CENTRO STUDI SUL FEDERALISMO
PERSPECTIVES ON FEDERALISM

ISSN: 2036-5438

Judicial Functions and Organisation in Belgium

by

Patricia Popelier*

Perspectives on Federalism, Vol. 12, issue 2, 2020

Abstract

Unlike most other federal states, the Belgian federation has kept the organisation of the judiciary as a federal competence. The reasons are historical, principled, practical as well as political. Meanwhile, some fragmentation has taken place, with sub-state competences related to several aspects of the judicial organisation, and a regularly used leeway for Communities and Regions to establish administrative courts. Moreover, the linguistic divide, which has inspired the construction of the Belgian dyadic federation, has also permeated the organisation of the judiciary. This article looks into the organisation of the Belgian judiciary from the viewpoint of federalism. In so doing, it highlights the institutional complexity of the judiciary in Belgium.

Key-words

Belgium, federalism, judicial pluralism, representation of sub-national entities, language pluralism

1. Introduction

1.1 The pluralist judicial system

The judicial system in Belgium is a pluralist one: it consists of three different types of courts, and the – sometimes uneasy – co-existence of three different supreme courts.

The eldest branch is the ordinary judiciary under the hierarchic supervision of the supreme court, called Court of Cassation (*Cour de Cassation*). According to Art. 144 of the Belgian Constitution, disputes about civil rights belong exclusively to the competence of these courts, although a new provision was added to enable administrative courts to award damages for non-compliance with their judgments. Art. 145 Constitution attributes disputes about political rights also to the competence of the ordinary courts, but allows for exceptions established by an Act of Parliament.

Hence, administrative courts can be established by law (as confirmed in Art. 161 Constitution), to decide upon disputes between persons and public authorities on matters such as taxes, permits, refugees, etc. – i.e. those disputes, according to the Constitutional Court, that are closely related to the prerogatives of the State's public authority.[I] Moreover, Art. 160 Constitution establishes the supreme administrative court, the Council of State, with two functions. The 'section legislation' provides opinions on drafts of legislative and regulatory acts to the parliaments and executives. This is not further discussed in this chapter. The 'section administrative litigation' acts as a supreme court with regards to administrative courts, and has the power to annul administrative acts and regulations. While the Constituent had in mind to give a quasi-monopoly to the ordinary judiciary, a labyrinth of administrative courts has in the meantime been established, each with their own composition and procedural rules. To guide citizens in this tangled ball, the law prescribes that individual decisions mention the instance, terms and modalities for appeal.[II]

Finally, the Constitutional Court, based on Art. 142 Constitution, provides centralized constitutional review. The Court has the power to annul Acts of (federal or regional) Parliaments on request of governments or any person with an interest. It also has to power to declare Acts of Parliaments unconstitutional and therefor non-applicable, on the preliminary reference of a court. The other apex courts, the Court of Cassation and the Council of State, are sometimes under the obligation of referring a preliminary request.

Ordinary and administrative courts are unable to review Acts of Parliament, with three exceptions: (1) they have the power, assumed by the Court of Cassation in 1971, to review Acts of Parliaments against international norms with direct effect;[III] (2) they have the power to review Brussels Acts of Parliament (called 'ordinances') against those provisions in the Constitution and the Brussels institutional act that do not fall under the Constitutional Court's jurisdiction;[IV] (3) they may conclude the constitutionality of an Act of Parliament if it is 'manifest' that this Act does not violate the Constitution.[V] The Constitutional Court was established in the 1980s in the wake of the Belgian federalisation process. As equality of the federated entities *vis-à-vis* the federal entity is a basic principle, a neutral arbitrator was required to solve federal competence disputes. Initially, this was the only power of the Court, then called 'Court of Arbitration'. Gradually, however, the Court transformed into a genuine constitutional court.

1.2 The Belgian federal system

Belgium is a fragmenting federation. It was established in 1830 as a unitary state but, since 1970, turned into a federal state with confederal traits in the course of – so far – six state reforms.[VI] Federalism in Belgium is a device for multinational conflict management. Its most important feature is that it is a dyadic federation which revolves around two major language groups, the French and the Dutch, divided by language, but also by wealth and ideology. Each language group is mainly situated in its own territory: the Flemish majority in the north, the Francophones in the south, and a small German-speaking community, that consists of less than 1 percent of the population, in the south-east. By contrast, the capital region Brussels is bilingual, with a large majority of francophone people.

As to structure, the federation consists of several overlapping jurisdictions: three Communities and three Regions, as well as two small entities in Brussels with a limited set of legislative powers in community matters. The territorial overlap is manifold. For example, the Walloon Region coincides with the French Community, but the latter also includes the Brussels territory whereas the former also includes the territory of the German-speaking Community. In Brussels, the Brussels Region has jurisdiction, but also the French and the Flemish Community with regard to unilinguistic institutions, as well as two minor entities, the Joint Community Commission and the French Community

Commission. The division between major language groups, however, structures the federal decision process: Parliament consists of two language groups, with a veto power in specific matters, and the Government is composed on the basis of language parity.

The Communities were established on the demand of the Flemings to protect their language and culture. Communities have powers in the field of education, culture, person-related matters and the use of languages. The Regions were established because the Walloons, eager after WWII to save old mine and coal industries through government subsidies, claimed autonomy over economic policy. Presently, Regions have powers in a variety of matters such as economy, employment policy, energy, spatial planning, housing, environment, animal welfare, mobility, road safety, public works and local authorities. Flemings, however, prefer the division in Communities, whereas Walloons accentuate the Regions. This resulted in asymmetrical developments, with the institutions of the Flemish Region merging into the Flemish Community, and the French-speaking Community transferring competences to the Walloon Region and the French Community Council, a francophone institution in Brussels.

With each state reform, matters have been transferred to the federated entities to unblock federal decision making, with distrust of the other language group as motive.[VII] The Belgian federation is therefore organised as a dual state, with exclusivity as the main principle for the allocation of powers: matters are the exclusive competence of either the federal entity, the Communities, or the Regions.[VIII] Also, legislative and executive powers remain within the competence of the same entity; examples of executive federalism are rare. The downside is that this often results in fragmentation: matters are split in sub-parts, whereby some sub-parts are conferred to the Communities or Regions, whereas others remain with the federal authorities.

2. The impact of the federal system on the functions of the judiciary

As in other matters, exclusivity is the main principle for the allocation of powers with regard to the judiciary. The situation, however, is slightly different depending of the type of judiciary. For all categories, the federal authorities have the exclusive competence. This is the logical starting point: as Belgium is a fragmenting federation, all powers were initially in the realm of the central authorities, whereas the federated entities, having been established

later, had to negotiate for the transfer of each power. The federated entities, however, do have additional powers to establish administrative courts, and there is some fragmentation with regards to the ordinary judiciary.

2.1 The ordinary judiciary

Justice and the organisation and functioning of the ordinary judiciary is a fragmented but essentially exclusive federal power, with only few aspects in which the Communities and Regions have parallel powers (a). Proposals to transfer this power to the level of the sub-states have been debated in political and scholarly circles, but this has remained a theoretical debate (b). Nonetheless, in practice the dual federal model has also inflicted the judicial organisation (c).

a. A fragmented but essentially federal power…

The Constitution explicitly regards the establishment of the Courts, the public prosecutor and the High Council of Justice as a federal matter.[IX] Also, the special majority law that allocates powers to the Communities and the Regions, explicitly reserves certain judicial powers for the federal state, such as the organisation of and procedures before juvenile courts. By contrast, procedural rules are part of the federal entity's residual powers.[X] Hence, the judiciary, in all its aspect, is in principle an exclusive federal matter, with only few exceptions.

Before the sixth state reform in 2012-2013, laws on the organisation of the courts had to find approval by both the House of Representatives and the Senate. Since then, the Senate has been transformed to a chamber of the sub-states, with a better representation of the Communities and Regions, but has been left with reduced powers. As a result, the Communities and Regions do not even participate in the legislation on the organisation of the courts through the Senate.

Presently, four aspects have explicitly been allocated to the sub-states: (1) aspects of penal law, (2) aspects of juveniles sanctions, (3) expropriation and (4) first-line assistance and Justice Centers.

First, Communities and Regions have the power to make non-compliance with their laws punishable. For punishments and penalizations that deviate from the federal code

book, the federal authorities need to give approval. Within their sphere of competences, Communities and Regions also have the power to assign the capacity of officer of the judicial police to their civil servants, regulate the evidential value of summons, and decide in which cases a house search can take place.[XI] Hence, Communities and Regions had the power to make violation of their laws punishable, but they had no say in the judicial enforcement thereof, for instance to prioritize environmental offences. This changed since the sixth state reform in 2012-2013.[XII] Since then, the members of the sub-state executives have the (indirect) right of injunction, as they can oblige the federal Minister of Justice to order prosecution in matters within their sphere of competences. Also, they are involved in the development of guidelines for penal policy, including tracing and prosecution policy, in the development of the National Security Plan, and in the meetings of the Committee of Attorney-Generals, where priorities in prosecution policy are discussed.[XIII]

Second, while the organisation, territorial competence and judicial procedure of juvenile courts is an explicit federal competence,[XIV] Communities have the power to decide what type of matters can be brought before the juvenile courts.[XV] Recently, they also acquired the power to decide the measures that juvenile courts can take to sanction juveniles.

Third, the judicial procedure for the expropriation of land is a parallel competence of the Regions; the federal legislator still determines the procedure for expropriations executed by the federal authorities.[XVI]

Finally, Communities have competence over first-line assistance and the power to regulate the organisation, functioning and tasks of Justice Centres as well as the agencies that organise and supervise electronic surveillance.[XVII] Justice Centres have several tasks, among which victim support, mediation in penal cases and supervision of alternative sanctions. The federal authorities still have the exclusive power to decide upon the Justice Centres' tasks in the framework of judicial procedures or the implementation of judicial decisions.[XVIII] Whenever Communities or the federal government modifies the Centres' tasks, they have to consult each other.[XIX]

Federated entities also have implied powers, on the condition that the matter lends itself for differentiated regulations, and the measure is necessary to exercise their powers and impacts only marginally on federal competence. For example, Communities may oblige judges of juvenile courts to write a report used in the procedure for the recognition of

juvenile institutions or require particular evidence for their decision to remove juveniles to another institution.[XX] Also, Communities and Regions may designate the competent (federal) court to decide upon specific matters.[XXI]

b. … under debate…

It was the clear purpose of the constituent to keep judicial dispute resolution uniform throughout the entire country.[XXII] This way, all courts are able to apply all legal rules, irrespective of their (local, subnational, federal, supranational or international) source. The drawback is that the sub-states are unable to establish specialized courts to resolve conflicts in matters within their sphere of competence, whereas the federal legislature can establish such courts whenever it feels the need to do so – for example labour courts which include lay judges.[XXIII]

The transfer of powers in the field of judicial competences has been debated in political[XXIV] and scholarly circles. Such debates, however, easily become exponents of political rivalry between the language communities. The competence over the judiciary was traditionally associated with the essence of central state power,[XXV] whereas proposals for decentralisation are suspected of fitting in a confederal or separatist agenda.[XXVI] After all, institutional capacity is one of several conditions that facilitate secessionist movements.[XXVII] This may explain why the topic is debated in Flemish but hardly in francophone circles.[XXVIII] The reasons invoked for a transfer of competences regarding the organisation of justice also have to do with the divide between the Flemings and the francophone people: authors point out differences in workload but also in preferences,[XXIX] and claim that judges only read jurisprudence and doctrine in their own language.[XXX] It has also been noted that as a result thereof, the Bar has already split in a francophone and a separate Flemish Bar.[XXXI] Basically, Flemish proponents argue that federalism is incomplete if Communities have the power to make laws but not to enforce them.[XXXII]

Some persons propose the establishment of 'community chambers' within the federal courts, appointed by the sub-state government to apply sub-state laws.[XXXIII] Others find parallel circuits where federal courts apply federal laws and subnational courts apply subnational law unrealistic – in Brussels alone, this would require six parallel circuits for six types of legislators.[XXXIV] Also, fragmentation of competences may oblige courts to apply laws from different jurisdictions. Instead, these scholars propose, in the line of exclusivity

of competences, that Communities acquire the exclusive competence to establish and organise courts, and the federal state may only establish a federal court to explain how federal law should be interpreted on the basis of preliminary references and would keep a limited framework competence to establish minimum guarantees for the functioning of the judiciary.[XXXV] This would, however, require special measures for the German-speaking Community, which is too small to organise its own judiciary.[XXXVI] Others prefer transfer of the competence over the organisation of the judiciary to the Regions rather than the Communities, for territorial clarity[XXXVII] – unlike the Regions, the Flemish and French Community overlap in Brussels. Objections to that are based on the fact that the Flemish minority in the Brussels Region would need special protection.[XXXVIII] There is also disagreement as to the question of whether rules of civil procedure should remain a federal competence,[XXXIX] or should become a sub-state[XL] or shared[XLI] competence.

c. … and permeated with dualism characteristic of Belgian federalism.

Nevertheless, justice is still regarded as an essentially federal power. In its organization, however, the dyadic nature of Belgian federalism becomes apparent, especially since the split of the judicial district in the bilingual territory of Brussels.[XLII] This is because the language divide that determines dualism in the Belgian federation, leads to linguistic requirements and the organization of Dutch- and French-speaking courts. Also, the involvement of Dutch- or French-speaking chambers of the High Council of Justice in the training and appointment of judges respects the singularity of the major language communities.[XLIII] This is explained further in Section 3.

2.2 Administrative courts

Communities and Regions have the power to organize administrative appeal within their sphere of competences. By contrast, the establishment and organization of administrative courts for judicial appeal against administrative decisions, is federal competence. This also applies to the Council of State. Art. 160 of the Constitution assigns its organization – composition, competences and functioning - to the federal Parliament. The Council of State impacts considerably on the functioning of the Communities and Regions: governments are obliged to ask the Council's advisory opinions on draft bills and regulatory decisions and the division administrative litigation has the power to annul their

administrative acts. Nonetheless, since the sixth state reform, the Senate is not greatly involved in the legislation on the Council of State or administrative courts. It can discuss bills approved by the House, but has no decisive say in the matter.[XLIV]

However, the sub-states can establish and organize specific administrative courts as part of their implied powers,[XLV] even to the point that the Council of State is deprived of its power to annul.[XLVI] Communities and Regions have made use of these implied powers to establish administrative courts to challenge decisions such as exam results, building permits or environmental permits. It is argued in doctrine that Communities and Regions also have the power to introduce specific measures in the procedure before the Council of State in matters within their sphere of competences.[XLVII]

In doctrine, proposals have been made to either organize community chambers for the review of sub-state regulations[XLVIII] or to preserve the Council of State only for annulment requests of federal acts and Brussels acts (because of the bilingual status of Brussels), but to assign to the Communities the competence to organize the system of administrative courts for their own Community and related Region.[XLIX] In political circles, the idea to transfer the full competence to establish administrative courts was considered but not accomplished in the sixth state reform. As a result, Communities and Regions do not have the power to adopt a general framework for the functioning of administrative courts.

2.3 The Constitutional Court

Art. 142 of the Constitution establishes the Constitutional Court and assigns its organization – composition, competences and functioning – to the federal Parliament. A special majority is required, which implies approval in both the House of Representatives and the Senate by a majority in each language group and an overall majority of two thirds. Since the sixth state reform, the Senate has transformed into a (more or less) genuine chamber of the sub-states. This way, the sub-states are involved in the organization of the Constitutional Court.

In doctrine a proposal was made to let Communities and Regions organize decentralized constitutional review and to keep the federal Constitutional Court for conflicts of competence and, as a court of last instance or a preliminary questions court, for

the protection of constitutional fundamental rights.[L] The establishment of sub-state constitutional courts, however, has not been a topic of discussion.

3. Representation of sub-national entities in federal courts

It is rather unusual for federal states to organize courts quasi exclusively at the federal level. One might therefor expect that extra attention is paid to the representation of sub-national entities in federal courts. This chapter discusses two aspects in that respect, (a) the involvement of the sub-states in the appointment of judges and (b) the representation of sub-states in the composition of the court. The picture is different for each type of court. In all cases, however, the dyadic character of the Belgian federation, based on two major linguistic communities, prevails over the involvement of the territorial sub-states.

3.1. The judiciary

a. The selection of judges

Judges are appointed by the King – which, in practice, means by the Minister of Justice – on nomination by the relevant nomination and appointment committee of the High Council of Justice with a two thirds majority.[LI] For appointments in appeal courts or the Court of Cassation, the court concerned issues a reasoned opinion prior to the nomination.[LII] The sub-states are not involved in this process. However, the linguistic communities are represented through the High Council of Justice.

The Council is entrusted with the nomination of judges and officers of the public prosecution office, their training, the organization of comparative exams for access to the judiciary, the drafting of general profiles, the giving of advice on proposals concerning the general operation and organization of the judiciary, general surveillances, the follow-up of complaints and the conducting of enquiries on the operation of the judiciary.[LIII] It is composed of a Dutch-speaking and a French-speaking college, each with 22 members.[LIV] Each college consists of an equal number of, on the one hand, judges and officers of the public prosecutor's office elected directly by their peers, and, on the other hand, members appointed by the Senate by a two thirds majority.[LV] This way, the sub-states as well are indirectly involved in the selection of judges.

Within each college, a nomination and appointment committee is established. The Dutch-speaking committee nominates judges in the Dutch-speaking districts and the Dutch-speaking courts in Brussels, the French-speaking committee nominates judges in the French- and German-speaking districts and the French-speaking courts in Brussels.

b. The composition of courts

As a result of the language divide, Belgium is divided in four linguistic areas: the Dutch-speaking area, the French-speaking area, the German-speaking area and the bilingual Brussels area.[LVI] The administration should only use the language of the linguistic area – with the exception of so-called 'facilities municipalities', where individuals have the right to communicate with the public authorities in another language. For example, in six 'facilities municipalities' around Brussels, on Flemish territory, Francophones have the right to communicate with the administration in French. The legislation on the use of languages in judicial affairs is also based on these linguistic territories.[LVII] Two perspectives determine the rules in place: the institutional perspective, regarding the language requirements for judges, and the litigant's perspective, regarding the language of the process. The latter is discussed in Section 4. The first is discussed in this section, as the language requirements come down to linguistic quota with the purpose of a balanced representation of the major linguistic communities.

In Flemish districts, judges must have acquired their law degree in the Dutch language, whereas in French-speaking districts, they must have acquired their law degree in the French language.[LVIII] In the German-speaking district of Eupen, they must have acquired a law degree in French, and they have to give proof of their knowledge of the German language.[LIX]

In Brussels, specific arrangements are in place.

While the division in judicial districts in principle respects the language borders, there was traditionally one exception in place: the judicial district of Brussels and Halle-Vilvoorde, covering the bilingual area of Brussels as well as part of the Dutch-speaking territory. The judicial district coincided with the electoral district of Brussels-Halle-Vilvoorde, which was challenged by Flemish political parties and was eventually split as part of the sixth state reform.[LX] For the judicial district, a complex arrangement was implemented.

The office of the public prosecutor was split, with a Dutch-speaking prosecutor in Halle-Vilvoorde and a bilingual prosecutor in Brussels. This was more efficient, also because criminality in the Brussels capital is of a different type than criminality in the more residential area of Halle-Vilvoorde.[LXI] Part of the political agreement was that the prosecutor in Brussels was French-speaking – i.e. had acquired his or her degree in law in the French language - with profound knowledge of Dutch, and was assisted by a Dutch-speaking deputy prosecutor. The Constitutional Court, however, annulled the exclusion of a Flemish prosecutor in the bilingual district of Brussels for violation of the equality- and non-discrimination clause.[LXII] A number of French-speaking magistrates were detached to the office of public prosecution in Halle-Vilvoorde, to secure the continuation of cases that were brought to the French linguistic register. They are put under the authority of the Flemish prosecutor of Halle-Vilvoorde for the implementation of prosecution policy, but remain under the hierarchical authority of the Brussels prosecutor. This was contested by some Flemish politicians and the Flemish Bar, for fear of francophone intrusion in the Flemish office.[LXIII]

However, for the courts, the judicial district Brussels-Halle-Vilvoorde remained, but the courts (with the exception of the justice of the peace courts) were split in separate Dutch- and French-speaking courts with jurisdiction in both Brussels and Halle-Vilvoorde. The president of each court is required to have a profound knowledge of the other language. In the French- and the Dutch-speaking courts, one third of the magistrates has to be able to use both languages. Previously, two thirds of the magistrates had to be bilingual, but this required resulted in unfilled vacancies for French-speaking judges.[LXIV] The number of judges for Dutch- and French-speaking courts is to be determined on the basis of a workload assessment. The workload assessment, however, has not yet been accomplished. In the meantime, 80% of the judges in Brussels are allocated to the French-speaking courts and 20% to the Dutch-speaking courts, and a 60-40 ratio applies with regard to the commercial courts. The ratio was criticized as disproportional and leading to backlog before the Dutch-speaking courts. The Council of State, in an advisory opinion, noted that unreasonable delay resulting from a disproportional ratio would ultimately incur the lawmaker's liability.[LXV] Therefore, a monitoring committee was established, and additional judges can be temporarily detached to remedy delays.[LXVI]

In the supreme court, the Court of Cassation, language parity is the rule: half of the judges have acquired a law degree in Dutch, half in French.[LXVII] This has been criticized, mainly in Flemish circles, as parity does not reflect the workload.[LXVIII] For example, in the five-year period 2012-2016 the Court of Cassation pronounced 15,212 judgments, 57 percent of which in Dutch.[LXIX] However, as the Court's backlog is manageable, there is no political incentive to break the linguistic balance which includes linguistic parity in apex courts.

3.2. Administrative courts

The selection of administrative judges and the composition of the administrative courts differ for each specific administrative court. Therefore, we will only discuss the apex court: the Council of State. The Council of State consists of Councilors, the Auditor's Office, a Coordination Office and a Registry. This section focuses on the Councilors of State.

a. The selection of judges

The Councilors of State are appointed by the King (i.e. the Minister of Internal Affairs) from a list of three nominations by the Council of State. The Minister appoints the first ranked candidate, unless (s)he or the House of Representatives or the Senate refuse the nomination to avoid overrepresentation of judges originated from the Council's Auditor's Office. Also, the House or Senate may propose an alternative list of candidates.[LXX] Through the Senate, the sub-states play a marginal role in the selection of the Councilors of State.

b. The composition of the Council of State

The Council of State consists of 44 Councilors.[LXXI] As in the other apex courts, the composition is based on a linguistic parity: 22 Councilors are Dutch-speaking, the other half is French-speaking. The Council of State consists of a Legislation Section and the Administrative Litigation Section. The Legislation Section gives advisory on governmental drafts of federal and sub-state laws and government regulations or parliamentary drafts. The Administrative Litigation Section is the jurisdictional branch, acting as an abstract review court as well as the administrative supreme court. It consists of one bilingual bench, five Dutch-speaking benches and five French-speaking benches. Usually, the bench

consists of three Councilors. Exceptionally, cases are send to the general assembly, to secure unity of case law of the various benches. Nevertheless, observers have noticed that the French- and the Dutch-speaking benches develop divergent case law on a specific set of issues – although they emphasized that the number of divergences remains limited and is often the result of decisions in urgency procedures, decided by single councilors.[LXXII]

3.3. The Constitutional Court

a. The selection of judges

The judges of the Constitutional Court are selected by, alternately, the House of Representatives and the Senate by a two-third majority and appointed by a Royal Order.[LXXIII] In practice, however, the political parties in the governing coalition select the judges according to a proportional rotation plan within each language group.[LXXIV] While this selection process is very political in nature, the political ideologies represented in the Court balance each other out.

Proposal have been made to involve sub-states in the selection of the judges of the Constitutional Court.[LXXV] A concrete proposal was to let the federal government select half of the judges and to let the sub-states select the others. [LXXVI] It is, however, unclear whether the author envisaged the selection of a joint candidate by all sub-states, or a rotation plan amongst the sub-states, including the German-speaking Community. In the meantime, the Senate has transformed into a more genuine chamber of the sub-states. This way, the sub-states are involved in the selection process. Moreover, as political parties are region-based, the informal selection procedures secure the involvement of the major language groups.

b. The composition of the Constitutional Court

The Court is composed of twelve judges, with a double parity, based on language and professional background. Half of the judges are French-speaking, the other half is Dutch-speaking. Within each language group, half of the judges have a legal background, the other half has a political background: they have been a member of a federal or sub-state parliament for at least five years.

The functioning of the Court also reflects the importance of linguistic parity. Cases are decided in chambers of seven judges or in plenary sessions of ten or twelve judges. There is

always a linguistic parity, with the remaining judge in the chamber of seven alternating between the Dutch and the French language group. Two presidents are appointed, one from each language group. In plenary sessions, the tie-breaking vote rotates between the Dutch- and the French-speaking president on a yearly basis.[LXXVII] The emphasis on linguistic parity reveals once more that the dyadic nature of the Belgian federation based on linguistic communities is more important than representation of the territorial sub-state entities. Along with the absence of majority votes or dissenting and concurring opinions, linguistic parity is essential to ensure that the decisions of the Court are accepted on both sides of the language border. Recent empirical research shows that this institutional design has succeeded in eliminating the impact of ideological preferences of the individual judges in the resolution of federalism disputes.[LXXVIII]

4. Language regulations

4.1. Civil and criminal proceedings

In a divided state such as Belgium, based on linguistic conflict, the use of languages in public affairs is an important but sensitive matter. According to Art. 30 Constitution, the use of languages spoken in Belgium is optional; only an Act of Parliament can rule on this matter and only for acts of the public authorities and for judicial affairs. This provision dates from the original 1831 Constitution and was a reaction against the language policy of King William I of the United Kingdom of the Netherlands' policy of 'Dutchification'.[LXXIX] Through regulation of the use of languages in public and judicial affairs, the Belgian government, initially, tried to create a homogeneous French-speaking nation. With the rise of the Flemish Movement, however, the strategy turned towards the creation of (linguistically) homogeneous territories, with a Dutch-speaking, a French-speaking and a German-speaking linguistic territory, and one bilingual territory of Brussels. As homogeneity was not perfect, arrangements were made to protect linguistic minorities in so-called 'municipalities with language facilities', where residents, upon request, may in their communication with the authorities use another language (depending upon the territory, French, Dutch or German) instead of the language of the territory.

Initially, judicial proceedings as a rule were held in French. The sentencing to death of two Flemish workers in 1865, accused of murder in a language they did not understand,

brought about a public outrage that was buried in the first language law on the use of Dutch in criminal proceedings in Flanders in 1973. This law was limited to criminal proceedings in Flanders and still allowed for the use of French if the accused was considered to understand that language.[LXXX] In practice, the law did not bring about fundamental change. The Court of Cassation held that lawyers, themselves naturally educated in the French language, should employ the language understood by the judges. The Attorney-General considered the Dutch language 'an idiom, interesting perhaps from an archeological and philological perspective, but of minor use, limited to a small part of the world and varying, so to speak, from village to village'.[LXXXI] This changed in 1935, when the law on the use of languages in judicial affairs proclaimed the equality of French and Dutch in judicial proceedings and established the use of the language of the region.

In civil proceedings, the language of the region is used. In the bilingual Brussels region, French is used by the French courts and Dutch by the Dutch courts.[LXXXII] The defendant's place of residence determines the language of the proceedings. If the defendant lives in the bilingual region or does not reside in Belgium, (s)he may choose between Dutch and French as the language of the proceedings.[LXXXIII] In Flemish municipalities with linguistic facilities, the defendant may request the use of French in judicial proceedings.

In penal proceedings as well, the language of the region is used. The accused, however, may request translation of documents or transferal of the case to a court in another language region where proceedings are held in his or her language. In Brussels, the Dutch language is used if the accused lives in the Dutch-speaking region and the French language is used if (s)he lives in the French-speaking region; if the accused lives in the bilingual Brussels region, the language in which (s)he made statements during the judicial inquiry.[LXXXIV]

4.2 Administrative courts

In administrative courts as well, the language of the region is used. In this section, we only discuss the Council of State.

In principle, the language used by the Council of State, depends upon the language which the public authority whose decision is challenged, is required to use.[LXXXV] Specific regulations are in force for specific situations. For example, if the requesting party is a civil servant challenging a decision that affects his or her individual position, several criteria are

listed, in order of priority, to determine the use of the language, such as the unilingual status of the region where the civil servant exercises his or her office, his or her linguistic register, the language in which he or her sat for the entrance exam, the language of the degree on which his or her appointment was based or the language of his or her request.[LXXXVI]

If the parties before the Council of State are private persons, they may choose the language used in procedural acts and statements – unless (s)he is a candidate refugee: in that case, the language of the asylum claim, as determined by the law on the access to Belgian territory, applies. If needed, they may make use of a translator at the State's expenses.[LXXXVII] If the parties are administrations, they have to use the language imposed by the law on the use of languages in administrative affairs. Acts submitted in another language are void.[LXXXVIII]

Cases referred to the bilingual chamber are treated in both languages. Such referral is obligatory under certain circumstances, for example if several parties are involved resorting under different language systems.[LXXXIX]

Judgments are pronounced in the language in which the proceedings took place.[XC] They are also pronounced in German if the case concerns a person residing in the German-Speaking linguistic region and has requested the use of the German language.[XCI]

4.3. The Constitutional Court

Cases are brought before the Constitutional Court in Dutch, French or German,[XCII] but this does not determine the use of languages during the inquiry or the language used by the parties.

Individuals may choose to bring a case before the court in Dutch, French or German. Public persons that fall under the legislation on the use of languages in administrative affairs are obliged to use the language determined by this legislation. For example, sub-state governments use the language of their region; courts use the language in which they have to pronounce their judgments; the presidents of the federal chambers or the Brussels Parliament use both French and Dutch.[XCIII] Here as well, acts submitted in another language, are void.

The Court uses the language in which the case is brought,[XCIV] with two exceptions. First, if the case is brought before the Court in German or in both French and Dutch, the Court chooses the use of French or Dutch during its inquiry.[XCV] Second, if the petitioner – or a majority of petitioners[XCVI] – lives in a linguistic region without special language facilities, the Court uses the language of this linguistic region.[XCVII] If needed, acts are translated to French or Dutch.[XCVIII] Oral discussions before the Court are held in French, Dutch or German, with simultaneous translation.[XCIX]

Judgments are pronounced in both French and Dutch. The reasons and decision are published in the Official Gazette in French and Dutch, with a German translation. They are also pronounced in German in the case of annulment requests or if the case was brought before the Court in German.[C]

5. Conclusion

Unlike most other federal states, the Belgian federation has kept the organisation of the judiciary as a federal competence. The reasons are historical, principled, practical as well as political. First of all, Belgium is a devolutionary federation, which means that the federated entities did not have a judiciary in the first place and a transfer of judicial competence is part of state reform negotiations. Secondly, it was the constituent's choice to keep judicial dispute resolution uniform throughout the entire country. Next, practical considerations are linked with the fact that the Belgian federal system consists of two types of overlapping sub-states and that the Brussels Region and the German-speaking Community are considered unable to bear the costs of a separate judiciary. Finally, the claim for separate sub-state courts may be suspected of being part of a Flemish confederalist or even separatist agenda.

Meanwhile, some fragmentation has taken place, with sub-state competences related to several aspects of the judicial organisation, and a regularly used leeway for Communities and Regions to establish administrative courts. Moreover, the linguistic divide, which has inspired the construction of the Belgian dyadic federation, has also permeated the organisation of the judiciary. This is apparent in the composition of the three apex courts based on linguistic parity, the language legislation regarding both the appointment of judges and the judicial procedure, and the establishment of separate Dutch- and French-speaking

courts in Brussels. The result is institutional complexity, especially in Brussels, where the judicial districts are not identical with regard to courts on the one hand and public prosecution on the other. More fundamentally, the representation of the two major language groups appears more important than the involvement of the territorial subnational entities in the organisation of the judiciary.

In principle, however, the judiciary is still an exclusive federal competence. Several drawbacks have been reported as a result thereof. One drawback is that sub-states are unable to establish specialized courts to resolve conflicts in matters within their sphere of competence, whenever this need may rise, whereas the federal government may have no interest in doing so. Another is that a central organisation may have difficulties in accommodating differences in workload and preferences between the two major language groups. In this regard, it is claimed that judges do not sufficiently take into account legal sources written in another language than their own, and the split of the Bar in two separate Bars based on language is invoked to support a decentralisation claim. Further, linguistic requirements have resulted in unfilled vacancies, leading to delays, and uneven workload. Also, it is regretted that while dual federalism implies that the transfer of matters relates to both legislative and executive power, Communities and Regions do not have the power to enforce their own laws. Demands for sub-state powers in the field of the judiciary, however, are all situated within Flemish circles and is hardly debated at the francophone side.

---

[*] University of Antwerp

[I] Const. Court No. 14/97, 18 March 1997; No 81/2008, 27 May 2008.

[II] Art. 2, 4° Law on the openness of administration; Art. 35 Flemish Law on the openness of administration; Art. 6 Brussels Ordonnance on the openness of administration; Art. 2 French Community Law on the openness of administration; Art. 3, 3° Walloon Region Law on the openness of administration; Art. 2 Law of the German-speaking Community on the openness of administration.

[III] *Franco Suisse Le Ski*, Cass. 27 May 1971, *Pas.* 1971, I, 886.

[IV] The Constitutional Court is only able to review directly against provisions that allocate competences between the federal state and the federated states, or against provisions in title II (fundamental rights), Art. 172 (fiscal rights) and Art. 191 (equal treatment of foreigners on Belgian soil) of the Constitution.

[V] Art. 26 §4, 4° Special Majority Law on the Constitutional Court.

[VI] For an overview of this process, see P Popelier and K Lemmens, *The Constitution of Belgium*, Oxford, Hart, 2015, 18-32.

[VII] P Coenraets and E Mahon, 'Les transferts de compétences de l'autorité fédérale vers les communautés et les régions', in *Les réformes institutionnelles de 1993. Vers un fédéralisme achevé ?* (Brussels: Bruylant, 1994) 188; W Pas, 'A Dynamic Federation Built on Static Principles: The Case of Belgium', G.A. Tarr, R.F. Williams and J Marko, *Federalism, Subnational Constitutions and Minority Rights,* Westport, Connecticut: Praeger 2004), 160, 167.

[VIII] This is further elaborated in P Popelier, 'Zuständigkeitsteilung in Belgien: Kompetenzverteilung als Kennzeichen multinationalen Konfliktsmanagements', in A Gamper *et al.* (eds) *Federale Kompetenzverteilung in*

Europa (Baden-Baden, Nomos 2016) 142-148.
[IX] For an overview of all the relevant provisions, see J. Vanpraet, *De latente staatshervorming* (Bruges, die Keure 2011) 272-276.
[X] Const. Court No. 49/1993, 24 June 1993.
[XI] Art. 11 Special Majority Law on the reform of institutions.
[XII] For an overview of earlier proposals and practical arrangements, see W. Vandenbruwaene, 'Justitie: strafrechtelijk beleid, jeugdsanctierecht en justitiehuizen', in J. Velaers *et al.* (eds), *De zesde staatshervorming: instellingen, bevoegdheden en middelen* (Antwerp, Intersentia 2014) 300-301.
[XIII] Art. 151, § 1 Constitution and 11*bis* Special Law on the reform of institutions and an intrafederal cooperation agreement of 7 January 2014. For practical aspects, see Y Liègeois, 'Beschouwingen inzake de impact van de zesde staatshervorming op de werking van justitie', in J. Velaers *et al.* (eds), *De zesde staatshervorming: instellingen, bevoegdheden en middelen* (Antwerp, Intersentia 2014) 315-344.
[XIV] Art. 5, § 1, II, 6°, c Special Majority Law on the reform of institutions.
[XV] J. Vanpraet, *De latente staatshervorming* (Bruges, die Keure 2011) 282-283.
[XVI] Art. 6*quater* Special Majority Law on the reform of institutions.
[XVII] Art. 5, § 1, II, 8° and III Special Majority Law on the reform of institutions and the intra-federal cooperation agreement of 17 December 2013.
[XVIII] Art. 5, § 1, III Special Majority Law on the reform of institutions.
[XIX] Art. 6, §3*bis*, 4° Special Majority Law on the reform of institutions.
[XX] Const. Court No. 66/88, 30 June 1988; No. 4/93, 21 January 1993.
[XXI] E.g. Const. Court No 19/2001, 14 February 2001. For an overview, see V. Thiry, 'La défédéralisation de la justice: une pièce en trois actes', in *Liber amicorum Jo Stevens* (Bruges, die Keure 2011), 580-584.
[XXII] J. Vanpraet, *De latente staatshervorming* (Bruges, die Keure 2011) 270.
[XXIII] J. Vanpraet, *De latente staatshervorming* (Bruges, die Keure 2011) 271.
[XXIV] For an overview of political documents, see L. Deconinck 'Rechterlijke organisatie en justitie in het federale België', in *Liber Amicorum Ludovic De Gryse* (Brussels, Larcier 2010) 555.
[XXV] F. Judo, 'Justitie in de zesde staatshervorming' (2011) *Tijdschrift voor Bestuurswetenschappen en Publiekrecht* 516.
[XXVI] Proposals are often made by persons with a Flemish-nationalist affiliation, even in scholarly debates. For example, Matthias Storme has been member of the city Council of Gent for the flemish-nationalist party N-VA and is a member of the party executive committee.
[XXVII] L.M. Anderson, 'The Institutional Basis of Secessionist Politics: Federalism and Secession in the United States', (2004) 34 *Publius* 2004, 7-10. See also J. McGarry and O´Leary, 'Federation and managing nations', in M. Burgess and J. Pinder, *Multinational Federations* (Abingdon, Routledge, 2007) 192.
[XXVIII] As noted by L. Deconinck 'Rechterlijke organisatie en justitie in het federale België', in *Liber Amicorum Ludovic De Gryse* (Brussels, Larcier 2010) 554. V. Thiry, 'La défédéralisation de la justice: une pièce en trois actes', in *Liber amicorum Jo Stevens* (Bruges, die Keure 2011), 575 reports that in francophone circles the Flemish debate is regarded with 'astonishment'.
[XXIX] B. Bouckaert, 'Defederalisering van de Belgische justitie? Een rechtseconomische overvlucht', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 41-42; L. Deconinck 'Rechterlijke organisatie en justitie in het federale België', in *Liber Amicorum Ludovic De Gryse* (Brussels, Larcier 2010) 557; M.E. Storme, 'Een Vlaamse justitie?', (2001) *Rechtskundig Weekblad* 1118; P. Van Orshoven, 'Defederalisering van de rechtspraak', in A. Van Oevelen *et al.* (eds), *Hulde aan Prof. Dr. Jean Laenens* (Antwerp, Intersentia 2008) 363.
[XXX] R. Landuyt, 'De federalisering van de Belgische justitie', in B. Timmeman en A. Verbeke (eds), *Actualia Vermogensrecht. Liber Alumnorum Kulak* (Brugge, die Keure 2005) 716. P. Van Orshoven, 'Defederalisering van de rechtspraak', in A. Van Oevelen *et al.* (eds), *Hulde aan Prof. Dr. Jean Laenens* (Antwerp, Intersentia 2008) 363 suggests that mainly francophone judges have no or insufficient knowledge of the other language.
[XXXI] M.E. Storme, 'Een Vlaamse justitie?', (2001) *Rechtskundig Weekblad* 1118.
[XXXII] R. Landuyt, 'De federalisering van de Belgische justitie', in B. Timmeman en A. Verbeke (eds), *Actualia Vermogensrecht. Liber Alumnorum Kulak* (Brugge, die Keure 2005) 716.
[XXXIII] R. Landuyt, 'De federalisering van de Belgische justitie', in B. Timmeman en A. Verbeke (eds), *Actualia Vermogensrecht. Liber Alumnorum Kulak* (Brugge, die Keure 2005) 719.
[XXXIV] The federal authorities, the Brussels Region, the Flemish Community, the French Community, the Joint Community Council and the French Community Council all have legislative competences in the Brussels territory of 121 km². See also K Rimanque, 'De organisatie van de rechtsbedeling in federale staten: een bevoegdheid voor de deelstaten? Vergelijkend overzicht en mogelijkheden in België', in M Taeymans (ed),

Defederalisering van justitie, Brussel, Larcier, 2003, 24-25; M.E. Storme, 'Een Vlaamse justitie?', (2001) *Rechtskundig Weekblad* 1117; M. Storme, 'De defederalisering van het gerecht in België', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 59-60; and L. Deconinck 'Rechterlijke organisatie en justitie in het federale België', in *Liber Amicorum Ludovic De Gryse* (Brussels, Larcier 2010) 557. See, however, more nuanced M. Storme, 'De defederalisering van het gerecht in België', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 63.

[xxxv] M.E. Storme, 'Een Vlaamse justitie?', (2001) *Rechtskundig Weekblad* 1117-1119; P. Van Orshoven, 'Defederalisering van de rechtspraak', in A. Van Oevelen *et al.* (eds), *Hulde aan Prof. Dr. Jean Laenens* (Antwerp, Intersentia 2008) 364-365.

[xxxvi] B. Bouckaert, 'Defederalisering van de Belgische justitie? Een rechtseconomische overvlucht', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 35; P. Van Orshoven, 'Defederalisering van de rechtspraak', in A. Van Oevelen *et al.* (eds), *Hulde aan Prof. Dr. Jean Laenens* (Antwerp, Intersentia 2008) 365. L. Deconinck 'Rechterlijke organisatie en justitie in het federale België', in *Liber Amicorum Ludovic De Gryse* (Brussels, Larcier 2010) 554 that asymmetry in this matter is not unusual.

[xxxvii] K Rimanque, 'De organisatie van de rechtsbedeling in federale staten: een bevoegdheid van oor de deelstaten? Vergelijkend overzicht en mogelijkheden in België', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 28-29.

[xxxviii] M. Storme, 'De defederalisering van het gerecht in België', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 63.

[xxxix] R. Landuyt, 'De federalisering van de Belgische justitie', in B. Timmeman en A. Verbeke (eds), *Actualia Vermogensrecht. Liber Alumnorum Kulak* (Brugge, die Keure 2005) 721.

[xl] P. Van Orshoven, 'Defederalisering van de rechtspraak', in A. Van Oevelen *et al.* (eds), *Hulde aan Prof. Dr. Jean Laenens* (Antwerp, Intersentia 2008) 365-366.

[xli] L. Deconinck 'Rechterlijke organisatie en justitie in het federale België', in *Liber Amicorum Ludovic De Gryse* (Brussels, Larcier 2010) 558.

[xlii] W. Vandenbruwaene, 'Justitie: strafrechtelijk beleid, jeugdsanctierecht en justitiehuizen', in J. Velaers *et al.* (eds), *De zesde staatshervorming: instellingen, bevoegdheden en middelen* (Antwerp, Intersentia 2014) 296.

[xliii] R. Landuyt, 'De federalisering van de Belgische justitie', in B. Timmeman en A. Verbeke (eds), *Actualia Vermogensrecht. Liber Alumnorum Kulak* (Brugge, die Keure 2005) 716; K Rimanque, 'De organisatie van de rechtsbedeling in federale staten: een bevoegdheid van oor de deelstaten? Vergelijkend overzicht en mogelijkheden in België', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 25.

[xliv] Art. 78, §1, 4° Constitution.

[xlv] E.g. Const. Court No. 49/2003, 30 April 2003; Const. Court No. 8/2011, 27 January 2011.

[xlvi] Const. Court No. 8/2011, 27 January 2011. Critical: V. Thiry, 'La déféderalisation de la justice: une pièce en trois actes', in *Liber amicorum Jo Stevens* (Bruges, die Keure 2011), 585.

[xlvii] J. Vanpraet, *De latente staatshervorming* (Bruges, die Keure 2011), 305.

[xlviii] R. Landuyt, 'De federalisering van de Belgische justitie', in B. Timmeman en A. Verbeke (eds), *Actualia Vermogensrecht. Liber Alumnorum Kulak* (Brugge, die Keure 2005) 720.

[xlix] M. Storme, 'De defederalisering van het gerecht in België', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 67-74.

[l] M. Storme, 'De defederalisering van het gerecht in België', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 70-72; 85-87.

[li] Art. 151, § 4 Constitution.

[lii] Art. 151, § 4 Constitution.

[liii] Art. 151, § 3 Constitution.

[liv] Art. 259*bis*1 Judicial Code.

[lv] Art. 151, § 2 Constitution.

[lvi] Art. 4 Constitution.

[lvii] See further, Section **xx**

[lviii] Art. 43 Law on the use of languages in judicial affairs.

[lix] Art. 45*bis* on the use of languages in judicial affairs.

[lx]

[lxi] B. Van Lerberghe, 'De hervorming van het gerechtelijk arrondissement Brussel', (2012-13) *Rechtskundig Weekblad* 1683.

[lxii] Const. Court No 96/2014, 30 June 2014.

[LXIII] B. Van Lerberghe, 'De hervorming van het gerechtelijk arrondissement Brussel', (2012-13) *Rechtskundig Weekblad* 1685-1686.
[LXIV] B. Van Lerberghe, 'De hervorming van het gerechtelijk arrondissement Brussel', (2012-13) *Rechtskundig Weekblad* 1691.
[LXV] Council of State, Advice of 3 May 2012, *Parl.Doc.* House of Representatives 2011-2012, No. 53-2140/002, at p. 23. Earlier, the Court of Cassation had rules that the Belgian State can be held liable for faults and omissions by Parliament, aiming at the legislation that resulted in unfilled vacancies for French-speaking judges in Brussels, Cass. **Citeer.** The provision was challenged before the Constitutional Court, but the Court did not go into the ground of the matter, Const. Court No 96/2014, 30 June 2014.
[LXVI] B. Van Lerberghe, 'De hervorming van het gerechtelijk arrondissement Brussel', (2012-13) *Rechtskundig Weekblad* 1693.
[LXVII] Art. 43*quater* Law on the use of languages in judicial affairs.
[LXVIII] Amongst others: B. Bouckaert, 'Defederalisering van de Belgische justitie? Een rechtseconomische overvlucht', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 51; K Rimanque, 'De organisatie van de rechtsbedeling in federale staten: een bevoegdheid van oor de deelstaten? Vergelijkend overzicht en mogelijkheden in België', in M Taeymans (ed), *Defederalisering van justitie,* Brussel, Larcier, 2003, 26.
[LXIX] Based on the data in Court of Cassation, *Annual report 2016* (Brussels, 2017) 220.
[LXX] Art. 70, § 1 coordinated laws on the Council of State.
[LXXI] Art. 69 coordinated laws on the Council of State.
[LXXII] B. Lombaert, F. Vandendriessche and S. Devos, 'Divergences de juriprudence entre les chambres de langue française et de langue néerlandaise du Conseil d'Etat: y a-t-il deux Conseilds d'Etats en Belgique?', in C. De Koninck *et al.* (eds) *Chroniques des marchés publics 2009-2010* (Brussels, E.B.P.) 365-395 discuss examples in the domain of public procurements.
[LXXIII] Art. 32 Special Majority Law on the Constitutional Court.
[LXXIV] M Bossuyt, *Séparation des pouvoirs et indépendance des cours constitutionnelles et instances équivalentes*, Report for the Belgian Court at the Second World Congress of Constitutional Courts, Rio de Janeiro, 16-18 January 2011, at p. 7, available at http://www.venice.coe.int/WCCJ/Rio/Papers/BEL_Cour_constitutionnelle_F.pdf (accessed 14 September 2017); S Graeziadei, 'Power Sharing Courts', (2016) 3 *Contemporary Southern Europe* 1, 80.
[LXXV] L. Deconinck 'Rechterlijke organisatie en justitie in het federale België', in *Liber Amicorum Ludovic De Gryse* (Brussels, Larcier 2010) 558; R. Landuyt, 'De federalisering van de Belgische justitie', in B. Timmeman and A. Verbeke (eds), *Actualia Vermogensrecht. Liber Alumnorum Kulak* (Bruges, die Keure 2005) 721.
[LXXVI] M. Storme, 'De defederalisering van het gerecht in België', in M Taeymans (ed), *Defederalisering van justitie* (Brussels, Larcier, 2003) 73.
[LXXVII] Art 32 Special Majority Law on the Constitutional Court.
[LXXVIII] P. Popelier and S. Bielen, 'How Courts decide Federalism Disputes: the Revaluation of Legal Merit in the Jurisprudence of the Belgian Constitutional Court' (under review).
[LXXIX] S. Van der Jeught, 'Territoriality and freedom of language: the case of Belgium', (2017) 18 *Current Issues in Language Planning* 183.
[LXXX] S. Van der Jeught, 'Territoriality and freedom of language: the case of Belgium', (2017) 18 *Current Issues in Language Planning* 184.
[LXXXI] For an overview, quotes and references, see R. Janssens, 'Het Hof van Cassatie van België – Enkele hoofdmomenten van zijn ontwikkeling', (1977) 95 *Tijdschrift voor Geschiedenis* 99-101.
[LXXXII] Art. 2 and 3 Law 1935 on the use of languages in judicial affairs.
[LXXXIII] Art. 4 Law 1935 on the use of languages in judicial affairs.
[LXXXIV] For details, see B. Van Lerberghe, 'De hervorming van het gerechtelijk arrondissement Brussel', (2012-13) *Rechtskundig Weekblad* 1689-1690.
[LXXXV] Art. 52-53 coordinated laws on the Council of State.
[LXXXVI] Art. 54 coordinated laws on the Council of State.
[LXXXVII] Art. 66 coordinated laws on the Council of State.
[LXXXVIII] Art. 65 coordinated laws on the Council of State.
[LXXXIX] Art. 61-62 coordinated laws on the Council of State.
[XC] Art. 63 coordinated laws on the Council of State.
[XCI] Art. 63 coordinated laws on the Council of State.

[xcii] For more details, see M-F Rigaux and B Renauld, *La Cour Constitutionnelle* (Brussels, Bruylant 2008) 265-266.
[xciii] Art. 62 Special Majority Law on the Constitutional Court.
[xciv] Art. 63, § 1 Special Majority Law on the Constitutional Court.
[xcv] Art. 63, § 2 Special Majority Law on the Constitutional Court.
[xcvi] M-F Rigaux and B Renauld, *La Cour Constitutionnelle* (Brussels, Bruylant 2008) 272.
[xcvii] Art. 63, § 3 Special Majority Law on the Constitutional Court.
[xcviii] Art. 63, § 4 Special Majority Law on the Constitutional Court.
[xcix] Art. 64 Special Majority Law on the Constitutional Court.
[c] Art. 65 Special Majority Law on the Constitutional Court.