

The Use of Language in Education in Belgium (2012)

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1. Historical background²

Belgium is situated at the border of the Romance and Germanic cultures. After the fall of the Roman Empire, the Frankish Empire had a Germanic language region in the North and a Roman language region in the South with the breakline going through present day Belgium.

French became the *lingua franca* in Europe from the 17th century onwards. It was increasingly used in the administration and courts in Flanders. The French revolution of 1789 originally considered that the State should address the people in their own language. From 1794 on however, in order to avoid disintegration, minority languages had to make place for uniformity³. France annexed the territory of present-day Belgium in 1795. Until 1803 no central linguistic legislation was enacted till Napoleon made the use of French obligatory for administrative and official acts.⁴

In 1815 present-day Belgium became part of the Netherlands. Dutch⁵ was spoken by 75 percent of the population and was the official language. Although French was not an official language, it continued to be used in the southern provinces of present day Belgium.

After the Belgian Revolution in 1830, the Constitution stated that: ‘The use of languages spoken in Belgium is free; only the law can rule on this matter, and only for acts of the public authorities and in judicial matters’, and that ‘all Belgians are equal before the law’. However, the administrative authorities spoke and used only French because officials and magistrates had the constitutional right to use French exclusively which in practice resulted in the denial of linguistic rights of Dutch-speakers which were in a numerical majority but barely represented in the state organs. Only in 1873 the law on the use of languages in criminal procedures, in 1878 the law on the use of languages in administrative matters, and in 1883 the law on the use of languages in education introduced official bilingualism (French and Dutch) in Flanders. The southern French speaking provinces remained monolingually French. The law of 1898 recognised the official equality of French and Dutch in matters of national legislation. In practice, knowledge of French was necessary for professional advancement.

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² Based on *Clement* 2003: 956.

³ For the idea of the indivisible Nation in France, see the decision of 15 June 1999 of the Constitutional Court that France could not adhere to the European Convention on the Protection of minority languages <http://www.legifrance.gouv.fr/citoyen/conscons.htm>

⁴ Decree of 13 June 1803 (24 Prairial, year XI).

⁵ The official language in the Flemish Community of Belgium is Dutch (also the official language of the Netherlands). ‘Flemish’ is increasingly used to refer to standard Dutch spoken in Belgium. Although there are no spelling differences, pronunciation is different and certain words and adverbs are used in Flanders and not in the Netherlands.

In 1923 Dutch became the teaching language at the University of Gent (in Flanders) but a percentage of the courses had to be taught in French. It was only by law of 5 April 1930 that Dutch became the only official language at the University of Ghent and that the Flemish got their own university.

In 1954, language facilities were introduced for the French-speaking minority in four previously unilingual Flemish municipalities (Drogenbos, Kraainem, Wemmel, Linkebeek). Municipalities with linguistic facilities are municipalities with legal provisions to protect the rights of the (Flemish, French or German) linguistic minority.⁶

In 1963 Brussels was recognised bilingual French-Dutch. In 1830 more or less 85 percent of the Brussels population was Dutch-speaking. But with French the language of the government, the courts, culture, the media and education, frenchification (the shift from Dutch to French among the local Flemish residents) took place over several generations. During the second half of the 20th century, Frenchification of Dutch speakers ceased with Flanders prospering economically and Dutch regaining its prestige, while Brussels became an increasingly international city, and this internationalization brought an influx of (mainly French speaking) foreign immigrants. In 2011 only around 15 percent is still Dutch-speaking.

In 1970, the Constitution was reformed. Article 4 states that Belgium comprises four linguistic regions: the Flemish-speaking region, the French-speaking region, the bilingual region of Brussels-Capital and the German-speaking region. Each municipality of the Kingdom forms part of one of these linguistic regions. The boundaries of the four linguistic regions can only be changed or corrected by a law passed by a majority of the votes cast in each linguistic group in each House, on condition that a majority of the members of each group is present and provided that the total number of votes in favour that are cast in the two linguistic groups is equal to at least two thirds of the votes cast.

French further proceeds in the suburbs around Brussels, which is called the Brussels 'oil-stain' in Flanders and Frenchification of municipalities in Flanders. Notwithstanding the constitutional 'principle of territoriality', French speakers in the Flemish suburbs around Brussels require these municipalities to join the bilingual Brussels-Capital region.⁷

2. Linguistic regionalism in Belgium

2.1. General introduction

⁶ Although the German-speaking Community is a region with less than 100,000 inhabitants, it has its own parliament, government, and administration, competent for culture and education in the German language region. It is composed of the German-speaking parts of the lands that were annexed in 1920 by Belgium following Germany's defeat in WWI and the Treaty of Versailles.

⁷ For the requests of the French to be recognised as a minority in Flanders, see the Venice Commission of the Council of Europe, which formulated a set of four criteria for determining if 'a minority' might qualify as a 'national minority'. Two of those criteria are not satisfied for the French-speakers in Flanders: lack of historic and peaceful relations between the minority and the national authority from which they request recognition, and a 'sufficient number'.

The Constitutional reform of 1970 introduced the territoriality-principle⁸ in Belgium. The Flemish, the French and the German communities⁹ became competent for education in their region. Linguistic regionalism means that in principle regional and local authorities, including schools, in the Flemish Community, the French Community and in the German Community use the language of the region exclusively. Brussels is the only region recognised as bilingual French-Dutch. The territoriality principle is softened in 27 municipalities with language facilities, where national, regional and local administrations are obliged to speak the language, in which they are addressed by a citizen.

In bilingual Brussels Capital, the French Community is competent with regard to French-language schools, and the Flemish Community for the Flemish-language schools. Parents inhabitants of Brussels can freely choose to send their children to Flemish- or French-speaking schools, which means that the parents choose whether they are subjected to the laws of the Flemish or the French Community.

In the Belgian Linguistic Case¹⁰, the European Court accepted the public interest to ensure that all schools financed by the State and located in a monolingual region use the regional language in education.

2.2. Applicable norms and laws

The law of 30 July 1963 on the use of languages in education (hereinafter: the Education Language Law) covers compulsory education (pre-primary, primary and secondary education).¹¹

Also the use of language in post-compulsory education, is regulated by law. The decree of 4 April 2003 on the restructuring of higher education in Flanders describes the use of language in colleges and universities.¹²

Article 127, § 1, 1, 2° of the Constitution regulates the competencies in education.¹³ Article 129, § 1, 1, 2°, of the Constitution regulates the use of language in education. The territorial scope of both decrees are different.

Under Article 127 § 2 of the Constitution, the decrees of the communities on education have the force of law *in the Flemish, French, and the German communities*. In principle schools as well as regional and local authorities in the Flemish region, in the French speaking region and in the tiny German region use exclusively the

⁸ Article 4 Constitution: “Belgium has four linguistic regions: the French-speaking region, the Dutch-speaking region, the bilingual region of Brussels-Capital and the German-speaking region. Each municipality of the Kingdom is part of one of these linguistic regions”.

⁹ In the 1970’s Belgium was reformed in so-called communities and regions with autonomy in specific matters. The territory covered by communities (with competencies in culture and education) is different from the territory of the regions (with competences in conservation of sites and monuments, environment protection policy, transport, social policy, the financing of municipalities, spatial planning, city building and housing). The German-speaking Community has autonomy in cultural and educational matters, but is part of the (French speaking) Walloon Region. Belgium has at least 9 governments: one federal government, six regional governments (the governments of the Flemish Community, the French Community, the German-speaking Community, the Flemish Region, the Walloon Region, the Brussels-Capital Region. It has 589 municipalities: 308 in the Flemish Region, 262 in the Walloon Region, and 19 in the Brussels-Capital Region.

¹⁰ ECtHR, 23 July 1968, Belgian Linguistic Case.

¹¹ Article 5, second and third paragraph of the Education Language Act, as inserted by the Act of July 26, 1971.

¹² Article 90.

¹³ Jan De Groof en Hilde Penneman, “Article 127, § 1, eerste lid, 2° van de Grondwet. Een overzicht van de bevoegdheidsverdeling in onderwijsaangelegenheden”, *T.O.R.B.* 1997-98, 324.

language of the region.

In the *bilingual region of Brussels-Capital*, the decrees on education have the force of law with respect to the institutions that - depending on their activities - must be regarded as belonging exclusively to one of the communities.

The main exception are *the municipalities with language facilities in the Flemish and French communities*. The Constitution stipulates that the provisions on the use of languages in municipalities with language facilities can only be changed by a federal law adopted by a special majority.

Also the use of languages in *municipalities with language facilities in bilingual Brussels-Capital*, is - according to Article 129 § 2 of the Constitution - regulated by federal law only.

3. The Flemish Community

3.1. Foreign language education in primary education¹⁴

The Law on language in education requires schools in the bilingual Brussels-Capital, the municipalities with language facilities other than those in the Brussels' suburbs and schools in the German-speaking Community, to teach the second language three hours per week in the second grade and five hours per week in the third and fourth grade.¹⁵

Since the first of September 2004, Flemish primary schools in the municipalities without language facilities and in the schools located in 6 municipalities with language facilities of the suburbs of Brussels Capital are obliged to teach French in Flemish primary schools in the fifth and sixth grade.¹⁶

In addition, all primary schools under the jurisdiction of the Flemish Community - including the schools in bilingual Brussels-Capital and the municipalities with language facilities - are allowed to offer initiation in a foreign language. If a school makes use of this right, the French language is the first language to be taught.¹⁷ Foreign languages other than French are possible¹⁸ if more than one foreign language (French) is taught.

3.2. Education in the mother tongue and culture of the country of origin

Article 3 of the Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers states: 'Member States shall, in accordance with their national circumstances and legal systems, and in cooperation with States of origin, take appropriate measures to promote, in coordination with normal education,

¹⁴ Secondary education is ruled by the general principles laid down in the law of 30 July 1963 on the use of languages in education (the Education Language Law). The first foreign language taught in schools in the Flemish Community is French. In 2010, the Minister of Education launched the idea to amend legislation to make English the first foreign language taught in schools in the Flemish Community.

¹⁵ Article 10, 1, Education Language Act.

¹⁶ Article 43 Decree Basic Education of 25 february 1997, as amended by decree of 7 May 2004

¹⁷ Article 43, § 2, 2 Decree Basic Education.

¹⁸ <http://www.ond.vlaanderen.be/dvo/basisonderwijs/taalinitiatie/taalinitiatietaalsensibilisering.pdf>.

teaching of the mother tongue and culture of the country of origin for the children referred to in Article 1’.

A number of Flemish schools, especially in Brussels, is conducting for some time experiments with teaching of the mother tongue and culture of the country of origin.¹⁹ It includes two systems: one system consists of up to 20% of the classes for teaching in the mother tongue. The other bi-cultural system consists of an active promoting of bilingualism with courses up to 50% in Dutch and in the ethnic minority language.

Teaching of the mother tongue and culture of the country of origin is only possible for those students with another native language than Dutch. The children participating in the project are studying in Flemish schools. They follow the regular curriculum in Dutch but receive additional support in their native language. This presupposes a sufficiently large group of pupils with another mother tongue and an additional program to be delivered by other teachers than the regular ones, and who are not financed or subsidized by the regular education budget of the Flemish Community. The main groups are Turkish, Spanish and Italian. In May 2011, the Minister of Education of the Flemish Community announced that he will stop these experiments.

Apart from teaching of the mother tongue and culture of the country of origin, the Flemish government has introduced support measures for non-native language speakers to learn the language of instruction. This includes additional teaching hours, mentoring and support for non-native language speakers.

4. The French Community

4.1. Foreign language instruction in de French Community

The first foreign language taught in schools in the French Community should not be Dutch, but can also be English or German. This rule applies to all schools under the supervision of the French Community.²⁰

4.2. Immersion²¹ in schools of the French Community

In 1998 the French Community legislated the possibility to teach foreign languages in primary and secondary education through immersion.²² Immersion is an opportunity for schools, it is not an obligation. Schools ask the French Community permission to organize immersion education. The majority of schools offer immersion as a choice for students, alongside the traditional French courses. However, the decree makes it

¹⁹ Article 43 Decree Basic Education, Omzendbrief BaO/2004/02.

²⁰ Decree of 30 January 1975 amending article 9 of the Education Language Act.

²¹ Language immersion is a method of teaching a second language in which the target language is used as a teaching tool of instruction and not simply as subject material. As a teaching tool, pupils are surrounded or ‘immersed’ in the second language during (a percentage of) in-class activities and outside class activities.

²² Article 2, 20°-22°, 12, 13, 70 en 71, Decree of the French Community of 13 July 1998 ‘portant organisation de l’enseignement maternel et primaire ordinaire et modifiant la réglementation de l’enseignement’.

possible for schools to offer exclusively immersion course. About a hundred schools provide immersion education in the French Community.²³

Immersion means that some of the lessons of the curriculum are taught in the immersion language.

From the age of 5 to the end of the second year of primary education, classes in the immersion language can be organized for at least $\frac{1}{2}$ and maximum $\frac{3}{4}$ of the timetable. From the third to the sixth year of primary education, this is at least $\frac{1}{4}$ and maximum $\frac{2}{3}$. In secondary education it can be maximum $\frac{1}{4}$.

In the municipalities without language facilities in the French Community, the immersion language can be Dutch, German or English.

In the municipalities with language facilities including municipalities with language facilities along the linguistic border of the Flemish Community, but also in the municipalities of Malmedy and Waismes, where German speakers enjoy language facilities, and in bilingual Brussels-Capital, only Dutch qualifies as immersion language.²⁴

Sign language can also be immersion education.²⁵

The organization of immersion education could constitute a constitutional problem. The Decree of 13 July 1998 that introduced the possibility of immersion education, assumed that this was an educational issue and not a language issue. Since the system of immersion allows schools to organise a majority of classes in a language other than the language of the community, it should have been regulated by the federal legislature and not by the government of the French Community for bilingual Brussels-Capital and for the municipalities with language facilities.

5. Bilingual Brussels-Capital

5.1. Foreign language education in bilingual Brussels-Capital

First foreign language teaching in bilingual Brussels-Capital is compulsory. This implies that the communities cannot unilaterally change the first foreign language education, which is Dutch for French-speaking schools, and French for Dutch-speaking schools.

5.2. Rehearsal classes

According to article 10 of the Education Language Law, foreign language teaching in the municipalities with language facilities in bilingual Brussels-Capital can include other courses of the curriculum. Some Flemish schools in bilingual Brussels-Capital make use of this opportunity for organising rehearsal lessons in another language in Dutch-speaking schools in Brussels.²⁶

²³ <http://immersion.dyndns.org>.

²⁴ In Article 13, § 3 Decree of 13 July 1998 refers to the municipalities of Article 3 of the law of 30 July 1963. Article 3, 3°, includes the municipalities Malmédy, Bellevaux-Ligneuville, Bevercé, Faymonville, Robertville and Waismes.

²⁵ The decree of 22 oktober 2003 of the French Community and the decree of 5 May 2006 of the Flemish Community recognized sign language.

²⁶ <http://www.bocobrusseel.be/Taalbeleid.htm>.

6. Exceptions: municipalities with language facilities in the Flemish and French communities and in the suburbs of bilingual Brussels-Capital and the establishment of minority schools

In municipalities with language facilities the territoriality principle is softened and national, regional and local administrations are obliged to speak the language, in which they are addressed by a citizen. Only in the municipalities with language facilities, can schools using another language than the language of the region be established.²⁷

The Flemish (Dutch language) Community has 9 French-speaking primary schools established in the municipalities with language facilities. In the French language region there is only one Flemish primary school in the municipality Komen.

Article 6 of the Education Language Law regulates the situation in the municipalities with language facilities²⁸ that provide education in the other official language of Belgium, which is however not the official language of that region. These schools were intended only for those children whose mother tongue is not the language of that region. The region is obliged to open a minority school in the other official language of Belgium, which is not the official language of that region, when sixteen heads of families in a municipality with language facilities request the opening of a minority school.

The language law provides for studying the language of the region in the so-called minority schools in municipalities with language facilities.²⁹ The language of the region should be taught four hours per week in the second degree and eight hours per week in the third and fourth grade. The purpose is to teach the language of the region so

²⁷ In practice the Flemish Community subsidizes 12 minority schools (i.e. all classes in French) in Flanders, whereas the French Community subsidizes zero minority schools.

²⁸ Komen-Waasten, Mesen, Moeskroen, Spiere-Helkijn, Ronse, Vloesberg, Bever, Edingen, Drogenbos, Linkebeek, Sint-Genesius-Rode, Wemmel, Kraainem, Wezembeek-Oppem, Herstappe, Voeren, Malmédy, Waimes, Lontzen, Raeren, Eupen, Kelmis, Burg-Reuland, Sankt Vith, Amel, Bütgenbach, Büllingen.

²⁹ Article 7, § 3, B, 4, of the law of 2 Augustus 1963 on the use of languages in administration, and Article 10, 1, Education Language Act.

that students are prepared after completing their secondary education to speak the language of the region they are living in.

In addition to the Education Language Law, minority schools in municipalities with language facilities are regulated by the law of 18 July 1966 on the use of languages in administration. That law applies to the administration of the school authorities of both public and private state funded schools.³⁰ Private non-state funded schools are not subjected to the Belgian language laws.

In case 65/2006 of 3 May 2006, the Constitutional Court stated that the law on the use of languages in administration should be applied on teaching staff of the French schools in the municipalities with facilities in the suburbs of Brussels-Capital. The claim of the French Community that freedom of education and freedom of speech would be violated, was rejected by the court. Article 4 of the Constitution states that ‘the language facilities do not affect the fundamental character of the monolingual Flemish-speaking region, which includes the suburbs’. This has important implications for the language requirements of the staff of the French-speaking schools in the municipalities with language facilities in the Flemish region. According to Article 14 of the Education Language Law personnel in these schools should demonstrate sufficient knowledge of Dutch. According to Article 27 of the law on the use of languages in administration, no person can be appointed in the schools located in the municipalities with language facilities in the suburbs of Brussels-Capital without sufficient knowledge of the Dutch language. The Constitutional Court explicitly states that all members of the teaching staff of these schools should have knowledge of Dutch to enable them to fulfil their obligations regarding the use of languages in administration, and not only the teachers of Dutch language.

The Flemish Community subsidizes 10 French-speaking minority schools in the Flemish Community.

The Flemish school in Komen, which is a municipality with language facilities in the French-speaking Community, is contrary to what one should expect, not funded by the French Community but also by the Flemish Community. In 1979 the applications for the establishment of a Flemish primary school in Komen caused so much commotion that the French Minister of Education established the school in 1980 to close it again a year later. The Flemish Minister of Education decided to pre-finance the school and to ask reimbursement by the French Ministry of education, which – till today – was never made.

As stated above, the French speaking schools located in the municipalities with facilities in the suburbs of Brussels-Capital are fully financed by the Flemish Community. According to the decree of the Flemish Community, Flemish inspectors would have the authority to control the schools fully financed by the Flemish Community. In case 124/2010 of 28 October 2010, the Constitutional Court ruled that

³⁰ Article 1, § 1, 4° Law on the use of language in administration. Except for the selection of staff which has to implement the identity of the school, regulations for state funded schools, whether official or private, are the same.

the decree of the Flemish Community on the inspection of the fully financed by the Flemish Community but French speaking schools located in the municipalities with facilities in the suburbs of Brussels Capital violated the Constitutional division of competences. In its ruling the Court stated that there is a lack of transitional period during which the French-speaking schools in the Flemish Community could request an exemption to apply the curricula of the French Community (in order to be funded by the Flemish Community, the school has to conform with the curricula of the Flemish Community except if the Flemish Government grants an exception).

As a consequence, the inspection of the French speaking schools fully financed by the Flemish Community located in the municipalities with facilities in the suburbs of Brussels Capital remains in the hand of the French Community.

Developments

In the Belgian Linguistic Case the European Court of Human Rights accepted only one of the six complaints.³¹ The accepted complaint concerned the accessibility of minority schools for children of parents living in the municipality with facilities. The Court ruled that this limited accessibility violated the equality principle in education in six municipalities with language facilities in the suburbs of Brussels-Capital. The Court ruled that the six benefited a bilingual status. As the Court had no problem with the limited accessibility of minority schools in municipalities with a monolingual status, Belgium remedied the violation in 1970 by explicitly placing the six in the Dutch-language region in order to not give them bilingual status. The Committee of Ministers declared itself satisfied with this solution which was not challenged till the beginning of the 21st century.³²

During constitutional reforms in the previous century, Belgian politicians took the decision in favour of territoriality and Belgian language laws are based on the territoriality principle. In the 21st century French-speaking politicians of Belgium request the introduction of more personal elements in the Flemish region thereby referring to human rights and minority conventions. Flemish speaking politicians responded that when those who settle in the Flemish Community must learn the local language and that no more exceptions should be made for French-speaking Belgians who settle in Flanders.

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³¹ ECtHR, 23 July 1968, Belgian Linguistic Case

³² Instigated by complaints of French-speaking Belgian politicians, the Parliamentary Assembly of the Council of Europe called on the Kingdom of Belgium to fully implement, without further delay, the judgement of the European Court of Human Rights of 23 July 1968 (resolution 1301 of 26 September 2002). It thereby disregards the competency of the Committee of Ministers to supervise the execution of judgments of the Court (article 46 of the European Convention)