. To this day, the basis of the Belgian federal state structure remains the constitutional division of the country into four linguistic areas that are grounded in the principle of territoriality. Under pressure from the Flemish, the language border was definitively established by the Law of 8 November 1962, which resulted in the Law of 2 August 1963 and the legal foundation of the linguistic areas; henceforth, every municipality was to be assigned to only one language area, with specific rights to protect the main language of that area.

Previously, the language regime had been established on the basis of a decennial census of the used languages from one municipality to another. Both Acts of Parliament had by now been coordinated in the Royal Decree of 18 July 1966. The linguistic areas were the monolingual Dutch-speaking area (also called 'Flanders'), the monolingual French-speaking area, the small monolingual German-speaking area and the bilingual (Dutch and French) area of Brussels-Capital. The consequences of this division are discussed in this paper in more detail (*infra*, n.12 et seq.). Some municipalities, the so-called 'municipalities with linguistic facilities', had a specific statute with specific rights for 'foreign-speaking' minority groups; this statute allows facilities on the use of language with administrative authorities for inhabitants of certain municipalities along the language border. It should be noted that no such amenities were provided to the authorities, politicians or civil servants.

The actual federalization process started with the constitutional revision of 24 December 1970. On the one hand, there was the Flemish pursuit of cultural autonomy and respect for their cultural rights, including language rights; this aim resulted in the creation of three Cultural Communities<sup>6</sup>, which were authorized in the first stage with relatively limited powers. In principle, the idea of a community refers to a personality principle, i.e., the cohesion of a group of the population on the basis of sharing the same language, its own (experience of) culture, a historical awareness as a language group, a sense of identity, etc. On the other hand, there was the endeavour of the Walloon provinces (the French-speaking and German-speaking areas) for greater social-economic independence, due to an economic recession in the region. Territorial cohesion is the key concept to take note of in this instance. Furthermore, in addition to the three Cultural Communities, three regions had also been established.<sup>7</sup> The principle of territoriality, which had been written into the Constitution for the first time in 1970, is an essential feature of the Belgian federal state structure<sup>8</sup>; the anchoring of the language areas in the Constitution was a consequence of this principle. Disagreements between Dutch- and French-speaking politicians, caused by the Flemish fear of being suppressed, and the consideration of whether the Brussels-Capital Region could be considered a self-sufficient region put regionalization on hold for more than ten years.

The second state reform of 1980 significantly extended the powers of Communities through the so-called 'personal matters' and to the Flemish and Walloon regions, giving them their own legal personalities and assigning the so-called localized competences.<sup>9</sup> Communities and regions now had their own governments.

In 1988, the Communities received the extremely important competence for education, while the Brussels-Capital Region gained identical powers to the other regions, as well as some significant additional powers. Another important amendment included that changes to the status of municipalities with linguistic facilities would be possible only by special majority law (*infra*, n.26 et seq.).

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<sup>5</sup> Johan Vande Lanotte et al., *Handbook on Belgian Public Law* (Brugge: die Keure, 2012), 25-35.

<sup>6</sup> Now they are called "the Communities" instead of "the Cultural Communities". The three Communities are the Flemish Community, the French Community and the German-speaking Community.

<sup>7</sup> Nowadays, the three regions are the Flemish Region, The Brussels-Capital Region and the Walloon Region.

<sup>8</sup> The principle of territoriality is confirmed by the Constitutional Court (Constitutional Court 26 March 1986, Case No. 17) and the Council of State (Council of State 17 August 1973, Case No. 15.990).

<sup>9</sup> "Regions" have with the Federal Government shared competences in certain economic areas (e.g. economic policy, natural resources, public works, regional public transportation, harbours, regional airports, ...) and "territorial matters" (e.g. spatial planning, environment, nature conservation, housing, agricultural policy and marine fishery, decentralized authorities, ...) where the protection of minorities in principle does not play a part. Besides, once again, every minority – except the German-speaking community – can regulate and implement in its discretion in those matters.

The fourth state reform of 1993 was mainly institutional; the Flemish and the French Communities and the Flemish and Walloon Regions<sup>10</sup> acquired their own, directly elected parliament, in addition to their already independently functioning (since 1983) governments. The inhabitants of the Flemish municipalities around Brussels, where many French speakers live, can vote only for the Flemish Parliament. The right to vote and the right to stand for election can be exercised only in regard to the legislative assembly that is knowledgeable about the territory in which the people live who invokes this right. The Constitutional Court confirmed that this principle was consistent with the Constitution, Article 3 of the First Protocol to the ECHR and Article 27 ICCPR.<sup>11</sup> Symbolically, it is important that this was the first time that the Constitution mentioned Belgium as a federal state with Communities and Regions (art. 1 BC).<sup>12</sup>

In the field of powers all federated authorities – exceptional and unique to federal states – even acquired international legal personality and shared competences with the federal state level. On the one hand, in their assigned competences they may conclude bilateral treaties. On the other hand, international treaties which relate to their areas of practice – the so-called mixed-treaties – the Federated Parliaments as well as the Federal Legislative must consent before ratification is possible.

The fifth state reform (2001), with its transfer of municipality legislation to provinces within the regions did not change the language regulation. However, the government majority did not have the required two-thirds majority for sanctioning this reform (*infra*, n.26 et seq.); as a result, an opposition party was pulled in to help push the reform through, which it agreed to under the express condition that the Framework Convention for the Protection of National Minorities was signed by the Government. The reason for the signing was therefore by no means due to an ‘awareness’ in political thinking, but a political necessity for the realization of a new step in state reform.<sup>13</sup> This reform introduced a stand-still provision in which decrees and ordinances, as well as regulations and administrative acts of the regions should not prejudice the existing language guarantees as of 1 January 2002 for the residents in the 27 municipalities with facilities and in the 19 municipalities of Brussels-Capital.<sup>14</sup> The sixth state reform modified the standstill provision. The rights of minority groups in the municipalities listed cannot be weakened according to the rights applicable as of 14 October 2012.

During the previous legislative term (2010-2014), following the most difficult government formation ever, the sixth state reform was realized, in which new competences were transferred to communities and regions. For the first time, a social security aspect was also involved, namely that of family allowances. Some political parties claim this to be the next step and according to some, perhaps the final phase for establishing a new state structure in which the Communities and Regions are stronger at a national level (a so-called ‘confederation’).

**5. *Effective Community powers.*** When discussing the protection of linguistic minorities in Belgium in the proper context, the real regulatory and executive powers in several policy areas attributable to the three linguistic Communities must be emphasized.<sup>15</sup>

In the past, Communities had been established in order to protect the distinctiveness of particular cultures and languages. Each community was therefore responsible for<sup>16</sup>:

- *Cultural affairs* (art. 4 SAIR<sup>17</sup>), which is to be understood, among other things, as the protection of the language, the cultural heritage, museums and scientific-cultural institutions, libraries, radio-broadcasting and television, aid to the written press, pre-school education in kindergartens, permanent education and cultural entertainment, leisure activities and tourism, physical education and sports;

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<sup>10</sup> The Parliament of the German-speaking Community and the Parliament of the Brussels-Capital Region were already a fact in 1984, respectively 1989.

<sup>11</sup> Constitutional Court 22 December 1994, Case No. 90/94.

<sup>12</sup> André Alen en Louis-Paul Suetens, *The federal Belgium after the fourth state reform* (Brugge: die Keure, 1993), 288 p.

<sup>13</sup> Jan Theunis, *The protection of minorities in international and national law. Recent developments* (Gent: Mys&Breesch Uitgevers, 1995), 76-89.

<sup>14</sup> Art. 16bis Bijzondere Wet van 8 augustus 1980 tot Hervorming der Instellingen [Special Act of 8 August 1980 on institutional reform]; art. 5bis Bijzondere Wet van 12 januari 1989 der Brusselse Instellingen [Special Act of 12 January 1989 relating to the Brussels institutions]; A. Alen, *De vijfde staatshervorming van 2001 [The fifth state reform of 2001]* (Die Keure 2002), 317 p.

<sup>15</sup> For an extended view: Johan Vande Lanotte et al., *Handbook on Belgian Public Law*, 25-35.

<sup>16</sup> See also Johan Vande Lanotte et al., *Handbook on Belgian Public Law*, 1010-1031.

<sup>17</sup> Bijzondere Wet van 8 augustus 1980 tot Hervorming der Instellingen [Special Act of 8 August 1980 on institutional reform] (henceforth: SAIR).

- *The almost complete educational system*(art. 127 and 130 BC), excludes the determination of the beginning and the end of compulsory education, the minimum requirements for obtaining a degree and the social security system of educational staff;
- *The use of languages in administrative matters within local authorities, education and social relations*(art. 129 and 130 BC) as it concerns a particular linguistic area and excluding municipalities with language facilities<sup>18</sup>;
- *Other ‘personal related matters’*, such as (i) *health policies*(art. 5, §1, I, SAIR), which includes care provision in and outside nursing institutions, as well as health education;(ii) *assistance to persons*(art. 5, §1, II, SAIR), which includes the family policy, the reception and integration of migrants, the policy for seniors and the disabled, youth protection and juveniles in conflict with the law and social assistance to inmates in view of their social reintegration;
- *The competence to conclude international treaties and the possibility of international cooperation* in all such matters, but under the implicit assumption that foreign States accept this international legal personality.

6. The relatively complete overview above of Community competences indicates that in numerous policy areas, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages safeguard minorities; additionally, linguistic minorities in the Belgian federal context enjoy full autonomy. Many minorities in other Party-States of the Council of Europe would be very satisfied if a fraction of these matters could be recognized in their areas, thereby giving them regulatory and executive powers.

The French-speaking minority in Belgium, however, still feels disadvantaged. Its territorial jurisdiction (which includes its assigned matters) is indeed exclusively limited to the French-speaking region and the French-speaking educational, welfare and cultural institutions located in the bilingual Brussels-Capital Region (*infra*, n.29 et seq.). Using the ‘personality interpretation’ of minority rights, the French Community wants to exercise its competences in respect of all French-speaking citizens in the entire Belgian territory and thus, also in Flanders. Their aim is to do so through financial support supplied by, for example, subsidies provided to a French-speaking cultural association in a Dutch-speaking region. Under the territoriality principle, however, this is prohibited.<sup>19</sup>

To the extent that community cultural policy possesses ‘effluvium’ across linguistic borders and into other linguistic areas, it therefore has extraterritorial effects; this should under no circumstances thwart the cultural policy of the Community that has territorial jurisdiction according to the Constitution<sup>20</sup>; on this account, a Community has the right to require from a local government that 75% of a municipal library collection corresponds to the language of that linguistic area, even if the majority of the municipality population is not Dutch-speaking.<sup>21</sup>

### 3 General constitutional protection

#### 3.1 The principle of equality and non-discrimination

7. **Legal foundation.** The principle of equality and non-discrimination (art. 10-11 BC) is one of the foundations of a democratic state and is also applicable to private relationships. Article 10 of the Belgian Constitution states: ‘No class distinctions exist in the State. Belgians are equal before the law: [...]. Equality between women and men is guaranteed’.<sup>22</sup> The constitutional revision of 23 December 1970 – alongside other protection mechanisms for the largest linguistic minority – added a general principle of non-discrimination to the Constitution. Article 11 BC stipulates that ‘enjoyment of the rights and freedoms recognized for the Belgians must be provided without discrimination. To this end, laws and federated laws<sup>23</sup> guarantee among others the rights and freedoms of ideological and philosophical minorities’. The principle prohibits any form of discrimination and even allows for positive actions to correct the existing inequities in practice; the law should treat everyone equally.<sup>24</sup>

<sup>18</sup> For the German-speaking Community limited to education.

<sup>19</sup> Constitutional Court 30 January 1986, Case No. 9/86 and No. 10/86; see also André Alen and Stefan Sottiaux, *Language Requirements Legal tested* (Mechelen: Kluwer, 2009), 103-158.

<sup>20</sup> In that sense Constitutional Court 3 October 1996, Case No. 54/96.

<sup>21</sup> Constitutional Court 24 June 2003, Case No. 88/2003.

<sup>22</sup> The last sentence was inserted by the constitutional revision of 21 December 2002.

<sup>23</sup> “Law” refers to the legislative act adopted by the Federal Legislative, while “federated law” refers to the legislative act adopted by the Legislative Assembly of a Community or a Region.

<sup>24</sup> André Alen and Koen Muyllé, *Handbook on Belgian Constitutional Law*, 890-893.

To see today whether a differentiated treatment is discriminatory, the following review pattern is followed: i) an objective criterion is used; ii) is this relevant; iii) is there a reasonable justification for the use of a different treatment. No longer is the (un)equality of treatment between persons in administrative practices evaluated exclusively; (un)equal treatment and non-discrimination between groups in the legislation can also be reviewed.

**8. Anti-discrimination legislation.** Finally, early in the 21<sup>st</sup> century, both federal and federated level anti-discrimination legislation was adopted. To implement the constitutional provisions cited, as well as several EU directives, on 10 May 2007, the federal government adopted three laws concerning anti-discrimination: a general antidiscrimination law<sup>25</sup>, an antiracism law<sup>26</sup> and a gender law.<sup>27</sup> The regulation introduced a prohibition of direct and indirect discrimination based on a legally forbidden ground, including age, sexual orientation, civil status, birth, wealth, religion or belief, political opinion, language, current or future state of health, disability, a physical or genetic characteristic, as well as social origin.<sup>28</sup> Due to language perils and tensions between the Dutch- and French-speaking communities, 'language' was not included in the initial law. Following complaints concerning this, the Constitutional Court decided that the absence of this ground in the law was in itself contrary to the principle of non-discrimination.<sup>29</sup> Although the law is intended to have as a general objective the elimination of all forms of discrimination, the Constitutional Court consented to the closed system, i.e., a restrictive list of grounds of discrimination.

For the Flemish policy areas, the Federated Law of 10 July 2008 regulates the equal treatment policy within the Flemish Community and the Flemish Region. To a large extent, this federated anti-discrimination legislation, where equal treatment is concerned, accords with the federal law. This act also contains provisions for elaborating a policy concerning equal opportunities.

It should be noted that both regulations apply in its relationship to citizen/government, as well as horizontally, between individuals or between a citizen and a private legal entity.

**9. International law.** The principle of equality is not represented in the European Convention on Human Rights itself; however, the twelfth protocol of the Convention does contain such a provision, but has yet to be entered into force. The European Convention on Human Rights does provide the principle of non-discrimination (art. 14 ECRM). Nevertheless, this provision should always be invoked in conjunction with another article of the Convention; consequently, the application of this principle is limited to the rights and freedoms listed in other provisions of the Convention. The meaning and effect of this principle is similar to that of Article 10 of the Belgian Constitution.

Since the Treaty of Lisbon (13 December 2007), the Charter of Fundamental Rights of the European Union, which contains a written and general principle of equality and non-discrimination (articles 20 and 21), has become legally binding in the states of the European Union. Similar to the European Convention on Human Rights, this provision is only applicable within the scope of European law. In addition, there are also specific provisions of equality incorporated in the Treaty on the Functioning of The European Union, such as the prohibition of discrimination, within the scope of the Treaty, on grounds of nationality (art. 18 TFEU), the prohibition of discrimination on grounds of nationality concerning the freedom of movement for workers (art. 45 TFEU) and the principle of equal payment for men and women for equal work provided (art. 157 TFEU).

**10. Other constitutional protections of equality.** For the sake of totality, we note the specific constitutional clauses, such as equality between men and women (art. 11bis BC), equality concerning taxation (art. 172 BC) and equality in education (art. 13 BC).

### 3.2 The freedom of language

**11. Legal foundation.** We should note that article 30 BC, as an individual and personal right, prescribes that languages can be spoken freely in Belgium; only the law can rule on this matter and only as it relates to acts of the public authorities and judicial affairs. This provision was a historical reaction against the efforts of William I, Dutch king and

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<sup>25</sup> Wet van 10 mei 2007 ter bestrijding van bepaalde vormen van discriminatie [Law of 10 May 2007 combatting certain forms of discrimination].

<sup>26</sup> Wet van 10 mei 2007 tot wijziging van de wet van 30 juli 1981 tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden [Law of 10 May 2007 to change the law of 30 July 1981 on combatting certain acts motivated by racism or xenophobia].

<sup>27</sup> Wet van 10 mei 2007 ter bestrijding van discriminatie tussen vrouwen en mannen [Law of 10 May 2007 on combatting discrimination between men and women].

<sup>28</sup> André Alen and Koen Muylle, *Handbook on Belgian Constitutional Law*, 893-900.

<sup>29</sup> Constitutional Court 6 October 2004, Case No. 147/2004; See also Johan Vande Lanotte et al., *Handbook on Belgian Public Law*, 351-375.

leader in Belgium until Belgian independence in 1830, to reduce the influence of the French language. As stated earlier, this fundamental right had initially been a tool for justifying abuses of public power, as opposed to a right to protection. (*infra*, n.2)

The above-mentioned constitutional right can refer to private relations, such as family, worship services or in stores, as well as to public relations. The use of language in private relations cannot be restricted and includes all spoken languages. On the other hand, there are strict rules concerning the use of languages for public administration action(s)<sup>30</sup>, for seeking justice<sup>31</sup>, the military, education<sup>32</sup> and within the framework of social relations between employee and employer<sup>33</sup>; this regulation concerns the use of the three official languages (Dutch, French and German).

## 4 The principle of territoriality and the linguistic areas

**12. *Legal foundation of the linguistic areas.*** As mentioned earlier, discussing the call for the protection of the language rights of the Flemish movement led to a permanent linguistic border in 1962-1963 and the anchoring of the linguistic regions in the Constitution (*infra*, n.4 et seq.). These reforms led to the current Article 4 BC, which stipulates that 'Belgium comprises four linguistic areas: the Dutch-speaking, the French-speaking, the German-speaking region and the bilingual region of Brussels-Capital'. Language communities live in a very concentrated manner: the Dutch-speakers in the North ('Flanders'), the French-speakers in the South, the German-speakers in the South-East and both Dutch- and French-speakers in Brussels-Capital. It should be stressed that these linguistic areas are in fact not language homogeneous and count a, whether or not numeric important, language minority: the French-speaking in Flanders and the German-speaking community, the Dutch-speaking in the Walloon and Brussels regions, and some German-speaking citizens in two municipalities in the Walloon Region.

**13. *The principle of territoriality.*** The principle of territoriality is a constitutional principle that guarantees the primacy of the main language in a unilingual area (the Dutch-speaking, the French-speaking and the German-speaking regions) or the equality between languages in a bilingual region (Brussels-Capital Region).<sup>34</sup> This territoriality principle has, for specific aspects related to the protection of linguistic minorities, important legal effects. The starting point is clear: explicit unilingualism in the Dutch- and French-speaking regions, principled unilingualism in the German-speaking region and mandatory bilingualism in the region of Brussels-Capital. To put it another way, 'regional language is operational language'.

For the sake of comprehensiveness, it should be noted that according to settled case-law, there are likewise only three official languages that may be used by the executive and administrative authorities; in this sense, English is not an official language and therefore cannot be used for administrative documents and communicative purposes.<sup>35</sup>

**14. *Consequences and nuances of the linguistic areas.*** With respect to a language minority in a linguistic area, the legal consequences imply, amongst others, the following:

- *The use of languages in relationships between citizens and the authorities.* The earlier cited Royal Decree of 18 July 1966 resulted in the linguistic areas and the principle of territoriality. In general, the decree states (i) that there is no right to contact authorities in the minority language and (ii) that the public authorities are not allowed to use another language other than the local language.<sup>36</sup> As previously stated, an exception is made for the inhabitants (but not the government administrators) of the so-called 'municipalities with language facilities' (*supra*, n.4); these areas can apply its administration in French (in the Dutch- or the German-speaking region) or in the Dutch (in the French-speaking region) and request to be answered or to receive an administrative document in the minority language. Due to the fear of increasing the number of Francophone inhabitants in Flanders, the Flemish Government interprets these facilities restrictively; the limitation is that use of the language facilities should each time be expressly requested; in other words, it is not sufficient for a resident of a municipality with language facilities belonging to a linguistic minority to make a one-off

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<sup>30</sup> Koninklijkbesluit van 18 juli 1966 houdende coördinatie van de wetten op het gebruik van de talen in bestuurszaken [Royal Decree of 18 July 1966 coordinating the laws on the use of languages for administrative purposes].

<sup>31</sup> With of course the guaranteed right to be assisted by an interpreter, cf. article 6.3.(a) and (e) EChHR.

<sup>32</sup> Wet van 30 juli 1963 houdende detailregeling in het onderwijs [Law of 30 July 1963 on the use of languages in education].

<sup>33</sup> Cf. art. 30, 129 and 130 BC.

<sup>34</sup> The principle of territoriality is confirmed by the Constitutional Court (Constitutional Court 26 March 1986, Case No. 17) and the Council of State (Council of State 17 august 1973, Case No. 15.990).

<sup>35</sup> Council of State 20 December 1991, Case No. 38.376.

<sup>36</sup> For a more extensive explanation, see Tom De Pelsmaeker et al., *The use of languages in administrative affairs* (Brugge: die Keure, 2004), 305 p.



statement with the intent that all future contact with the administrative authorities will occur in the minority language.<sup>37</sup> The Permanent Committee for Language Supervision monitors the correct implementation of the laws concerning the use of language and gives authoritative but non-binding advice on the application of said laws, possibly accompanied by a notice; this control can be done ex-officio or upon receiving a citizen complaint. Furthermore, a vice governor of Brussels-Capital controls the application of language legislation in the nineteen municipalities; complaints or violations in the six border counties are overseen by the assistant to the governor of the province of Flemish Brabant. For inclusivity's sake, it should be made clear that linguistic constraints are mitigated for tourist centres.

- *The language knowledge of local representatives.* Municipal councillors must adhere to strict language regimes; they must, on pain of nullity, swear to an oath to do so in the language of the linguistic area.<sup>38</sup> The mayor and the aldermen are constrained to using the regional language for oral interventions and voting, whilst the proceedings of the municipality council are performed in the same manner as for municipalities with language facilities.<sup>39</sup> Language facilities apply only to citizens and not to the directors of the authorities. Another element of the strict language regimes is that the official administrative documents have to be executed in the regional language.<sup>40</sup> Non-compliance with this obligation for the concerned political mandatories in question can entail far-reaching consequences; the Flemish Government has previously refused to appoint the mayors of three facilities-endowed municipalities who had knowingly violated the strict use of languages in administrative affairs. Despite the highest national courts not overturning this refusal, this particular practice creates a negative reaction at an international level.<sup>41</sup>
- *The use of language in education.* The Law of 30 July 1963 on the use of language in education<sup>42</sup> follows the same principle as in administrative affairs, namely ‘the language of the linguistic area is the language of education and instruction’. This implies the absence of the right to education in the pupils’ native language in another linguistic area.<sup>43</sup> This strict language regime in schools, based on the territoriality principle, is in itself not deemed as discriminatory by the European Court of Human Rights (*Infra*, n.15). Nevertheless, in the Flemish municipalities with language facilities, a group of parents can enforce the organization of education in French and diplomas for such education issued in French have *effectus civilis* in all linguistic areas.

**15. International recognition of the territoriality principle.** The conformity of this territoriality principle with international law has to date been the subject of two judgments handed down by the European Court of Human Rights.

The above-cited law on the use of languages in education gave rise to a complaint before the European Commission of Human Rights and then the European Court of Human Rights. In the famous ‘Belgian linguistic case’<sup>44</sup>, the central point of law concerned to what extent the Education Language Act caused a discrimination in the recognition of the right to education<sup>45</sup>, as inhabitants domiciled in a Flemish municipality with language facilities could enforce French-language education for their children, while for children of French-speaking inhabitants residing in a neighbouring Flemish municipality without language facilities, education at schools was presented exclusively in Dutch. The ECHR considered this case in the following manner: ‘Thus, the difference in treatment which is wrongly denounced as a discrimination is the inevitable consequence of the fact that the legislator - as was his right - intended to limit the effects of the exception which he permitted to the principle of territoriality only to the children of families whose head lives in the communes ‘with special facilities’, and the limits to common law were permitted on the basis of this paramount objective factor, which the residence of the head of the family constitutes.’ and ‘The legislator who, it must be reiterated, may grant derogations from the principle of territoriality but who is not bound to do so, has, regard being had to the Convention, the right to determine the precise limits within which he intends to confine the extent of the derogation granted. In this case, he has decided that these limits should be those, which are eminently objective, of the territory of the six communes.’

The territoriality principle itself was therefore not disputed by the Court. Although the Court considered the fact that French-language education in the municipalities with language facilities had been inaccessible for children whose

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<sup>37</sup> Imposed in two Flemish circulars, based on a judgment of the Council of State 23 December 2004, Case No. 138.861.

<sup>38</sup> Council of State 17 August 1973, Case No. 15.990.

<sup>39</sup> In that sense Constitutional Court 10 March 1998, No. 26/98; see also Council of State 29 June 2001, Case No. 97.257.

<sup>40</sup> See also André Alen and Koen Muylle, *Handbook on Belgian Constitutional Law*, 314-318.

<sup>41</sup> See Bureau du Congrès des pouvoirs locaux et régionaux, *Rapports d'information sur la mission d'enquête en Belgique concernant la non nomination de trois bourgmestres par les autorités flamandes*, May 22, 2008.

<sup>42</sup> Wet van 30 juli 1963 houdende taalregeling in het onderwijs [Law of 30 July 1963 on the use of languages in education].

<sup>43</sup> In the bilingual Brussels-Capital Region education is offered in Dutch and French.

<sup>44</sup> ECtHR 23 July 1968, Case No. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, “*Relating to certain aspects of the laws on the use of languages in Education in Belgium*” v Belgium.

<sup>45</sup> Art. 14 ECHR in combination with art. 2 First Protocol ECHR.

parents had residence outside that municipality, the law was nonetheless deemed arbitrary, discriminatory and in violation of Article 2 P-1 and Article 8 ECHR.

A second case involved an election issue.<sup>46</sup> French-speaking inhabitants of the Dutch-speaking region considered themselves discriminated against for the fact that they could not (and still cannot) participate in the elections of the French Community Parliament. The European Court of Human Rights, also followed by the Belgian Constitutional Court, accepted for the second time the principle of territoriality and judged that no discrimination had been present in these inhabitants' exclusion from the referred election. After all, 'the right to vote may be exercised only with regard to the Parliamentary Assembly competent for the territory in which the people live who invoke this right'.

## 5 The specific Belgian federal techniques for protecting linguistic rights

16. The principle of territoriality and the division of the State in linguistic areas are in fact a protection of the linguistic majority in a region; as stated earlier, this regulation provides some nuances for mitigating this principle to protect those citizens who speak the minority language (*supra*, n.14). In addition, some techniques are needed for the regions not to negatively affect one another at a federal level; these institutional protection techniques are discussed below.

### 5.1 The composition of the Federal Parliament and The Federal Government

17. *Parliamentary language groups in the federal parliamentary assemblies.*<sup>47</sup> Each member of the House of Representatives and the Senate, as well as the federal parliamentary assemblies, is part of a language group. The Senate, a non-permanent assembly since the sixth state reform in 2014, is divided into two language groups: the Dutch-speaking and French-speaking language groups. Following the sixth state reform,<sup>29</sup> Dutch-speaking senators (members of the Dutch-speaking language group) were appointed by the Flemish Parliament. Twenty French-speaking MPs (members of the French-speaking language group) were appointed by the assemblies of the French Community and the Walloon Region. The German Community Council was allowed to appoint only one senator and he/she is a member of the French-speaking language group. These 50 senators are called 'the community and region senators', because they have to be a member of another assembly of a community or region. These senators are supplemented by six co-opted senators for the Dutch-speaking language group and four co-opted senators for the French Community Parliament. After their designation and inauguration, the members of both parliamentary assemblies are definitively classified into two parliamentary language groups, in which the majority of MPs belongs to the Dutch language group.

For the election of the House of Representatives, the Belgian territory is divided into constituencies. The Dutch-speaking region (Flanders) and Wallonia (both a German- and French-speaking region) each counts for five provincial constituencies; the bilingual Brussels-Capital Region includes one constituency. The members of the House of Representatives elected in Flanders and Wallonia, respectively, belongs to the Dutch-speaking and the French-speaking language groups; there is no German-speaking language group; German-speaking citizens are instead assigned to the French-speaking language group. The representative elected in the bilingual Brussels-Capital Region belongs to the language group in whose language they have taken oath; for example, if the MP took an oath in German or French, they will be part of the French-speaking language group. As in the Senate, the Dutch language group has a majority in the House of Representatives.

18. *Language parity within the Council of Ministers.* The Council of Ministers consists of maximum fifteen members, including the prime minister. The Council of Ministers counts an equal number of Dutch- and French-speaking ministers (art. 99 BC); the prime minister is considered neutral and therefore does not belong to a language group. The Council of Ministers is complemented by Secretaries of State, which together forms the Government Council; the Constitution provides no language parity for the Secretaries of State. This parity is necessary for the benefit of the continuous pursuit of compromises between the two major groups.

Constitutional minority protection, however, exclusively concerns the formal composition of the Council of Ministers; the occasional absence of a minister has no repercussions on the actual operation of the council and even in the case of

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<sup>46</sup> ECtHR 2 March 1987, Case No. 9267/81, *Mathieu-Mohin and Clerfayt v Belgium*.

<sup>47</sup> Art. 43 BC; Wet van 3 juli 1971 tot indeling van de leden van de wetgevendekamers in taalgroepen houdende diverse bepalingen betreffende de cultuurraden voor de Nederlandse cultuurgemeenschap voor de Franse cultuurgemeenschap [Act of 3 July 1971 concerning the classification of the members of the legislative chambers in language groups and various provisions relating to the cultural councils of the Flemish Community and the French Community]; Johan Vande Lanotte et al., *Handbook on Belgian Public Law*, 750-760; See Ludo Veny et al., *Fundamentals on Public Law*, 48-50; André Alen and Koen Muylle, *Handbook on Belgian Constitutional Law*, 267-273.

such an absence, may nonetheless validly deliberate. Moreover, the decision-making process in the Council of Ministers will be carried out according to a customary rule by ‘consensus’; the exceptions to this include at the instance of a real voting place, when both language communities are oppositely positioned and the resignation of the government, in which case it is likely that new parliamentary elections will take place.<sup>48</sup>

## 5.2 *The linguistic alarm bell procedure*<sup>49</sup>

**19. *Legal foundation.*** Considering the French minority and the Flemish majority in the House of Representatives and the Senate (*supra*, n.17), an ordinary law can be approved against the will of linguistic minorities. For this reason, the Constitution has implemented in Article 54 a special protection mechanism for such a situation, referred to as the linguistic alarm bell.<sup>50</sup>

**20. *The procedure.*** Except for budgets and laws requiring a special majority (*infra*, n.26 et seq.), a reasoned motion, signed by at least three-quarters of the members of one of the language groups and tabled following the depositing of a report, and prior to the final vote in a public sitting of a suggested government bill or private member’s bill, can declare that the suggested government bill or private member’s bill can gravely damage relations between the Communities.

In such a case, parliamentary procedure is suspended and the motion is referred to the Council of Ministers, which within 30 days thereof must provide its reasoned opinion on the motion and invite the Parliament involved to pronounce on this opinion (or on the government bill or private member’s bill that has been amended, should the need to do so present itself).

This procedure can be applied only once by the members of a language group with regard to the same suggested government bill or private member’s bill.

The procedure has been applied in practice only twice and in both instances by French-speakers. In a first case, it concerned the granting of university status to a Flemish educational institution. The second application concerned the unilateral splitting of the electoral district of ‘Brussel-Halle-Vilvoorde’ for the House of Representatives, the Senate and the European Parliament; this problem was solved at a political level in 2013. In both cases, the procedure was cancelled before it could be fully completed, due to the premature dissolution of Parliament.

**21. *No protection for the German minority.*** Undoubtedly, the alarm bell procedure is a technique aimed at minority protection. However, in current constitutional legislation, the alarm bell procedure only protects the French language minority within the Federal Parliament; the only real minority in the Belgian federation, the German-speaking Community, is not truly represented in the House of Representatives and remains to be included in this context.

## 5.3 *The conflict of community interests*

**22. *General principle.*** In pursuance of Article 143 of the Belgian Constitution, the federal State, the communities, the regions and the Joint Community Commission are obliged to exercise their respective responsibilities with respect to federal loyalty in order to prevent conflicts of interest in the exercise of their respective powers. Nonetheless, conflicts of interest may nonetheless arise, on the one hand because a bill under discussion in a parliamentary assembly can cause damage to the interests of another entity (‘at parliamentary level’) and on the other, because a ministerial order under discussion in a government can cause damage to the interests of another entity (‘at government level’).

The conflict of community interests is different from a conflict of competence. In the case of a conflict of community interest, the legality of an act is not questioned, but rather the opportunity or the way in which power is exercised. Conversely, conflicts of competence arise when the law violates a rule of division of competences; instead, the Constitutional Court serves to pronounce judgment on conflicts of jurisdiction.

**23. *The conflict of community interests at the parliamentary level.*** Conflicts within community interests at the parliamentary level can be invoked by another assembly than the one where the bill is being tabled, provided that a

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<sup>48</sup> André Alen and Koen Muylle, *Handbook on Belgian Constitutional Law*, 334-335.

<sup>49</sup> There is also an alarm bell procedure that protects the philosophical and ideological minorities within a community. This technique is especially remained a symbol; it was never used.

See Wet van 3 juli 1971 tot indeling van de leden van de wetgevendekamers in taalgroepen houdende diverse bepalingen betreffende de cultuurraad voor de Nederlandse cultuurgemeenschap voor de Franse cultuurgemeenschap [Act of 3 July 1971 concerning the classification of the members of the legislative chambers in language groups and various provisions relating to the cultural councils of the Flemish Community and the French Community].

<sup>50</sup> See also André Alen and Koen Muylle, *Handbook on Belgian Constitutional Law*, 330-334.

motion is signed by three-quarters of the other assembly's members. In this instance, parliamentary discussion of the bill is suspended and the presidents of both parliamentary assemblies involved must hold consultation. If these consultations do not lead to a result, the Senate takes over the decision-making process on the pending conflict of interest by means of reasoned opinion. Finally, the case ends at the Consultative Committee, which has to find a solution. Whatever the outcome of this procedure, the parliamentary assembly will still decide on the consequences of said outcome, which it attaches to the opinion of the Consultative Committee.

This entire procedure can suspend the legislative process for 120 days. In contrast to the linguistic alarm bell procedure (*supra*, n.19 et seq.), there are no quantitative restrictions to this process. With respect to the same bill, another assembly can at any time once again provoke a new conflict of interest; bearing this in mind, should such a case arise, the legislative process can be suspended for more than a year.

**24. *The conflict of community interests at government level.*** If the federal government, a community government or regional government is considered to potentially be severely disadvantaged by a bill under discussion, they can bring the conflict before the Consultative Committee. In such a case, the bill under discussion is suspended and the Consultative Committee must make a decision according to the procedure of consensus.

**25. *The Consultative Committee.*** The Consultative Committee is composed by taking into account equal language representation, especially in terms of appointing the six Dutch-speaking and six French-speaking ministers. No language group can impose its opinion – including the Flemish majority – on the other; however, in practice, solutions for problems arising are rare and often include conflict in which both linguistic communities, at least their parliamentary representatives, oppose one another vehemently. This is precisely the language parity that signifies obstruction for any negotiated solution, whereby the initial problem can assume inflated proportions and result in new parliamentary elections.

#### **5.4 *Legislation voted on with a special majority***

**26. *The adoption of special majority laws.***<sup>51</sup> In general, the Belgian parliamentary system has three voting procedures. *Firstly*, according to the general rule, laws are approved by a simple majority; this means that a federal law can in principle be adopted against the will of a language group.<sup>52</sup> *Secondly*, the Belgian Constitution can only be revised according to a process with three phases. The first phase consists of three statements by the three branches of legislative power (the government, the House of Representatives and the Senate); these statements indicate the provisions that will be eligible for revision. Following the three statements, in the second phase, there are new elections to the House of Representatives and the Senate. In the final phase, the newly elected parliaments can revise the provisions of the constitution that were indicated in the first phase by a two-thirds majority.<sup>53</sup> A language majority is not required for revising the constitution. *Thirdly*, some Acts of Parliament expressly mentioned in the Constitution must be adopted with a special majority. A special majority law is passed on the condition that a majority of the members of each language group is present, by a majority of votes cast in each language group and provided that the total number of votes in favour (and that are cast in both language groups) is equal to at least two thirds of the votes cast.<sup>54</sup> In addition, these special majority laws are expressly mentioned in Article 4 BC.

**27. *The importance of the special majority laws.*** The special majority laws referred to in the Constitution are primarily 'community laws'; this means they are laws that implement successive state reforms, which in turn secures the competences of the communities and regions. Furthermore, they also effect the election of the federated parliaments and federated governments<sup>55</sup>, and fix the financing systems of the communities and regions. In addition, the law concerning the Constitutional Court should be noted. The boundaries of the four linguistic areas can only be changed or corrected by a special majority law; the same special majority can exclude a municipality from division into a province to bring it directly under the Executive, rendering it subject to a specific statute. Finally, there is a law on the use of languages in administrative affairs, specifically for municipalities with language facilities and where inhabitants belonging to a linguistic minority enjoy certain language facilities (*infra*, n.4). In this way, the limitation and abolition of these facilities become impossible, given the necessary approval needed from the French language group in both federal parliamentary assemblies.

The protection mechanism for a linguistic minority is clear; when adopting a law according to this special majority, each language group – but in particular the French-speaking minority – arranges in both parliamentary assemblies a double veto. On the one hand, the adoption of a special law can be stopped, because all or the majority of MPs of a

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<sup>51</sup> F. Judo and G. Geudens, *Confederalisme? [Confederalism?]* (Larcier 2008), p. 41-43.

<sup>52</sup> See, however, the protection mechanism of the "linguistic alarm bell", *infra*, No.19 et Seq.

<sup>53</sup> Invalid and blank votes are taken into account for the attendance but not for the approval quorum.

<sup>54</sup> Art. 4, in fine, BC.

<sup>55</sup> Except for the German-speaking Community where no special majority law is prescribed by the Constitution (see art. 130 BC).

language group leave the parliamentary hemisphere during the voting procedure; with no members or only a minority presence in that language group, the voting cannot continue. On the other hand, each language group, but primarily the language minority willing to demonstrate being explicitly against a bill, will give a no-vote at this time, so that the law in the absence of the prescribed approval quorum in that language group will not be adopted.

For this reason, in the federal parliament, consultation between two linguistic groups is always necessary when voting on such laws; currently, the Belgian federal construction is supported in terms of its willingness to compromise, as has mostly been the case in the past.

## 5.5 Other language parities

28. In the highest courts<sup>56</sup>, the functions of judge and prosecutor are jointly distributed between Dutch-speaking and French-speaking magistrates.

Similarly, for the top civil service posts in the Belgian administration, linguistic parity applies; 40% are Dutch-speaking, 40% are French-speaking and 20% are bilingual (10% of each language consists of community staff members). The decisive criterion for determining a government official within a specific language group is the language in which the candidate's appropriate diploma or certificate had been obtained or in which they succeeded a language examination.

## 6 The Brussels-Capital Region

29. *The specific character of the Brussels-Capital Region.* The Brussels-Capital Region is the only bilingual region in Belgium; because of its specific character, it is mentioned separately in this article. At the political level, negotiations on the status of Brussels are extremely sensitive. The Flemish opposes the recognition of Brussels as an equivalent region, while the Francophones try to maximize the competences of the region. These are logical consequences of the Flemish minority and French-speaking majority in the capital. For this reason, the region became established only in 1988-1989, while the other two regions had already been founded in 1980; moreover, to this day, the region does not have the same powers as the other regions and has acquired its competences gradually. The sixth state reform turned the Brussels-Capital Region into a stronger constituency with more powers and in particular, more funding.

30. *The Brussels-Capital Regional Parliament.* Regarding the institutions, the Brussels-Capital Regional Parliament is divided into a Dutch-speaking and French-speaking language group. According to a special majority law, the Dutch-speaking language group counts 17 and the French-speaking language group 72 members, displaying the language ratio in the bilingual region of Brussels-Capital as *quod non*. As is the case at the federal level, there are some protection techniques in place for the minority language group, including that the president and vice-president of the parliament must belong to a different language group, each language group has to be represented in the different commissions and a linguistic alarm bell procedure is available. The most important protection is the technique of the qualified majority. For some important matters, a Brussels federated law can only be adopted by a qualified majority; this assumes a simple majority (half plus one) for the present quorum and a simple majority yes-vote (half plus one on yes- and no-votes) for quorum approval, both within each language group. Similar to the French minority in a federal assembly having veto rights in the adoption of special majority laws, the Flemish minority has similar veto rights in the Brussels Parliament concerning the approval of community-oriented federal laws.

31. *The Brussels-Capital Regional Government.* A similar institutional protection exists within the Brussels Executive. The Brussels Government, excluding the Prime Minister, must be made up of two French-speaking and two Dutch-speaking ministers; additionally, three regional Secretaries of State are elected, of which at least one must belong to another, i.e., a Dutch-speaking language group.

32. *The community commissions.* The federated laws of the Flemish Community and the French Community have an impact with regard to the institutions in Brussels-Capital belonging to one or the other community as a result of their specific organization or activities (art. 127-128 BC). However, they have no effect in relation to the so-called 'bi-communal institutions', which do not belong to one or the other community. Three institutions are charged with executing those powers: the Flemish Community Commission for the Flemish community powers, the French Community Commission for the French community powers and the Joint Community Commission for the bi-communal powers. Each commission has a normative institution ('the assembly') and an executive institution ('the college'). Given the two language groups represented in the Joint Community Commission, some protection

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<sup>56</sup> I.e. the Constitutional Court, the Court of Cassation and the Council of State.

techniques are included for the Flemish minority. The most important protection is the obligated qualified language majority; the Dutch-speaking minority in both the United Meeting, as well as in the United College of the Joint Community Commission (e.g., French-speaking politicians at the federal level) enjoy a double veto, either by staying absent at the sittings during the vote, by the majority rejecting a bill or by a draft decision.

## 7 Conclusion

**33.** During the past few decades, Belgian politics have been characterized by a struggle for linguistic minority rights. This struggle has caused major political impasses in the country, for example, a period in 2010-2011 when for 541 days, Belgium had no government. Another example is the separation of the electoral district 'Brussel-Halle-Vilvoorde', a process that took over 10 years to reach a political agreement concerning the execution of a judgment on the part of the Constitutional Court<sup>57</sup>, which stated that there was inequality between this district and other electoral districts. Fear of suppressing the French-speaking minority had been the reason for the negotiations being so difficult concerning this constituency.

The most important consequence of the language struggle was the evolution of the Belgian state structure, which is characterized by the Dutch-speaking aim to maintain the principle of territoriality. Today, following the sixth state reform, Belgium has a federal structure with a strong federated level, in which many important policy areas are transferred to the three communities. These include education, the use of languages in different policy domains, cultural matters, certain religious matters and the media. The different cultural linguistic groups have broad powers in their 'own region'. However, specific techniques for protecting the minority language will always be needed; it is therefore important to accept the protection of language rights in order to avoid internal conflicts and tensions.

**34.** The sixth state reform will not be the last of its kind. Politicians will continue to be faced with questions concerning the protection of linguistic minorities. A federal state structure is never static, but a process that continues to evolve. Some political parties claim that this evolution will end with the abolition of the linguistic areas; others are convinced that Belgium will evolve into a country with specific and significant competences assigned to different regions, the so-called 'confederations'.

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<sup>57</sup> Constitutional Court 26 May 2003, Case No. 73/2003.