Changing linguistic landscapes
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"The understandable language in Belgian civil proceedings – the wrong way"

Kära deltagare. Jag är glad att vara här i Mariehamn.

Dear participants. I'm glad to be present in Mariehamn.

As a pip-squeak researcher I often think during my current beginning research about language protection: "My God, it's just a language, so what!?"... By thinking this, I certainly do not want to underestimate the importance of language protection, but still, the language problem needs more openness and tolerance.

Richard Cullen explains that the linguistic frontier between Romance and Germanic languages was fixed at the point of maximum stable Roman conquest. And in Belgium, it remains at this point, essentially, today. There is the Dutch speaking area in the northern part of the country, and the French speaking zone in the southern part.

After the First World War, the Treaty of Versailles transferred the German cantons of Eupen, Malmédy and Sankt Vith to Belgium. One of the strangest presents ever…

The principle of territoriality was introduced. The language for each region was the language spoken by the majority of the population. Every ten years a census was conducted. However, this system was not approved generally, and since 1962 each municipality belongs to only one fixed language area. There is no language census practice anymore. So, there is a difference with for instance Canada or Lithuania.

The Belgian Constitution established four language areas: the Dutch language area, the French language area, the bilingual (French and Dutch) area of Brussels-Capital (that is a kind of island in the Dutch speaking area) and the German language area.

Also, the Belgian Constitution enshrines the right to use any language. This right may be limited by legislation. Under that section 30 of the Belgian Constitution, the Language Act of 1935 was voted. The Belgian Language Act primarily focusses on the three Belgian official languages.

In the **civil, commercial and labour courts the entire procedure takes place in the language of the concerned language area**. In the courts of Brussels, proceedings are initiated in French when the defendant resides in the French-speaking part of the country, in Dutch when the defendant resides in the Dutch-speaking area, and in French or Dutch (at the plaintiff's choice) if the defendant resides in the Brussels-agglomeration.

For **purposes of making statements to the court**, the party can use the language he or she prefers, and a sworn interpreter will assist.

There is a possibility to change the language of the proceedings. It is essential to notice that this change is only a matter of the existing Belgian official languages. So, the Dutch language will eventually be replaced by French or German, French by German or Dutch, or Dutch by French or German.

First of all, the **parties may jointly request the change of the language of the proceedings**. In such case, the proceedings will continue in the language requested, without consideration by the judge. Strangely enough, in the courts in Brussels, the joint request to change Dutch in French or the other way around is not possible…

Secondly, in some cases **the defendant may ask that the proceedings continue in the other language**. In general this is only possible in the courts of Brussels where the defendant may ask that the proceedings initiated in French or Dutch continue in the other language (Dutch or French). Here the judge has a discretion when considering this request. He may reject the application if the elements of the case show that the defendant has an adequate knowledge of the language of the proceedings.

Unfortunately there is **no definition of the words ‘sufficient knowledge’**. By virtue of the Language Act the judge must take into account the elements of the cause. Naturally, the “elements of the cause” risk to leave the door wide open to unclear standards. We may call this kind of legal reasoning the 'carpenter’s eye' of the judge. In practice, the judge founds his decision on his findings in court or on the documents deposited by the parties. He will for instance refuse the request when he discovers an entire correspondence between the parties in the language of the proceedings.

If **service of procedural documents** written in French, Dutch or German must be effected in another language area, a translation should be added in the official language of that other language area. So, here again, the translation is just a matter of the existing three Belgian official languages.

The **translation rule is not applied to the appeal in cassation**. The Belgian legislator developed an argument based on the special nature of the appeal in cassation. He believes that the translation of the appeal in cassation would not be useful because the proceedings happen in written and between the lawyers. I wonder why the defendant does not have the possibility to judge the success rate of the appeal in cassation. I think it is first of all up to the defendant to see whether the game is worth the candle to invoke the assistance of a lawyer at the Court of Cassation. *That* margin of appreciation is now restricted, precisely because of the fact that the defendant does not have a translation on his disposal. In my opinion, the defendant must at least have the possibility to stay master of his or her own case.

I now come back to the general translation rule. As the language protection for served documents is placed in that cozy little circle of the three official languages, each in a separate language box, there is of course a good chance that the addressee of the document does not understand the language in which the document has been served.

Once the defendant has “trudged” to court – I use the verb “to trudge” because of the fact that the defendant did not catch the message of the received document – the gates of language eternity open… Indeed, like we have seen before, for purposes of making statements to the court, the party can use any language he or she wants, even other languages than the official languages. This discrepancy between the language protection of the service of documents and the language protection in court seems not balanced to me.

The same incongruity occurs when a party asks and obtains the change of the language of the proceedings; he or she may not understand the language of the writ of summons but (after the accepted language change) there is no regulation of that initial language trouble.

What can we do about all this? **Official languages may incline towards understandable languages.** By the inclination of the official language towards the understandable language I understand the conceivable augmentation of the chances of coinciding languages (official language and understandable language).

Belgium suffers from false official multilingualism. Definitely, when we take the map of Belgium to play darts with it, the thrown dart will end in a monolingual area. And even if the result is Brussels, there again: Brussels is a so called bilingual area, but bilingual courts do not exist; the courts are either Dutch speaking or French speaking. In other words, when a country has several official languages, it is unfortunate that those languages do not prevail over the whole territory of that country.

Superposition of official languages as potential languages of the proceedings *all over the country* should be a step forward. In this way the options regarding the languages of proceedings become wider and this creates a larger potential language coincidence (between the language of proceedings and the understandable language). Also, this superposition could mean a progress relating the language change processes. Once all official languages superposed, the language change processes – the joint request or the request of the defendant – could be generalized and uniformized.

Official languages may be left. In May 2010, the German parliament adopted a bill that allows to establish special court chambers for transnational commercial disputes where the proceedings can be entirely conducted in English. Why should we not accept it, if the parties agree with the optional language of the proceedings and if the concerned State makes that language of the proceedings possible? I find regrettable that the project only concerns commercial and transnational litigation, but what can we do against the “business as usual” quote…

As we have seen, the **translation of served documents** is absolutely catastrophic in Belgium. In my point of view, there is no other way out: the legal documents should be translated in a language the addressee understands. The European Court of Human Rights has not yet had the opportunity to rule on the issue of language rights with specific reference to a fair civil trial. The question remains whether the right to language is a right in itself, or whether it is one of the elements to the right to a fair trial. In my essential opinion, there is no margin: a non-observed right to language is a non-observed right to a fair trial.

What about the **inner quality of an understandable language**? It makes no sense to insure the understandable language if that understandable language is determined in an invaluable way. Instead of the 'carpenter's eye' of the judge we need a more stable and just norm to fix the understandable language. I am convinced that the external language appreciation by the judge should be substituted for an internal appreciation by the person concerned. Who else but the party may in fact have something to say about his or her own language?

A ‘selective incestuous language protection’ would be an appropriate description of the Belgian language protection. ‘Incestuous’ because of the fact that the language protection always returns to an official language. And ‘selective’ for the reason that there is no superposition of those three languages and that therefore language protection only serves particular language minority concentrations like the language areas themselves.

There is no modern creative, practical and useful language protection evolution in Belgium.

We need to search for language solutions in a non-competitive language environment. Here again… *It is just a language… so what!?*

I thank you very much for your beautiful and peaceful attention.

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