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Personality versus Territoriality: Belgium and the Framework Convention for the Protection of National Minorities

I. INTRODUCTION

On 26 September 2002, Belgium was hit by a small political storm. The Parliamentary Assembly of the Council of Europe (PACE) had just approved a resolution on the Protection of Minorities in Belgium.1 Sixty-eight members of the Assembly present and voting endorsed the resolution; twenty-three members present and voting rejected it.2 The resolution urged Belgium to ratify the Framework Convention for the Protection of National Minorities (FCNM) and to sign and ratify the European Charter for Regional or Minority Languages.

In 1993, the PACE defined as a national minority, 'a group of persons in a state who (1) reside on the territory of that state and are citizens thereof; (2) maintain longstanding, firm and lasting ties with that state; (3) display distinctive ethnic, cultural, religious or linguistic characteristics; (4) are sufficiently representative, although smaller in number than the rest of the population of that state or a region of that state; (5) are motivated by the concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.'3

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1 Resolution 1301 (2002).
With this definition in mind, the 2002 resolution on the Protection of Minorities in Belgium identified as national minorities the German-speaking community at the national level, the French-speakers in the Dutch language Region and in the German language Region, and the Dutch-speakers and German-speakers in the French language Region. The recognition of linguistic entities at the regional level as 'national minorities', is, so the resolution argues, a direct consequence of the federalization of Belgium. The devolution of powers has made 'the sub-state entities competent in respect of fields of interest to minorities [such as education and culture]... [Therefore], to exclude the applicability of the Framework Convention at the sub-state level would thus be contrary to the object and aim of the Convention itself.'

The resolution was hailed as an important victory by most of the French-speaking Belgian community, but condemned by a majority of the Dutch-speaking politicians and the Dutch-language press. It was welcomed by the former because the recognition of the French-speakers living in Flanders as a national minority, so they hoped, would secure and possibly broaden the linguistic rights or facilities already offered to them. The Flemish political parties and the press dismissed the resolution because it would speed up the 'Frenchification' of Flanders and violate the spirit of these 'linguistic facilities': transitory measures which ultimately should lead to a homogeneous Dutch-speaking Flanders.

In this article, I will not seek to address the judicial strength or weaknesses in the Parliament's resolution or in the Nabholz-Haidegger's Report on which it is largely based. Instead, I will explain the political dynamics which have led some of the French-speakers living in the Brussels' periphery to advance their cause with the Council of Europe (CoE). To understand why, the federalization process of Belgium, and the relevance of language therein must first be explained. The political-historical analysis also clarifies what makes the concerns of the French-speaking minority in Flanders so different from, say, the concerns of the other national minorities which were identified by the CoE's resolution.

In the second part of the article, the Belgian case is placed within a comparative framework of linguistic policy-making. In essence, the debate is not about how to define a national minority. Instead, the crucial question is which principle of organizing linguistic policy is best suited to managing Belgium's linguistic problems: 'territoriality' (citizens adopt the majority language of a region or country in which they live) or 'personality' (citizens communicate with public services in their own language, even if that is not the language which is spoken by most people living around them). The comparative overview demonstrates that other states with a multilingual character, such as Canada, Spain and Switzerland have faced the same question. In Belgium, the territoriality principle finds strong resonance among the Flemish political elites and public. The personality principle finds more support among a majority of the French-speaking political elites and public.

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