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Linguistic separation or jurisdictional communitarianism? *Reflective judiciary* in Belgium

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1. Introduction

Belgium's institutional, legal, sociological and cultural context reflects a fracture that tangibly splits the country in two, with every decision concerning the country's organisation responding to the need to preserve the existence of the two major linguistic communities: Flemish and French.

The aim of this paper is to assess whether, as regards the judiciary, the typically Belgian linguistic division does not reflect a simple issue of representation of different national groups within Institutions, or whether this division reflects a general ideological approach strongly embedded in the federal structure: regardless of their impact, whether demographic, political or economic, the Flemish and Francophone communities must be balanced. All state powers, including the judiciary, must engage in maintaining this difficult balance. Below, we will seek to demonstrate this argument.

2. Federalism in Belgium

Belgium arrived at federalism in 1994. As already mentioned, this was not a drastic choice, but more of a slow and gradual process that led to the progressive territorial decentralisation of central power.

Born to contain the secessionist claims of certain political forces, where weaker forms of dissociation had failed, the Belgian constitutional model represents an *unicum*. At the same time, it is a *fédéralisme de dissociation* (because it stems from the process of dissociation of an initially unitary State), a *fédéralisme de superposition* (which creates different types of collectiveness, such as regions and communities that overlap

* Peer reviewed.

from a territorial point of view), and a *fédéralisme de confrontation* (to meet the cohabitation needs of a multidimensional society)[1].

The Belgian federation is made up of six different organisations: three communities, French-speaking, Flemish and German-speaking, and three regions, Wallonia, Flanders and the Region of Brussels-Capital. Therefore, every citizen is subject to three different levels of authority in Belgium: regional, communitarian and federal.

In offering a juridical response to the conflict affecting the social body, the Belgian constitutional model is based on two different realities in an attempt to make two different and theoretically incompatible types of federalism coexist: on the one hand, with the strengthening of the three linguistic communities, it introduces a personal system revolving around cultural distinctions; and on the other, according to the more classical federal theory, with the redefinition of the regions, it unites the territorial element with the subjective data. The result is an articulate system that breaks down spaces and jurisdictions, overlapping the subjective component of belonging to the group with the objective one of the territory, and which makes belonging and territoriality the mainstays of the organisation and operation of the federal system, despite its more simplified form than the original constitutional project[2].

There has been a progressive "territorialisation" of the communitarian system over the years, partially concerning matters of a cultural nature initially assigned to the jurisdiction of the communities, tied to the linguistic affiliation of the citizens and not to their residence, to the point where the voluntary nature of membership in a linguistic group has been replaced by an objective concept of belonging determined by the place where they live.

Furthermore, the system has gradually succeeded in generating a political model that more closely reflects the sensitivities of each linguistic group. When the reform was first implemented, a reduction of the federation was favoured, at least in practical terms, because the jurisdictions and departments of the Flemish region were gradually absorbed by the Flemish Community, while the institutions of the French Community, despite continuing to exist, devolved part of their jurisdiction to the Wallonia region.

Then there is the fact that, unlike the more classic examples of federalism by aggregation, Belgium is founded on the traditional principle of equality among the federated departments, that is not revealed in the facts, however: re-proposing what is essentially the social fracture running through the entire national territory, over the years the Belgian system has become bipolarised, ending up revolving around the historic divide between French-speaking and Flemish communities.

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1 See F. Delpérée, *Le droit constitutionnel de la Belgique,* Brussels, Bruyllant, 2000, 388 et seq.

2 For further details on the matter, refer to A. Mastromarino, *Belgio*, Bologna, il Mulino, 2012, 28 set seq.

Every single aspect of political and institutional life in Belgium reflects this dichotomy: the party system is split; the electoral system is organised on the basis of a rigid system of linguistic districts; in Parliament, the more traditional parliamentary groups are flanked by linguistic groups, to which every elected member must adhere; the social services, healthcare and education systems are based on the principle of linguistic territoriality and respond to the rule of mono-linguicism that has been consolidated over the years, with amendments and additions that have never involved a substantial rethinking of the linguistic separatism that exists in Belgium[3].

It is on this separation that the Belgian *paix communautaire* has been built[4]. This separation and the constant use of compromise often leads to stalemates that are overcome through apparently surreal solutions (worthy of a Magritte painting), which are actually effective in maintaining that unstable balance sustaining the kingdom of Belgium. An excellent explanation is given by jurist Paul Martens, identifying an element transversal to every other division, shared by all Belgians: "Au Nord comme au Sud, nous

[3] The Belgian linguistic regime is outlined via a step-by-step procedure, the start of which can definitely be seen as coinciding with the approval of a law on the use of language in administration on 28 June 1932, and the adoption of a specific regulation for the use of languages in the legal system on 15 June 1935. Since then, the division of the national territory into mono-lingual regions (with the exception of Brussels-Capital) has been subject to no further doubt. On the contrary, in the early Sixties it was confirmed and made even more restrictive, with laws passed on 8 November 1962 and on 30 July and 2 August 1963, proceeding with what was commonly known as the "freezing" of the linguistic boundaries.

[4] The term *paix communautaire* is borrowed from the name commonly given to the law passed on 9 August 1988. It was approved by Parliament following a long period of tensions fed by the rigid application of linguistic separatism in the municipalities in which the special system was applied (*à facilités linquistiques*). These were situated on the border with the linguistic regions in which the language spoken by the majority of the inhabitants is different from the official language. The law's passage in 1988 introduced an eloquent example of Belgian pragmatism and its vocation for compromise, with an unusual and insuperable presumption of knowledge of the official language by those who elected to municipal office. The need to guarantee linguistic uniformity and to verify that knowledge of the official language by public administrators is required by regulations is not derogated, but bypassed by means of a legal presumption "qui pourrait permettre de vivre en paix linguistique et de vaquer à d'autres préoccupations plus urgentes: l'objectif de pacification valait bien qu'on malmenat quelque peu la raison". Cf. P. Martens, *Les cours constitutionnelles: des oligarchies illégitimes?*, in *La république des Juges*, Actes du colloque organisé par la Conférence libre du Jeune Barreau de Liège, Liège, Edition du Jeune Barreau de Liège, 1997, 63 (53-72). Referring to the case of the creation of the district of Bruxelles-Hal-Vilvorde, Paul Martens insists on Belgian pragmatism, which sometimes approaches surrealism and often implicates a *vulnus* of the system of separatism to the benefit of what he himself calls *pax belgica*, meaning a compromise representing the achievement of a difficult balance between the interests of the various communities and between the communities and the Federal State (again P. Martens, *Le communautarisme, le multiculturalisme, le nationalisme et l'universalisme en Belgique à la lumière de la jurisprudence de sa Cour Constitutionnel*, in J. Ringelheim, *Le droit et la diversité culturelle*, Bruyllant, Brussels, 2011, 205 et seq. Constitutional justice seems to have taken this perspective to heart when, in decision no. 73/2003, referring specifically to the need to defend *paix communitaire* at all costs, it recalls how Belgium represents a space for the neutralisation of passions, permanently using compromise; and in the case regarding the inspection of Francophone schools under the special system, located in Flemish territory, resolved with decisions 95/2010 and 124/2010, defined by the author as a "prototype des décisions de pacification par lesquels la Cour, tout en reconnaissant l'homogénéité de principe de la Communauté flamande, tempère son application en solidifiant les accords qui ont été conclus et les dérogations qui doivent être accordées".

avons, prétend-on, une aversion pour les questions simples: il suffit qu'un problème soit soluble pour qu'il cesse de nous intéresser. Par contre, nous raffolons des questions qui nous divisent et qui nous permettent de disputer sans fin. Nous en avons un stock inépuisable: question royale, question scolaire, question linguistique. Nous ne leur donnons jamais une solution tranchée. Nous laissons les positions antagonistes sur un point d'équilibre et nous en faisons un compromis. Nous avons une inaptitude à la raison syllogistique : nous faisons de la dialectique mais en laissant le syllogisme inabouti. Souvent, nous nous opposons sur des points mineurs : nous avons la capacité de prendre l'anodin au tragique. Et les solutions que nous imaginons finissent par contenter chaque partie parce que chacune d'elles est convaincue qu'elle l'a emporté, grâce à la polysémie du texte finalement adopté. Nous avons le talent de bien nous entendre sur des malentendus. Nous sommes modérément cartésiens. Le surréalisme belge existe aussi dans notre droit"[5].

3. The justice system in Belgium

The organisation of justice does not escape the logic of separation in a system that is completely divided by language, in which there is no public space that is immune to the linguistic factor, no public space in which people can declare themselves to be "lay" from a linguistic point of view. This proves that "language" is not a matter that can be assigned to the centre or the periphery in the Belgian system: it is more of a code that can help decipher the entire system.

The Belgian legal system belongs to the tradition of *civil law*. Competence over the organisation of judicial power (the independence and autonomy of which are sanctioned by the Constitution) and of constitutional justice is held by the federation.

Alongside ordinary jurisdiction, Belgium has two more jurisdictions that perform mainly a controlling function; these are the *Conseil d'Etat*[6] and the Constitutional Court.

Like the *Cour the Cassation*, these two Courts hold jurisdiction over the entire national territory. However, for the purposes of our work, it is worth remembering that the other courts and tribunals are organised

[5] P. Martens, *Théories du droit et pensée juridique contemporaine*, Brussels, Lancier, 2003, 249. Elsewhere, in *LeLibre.be*, dated 5 October 2010, the same author speaks of a "réalisme fantastique" typical of the Belgian system, also with regard to its jurisprudence, capable of "mettre dans la même décision les concessions des uns et des autres, permettant à chacun d'estimer que les concessions qu'on leur fait sont au moins aussi satisfaisantes que celles qu'ils font". An admirable example of jurisprudential fantastic realism refers to the decision no. 124 passed by the Constitutional Court in October 2010, which, while confirming the exclusive jurisdiction of the Flemish government to monitor and inspect schools situated in Flanders, also adds that the Flemish Community is obliged to agree to an exception with regard to French-speaking schools active in municipalities *à facilitès linguistiques*.

[6] The *Conseil d'Etat* is the highest department in the judgement and control of Belgian administration. In some spheres, due to the wishes of the federation or intervention of a sub-state department, there is also a territorial organisation of administrative justice. In this case, the Conseil d'Etat operates in the second degree.

into five "judicial areas" corresponding to the five districts of the Appeals Court: Brussels, Liège, Mons, Gent and Antwerp.

Each district is divided into twelve counties, all under a court of first instance, with the exception of the county of Brussels, where there are two courts, one operating in French and the other in Flemish. There are also nine labour tribunals and nine commercial tribunals.

Each county is divided into cantons, totalling 187, with 187 *juges de paix*. Lastly, each province can rely on its own Court of Assizes. This is not a permanent jurisdiction, but a specialised department, set up, if necessary, by judges who are members of the Appeals Court. The decisions of the Belgian Court of Assizes can be overruled only by the *Cour de Cassation*.

Access to the Bench (as a *juge de paix* or member of the *tribunal de police*, *du travail*, *du commerce* or *de première instance*) is by royal appointment.

In 1991, law makers intervened to make the selection process more difficult. Today, intervention by an appointment commission is envisaged. The commission is set up within the Higher Council of Justice (department for the self-governance of judicial power), choosing from candidates having passed a national exam and then presented to the reigning monarch in the form of a proposal. The selection criteria include language, which is unquestionably determined by the possession of a university degree, according to the location in one or the other linguistic region of the university that issued the degree.

The potential candidate's profile is undoubtedly influenced by two factors: his/her education language and the geographical location of the vacant position. This is because, since 1935, justice has also adapted to the system of mono-linguism in force in every other area of civil service in Belgium.

Consequently, in observance of the principles regulating the establishment of a judgment at one court or another on the basis of jurisdiction by territory and subject, even the judicial system is based on a system of linguistic separatism, in compliance with the principles assumed and never abandoned by law makers, with the law passed in June 1935 on the use of language in judicial administration. Consequently, the entire procedure is conducted in the official language of the region where the court appointed to pass judgement is located, notwithstanding the parties' rights to defence.

Additionally, even when only one department holds jurisdiction over the entire national territory, as is the case of the *Cour de Cassation*, the *Conseil d'Etat* or, as regards constitutional justice, the Constitutional Court, the linguistic element is preserved in terms of the organisation and composition of the court, guaranteeing equal participation by the members of one or the other linguistic group and/or the creation of uniform sections along linguist lines.

4. Linguistic separatism in the Belgian judicial system

It is undeniable that, in Belgium, the linguistic communities' focus on linguistic separation in judicial services has grown over time, not only with regard to the use of one language or the other, but also with regard to the recruitment of judicial staff, particularly judges.

This does not, however, seem to depend on a progressive acknowledgement to the individual of a communitarian right to be judged by a subject sharing the same ethnic-linguistic affiliation, in order to guarantee full entitlement to defence. Rather, this increasingly clear separation seems to depend more on the strict application of the principle of linguistic territoriality and the adoption of preferential mono-linguism implying a systemic choice made as the basis of the Belgian state structure.

This perspective seems to be confirmed by an analysis of the linguistic rights acknowledged to the parties in judgement. If proceedings are held in a region where the official language is not that spoken by one of the parties, their right to use their mother-tongue is limited, although we also need to distinguish between the criminal and civil spheres.

The system appears complex, making it difficult to summarise here.

It is also worth remembering that, in civil matters, territoriality is a priority in defining the language of the judging body: if both parties present a claim, the procedure can be transferred to a court or tribunal of the same level in another linguistic region. As regards the Region of Brussels-Capital, taking into account the bilingual nature of the department, the procedure is held in the language of the region in which the defendant is domiciled. If he/she is domiciled in the Region of Brussels-Capital or abroad, the choice of language for the proceedings depends on the plaintiff. The defendant may present a claim, *in limine litis*, to have the lawsuit held in the language of the region where he/she is domiciled. In any case, the judge may reject the claim if he considers that the defendant has the necessary knowledge to understand the proceedings in the language in which it has been set-up, i.e. that of the plaintiff.

Territoriality prevails in the criminal sphere as well. In the Region of Brussels-Capital, the accused's domicile determines the language of the proceedings. When the accused knows only one language, different from the one in which the proceedings are to take place, or if his/her knowledge of the language of the proceedings is insufficient to fully guarantee his/her rights to defence, he/she may ask to be heard by a department operating in his/her language. The judge will be responsible for assessing claims on a case-by-case basis, and either accepting or rejecting them. Should they be rejected, the accused will be entitled to receive a translation of all legal files.

The adoption of the law passed on 19 July 2012 appears to respond to the Belgian system's vocation for linguistic separation.

The law is part of a larger package of regulatory interventions, also of constitutional ranking, forming the basis of the political agreement for what is known as the sixth reform of the Belgian State[7].

In particular, this reform changed the judicial district of Brussels-Hal-Vilvorde (BHV), duplicating the judicial seats, splitting the offices of the public prosecutor's department along linguistic lines (with the creation of the XII *arrondissement* of Brussels), and redefining the rules for the use of language in legal matters in the territories concerned in the division of the constituency.

As concerns the electoral plan, the bilingual nature of the dissolved BHV district had contributed to generating unsustainable political tension which also ended up involving Parliament and the Constitutional Court on several occasions[8]: the search for a solution involving the division of the district seemed inevitable, unlike the judicial sphere, where the existence of the bilingual district BHV had generated a less heated debate in juridical terms.

The reasons for the reform that led to the juridical district being included in the split have to be sought elsewhere. First and foremost, the split would seem to depend on the opportunity to impose on the district an all-round division involving every sphere possible; but also on strictly political reasons[9]. It effectively highlights the centrality assumed by the principle of territoriality in the Belgian system and the system's consequent inexorable tendency to minimise (when truly necessary or impossible to do otherwise) the existence of bilingual spheres that generate socio-institutional tensions and overshadow the application of the law.

The law passed in 2012 (a detailed analysis of which is outside the scope of this article[10]) does not actually focus on disputing or changing the legislative framework of the law passed in 1935. Rather, it tends to impose a simplification that moves directly in the sense of application of the regimen of linguistic separatism in the use of languages in the districts of Hal-Vilvorde and the bilingual district of Brussels, extending to it the application of the rules already usually applied in the other *arrondissements* we briefly mentioned earlier.

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[7] Cf. A. Mastromarino, *Modificaciones constitucionales en Bélgica. La sixième réforme de l'État: un proceso en marcha*, in *Revista d'Estudis Autonòmics i Federals*, n. 22, 2015, 64-91.

[8] For a reconstruction of the matter of the BHV electoral district, before its split, historically and institutionally, see B. Blero, *Bruxelles-Hal-Vilvorde, couronne d'épines de l'État fédéral belge?*, in *Pouvoirs*, 136, 2010, 97-123.

[9] It is worth remembering that, with decision no. 96 passed on 30 June 2014, the Belgian Constitutional Court ruled on the constitutionality of the law in the division of the BHV.

[10] To this end, see F. Gosselin, *La réforme de la loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire*, in F. Gosselin (dir.), *La réforme de l'arrondissement judiciaire de Bruxelles. Première approche pratique*, Brussels, Larcier, 2012, 69-104; by the same author, see also *La loi du 19 juillet 2012 portant réforme de l'arrondissement judiciaire de Bruxelles*, in *Journal des tribunaux*, 16 February 2013, 113-119.

There does not seem to be any impellent reason of public system on the basis of the division of the BHV judicial district (as happens on the electoral front), but more of a desire to guarantee and confirm the institutional political foundations of the defence and consolidation of the previously mentioned *paix communitaire,* which finds a stronghold in the regimen of mono-linguicism and linguistic separation.

This appears to be the direction taken by the review of the constitutional text accompanying the law that led to the introduction of art. 157bis in the Constitution, prescribing the use of the special law for defining or amending essential elements concerning the use of the language in the judicial sphere. In the words of constitutional law makers, the provision was made necessary because "la réforme touche au cœur des grands équilibres qui sous-tendent la paix communautaire, par analogie avec ce que prévoient d'autres dispositions de la Constitution qui touchent également à ces grands équilibres"[11].

5. Shades of *Reflective Judiciary* in Belgium

The justice system's tendency to try to consolidate the legitimisation of its judges by selecting members capable of representing the social body is not new. Think of the unwritten rules that determine the composition of the United States Supreme Court; the practices implicated in the application of rules on the presence of the Quebec component of the Canadian Supreme Court; the constitutional or legislative provisions of those countries that, especially in recent years, have encoded the selection of judges, initially at the constitutional level, but sometimes ordinary judges as well, so that the representation of diversity (gender, linguistic, ethnic and religious) within the social body can also be taken into consideration by the judicial system. The matter is quite delicate if one considers that, with reference to the act of representation, it is common to trace the difference between the tasks of legislating and judging.

There can be many reasons for this aspiration and, from a theoretical point of view, the matter (as a whole) seems to have been the focus little study in order to draw final conclusions.

In this sense, the volume containing this piece intends to contribute to the reflection, proposing an attempt at organising and theoretically classifying tangible cases.

What is certain is that the matter relating to the legitimisation of judiciary power tends to become quite a touchy subject and to take on particular characteristics in correspondence with systems marked by ethnically and nationally fragmented social bodies. In this case, tensions between the different *cleavages* tend to monopolise institutional life, especially where minorities complain of a deficit in visibility and defence. The reaction to this is often the breaking down of power into segments in order to reflect and provide a response to the divisions of society.

[11] *Ann. Parl.*, Ch., 2011-2012, discussion générale, 20 juin 2012.

This phenomenon ends up having particular effects in the judiciary sphere with regard to the legitimisation of the judging body. Methods of legitimisation different from those of the circuit of representation (the same authority, for example, or a high level of skill), can, in fact, lose value if used in a climate of diffidence and mistrust towards those who, operating on behalf of the State, are thought to act in the interests of the majority only, without being able to identify with and understand the juridical culture in which the minority moves[12].

We are well beyond the matters that the protection of rights to defence can raise in the presence of a linguistic minority.

Here, we face a perspective involving the judging body's very reasoning, marking a cultural confine between "us" and "them", and which ends up investing the unity of jurisdiction, raising the matter of the possible conditioning of those who decide in relation to their autonomy, but not in the sense of guaranteeing the impartiality of the ruling with respect to the judge's social and cultural background[13]. On the contrary, it seeks to assure the parties that the decision has been taken in a specific sense (which is that to which they belong and which the judging body knows, being a member of it), in order to guarantee its equity.

Certain legal systems seem to willingly accept the risk of a loss of autonomy by the judging body or of dismembering the legend of the unity of jurisdiction in order to ensure the tangible application of another principle: that of the natural judge "by affiliation", capable of better understanding the position of those who are part of the judgement, since he or she is "one of us". This is not a matter of expecting preferential treatment, which would find its *raison d'être* in belonging to the same group. Rather, it is more a question of cultivating the certainty, from which legitimisation and trust are promulgated, that those called upon to pass judgement have the cultural tools to fully understand the reasons of the parties or the accused, and, consequently, to judge fairly. The difference is slight but requires a shift from a merely procedural level (predetermination of the judge by law) to a level on which sociological – if not psychological – factors intervene to enrich the reflection.

Now, considering all of the above, can Belgium be included among the paradigmatic cases best representing the theoretic plan to which we have referred, well defined by the phrase "*Reflective Judiciary*", and which is timidly beginning to gain ground in doctrine?

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[12] For a reflection on the legitimisation of judiciary power in constitutional democracy, refer to A. Di Giovine, A. Mastromarino, *Il potere giudiziario nella democrazia costituzionale*, in R. Toniatti, M. Magrassi, *Magistratrura, giurisdizione ed equilibri istituzionali. Dinamiche e confronti europei e comparati*, Padua, Cedam, 2011, 17-41.

[13] …through that process that P. Martens, *Le métier de juge constitutionnel*, in F. Delpérée, P. Foucher (dir.), *La saisine du juge constitutionnel. Aspects de droit comparé*, Brussels, Bruyllant, 1988, 25-42, 29, plastically defined as a 'miracle de transfiguration'.

Answering this question seems complex, although, anticipating the conclusions, it should be said that the outcome is largely negative, despite the existence of certain factors that could lead to different considerations. These factors, first of all, lead to a social-juridical analysis and invite us to reflect on the possible existence of different juridical cultures within the two majority linguistic communities. These factors, as described in the previous paragraphs, in turn, have an immediate influence on the clear organisation of the judicial system from a linguistic point of view, but also on the emergence of a *Judiciary Federalism*. This highlights a certain gap in as far as the tangible expression of the jurisdictional function in the different regions of the country is concerned, despite the exclusive competence being formally assigned to the federation by the Constitution. We will have the opportunity to look at this in more detail in the last paragraph.

On order to understand *Belgique juridique* (and any connections with the phenomenon of *Reflective Judiciary*) we must first look at *Belgique sociologique* and reiterate the centrality of two social groups which, in a desire to simplify matters, are usually defined on a linguistic basis.

In fact, language, in both the Flemish and the French-speaking communities alike, represents the beating heart of a larger identity that finds its vehicle of expression and point of strength in language, though not representing the only *fait différent* between the two communities. The fracture between the two communities is not purely linguistic, but cultural and ideological, and economic and social as well. It appears to interest the idea of community and of State cultivated by the French-speaking and Flemish communities; and to regard the juridical tradition referred to by the two groups in the application and interpretation of the texts[14]. It would seem to stem from a different concept of nationalism (with everything that ensues in terms of national symbolism) conceived within the two groups[15].

[14] P. Martens, *Théories du droit et pensée juridique contemporaine*, cit., 248-249, insists on this point, stating that "juristes néerlandophones et francophones ne se présentent pas avec un patrimoine culturel identique lorsqu'ils abordent l'interprétation d'un texte. Les francophones ont, pour l'essentiel, un fonds de culture cartésienne et positivisme qui les conduit à chercher le sens de la loi, indépendamment des contingences historiques ou politiques de son élaboration. Les néerlandophones sont imprégnés d'une culture d'affirmation et de revanche qui éclaire les textes d'un sens qui n'est pas lisible par le lecteur d'une autre culture".

[15] It is known that the original nationalism referred to by the Flemish community is one that bases its idea of social cohesion on pre-juridical, irrational and romantic data, while the concept of nation to which the Francophones refer is the result of an act of intellect, which invites a converging of the differences within a common project of life. This nationalism is more defensive and cyclical than anything else. Although diluted time after time, this distinction found a plastic representation at the time of creation of the federate departments and in the definition of the autonomy granted to them. Over time, two different conceptions of the country have found space in Belgium (including at the institutional level). One – that closest to the "feelings" of Flanders, founded on the subjective membership in a group and linked, more than anything else, to the Germanic concept of population – has focused rights from the start on the acknowledgement of three separate communities: French-speaking, German-speaking and Flemish; the other – rooted in the territorial conception of region and aimed at re-proposing

Above all, it appears that it has already been been taken into account by Belgian jurisprudence for some time, at least since the Sixties, about thirty years before the federal transformation of the Belgian State and before the beginning of the process of territorial decentralisation launched constitutionally with the reform of 1970. Consider, in this sense, the conclusions reached by the Conseil d'Etat in decision no. 11,749 of 1966, better known as *arrêt Molulin et de Coninck*.

In this case, in formulating his decision, the judge seems to allow himself to be guided not so much—or not only—by the provisions in force (primarily art. 42 of the Constitution), but by other infra or para-legal documents[16]. The ruling refers specifically to the division of the Belgian State into linguistic regions, and this division can be considered, according to the Council, a division suited to conditioning the exercise of a public service (including radio and television broadcasting, in the case in hand), having confirmed the existence of a "*partie flamande du pays*" which evidently requires the existence of an opposing French-speaking part. Despite the fact that, at the time (1961), the division into institutional linguistic regions had not been formalised in any text in force, the Council seems to want to enhance certain social and cultural values, assuming that the two linguistic communities, which it is taken for granted exist in Belgium, can have different needs which, as such, must be met by public administration[17].

The Conseil d'Etat's type of reasoning and the perplexities aroused in doctrine, then and now, by the decision, allow us to go even further, assuming the existence of a difference that can be glimpsed between the lines of the judgement, between the *modus decidendi* of the French-speaking judge, with his Latin education, and that of the judges whose *reasoning* prioritises the method of the Anglo-Saxon or Germanic school as in the case of the Flemish magistrates; this method is much less linked to the letter of the law

a French idea of State, prioritising a voluntary view of the definition of community – has always required the institutionalisation of three different regions, Wallonia, Flanders and Brussels-Capital.

[16] The reference is to the conceptual impact proposed by Hughes Dumont, *Le pluralisme idéologique et l'autonomie culturelle en droit public belge*, vol. 1, Brussels, Bruyllant, 1996, used to analyse the case of Moulin-de Coninck by P. Martens, *Théories du droit et pensée juridique contemporaine*, cit., 244.

[17] Messrs Moulin and De Coninck, secretaries of the Belgian Communist Party, had contacted the *Conseil d'Etat,* contesting the legitimacy of the regulations adopted in 1961 by the administrative council of the Flemish section of the Belgian broadcasting company, by force of which access to the spaces of the political tribune was reserved exclusively to the political forces represented by at least one seat "dans la partie flamande du pays". Being able to rely on the presence of those elected in the Brussels-Capital region and the region of Wallonia, but not in Flanders, they complained of their unfounded exclusion from the broadcasting circuit in this part of the country. At the time of the complaint, the reference to the existence of an alleged "Flemish part" had no foundation in the positive law that made no mention of either the notion of region or of community. Despite the fact that the dictates of art. 42 of the then Constitutional text, which declared that those elected represented the nation and not only the province in which they were elected, could, on the contrary, be mentioned in support of the position of plaintiffs, in 1966, the Conseil d'Etat rejected the complaint, grounding the legitimacy of the overruled regulations directly on geopolitical and sociological factors, before those of a regulatory nature. Among others, see P. Martens, *Le Droit peut-il se passer de Dieu : six leçons sur le désenchantement du droit*, Namur, Presses Universitaires de Namur, 2007, 114 et seq.; H. Dumont, *Le pluralisme idéologique et l'autonomie culturelle en droit public belge*, cit., 286 et seq.

and oriented much more towards a teleological interpretation of the provision[18]. Having said this, and having reached this point, we have to stop: otherwise, if we continuing along our line of reasoning, it is unlikely that we will be able to escape the syllogism, which, when certain conditions are met, leads us to consider the organisation of the Belgian judicial system as completely irreconcilable with the legitimate aspiration of being able to rely on a same, shared interpretation of the regulations common to all citizens.

6. "No" to *communautarisme juridictionnel*

There is no lack of elements that could lead to the temptation to include Belgium among the systems to be taken pragmatically into consideration for a systematic study of the phenomena of *Reflective Judiciary*: composition of the courts on a linguistic basis; geographic differentiation; consideration of the sociological differentiation of ethnic-linguistic membership among factors sustaining decisions; the assumption that there can be a certain distance between the legal culture in which Flemish and French-speaking judges have been educated and operate.

Then there is an analysis that is not restricted to photographing the present, tending towards the reasons that have led to the choices progressively made in acknowledging and representing the different identities within the judicial sphere, that could shed new light on the reflection, leading more to a reading of the figures from the viewpoint of the more general Belgian federal context and its particularities than from the point of view of territorial organisation of the powers of the State.

Notwithstanding certain long-term considerations that will be made when we draw our conclusions, we can, in fact, exclude that the decisions made with regard to the organisation and operation of judicial power in Belgium were adopted primarily to meet needs to "represent" diversity in the jurisdictional sphere.

In this sense, the Constitutional Court, in decision no. 195 of 2009, excluded that Belgian justice can, in some way, be inspired by velleitiés of *communautarisme juridictionnel*, meaning that only judges belonging to the same community as the parties or the accused could be legitimated to pass judgement[19].

Such features of the judiciary (and of the constitutional justice itself) seem to be a response to "structural pressure" affecting either the institutions and the people, and influencing their expectations towards the system, from the viewpoint of its organisation. They can be traced back to an institutional need linked to the tension experienced by the system with respect to seeking and maintaining an institutional balance

[18] Remember P. Martens, *Théories du droit et pensée juridique contemporaine*, cit., 244, the "problème d'une telle méthode porte sur l'identification de la finalité à satisfaire : peut-on interpréter des textes belges à la lumière des fins que poursuit une partie de la population de l'État belge ?".

[19] P. Martens, *Le communautarisme, le multiculturalisme, le nationalisme et l'universalisme en Belgique*, cit., 208.

that would preserve the State's integrity, enabling political instances of an otherwise opposed ethic-national nature to coexist.

There are two communities in Belgium speaking two different languages. Belgian federalism was created on the basis of this differentiation. Belgian institutions are based on this differentiation and the unique Belgian federal system is based on maintaining an unstable balance between this differentiation and State unity.

The search for balance (obviously an unstable one…) is the key to reading the Belgian system, directly related to the constant use of compromise as the preferential political dynamic to prevent the prevalence of one political force over the other, or of the interests of one community over the other.

It is hard to say whether the distance between the two communities still feeds this institutional separation or whether institutional separation maintains the social and cultural gap between the two communities. What is certain is that this separation/division has become physiological and characterises the system, guaranteeing its survival. It also represents the horizon of sense on which every Belgian builds his/her identity as a citizen from birth. The citizen is included *ab origine* in a dichotomist public context, in which everything is linguistically defined: how could the judicial system not be? How could it not be like this, taking into account that "not being like this" would manifest an original element unknown to the system, capable of generating mistrust in the public and endangering that balance that is at the basis of Belgian cohabitation. In a world where everyone, from shop owners to high-level officials, speaks his/her own language how could someone have faith in an allophone institution?

As a consequence, as regards the judicial system and its linguistic organisation defined in compliance with the rigid application of the territorial principle, apart from in the bilingual areas obviously, the question appears not so much to be "why is it like this?" as "how could it be otherwise?". The Belgian judiciary has to be divided because the entire institutional system is divided; because through the demarcation of spaces of exclusive autonomy, the entire system tends towards a balance guaranteeing cohabitation and peaceful coexistence between two otherwise opposing communities.

When possible, this balance has been pursued and protected by applying the principle of territoriality and a preference for mono-lingual regimens. In other cases, the balance is pursued by guaranteeing equal participation by the Flemish and French-speaking components.

So, in the case of the Constitutional Court, "la règle de la parité ne peut être assimilée à une disposition sur l'usage des langues au sein de l'institution de justice. Elle doit être comprise dans une perspective plus institutionnelle. Elle est révélatrice de la structure dualiste de la société politique. Elle entend apaiser les craintes de l'une et de l'autre des Communautés les plus importantes qui sont organisé en son sein. Elle

met surtout la cour à l'abri des critiques de partialité que pourrait lui valoir une composition déséquilibrée"[20].

The Court's composition (from a linguistic point of view), the selection of its members (chosen from linguistically determined lists, drawn up by the Lower House and the Senate), and its internal organisation (with two presidents, one from each of the two linguistic communities, and on the assistance of referendaries, who are also divided into linguistic groups) meet the need to place the Court in a position to be able to fulfil its office as guarantor of the institutional balance, envisaging an equal structure in linguistic terms, since it is impossible to organise mono-lingual work sections as in other courts of final instance[21].

It is a shared opinion that the Constitutional Court in Belgium "contribue à un fonctionnement ordonné et pacifié de l'enterprise fédérale"[22]. In this sense, it ends up representing that vocation for unity in diversity on which Belgium is represented better than any other body.

It is no coincidence that the Constitutional Court has been assigned to oversee the respect of so-called *loyauté fédérale*[23], "ingrédient essentiel de la cohésion de l'État belge"[24] which "rappelle aux différents

[20] Cf. F. Delpérée, *La Cour d'Arbitrage et le fédéralisme belge*, in E. Orban (coord.), *Fédéralisme et cours suprêmes*, Brussels, Bruyllant, 1991, 167-198, 174.

[21] …being convinced that the "règle de la parité linguistique de la Cour constitutionnelle est une illustration particulière d'un constat général : la composition d'une juridiction constitutionnelle doit être adaptée aux spécificités des attributions qui lui sont confiées": M. Verdussen, *Le mode de composition de la Cour constitutionnelle est-il légitime*, in *Revue de Droit constitutionnel belge*, no. 1, 2103, 67-86, 74. A more general reflection on *La legittimazione della giustizia costituzionale. Una prospettiva comparata*, is made by Tania Groppi, in R. Toniatti, M. Magrassi, *Magistratura, giurisdizione ed equilibri istituzionali*, cit., 297-312. On this point, see the volume edited by Marina Calamo Specchia, *Le Corti Costituzionali. Composizione, Indipendenza, Legittimazione*, Turin, Giappichelli, 2011.

[22] Cf. M. Verdussen, *Les douze juges. La légitimité de la Cour constitutionnelle*, Brussels, Labor, 2004, 27-28.

[23] Inspired by German law, federal loyalty finds citizenship in the Belgian constitutional text (art. 143) with the federal reform of 1993. Considered by many to be a *soft law*, a "norme de conduite politique ayant une signification pédagogique et socio-psychologique importante" (as stated during the constitutional review: Révision du Titre III, Chapitre III *bis* de la Constitution en vue d'y ajouter des dispositions relatives à la prévention et au règlement des conflits d'intérêts, Rapport Benker, *Doc. parl.*, Sénat, s. e. 1991-1992, no. 100- 27/8, p. 11) it was, for a long time, subject to an ambiguous application by constitutional judges who generally preferred to resort to other principles, such as proportionality or, in the more strictly juridical sense, to the rules of the division of jurisdiction. In reality, the concept of *loyauté fédérale* does not end in the centre-periphery division of jurisdiction, as it connects rather to the "nécessité de rechercher avec constance, au sein de la fédération, un équilibre viable entre l'autonomie des entités fédérées et l'intégrité de la communauté de destins que représente l'ensemble fédérale" (P. Dermine, *La loyauté fédérale et la Sixième réforme de l' État - Essai d'interprétation*, in *Administration publique: Revue du droit public et des sciences administratives*, no. 2, 2015, 212, 211-225. Among other things, the sixth State reform sought to overcome this ambiguity, including art. 143 in the so-called block of constitutionality reforming the special law on the matter of the Constitutional Court (L.S. 6 January 1989). The obligation of federal loyalty now takes on the role of independent parameter of constitutionality, to which the Court must refer whenever the federation of the federate bodies fail to perform their duty in respecting and defending the balance of the overall system in the exercise of their jurisdiction.

[24] See M.-F. Rigaux, *La loyauté fédérale ou la polysémie d'une norme*, in *La loyauté. Mélanges offerts à Etienne Cerexhe*, Brussels, Larcier, 1996, 312, 311-319.

acteurs politiques qu'au-delà du respect formel de compétences, il faut assurer la finalité du projet politique"[25] and which doctrine does not hesitate to place in connection with another unwritten principle, while forming one of the founding pillars of the system, that of *vivre ensemble*[26], united with the concept of *paix communautaire* to which reference has been made. With this in mind, an indissoluble link is formed between the Constitutional Court, linguistic separation and federal loyalty[27], amplifying the Court's role as keeper of the federal system and guarantor of the reliability of the system with respect to the claims of the people[28].

7. Linguistic separatism and *belgitude.*

It is, therefore, possible to state that linguistic separation and the strict rules dominating the organisation of judiciary power in Belgium respond, firstly, to an institutional need. They are the expression of the Belgian federal system and not, as would seem to emerge in other experiences of *Reflective Judiciary*, the manifestation of a claim of representation of personal identity at the jurisdictional level, in order to establish a good level of empathy with the judge who in this way is expected to better understand the reasons of the parties, and identify with their cultural context.

Being an institutional claim, separation and organisation along linguistic lines of judicial offices and bodies is only one aspect of the country's political dynamics. It represents just one of the many components hanging in the balance, registering the degree of socio-political differentiation and disaggregation of the social body, offset on the scales by the thrust towards unity. This thrust exists, despite the rooting of the

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[25] See: E. Cerexhe, *La loyauté, concept moral ou juridique*, in *Liber amicorum Henri-D. Bosly*, Brussels, La Charte, 2009, 75, 71-76.

[26] In this sense: A.-C. Rasson, *Le principe du "vivre ensemble belge" une épopée constitutionnelle. Réflexions autours de la loyauté fédérale et de son intégration dans la jurisprudence de la Cour constitutionnelle*, in *C.D.P.K.*, 1, 2012, 25-75.

[27] In this context, an invitation to reflect is extended by the reconstruction proposed by B. Dejemeppe, *La loi du 18 juillet 2002 relative à l'emploi des langues en matière judiciaire : un nouveau pari pour le bilinguisme des magistrats*, in *Journal des tribunaux*, dated 25 January 2003, 61-65. He claims that "loyauté fédérale passe, dans ce pays par la connaissance et la reconnaissance linguistiques" (65), thus proposing not only to focus, as already happens, on a regimen of indefectible linguistic separation, but also on the study of knowledge of the other's language. The idea seems to be confirmed by a larger project called Plan Marnix, which focuses on a rethinking of the social value of language. Via the forecasting of a plan for immersion which envisages the compulsory and simultaneous use of French, Flemish and English in the school system in the bilingual region of the capital, the idea is to progressively change the way of understanding language, from being a vehicle of identity to a tool for communication. Cf. P. VAN PARIJS, *Le multilinguisme n'est pas nocif*, in *Le Soir*, dated 27 September 2013. By the same author, on *Plan Marnix*, see *Altérité et diversité: le défi de l'autre en Europe*, in *France Forum*, n. 53, 2014, 27-29.; *Multilingual Brussels: past, present and future*, in E. Corijn, J. Van der Ven (eds.), Brussels, VUB Press, 2012, 269-289.

[28] P. Popelier, *The Belgian Constitutional Court: Guardian of consensus democracy or venue for deliberation?*, in *Liberae cogitations liber amicorum Marc Bossuyt*, Cambridge, Intersentia, 2013, 499-514, especially 503, where he states that the Court "serves as a watchdog over the federal consensus democracy in several ways".

forces of independentism in the Belgian political system[29], and is well-represented by the consolidation of a heritage of characteristics shared by the entire Belgian population, regardless of communitarian membership.

There has long been discussion in Belgium about *belgitude*, referring to the emergence of a shared identity created in opposition to the historical division between the Flemish and French-speaking communities, and which highlights some shared characteristics.

The expression was coined by Claude Javeau for the first time in 1976[30] and has contributed in recent years to highlighting a certain standardisation of the country, including in terms of the values, expectations and habits cultivated by Belgian citizens regardless of their linguistic affiliation. This is reflected in research conducted in recent years that seems to show that, aside from some obvious differences between the two large regions of the country, "c'est leur proximité qui frappe. Ainsi en matière religieuse, la différence autrefois sensible entre le deux a presque complètement disparu. On ne note que très peu de différence entre elles en ce qui concerne la libre disposition du corps et de la permissivité sociale, si ce n'est que les néerlandophones se montrent quelque peu plus tolérant à l'égard des nouvelles formes de vie commune"[31].

And it is of *belgitude juridictionnelle* that we also speak in a jurisdictional sphere[32], referring to the Constitutional Court's action, proving its activity in terms of cohesion of the system, of neutralisation of conflict, in a unifying function that is so strong as to represent an obstacle for the prospects of the "evaporation" of Belgium cherished by the Flemish independence movement[33]. Indeed, the movement did not hesitate, including through direct attacks, to try to damage the Court's credibility in public opinion, and its reputation as a *super partes* body, raising issues in relation to its excessive politicisation, provocatively and with a lack of coherence. At the end of the day, the aim of these concerns was to

[29] In the federal elections held on 25 May 2014, the Flemish independence party, N-VA, won 20.3% of the vote, confirming its position as the country's leading party. In Flanders, for the renewal of the European and regional bodies, it garnered about 33% of the consensus.

[30] See the contribution by C. Javeau, *Y a-t-il une belgitude ?*, to be published in the *dossier "L'autre Belgique"*, directed by Paul Martens for *Nouvelles Littéraires* magazine.

[31] L. Voyé, *Les Belges et leurs valeurs*, in *Outre-terre*, no. 40, 2014, 191-205, 205.

[32] Again, P. Maddens in the interview published for LeLibre.be, dated 5 October

[33] To back its claims, the Flemish independence movement recently prefers to use expressions that are decidedly "outside the juridical language, but evocative nevertheless. There has often been talk of "evaporation" of the Belgian State, plastically referring to the idea that the independence of Flanders will not be achieved through a violent or sudden act of separation from the rest of the kingdom, but rather at the end of a process, the duration of which cannot be established beforehand, characterised by the progressive emptying of the federation's prerogatives in favour of the federate departments, until the complete dissolution of the State level" (917): I focused on the matter in my *Evaporazione vs solidificazione: la sfida belga*, in *le Istituzioni del Federalismo*, no. 4, 2014, 909-937.

favour the appointment of pro-independence judges to the Court, transforming the linguistic criteria of composition of the body from institutional criteria to those with a nationalist tendency with a strong emotional undercurrent[34]. Their intention seems to be to attack the country's unity, striking one of the institutions that, more than any other, has managed to remain separate from nationalist tensions, while adopting the philosophy of Belgian linguistic separatism.

8. Conclusions: Beyond linguistic separatism: When communication breaks down

For some time now, the Flemish secessionist debate seems to have adopted a language all of its own in order to advance the Belgian political agenda. This language is in line with the country's institutionalist dynamic, moulded on the characteristics of disaggregating federalism[35], incessantly animated by centrifugal thrusts with the progressive allocation of jurisdiction to federate departments and the consequent impoverishment of the federal legislative function.

In this perspective, independence supporters rarely speak of separating Flanders from the rest of Belgium. In these terms, the secessionist theory no longer even seems to appear in the New Flemish Alliance's electoral programme, perhaps because secession would have devastating effects on the country, leading to its substantial dissolution.

Instead, Flemish independents seem to focus on a confederative arrangement of the system, one in which several substantially independent institutional organisations can coexist in the same State, though linked by a common constitutional project: nothing like the historical confederal experience of the United States, Germany or Switzerland… but more like an extreme evolution of the disaggregating project adopted by Belgium in 1994, capable of adapting to changes in the social and political body while avoiding visceral disputes that would be devastating for the system (as recently shown by events in Spain)[36].

The judicial system does not seem to escape this centrifugal tendency: on the contrary, it is becoming a case study for analysing the phenomenon and for highlighting certain risks that, if not avoided, could seriously threaten Belgium's (con)federal project.

[34] By way of example, see the comments of B. Maddens, *Het machtigste parlement van België*, in De Redactie.be dated 8 June 2015, which solicited an immediate, dry response from certain jurists, some Flemish: P. Popelier, J. De Jaegere, *Het Grondwettelijk Hof: Belgische restauratie noch Vlaams voorvechterschap*, in *De juristenkrant een actuele kijk op net recht*, dated 24 June 2015.

[35] Reference attributed to A. Mastromarino, *Federalismo disaggregativo. Un percorso costituzionale negli Stati multinazionali*, Milano, Giuffrè, 2010.

[36] Again, A. Mastromarino, *Evaporazione vs solidificazione: la sfida belga*, cit., 923 et seq.

It has been recalled that competence over the judicial system is held exclusively by the State. This means that the federation is responsible for regulating the organisation of the judicial system, the recruitment of its staff and the rules of its operation.

It has also been recalled that organisation, recruitment and operation, responding to a need for pacification and balance that is part of federal institutions as a whole, were conceived to guarantee the respect of an essential principle of the Belgian system—linguistic separatism—using it to adapt the jurisdictional function to a pre-juridical element, geopolitical if you like, meaning the existence of two separate and territorially rooted ethnic-linguistic communities in Belgium.

What still has to be highlighted are the effects that that preference, gradually tacked onto the legislative power of the federate departments with respect to the federation in the centrifugal sense, will end up having on the arrangement of the judicial system described so far. Also, in the medium to long term, what effects can it have with respect to the balancing of institutional factors and identity-related factors mentioned earlier, which animates the judicial system and still sees a prevalence of the former over the latter, thanks in part to the Court's clear refusal to accept any shift of *communautarisme juridictionnel*.

To this end, we must simply mention two phenomena.

Firstly, the matter relating to the creation by federate entities of new jurisdictions, albeit of a decidedly specialised nature.

While it is true that the Belgian system is based on a rigid split in the attribution of competence between centre and periphery with no space for the rival power, it is also true that, on more than one occasion, resorting to the so-called theory of implicit competences has allowed territorial groups to intervene in the competence of the Federal State within the limits of their territory, when necessary to ensure the exercise of a competence constitutionally attributed to it[37].

Not only federate identities have often resorted to the theory of limits implicit in the judiciary sphere; indeed, the Court itself has approved its application. And a certain consolidation of the practice, as well as an increase in the incidence of inferences over time can be observed: in 2001, with decision no. 19, the Constitutional Court constitutionally declared legitimate the, although limited, exceptions approved by the Flemish Community to the Belgian Judiciary Code in relation to the Appeals Court; in 2003, with decision no. 49, the constitutional judge considered legitimate the creation of an appeal commission in Wallonia, appointed to audit appeals against decisions made by the Walloon administration with regard to aid for the disabled; with decision no. 8/2011, the Court acknowledged the legitimacy of the Flemish

[37] This requisite is joined by two more legitimising the use of implicit jurisdictions; that legislative intervention does not have definitive effects and weighs on the jurisdiction of the federation and that the matter in hand can be subject to differentiated regulation.

Region's decision to create an administrative jurisdiction specialised in urban planning law. The practical consequences of the ruling are considerable, when one considers that, prior to the adoption of the Flemish decree on urban planning jurisdiction, the State Council itself had been called upon to pass judgment in the first instance, and which, outlined in a framework of *Judicial Federalism*, now shows an evident difference in the organisation of Flemish administrative justice compared to that of Wallonia and of the Region of Brussels-Capital, where the State Council continues to be judge of sole instance.

The progressive establishment of a divide between the two communities is even better conveyed by a second set of arguments, also from the point of view of jurisdictional organisation, regardless of the attribution of an exclusive jurisdiction by the federation, and well beyond the application in terms of a merely institutional instrument of the principle of linguistic separation. Here, we are referring to the use of the translation of judiciary documents and decisions.

The linguistic separatism in force in Belgium imposes procedural mono-linguism and does not envisage the translation of documents and decisions.

This situation could have generated two different scenarios: a judiciary in which there is a sort of communitarian self-referential aspect, in which, in the absence of translation and knowledge of the other language, tho characteristics in terms of juridical culture that we have already said belong to one or the other linguistic group, become increasingly evident, increasing distances in terms of interpretation, since there is no longer any possibility for exchange; or, a second hypothesis, in which the desire and functional need to confront someone else working in the same order, establishes a virtuous circle encouraging legal operators to learn the jurisprudence of the other community, learning the language or using translations. Reality has offered proof, as it often does, inevitably revealing itself to be a little more complicated than theory. In Belgium, elements of both scenarios are observed, depending on the subject. There are, in fact, sectors of law, such as administrative law, especially linked to the territory, as we have said, where the use of translations is becoming increasingly rare and jurisprudence increasingly "communitarian". This is because, while recognising a jurisdiction that concerns the general principles managed by the federation, administrative law is now a sector that is mostly attributed to the jurisdiction of the federate departments. These deeply influence administrative judges' interest in learning the jurisprudence of the other linguistic community. Interest is minimal because the possibility of having to apply the other law, which is like that of a foreign country, is also minimal. And where there is no interest, there is no market: this means there are fewer private translations and few official ones (the weight of translations on public spending is well known!), to the point where the State Council publishes its decisions only in the language in which the suit was discussed, with some exceptions.

This would be confirmed *a contrario* by the experience of the Court of Cassation, the decisions of which are translated and distributed throughout the country, by virtue of the weight that they still carry over the entire nation, helping to consolidate case law shared by the two communities.

Thus, it is obvious that the principle of linguistic separatism, a bastion of communitarian pacification in the judiciary sphere as well, can, if considered as part of a combined provision with the rules regulating the division of jurisdiction between centre and periphery, represent an institutional short circuit, accelerating the process of distancing the two communities, as it seeks to favour their coexistence in the same constitutional arrangement.

The risk is that separation could degenerate into incommunicability, and that incommunicability could trigger a process of pure nationalization of the judiciary, instead of a bare "judical communitarism" at the constitutional level as well, as mentioned earlier.

That said, no process in Belgium is ever one-way. The thrust towards separation regularly corresponds to a counterthrust towards unification. It is sometimes latent, but never absent.

We could assume that, alongside confirmation of the strict separatism trend present today, the idea of the practical (before ideological) need to know the other language is gaining ground as is the consolidation of the conviction that it is necessary to be able to communicate with those who share the same constitutional project which, while often subject to maintenance, does not seem to have been revoked. This is part of the conviction that "apprendre la langue de l'autre ce n'est pas trahir sa communauté"[38]. It means implementing strategies of inter-culturalism and of communication, perhaps starting from the judicial system itself, conceiving a process of shared education for those working in law that does not replace the linguistically characterised one envisaged today, but that can be added at a later time to create a shared platform in terms of interpretation of the texts, starting from the letter of the provision, and in terms of the juridical culture that influences, as a precognitive factor, the very act of interpreting.

As always, because we are dealing with Belgium, the conclusions are "inconclusive". Or perhaps it would be more appropriate to say that they are suspended, awaiting a new evolution of the system, which generally isn't long in coming, one way or another.

[38] So P. VAN PARIJS, *Le multilinguisme n'est pas nocif*, in *Le Soir*, dated 27 September 2013