CHAPTER THREE

LINGUISTIC LAW IN HIGHER EDUCATION IN BELGIUM: NEW TRENDS FOR BILINGUAL EDUCATION, BUT WHICH ONE?

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A. INTRODUCTION

The Belgian State is composed of three national language groups. Dutch is the most common language among the population, followed by French and then German. Since 1970, the Belgian territory comprises four linguistic regions: the Dutch-speaking region, the French-speaking region, the bilingual region of Brussels-Capital and the German-speaking region. The decentralised unitary State has also evolved into a federal political model. The federal power has two

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1 Art. 4 of the Constitution: ‘Belgium comprises four linguistic regions: the Dutch-speaking region, the French-speaking region, the bilingual region of Brussels-Capital and the German-speaking region.

Each municipality of the Kingdom forms part of one of these linguistic regions.

The boundaries of the four linguistic regions can only be changed or corrected by a law passed by a majority of the votes cast in each linguistic group in each House, on condition that a majority of the members of each group is present and provided that the total number of votes in favour that are cast in the two linguistic groups is equal to at least two thirds of the votes cast.’

We would like to stress that Regions and linguistic regions are two different legal concepts. The first is one of two kinds of federate entities while the second refers to an administrative division of the territory. Regarding federate legislative powers, the Belgian federal system has the peculiarity that territorial jurisdiction of Communities and Regions almost match without overlapping. For example, the Walloon Region’s geographic scope covers the German-speaking region (also administered in this specific linguistic region by the German-speaking Community) and the French-speaking region (also administered for some matters by the French Community). On the other hand, the French Community’s scope of action covers the bilingual region of Brussels-Capital (which is also the territory of the Brussels Region) as well as the French-speaking region (meaning the territory of the Walloon Region without the territory of the German-speaking Community). On the Flemish side, the Flemish Region territory corresponds to the Dutch-speaking region whilst the territory of the Flemish Community covers the Dutch-speaking region as well as the bilingual region of Brussels-Capital. Therefore both Communities are competent on the territory of the bilingual region of Brussels-Capital.
official languages - French and Dutch - and a language of official translation – German. All federal institutions are organised on the basis of a division between the two main linguistic groups (Dutch and French). The principle of linguistic equality between groups is applied to the Federal Government, the Constitutional Court all the way through to the division of the federal high civil services. The Belgian federalism is thus seen as a bipolar federalism. In addition to the federal power, three Communities – Flemish, French and German-speaking – and three Regions – Brussels-Capital, Flemish and Walloon – have been created as federated entities. Since constitutional revisions of 1970 and 1988, language use policy and education policy are allocated to Communities, under any reserves for the benefit of federal power. Each Community is free to implement the educational model it wants.

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2 Law of May 31, 1961 concerning the use of languages in presentation, publication and entry of force of laws.
3 German speakers are around 70,000 over 10 million inhabitants. The Constitution does not guarantee them a political representation inside the federal government.
4 Art. 99 of the Constitution: ‘The Council of Ministers is composed of no more than fifteen members. With the possible exception of the prime minister, the Council of Ministers is composed of an equal number of Dutch-speaking members and French-speaking members.’
5 Special Law of Jan. 6, 1989 on the Constitutional Court, Art. 31: ‘The Constitutional Court shall be composed of twelve judges: six Dutch-speaking judges, who form the Dutch language group of the Court, and six French-speaking judges, who form the French language group of the Court. The title of Dutch-speaking judge or of French-speaking judge of the Constitutional Court shall, for the judges referred to in Article 34 (1) (1) be determined by the language of their degree, and for the judges referred to in Article 34 (1) (2) by the parliamentary language group to which they last belonged.’
7 Art. 2 of the Constitution: ‘Belgium comprises three Communities: the Flemish Community, the French Community and the German-speaking Community.’
8 Art. 3 of the Constitution: ‘Belgium comprises three Regions: the Flemish Region, the Walloon Region and the Brussels Region.’
9 About the Belgian Constitution, explained article by article, see M. Verdussen (ed.), La Constitution belge. Lignes et Entrelignes (Le Cri 2004). About the Belgian Federalism, see M. Uyttendaele, Précis de droit constitutionnel belge. Regard sur un système institutionnel paradoxal (Bruylant 2005); F. Delpéré, Le droit constitutionnel de la Belgique (Bruylant/LGDJ 2001).
10 Art. 129 of the Constitution.
11 Art. 127 of the Constitution.
12 Art. 30 of the Constitution.