

4. The case of Belgium

Yves Lejeune

*Catholic University of Louvain-la-Neuve (UCL) and the University
Faculties of Notre-Dame de la Paix, Namur, Belgium*

To understand the problems raised by the prospect of ratifying the European Charter for Regional or Minority Languages in Belgium, we must first of all refer (section 4.1 below) to the status conferred by the Belgian Constitution on the languages used in Belgium. The provisions of the constitution result from the steadfast demand for linguistic homogeneity from Flanders, which has now morphed into a firm desire for territorial integrity (section 4.2). This makes it vital to identify the position of the kingdom's three official languages within each language zone and then to list the "regional languages" or dialects spoken in each zone and describe the areas where they are used (section 4.3). We conclude by describing the repeated attempts by the French Community of Belgium to secure the state's accession to the European Charter on behalf of its endogenous languages (section 4.4).

4.1. The constitutional status of languages in Belgium

Since its adoption in 1831, the Belgian Constitution has formally guaranteed the freedom of the use of languages: "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 judicial matters".³⁷

Despite this, such freedom is nowadays confined to the private sphere by two fundamental developments dating back to 1970:

- the inclusion in the constitution of four language zones, three of which are subject to the monolingual principle;
- the emergence of new fields in which three federate entities can now issue linguistic legislation, namely the Flemish-, French- and German-speaking communities, which are constitutionally empowered to regulate the use of languages in the administrative field³⁸ but also in social

37. Article 30 of the Belgian Constitution (Article 23 in the original text of 7 February 1831).

38. Until 1970 the constitution allowed the legislature to act in this field only "for acts of the public authorities".

relations between employers and their staff and for teaching in schools set up, subsidised or officially approved by the public authorities.³⁹

A compromise, which has unfortunately been under challenge since about 2000, legally guarantees the survival of the minorities scattered along the “border” between language zones.

4.1.1. The language zones

The existence in Belgium of three human groups with different cultural and linguistic characteristics has not given rise to personal federalism⁴⁰ because these groups are, in the main, geographically concentrated. The national territory is split into four areas known as “language zones”: three monolingual areas (French-, Dutch- and German-speaking) and a “bilingual” area (Brussels-Capital), which is entirely surrounded by the Dutch-speaking area.⁴¹ Each municipality in the kingdom is required to belong to one of these language zones.⁴²

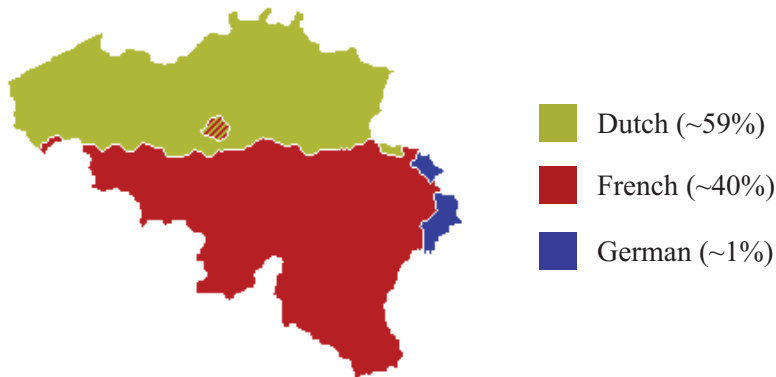


Figure 4.1: Language zones in Belgium

The language zones should not be confused with the Walloon, Flemish and Brussels regions, which are sub-national federate units superimposed on the three communities. The regions have legislative and administrative

39. However, Article 130 of the constitution confines the linguistic powers of the German-speaking Community to education (under the constitutional review of 20 May 1997).

40. “Personal federalism” [or personality] refers to political autonomy for (language) groups on a personal basis throughout the entire territory of the State. It can be defined as a form of group self-rule, with institutions and governing organs exercising autonomous powers over the group members. Power is not distributed over territories but over human groups as such.

41. Brussels has a boundary 3.5km from the French-speaking zone, via the municipality of Sint-Genesius-Rode/Rhode-Saint-Genève.

42. Under the current Article 4 paragraph 2 of the Belgian Constitution.

powers in socio-economic, spatial planning, environmental and local government matters.

The linguistic border between the Flemish people and the French-speakers of Wallonia, first established under the Law of 28 June 1932,⁴³ was set in stone by an Act of 8 November 1962, and the Brussels-Capital bilingual zone was finally delimited by an Act of 2 August 1963. This border has become virtually immutable, because since 1970 the Belgian Constitution has required that any law to amend or rectify the boundaries of language zones must be supported not only by two-thirds of the votes cast but also by a majority of the representatives and votes cast within each linguistic group (French and Dutch) in each Chamber of the Federal Parliament, in order to be adopted.⁴⁴ Thus a “special law” – the name in Belgium for such legislation – modifying the linguistic border has no chance of being adopted in the foreseeable future. As a result, local populations can no longer submit requests to change the boundaries.

4.1.2. Regional monolingualism

The linguistic laws⁴⁵ as interpreted by the case law of the Conseil d’Etat have established the territoriality principle⁴⁶ ever more rigidly. According to this principle, the language used by the public authorities, the schools which they fund, and employers and employees in their mutual relations, is mandatorily that of the language zone in question.

Therefore, each language zone has an official language, except Brussels-Capital, which has two.⁴⁷ As things stand, French is considered as a foreign language in Flanders and the same applies to Dutch in the French-speaking zone. The Belgian system is apparently an unprecedented case, where the

43. At the time, exceptions were made for “protected minorities” in the very many municipalities with mixed populations along the linguistic border, with “external bilingualism” for public notices and communications.

44. Under the current Article 4 paragraph 3 of the Belgian Constitution.

45. The last laws on use of languages in the administrative field were co-ordinated under the Royal Decree of 18 July 1966.

46. See A. Alen and R. Ergec, “Le principe de territorialité dans la jurisprudence belge et européenne. Un essai de synthèse”, *Journal des Tribunaux* (hereafter JT), 1998, pp. 785-790. The Dutch version of the same study is in *Rechtskundig Weekblad*, 1998-9, pp. 417-424.

47. The Constitution does not explicitly designate official languages for each language zone, but, according to the combined Chambers of the Legislative Section of the *Conseil d’Etat*, it was “manifestly superfluous” to do so since there was a “consensus on the principle” when the division of the country into language zones was enshrined in the Constitution (Opinion of 15 June 1988, general observations adopted only by the Flemish members of the Section, *Parl. Doc.*, Senate, SE 1988, No. 371/1, pp. 53 and 54).

two main official languages of the state cannot be used by the public authorities in almost half the national territory.

4.1.3. Protection of linguistic minorities

Where local circumstances – namely the presence of a linguistic minority – calls for special regulations derogating from the general linguistic regulations applicable to a given zone, the language of this zone must continue to take precedence. This is the main case-law stance.⁴⁸

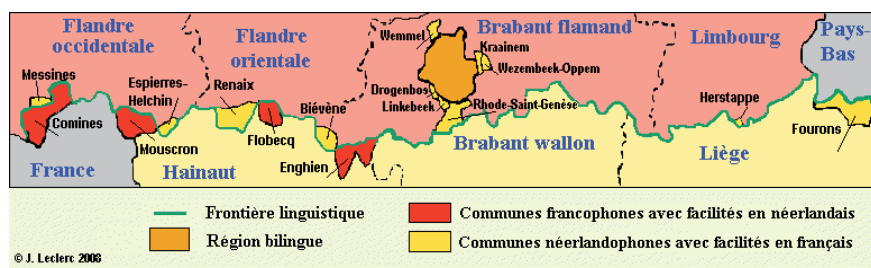


Figure 4.2:⁴⁹ Belgium's linguistic border⁵⁰

Source: Jacques Leclerc, "L'Etat belge: données démolinguistiques" [figure titled "Communes de la frontière linguistique"] in *L'aménagement linguistique dans le monde*, Quebec, TLFQ, University of Laval, 2008 (www.tlfq.ulaval.ca/axl/europe/belgiqueetatcarte5.htm).

A few municipalities (all listed in federal legislation) have special regulations "with a view to protecting their minorities"⁵¹ enabling them to use an official language other than that of the language zone in which the municipality stands.⁵² These municipalities with linguistic facilities also have them in education.⁵³ Most are along the linguistic border or around Brussels.

48. Opinion of the Legislative Section of the *Conseil d'Etat* of 5 September 1972, *Parl. Doc.*, Ch., sess. 1971-2, No. 282/5, p. 2; judgment No. 17 of the Court of Arbitration (hereafter C. Arb.) of 26 March 1986, JT 1986, 562, note by M. Uyttendaele. The judgments of the Court of Arbitration, renamed Constitutional Court in 2007, are accessible in French, Dutch and German on website www.const-court.be.

49. Names of municipalities in Dutch (from west to east): Mesen, Komen, Spiere-Helkijn, Moeskroen, Ronse, Vloesberg, Bever, Edingen, Sint-Genesius-Rode and Voeren. Dutch names of Provinces: West-Vlaanderen, Oost-Vlaanderen, Vlaams-Brabant and Limburg. English translation of the Provinces above the green boundary line: West Flanders, East Flanders, Flemish Brabant and Limburg. Below the green boundary line: Hainaut, Walloon Brabant and Liège.

50. The green line in the map indicates the linguistic border. Orange = bilingual region; red = French-speaking municipalities with facilities in Dutch; yellow = Dutch-speaking municipalities with facilities in French.

51. Co-ordinated laws on the use of languages in administrative matters, Article 8.

52. The "municipalities with special linguistic regulations", often called the "municipalities with facilities".

53. The three Walloon municipalities of Baelen, Plombières and Welkenraedt along the northern edge of the German-speaking zone also have linguistic facilities in the educational field.

The legislative powers of the communities in the field of language use are not exercised in municipalities with special linguistic status nor in the “bilingual” Brussels-Capital zone. In these parts of the country, the federal legislature holds jurisdiction for regulating language use in the same fields as the French and Flemish communities.⁵⁴

Apart from these limited territorial exceptions, no protection is granted to “official languages less widely used on part of its territory”, to paraphrase Article 3 of the European Charter for Regional or Minority Languages. According to the case law of the Belgian Constitutional Court, the communities are not authorised unilaterally to ensure the protection of Dutch-speaking, French-speaking or German-speaking minorities living in a language zone of Belgium where their language is not official.⁵⁵ Measures to promote a language or a culture as adopted by a community must respect the exclusive division of territorial competence; they must exclude the “potential extra-territorial effects” of their provisions, at variance with policies implemented by other communities.⁵⁶

The reasons for the Belgian constitutional reluctance to protect linguistic minorities against assimilation will be described later.⁵⁷ We can nevertheless already note that, according to Flemish doctrine, the territoriality principle is an “institutional guarantee which is potentially necessary to protect a linguistic group”, even a majority one, “against ‘assimilationist’ pressure by a dominant language”,⁵⁸ viz French: it prevents “infiltration” and helps create a “linguistic security area”. The territoriality principle, like the rights

54. C. Arb., judgments Nos. 15 and 16 of 25 March 1986, No. 19 of 12 June 1986, Nos. 20, 21 and 22 of 25 June 1986.

55. C. Arb., judgment No. 54/96 of 3 October 1996, B.7.1, B.7.2, JT 1997, p. 477, with note by M. Uyttendaele and R. Witmeur; judgment No. 22/98 of 10 March 1998; judgment No. 56/2000 of 17 May 2000.

56. Ibid. Also judgment No. 92/2003, 24 June 2003, B.14.1, B.14.2; Conseil d’Etat, 12 February 2008, *Flemish Community v. French Community Commission*, No. 179.511, *Public Law Chronicles* (hereafter CDPK) 2008/4, p. 859, with note by H. Vuye. The measures adopted by Brussels Region and the French Community of Belgium favouring French speakers outside their language zone raise a constitutional problem of territorial allocation of legislative and administrative competences. See H. Vuye, “La répartition des compétences territoriales entre les Communautés. Après la saga des arrêts Carrefour s’annonce un nouveau ‘carrousel’: le ‘Conseil consultatif des francophones de la périphérie’”, note on the judgment by Conseil d’Etat, CDPK 2008/4, pp. 868-876.

57. See section 4.2 below.

58. See J. Clement, “L’emploi des langues en matière administrative. Les facilités et la résolution Nabholz du Conseil de l’Europe. Pas de langue, pas de liberté?”, *Administration Publique* (hereafter: AP), 2003, pp. 190-207, at 205; J. Clement, *Taalvrijheid, bestuurstaal en minderheidsrechten. Het Belgisch model*, KUL thesis, Antwerp/Oxford/Groningen, Intersentia, 2003; and J. Clement, “Territoriality versus personality” in *The Framework Convention for the Protection of National Minorities: a useful pan-European instrument?*, ed. A. Verstichel, A. Alen, B. De Witte and P. Lemmens, Antwerp/Oxford/Portland, Intersentia, 2008, pp. 51-68. See also Fr. Gosselin, “Actualité du contentieux linguistique

of minorities, must be considered as a means of protecting a linguistic group, viz the Flemish people.

As we know, Belgium did not ratify the Council of Europe Framework Convention for the Protection of National Minorities of 1 February 1995 because of the controversy between French-speakers and the Flemish on the existence in Belgium of such minorities within the meaning of the Convention.⁵⁹ The reasons for this reluctance become clear from reading the relevant Flemish doctrine, which suggests that:

at the present time there is a balance, between the constitutionally guaranteed principles of territoriality and homogeneity of language zones and the facilities enshrined in the linguistic laws. For instance, French-speakers and Dutch-speakers enjoy equal protection in the six peripheral municipalities. The ratification of the Framework Convention would add to our legislation a provision to protect the minority group only. Such ratification is accordingly liable to upset the constitutional balance in “municipalities with facilities”.⁶⁰

In short, the argument is that the aim of refusing to ratify this Convention is quite simply to defend the Belgian system, which has managed to provide a peaceful solution for the co-existence of different linguistic groups.⁶¹

4.2. An explanation: from linguistic homogeneity to territorial integrity

4.2.1. The cause: defending the language of the Flemish population

4.2.1.1. The problem: French-speaking elites in a trilingual country

The vagaries of history brought populations of different languages living in principalities theoretically ruled by either France or the Holy Roman Empire under the unified domination of the dukes of Burgundy, then the kings of Spain and finally the Habsburgs. Belgium thus inherited a territory whose

devant le Conseil d'État: quel avenir pour la Commission permanente de contrôle linguistique?”, AP 2007-8, pp. 312-330.

59. See the report by a group of experts on constitutional matters in CDPK 1998, pp. 491-527; X. Delgrange and S. Van Drooghenbroeck, “La signature de la Convention-cadre sur la protection des minorités nationales et les mesures de protection contenues dans les lois spéciales”, AP 2002, pp. 273-287; J.-C. Scholsem, “Quel avenir pour la Convention-cadre pour la protection des minorités nationales en Belgique?”, CDPK 2008, pp. 557-586; J. Velaers, “Het Kaderverdrag tot bescherming van de nationale minderheden: een ‘non possumus’ voor Vlaanderen?” in *Taaleisen juridisch getoetst*, ed. A. Alen and S. Sottiaux, Mechelen, Kluwer, 2009, pp. 103-158.

60. J. Clement, “L’emploi des langues en matière administrative”, op. cit., AP 2003, p. 206 (trans. Council of Europe). The institutional guarantees to protect French speakers from being reduced to minority status at federal level are also part of the overall balance of the “Belgian model”.

61. *Ibid.*, p. 207.

boundaries bear no relation to the languages spoken within them, except along the Luxembourg–Belgian border.⁶²

This situation is not unprecedented in the older states of Europe, whose monarchs had to ensure homogeneity by fomenting the emergence of a national sentiment and imposing either the language or the religion of the seat of power, or both. What distinguished Belgium from its neighbours was its complete inability to secure linguistic unity, despite the social and political domination of French from the 18th century at least until the advent of universal male suffrage just after the First World War, because the border between the Latin and Germanic peoples runs straight through the southern section of the Low Countries.

When Belgium became a unitary state in 1830, its elites enjoying voting and election rights spoke only French, whether in Flanders or elsewhere in the country. French therefore became the sole official language of the state. However, a majority of the Belgian population living in the northern provinces of the country used a variety of Flemish dialects.

4.2.1.2. First demands of the Flemish movement: equality of languages and bilingualism

In the mid-19th century the Flemish movement,⁶³ which was originally cultural and linguistic, opposed the political monopoly enjoyed by the French language. As a result, the Dutch language gradually gained acceptance in the north of the country, in courts of law and government departments. Dutch was gradually introduced in the northern education system.⁶⁴

The year 1898 saw the adoption of legislation stipulating that Belgian laws must be enacted and published in Dutch and French; Dutch thus became an official language of the state on an equal footing with French.⁶⁵ Nevertheless, recognition of legal equality between two unevenly distributed international languages clearly was insufficient to establish de facto equality between them, especially because of the principle of freedom of choice of language

62. See, on this subject, J. Stengers, *Les racines de la Belgique* [Vol. 1 of *Histoire du sentiment national belge des origines à 1918*], Brussels, Racine, 2000, pp. 52 and 53.

63. The members of this movement are known as Flamingants.

64. Only in 1930 did Ghent State University changed its linguistic status; only in 1968 was the French-speaking section of the Catholic University of Leuven finally forced over the linguistic border to Louvain-la-Neuve.

65. Act of 18 April 1898, the “Equality Act” (*loi d’égalité – Gelijkheidswet*).

used in private relations, which the constitution has proclaimed ever since national independence.⁶⁶

We might quote the perceptive comments by the historians Jean Stengers and Eliane Gubin:

The Flamingants placed great hopes in the first linguistic laws, which proved only moderately effective. The bilingualism they demanded even seemed to turn against them: the Flemish people still had to know both languages, unlike the Walloons, for whom one language was sufficient. ... Furthermore, the legislation on the use of languages encountered problems among the Flemish population, who continued to see French as a refined language that could promote their social advancement. ... Bilingualism in Flanders, which was the ideal of the first Flamingants, thus turned to the advantage of the French language. ... Flemish was not just relegated or disregarded: it was actually despised.⁶⁷

And the memoirs of a French-speaking writer from Ghent, Suzanne Lilar:

It was this disdain that the Flemish population resented most, for one can accept bilingualism but not, without demeaning oneself, the systematic disparagement of one's mother tongue. Everything has been said that there is to say about this matter, apart from the fact that it was a matter of honour.⁶⁸

4.2.1.3. *The end of French-speaking dominance and the triumph of territoriality*

At the end of the First World War, the advent of genuine universal suffrage finally put an end to the predominance of the French language in Belgium. Thanks to the combination of the Flemish movement's determination to eliminate French from Flanders and the French-speakers' opposition to the idea (which was envisaged for a time) of establishing compulsory bilingualism nationwide, the national legislature began a process, which continued throughout the 20th century, of adopting strict legislation imposing the exclusive use of Dutch in government departments, the army, the courts and schools in the north. In other words, these major linguistic laws were acquired primarily under pressure from the Flamingants, who saw them as

66. Under the current Article 30 of the constitution.

67. J. Stengers and E. Gubin, *Le grand siècle de la nationalité belge de 1830 à 1918* [Vol. II of *Histoire du sentiment national belge des origines à 1918*], trans. Council of Europe, Brussels, Racine, 2002, pp. 125-6.

68. S. Lilar, *Une enfance gantoise*, Paris, Grasset, 1976, p. 39 (quoted by Stengers and Gubin, op. cit., p. 128).

a matter of principle, and with the connivance of French-speakers who, appalled at the idea of bilingualism, saw them as an easy way out.⁶⁹

4.2.2. Explaining the current intransigence: a nation on the defensive

The Flemish general public currently interprets the territoriality principle as excluding any recognition within the Dutch language zone of linguistic, cultural or political rights for French-speakers or any other linguistic groups, except in areas “with facilities” – a measure which they consider temporary, designed to facilitate the assimilation of non-Dutch-speakers. This perception stems mainly from fear of the gradual Francisation of the municipalities around Brussels (urban sprawl of French speakers), even though this phenomenon of cultural spread happens on the outskirts of all major towns and cities as nearby rural areas become urbanised; it is naturally intensified in Brussels by the presence of state institutions, European organisations and the internationalisation of the city’s population.

There is a fairly simple explanation for this intransigence. The Flemish population’s long linguistic struggle against its Frenchified elite and its French-speaking civil servants meant that Flemish public opinion differed from Belgian French-speaking public opinion, leading to a genuine feeling of Flemish national identity, whereas no parallel phenomenon was to be seen on the French-speaking side. French-speaking Belgians have an unflinching attachment to the state, but this is not matched by any strong feeling of belonging to a Walloon or French-speaking community, which cannot be treated as equivalent to a nation in the factual meaning of the term.⁷⁰ In contrast, the Dutch-speakers have a Flemish political identity which they must combine with their belonging to the Belgian national community. Having created a genuine national sentiment based on their common language, but confined within the borders of Belgium, Flemish people are increasingly detached from the state, which is regarded as the embodiment of a century of French-speaking domination, affecting even the Flemish elites.

The Flemish nation was invented within the Belgian state,⁷¹ and it has already created its own institutions, its own territory and its own borders,

69. Stengers and Gubin, op. cit., p. 191.

70. As Stengers puts it, “There are not two separate [Belgian] peoples, one in the North and one in the South. There is one in the North, the Flemish people (*ons volk*), but in the South no one would ever venture to say *notre peuple*” in Stengers and Gubin, op. cit., pp. 200 and 201.

71. “Flanders and Wallonia, Walloons and Flemish people are, collectively and exclusively, sub-products of Belgium”, in Stengers and Gubin, op. cit., p. 201.

with the consent and active participation of this state. The traditional manifestations of this national sentiment – defence of the integrity of Flemish territory and a determination to ensure the cultural integrity of Flanders – are familiar to, but frowned upon, by French-speakers. But it is difficult for a nation to renounce its territorial integrity, even where it has not set itself up as a separate state.

4.3. Regional or minority languages in Belgium

The recognition and protection of languages in the various language zones in Belgium are matters for the communities,⁷² except for minorities living in “municipalities with facilities”, which come under the jurisdiction of the federal authorities in this field.

4.3.1. The French language zone

4.3.1.1. The position of the official languages of other language zones

The French language zone has two types of “municipalities with facilities” adjacent to another language zone: four municipalities along the linguistic border⁷³ and two municipalities next to the German-speaking zone.⁷⁴ In the former, administrative facilities are granted to inhabitants who speak Dutch; in the latter, they are granted to German-speaking residents. Three further municipalities beside the German-speaking zone⁷⁵ offer linguistic facilities (in German and Dutch) in education. The federal authorities are responsible for granting this language status.

4.3.1.2. “Endogenous regional languages”

The French Community of Belgium considers that the regional dialects that have developed over the centuries in the area for which it is responsible constitute both a heritage worth protecting and a means of communication and expression which should be promoted alongside French, the official language. It seems that these dialects do not fit into the category of “languages linguistically affiliated with a(nother) nation-state language”.⁷⁶

72. But the German-speaking Community’s linguistic competence is confined to education “in establishments created, subsidised or recognised by the public authorities” (constitution, Article 130 paragraph 1.5).

73. From west to east, Comines/Komen, Mouscron/Moeskroen, Flobecq/Vloesberg and Enghien/Edingen.

74. Malmedy and Waimès.

75. Baelen, Plombières and Welkenraedt.

76. See classification by J.-L. Fauconnier, “Challenges of applying the European Charter for Regional or Minority Languages to a federal country: the Belgian example” in R. Dunbar and G. Parry (eds), *The*

On 24 December 1990, growing awareness of the importance of this heritage led the French Community to issue legislation to raise these local variants from dialect status to the general level of “endogenous regional languages”.⁷⁷ On 19 March 1991, the Executive of the Community set up a Consultative Council on Endogenous Regional Languages (CLRE) to submit opinions to the minister responsible for culture on any requisite measures in the field of protecting and promoting these languages. This Council also ensured representation of the French Community in the international bodies involved in defending the same causes.

The CLRE drew up geographical lists of “endogenous languages” spoken in the French language zone. According to the list first approved on 20 June 2001,⁷⁸ these languages or dialects are either Romance in origin – Walloon, Picard,⁷⁹ Champenois⁸⁰ and Gaumais or Lorrain⁸¹ – or Germanic:⁸² Moselle (or Luxembourg) Franconian.⁸³ On 1 October 2003, Meuse-Rhenish Franconian (or Carolingian Franconian) was added to the list,⁸⁴ which does not include Ripurian Franconian,⁸⁵ western Flemish⁸⁶ or Brabantish.⁸⁷ These

European Charter for Regional or Minority Languages: legal challenges and opportunities, Council of Europe Publishing, Regional or Minority Languages No. 5, 2008, pp. 147-156, at 149-151.

77.: Decree of 24 December 1990 on endogenous regional languages of the French Community. One of the main reasons for this title certainly lay in the determination of the government of the French Community of Belgium to bring its policy into line with the European Charter for Regional or Minority Languages, whereas the Council of Europe Ad hoc Committee of Experts on Regional or Minority Languages (CAHLR), which had been mandated to revise the draft Charter, decided to exclude “dialects of the official language”.

78. This document was published in the booklet “Le coq chante ... il va vous réveiller. Vade-mecum Langues régionales en Communauté Wallonie-Bruxelles”, Brussels, Ministry of the French Community, DG Culture, Literature and Books Division, Department of Endogenous Regional Languages, 2002.

79. Picard is spoken in most of Hainaut and a small area of Walloon Brabant: districts of Ath, Mons, Mouscron/Moeskroen, Soignies (apart from Ecaussines), Thuin (apart from Anderlues, Froidchapelle, Gozée, Lobbes, Ham-sur-Heure/Nalennes, Thuin), Tournai and Rebecq.

80. Champenois is spoken in four villages in the Bohan area along the French border: Sugny, Pussemange, Bagimont, Membre-Bohan (Vresse-sur-Semois).

81. Gaumais or Lorrain is spoken in Gaume (Virton district) in the south of the French language zone.

82. Franconian languages and dialects form a Germanic language group within western Middle German. Some linguists adopt a much broader approach and consider that Franconian also embraces dialects of Low German (Flemish, Brabantish, Limburgish, Dutch, Utrechtian, etc.) and High German (southern Rheno-Franconian and eastern Franconian).

83.: Moselle Franconian is the national language of the Grand Duchy of Luxembourg. In the French language zone it is spoke in the Arlon area/Arelerland and around Beho/Bochholz (part of the municipality of Gouvvy).

84. Meuse-Rhenish Franconian is spoken in Aubel, as well as Plombières, Welkenraedt and Baelen.

85. Even though this dialect is spoken in part of Waimes/Weismes (a “municipality with facilities”).

86. Western Flemish is spoken by a minority of the population of Comines/Komen and Mouscron/Moeskroen (“municipalities with facilities” on the linguistic border).

87. Brabantish is spoken by a minority of the population of Enghien/Edingen (a “municipality with facilities” on the linguistic border).

three dialects are used by either German-speakers or Dutch-speakers in “municipalities with language facilities”, which therefore do not fall under the linguistic jurisdiction of the French Community.

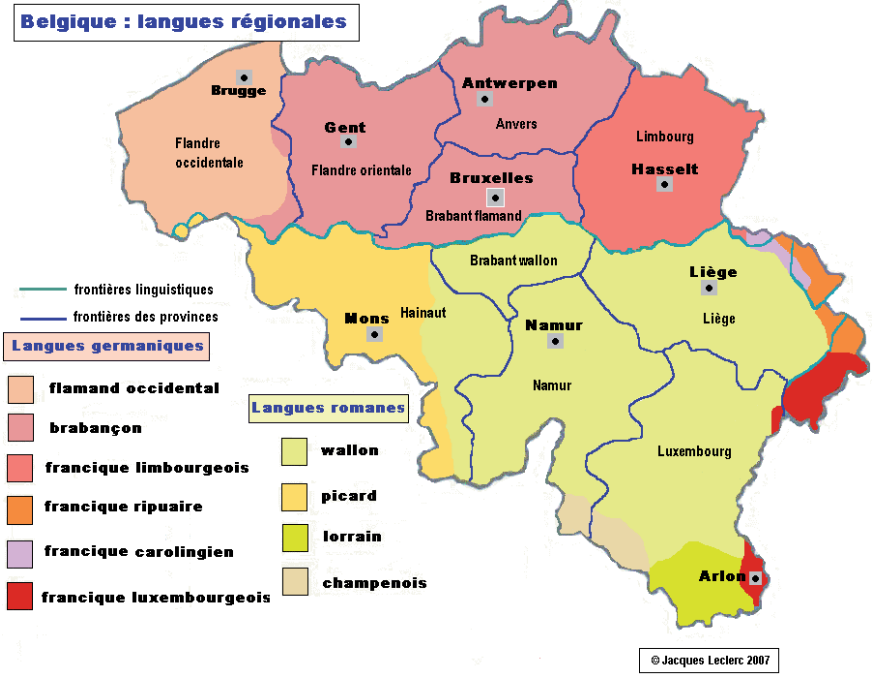


Figure 4.3:⁸⁸ Dialects of official languages and regional languages of Belgium⁸⁹

Source: Jacques Leclerc, “L’Etat belge: données démolinguistiques” [figure titled “Les langues régionales de Belgique”] in *L’aménagement linguistique dans le monde*, Quebec, TLFQ, University of Laval, 2007 (www.tlfq.ulaval.ca/axl/europe/belgique_ing-regionales.htm).

4.3.2. Flanders (Dutch language zone)

4.3.2.1. French as an official language in another language zone

In the Dutch-speaking zone there are also two groups of “municipalities with facilities” adjacent to another language zone: six municipalities located

88. Names of Flemish provinces and of Brussels in Dutch (from west to east): West-Vlaanderen, Oost-Vlaanderen, Vlaams-Brabant, Brussel and Limburg. In English: West Flanders, East Flanders, Flemish Brabant, Brussels and Limburg. The French provinces in English translation: Hainaut, Walloon, Brabant, Namur, Liège and Luxembourg.

89. The green lines on the map are the linguistic borders. The blue lines are the borders of the provinces. Germanic languages from top to bottom: western Flemish, Brabantish, Limburgish Franconian, Ripuarian Franconian, Carolingian Franconian and Moselle (or Luxembourg) Franconian. Romance languages from top to bottom: Walloon, Picard, Lorrain and Champenois.

along the linguistic border⁹⁰ and six municipalities on the Brussels periphery.⁹¹ In both cases the administrative facilities are granted to French-speaking inhabitants. The federal authorities are responsible for granting this linguistic status, but the Flemish Government is responsible for supervising its implementation by the provincial and local authorities.

4.3.2.2. Dialects

Dialects are widely used in everyday life. There are three main dialects:

- Brabantish, whose Antwerp variant is very widely used;
- Flemish, which has two variants: western and eastern Flemish, with a transitional area to Brabantish;
- Limburgish, which is recognised as a “regional language” in the Netherlands.

There are also Meuse-Rhenish (Carolingian) Franconian-speakers in four sections out of six in the municipality of Voeren/Fourons.

These dialects have no official status in Flanders, where they are considered as dialects of the Dutch language.

4.3.3. The German language zone

4.3.3.1. French as an official language in another language zone

The small French-speaking minority enjoys administrative facilities throughout the German-speaking zone (made up of nine municipalities). The federal authorities are responsible for granting this linguistic status. On the other hand, the legislation on language use in education is a matter for the German-speaking Community.

4.3.3.2. Dialects

Many German-speakers in the German-speaking zone also speak variants of Franconian. A distinction should be drawn between the canton of Eupen in the north and the canton of Sankt Vith/Saint-Vith in the south. In the canton of Eupen, Meuse-Rhenish (Carolingian) Franconian is the most common variant; only in the municipality of Raeren adjacent to the German border is Ripuarian Franconian spoken. In the canton of Sankt Vith/Saint-Vith, Ripuarian

90. Mesen/Messines, Spiere-Helkijn/Espierres-Helchin, Ronse/Renaix, Bever/Biéville, Herstappe and Voeren/Fourons.

91. Wommel, Kraainem/Crainhem, Wezembeek-Oppem, Drogenbos, Linkebeek and Sint-Genesius-Rode/Rhode-Saint-Genèse.

Franconian is also spoken in Bütgenbach and in the northern section of the municipality of Büllingen/Bullange, but Moselle (or Luxembourg) Franconian is spoken everywhere else.⁹²

These dialects have no official status in the German-speaking Community.

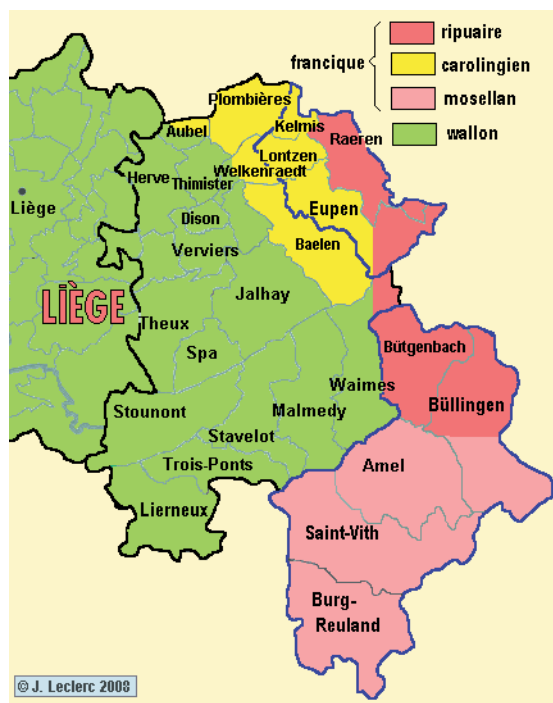


Figure 4.4: Walloon and the Franconian varieties of the Montzen-Welkenraedt region⁹³

Source: Jacques Leclerc, “L’Etat belge: données démolinguistiques” [figure titled “Les variétés de francique dans la région de Montzen-Welkenraedt”] in *L’aménagement linguistique dans le monde*, Quebec, TLFQ, University of Laval, 2008 (www.tlfq.ulaval.ca/axl/europe/belgiqueger.htm).

4.4. The planned Belgian accession to the Charter

Why has Belgium not yet signed the European Charter for Regional or Minority Languages? This is a different question from that of the non-ratification of the Framework Convention for the Protection of National Minorities, although the two are clearly linked. The ambiguities of the

92. Amel/Amblève, Sankt Vith/Saint-Vith, Burg-Reuland and the southern part of Büllingen/Bullange.

93. The Walloon variety is marked as green on the map. The Franconian varieties are (from top to bottom): Riparian, Carolingian and Moselle Franconian.

Charter itself are part of the explanation (section 4.4.1 below), followed by the difficulties arising from Belgian constitutional law (4.4.2). Then there are the reservations of the Flemish and German-speaking communities (4.4.3). The French Community would like to sign, but that would require the involvement of the federal authorities and all the communities (4.4.4).

4.4.1. The ambiguities of the Charter

The ambiguities of the Charter present Belgium with two types of difficulty, relating to the vagueness of its material and territorial scope.

4.4.1.1. Difficulties arising from the lack of lexical distinctions

The meaning of “language”

The Charter does not define the word “language”, though Article 1 does specify what it means by “regional or minority languages”. They are languages that are traditionally used within a given territory of a state by nationals of that state who form a group numerically smaller than the rest of the state’s population, languages which are different from the official language(s) of that state. The expression does not cover the local variants or different dialects of the official languages of the state.⁹⁴

This is a deliberate ambiguity.⁹⁵ The explanatory report to the Charter states that the instrument “does not pronounce on the often disputed question of the point at which different forms of expression constitute separate languages. ... Accordingly, it will be left to the authorities concerned within each state, in accordance with its own democratic processes, to determine at what point a form of expression constitutes a separate language”.⁹⁶ It is accordingly up to each contracting state to indicate at what point dialects constitute separate languages. However, in a state with several legislatures, contradictory solutions can be adopted vis-à-vis the recognition of endogenous languages. This is what has happened in Belgium, where only the French Community has granted endogenous language status to the main dialects used within its geographical area.

94. European Charter for Regional or Minority Languages, Article 1a (ii).

95. See R. Dunbar, “Definitively interpreting the European Charter for Regional or Minority Languages: the legal challenges” in R. Dunbar and G. Parry (eds), *The European Charter for Regional or Minority Language: legal challenges and opportunities*, Council of Europe Publishing, Regional or Minority Languages No. 5, 2008, pp. 37-61, at 46.

96. Explanatory report, paragraph 32.

The meaning of “regional or minority languages”

Whereas the expression “regional or minority languages” theoretically excludes the official languages of a state,⁹⁷ the state may nonetheless specify in its instrument of ratification, acceptance or approval any “official language which is less widely used on the whole or part of its territory” to which the provisions of Part III specified by the state should apply.⁹⁸ This enables the state to decide that the Charter will apply to this language.

In a state that uses the territoriality principle to ensure that its main communities co-exist, this option may appear hazardous to the advocates of homogeneity within language zones. This is no doubt the situation in Belgium. The linguistic territoriality principle enshrined in the constitution serves to protect each of the state’s official languages within its own geographical area. As we have seen, it is a case of protecting Dutch, within its zone, from the potential predominance of French, which is considered socio-culturally dominant; a further aim is to protect German from the demographic predominance of French in the province of Liège.

4.4.1.2. The difficulty of the lack of a territorial clause

It was decided not to include among these final provisions a territorial clause enabling states to exclude part of their territories from the scope of the charter. This is because it is already an intrinsic characteristic of the present charter that it is concerned especially with particular territories, namely those on which regional or minority languages are used; moreover, contracting states already have the right, under Article 3, paragraph 1, to specify those regional or minority languages to which their detailed undertakings will apply.⁹⁹

The Vienna Convention on the Law of Treaties of 23 May 1969 stipulates that “a treaty is binding upon each party in respect of its entire territory”,¹⁰⁰ unless otherwise established in a separate agreement. The lack of a territorial clause in the Charter therefore precludes a state comprising several legislatures from ratifying it while confining its commitment to the part of its territory in respect of which one of these legislatures is competent. It follows that Belgium could not limit the application of the Charter to the area of linguistic competence of one community – say, the French-speaking zone – and exclude its “municipalities with facilities”.

97. European Charter for Regional or Minority Languages, Article 1a (ii).

98. Ibid., Article 3 paragraph 1. See paragraph 51 of the explanatory report.

99. Explanatory report, paragraph 134.

100. Vienna Convention on the Law of Treaties, Article 29.

In order to overcome this problem, we must consider the obligations imposed by the Charter on all contracting states for the purposes of applying Part III, viz enumerating the “regional or minority languages”, within the meaning of the Charter, used in its territory; specifying their geographical distributions; and selecting the paragraphs or sub-paragraphs of Part III which are to apply to these languages.

Furthermore, Part II, which “is general in scope and applies in its entirety to all regional or minority languages spoken on the territory of a State Party”, allows the latter “a broad measure of discretion as regards interpretation and application”.¹⁰¹ As the public authorities are responsible, as authorities for the application of the Charter, “for deciding whether the form of expression used in a particular area of their territory or by a particular group of their nationals constitutes a regional or minority language within the meaning of the Charter”,¹⁰² the federal authorities could ratify this treaty without specifying the material scope of Part II.

Although no state can confine the application of the Charter to part of its territory, this would boil down to the same thing: Belgium would have ensured that the Charter only applied to a specific number of regional languages in their respective areas of use.

4.4.2. The difficulties of Belgian constitutional law

Among the reasons for Belgium’s continuing failure to sign the Charter we should also mention the difficulties arising from its highly complex federal system.

4.4.2.1. Allocation of legislative and international competences

Recognition of a “regional or minority language”, within the meaning of the Charter, which is spoken in part of a given language zone, is exclusively a matter for that community, which is also responsible for specifying the traditional location of speakers of this language within its geographical area. The federal authorities have the same competences vis-à-vis the bilingual Brussels-Capital zone and the “municipalities with facilities” in the various language zones.

Responsibility for designating any new “municipalities with facilities” in a given language zone and specifying the content of such facilities would also

101. Explanatory report, paragraph 39.

102. Ibid., paragraph 40.

go to the French and Flemish communities, although this hypothesis is completely unrealistic in practice.

Under the Belgian Constitution, as we know, the communities and regions are entitled to conclude treaties in their respective fields of competence. It follows that the European Charter is, in the context of Belgian constitutional law, a “hybrid” treaty which concerns not only the communities but also the federal authorities. Such a treaty should be concluded in accordance with the complex procedure set out in the co-operation agreement concluded by the federal state, the regions and the communities on 8 March 1994. The community governments would have to be involved in the discussions on an equal footing, under the “co-ordinating leadership” of the Federal Department of Foreign Affairs; the representatives of the federal state and the three communities would have to sign the treaty; and consent would have to be given by all the parliamentary assemblies concerned, although only the Head of State would be called upon to ratify the treaty.

4.4.2.2. Conclusion of a Council of Europe convention concerning only one Belgian community

This does not automatically mean that the Belgian communities could be signatories to the European Charter. The European Charter is also, and above all, a treaty adopted within the Council of Europe. The member states of this Organisation are entitled to voice their agreement to be bound by the Charter, as are any non-member states which the Committee of Ministers of the Council of Europe may have invited to accede. But, since the constituent units of federal states are neither member states nor non-member states of the Council of Europe, they cannot be contracting parties.

Fortunately, Belgian law allows the communities and regions to mandate a federal minister or Belgian ambassador to sign a “hybrid” treaty on their behalf. This would suggest a procedure involving Belgian signature of the European Charter on behalf of the federal authorities and all the Belgian communities. In this scenario, prior to signature, all the requisite executive mandates would have to be secured from the various entities concerned.¹⁰³

Moreover, if only one community is concerned by the conclusion of a treaty open for signature by the member states of an international organisation – and this, as we shall see, is the case of the French Community vis-à-vis the

103. Reply by K. De Gucht, Minister for Foreign Affairs, to a question on the “minority Luxemburgish language” put by J. Arens MP: *verbatim* proceedings, Committee on External Relations of the Chamber of Representatives, sitting of 2 February 2005 (CRIV 51 COM 490, p. 21) – translation of the Council of Europe.

European Charter¹⁰⁴ – how should the Belgian authorities then proceed? It is necessary and sufficient, in my view, for the federal authorities to agree to take on the relevant international commitment on behalf of this community, given that only the Belgian state can become a contracting party to the Charter. At the same time, this solution can only be envisaged if the authors of the treaty intended that its geographical scope could be restricted in such a way as to correspond to the territorial boundaries of the community in question. The Charter does not actually accommodate such an interpretation.¹⁰⁵ It would, therefore, be impossible for Belgium to ratify it solely on behalf of the only community that recognises the existence of endogenous regional languages in its territory.

4.4.3. Reservations by the Flemish and German-speaking communities

4.4.3.1. Exclusion of dialects used in Belgium

By virtue of the position of principle which it defends within the Dutch Language Union,¹⁰⁶ the Flemish Community considers all the local modes of speech used in the Dutch language zone as dialects. This means that they have nothing to do with the European Charter for Regional or Minority Languages, which does not apply to dialects of an official language of the same state.

According to some French-speaking linguists, this stance is more ideological than scientific. They refer to the example of Limburgish Franconian, which is a Dutch dialect in Flanders but a “regional language” in the Dutch province of Limburg, recognised as such by the Netherlands in a declaration deposited with the Secretariat of the Council of Europe. They contend that it is not a Dutch dialect but a variant of Low German.

It is true that promoting the use of standard Dutch at a time when the Germans were beginning to become aware of their national identity in their own language boosted the emergence of a Flemish national sentiment.¹⁰⁷ This clearly explains why Flemish people find dialect variants more like pale vestiges of a difficult past, rather than a rich heritage.

104. See section 4.4.4 below.

105. See section 4.4.1 above.

106. The Dutch Language Union or Taalunie is an international body founded by Belgium and the Netherlands.

107. In the words of the Flemish poet Prudens van Duyse, *De tael is gantsch het volk* (“language is the whole nation”), which in 1836 became the name of a Ghent literary society. See J. Stengers, *Les racines de la Belgique*, op. cit., p. 52; cf. *Nieuwe Encyclopedie van de Vlaamse Beweging*, Tielt, Lannoo, Vol. 3, 1998, p. 3046.

The German-speaking Community of Belgium seems to have a similar attitude where its own linguistic realities are concerned. This is also apparently the result of historico-ideological factors.¹⁰⁸

It follows that these two communities consider that their respective territories are not home to any regional or minority language within the meaning of the Charter.

4.4.3.2. Dreading the application of the Charter to the French language in Flanders

Ever since Belgium proclaimed its independence, the public authorities have systematically prioritised the use of the official language(s) to the detriment of dialects, but this does not preclude the potential applicability of the Charter to these languages. We have seen that Article 3 of the Charter makes it possible to include in the scope of the state's international commitment one or more official languages which is/are less widely used on the whole or part of its territory.¹⁰⁹

Therefore, in the light of the stance adopted by the Flemish authorities on the “linguistic facilities” provided in 12 municipalities in the Dutch-speaking zone,¹¹⁰ the only official languages to which Belgium could in practice hope to declare the Charter applicable would be French in the German language zone and German in the French language zone, or indeed Dutch in the French language zone. This would lead to a system that discriminated against French in the Dutch language zone, discrimination which is formally prohibited under the International Covenant on Civil and Political Rights¹¹¹ and the Belgian Constitution.¹¹²

4.4.4. The initiative of the French Community

The European Charter was opened for signature in Strasbourg on 5 November 1992. Also in 1992, the French Community, which had just recognised the existence of its “endogenous regional languages”, expressed its conviction that Belgium should sign the Charter, a position which it even included in a general policy declaration by its government.¹¹³

108. The aforementioned booklet “Le coq chante ... il va vous réveiller. Vade-mecum Langues régionales en Communauté Wallonie-Bruxelles” (excerpts: The Charter and Belgium).

109. See section 4.4.1 above.

110. See section 4.1.3 above.

111. Article 26 of the Covenant.

112. Under the current articles 10 and 11 of the Belgian Constitution.

113. This fact is mentioned by J.-L. Fauconnier, “Challenges of applying the European Charter”, op. cit., p. 154.

The Council of Endogenous Regional Languages (CLRE) of the French Community even conducted preparatory work for the signature of the Charter by the Belgian state,¹¹⁴ by noting certain paragraphs or sub-paragraphs in the Charter and indicating the endogenous regional languages of the French Community to which these provisions might be made applicable.¹¹⁵

In view of the ideological reservations on the part of the other two communities and the legal difficulties of concluding the treaty, the French Community officially proposed a selection of 44 articles and paragraphs from Part III of the Charter, which would be applicable exclusively to the Romance dialects, namely Champenois, Lorrain, Picard and Walloon. Owing to the complexity of the federal system, it was deemed more pragmatic not to take account at this stage of the Brabantish Thiois spoken in Brussels.¹¹⁶ The list was accompanied by a description of the geographical areas in which these languages have “a history”.¹¹⁷

The refusal of the other two communities to treat the dialects used in their territory as “endogenous regional languages” had almost buried the whole venture until, on 16 June 2000, the CLRE held a forum on the subject in Namur.¹¹⁸ This was an opportunity to resume negotiations with the federal authorities and the other communities. Finally, in June 2001, representatives of all the levels of power met in the Federal Ministry of Foreign Affairs to produce a list of 38 paragraphs and sub-paragraphs to be applied exclusively in the French-speaking zone.¹¹⁹ They also accepted the list of endogenous languages proposed by the CLRE and the description of their geographical areas.

114. In co-operation with the Romance Language Committee of the Belgian Committee (CROMBEL) of the European Bureau for Lesser-Used Languages.

115. Under the terms of Article 2.2 of the Charter, the states parties undertake to apply a minimum of 35 paragraphs or sub-paragraphs chosen from among the measures recommended, three of which must be chosen from the hard core of the Charter (education, cultural activities and amenities). Furthermore, Article 3.1 requires them to specify the regional or minority languages used on the whole or part of their territory.

116. In the bilingual Brussels-Capital zone, the Federal Authorities are responsible for standard-setting in the field of language use (Constitution, Article 129.2 *a contrario*).

117. The aforementioned booklet “Le coq chante ... il va vous réveiller. Vade-mecum Langues régionales en Communauté Wallonie-Bruxelles” (excerpts: The Charter and Belgium). Translation of the Council of Europe.

118. The proceedings of this colloquy were published (*Parva Charta. Forum relative à la Charte européenne des Langues régionales ou minoritaires*, Brussels, DG Culture, Literature and Books Division, Department of Endogenous Regional Languages) and distributed to the federal and federate authorities.

119. This list was published in the booklet “Le coq chante ... il va vous réveiller”, op. cit.

In 2002 and 2003 the Ministry of Culture of the French Community, at the prompting of the CLRE, added Luxembourg Franconian and Meuse-Rhenish (Carolingian) Franconian to the list of languages to which the 38 provisions of Part III would be applicable.¹²⁰



Figure 4.5: The Franconian varieties¹²¹

Source: Jacques Leclerc, "L'Etat belge: données démolinguistiques" [figure titled "Les variétés de francique"] in *L'aménagement linguistique dans le monde*, Quebec, TLFQ, University of Laval, 2008 (www.tlfq.ulaval.ca/axl/europe/francique-map.htm).

It should be stressed here that, beyond the policy of preserving regional dialects in the French-speaking zone, Luxemburgish-speakers in the Arelerland (Arlon area) were and still are also highly interested in signing the European Charter. The protection provided by the Charter would make it possible not only to take legal account of a bilingual population ignored by Belgian language legislation but also to intensify economic relations with the Grand Duchy, which is a major labour pool for cross-border commuters.¹²²

120. "Franconian", unqualified, had been mentioned in the proceedings of the *Parva Charta* Forum.

121. From left to right: Limburgish, Carolingian, Riparian, Luxembourg Franconian, Moselle Franconian and Rhenish.

122. See the question put by J. Arens MP, on "the minority Luxemburgish language" and the reply by the Minister for Foreign Affairs, K. De Gucht, in the Committee on External relations of the Chamber

In 2004 the French Community issued the Federal Ministry of Foreign Affairs with an executive mandate to sign the Charter, yet this Treaty, which came into force on 1 March 1998 after its fifth ratification by a Council of Europe member state, has still not been signed by Belgium, primarily because of the “lack of interest” from the Flemish Community.¹²³ It is not inconceivable that the deliberate lack of expedition shown by this community is in fact due to the fear of opening the door to an extension of the application of the Charter in Belgium to “each ... official language which is less widely used on ... part of its territory”.¹²⁴ This fear might be explained by the fact that certain Flemish political circles are sometimes accused of confusing the issue of Belgian accession to the European Charter for Regional or Minority Languages and that of ratifying the Framework Convention on the Protection of National Minorities.¹²⁵

For its part, the German-speaking Community has reportedly also issued the Federal Authority with an executive mandate to sign the Charter.

4.5. Conclusion

It is not quite inconceivable that one day Belgium, a founder state of the Council of Europe, will ratify the European Charter for Regional or Minority Languages. However, the commitments entered into will not concern the languages spoken “by a group of persons, which, though concentrated on part of the territory of the state, is numerically smaller than the population in this region which speaks the majority language of the state”,¹²⁶ quite simply because the linguistic minorities corresponding to this definition speak one of the official languages which the Charter does not consider *stricto sensu* as a “regional or minority language”.

If we discard the unlikely hypothesis of a radical change in ideas in northern Belgium, the country is unlikely to resort to the option provided for in Article 3.1 of the European Charter of extending the application of the text to the official French and German languages, for the same reasons as we

of Representatives: *verbatim* proceedings, Committee on External relations of the Chamber of Representatives, sitting of 2 February 2005 (CRIV 51 COM 490, pp. 18-20).

123. Reply by F. Laanan, Minister for Culture, to the question put in the Committee for Culture, Youth, the Audiovisual Sector and Assistance for the Press and Cinema of the Parliament of the French Community of Belgium by R. Miller MP on the European Charter for Regional or Minority Languages: *verbatim* proceedings of the Culture Committee, sitting of Thursday 4 May 2006 (CRIC No. 63-Cult. 12, sess. 2005-6, 2.6, p. 10).

124. Charter, Article 3.1.

125. See J.-L. Fauconnier, “Challenges of applying the European Charter”, *op. cit.*, p. 154.

126. Explanatory report, paragraph 18.

mentioned vis-à-vis the ratification of the Framework Convention for the Protection of National Minorities.¹²⁷ The hypothetical entry of the Belgian state into the Charter system would have the sole effect of helping protect the dialectal heritage of the inhabitants of the French language zone.

127. See section 4.1 above.