



Judges de-escalate heated Belgian language conflict

Posted on March 30, 2015 / Under [Analysis](#) / With [0 Comments](#)

Stefan Graziadei, PhD student at the Faculty of Law, University of Antwerp.

With its decisions on the language facilities and the appointment of mayors in the Brussels periphery, Belgium's highest administrative court, the Council of State, found a compromise on a very heated institutional conflict. The decisions date from June and December 2014 and are familiar to the Belgian public opinion. Unfortunately, they are largely unknown to comparative lawyers and political scientists who do not live in Belgium. The decisions deal with the Flemish government's refusal to appoint several French-speaking mayors in the municipalities around Brussels due to breaches of the language legislation. This is a long-standing issue and was already criticized by the Council of Europe in 2008. Mayors of Dutch municipalities with facilities for French-speaking citizens refused to apply the Flemish interpretation of the language legislation, according to which French speakers have to submit a separate request for every document which they want to obtain in their own language. French speakers, on the contrary, argued that the Flemish interpretation contradicted federal law and the Belgian Constitution. In an interesting landmark decision, the Council of State cut the Gordian knot by ruling that French speakers (only) have to apply every four years in order to receive administrative documents in their language. However, the significance of this case is broader, as it touches on the delicate equilibrium between the language communities in Belgium. Political parties are often unwilling to compromise on institutional questions for strategic reasons. The decisions of the Council of State show how judges can resolve an ensuing political gridlock through imposing a mutually acceptable legal solution.

This contribution is structured as follows. Firstly, it discusses the background of the relevant cases. Secondly, it analyzes the Council of State's decision on Flemish language regulations. Thirdly, it explains this court's three decisions in the cases regarding the non-appointed mayors. If you are familiar with Belgium, feel free to immediately start reading the second part. Keep in mind that the Belgian language regulations and related jurisprudence have been dealt with in many books. This blog entry only gives a snapshot of the current state of language relations and regulations in the Brussels peripheral municipalities.^[1]

Belgium in a nutshell



As Belgium is a complicated place, the country's institutional architecture will first briefly be sketched. Jules Destrée wrote to the Belgian king at the dawn of World War I that it is the truth there are "no Belgians, but only Walloons and Flemings". While this "truth" is not entirely true, it is correct to say that the two politically relevant communities are the French and the Dutch ones (mostly situated in the

Editors

[Jurgen Goossens](#), [Pieter Cannoot](#) & [Sien Devriendt](#)



Subscribe to the blog

In this way, you receive an email about each new blog post.

Email address:

[Sign up](#)

Submit to BelConLawBlog

We welcome submissions on any subject of constitutional law or policy. Submissions usually range from 750 to 1000 words. All submissions will be reviewed by the editors in a timely fashion. Please contact us [here](#).

@BelConLawBlog



monolingual areas of Wallonia and Flanders respectively). In its first Article, the constitution states that Belgium is a federal state composed of (three) regions and (three) communities. An

internal language border divides the country into four language areas, namely the Dutch area, the French area, the bilingual Brussels Capital area and the German area (Article 4). In Belgium, the communities are responsible for person-related matters (such as health assistance and culture), while the regions are competent for issues related to the territory and the economy (such as infrastructure and territorial planning). The Flemish and French Communities both have competences in the Brussels-Capital Region. Brussels is the only bilingual region in Belgium, but its population is overwhelmingly French-speaking.

The Brussels periphery, still an apple of discord for Dutch and French speakers

The 19 municipalities around Brussels remain a major point of contention in the mostly pacified French-Flemish language conflict saga. Immediately after the Second World War, Flemish municipalities in the Brussels periphery with at least thirty percent French speakers were entitled to special language facilities, and those with more than fifty percent of French speakers obtained a fully bilingual status. The number of French and Dutch speakers was established by a recurring language census, which showed a growing “Frenchification” threatening the Flemish character of the Brussels periphery (known as the *Vlaamse Rand*). At the demand of the Flemish movement, the recurring language census was stopped in 1961 and a definitive language border was installed soon thereafter. In order to protect the language minorities in several municipalities adjacent to the border a system of language facilities for German, French and Dutch speakers was introduced. Minority protection in these municipalities has been the central issue of the Belgian language conflict over the last fifty years.

In order to stop Frenchification and promote Flemish integration, the Flemish government issued the (in)famous [Peeters directive](#), clarifying the official Flemish interpretation of the language legislation. According to this directive, French speakers have to reapply every single time to obtain documents in their language in Dutch municipalities with facilities for French speakers. For Flemings, the primacy of Dutch in Flanders justifies this measure, so that everyone, including French speakers, should learn Dutch. For French speakers, this interpretation is seen as an administrative chicanery in violation of federal law and their constitutional rights. Nowadays, the political and constitutional question remains whether these facilities are temporary or permanent.

Not only politicians, but also courts from the different parts of the country stepped into the dispute. The Flemish section of the Council of State [affirmed the Peeters directive](#). A tribunal in Wallonia, on the contrary, found that the Peeters directive did not have [any binding legal value whatsoever](#). In May 2014, the Brussels First Instance Court held that Dutch municipalities with language facilities were [legally obliged to send official documents in French](#). The Permanent Commission on Language Control, composed of an equal number of French and Dutch speakers, had decided that [French speakers needed only a once in a lifetime declaration to obtain documents in French](#). After the Peeters directive, the Permanent Commission was divided on this issue: [the five French-speaking judges published one opinion, the five Dutch speaking judges another](#).

Political parties were not able to solve the dispute, as the status of the municipalities in Brussels is crucial for their (geo)political interests. Brussels is a mainly French-speaking island surrounded by Flemish territory. French speakers want to establish a territorial link between Wallonia and Brussels. This would strengthen their claim on Brussels in case of a possible split-up of the country, so that they would have a more viable state if Flanders would declare its independence. I believe that Flemish independence is not likely to happen any time soon, but is a medium to long-term option which crucially shapes the negotiation strategies of political parties. In order to underscore this territorial ambition, the French Community recently changed its name into the ‘Brussels-Walloon Federation’. The quarrel about the Peeters directive has to be seen in light of this broader political dispute, which explains Flanders’ strong interest in keeping the Flemish character of these municipalities. Flanders realized that it needed a strict interpretation of the language laws to halt further “Frenchification”.

In order to find a solid judicial solution to the dispute, the [Sixth State Reform](#) transferred the [judicial oversight over administrative action in those municipalities from the Flemish to the bilingual section of the Council of State](#) (hereinafter also referred to as “the Council”). The Council’s General Assembly is composed of an equal number of Dutch and French speakers. A president and a first president, each belonging to a different language group, alternatively chair the Council’s sessions. If there is a tie, the Council’s chair has the decisive vote. The Council’s new competences are embedded in the Art. 160 of

Tweets by @BelConLawBlog

BelConLawBlog Retweeted



De Belgische staatsstructuur en het Grondwettelijk recht zijn een zeer complex gegeven. Prof Johan Vande Lanotte brengt in het 1e bachelorvak Staatsrecht [@ugent](#) duidelijkheid in dit institutionele klussen via de filmpjes ‘België voor Beginners’: ow.ly/Ufj230iV66z



Mar 14, 2018

BelConLawBlog Retweeted



Jurgen Goossens
[@goossens_jurgen](#)

Interessante bijdrage van [@RobinVerbeke](#) op [@BelConLawBlog](#) [#BelconLawBlog](#)

[Embed](#)

[View on Twitter](#)

Search

To search type and hit enter

Recent Posts



[Monthly Overview – February 2018](#)

March 21, 2018



[Monthly Overview – January 2018](#)

February 15, 2018



[Monthly Overview December 2017](#)

January 26, 2018



[Monthly Overview November 2017](#)

December 22, 2017



[Hervorming van de provincies: quo vadis?](#)

December 8, 2017

Archives

[March 2018](#)

[February 2018](#)

[January 2018](#)

[December 2017](#)

[November 2017](#)

[October 2017](#)

[September 2017](#)

[July 2017](#)

the Constitution.

The Council of State overrules the 'Peeters directive'

The Constitutional Court upheld the jurisdiction of the Council's General Assembly regarding administrative action in the six municipalities with facilities bordering Brussels. Needless to say, some Flemish political parties, such as the Flemish-nationalists of N-VA, were not enthusiastic that the bilingual section of the Council of State was now competent for the municipalities with language facilities around Brussels. In view of Belgium's constitutional division into language areas, Flanders petitioned the Constitutional Court to deny jurisdiction the bilingual section of the Council of State over Flemish affairs. The Flemish argument was that these municipalities around Brussels would be treated differently than other Flemish municipalities, in this way violating the principle of equality. The Court argued that it was not competent to review a deliberate choice of the special legislator. The Council of State, which had suspended its deliberations pending the Constitutional Court decision, could thus resume the case.

The Council interpreted the language facilities in a Salomon judgment. The French speaking citizens argued that a once in a lifetime declaration on language preference ought to be sufficient, while the Peeters directive imposed a separate declaration for every single document. The General Assembly found that "both interpretations are contrary to law". **In an exercise of bold judicial creativity, the Council not only ruled that such declarations had to be made at reasonable intervals, but it explicitly imposed the interval: every four years.**

Political parties from both language groups seem to be able to live with this interpretation. Walloon political parties were joyous that the Council of State invalidated the Peeters directive. French constitutional lawyers equally **cheered "bravo" to the Court**. Flemish parties were not amused, but they could live with this typically Belgian compromise. **Flemish authors found the Court activist**, since it was not necessary to interpret the Peeters directive for solving the case. Anyhow, Flemish parties were quick to downgrade the scope of the Council's decisions, arguing that it **applied only to correspondence with citizens at municipal level**.

The mayors cases

Three non-appointed French-speaking mayors from Dutch municipalities with French facilities bordering Brussels (Francois Van Hoobrouck d'Aspre, Damien Thiéry and Véronique Caprasse) petitioned the Council of State. The Flemish government did not appoint them because they sent out voting summons in French. The situation is somewhat *Kafkaesque*: according to the Flemish interpretation, these mayors were forbidden to send voting summons in French. However, the Brussels First Instance Court ruled that they were not only permitted, **but obliged to send out French voting summons**. The Flemish government always said that **only the Council of State had the legitimacy to reverse their policy**.

The *designated* mayors brought their case to the Council of State. An explanation about the difference between a *designated* and an *appointed* mayor is necessary at this point. A majority in the municipal council had voted for them as designated mayors. The Flemish government still needed to appoint them. At this point, the controversy starts. Flanders refused to appoint them, because they had sent out voter summons in French. The Flemish government argued that this action, destroyed the necessary trust between the designated mayor and the regional government. But in view of the Brussels court's decision, the mayors stood before a difficult choice: which interpretation should they follow? As designated mayors they exercise full competences, but they nonetheless chose to litigate. One of them argued that his non-appointment caused him **"political, moral and personal damages."**

The Council dismissed the petitions of two mayors, Francois Van Hoobrouck d'Aspre and Damien Thiéry, but appointed a third, Véronique Caprasse. The stakes were high: according to the new legislation, a *designated* mayor automatically becomes appointed, as soon as the Council finds an irregularity, of any nature, in the Flemish government's appointment refusal. The Council decided all three cases on the same day, namely 20 June 2014. **First, the Van Hoobrouck case was dismissed**. The Council argued that, in order to be admissible, a legal interest is required not only at the time of lodging the application, but also on the moment that the Council takes a decision. Therefore, the nobleman Francois Van Hoobrouck, who was mayor for nearly 20 years but no longer at the time of the decision, no longer had standing to sue. **Secondly, the Council equally dismissed the application of Damien Thiéry**. In a long decision, the Council argued that he had breached the trust of the Flemish government

June 2017
 May 2017
 April 2017
 March 2017
 February 2017
 January 2017
 December 2016
 November 2016
 October 2016
 August 2016
 June 2016
 May 2016
 April 2016
 March 2016
 February 2016
 January 2016
 December 2015
 November 2015
 October 2015
 September 2015
 August 2015
 July 2015
 June 2015
 May 2015
 April 2015
 March 2015
 February 2015
 January 2015
 December 2014
 November 2014
 October 2014

Tags

article 195 Constitution artikel 195 Grondwet Belgium;
 future bevoegdheidsoverdrachten BFW BHV Bijzondere
 Financieringswet Brussel Brussel-Halle-
 Vilvoorde Brussels Butterfly Senate
 Catalonia Catalonië constitutional amendment
 procedure EU-lidmaatschap EU Membership
 European state system Europese statensysteem
 fundamental rights future grondwet
 grondwetsherzieningsprocedure Hervorming
 Hervorming van de Senaat implementatie
 independence independence referendum interview
 staatsvorming judges Martin Ruebens monarchie
 Onafhankelijkheid onafhankelijkheidsreferendum popular
 sovereignty referendum Reform of the
 Senate Schotland Scotland Senaat
 Senate sixth state reform
 Special Finance Act toekomst transfer of powers
 zesde
 staatsvorming

Name *

Email *

Website

Post Comment

← [Shedding light on the double aspect doctrine](#)

[Filip, laatste Koning der Belgen? Rol en toekomst van de monarchie](#) →

© 2014-2015 - BelConLawBlog - Webdesign by [Webkampioen](#)