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**Doc. 10680**

21 September 2005

**Language problems in access to public health care in the Brussels-Capital region in Belgium**

Opinion<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Boriss Cilevičs, Latvia, Socialist Group

**I. Conclusions of the Committee**

1. The Committee on Legal Affairs and Human Rights welcomes to a large extent the spirit of the draft resolution presented by the Social, Health and Family Affairs Committee and congratulates the Rapporteur, Ms Minodora Cliveti, on her work.

2. The committee strongly supports the findings in the second and fifth paragraphs of the draft resolution, according to which

"... access to health care and language problems in the Brussels-Capital region must be considered in the general context of Belgium's constitutional development and its complex language situation, which is the result of historical events and compromises reached through lengthy negotiations", and

"The solution to the problem evidently lies not in a reform of the language legislation but rather in enforcement of the provisions of the legislation on language use in administrative matters."

3. In the same spirit, the committee feels that it is not for the Council of Europe to go so far as making the opening of the complex Belgian compromise package a requirement or even a recommendation. It is more in line with a constructive approach that is the trademark of the Council of Europe to encourage practical initiatives to improve in concrete terms the situation of Dutch-speaking patients in Brussels hospitals and access to healthcare of French-speaking inhabitants of the Dutch-speaking periphery of Brussels.

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**II. Amendments proposed by the committee**

4. The Committee therefore proposes the following amendments to the draft resolution:

**Amendment A**

In the draft resolution, paragraph 7.1, replace the words "fundamental principle of continuity of public services" by "existing legal basis of public services".

**Amendment B**

In the draft resolution, sub-paragraph 7.2., after "evaluate", add "and streamline".

**Amendment C**

In the draft resolution, after sub-paragraph 7.4, add the following new sub-paragraph:

"to pay urgent attention to the need to ensure effective bilingualism in

emergency services, in order to avoid potentially life-threatening consequences of misunderstandings;”.

#### **Amendment D**

In the draft resolution, replace sub-paragraph 7.5. by the following:

“to investigate the reasons for the lack of enthusiasm of Dutch-speaking health-care professionals for practicing in Brussels, to promote traineeships for Flemish students in Brussels hospitals, to spread information about vacancies to bilingual professionals who may be interested in working in Brussels, to promote “networking” between bilingual general practitioners and bilingual specialists working in hospitals and to improve language training possibilities in Brussels hospitals;”.

#### **Amendment E**

In the draft resolution, sub-paragraph 8.2., replace the words “recognising the French speakers living in the Flemish region as a national minority” by the following text:

“in such a way as to complement the existing language arrangements with the application of relevant provisions of the Framework Convention in order to ensure the best possible quality of health care for all inhabitants of the greater Brussels region;”.

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### **III. Explanatory memorandum**

by Mr Cilevičs, Rapporteur for opinion

#### **A. Introduction**

1. In its opinion to the Bureau on the petition of 1 October 2002<sup>2</sup>, the Committee on Legal Affairs and Human Rights concluded that

“the issue raised by the petition is not, at least not primarily, a legal one, but one that directly concerns other fields, in particular the political, the cultural and the social fields.”

2. As Rapporteur for the opinion of the Committee on Legal Affairs and Human Rights, my intuition, also in light of my experience with minority issues in other countries, including my own, was to apply legal means as sparingly as possible and to favour practical solutions.

3. As I wrote in the above-mentioned opinion, I still consider that fundamental changes of the legal framework can have wide-ranging repercussions on the existing “modus vivendi” between the different population groups.

4. Belgium is a particularly impressive example of how the elaborate system of “checks and balances” put into place after a laborious search for compromise can lead to the (perceived) artificial stability of the status quo, conserving even some long-standing rules that anyone would agree are or have become irrational. But it is quite conceivable that certain stalemate or blocked situations, however frustrating, are intended or at least accepted by both sides in negotiating a “package deal” that is presentable to their constituents. Nevertheless, it is sometimes difficult to accept that substantive legal provisions remain largely inapplicable because of the weakness of the procedural means put into place for their implementation.

5. To an outsider (and to lawyers such as the members of our committee), it may seem “cleaner” to reframe the substantive rules in more realistic terms (for example, stipulate bilingualism of the service provided rather than of each staff member dealing with the general public) and in return provide sharp procedural tools to implement the revised rules. But this would require opening the whole package and I feel that it is not for the Council of Europe to go as far as making this a requirement or even a recommendation. It may be more in line with a constructive approach that is the trademark of the Council of Europe to encourage practical initiatives to improve in concrete terms the situation of Dutch-speaking patients in Brussels hospitals and of French-speaking patients in the Dutch-speaking periphery of Brussels.

6. In this spirit, I have proposed some amendments to the draft resolution, which in its present form – and I admit this is an odd thing to say for a rapporteur from the Committee on Legal Affairs and Human Rights – appears in some places as somewhat legalistic and does not sufficiently take into account the very specific features of the delicate balance between linguistic groups in Belgium and in Brussels and the surrounding region in particular.

7. In my view, the very real and practical need of hospital patients and users of medical emergency services for treatment in their own language is best served by a pragmatic approach.

## **B. Reasons for Amendments**

### ***Amendment B***

In sub-paragraph 7.2., after "evaluate", add "and streamline".

The purpose of the evaluation should be made clear in order to prevent that the exercise becomes purely academic.

### ***Amendment C***

After sub-paragraph 7.4, add the following new sub-paragraph:

"to pay urgent attention to the need for ensure effective bilingualism in emergency services, in order to avoid potentially life-threatening consequences of misunderstandings."

The treatment of emergencies is a special case, requiring special attention, also in the draft resolution, for three main reasons, as presented in my 2003 opinion for the Bureau:

- Firstly, patients in an emergency situation often do not have any choice of hospital to which they address themselves, or to which the ambulance takes them, as it must be the nearest one.
- Secondly, in emergency situations, the misunderstandings or loss of time caused by communication problems between patients and hospital staff, or by the necessary search for an interpreter, can have particularly dramatic health consequences (as shown by some of the examples provided by the petitioners).
- Thirdly, patients in stress situations are less able than otherwise to use foreign languages, hence the special need for special consideration for these issues.

As a matter of fact, among the most vividly expressed complaints I was confronted with during my information visit in Brussels were cases of inhabitants of the Flemish region picked up by the MUG ("Mobile Urgency Group") services of the mostly French-speaking ULB or UCL hospitals, which are located close to the "language border", whose geographical range of intervention extends well into overwhelmingly Dutch-speaking territory.

The special character of the treatment of emergencies has also been recognised in the legal regulations and their interpretation. The Permanent Commission for Language Supervision has recognised that even private health care providers that are normally not subjected to the language laws requiring bilingualism must furnish bilingual services insofar as they provide emergency care, which is considered as a public-health task. In practice, this implies that at least the doctors and nurses who man the emergency rooms and the MUG services of these clinics and who interact with the patient or his family, should be bilingual.

In Brussels, the Fire Department is charged with organising the emergency ambulance service, reachable through a single telephone number (100). The language rules applicable to the Brussels Fire Department were changed by the Law on Brussels in 1989. Before this date, the Fire Department was attached to the municipality and subject to the co-ordinated laws on language use in public affairs, meaning that parity between French- and Dutch-speaking staff was required at management level and all staff members in contact with the public (including ambulance personnel) had to be bilingual. In 1989, the Fire Department was transferred to the Region. As a consequence, the Fire Department became a bilingual service manned by non- (or not necessarily) bilingual staff. Later ordinances adopted by the parliament of the Brussels-Capital region introduced fixed language ratios at all levels, depending on the workload calculated in accordance with the number of calls made in the two languages. This issue has given rise to serious political conflict, lengthy litigation before the Council of State, and the resignation of a Minister.

### ***Amendment D***

Replace sub-paragraph 7.5. by the following:

"to investigate the reasons for the lack of enthusiasm of Dutch-speaking health-care professionals for practicing in Brussels, to promote traineeships for Flemish students in Brussels hospitals, to spread information about vacancies to bilingual professionals who may be interested in working in Brussels, to promote "networking" between bilingual general practitioners and bilingual specialists working in hospitals, and to improve language training possibilities in Brussels hospitals."

This amendment is inspired by the desire to promote practical improvements, which do not necessitate changes in the legal framework.

## **Amendment E**

In sub-paragraph 8.2., replace the words "recognising the French speakers living in the Flemish region as a national minority" by the following text:

"in such a way as to complement the existing language arrangements with the application of relevant provisions of the Framework Convention in order to ensure the best possible quality of health care for all inhabitants of the greater Brussels region."

As is well-known, I am generally a fervent supporter of the Framework Convention on National Minorities and I consider its promotion as a priority task of the recently created Sub-Committee on Rights of Minorities which I have the honour of chairing, I have doubts whether the pure and simplistic application of this convention to the language problems in the Brussels periphery would best serve the above-mentioned needs.

The existing "checks and balances" may be seriously upset by an unscrupulous intervention which could be seen as tipping the balance decisively in favour of French-speakers in the Brussels region. Dutch-speakers in the areas surrounding Brussels consider themselves as being on the defensive. They feel threatened by the growing cultural influence from predominantly francophone Brussels due to the "urban sprawl" of city-dwellers moving to the periphery.

The "defensive" linguistic regime in the Brussels region is considered by many Dutch-speakers as the *quid pro quo* for the parity granted to French-speakers at the national level, despite the numerical (and economic) superiority of Dutch-speakers in Belgium as a whole. Any major changes in the status quo in the Brussels region may lead to a re-opening of the countrywide historical compromise package, with all that may entail.

This is the reason why I plead for replacing the call, in paragraph 8.2. of the draft resolution, for simply recognising the French speakers living in the Flemish region as a "national minority" in the sense of the Framework Convention. In no way does this mean that I suggest the Assembly withdraw from its position

reflected in [Resolution 1301 \(2002\) on the protection of minorities in Belgium](#). The text that I am proposing instead allows for a more flexible implementation of this recommendation that is most suited to the specific needs addressed in this report.

It is, in my opinion, one of the strengths of the Framework Convention on National Minorities that it allows for a high degree of flexibility allowing to develop the most suitable solutions through a dialogue involving both majority and minority groups, rather than sets rigid formal prescriptions ignoring specificities of different minority situations in Europe. As far as the situation in Belgium is concerned, I do not believe that the Framework Convention does not necessarily compel radical changes in the existing balance which would entail the re-opening of the compromise package as a whole, but rather allows for implementation of its basic provisions in such a way as to complement and improve existing regulations to the benefit of all linguistic groups concerned.

Finally, it is essential to stress that, despite the fact that regulations on the use of minority languages always have certain symbolic meaning, ensuring full and effective equality between persons belonging to minorities and majorities in practice is nevertheless undoubtedly the cornerstone of the modern system of minority protection. This is why it is so important that the report under consideration has been prepared by the Social, Health and Family Affairs Committee and the conclusions are based on a thorough analysis of the practical needs of the persons belonging to different linguistic groups in the field of healthcare. Thus, without any retreat from the general principles, one should look for practical solutions and the best practical options of implementation of these principles, taking into account peculiarities of the situation in question.

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*Reporting committee:* Social, Health and Family Affairs Committee

*Committee for opinion:* Committee on Legal Affairs and Human Rights

*Reference to committee:* [Doc 10009](#), Reference No 2906 of 25 November 2003; [Doc 10115](#), Reference No 2941 of 2 March 2004

*Opinion approved by the Committee on 16 September 2005*

*Secretariat of the committee:* Mr Drzemczewski, Mr Schirmer, Ms Clamer, Mr Kotliar

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<sup>1</sup> See [Doc 10648](#) tabled by the Social, Health and Family Affairs Committee.

<sup>2</sup> [Doc 10009](#) of 3 December 2003.

