INFORME

THE BELGIAN LINGUISTIC COMPROMISE: BETWEEN OLD BATTLES AND NEW CHALLENGES[1]

EL COMPROMISO LINGÜÍSTICO BELGA: ENTRE VIEJAS BATALLAS Y NUEVOS RETOS

por Sébastien Van Drooghenbroeck
Professor of constitutional and human rights law,
Law Faculty of University Saint-Louis-Brussel,
y Patricia Popelier
Professor of constitutional law, Law Faculty of the University of Antwerp.

Cómo citar este artículo / Citation:
Van Drooghenbroeck, Sébastien; Popelier, Patricia (2022):
The belgian linguistic compromise:
between old battles and new challenges, en:
Cuadernos Manuel Giménez Abad, nr. 22.
DOI: https://doi.org/10.47919/FMGA.CM22.0202

RESUMEN

La sociedad belga se caracteriza por tres grandes divisiones: socioeconómica, filosófica-ideológica y lingüística. Esta combinación de líneas de conflictos ha dado lugar a un Estado dividido. La línea de conflicto lingüística es esencialmente la que ha dado forma al federalismo belga. La división lingüística se refleja fuertemente en los acuerdos institucionales y las diversas políticas públicas del país.

Palabras clave: Bélgica, Estado regional, regionalismo asimétrico, políticas lingüísticas, multinivel

ABSTRACT

Belgian society is characterized by three main divides: socioeconomic, philosophical-ideological and linguistic. This combination of coinciding fault lines has made for a divided state, but it is essentially the latter that has shaped Belgian federalism. The linguistic divide is strongly reflected in the institutional arrangements and various public policies of the country.

Keywords: Belgium, regional state, asymmetrical regionalism, language policies, multi-level

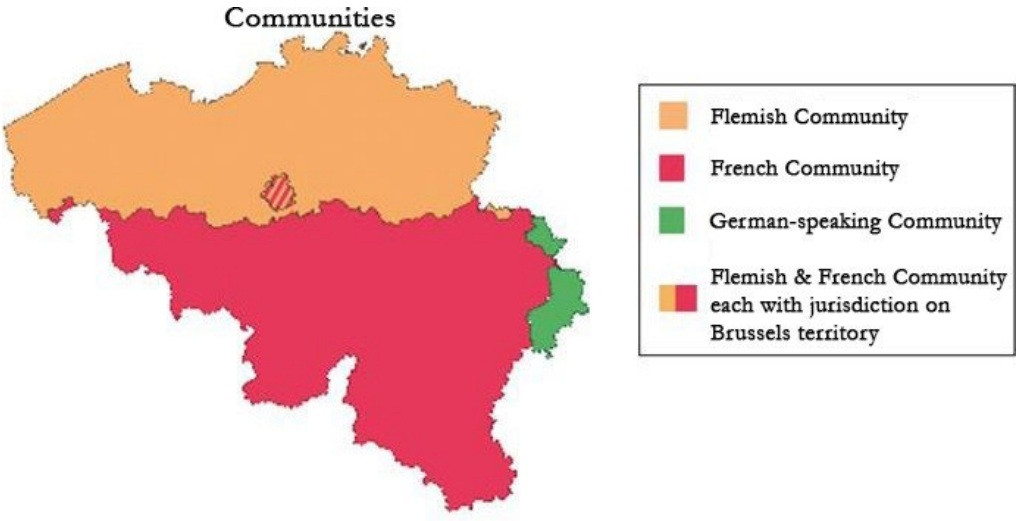
fundación Manuel Giménez Abad de Estudios Parlamentarios y del Estado Autonómico

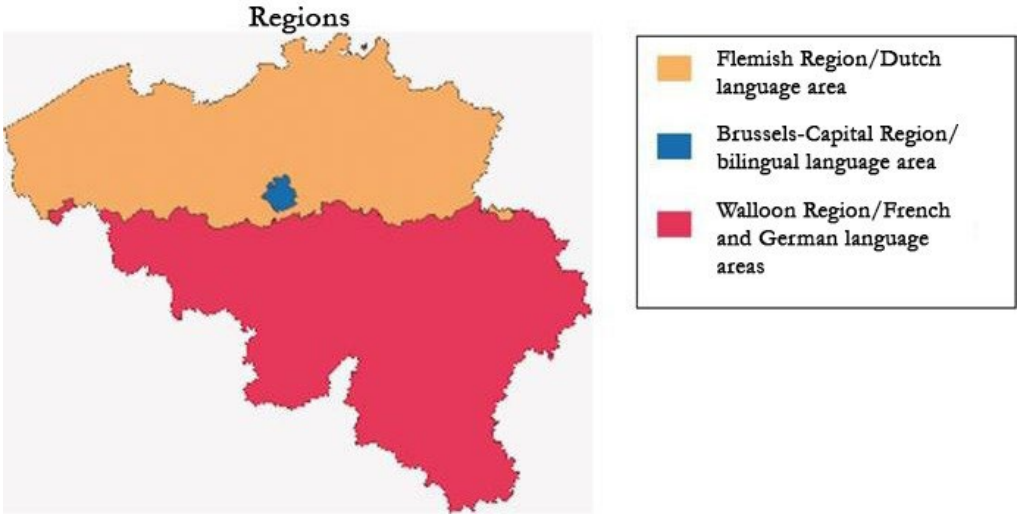
1. The text is part of the Special Occasional Paper Series on Language Policy in Federal and Devolved Countries. The series provides a country-specific look at language policy in 11 different countries. All paper can be downloaded on: https://forumfed.org/collection/language-policy-in-federal-and-devolved-countries/. This text has been presented at the Workshop "Linguistic Diversity and Practices In Federal Countries" on 9 November 2022, organized by the Forum of Federations, Eurac Research, Fundación Manuel Giménez Abad, the Embassy of Canada in Spain and the Observatorio de Derecho Público (IDP).

I. INTRODUCTION

Belgian society is characterized by three main divides: socioeconomic, philosophical-ideological and linguistic. This combination of coinciding fault lines has made for a divided state, but it is essentially the latter that has shaped Belgian federalism. The linguistic divide is strongly reflected in the institutional arrangements and various public policies of the country.

We analyse the main rules and principles governing "the Belgian compromise" concerning language recognition and distribution of powers for linguistic policy in the first section. The second section examines current challenges to this compromise: the tension between some linguistic arrangements and the protection of human rights and national minorities; European integration, and globalization, including migratory movements and the internationalization of economic exchanges. The third section discusses some potential reforms to modernize the "Belgian compromise" in the face of these challenges.





II. THE BELGIAN LINGUISTIC COMPROMISE

II.1 General context

The Belgian population of approximately 11.5 million is roughly divided among three linguistic groups (Delmartino *et al.* 2010, 47-75; Popelier 2019, 17-23; Popelier and Lemmens 2015, 2). Somewhat less than seven million Dutch-speakers live in the northern part of the country in the Flemish region and are a small minority in Brussels-Capital. A little more than four million French-speakers live in the southern part of the country in the Walloon region and in Brussels, where they are a large majority. Finally, some 76,000 German-speakers are concentrated in a small part of the Walloon region in the southeast part of the country. This breakdown is based on the assumption that the inhabitants all speak the language of their region. The division of the inhabitants of Brussels into French and Dutch speakers is based on an approximation, as there is no language census. A growing number, especially in Brussels, speak more than one language and/or have a mother tongue other than one of the three official languages.

From 1831—when the unitary Belgian state was created—until the beginning of the 20th century, the French bourgeoisie and the French language were culturally and socially predominant. At the end of the 19th century, a Flemish movement developed that called for language laws to put an end to past injustices. As early as 1932, a territorial subdivision created so-called "linguistic borders." This divided the country into three unilingual linguistic (French, Dutch and German) and one bilingual region, Brussels-Capital, where French and Dutch are on an equal footing (article 4 of the Constitution). These are only administrative entities, but they determine the use of languages by public authorities. To this, federated Communities and Regions were added. Linguistic regions, Communities and Regions all have overlapping territories.

The transformation from a unitary to a federal state that began with the constitutional reform of 1970 (the so-called first reform) and continued with the most recent reform of 2014 (the so-called sixth reform) (Alen *et al.* 2020, 38-41; Popelier and Lemmens 2015, 18-32), was intended to satisfy two distinct demands. First, the Flemish movement's battle for the recognition and advancement of the Flemish culture and language led to the creation of communities with jurisdiction over cultural matters. In turn, the second demand, the Walloons' desire to control actions to respond to the economic decline of Wallonia since the 1960s, led to the creation of regions with jurisdiction over economic matters.

Under the present constitution (article 2), Belgium comprises three *communities*: French, Flemish and German-speaking. Basically, the communities have jurisdiction over culture and education as well as matters involving "person-to-person relationships"—for example health care, youth protection and social assistance. The territorial area of the German-speaking Community corresponds to the German- speaking linguistic region.

By contrast, the French and Flemish communities each have their own separate territory – corresponding to the Dutch-speaking linguistic region for the Flemish Community and the French- speaking linguistic region for the French Community – but they also share a common territory that corresponds with the bilingual Brussels linguistic region. Both communities can enact laws that apply to the Brussels territory, but only for unilingual institutions such as those in the cultural field.

Belgium also has three *Regions* (Constitution, article 3): the Walloon Region, the Flemish Region and the Brussels-Capital Region. The regions are responsible for economic, environmental, planning, housing, and industrial matters within their territory. The

structure just described, with two types of overlapping but distinct federated entities, is called "federalism in superposition."

The question of language has been central to the evolution of the Belgian federation. The compromise that has been patiently constructed, by policymakers and judges, is based on three components or pillars: linguistic freedom, the distribution of competences on language policy and the principle of territoriality.

II.2 Linguistic freedom

Linguistic freedom is guaranteed by article 30 of the Constitution (van der Jeught 2017, 183-184). This provision, unchanged since 1831, reads as follows: "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 phrase "languages spoken in Belgium" is controversial (Velaers 2019, 618). A traditional interpretation, that it refers only to the three "national" languages (French, Dutch and German), has been criticized for giving a particularly restricted scope to the linguistic freedom guaranteed by Article 30 (see Velaers 2019, 618). The position of the courts on this issue is at present undecided. In the end, the practical relevance of this controversy is rather limited. Freedom to use another language—e.g., English, Arabic or Yiddish—between private persons can also be based on other constitutional rights, such as freedom of religion or expression (article 19), and the rights to privacy and respect for family life (article 22).

A literal interpretation of article 30 might suggest that the freedom to use the language of his/her choice between private persons could not be subject to any limitation, except for what is provided for in article 129 of the Constitution regarding for education and "social relations between employers and their personnel." However, this literal interpretation does not prevail in the current case law. The Council of State (Nr. 66.996) has determined that the law may validly impose the use of a particular language in relations between private individuals—for example, the compulsory translation of a message into one of the three national languages—in the fields of commercial practices, consumer protection, product standards, telecommunications, public health, and environment and waste policy. However, mandating the use of one language in the cases above must meet one of three conditions:

1. It must be based on an international obligation or European law, or
2. It must meet a positive obligation to protect or guarantee other fundamental rights, or
3. It must respond to a compelling need to protect the interests of third parties to receive information in other languages.

In contrast, provisions that impose the exclusive use of a specific language, thereby ruling out other languages, cannot be considered necessary for the effectiveness of the measure. According to the Council of State, oral communication cannot, in principle, be regulated, since the obligation to use one language de facto excludes the use of all others. Exceptions are, however, conceivable for reasons of safety.

II.3 Competences in language policy

The distribution of competences to regulate the use of languages is obviously a crucial dimension of the Belgian linguistic compromise. The federal government remains competent to regulate the use of languages in "judicial affairs," as well as for "acts of public authorities." However, this latter competence is qualified by article 129 (and

then echoed by article 130) of the Constitution. Article 129 stipulates that it is for the French and Flemish Communities to regulate the use of languages for "administrative matters," "education" and, for all Communities, the "social relations between employers and their personnel, as well as company acts and documents required by the law and by regulations." Moreover, the language of instruction is considered part of the competence of education itself laid down as a Community matter in article 127. The powers thus granted to the communities are very broad, but there are important exceptions. According to article 129 (2), Community laws are not applicable in the municipalities with "linguistic facilities": municipalities adjacent to another linguistic region where the law permits or prescribes the use of another language than that of their region. In these 30 municipalities, a federal law enacted with a special majority (article 4 of the Constitution) regulates the use of languages. The federal state also remains exclusively competent for the regulation of language use in the bilingual Brussels-capital Region.

It is important to distinguish between the *use* and the *knowledge* of a language. According to the case law of the Constitutional Court and the Council of State (Council of State No 59.628), where the power to regulate the *use* of languages for a specific matter is expressly granted to either the communities or the federal state, this implies the exclusive competence to also regulate on the *knowledge* of a language. By contrast, in the absence of such an express attribution, the competence to regulate the substance of a given matter (for instance, housing) includes the competence to impose language knowledge requirements if necessary to the pursued objective (for instance, to understand the instructions given by a landlord). A region, which has the authority to regulate access to social housing, may thus require persons applying as tenants to demonstrate a certain level of language skill or at least a willingness to learn the language (discussed further below).

The competence to regulate the *use* of languages must further be distinguished from the competence to adopt *rules relating to the prohibition of discrimination on the basis of language*, in relations with the public authority or between private persons. On the latter, each authority (federal state, Communities and Regions) is competent, to the exclusion of the others, to adopt non-discrimination rules in its areas of competence (Van Drooghenbroeck and Velaers 2008).

Finally, the competence relating to the "defense and promotion of the language" is a cultural matter falling within the exclusive jurisdiction of the communities. This competence includes, among other things, the power of each of the three communities to establish rules relating to the spelling, linguistics and lexicology of the language in question (Council of State No 25.460), on the understanding that these rules will also de facto apply in Brussels. It is on this basis that the French Community has adopted a law that aims to impose "gender-neutral good practice in official or formal communications" (Decree of 14 October 2021). In the Flemish Community, a mere recommendation to find a gender-neutral formulation follows from a circular on legislative technique (Circular VR 2019/4, recommendation 10).

II.4 The principle of territoriality

Finally, the principle of linguistic territoriality, deduced from article 4 of the Constitution, is the third "pillar" of the Belgian linguistic compromise. This provision states that "Belgium comprises four linguistic regions: the Dutch-speaking Region, the French-speaking Region, the bilingual Region of Brussels-Capital and the German-speaking Region". As mentioned, these "linguistic regions" are not federated entities, such as Regions and communities (article 2 and 3 of the Constitution), but only administrative delineations for the sake of application of legislation. As recalled by Jonathan Bernaerts

(2020, 250), following the case law of the Council of State, "(article 4 of the Constitution) should not be read as an ethnographic representation of the linguistic diversity in Belgium, but rather as reflecting the normative intentions of the constitutional legislature to enshrine the principle of territoriality." Thus, while article 4 prohibits the competent authority from introducing a bilingual regime for administrative interactions in a monolingual area, this does not imply that the language of a monolingual area is the only language. According to the Constitutional Court (17/1986, 3.B.6), article 4 indeed implies "a restriction of the legislators'" competence in the use of languages and thus constitutes the constitutional guarantee of the primacy of the language of the unilingual region or of the bilingual character of the region." As we will see below, this aspect of the Belgian federal arrangement is the most subtle, and the most fragile.

III. OLD BATTLES AND NEW CHALLENGES

III.1 New legal clothes for old questions

As noted above, the Belgian compromise was not reached overnight. It is still precarious. The longstanding conflicts between both linguistic communities are less virulent than they were in the past, but they have not completely disappeared. The protection of human and minority rights has given them a new register, along with new European and international dimensions.

In a nutshell, two debates fueled the Belgian "linguistic dispute" between the mid-1990s and the early 2010s.The first concerned the judicial and electoral districts of Brussels-Halle-Vilvoorde— the only ones that crossed language borders (Peeters and Mosselmans 2009). It took a bold judgment by the Constitutional Court (Constitutional Court 73/2003) and a long government crisis before the disagreement was finally resolved in 2012 by splitting the districts, as part of the sixth state reform.

The other major debate was about the scope of the language facilities granted to the linguistic minorities in certain municipalities. Language facilities provide residents of these municipalities—and only these municipalities—with the right to be addressed by the authorities in a language other than the official language of the unilingual region concerned. One perspective, supported by Flemish politicians, advocated the temporary nature of these facilities: the right to obtain services in the minority language. For example, obtaining a translation of an official document would have to be requested repeatedly on a case-by-case basis. The opposing perspective, taken by French-speaking political leaders, was based on the idea of the enduring character of the facilities, meaning that the right to a given service could be obtained once and for all. The sixth state reform put in place a sophisticated mechanism to resolve the issue by entrusting the General Assembly of the Council of State (Nos. 227.776; No. 251.570) — composed of an equal number of French- and Dutch-speaking judges—with the task of deciding on these politically sensitive cases. In 2014, it did so by drawing up a compromise between the opposing views. Language facilities are not acquired definitively by means of a single request, but neither do they have to be claimed every time: the request must be repeated at 'reasonable intervals", set by the Council of State at four years.

It is thus clear that the Belgian arrangements rely not only on the Constitution and the formal laws based on it, but also on judge-made law. The role of the judge is, of course, always important in the interpretation of the principles of federalism. Here, however, it is particularly salient, since the political actors had entrusted judges with the task of finding a solution that they themselves were unable to construct. Importantly, a balanced linguistic composition of the bench was deemed crucial for the legitimacy of the Court's decision. Earlier, decisions regarding language facilities decided by a

chamber composed only of Dutch-speaking judges (Council of State 2001; 2008), had remained controversial (Gosselin 2007-08, 313).

The "old battles" have thus left the forefront of Belgian political life. However, they have not disappeared completely. One of the unresolved disputes concerns the 1995 Framework Convention for the Protection of the National Minorities (hereafter FCNM) (van der Jeught 2017, 187-188). One part of the political agreement that allowed sufficient francophone support for the fifth state reform (2001) was the signature of this Convention (Delgrange and Van Drooghenbroeck 2002, 273-287). (It has not yet been ratified, which would require the approval of all the partners in the federation (federal government, Communities, Regions.) At the time of signing, Belgium made a declaration stating that "the notion of national minority will be defined by the inter-ministerial conference of foreign policy." Twenty years later and despite the continuous consultation of expert groups, no real progress has been made in this respect. The most acute problem is whether French-speaking residents in the Dutch- speaking region can be qualified as a "national minority" and claim the rights guaranteed by the Convention.

At the time the Framework Convention was signed, the federal government also expressed a significant reservation, stating that the convention "applies without prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules that currently govern the use of languages." This clearly expresses the concern that ratification would disrupt the 'Belgian compromise" if it conferred on certain groups, identified as "national minorities," language rights that would go beyond existing" "language facilities" or, more radically, challenge the principle of territoriality. Because of its vague and general character, however, the validity of this reservation is highly questionable (Bernaerts 2020, 327-331).

It is doubtful that Belgium will ever ratify the Framework Convention. At the same time, other developments have rendered resistance futile. The European Court of Human Rights (ECtHR 2008) has taken the habit, in recent years, to interpret the Convention in the light of other treaties, even when they have not been ratified by the respondent state. These include the Framework Convention (ECtHR 2013). Regardless of this legal "cross-fertilization," in recent years the European Court of Human

Rights has given a certain linguistic colouring to the rights guaranteed by the Convention, departing from the very great caution it had previously observed. This was precisely the case in Rooman v. Belgium (ECtHR 2019).

In this case, the ECtHR concluded that Articles 3 (prohibition of inhuman and degrading treatment) and 5 § 1 (right to liberty) ECtHR were violated, due to the linguistic obstacles experienced by a German-speaking person detained in a specialized institution in the French-speaking Region in Belgium. There was no German-speaking staff in this institution, whereas the applicant himself only spoke German. In its judgement, the Court declares among others, that "Article 5 § 1 (...) does not guarantee to an individual in compulsory confinement the right to receive treatment in his or her own language". However, it finally concludes that "the failure to provide the applicant with treatment appears all the more unjustifiable in that he was capable of communicating in a language that is one of the official languages of Belgium: overcoming a problem related to the use of that language does not therefore seem unrealistic".

III.2 Integration of people of foreign origin

The question of language learning in the context of the integration of people of foreign origin has been on the political agenda since the mid-1990s. Previously, this issue was dealt with pragmatically, with language training provided through work. The

competence for the reception and integration of immigrants lies with the communities. From 2003 on, each of them, with the Flemish Community as a pioneer (Foblets and Yanasmayan 2010), has put in place a civic integration program. The programs include a component for learning the language of the region. The controversy has never been about the need for or legitimacy of such a measure. Instead, the question arose as to whether these courses could be mandatory. Can failure to learn the language be sanctioned, directly or indirectly, by fines or the restriction of certain rights?

Such a requirement does not pose any difficulty of principle for linguistic freedom. It is not a question of imposing the *use* of a certain language in every circumstance of social life—which indeed would be open to criticism from a constitutional point of view—but rather the question of having the *knowledge, learning* or the *readiness* to learn the relevant official language (Velaers 2019, 632-635). This means that the competent authority is not necessarily the one that is competent to regulate the use of languages: typically, this lies with the authority competent for the subject-matter. A region, which is responsible for housing, may therefore make access to social housing conditional on the willingness of prospective tenants to learn the language. In turn, the federal authority, which is responsible for granting nationality, can make this conditional on the follow-up to integration programs and their language components (Belgian Code of Nationality, art. 12*bis)*.

The controversy was therefore not so much about the question of competence, but about the substantive issue: how far can access to fundamental rights be made conditional on criteria of linguistic integration? The matter has been the subject of litigation before the Court of Justice of the European Union (C-579/13) and the Constitutional Court (Nos 101/2008; 136/2019). Both courts expressed no opposition in principle but stated that the limitation of the rights in question must be proportionate (C- 153/14) and non-discriminatory (C-94/20).

Enforcement of the legislation on linguistic integration of foreigners is not only a challenge for the persons concerned, but also for the administrative authorities. Bernaerts (2020) has shown how administrative authorities, in their interactions with foreign persons, do not always apply linguistic

legislation with the same rigidity. In some cases, this administrative flexibility has received legislative recognition. The Council of State (No. 53.019) has thus implicitly admitted that the authorities in charge of the initial reception of new arrivals must address them in a language they understand, even if it is not one of the three “national” languages. Providing integration services in other languages has never given rise to any real political opposition.

III.3 Anglicization of business life

In Belgium as elsewhere, the *lingua franca of international trade is often English. To increase the* attractiveness of Brussels to the business community, the government announced its intention (through Bill 2018) to create a *Brussels International Business Court* (BIBC) that would allow parties who so wished to conduct all their proceedings in English.

The project never saw the light of day. It did, however, give the Council of State the opportunity to clarify whether, and under what conditions, the constitutional rules and principles that now define the Belgian linguistic compromise could be accommodated by the introduction of English in court proceedings. Summarizing these rules and principles, the Council of State (No 64.211) stated that

> "... public services—including the judiciary—must in principle make use of the official languages, but that the use of another language may be regulated insofar as the use of the official language or languages proves to be impossible by the nature of things or the necessities of the service or the general interest impose the use of other languages. If this condition is met, the use of another language may be regulated on the additional condition that the primacy of the language or languages of the region is not infringed (article 4, paragraph 1, of the Constitution) and that "the principle of equality and the prohibition of discrimination are not violated (articles 10 and 11 of the Constitution)."

The advisory opinion of the Council of State remains an important precedent for the whole debate on the introduction of English in the functioning of public services (see below).

III.4 European constraints

Belgium accepts the primacy of international law in general, and most notably European Union law, over conflicting national rules (Popelier and Van De Heyning 2019, 1225-1226, 1261-1264). In all EU secondary law, primacy exists even over constitutional norms, subject to the reservation, formulated by the Constitutional Court (No 62/2016), that "the national identity inherent in the fundamental, political and constitutional structures or in the fundamental values of the protection that the Constitution confers on the subjects of law" is not discriminatorily undermined (see Gérard and Verrijdt 2017). To date, it has not been specified by case law whether, and to what extent, the constituent elements of the Belgian compromise are part of the "national identity" or "fundamental values" (see Council of State No 64.211, fn 31).

The constraints resulting from EU law have, in some respects, challenged this compromise. For instance, the principles relating to the free movement of workers, as interpreted by the Court of Justice in *Anton Las* (C-202/11), have had an impact on the rules issued by the Flemish Community on the use of languages in employment relationships. As a rule, the CJEU recalls that "the provisions of European Union law do not preclude the adoption of a policy for the protection and promotion of one or more

official languages of a Member State." However, the measures adopted by the Flemish Community to realize this legitimate aim were found to be excessive. According to the CJEU, Article 45 TFEU must be interpreted as precluding legislation of a federated entity that requires all employers whose established place of business is located in that entity's territory to draft cross-border employment contracts *exclusively* in the official language of that federated entity. Legislation of a member state that would require the use of the official language of that member state for cross-border employment contracts, but which would also permit the drafting of an authentic version of such contracts in a language known to all the parties concerned, would be less prejudicial to freedom of movement for workers.

IV. POTENTIAL REFORMS

Several proposals have been made to modernize the Belgian linguistic arrangement. We have selected three of them: possible changes to the rules governing language in education, as a cement for the "social base" of this compromise; the potential recognition of English as an official language, as a response to the internationalization of the business life and the growing mobility of population, especially in the European context; and the "realignment" of the law on books with the law on linguistic matters in practice, as a factor of equality and legal security that could lead to a better acceptance of this compromise.

IV. 1 Language in education

The need to preserve linguistic identities, and the underlying cultural identities, may justify the existence of protective measures. Specifically, they may restrict the possibility that languages "compete" with each other in the education system, with the risk of "dominant" languages *de facto* marginalizing the others. In Flanders, education in Dutch was used to develop a Flemish identity (Ceuppens and Foblets 2007, 104), but it also changed economic relations, when the French-speaking industry was confronted with a labor market with mainly Dutch-speaking graduates (Boehme 2013, 170). Political views and the economic and cultural context now seem to have sufficiently shifted for these restrictive measures to be relaxed and for a more assertive promotion of multilingualism in education to be considered.

A measure that seems obvious, would be to require that the second national language be on the curriculum for all pupils until the end of compulsory education (Dumont 2020, 63-67; Sinardet 2011). This is already the case in Flanders and Brussels, but not in the unilingual French-speaking Region, where it is possible to choose English, German, or Dutch as a second language in secondary education. According to the latest available statistics (2020), only 15% of Walloon pupils choose Dutch, and the proportion is decreasing. A reform in this area seems necessary. The issue is not only the need to maximize opportunities in the labour market, but also to ensure the minimum conditions for building social cohesion and participating fully in democratic debate. Such reform falls within the competence of the French Community, but legally it could also be imposed by a constitutional amendment. The government of the French Community (2019-2024) has scheduled a debate on this issue.

Another possible measure is the relaxation of the rules and conditions that constrain foreign language teaching in higher education. The legislation of the French Community (art. 75 Decree 2013/2019) has recently been made more flexible in this respect, to meet the new needs of institutions for mobility (in and out) of their students and staff. In Flanders the law allows for the organization of courses or a full bachelor's or master's degree in a foreign language, but with a basic condition that equivalent education is available in Dutch. For example, the University of Antwerp has developed an English Master in Law degree that is given along with the Dutch master's program.

Finally, there have been demands for several years to create truly bilingual schools in Brussels (Nassaux 2011, Nos 2013-2014; Brussels Government 2021), with an equal number of courses taught in Dutch and French without distinction between a "first" and "second" language, and with both French and Dutch as the administrative languages. The difficulty is that the French and the Flemish communities, separately or together, do not have the competence to create schools whose activities are also directed towards the other linguistic community. In Brussels, "bi-educational" matters are a competence of the federal state, which has never exercised it in practice since education has been transferred to the Communities (1970 and 1988) and has no intention to do so now.

The "reinvention" of a "national" education policy, even for the sole purpose of creating bilingual schools in Brussels, would come up against political resistance, as well as practical obstacles: all the resources (human and financial) and the know-how are now with the communities. Consequently, the most efficient solution would certainly be to amend the constitution to entrust this bi-educational competence to another authority that would actually exercise it. The difficulty is: which authority? (El Berhoumi and Sautois 2019). Possible authorities are the Brussels-Capital Region, or the Joint community Commission (*Commission Communautaire commune/Gemeenschappelijke gemeenschapscommissie*), but this scenario encounters political obstacles. One major obstacle: for some politicians on both sides of the language border, transferring

the matter of education from the French and Flemish communities to the Brussels institutions is not negotiable. An alternative approach would be to entrust the "bi-educational" matter to the communities, acting through a cooperation agreement, but there is a risk that implementation could be blocked. It is difficult to predict whether any of the options will be put on the agenda and receive sufficient political support in the next state reform currently under preparation.

IV.2 English as a new "official" language in Brussels

Brio language barometers (Brio 2018) show a decline in the knowledge of French and Dutch in Brussels, as well as the important place occupied by knowledge of English. According to a longstanding interpretation, the only "languages spoken in Belgium" within the meaning of article 30 of the Constitution are Dutch, French and German. Contemporary case-law has nonetheless increasingly accepted that there is a place for English in the organization of public services. However, the scope remains modest, and must always be justified by duly demonstrated needs and respect the territoriality principle.

To overcome these significant limitations, some have proposed that English be given official language status in Brussels. Philippe Van Parijs (2018) proposes to give English in the provision of public services in Brussels a place equivalent to that of Dutch and French. This, however, would require a constitutional revision of the territoriality principle deduced from article 4 of the Constitution. This is obviously a perilous project, as it concerns a particularly delicate pillar of the Belgian compromise. Beyond this difficulty, there is a particular fear that the officialization of English will lead, if not to a further decline in the knowledge of French and Dutch in Brussels, at least to a stagnation in the progress of this knowledge among newcomers, whereas this knowledge remains fundamental for the construction of a strong social link.

IV.3 Closing the gap between the letter of the law and law in action

Bernaerts (2020) has shown that there is an important gap in Belgium between the letter of the law on the use of languages and its application by public authorities, especially at the local level. However, when it becomes too large and too long-lasting, this gap is a source of difficulties in terms of legal certainty and equality—real or perceived—before the law. From this point of view, but also for the purposes of democratic legitimization of the relevant policies, it would be desirable that the legislatures codify the administrative practices developed to deal with the new problems. For the same purpose, Belgium may have to update its constitution.

Several authors (see Velaers 2016) have long highlighted the need to update certain constitutional provisions that have remained unchanged since 1831, and that have been more or less largely overtaken by the case law (including from the European Union) that applies to them. Article 30 of the Constitution is a significant example of this. The longstanding interpretation of "language spoken in Belgium," which has been limited to German, French and Dutch, forces a large part of linguistic freedom to be reconstructed, in an artificial manner, between the lines of other constitutional provisions. Article 30 also gives the appearance that the linguistic freedom between private persons is absolute and can never be regulated by law. However, this is contradicted by the Constitution itself - for example, regarding social relations between employers and employees and by case law. From the point of view of democratic legitimization and transparency—*e.g.* for the language of services provided to newcomers required to complete an integration process—it would be necessary to amend article 30 on the points just discussed.

fundación Manuel Giménez Abad 20 años
de Estudios Parlamentarios y del Estado Autonómico

V. CONCLUSIONS

Belgian federalism was born in part from an absolutely legitimate demand to preserve the cultural and linguistic identity of each of the components of the population. To this end, a compromise was sought which strives to ensure a balance between collective and individual protections, reflected in linguistic freedom and the creation of linguistic facilities. This compromise, potentially an example for other countries, is however, and irrevocably, a *work in progress*—like Belgian federalism itself. The linguistic battles of the past no longer occupy centre stage as they did until a few years ago, but divergent views are still very much present and will continue to fuel debates on state reform in years to come. The challenge will be, in particular but not exclusively, the modernization of the linguistic compromise in the context of the globalization of economic exchanges and migratory movements.

fundación Manuel Giménez Abad 20 años
de Estudios Parlamentarios y del Estado Autonómico

fundación Manuel Giménez Abad de Estudios Parlamentarios y del Estado Autonómico

REFERENCES

- BERNAERTS, Jonathan (2020): Linguistic diversity and administrative interactions in Belgium and Germany: a legal and empirical analysis. PhD Diss, University of Antwerp/Max Planck Institute for Social Anthropology.
- BOEHME, Olivier (2013): Een geschiedenis van het economisch nationalism. Antwerp: De Bezige Bij.
- Brio (2018): "Brio language barometer 4: languages in Brussels." Accessed January 18, 2022. https://www.briobrussel.be/node/14776
- CEUPPENS, Bambi and Marie-Claire FOBLETS (2007): The Flemish Case: A Monolingual Region in a Multilingual Federal State. In Regional identity and diversity in Europe, edited by D M Smith and E Wistrich, 104. London: Federal Trust for Education and Research.
- DELGRANGE, Xavier and Sébastien VAN DROOGHENBROECK (2002): "La signature de la Convention-cadre sur la protection des minorités nationales et les mesures de protection contenues dans les lois spéciales." Administration publique trimestriel, 273-287.
- DELMARTINO, Frank, Hugues DUMONT and Sébastien VAN DROOGHENBROECK (2010): Kingdom of Belgium. In Diversity and Unity in Federal Countries, edited by. L. Moreno and C. Colino. Montreal and Kingston: Mc Gill-Queen's University Press, 47-75.
- DUMONT, Hugues (2020): "Lettre ouverte aux Belges qui souhaitent se réapproprier les cadres de leur vie démocratique." Politique Belge: les évènements—les hommes—les attitudes politiques, no.113 63-67.
- EL BERHOUMI, Mathias, et Joëlle SAUTOIS (2019): "Etude juridique relative à la création d'écoles dispensant un enseignement bilingue en région de Bruxelles-Capitale," March 31. Brussels Studies Institute. https://bsi.brussels/publication/etude-juridique-enseignement-bilingue
- FOBLETS, Marie-Claire and Zeynep YANASMAYAN (2010): "Language and Integration Requirements in Belgium." In A Re-definition of Belonging? edited by R. van Oers et al., 267-301. Leiden, The Netherlands: Brill.
- GÉRARD, Philippe and Willem VERRIJDT, (2017): "Belgian Constitutional Court Adopts National Identity Discourse." Eu.Const.L.Rev. 13: 182-205.
- MEES, Hannelore & y, Cathy & BEYERS, Jean-Christophe & y, Ann & DELVAUX, Bram (2016): Analysing and evaluating flood risk governance in Belgium.
- NASSAUX, J.-P (2013, 2014): Le Nouveau Mouvement Bruxellois, Courrier Hebdomadaire du CRISP, 2011/18-19, nn (2013 et 2014).
- PEETERS, Patrick (2012): "The constitutional and institutional autonomy of Communities and Regions in federal Belgium." In Constitutional Dynamics in Federal Systems, edited by M. Burgess and G.A. Tarr, 164-173. Montreal: McGill-Queen's University Press.
- PEETERS, Patrick and Jens MOSSELMANS (2009): "The Brussels-Halle-Vilvoorde-Question: A Linguistic Trap." European Public Law 15, 5-16.
- POPELIER, Patricia (2019): "Asymmetry and Complexity as a device for multinational conflict management. A country study of constitutional asymmetry in Belgium." In Constitutional Asymmetry in Multinational Federalism, edited by P. Popelier and M. Sahadzic, 17-23. London: Palgrave McMillan.
- POPELIER, Patricia and Catherine VAN DE HEYNING (2019): "The Belgian Constitution: the efficacy approach to European and global governance." In National Constitutions in European and Global Governance: Democracy, Rights,

the Rule of Law, edited by A. Albi and S. Bardutzky, 1225-1226 and 1261-1264. Den Haag, Netherlands: Asser Press.

- POPELIER, Patricia and Koen LEMMENS (2015): The constitution of Belgium: a contextual analysis, Oxford, UK: Hart Publishing.
- SINARDET, Dave (2011): "Les francophones, un discours probelge souvent hypocrite." Le Vif (on line version), 26 April 2011.
- VAN DER JEUGHT, Stefaan (2017): "Territoriality and freedom of language: the case of Belgium." 2017. Current Issues in Language Planning 18: 181-198.
- VAN DROOGHENBROECK, Sébastien and Jan VELAERS (2008): "La répartition des compétences dans la lutte contre la discrimination." In Les nouvelles lois luttant contre la discriminationn, edited by C. Bayart, S. Sottiaux et S. Van Drooghenbroeck, 101-130. Belgium: Bruges: Die Keure.
- VAN PARIJS, Philippe (2018): Belgique : une utopie pour notre temps. Bruxelles: Académie Royale de Belgique.
- VELAERS, Jan (2016): "Constitutional Versus International Protection of Human Rights: Added Value or Redundancy? The Belgian Case, in the Light of the Advisory Practice of the Venice Commission," Revue interdisciplinaire d'études juridiques 77 265-295.
- VELAERS, Jan (2019): De Grondwet. Een artikelsgewijze commentaar, vol 1, Belgium, Bruges: Die Keure.

Belgian Policy Documents

- Brussels Regional Government "Stratégie G04Brussels 2030" (https://go4.brussels/wp-content/uploads/2021/07/S2030bis_FR.pdf)

Belgian Case-Law

- Constitutional Court
- Constitutional Court., 26 March 1986, no 17/1986 Constitutional Court, 26 May 2003. no 73/2003 Constitutional Court, 1 July 2008, no 101/2008 Constitutional Court, 17 October 2019, no 136/2019 Constitutional Court, 26 April 2016, no 62/2016

Belgian Council of State

- 1Council of State, Legislation Section, Opinion No 25460 of 7 August 1996, to be consulted on www.raadvst-consetat.be
- Council of State, Legislation Section, Opinion No 53019 of 23 April 2013, to be consulted on www.raadvst-consetat.be
- Council of State, Legislation Section, Opinion No 59628 of 19 September 2016, to be consulted on www.raadvst-consetat.be
- Council of State, Legislation Section, Opinion No 64211 of 2 March 2018, to be consulted on www.raadvst-consetat.be
- Council of State, Legislation Section, Opinion No 66.996 of 13 February 2020, to be consulted on www.raadvst-consetat.be
- Council of State, Section of Administrative Litigation, Judgement 227.776, 20 June 2014, to be consulted on www.raadvst-consetat.be.
- Council of State, Section of Administrative Litigation, Judgement 251.570, 22 September 2021, to be consulted on www.raadvst-consetat.be

fundación Manuel Giménez Abad 20 años
de Estudios Parlamentarios y del Estado Autonómico

European Court on Human Rights

- ECrtHR, Judgement *Demir & Baykara v Turkey,* 12 November 2008, Appl no 34503/97 ECrtHR, Judgement *Sukran Aydyn v Turkey,* 21 January 2013, Appl no 49197/06 ECrtHR, Judgement *Rooman v Belgium,* 31 January 2019, Appl no 18052/11

Court of Justice of the EU

- ECJ, C-579/13, judgement of 4 June 2015 ECJ, C-202/11, judgement of 16 April 2013 ECJ, C-153/14, Judgement of 9 July 2015
- ECJ, C-257/17, Judgement of 7 November 2018 ECJ, C-94/20, Judgement of 10 June 2021

Belgian Legislation

- Decree of 14 October 2021 "on the reinforcement of the feminisation of the names of professions, functions, grades or titles and on non-discriminatory good practices regarding gender in official or formal communications."
- Circular VR 2019/4, recommendation 10
- Bill of Law creating the Brussels International Business Court, House of Representatives, Doc 54- 3072/1
- Decree of the French Community of 7 November 2013 "définissant le paysage de l'enseignement supérieur et l'organisation académique des études."
- Codex Hoger Onderwijs. ■