

# LANGUAGE BORDER AND LINGUISTIC LEGISLATION IN BELGIUM

ELŻBIETA KUŹELEWSKA\*

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## I. INTRODUCTION

Belgium is a founding member of the European Union (“EU”). Belgium is a trilingual country with federal organization, consisting of four different entities constituted on the basis of language<sup>1</sup>. The linguistic groups that comprise Belgian population have a long history of conflict. For many years, tensions between French and Dutch speaking areas have been ameliorated through the principle of “territoriality.”<sup>2</sup> Application of this principle resulted in division of the country into three areas: the Flemish Region (the Dutch-speaking region in the north), the Walloon Region (the French-speaking region in the south) and the Brussels-Capital Region (officially bilingual but predominantly francophone).<sup>3</sup> In each of those areas, only one language has official status, and speakers of other national languages residing there have no linguistic rights.<sup>4</sup>

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\* Head of the Centre for Direct Democracy Studies established in 2011 at the Faculty of Law, University of Białystok, Poland. Author of publications on direct democracy, European integration and political systems in comparative perspective.

<sup>1</sup> 2007 CONST. art. 2-4 (Belg.).

<sup>2</sup> Ulrike Vogl & Matthias Hüning, *One Nation, One Language? The Case of Belgium*, 34(3) DUTCH CROSSING. 228, 229 (November 2010), available at [http://www.academia.edu/1056036/One\\_nation\\_one\\_language\\_The\\_case\\_of\\_Belgium](http://www.academia.edu/1056036/One_nation_one_language_The_case_of_Belgium).

<sup>3</sup> Dirk Jacobs, *Alive and Kicking? Multiculturalism in Flanders*, 6(2), INT’L J. ON MULTICULTURAL SOC’Y. 280, 282-283 (2004), available at <http://unesdoc.unesco.org/images/0013/001385/138592E.pdf#page=87>.

<sup>4</sup> Isabelle Bambust & Albert Kruger & Thalia Kruger, *Constitutional and Judicial Language Protection in Multicultural States: A Brief Overview of South Africa and Belgium*, 5(3) ERASMUS LAW REVIEW. 211, 214 (2012)

The principle of territoriality has resolved some tensions between linguistic groups by guaranteeing linguistic rights within geographic boundaries. But it has not fully resolved those tensions. The Belgian experience in dealing with a multicultural and multi-linguistic polity clearly will provide valuable insights for other national groups wrestling with ever-increasing heterogeneity among their linguistic populations. More importantly in the short term, however, is the ongoing struggle for dominance between French and Dutch speakers within Belgium. As this paper will explore, this linguistic battle will also yield insights for addressing bilingual tensions within existing geopolitical entities.

## II. BACKGROUND

Belgium is a trilingual and federal country consisting of four different entities constituted on the basis of language: the Dutch-speaking community (called Flanders, nearly 60% of the population), the French-speaking one (called Wallonia, over 30%), German-speaking community (less than 1%) and the Dutch-French bilingual community of Brussels.<sup>5</sup> “The Brussels-Capital Region, home to approximately 10% of the population, is officially bilingual.”<sup>6</sup> The three official languages are Dutch, French, and German.<sup>7</sup> It is worth to mention that the constitution of 1831 guaranteed linguistic freedom, nevertheless French became the only official language.<sup>8</sup> As Willemyns rightfully writes, although the new constitution provided for linguistic freedom, this liberty was profitable only for the well-off and the powerful, in particular to the bourgeoisie from Wallonia and

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available at file: [http://repub.eur.nl/pub/51392/Volume05Issue03-Bambust\\_and\\_Kruger\\_and\\_Kruger.pdf](http://repub.eur.nl/pub/51392/Volume05Issue03-Bambust_and_Kruger_and_Kruger.pdf)

<sup>5</sup> Frank Delmartino, Hugues Dumont & Sébastien van Drooghenbroeck, *Kingdom of Belgium*, in *DIVERSITY AND UNITY IN FEDERAL COUNTRIES* 48 (Luis Moreno & César Colino-eds., McGill-Queen’s University Press 2010).

<sup>6</sup> Martin Euwema & Alain Verbeke, *Negative and Positive Roles of Media in the Belgian Conflict: A Model for De-escalation*, 93 *MARQ. L. REV.* 139, 139 (2009) available at <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=4929&context=mulr>.

<sup>7</sup> Liesbet Hooghe, *Belgium: Hollowing the Center*, in *FEDERALISM, UNITARISM, AND TERRITORIAL CLEAVAGES* 1, 5 (Ugo Amoretti & Nancy Bermeo eds., Johns Hopkins Press 2002) available at [http://www.unc.edu/~hooghe/assets/docs/books/princeton\\_finaldraft.pdf](http://www.unc.edu/~hooghe/assets/docs/books/princeton_finaldraft.pdf).

<sup>8</sup> *Id.* at 5.

Flanders, all of whom were French speakers.<sup>9</sup> The government appointed only French-speaking civil servants.

The discrimination against Dutch in the 19th century was incontrovertible.<sup>10</sup> Intellectuals in the Flemish centers started to advance language grievances and formed the 19th century Flemish Movement to agitate individual language rights.<sup>11</sup> Partly, this struggle involved the official recognition of Dutch as an official language.<sup>12</sup> However, it also involved the Dutch-speaking community in Belgium itself.<sup>13</sup> This resulted in development of conflict. As Nelde notes, “it was not a conflict between languages, but between speakers of languages and between language communities.”<sup>14</sup>

The first series of language laws, adopted in the late 19th century, forced asymmetric bilingualism.<sup>15</sup> The Flemish region became in principle bilingual, while the rest of Belgium was not changed and remained monolingual.<sup>16</sup> The legislation was limited in scope. The language laws of 1873 (court), 1878 (administration) and 1883 (education) enforced language rights for Dutch speakers in Flanders.<sup>17</sup> The most significant was the Equalization Act of 1898, which made Dutch an official language on equal footing with French. Language laws adopted in 1963 moved towards both territorial unilingualism in Flanders and Wallonia and bilingual institutions in Brussels, in areas with linguistic minorities. Until 1930 Dutch hardly functioned as a national, cultivated language in

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<sup>9</sup> Roland Willemyns, *The Dutch-French Language Border in Belgium*, in LANGUAGE CONTACT AT THE ROMANCE-GERMANIC LANGUAGE BORDER 36, 37 (Jeanine Treffers-Daller & Roland Willemyns eds., 2002).

<sup>10</sup> *Id.* at 37.

<sup>11</sup> ELS WITTE & HARRY VAN VELTHOVEN, LANGUAGE AND POLITICS, THE BELGIAN CASE STUDY IN A HISTORICAL PERSPECTIVE 39-40 (VUB University Press 1999).

<sup>12</sup> Dirk Geeraerts, *Everyday language in the media: the case of Belgian in DUTCH SOAP SERIES 3* (2001) available at <http://www.ling.arts.kuleuven.be/qlvl/PDFPublications/01Everydaylanguage.pdf>.

<sup>13</sup> Dirk Geeraerts, *Everyday language in the media. The case of Belgian Dutch soap series*, in SPRACHE IM ALLTAG. BEITRÄGE ZU NEUEN PERSPEKTIVEN IN DER LINGUISTIK 281, 282 (Andrea Lehr et al. eds., de Gruyter 2001).

<sup>14</sup> Peter Hans Nelde, *Language in Contact and Conflict: The Belgian Experience and the European Union*, in LANGUAGES IN CONTACT AND CONFLICT, CONTRASTING EXPERIENCES IN THE NETHERLANDS AND BELGIUM 65, 66 (Sue Wright ed., Multilingual Matters Ltd 1995).

<sup>15</sup> Hooghe, *supra* note 7, at 6.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> Jetje de Groof, *Two hundred years of language planning in Belgium*, in STANDARIZATION. STUDIES FROM THE GERMANIC LANGUAGES 117, 125 (Andrew R. Linn & Nicola McLelland eds., Johns Benjamin Publishing 2002).

Flanders.<sup>18</sup> French was used by the upper classes and dominated education, administration, politics, and public life although the majority of the population spoke Dutch.<sup>19</sup>

It took time and effort before Dutch was recognized as one of the three official Belgian languages and as the only public language of Flanders. This achievement was made possible by the Flemish Movement.<sup>20</sup> The first significant victory of the Flemish Movement was the *Dutchification* (or *Flemification*)<sup>21</sup> of Ghent University in 1930, followed in 1932 by the series of language laws referring the use of the native language in primary and secondary education according to the new principle “language of territory – language of education.”<sup>22</sup> The University of Ghent got the opportunity to expand fully after the Second World War. The similar case was with the gradually flemished Catholic University of Louvain, which became an autonomous Flemish institution in 1968.<sup>23</sup> In the Belgian context, the Dutch language is clearly on the defensive and stands to benefit from linguistic legislation, while French is clearly stronger and less in need of legislative protection.<sup>24</sup>

### III. LANGUAGE BORDER

Grievances on the language questions in the census led to the last series of linguistic laws in the 1960s. Most significant was the 1963 law that divided Belgium into four language areas: unilingually Dutch-speaking (Flanders), unilingually French-

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<sup>18</sup> Reinhold Vandekerckhove, *Belgian Dutch versus Netherlandic Dutch: New Patterns of Divergence? On Pronouns of Address and Diminutives*, 24 *MULTILINGUA* 380 (2005).

<sup>19</sup> *Id.* at 379, 380.

<sup>20</sup> Wilfried Swenden & Maarten Theo Jans, ‘*Will It Stay or Will It Go?*’ *Federalism and Sustainability of Belgium*, 29(5) *WEST EUROPEAN POLITICS*. 877, 878 (2006).

<sup>21</sup> PIERRE BRACHIN, *DUTCH LANGUAGE, A SURVEY* 40 (Stanley Thorners Publishing Ltd 1985).

<sup>22</sup> Ludo Beheydt, *The Linguistic Situation in a New Belgium*, in *LANGUAGES IN CONTACT AND CONFLICT. CONTRASTING EXPERIENCES IN THE NETHERLANDS AND BELGIUM* 48, 52 (Sue Wright ed., Multilingual Matters Ltd. 1995).

<sup>23</sup> Guido Geerts, *Language Legislation in Belgium and the Balance in Power in Walloon-Flemish Relationships*, in *LANGUAGE ATTITUDES IN THE DUTCH LANGUAGES AREA* 25, 37 (Roeland van Hout ed. et al., Dordrecht 1988).

<sup>24</sup> KENNETH D. MCRAE, *CONFLICT AND COMPROMISE IN MULTILINGUAL SOCIETIES, BELGIUM* 42 (Vilfrid Laurier University Press 1986).

speaking (Wallonia), unilingually German-speaking areas, and the bilingual area of Brussels.<sup>25</sup>

The first language law established and set the permanent language border, for each of the four language territories.<sup>26</sup> In doing so, the legislator abandoned the principle of the language census and, as a result, the language border could no longer be changed.<sup>27</sup> The radical 1963 law did not establish strictly homogenous regions, and many Francophones have never accepted the freezing of the linguistic frontier around Brussels. In 1970, an amendment to the constitution introduced four measures of power sharing between the two language groups. The government was to consist of equal number of Dutch- and French-speaking ministers taking decisions by consensus. Deputies to the national parliament were divided into separate Dutch and French language groups.<sup>28</sup> The language policy legislation was made subject to special voting requirements: a majority of each language group had to be present, a majority in each language group had to support the law, and there had to be an overall two-third majority in favour.<sup>29</sup>

The significant step approved in the 1970 reform was introducing two models of federalism: communities and regional autonomy.<sup>30</sup> The constitution defined linguistic communities (Francophone, Dutch-speaking, and German). The Francophone (French) community referred to all Belgian citizens in the Walloon region and Brussels speaking in French (French-speaking in the Flemish region were excluded). The Dutch-speaking (Flemish) community referred to all persons in the Flemish region or in Brussels who spoke Dutch. The German community indicated all German-speaking Belgians in Eastern cantons.<sup>31</sup> It means that the

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<sup>25</sup> Liesbet Hooghe, *From Regionalism to Fedrealism*, in *THE TERRITORIAL MANAGEMENT OF ETHNIC CONFLICT* 70, 76 (John Coakley ed., Frank Cass Publishers 2005).

<sup>26</sup> Hendrik Vuye, *Language and Territoriality in Flanders in a historical and international context*, available at file:

<http://www.flanders.be/en/publications/detail/language-and-territoriality-in-flanders-in-a-historical-and-international-context>

<sup>27</sup> Hendrik Vuye, *Language and Territoriality in Flanders in a historical and international context*, available at file:

<http://www.flanders.be/en/publications/detail/language-and-territoriality-in-flanders-in-a-historical-and-international-context>

<sup>28</sup> Jean-Benoit Pilet, *The Adaptation of the Electoral System to the Ethno-linguistic Evolution of Belgian Consociationalism*, 4(4) *ETHNOPOLITICS* 397, 398 (2005) available at [http://dev.ulb.ac.be/sciencespo/dossiers\\_membres/pilet-jean-benoit/fichiers/pilet-jean-benoit-publication2.pdf](http://dev.ulb.ac.be/sciencespo/dossiers_membres/pilet-jean-benoit/fichiers/pilet-jean-benoit-publication2.pdf).

<sup>29</sup> *Id.* at 401.

<sup>30</sup> 1970 CONST. art. 1 - 3 (Belg.).

<sup>31</sup> Alain Verbeke, *Unification of Laws in Federal \systems. Belgium*, available at file: <http://ssrn.com/abstract=1751674>.

communities had fluid territorial boundaries. Unlike the regions, the communities do not have a clear territorial basis, but use language as their main criterion.<sup>32</sup> The principle of regional autonomy was introduced to the constitution, too.<sup>33</sup> The regulation of language use was transferred to the Flemish and French communities for three main reasons: 1) administration affairs; 2) education in institutions established, subsidized or recognized by the authorities; 3) social relations between employers and their personnel, as well as the instruments and documents of enterprises required by law and regulations.<sup>34</sup>

The second constitutional amendment in 1980 set Belgium on the path of territorial devolution. This reform established separate administrative apparatus for regions and communities.<sup>35</sup> The 1980 constitutional revision gave the Flemish and the Walloon regions their own parliaments with legislative power and their own governments with executive power in territorial matters such as economy, energy, environment, etc.<sup>36</sup> The Brussels region was exempt from the reform. The third constitutional reform in 1989 stopped short of creating a federal state.<sup>37</sup> The new Belgian constitutional structure resembled a form of dual federalism, where regions, communities, and national government had primarily exclusive competencies and the division of work was jurisdictional.<sup>38</sup> On the basis of 1989 constitutional reform, Metropolitan Brussels was made a separate region with its own legislative and executive powers.<sup>39</sup> It should be underlined that the 1989 reform limited fiscal devolution and regions and communities obtained only circumscribed fiscal autonomy.<sup>40</sup>

In 1989, the Communities were given authority over education.<sup>41</sup> This resulted in separation between Flemish, French, and German education system. Even in bilingual Brussels, the

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<sup>32</sup> Wilfried Swenden & Marleen Brans & Lieven de Winter, *The Politics of Belgium: Institutions and Policy under Bipolar and Centrifugal Federalism*, 29(5) WEST EUROPEAN POLITICS 863, 872 (2006).

<sup>33</sup> Hooghe, *supra* note 25, at 80-82.

<sup>34</sup> Vuye, *supra* note 26, at 26.

<sup>35</sup> 1980 CONST. Chapter IV, art. 115-140 (Belg.)

<sup>36</sup> Beheydt, *supra* note 22, at. 56.

<sup>37</sup> Liesbet Hooghe, *Belgium: Hollowing the Center*, in 1980 CONST. Chapter IV, art. 115-140 (Belg.)F 71 (Ugo M. Amoretti & Nancy Bermeo, eds., The Johns Hopkins University Press 2004).

<sup>38</sup> Brainard Guy Peters, *Consociationalism, Corruption and Chocolate: Belgian Exceptionalism*, 29(5) WEST EUROPEAN POLITICS 1079, 1083-1084 (2006).

<sup>39</sup> 1989 CONST. art. 136 (Belg.).

<sup>40</sup> Hooghe, *supra* note 7, at 23.

<sup>41</sup> Jaak Billiet, Bart Maddens & Anfré-Paul Frogner, *Does Belgium (Still) Exist? Differences in Political Culture between Flemings and Walloons*, 29(5) WEST EUROPEAN POLITICS. 52 (2006).

French- and Dutch-speaking education networks are completely separate.<sup>42</sup> This situation enforces lack of knowledge of citizens about the other region and are becoming alienated from it.<sup>43</sup>

Division into language areas is very crucial. An example of coexisting languages within Belgium can be representation in the standing committees of the European Science Foundation. Belgium is the only country to send a delegation from both language communities.<sup>44</sup>

#### IV. BRUSSELS

The pattern of fluctuation shows an erosion within the Dutch linguistic territory finally rendering a city which used to be a part of Flanders into a bilingual city with Francophone dominance. “From a judicial point of view, a language shift did nevertheless occur, since Brussels changed its status from (*de facto*) monolingual Dutch into (*de jure*) bilingual.”<sup>45</sup> For many centuries, the inhabitants of Brussels spoke a German dialect related to the Flemish tongues of surrounding communes – but with a distinctive character of its own due, in part, to the influence of Romance tongues to the south.<sup>46</sup> During the 19th century, the linguistic character of the city fundamentally changed as the use of French in the capital put Francophones in a socially advantaged position. Concurrently, substantial numbers of French speakers migrated to the city from southern Belgium.<sup>47</sup> Brussels had a majority of French speakers by the early 20th century.<sup>48</sup> Nowadays French in Brussels has the position of *lingua franca*.<sup>49</sup>

The portrait of Brussels involves not only linguistic background and competence but also attitudes, social status, job,

<sup>42</sup> Jan D. Markusse, *German-speaking in Belgium and Italy: two different autonomy arrangements*, 1 ACTA UNIVERSITATES CAROLINAE 62, 63 (1999).

<sup>43</sup> Jaak Billiet & Bart Maddens & Anfré-Paul Frogner, *Does Belgium (Still) Exist? Differences in Political Culture between Flemings and Walloons*, 29(5) WEST EUROPEAN POLITICS 54, 56 (2006).

<sup>44</sup> *Id.* at 54.

<sup>45</sup> Willemyns, *supra* note 9, at 42.

<sup>46</sup> BRUCE DONALDSON, *DUTCH. A LINGUISTIC HISTORY OF HOLLAND AND BELGIUM* (2013) available at [www.dbnl.org/tekst/dona001dutc02\\_01/dona001dutc02\\_01.pdf](http://www.dbnl.org/tekst/dona001dutc02_01/dona001dutc02_01.pdf).

<sup>47</sup> Alexander B. Murphy, *Brussels: division in unity or unity in division?*, 21 POLITICAL GEOGRAPHY 695, 696 (2002).

<sup>48</sup> Robert Mnookin & Alain Verbeke, *Persistent Nonviolent Conflict with No reconciliation: The Flemish and Walloons in Belgium*, 72 LAW AND CONTEMPORARY PROBLEMS 169 (2009).

<sup>49</sup> Rudi Janssens, *Language use in Brussels and the position of Dutch. Some recent findings*, 13 BRUSSELS STUDIES 1, 3-4 (2008), available at [http://www.briobrusseel.be/assets/andere%20publicaties/en\\_51\\_brus13en.pdf](http://www.briobrusseel.be/assets/andere%20publicaties/en_51_brus13en.pdf).

circumstances of discourse, etc. It should be stressed that the strongly centralizing Belgian policy resulted in a disproportional concentration of the country's financial and industrial power in the Francophone middle of the capital. Brussels became a pole of attraction to various immigrants from both the Dutch and the French-speaking parts of the country.<sup>50</sup>

At the beginning, most of the linguistic legislation did not apply to Brussels or had to be paid for by concessions intensifying the “*Frenchification*” of the capital.<sup>51</sup> To counter this phenomenon, the national government began, in the 1970s, to enact legislation that would guarantee Dutch speakers in Brussels a position on all levels, such as school system, so-called “freedom of the head of the family.”<sup>52</sup>

This new legislation was challenged in the European Court of Human Rights by six applicants alleging that Belgian linguistic legislation relating to education infringed their rights under the European Convention on Human Rights. The first case concerning protection of mother tongue education or education in the minority language dates back to 1968.<sup>53</sup> Specifically, the applicants argued that the new protection for Dutch speakers violated Article 8 (right to respect for private and family life) in conjunction with Article 14 (non-discrimination), and Article 2 of the Protocol 1 to the European Convention of Human Rights of March 1952 (right to education) (Application nr. 1474/62 and others).<sup>54</sup> The applicants asserted that the law of the Dutch speaking regions where they lived (Aalst, Beersel, Antwerp, Ghent, Louvain, and Vilvorde) did not include adequate provisions for French-language education.<sup>55</sup>

The European Court of Human Rights found that the Belgian Act of 1963 did not comply with Article 14 of the Convention read in conjunction with Article 2 of the Protocol 1 on

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<sup>50</sup> Willemyns, *supra* note 9, at 43.

<sup>51</sup> Roland Willemyns, *Language borders in northern France and in Belgium: A contrastive analysis*, in *CONTRASTIVE SOCIOLINGUISTICS* 229, 241 (Marlis Hellinger et al. eds., de Gruyter 1996).

<sup>52</sup> Peter Hans Nelde, *Four Propositions for a European Language Policy*, XV-3 *INTERCULTURAL COMMUNICATION STUDIES*, 43, 48 (2006) available at <http://www.uri.edu/iaics/content/2006v15n3/05%20Peter%20Hans%20Nelde.pdf>.

<sup>53</sup> Anneleen Van Bossuyt, *Fit for Purpose or Faulty Designed? Analysis of the Jurisprudence of the European Court of Human Rights and the European Court of Justice on the Legal Protection of Minorities*, 1 *EUROPEAN CENTRE FOR MINORITY RIGHTS* 1, 12 (2007) available at [http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/Issue1/1-2007\\_van\\_Bossuyt.pdf](http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/Issue1/1-2007_van_Bossuyt.pdf).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*



the basis that it prevented certain children from having access to French-language schools in the communes in the suburbs of Brussels solely because of the residence of their parents.<sup>56</sup> The Court found unanimously that there had been no breach of Articles 8 and 14 of the Convention, and Article 2 of the protocol, with regard to the other contested legislation and points at issue.<sup>57</sup> In reaching its decision the Court considered that the principle of equality of treatment enshrined in Article 14 was violated if the distinction had no objective and reasonable justification, did not pursue a legitimate aim, and was not proportionate to the aim pursued.<sup>58</sup> Further to this, the Court opined that the right to education implied the right to be educated in the national language, and did not include the provision that the parent's linguistic preferences be respected.<sup>59</sup>

## V. LANGUAGE FREEDOM AND LANGUAGE USE

Belgians have a legal right to linguistic freedom. The state does have the authority to guarantee this language freedom in areas that are exhaustively listed in the constitution: acts of public authority and administrative affairs, legal cases, education in institutions established, subsidized and recognized by the authorities, social relations between employers and their personnel.

In accordance with the Article 129 (1) of the Belgian constitution, Communities can regulate the language use in administrative affairs.<sup>60</sup> A Regional Act of 6 December 1972 stipulates that the working language in municipal councils and the Board of Mayor and Aldermen is Dutch.<sup>61</sup> The Regional Act of 3

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> European Court of Human Rights (date of decision: 23 July 1968). Belgium Linguistic Case – ‘In the case “relating to certain aspects of the laws on the use of languages in education in Belgium” v Belgium’. Application nr. 1474/62: 1677/62; 1691/62; 1769/63; 1994/63; 2126/64) available at <http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20Belgian%20linguistics%20case.pdf>.

<sup>60</sup> 1994 Const. art. 129 (1) (Belg.).

<sup>61</sup> Décret de 6 decembre 1972 réglant l'emploi des langues dans les conseils communaux, les conseils de fédération, les conseils d'agglomération, les conseils provinciaux, les collèges des bourgmestres et échevins, les collèges de fédération, les collèges d'agglomération, les députations permanentes, les institutions subordonnées aux communes et aux provinces et les associations de communes [Regional Act] of Dec. 6, 1972, "Moniteur Belge" ["M.B."], 1973.01.09, 139, available at file: <http://www.ejustice.just.fgov.be/loi/loi.htm>

May 1972<sup>62</sup> states that the oath must be taken in Dutch. The Belgian Constitutional Court did not accept this statutory language. According to a judgment of 26 March 1986, the Constitutional Court ruled that Article 4 of the constitution does not oblige the bodies of the municipalities to use the language of the monolingual language area.<sup>63</sup> A few months later, the Council of State ruled that Article 4 of the constitution does not imply that the bodies of the municipalities in the Dutch language area must use the Dutch language.<sup>64</sup>

In Belgium, the language legislation was restricted to three areas which are monolingual within the designated territory. The first of these domains is administration which needs to be monolingual. The second field is education and it means that each educational institution will adopt the language of the territory in which it is located. As a result, in Belgium there is no official multilingual school or university. The third area is the workplace.<sup>65</sup>

## VI. LANGUAGE USE IN COURT

Language use in court cases seems to be a very interesting issue. The Act of 15 June 1935 on language use in court cases is founded on the two basic rules.<sup>66</sup> According to the first one, there is the monolingualism of proceedings, which means that the entire lawsuit is conducted only in one language. Secondly, the territoriality principles apply – the language of the language area is the legal language. In the bilingual areas, both languages can be used. Proceedings in civil cases are conducted in the language of the originating application of the case, unless the defendant asks for the proceedings to be conducted in another language. However the judge can refuse to comply with the request if case elements show that the defendant has sufficient knowledge of the

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<sup>62</sup> Décret du 3 mai 1972 réglant l'emploi de la langue néerlandaise pour la prestation de serment statute name [Regional Act] of May 3, 1972, "Moniteur Belge" ["M.B."], 1972.05.27, 88888, *available at file*: <http://www.ejustice.just.fgov.be/loi/loi.htm>.

<sup>63</sup> Cour Constitutionnelle [CC] [Constitutional Court] decision no 17/86, Mar. 26, 1986, MONITEUR BELGE [MB] [Official Gazette of Belgium] 3.B.6 (Belg.).

<sup>64</sup> Conseil d'Etat [CE] [Council of State] Sept. 30, 1986, Motte, No. Belgian Council of the State, 30 26.941, RECUEIL DES ARRÊTS Du CONSEIL D'ETAT [RACE], 1986 (Belg.).

<sup>65</sup> Nelde, *supra* note 14, at 69.

<sup>66</sup> Loi de 15 juin 1935 concernant l'emploi des langues en matière judiciaire [Act concerning the use of languages in judicial matters] of June 15, 1935, "Moniteur Belge" ["M.B."], 1935.06.22, *available at file*: <http://www.ejustice.just.fgov.be/loi/loi.htm>

language in which the originating application drawn up. Similar rules govern preliminary inquiry, the inquiry and criminal courts.<sup>67</sup>

## VII. CONCLUSIONS

Existing asymmetry in Belgium between Flemish and Walloons in political, economic, cultural, and linguistic respect seems to be completed by the institutional asymmetry. There are strong connections between cultural and linguistic asymmetry. Since Belgium opted for territorial unilingualism, both Flanders and Wallonia function as monolingual entities each paying little attention to the language of other. There is no cultural unity in Belgium. The position of French has lost much of its influence in Flanders. And Flanders is orienting more to the culture of the Netherlands, so the gap between the two communities is widening.

It is worth underlining that federalization of Belgium has occurred in steps and took 18 years before all federal units were fully operational.<sup>68</sup> The major language communities hold a mutual veto power in the centre.<sup>69</sup> This way the French-speakers ensured that their demographic minority position would not lead to their political marginalization.

The Belgian language law of July 30, 1963 in Article 4 states that: “The language of education is Dutch in the Dutch language area, French in the French language area and German in the German language area, except in the cases defined by articles 6 to 8”.<sup>70</sup> This article runs counter the EU language policy. The Treaty of Rome guaranteed the linguistic freedom of all EU citizens.<sup>71</sup> The European language policy is based on the personality principle, unlike the Belgian, which has adopted the

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<sup>67</sup> Vuye, *supra* note 26, at 36.

<sup>68</sup> Louis Vos, *Reconstruction of the past in Belgium and Flanders, 198*, available at file: <http://poli.vub.ac.be/publi/orderbooks/secession/secession-07.pdf>.

<sup>69</sup> Wilfried Swenden, *Why Is Belgian federalism Not More Asymmetrical?*, in *FEDERALISM BEYOND FEDERATIONS. ASYMMETRY AND PROCESSES OF RESYMMETRISATION IN EUROPE 31* (Ferran Requejo & Klaus-Jürgen Nagel eds., Ashgate Publishing Limited 2011).

<sup>70</sup> Loi de 30 juillet 1963 concernant le régime linguistique dans l'enseignement statute name [Law on language regulations in education] of July 30, 1963, “Moniteur Belge” [“M.B.”], 1963.08.22, 8210, available at file: <http://www.ejustice.just.fgov.be/loi/loi.htm>

<sup>71</sup> Consolidated text of the Treaty Establishing the European Community (signed in Rome on 25 March 1957, art. 248, 8d, 217 available at file: <http://europa.eu.int/eur-lex/en/>. The legal basis for the EU language policy was established in the Treaty of Rome in Article 248 (see more: Elżbieta Kuźelewska, *Unity in Diversity. The Language Policy of the European Union*, 38(51) *STUDIES IN LOGIC, GRAMMAR AND RHETORIC* 153 (2014).

territoriality principle.<sup>72</sup> Establishing language areas in Belgium resulted from the balance based on two conflicting principles: territorial and personality. This balance continues to be influenced by economic changes, ethnic attitudes and migration waves. For Brussels, this multilingual enclave is becoming European administrative centre where English is increasingly used as *lingua franca* (in an economic and also cultural context), and where Dutch is used by a self-confident, middle class Flemish minority. Is French becoming the language of the middle class and of the immigrant population? It seems French still is the most important language as it consolidates its position as a second home language of a large group of foreign speakers and as *lingua franca* it still dominates public language use in Brussels.

Maybe the Belgian way of handling language conflicts could be considered to be a model for a language planning on the part of the EU and for the U.S., which has no official language? What can EU borrow from Belgian experience? The Belgian lesson learned may be useful in tackling the linguistic problems facing the EU. The territoriality principle seems to work. In Belgium, the two principles of multilingualism were in opposition to each other: the individualist principle and the territorial principle.<sup>73</sup> The first one prevailed until the 1960s and led to extensive *Frenchification* of the country.<sup>74</sup> Nowadays this principle can be found only in bilingual Brussels.<sup>75</sup> The two largest sections of Belgium are either monolingual French or Dutch according to the territorial principle, except for a few communities on language borders. Institutionalized bilingualism is a necessary consequence of the territorial principle. All small majorities are accorded equal status. This situation in Belgium can be a good example for the EU. Belgian approach also might have useful implications in parts of the U.S. where Anglos are becoming a minority and the dominant language is Spanish.

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<sup>72</sup> Nelde, *supra* note 52, at 48.

<sup>73</sup> Nelde, *supra* note 52, at 76.

<sup>74</sup> *Id.* at 76.

<sup>75</sup> Peter Hans Nelde, *Language conflicts in multilingual Europe – prospects for 1993*, in *A LANGUAGE POLICY FOR THE EUROPEAN COMMUNITY* 66 (Florian Coulmas ed., Walter de Gruyter 1991).