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REPORT

**THE BELGIAN FEDERAL STATE,
THE FLEMISH COMMUNITY & THE WALLOON REGION
AND THE PROTECTION OF MINORITIES**

by

**Mr Ludo VENY
(Professor, Gent University, Belgium)**

**PART ONE
THE BELGIAN FEDERAL STATE**

I. SOME POLITICAL HISTORICAL FACTS

I.1. GEOGRAPHICAL AND CULTURAL SITUATION AND HISTORICAL CONTEXT

Geographical situation



1. Geographically, Belgium lies on the dividing line between the Latin and the Germanic cultures. This in itself largely explains the Belgian linguistic situation, where the country has three official languages: Dutch, French and German. Two large population groups live side by side: the Dutch-speaking Flemish Community in Flanders, in the north, and the French-speaking Community in the Walloon Region in the south. In its capital, Brussels, Dutch as well as French is spoken, but with the French in a large majority (approximately 80%).
2. There is also a German-speaking Community in the eastern part of the country, as a result of the acquisition of a number of former German municipalities after the First World War (see the Treaty of Versailles of 1918-19).
3. Consequently, in Belgium there are four language regions: 2 single-language regions (the Dutch, the French), a single German language region (where in public administration however French is used, with facilities for the German-speaking inhabitants of this canton), and the bilingual language region of Brussels-Capital (where official languages are Dutch and French).

BELGIUM

THE FEDERAL STATE



THE COMMUNITIES

THE FLEMISH COMMUNITY



THE FRENCH COMMUNITY



THE GERMAN-SPEAKING COMMUNITY



THE REGIONS

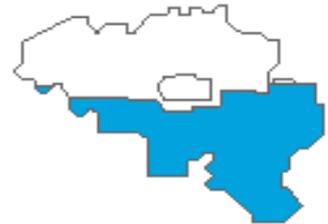
THE FLEMISH REGION



THE BRUSSELS-CAPITAL REGION



THE WALLOON REGION



The emancipation of the Flemish-speaking population

4. This transformation of the Belgian State was the result of repeated conflicts from practically its independence in 1830 - and up until now - between the country's two major communities, the Flemish and the Walloons.

In the second half of the nineteenth century the struggle for Flemish emancipation began to gain momentum; the Flemish movement, led by social-minded intellectuals, campaigned for the recognition of Dutch as a national language a par with French, which had been the only official language since independence; in other words, in the administration, the justice, the army and in education French was the only recognised and official language. Successive language laws, accepting Dutch as the second official language, from 1873 up to 1930 were approved, but nevertheless the Flemish Movement made very considerable headway.

After a short break, after the Second World War language problems surfaced again and tensions between the Northern and the Southern part of the country even increased. Slowly but surely in the political environment the opinion grew that Flemish and Walloons should be allowed to make their own decisions regarding certain sensitive matters such as education and language use; this evolution was the only possibility to prevent and to avoid the complete disintegration of the Belgian State.

A multicultural state

5. Historically, the Belgian area has always been the meeting point of the Germanic and the Romanic societies and cultures. During the 19th and 20th Century, one of the main dividing lines in the country's political history is precisely the tension between the French-speaking elite and the Dutch-speaking lower classes, or the Flemish population in the North and the French population in the South; the capital, Brussels, originally a Dutch-speaking city has always been international in scope and was, thanks to a liberal constitution, a heaven for political and religious (Jewish) refugees from all over Europe. Since the Second World War French-speaking persons - Belgian inhabitants, European citizens and migrant workers - became a majority in the Capital, which now is for over 80% French-speaking.

As a result of the Treaty of Versailles after the First World War, Belgium 'received' as an indemnity for the loss of lives and properties, a small German-speaking area in the East of the country; today this German Community counts about 60.000 inhabitants.

6. In addition to this already three-lingual state, a first important wave of migrants entered the country in the aftermath of the Second World War, foreign migrant workers (especially Italians, Spanish and Polish) who helped with the reconstruction of the Belgian economy during the fifties. A second important wave of migrant workers in the sixties and early seventies consisted of mostly Turkish and Northern-African immigrants; attracted by a booming economy and industry, and Belgians no longer interested in labour in some industrial jobs, they are now up to 5% of the population, although neither the Belgian Government nor the industry anticipated on a definitive settling of this large number of - mostly also Islamic - immigrants.

7. Very concisely with regard to the degree of integration of this two waves of immigrants, one could say that - generally spoken - the Italians and Spanish and Polish are to a high extent integrated into the Belgian society, whereas the Turkish and Moroccans - especially the male youngsters of the so called third generations - are still facing major problems: namely poverty and unemployment, ghetto suburbs or neighbourhoods, a lack of thorough knowledge and command of one of the official languages, isolation from and poor contacts with the autochthon population due to a lack of understanding of Islamic culture and religion.

An overview of the figures of the allochthonous population (1998):

EU-citizens:	562.000
Non EU-citizens:	340.000
New' Belgians*:	411.000
TOTAL	1.313.000

* Mostly Italians, Spanish, Turkish and Moroccan migrant workers having achieved Belgian nationality since 1993.

8. One can add to this multicultural aspects the exchange programs for students of institutions of higher education and universities within the European Union, rather important for the open mind of our future cultural elite, and the ongoing globalisation of the economy and the increasing use of new media. As a result, people get more and more in touch with foreign cultures, although there might appear a dominant, mainstream culture based on Anglo-saxon Christian values and underpinned by an enormous economic force.

9. A very recently occurring phenomenon of 'immigration' with impact on the multicultural state is the increasing rate of persons who fled their country for political reasons and apply in Belgium, as well as other Western European States, for the status of political refugee. During the period 1990-2000 approx. 15.000 persons applied yearly, with high peaks up to 45.000 in 1999: two main streams can be detected, namely one flowing from former Eastern European States and one pouring from central Africa.

Normally, if the attempt to get the status of political refugee fails, these persons are requested to leave the territory of the country; in practise many of them prefer to stay nevertheless illegally in the country, victim to oppression by some groups. Recently, a one momentum act tried to 'regularise' some categories of illegal residing people if presupposed conditions are fulfilled. Approximately 35.000 persons will benefit from this advantage.

1.2. FORM OF GOVERNMENT

10. The Belgian federal state is characterised by a *Parliamentary regime*, with the representative parliamentary assembles founded on the principle of national sovereignty and a hereditary constitutional monarchy within a democratic state and the rule of law.

11. By enshrining the principle of *national sovereignty*, the main objective of the National Congress in 1830 was to stress the idea that only the nation as a whole could be the source of all State power and that no individual person or a group of individuals could claim such powers on the basis of any personal right.

However, accordingly this abstract Nation delegates the exercise of state power to certain public authorities created and organised by the Constitution or the Legislative, such as the federal and the federative legislative and executive authorities, the – still federal – judiciary and decentralised bodies, but also – and in an important way – to some international organisations, especially the European Union and the Council of Europe.

12. Next to these constitutional institutions, lots of *interest* or *pressure groups*, as well as *political parties*, which have no constitutional or statutory law- or decision-making, exercise important powers in the Belgian State; although they cannot be seen as formal lobbies, they nevertheless try to influence the decision-making of the public authorities.

At last, quite characteristic in Belgian politics is '*Pillarisation*'; these are socio-economic pressure groups (political parties, trade unions, ...) and cultural groups (especially schools, welfare and leisure organisations, ...) all gathered in one-pillar-pressure group on philosophical, religious or ideological basis, such as the catholic pillar, the socialist pillar, the liberal pillar.

1.3. THE CONSECUTIVE STEPS IN THE REFORM OF THE STATE

13. Its geographical location, on the dividing line between Latin and Germanic cultures, goes some way to explaining the country's linguistic diversity and the peaceful evolution towards a linguistic federal state. On the other hand this cultural diversity, hand in hand with economic concerns, has led, over the past few decades, to fundamental constitutional reforms.

14. Over four constitutional reforms, namely 1970 (establishments of the Communities), 1980 (establishment of the Flemish and Walloon region, foundation of the Court of Arbitration as constitutional court and extension of the powers of the communities with personal matters), 1988-89 (education as community's power, extension of the powers of the Court of Arbitration and set up of the Brussels Region and institutions), 1993 (extension of powers and polls for/direct election of the federated parliaments) and 2001 (extension of powers of the communities and regions) have seen the country evolving progressively - but **peacefully** - from a *unitary state* into a *federal state*, in which the power of decision no longer lies exclusively in the hands of a national government and a national parliament, but also federated parliaments and governments; some critics and politicians even emphasises that Belgium is already a *confederated state*.

15. After students riots at especially the Dutch Catholic University of Leuven in 1967, and in the wave of students protest at Berkeley University and the Paris May 1968 'Revolt', the conclusion was that the Belgian State, as a nineteenth century artificial state, was on the way of disintegration; politically it was decided, to keep the country as such together, to insert a political level (with own powers) between that of the national state and the provinces.

In contrast with other federal states, the political demands of respective the Flemish-cultural movement and the Walloon-regional movement led to the emergence of the Communities and the Regions, or a complex state organisation with two, instead of one, federated entity.

16. Today, different levels of authority complement one another: the federal state (Parliament and Government), the Flemish Community (Parliament and Government), the Walloon region and the French Community (both with Parliament and Government), the German Community (Parliament and Government) and the Brussels-Capital Region (two Parliaments and Governments), and as decentralised bodies the provinces and the municipalities.

Therefore, the power of decision no longer lies exclusively in the hands of a national Government and a national Parliament. Nowadays, a collection of partners manage the country, who are equal as public authorities and who exercise their powers autonomously, but in a range of different fields.

17. Power has been redistributed along two main lines. The first, which was called for by the Flemish, concerns *linguistics*, and - more broadly - everything related to *culture* and '*personal matters*', giving rise to the Community. This is a concept which refers to all those who belong to a "linguistic community" and to the bond which unites them - in this case language, culture, education and welfare; this precisely explains why modern Belgium has three main language-based communities - the Flemish Community, the French Community and the German-speaking Community - which correspond to the three main national population groups (immigrants as ethnic group does not play any roll in Belgian politics).

18. The second main line of the state reform was inspired by the long-standing economic concerns of the Walloons, who wanted greater economic autonomy. This led to the creation of three Regions: the Flemish Region, the Brussels-Capital Region and the Walloon Region, which correspond to geographical entities.

19. The setting up of these institutions, which are decision-making bodies inheriting the powers that were originally devolved to the unitary state, was finalised in the national parliament on

14 July 1993 by the enacting of the laws on the federal state structure. Thus we now find that the first article enshrined in the Belgian constitution states that: "*Belgium is a Federal State which consists of communities and regions*".

20. Four main points have emerged from this reform: the reform of the institutions, new transfers of powers, the financing of the Communities and the Regions and the protection of linguistic minorities.

The underlying idea is provided by the "*principle of subsidiarity*". This means that anything that can be dealt with at a lower, i.e. federated, level must not be passed on to a higher, i.e. federal, political level. This lower level must be the closest possible to the community or the region, of which the people feel themselves a part. If a global approach to a problem is required, then authority for this must also be attributed to a higher level.

21. Reconciling *regional and cultural identity and federal structure* is not an easy task, but it does have the advantage of bringing the decision-making process closer to the people. The result is a more clearly defined political structure and greater emphasis on the quality of life.

II. AUTHORITIES AND POWERS

II.1. Federal powers

22. The Federal State has retained authority over everything that falls within the sphere of the national interest: finance, defence, justice, foreign policy (with respect and without prejudice to the powers of the communities and the regions in these matters), social security, most health matters. The Federal State has also retained control over a large common heritage: the judicial system, the armed forces, supervision of the federal and local police forces, social security and the major laws relating to social welfare (unemployment, pensions, family allowances, health insurance), the public debt, monetary policy, wage and price policy, the protection of savings, nuclear power, state-owned companies (such as the Belgian Railways and the post office), federal cultural and scientific institutions (Museum of Modern & Ancient Art, National Opera and the Royal Library) and over everything that does not fall within the express and exclusive powers of the communities or the regions.

II.2. Federated powers

Communities

23. The three Communities (Flemish, French and German-speaking Communities) are as we have already said, based on language. They enjoy autonomy in:

- culture;
- education;
- radio and television;
- curative and preventive medicine;
- welfare for individuals, such as family policy, protection of youth, social welfare (with exceptions),...;
- use of languages in administrative matters at municipality level and labour relations (except the German-speaking Community), and education*;
- scientific research;
- development aid to third world countries in the matters mentioned above;
- international relations in the above-mentioned areas;
- co-operation between the communities in cultural, educational and matters relating to individuals.

* The federal authorities are still competent for the use of languages in legal proceedings, the armed forces and in legal and decreed texts.

Regions

24. The three Regions (Flanders, Walloon and Brussels-Capital) are entities that are linked to economic interests, themselves determined by specific geographical areas.

They have authority over:

- regional development and town planning;
- the environment;
- rural development and nature conservation;
- housing;
- water policy;
- law relating to decentralised authorities, such as provinces and municipalities, their financing and administrative review of the legality of their decision, inter-provincial and inter-municipal cooperation and services;
- employment;
- public works;
- public transport (except railways);
- economic policy (within a Belgian economic union) foreign trade (without prejudice to the powers of the Federal State);
- regional aspects of banking policy;
- agriculture;
- energy;
- scientific research;
- development aid to third world countries in the matters mentioned above;
- international relations in the above-mentioned areas.

25. Following the reform of the institutions in 1993, the French Community handed over a range of powers relating to tourism, social advancement, refresher and vocational training, school transport, sports infrastructure and, to a certain extent, health policy and social aid and assistance (to families and immigrants) to the Brussels-Capital and the Walloon region. The French Community retains control over three large sectors: education, culture and audiovisual media.

III. INSTITUTIONS

III.1. THE FEDERAL PARLIAMENT

Law making powers

26. Belgium became independent in 1830. Since 1831, the Belgian parliamentary system has been based on the two-chamber system. The Parliament thus consists of the Chamber of Representatives and the Senate.

27. Since the last federal reform of the Belgian State in 1993, coming into force with the election of May 23, 1995 the Federal Parliament still consists of these two parliamentary assemblies but they no longer share the same powers. Three systems of power exist: double-chamber, optional double-chamber and single-chamber; it should be noted that deputies and senators are equal with regard to the right of parliamentary initiative, bringing amendments to government or parliamentary bills.

28. In some fields of parliamentary activity however, the two assemblies continue to act on an equal footing (*double-chamber*). These fields are: the revision of the Constitution, the fundamental laws concerning the Belgian state structure, the acts relating to the Judiciary and the Council of State, the approval of international treaties, proposals of candidates for the Court of Arbitration, the Court of Cassation and the Council of State. This also applies to the approval of the cooperation agreements concluded with the various federate entities and between them.

29. With the exception of the above-mentioned "double-chamber" powers, it is the Chamber which has the most influence when laws are voted on, but the Senate retains a say in the matter.

30. Today, for a bill to become a law, a majority vote in the chamber alone may suffice. But the Senate can also intervene (*optional double-chamber*) and demand examination of the bill by the senators. If the Senate adopts the amendments, they are passed on to the Chamber which then makes the final decision.

31. The Chamber is the only decision-making body (single-chamber) for laws relating to the civil and penal liability of the Ministers, for the state budget and finances, for organizing the armed forces and for granting naturalization. These matters are called "single-chamber". It is also the Chamber which has the power of political control over the Federal Government. It is again to the Chamber and only the Chamber that the federal minister must reply to questioning and from which he must be the subject of a possible no-confidence motion or, conversely, a confidence motion.

Political control

32. Today the real political control on the federal government is only in the hands of the Chamber of representative; by absolute majority, the representatives can force the prime minister to propose the dismissal of his government to the king, who can accept or refuse. In the first situation with the approval of the Chamber both parliamentary assemblies can be dissolved and new elections can be called. Also budget control is a single-chamber power. Both Chamber and Senate can control the Government by means of questioning ministers, investigation of high tensioned matters in public opinion, etc.

Composition of the two assemblies

33. Nowadays the Chamber has 150 deputies, instead of 212 as in the past. They are directly elected by universal suffrage.

34. For the Senate, on the other hand, the composition is more complex. 71 senators (without counting de jure senators), instead of 184 as in the past, are divided into three categories:

- 40 directly-elected senators (25 from the Dutch-speaking electoral college and 15 from the French-speaking electoral college);
- 21 community senators (10 from the Flemish Community, 10 from the French Community and 1 from the German-speaking Community), appointed by the legislative assemblies of the three Communities;
- 10 co-opted senators, six of whom appointed by the Dutch-speaking linguistic group and four by the French-speaking linguistic group.

The Senate thus emerges as the main seat of community dialogue.

III.2. THE FEDERAL GOVERNMENT

35. With the State reform of 1993, the national or central government changed its name and became the Federal Government. The number of ministers is limited to a maximum of fifteen,

and a number of state-secretaries appointed by the King.

36. This reduced Government will enjoy greater stability thanks to the respect of a new principle: that of the "Legislature Government". The legislature is the period which separates two legislative elections, i.e. four years. During this period of time, the Government may not be removed from office unless an absolute majority in the Chamber proposes an alternative formula. This procedure is what is called the "constructive no-confidence motion".

III.3. THE FEDERATED ENTITIES

37. The Communities and the Regions each have their own Parliament - called Councils - and their own Government.

38. However, the reform of the institutions has not taken place over the course of time in the same way in the various parts of the country. It is for this reason that the state reform is called asymmetrical. The asymmetric character of Belgian federalism took place, roughly speaking, in two phases. In a first phase, in 1980, the Flemish Community institutions exercised the power over the Flemish Region. In fact, contrary to what happens in the south, in Flanders, the Community and the Region are governed by one Council and one Government.

39. On the French side, on the other hand, as the institutions have not been merged, there is a Government and a Council of the French Community, and a Government and a Council of the Walloon Region which also includes the German-speaking part of the country for the regional matters. The German-speaking part also has a Government and a Council for their community matters.

40. During a second phase, in 1993, the Powers of the French Community were redistributed and partially transferred to the Walloon Region and to the French Community Commission in Brussels.

41. The Council of the Brussels-Capital Region consists of 75 directly elected members, who are divided into a Dutch-language group and a French-language group.

42. The Flemish Council, which is in a sense the Flemish Community and the Flemish Region merged into one, is composed of 118 directly elected members from the Flemish Region plus 6 members elected from the Dutch-language group of the Brussels-Capital Council.

43. The Council of the Walloon Region has 75 directly elected members. The Council of the French Community is composed of the 75 members of the Walloon Region Council plus 19 members elected from and by the French-language group of the Brussels-Capital Council. 25 directly elected members sit in the Council of the German-speaking Community.

44. The executive bodies of the Communities and the Regions are the Flemish Government (max. 11 members), the Government of the French Community (max. 4 members), the Walloon Government (max. 7 members), the Government of the Brussels-Capital Region (5 members) and the Government of the German-speaking Community (3 members).

III.4. DECENTRALISED BODIES

45. First of all the provinces can be mentioned (10 and the Brussels region); these political authorities are situated between the federal and federated entities on the one hand and the municipalities on the other hand.

Politically, they are rather unimportant and have only small powers in the field of education, cultural matters, regional economic development and political control on the municipalities.

46. The municipality is the political authority which is closest to the people. There were 2,739 municipalities when the Belgian state was created. The merger of the municipalities in 1975, saw their number reduced to 589.

47. Each municipality has a local district council, which is made up of between 7 and 55 members, depending on the number of inhabitants. This council decides on everything that is of "municipal interest" and passes municipal regulations.

48. The council elects the aldermen, who together with the mayor form the Municipal Executive; the mayor is appointed from among the members of the council by the Minister for the Home Department in the name of the King.

PART TWO THE LEGAL POSITION AND PROTECTION OF MINORITIES IN BELGIAN SOCIETY

I. ABOUT MINORITIES IN BELGIAN LEGISLATION IN GENERAL

49. Except for a general provision on equal treatment (article 10) and the prohibition of all forms of discrimination on the basis of ideological or philosophical grounds (article 11), the Belgian Constitution contains no other legal provisions dealing with (the protection of) minorities.

Recently, a revision of the Belgian Constitution inserted a new provision that forbids any discrimination on every ground whatsoever (language, race, sex, ethnic, sexual preferences, physical or mental disability, ...); up to now, it is not sure that this general provision is also related to national groups or minorities.

50. Besides, the Belgian State adopted most international Conventions on Human Rights and the UN-convention on the prohibition of discrimination of all kinds; however, the European Framework on National Minorities was only signed by the minister of Foreign Affairs in July 2001, but has not yet been approved by the federal and federated legislatures so that this Framework is not in force within the Belgian State.

The fear of the Flemish Community that French-speaking inhabitants could claim some specific rights, in contradiction with the Belgian principle of territoriality and linguistic or language areas, has up until now been an obstacle for becoming a Member-State to the Framework.

II. PROTECTION OF MINORITIES

II.1. LANGUAGE MINORITIES

a. The use of languages is "free"

aa. Article 30 of the Constitution

51. Article 30 of the Constitution stipulates that *"the use of languages current in Belgium is optional; only the law can rule on this matter, and only for acts of the public authorities and for legal matters"*. Absolute freedom applies to the use of languages in relations among private persons. However, restrictions may apply to the use of languages between the government and private persons, provided that they originate with the legislative body, to the exclusion of any competence order to the executive body, and provided that they pertain to matters mentioned in the Constitution.

52. The linguistic conflict became the main issue in the Flemish people's pursuit of equal rights. Even now many foreign observers – erroneously – believe that the language issue is the only break in Belgian society.

53. Language laws of the 1960's definitively laid down the linguistic border, modifying the provincial, municipal and district borders to have them coincide. Belgium now consists of monolingual territories, save some exceptions such as Brussels Capital and the national central administration. Linguistically homogenous areas were opted for, i.e. assimilation of linguistic minorities, albeit with legal safeguards against language-based discrimination.

bb. Constitutional revision of 1970

54. Article 30 of the Constitution was never modified formally. Still, it has been implicitly modified since the constitutional revision in 1970. Article 129, § 1, of the Constitution has

empowered the Flemish and French Communities to rule by decree on the use of languages for administrative matters, education in establishments created, subsidised or recognised by public authorities or in business matters. Considering Article 30 of the Constitution and the territorial competence restrictions of the communities in Article 129 § 2 of the Constitution, this implies:

- that the Flemish Community and French Community may regulate the use of languages for administrative matters, education and business within their own linguistic region, barring municipalities where specific language rules apply
- that the federal legislator remains competent to regulate the use of languages for these three matters in the bilingual Brussels Capital Region, in the German-speaking region and the municipalities where specific language rules apply:
- that the federal legislator is also competent to regulate the use of languages for legal matters and for acts of public authority falling outside the scope of "administrative matters" (e.g. use of languages in the army);
- that for all other matters, the individual use of languages is free.

b. Constitutional and legal safeguards for linguistic minorities

aa. Constitutional provisions

55. The rights and freedoms of linguistic minorities are not explicitly safeguarded in any constitutional provision. Nor do the provisions of the European Human Rights Treaty (EHRT) contain any safeguards regarding "linguistic freedom" as such. Particularly, the EHRT does not safeguard the right to use a language at one's own discretion in administrative matters. Articles 10 and 11 of the Constitution prohibit any discrimination, on whatever grounds. Furthermore the constitutional restrictions on the majority principle also constitute safeguards for linguistic minorities. For instance, a special majority act is required to modify the language statute of certain municipalities.

56. Concerning the federal executive power, section two of article 99 of the Constitution provides for linguistic parity in the Council of Ministers.

57. Article 43 of the Constitution stipulates that (with the exception of the German community senator) the elected members of each House are divided into a Dutch linguistic group and a French linguistic group, for instance for votes on special majority acts.

58. In addition, a linguistic group that finds its interests severely jeopardised by a draft bill may sound the alarm bell as laid down in article 54 of the Constitution.

59. Finally, there is also the procedure (article 32, § 1 of the GWHI) to prevent and settle conflicts of interest, in implementation of article 143, § 2, of the Constitution, regarding draft bills of legislative standards introduced in another legislative assembly. This procedure may be used for all sorts of conflicts of interest and thus also – mainly in practice – for interests pertaining to community issues.

bb. linguistic legislation

ii. Introduction

60. Below is a schematic overview of linguistic legislation in Belgium. Language laws are laws of public order. However, considering Article 30 of the Constitution, they must be interpreted restrictively. Furthermore Article 4 of the Constitution indicates that in a monolingual region the use of another language is the exception.

It must also be considered that linguistic legislation comprises *two aspects*: a citizen's individual right to speak his own language and to be helped in his own language. This is, however, a right that must be interpreted in light of the territoriality principle. The second aspect is the right of a linguistic minority as a group to a fair share of public offices.

ii. The use of languages in administrative matters

α. Local, regional and central services

61. The laws regarding the use of languages in administrative matters were co-ordinated by royal decree of July 18, 1966. This legislation embodies the territoriality principle: "*local language is administrative language*".

Every *local service* (i.e. every service with a scope covering more than one municipality) in a monolingual linguistic region will exclusively use the language of that region in its internal affairs and in its relations with private persons and other services. This applies to messages, communications and forms meant for the public at large, as well as to official acts. *Central services* (i.e. federal services with a scope covering the entire country) are bilingual and must use the language of the region they maintain relations with. Contacts with private persons must take place in the language those private persons use.

β. The services of communities and regions

62. The *services of communities and regions* are principally monolingual. The applicable legislation does contain special rules, for instance with regard to their relations with private persons from municipalities where special linguistic rules apply, or as regards the Walloon Region, with regard to relations with German-speaking municipalities.

γ. Municipalities where special linguistic rules apply

63. Linguistic rules are moderated in *municipalities where special linguistic rules apply*. As these municipalities belong to a monolingual region, they must use the language of that region for internal affairs and for relations with other services. However, they may use the protected minority's language for their relations with the public at large. In those cases the messages may or must be formulated in the language of the region and in the language of the protected minority or, in the case of a tourist centre, in at least three languages. In municipalities where special linguistic rules apply the government must address private persons in the language these persons make use of. In other words, private persons enjoy *language facilities* and the relevant municipalities are known as (*language*) *facilities municipalities*.

δ. Supervisory bodies

64. It is the *Permanent Language Supervision Committee's* task to monitor the application of laws governing the use of languages in administrative matters and to give advice on their application. Among other things, the Committee must be consulted regarding the distribution of central service posts among the various linguistic groups. The Committee may ask the competent authorities or courts, including the Council of State, to determine the nullity of any administrative acts deemed contrary to the above-mentioned legislation. The Committee may receive complaints and make conclusions of one's own accord.

iii. The use of languages in lawsuits

65. The Act of 15 June 1935 makes a distinction between civil and criminal proceedings. In *civil proceedings* the general principle is that the regional language must be used for the entire procedure in monolingual regions. In the bilingual region of Brussels Capital the procedure is held in the language chosen by the defendant. In *criminal proceedings* the defence's rights take precedence: the defendant may request free-of-charge translations of any document and may also request that his case be referred to a court that uses his language. Of course this legislation as well as the ECHR (article 6 §3 e) and the International Covenant on Civil and Political Rights (article 14 § 3 f) guarantee every defendant who has not mastered one of either three national languages the right to a free interpreter.

iv. The use of languages in legislation

66. The Act of May 31, 1961 stipulate that laws are passed, ratified, promulgated and

published in Dutch and in French. The text is authentic in both languages (no. 211). Similar rules apply to orders and decisions of the Brussels Capital Region and of the Joint Community Commission (articles 33, 39, 70*bis* and 73 of the Spec. Brussels Act). Decrees of the Flemish Council and the French Community Council and decisions of their governments are published with a translation in the other major national language.

v. The use of languages in business matters

67. With regard to deeds and records provided for by law and regulations and for those that are meant for their staff, private companies must use the language of the region where their place of business is located. In the Brussels Capital Region businesses will formulate their records in Dutch when they are destined for Dutch-speaking personnel and in French when they are meant for French-speaking personnel.

III. RELIGIOUS MINORITIES

1. Constitutional provisions

68. Article 19 of the Belgian Constitution guarantees the freedom of religion and expression in general; this fundamental right, also protected in several international treaties, can be practised on the individual or collective basis, but the State can never impose any kind of religion on its national or foreign citizens. Furthermore, Article 21 of the Constitution excludes any interference by the State in religious matters or organisation of the Church.

69. As mentioned already, Article 24 of the Belgian Constitution contains the right of every individual or legal group to organise education and to establish schools, neither dependent or subject to authorisation of the State nor any prior declaration or any kind of formality or restrictive measure whatsoever.

Privately run (subsidised) denominational schools can base their education and educational matters (curriculum, text books, content of certain matters such as biology) on the reading and provisions of their religion; any measure intended to restrict this pedagogical freedom is therefore unconstitutional.

The most obvious application of this combination of freedom of education and freedom of religion is the large number of Catholic, grant aided, schools in the Flemish Community, besides a smaller number of protestants, Jewish schools but no Islamic schools up to present.

70. However, in modern society religious ideas cannot be the basis for denial of a minor's right to education; permanent school absence, grounded on religious belief (e.g. fundamental Islamic tradition as in Taliban regime, is in conflict with the Flemish law on compulsory education and can not be admitted as part of the parents freedom of religion).

2. Main differences between denominational and publicly organised schools

71. One important difference in addition to distinct financing methods and educational project (pedagogical freedom) between privately run denominational schools and publicly run schools is the right of the first type of governing bodies **to refuse** pupils who want to enrol in their institutions, whereas community and publicly run subsidised schools have to accept everybody who applies for access.

Until 1997, this right to refuse was almost absolutely in primary education. Recently, however, the Flemish Decree on basic (i.e. nursery and primary) education restricts this possibility; in future pupils can only be refused '*on the basis of criteria that are not improper and that not violate human dignity*'. In practice this right to refuse the enrolment of a pupil can only be justified on the basis of the educational/denominational project and by motivated decision under control of the Judiciary; as such, the possibility of refusal is not in conflict with the constitutional free choice of schools of the parents, because of the existence of publicly run schools which have no right to refuse.

72. Of course, all schools have the right to refuse pupils who do not fulfil admission conditions, for example are not in possession of the requested certificate or did not succeed in the previous stage or class.

b. About 'recognised' religions

73. On basis of the above mentioned constitutional provisions all religions can be professed in the Belgian State. However, under certain circumstances a religion can be 'recognised' by the State; at present, six faiths enjoy this recognition: these are the Catholic, Protestant, Anglican and Orthodox Church, Judaism and Islamic belief.

74. This recognition implies specific legal effects:

- in general the recognition means that priests, ministers or imams are being paid by the State, and above the municipalities are responsible for their housing as well as for making up the budget-deficits of these denominations (especially catholic churches up to now);
- denominational schools, especially based on a recognised religion, get financial support by the Communities. In an important case before the Court of Arbitration the decision considered: *'the community is able to reserve the right to subsidies for religious education to establishments which organise such education with reference to one of the recognised religions. Indeed, the possibility of the Community controlling the quality of education in this case is restricted by the constitutional freedom of religion and the ensuing ban on interference on the one hand and the term 'recognised religion' is expressly confirmed by the Belgian Constitution on the other hand'*;
- all publicly run schools must offer the full range of all recognised religions and philosophies (i.e. non confessional liberal movement) to make it possible that parents or major pupils can choose one of these ethical courses to follow during school time; in publicly run compulsory education the timetable normally prescribes at least two hours a week of religious or non-confessional lessons. State can not meddle in what is being taught in these lessons and inspection is not authorised for the content aspects of religious education in schools. Although privately run schools do not face this obligation, more and more a growing internal pluralism is seen in denominational schools, without of course the education of other religions on the timetable.

In other words, at least publicly run schools have a tradition to shelter religious or philosophical minorities of any kind vis-à-vis the catholic - at least formal - majority amongst the population (at present time, the ongoing secularisation in modern Flemish society makes the hard core of practising catholics to a numerous minority);

- financial support and inspection for religious and non-confessional lessons at all schools are foreseen on the Flemish budget, section Education; the Flemish Government requires a certificate of pedagogical/didactic competence of these teachers. Specific teacher training is necessary and possible in colleges of higher education and universities; until this academic year however, no special training for Islamic teachers was offered and Islamic teachers were directly appointed by the Turkish, Sao amongst their citizens (not residing in Belgium). The other special teachers are formally appointed by the governing bodies under a list of candidates, approved by the religious authorities.

75. In recent past, specific problems raised concerning religious clothing, especially the wearing of headscarfs by Islamic female pupils. In privately run aid-granted institutions, a general school code of order can prohibit these exterior indications of a foreign religion; after some hesitation, the Belgian Judiciary in line with the highest administrative judges in France, Germany and Switzerland has accepted that Islamic headscarf, Jewish hat, Christian or orthodox cross, etc. is a matter of the manifestation of a religious conviction which – in principle – must be allowed in publicly run schools; the principle of neutrality of community education is not a valid object that an publicly organised education must leave room for this form of religious diversity in their schools.

76. Non-recognised religions (for Belgium Sikhs, Hindus, Mormons, Jehova witnesses, ...) are obvious in a disadvantaged position in society in general and in education in particular and quite often also being classified as 'sects'; although these religious do not affect large numbers of followers in Flanders (but sometimes more than protestants and Anglicans), the legal question arises if their inferior position is in accordance with the constitutional principal of equality/equal treatment and non-discrimination on religious or philosophical basis.

77. The Government argues that non-subsidising denominational schools based on not-recognised religion has its reason in limited financial resources; once again, the Court of Arbitration states that the Flemish Legislative has created '*an acceptable balances between, on the one hand, the power to make the granting of wage subsidies for religious education dependant on certain conditions and, on the other hand, the fundamental doctrinal and organisational autonomy of the religions*'.

Up to present, no individual person appealed to the Strasbourg Authority, in concreto the European Court of Human Rights in this matter; as there is hardly demand for the establishment, and connecting funding, of denominational schools on the basis of a non-recognised religion, the actual situation can last on for many years.

IV. CULTURAL AND IDEOLOGICAL MINORITIES

Introductory remarks

78. In addition to language issue, the Flemish community also had to learn to live with *ideological and philosophical dividing lines* and had to seek a *modus vivendi* between the catholics and the latitudinarians. As for the language, the guarantees for ideological and cultural minority groups the legislation provide for a procedure for conflict resolution and protective measures *stricto sensu*.

79. As mentioned already, Article 11 of the Constitution contains an overall ban on discrimination and places the obligation of safeguard the rights and freedoms of the ideological and philosophical minorities upon the law and the decree. Article 131 of the Constitution instructs the community legislative to regulate the aim of preventing any discrimination for ideological and philosophical reasons in the communities (the so called ideological alarm bell), whereas the Court of Arbitration is authorised to control decrees on their correspondence to the constitutional obligations of equal treatment (Article 10) and non-discrimination (Article 11).

The ideological 'alarm bell'

80. In implementation of article 131 of the Constitution an *ideological and philosophical alarm bell procedure* has been provided for by an Act of July 3, 1971. This procedure indeed resembles the community alarm bell laid down in article 54 of the Constitution.

According to articles 4 to 6 of the above-mentioned act, a justified motion in *the Flemish Council and French Community Council*, signed by at least a quarter of their members, may declare that provisions in a draft bill constitute a discrimination for ideological and philosophical reasons. This motion must be proposed before the final vote on the draft bill. If the Council of Chairmen of the Legislative Houses and Community Councils allow the motion, the examination of the disputed provisions is suspended and the Legislative Houses must rule on the motion's validity. The procedure for the disputed provisions can only be restarted after the House of Representatives and the Senate have dismissed the motion. The intervention of the federal Parliament in this procedure is intended as a safeguard against the possible minorisation of an ideology in a community.

2. A specific field(s) of protection: the Culture Pact Act

a. General remark

81. In the main the protection of and the policy towards cultural and ideological minorities contain measures in the field of the cultural life, less in education. However, it can be repeated that to this aspect, in particularly:

the constitutional freedom to organise education and establish schools for this purpose, based on a religious or non-denominational belief; community organised schools must respect neutrality; publicly run schools guarantee the parents a free choice of 2 weekly hours of education in a recognised religion or non-denominational moral philosophy.

b. Individual and group rights

82. To carry out Article 11 of the Constitution, the *Culture Pact Law* guarantees the *right of every citizen* not to be discriminated for ideological or philosophical reasons.

83. In addition, this legal act also includes *group rights*: all ideological and philosophical associations (and so not only minorities) have the right to participate in the cultural policy. Anyhow, the law does take some consideration of 'representative associations', as should be apparent from their presence in the representative body of the involved authorities (federal Parliament, federated Parliament, Municipality Council).

All Government bodies concerned have:

- to involve the users of the cultural infrastructure and all (represented) associations in the preparation and carrying out of the cultural policy in which users and associations are proportionally represented and without a certain association can obtain wrongful preponderance;
- to involve the users and associations in the management of cultural institutions according to a representation with a consultative or advising vote by means of one of the three forms prescribed by the law;
- to guarantee every recognised cultural group or organisation equal access to the cultural infrastructure without discrimination or interference due to the government;
- to assure all associations represented in a Community Parliament access to public media and, according to the principle of equal/proportional treatment, to assign their representatives in the management and board of administration in every cultural institution (e.g. radio and television, theatres, libraries, ...);
- to grant subsidies or awards on the ground of objective criterions.

84. Besides, staff with cultural functions are recruited, appointed and promoted according to the principle of equality before the law without ideological or philosophical discrimination and according to the applicable statutory provisions; although for this purpose the legislative can provide for philosophical or ideological balances in a legitimate manner, so no monopoly or preponderance of one of the associations will be possible, the Court of Arbitration decided that such balances cannot allow Governments to deviate from or to neglect the principle of equality before the law on basis of personal ideological or philosophical beliefs of civil servants. In other words, despite their merits no civil servant can be discriminated due to his ideological or philosophical convictions.

It is striking that a legal provision, adopted in order to ensure equality in cultural matters, was found to be in conflict with the general principle of equal treatment and non-discrimination. In practice the Courts decision implies that *individual equality* in the field appointments in cultural services prevail *ideological or philosophical groups equality*; or, ... the principle of pluralism can not overstep certain boundaries that are related to the protection of the rights (and equal treatment) of individuals.

c. Supervision body

85. The Culture Pact Act establishes a Committee made up of 13 Dutch-, 13 French- and 2 German-speaking members, nominated by the respective Community Parliament. This

Committee, the Permanent National Culture Pact Committee, can receive complaints from individuals as well as from associations; it has a conciliatory and advisory assignment.

86. Because the right of complaint must not be exhausted prior to going before the Council of State, the protection by the Committee is quite often not demanded and public authorities, denying the rights guaranteed by the Culture Pact Act, are sued immediately before the courts or the Council of State. For matters of legal procedures, the Culture Pact Act is of *public order* and violations of its provisions is to be raised *ex officio* by the judge(s).

d. Evaluation

87. Upon evaluation of the Culture Pact Act, it can be determined that pluralism is recognised and promoted in two ways; there is *external pluralism*, for example in the conditions for objective and legal criteria for granting subsidies or in requirements regarding the involvement of each association in the cultural policy. There is *internal pluralism*, particularly in the rules regarding the administration of the cultural infrastructure.

88. A positive aspect of the Culture Pact Act is the possibility for the Permanent Committee to put an end to the forms of 'small apartheid' at the level of local Government, where previously the – mostly Catholic – majority all too easily neglected and discriminated other religious or philosophical minorities or associations.

On the other hand, the legislation has become largely a means of subsidising cultural, religious, ideological or philosophical organisations. After all, the institutionalising of pluralism has promoted politicisation; the individual user likewise protected by the law, is in practice put in the tight corner of a particular minority or association. These disadvantages in the last years weigh up against the advantages of the Culture Pact Act and, subsequently, proposals are launched to revise this Act, at least for the Flemish Community.