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The functioning of the organs of local democracy in a context of linguistic diversity in the communes "with facilities" around Brussels in the Flemish region

Monitoring Committee

Rapporteurs:[1] Henrik HAMMAR, Sweden (L, EPP/CCE)
David ERAY, Switzerland (R, ILDG)

Summary

The report was prepared following a fact-finding visit that took place on 2 and 3 February 2017 to Brussels (Belgium) with a view to clarifying the functioning of local democracy structures in a context of linguistic diversity in the communes "with facilities" around Brussels in the Flemish region.

The report highlights the non-implementation of previous Congress Recommendations 131(2003), 258(2008) and 366(2014) as regards the issue of the appointment system for mayors. It stresses that the election of the burgomaster, directly elected by the citizens, continues to have to be endorsed by the Flemish Minister of the Interior. As a result, the fact-finding visit of 2017 shows that since the latest examination of the situation in 2008, it has not improved.

The report points out that an undue limitation of the capacity of French speaking local councillors in the communes "with facilities" in the Flemish region around Brussels to use French in carrying out local councillors' activities is an infringement on their exercise of local democracy.

Consequently, the Congress recommends that the Belgian authorities revoke the system of appointment of mayors by the Flemish Minister of the Interior. It also calls on the national authorities to review the way in which the language laws are applied in municipalities with so-called special language arrangements, in order to allow the use of both French and Dutch by local elected representatives when fulfilling their local mandates.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent and Liberal Democrat Group in the Congress
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political Group of the Congress

RECOMMENDATION 409 (2017)[2]

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b of Statutory Resolution CM/Res(2015)9 relating to the Congress, which provides that one of the aims of the Congress shall be "to submit proposals to the Committee of Ministers in order to promote local and regional democracy;"

b. Article 2, paragraph 3 of Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that "The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented;"

c. Congress Resolution 409 (2016) on the Rules and Procedures of the Congress and in particular, Chapter XVII on the organisation of the monitoring procedures;

d. Congress Recommendations 131(2003) and 366(2014) on local and regional democracy in Belgium;

e. Congress Recommendation 258(2008) on Local democracy in Belgium: non-appointment by the Flemish authorities of three mayors;

f. The appended explanatory memorandum on the functioning of local democracy structures in a context of linguistic diversity in the communes "with facilities" around Brussels in the Flemish region.

2. The Congress notes that:

a. Belgium is a founding member of the Council of Europe, which it joined in 1949. It ratified the European Charter of Local Self Government on 25 August 2004 with effect from 1 December 2004. The provisions not ratified relate to Article 3, paragraph 2, Article 8, paragraph 2, and Article 9, paragraphs 2, 6 and 7.

b. The Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe instructed the co-rapporteurs on local democracy Henrik HAMMAR (Sweden, L, EPP), and on regional democracy David ERAY (Switzerland, R, ILDG),[3] to carry out a fact-finding visit to Belgium in order to clarify the functioning of local democracy structures in a context of linguistic diversity in the communes "with facilities" around Brussels in the Flemish region and to prepare and submit to the Congress a report on this subject;

c. The fact-finding visit took place on 2 and 3 February 2017 in Brussels. During the visit, the Congress delegation met with representatives from the national delegation to the Congress, local elected representatives and the Vice-Minister-President of the Government of Flanders and Flemish Minister for Local and Provincial Government, Civic Integration, Housing, Equal Opportunities and Poverty Reduction. The detailed programme of the visit is appended to the report;

d. The delegation wishes to thank the Permanent Representation of Belgium to the Council of Europe and the interlocutors who met with the delegation, for their open and constructive discussions.

3. The Congress expresses its concern with regard to:

a. the fact that the election of the mayor proposed by the local council has to be endorsed by the Flemish Minister of the Interior whereas the proposed mayor is member of the local council which was previously directly elected by the citizens. This form of validation could constitute, in some cases, a disproportionate supervision of local authorities by the regional Flemish Government and a breach of the spirit of the Charter's preamble and Articles 4 and 8.3 thereof;

b. the resulting non-implementation of Congress Recommendations 131(2003), 258(2008) and 366(2014) as regards the issue of the appointment system for mayors mentioned under 3.a;

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2 Debated and approved by the Chamber of Local Authorities on 19 October, and adopted by the Congress on 20 October 2017, 3rd sitting (see Document CPL33(2017)02final, explanatory memorandum), co-rapporteurs: Henrik HAMMAR, Sweden (L, EPP/CCE) and David ERAY, Switzerland (R, ILDG).

3 They were assisted by Prof. Angel Manuel MORENO MOLINA, Chair of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat.

c. the legal impossibility for local councillors in these communes - where the majority of local residents are French-speaking - to comment in French on a point on the meeting agenda of a local council, or on that of other local internal bodies. This constitutes an undue limitation of their capacity and right to participate effectively in the meetings and decisions of these bodies and is therefore an infringement on the exercise of local democracy, and more generally, renders it impossible for exclusively French-speaking citizens to follow the activities of the local council;

d. the difficulties for French-speaking Belgian citizens to take part in local affairs, or to use public services in an effective way, in particular in the field of social services, due to a restrictive interpretation of the Belgian federal language laws, as implemented and enforced by the Flemish Government, which could lead, in some cases, to discrimination.

4. The Congress recommends that the Belgian authorities :

a. revoke the system of appointment by the Flemish Minister of the Interior;

b. review the way in which the language laws are applied in municipalities with so-called special language arrangements, in order to allow the use of both French and Dutch by municipal councillors and by the mayor and aldermen at the meetings of the municipal council or in the meetings of other local bodies;

c. extend the recommendation made above (4b) to the citizens of the communes concerned so that they can participate in a meaningful way in local public affairs and can make effective use of the municipal public services (and notably the social ones);

d. reconsider the possibility of ratifying Article 3, paragraph 2, Article 8, paragraph 2, and Article 9, paragraphs 2, 6 and 7 of the European Charter on Local Self-government and thereby undertake to comply with all the provisions set out in the said Charter.

5. The Congress calls on the Committee of Ministers to transmit this recommendation to the Belgian authorities and to take it into account, as well as the accompanying explanatory memorandum, in its activities relating to this member State.

6. The Congress recommends that the Parliamentary Assembly, the European Commission against Racism and Intolerance (ECRI) and the Commissioner for Human Rights take into account these recommendations within the framework of their activities in this country.

EXPLANATORY MEMORANDUM

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1. BACKGROUND INFORMATION

1. On 2-3 February 2017, a delegation of the Congress of Local and Regional Authorities of the Council of Europe (hereinafter, "the Congress Delegation") carried out a fact-finding mission in Belgium. The Delegation was composed by two rapporteurs, Henrik HAMMAR, Rapporteur on local democracy, (Sweden, L, EPP/CCE), and David ERAY, Rapporteur on regional democracy, (Switzerland, R, ILDG). The delegation was assisted by Prof. Dr. Angel M. Moreno, Chairman of the Group of Independent Experts on the European Charter of Local Self-Government and the Congress secretariat.

2. The antecedents and reasons for this fact-finding mission may be summarised as follows:

The complaint

3. In May 2015, six local government officials discharging their duties in different Belgian (Flemish) municipalities located in the periphery of Brussels (Krainem, Drogenbos, Sint-Genesius-Rode, Wemmel, Wezembeek-Oppem and Linkebeek) filed a complaint in the Chamber of Local Authorities of the Congress. In those "rim" municipalities (with a large majority of French-speaking people), special linguistic arrangements have been established in favour of French-speaking residents by the Laws of 8 November 1962 and 2 August 1963. For this reason these local entities are also commonly called "faciliteitengemeenten" in Dutch and "communes à facilités linguistiques" in French.

4. The signatories of the letter complained, inter alia, that they were not allowed to use other language than Dutch in the regular meetings of the local city council; that this situation would allegedly hamper their ability to discharge their political and representative duties and functions, especially as representatives of the French-speaking residents; that French-speaking local residents were also allegedly prevented to use French when they take part in the advisory and participatory bodies of the municipalities. Consequently, they claim that this situation went against the spirit of the Charter, and would even amount to a non-application of the Congress Recommendation 258(2008) of 2 December 2008.

5. On the other hand, the Chamber of Local Authorities was also informed of the specific situation in the "rim" Municipality of Linkebeek, where the city council had proposed on several occasions the appointment of Mr. Thiéry as the "mayor" or burgomaster (Burgemeester in Dutch, Bourgmestre in French) of the municipality. The last council proposal, deriving from extraordinary local elections held in the town, was rejected on March the 1st 2016 by the Flemish Minister for Local and Provincial Government, Civic Integration, Housing, Equal Opportunities and Poverty Reduction (hereinafter, "the competent Flemish Minister"), on the basis that he had allegedly violated the laws on the use of languages when he called for the local elections.

The legal opinion

6. In view of the foregoing, the Monitoring Committee of the Congress, on 17 February 2016, commissioned Prof. Moreno, chairman of the Congress´ Group of Independent Experts on the European Charter of Local Self-Government, to write a legal opinion in order to analyse the described situations, from the perspective of the Charter. He released an extensive legal opinion in March 2016, which was forwarded to the competent Flemish Ministry for comments and which is annexed to this report. On 23 June 2016, the said Flemish Department produced an official reply, including remarks, clarification and rectifications on the legal opinion.

The Bureau decision

7. At its meeting of 20 September 2016 in Strasbourg, the Bureau of the Congress took the decision to carry out a fact-finding mission to Belgium, in order to clarify the functioning of the organs of local democracy in a context of diversity of languages. The aim of the visit was to get first-hand information, to contrast facts and opinions, and to discuss with the concerned local representatives and other Flemish political officials. The official scope and content of the fact-finding mission was to be "the functioning of Local democracy, especially in a context of linguistic diversity in the "rim" municipalities in Brussels, Flemish region".

8. During the two days of the mission, the delegation met in Brussels with local council members of the "rim" municipalities, with members of the Belgian Delegation to the Congress and with the competent Minister of the Flemish government. The fact-finding mission proved to be very interesting and instrumental to get a clear, more precise and immediate understanding of the legal, political and sociological aspects of the situation. The programme of the visit is appended to this report.

9. The co-rapporteurs wish to thank the Permanent Representation of Belgium to the Council of Europe for contributing to the organisation and smooth running of the visit, as well as the interlocutors they met during this visit for their availability and the information they kindly provided to the delegation.

2. LEGAL CONTEXT OF THE SITUATIONS ANALYSED DURING THE MISSION AND THE PPLICABILITY OF THE CHARTER

10. It was established by the legal opinion of March 2016 provided by the Chair of the Group of independent experts that the facts under consideration are covered, in a direct or indirect way, by the Charter. The facts fall under the Preamble of the Charter (citizens participation in the conduct of public affairs), art 7.1 (free exercise of the functions of local elected representative); and Art. 8.3 (principle of proportionality in the exercise of inter-administrative control over local authorities) of the said Charter.

11. On the other hand, the use of languages "for administrative purposes" in the municipalities with special linguistic arrangements has been regulated by a complex set of national and regional laws and regulations ("circulars"). At federal level, the main piece of legislation is the so-called "*coordinated Laws on the use of languages on administrative matters* (or for governmental purposes) enacted on 18 July 1966 and subsequently amended (hereinafter, "the 1966 Laws"). In reality, these Laws apply to all governmental institutions in Belgium, and lay down specific provisions for local authorities (Arts. 9-31). Common provisions apply also to municipalities (Arts. 57 and following). Even more specific provisions address the peculiarities of "rim" municipalities around Brussels (Arts. 23-31).

12. Three rules are key principles in those local entities. First, only Dutch must be used "in their internal services", that is for internal or intra-services communications, and for the purposes of communicating with other government levels. Second, when there is a communication or relation between the residents and the "local services", French-speaking local residents have certain "rights" or *allowances* ("facilités") to use French in their relations with those services. That is, they are entitled to use French to address the local services and organs (to file a petition or to ask for a permit, for instance). Correlatively, the civil servants and employees working at those *faciliteitengemenleen* must respond and take care of the said citizens in French, too, if this is the language used by the citizen (Art. 25). Local resident may ask (in French) that the official documents, certificates and licences be written or delivered to them in French (Art. 26). Specifically in the municipalities of Drogenbos, Kraainem, Linkebeek and Wemmel the administrative acts and resolutions "are written in Dutch or in French, according to the wish of the concerned person". Nobody can work in the municipalities if he/she has not a good command of French (Art. 29), etc.

13. In a nutshell, this is the core of the so-called "allowances" *(facilités)* linguistic regime for what concerns the local residents. However, those rights or allowances are not recognised to the mayor or burgomaster (*burgemeester/ bourgmestre*), or to the vice-mayors and aldermen (*schepenen/échevins)* when they act in their formal capacity as governmental officials, and especially when they sit in the meetings of the different organs and bodies of the municipality. This is especially true when they conduct and/or take part in formal meetings of the city council.

14. The interpretation and implementation of the laws and regulations on "Municipalities with special linguistic arrangements" has produced a huge controversy in Belgium; it is the source of a permanent, emotional debate in the media, and in academic, judicial and political fora. Although the written Law has been interpreted in a handful of rulings by the Council of State and by the Constitutional Court (former "Court of Arbitration"), the Congress Delegation noticed that the right interpretation of that Law is still a matter of controversy, mainly between the Flemish regional officials and French-speaking elected political representatives.

15. In this sense, it was clear for the Congress rapporteurs that there are still details, perspectives or nuances where the interpretation and application of that body of law are problematic. For instance, in 1997 the Flemish executive adopted a "circular" (a sort of internal regulation) that "clarified" or supplemented the legal provisions of the "1966 Laws".[4] This circular, though, has been very controversial and contested by French-speaking social sectors, who claim that it is too restrictive. The most controversial aspect of this circular is that it stipulates that each time that a French-speaking resident in a "rim" municipality wishes that a local official decision, certificate or official document be delivered to him in French (as provided by the "1966 Coordinated

4 « Circular » regulation BA 97/22, of 16 December 1997, on the use of languages in municipalities located in the Flemish region, usually referred as "the Peeters circular" (*Omzendbrief Peeters* in Dutch) due to the name of the regional Minister who proposed it. Another Circular, BA-2005/03, was adopted on 8 July 2005.

Laws") he must explicitly ask for the official documents to be delivered in French. This request must be made every time, systematically.

16. The Circular has also been scrutinised by the Council of State on several occasions. For instance, in a 2004 ruling, the Council of State confirmed the legality of the "Peeters circular". However, in a June 2014 ruling, the Council of State (General Assembly) clarified the right interpretation of the special laws on the use of languages in the "rim" municipalities, in a way that reduced dramatically the scope of the Peeters circular. In particular, the Council of State notices that the plaintiff (a French-speaking politician) supported an interpretation of those laws according to which a citizen who had asked once for the use of French would be entitled to receive later on the documents in French "until the end of his days", without the need of making any new manifestation. And that the defendant (the Flemish government) supported an interpretation according to which the interested French-speaking person should ask explicitly, at every single time, that his documents be written in French (*Peeters Circular*).

17. The Council of State rejected both interpretations as unlawful and inadmissible. The former one, because it was inconsistent with the primacy recognised to Dutch in the Flemish region. And the latter, because it would "restrain in a disproportionate way the rights guaranteed by arts 25, 26 and 28" of the *1966 Laws*. Therefore, the administrative requirement demanded by the Flemish Government to express one's language preference every single time violates the rights of the French-speaking citizens. Consequently, the Council of State declared that a local resident in one of the municipalities with "facilities" in the Brussels periphery who wishes to receive his administrative documents in French is not required to ask for it at every single demand. It is enough for him to declare this language preference at regular intervals, every 4 years. Therefore, he is not supposed to reiterate at every instance hat he wished his administrative documents delivered in French. For this reason, and although the claim of illegality against the Peeters circular was not discussed, it is commonly understood that this ruling has undermined or disallowed the said circular at this precise point.[5]

18. Despite this body of case-law, the Peeters circular still generates discussion. Even during the mission (on the 2nd of February) the Congress Delegation learned that a new controversy had arisen as to the application of the said *circular*: according to the Flemish competent department, the Peeters circular is fully applicable to the calling of elections. Therefore, the French-speaking residents in the "rim" municipalities will receive the calling of the 2018 local elections in Dutch, and if they want to receive it in French they will have to ask for that explicitly. However, the French-speaking elected political representatives operating in those municipalities sharply disagree with this interpretation: they understand that French-speaking local residents should be entitled to receive automatically a calling for the elections in French if they had already made that general linguistic choice in the past at "regular intervals" (every four years). Consequently, they consider that this application of the *Peeters Circular* is not in conformity with the case-law of the Council of State (the abovementioned Ruling of 20 June, 2014). Moreover, some such politicians did ask for the resignation of the Flemish Minister.[6]

19. This last episode has showed the Congress rapporteurs that the respective positions, not only about the facts, but also about what is truly the "applicable law" are hard to reconcile. In any case, and in the light of the complexities of the legal scheme, the delegation refers to the legal expert opinion and states the existence of disagreement and controversy.

3. LOCAL DEMOCRACY: PARTICIPATION OF LOCAL RESIDENTS IN THE DECISION-MAKING ROCESS OF THE LOCAL BODIES

20. For a full account of the legal context regulating this specific item of the mission, reference is made to the expert´s legal opinion of March 2016. On this point, the official letter of the Flemish Minister of 23 June 2016 clarified the regulatory framework. For instance, it explained that the obligation to use Dutch in the (formal) meetings of the town council does not extend to the local residents (page 6). In fact, French-speaking residents may submit a petition to the municipality pursuant to Art. 201 of the Municipalities Decree. The petitioner is entitled to give his explanatory remarks in French, but the subsequent discussion and debate must take place in Dutch only.

5 Ruling of General Assembly of Council of State, No. 227.776, of 20 June 2014, *Thiéry D. vs. Flemish Region* (especially, paragraph 13).
6 See: http://www.lalibre.be, of 2 February 2017.

21. For what concerns the use of language during the meetings of municipal participation bodies, the Minister´s official letter goes on saying that a local resident can give testimony in a participation body in French. However, the subsequent deliberation must take place in Dutch.

22. Concerning this specific aspect of the fact-finding mission, the Congress Delegation heard several complaints from French-speaking local elected representatives of the municipalities in the Brussels periphery. They claimed that, in practice, the effectiveness of the "right to participate" in French in the operations of the city council and in other local bodies - in the case of local residents who do not speak Dutch - is almost reduced to nothing. For instance, even if it is true that a French-speaking resident may submit petitions or make oral contributions or submissions in French during the sessions of the several local bodies, he will most probably not understand the subsequent deliberations and discussions held by the (official) members of such bodies, which will be run exclusively in Dutch. Therefore, the local resident will be unable to understand the consequences or the outcome of his oral interventions, and he would probably be incapable of supplementing his petition with further information or clarifications, in the sense that he would not even understand the invitation to do so.

23. As a result of this situation (the Congress Delegation was told), French-speaking residents are *de facto* discouraged to attend the meetings of the local council (for they would not understand what is said or discussed therein), or even to submit inputs during the consultation of participation processes (since they would not be able to follow the results of that input). This would allegedly be aggravated by the fact that, in many cases, the documentation supporting the deliberations of the local council or of other consultative and participatory organs is written exclusively in Dutch. According to our interlocutors, if local residents cannot understand the documents and antecedents of the decision-making process, it is useless to expect that they would be involved or participate in such process.

24. This claim can be given some credit, if only by imagining the logical sequence of that type of participation: a citizen makes a remark or proposal in French within the session of a local body, and his intervention triggers a discussion in Dutch, that he cannot follow. Moreover, the possibility for a member of the local body or organ to engage spontaneously in a discussion in French after the input of a local resident made in such language is hampered by the prospect of the Flemish minister declaring the nullity of the decisions resulting from those discussions. That is, local decisions can be automatically annulled by the Flemish minister if French was spoken by "members" of the local bodies during the decision-making process leading to the adoption of the said decision.

25. Moreover, the Congress Delegation heard complaints that in the municipalities with "linguistic facilities" some governmental activities and programs in the sensitive field of social services cannot reach properly the French-speaking population, for they are handled and run exclusively in Dutch. For instance, some interlocutors reported that recently there was a campaign for the prevention of breast cancer, only in Dutch, from which many French-speaking women could not benefit due to their ignorance of that language. That a campaign against influenza, only in Dutch, was conducted in those municipalities. That football teams whose players speak in French on the playground during the football games cannot receive subsidies from the Flemish government, etc. Moreover, the said interlocutors reported that, under the Law, all local government employees should have a good command of French in order to communicate and to interact in that language with French-speaking residents, but this is not guaranteed in practice. Finally, they summed up that the interpretation of the "linguistic facilities" regime is becoming more and more restrictive on the part of the Flemish authorities.

26. The rapporteurs also heard counterclaims on these questions, expressed by a Dutch-speaking local representative. According to him, there are no serious problems in the field of citizen participation in the local life. Local residents are welcome to attend the sessions of the local council and of other local bodies if they wish. In fact, many local French-speaking residents do in fact intervene in Dutch during the meetings and sessions of the local bodies, and in practice there are no major problems in this respect. The agendas and the minutes of the city council are published in both Dutch and French in the website of the Town Hall. The social climate is smooth, and it is not disrupted by the language issue, except probably in Linkebeek, where the alleged "dogmatic position" of some local French-speaking politicians would have contributed to make the situation increasingly tense.

27. The described situation is certainly delicate. On the one hand, the Congress Delegation understands clearly that the "rim" municipalities are located in Flanders, which is a monolingual region; that the Flemish government has taken several initiatives to facilitate the learning of Dutch by French-speaking residents of the

faciliteitengemeenten, such as organising free Dutch courses that are addressed to them. This is a praiseworthy initiative in order to facilitate the full integration of those people in the Flemish region, which under the Law is a unilingual region. The Congress Delegation also understands that the protection of the official tongue of the Region is a legitimate governmental interest, and that it would be probably good for the societal peace that all residents in all Flemish municipalities would speak or at least understand Dutch, etc.

28. However on the other hand, the rapporteurs are also convinced that the "rim" municipalities do enjoy a "special" linguistic regime, that is, a derogation of the general laws. It is the result of a delicate compromise and balance of interests that lay at the very heart of the Belgian society. Moreover, the "linguistic facilities" should not only be interpreted as simple "expectations" or as mere "interests" on the part of French-speakers, but as true "rights", as the Council of State has depicted them;[7] "rights" that must be "guaranteed" by the competent governmental organisation, in this case the local authority as a whole and the Flemish government as the higher governmental layer.

29. Moreover, under Belgian law, there is no obligation imposed on the individuals to know French, Dutch or German. Therefore, the decision to learn or not to learn a specific language apart from one´s own mother language is a matter of personal, cultural self-determination, which cannot be hindered by the government. In any case, and independently from History, the current social reality in those municipalities is what it is, and it should not be disregarded by the government.

30. It is also clear that the laws can be interpreted in different manners (strict approach vs. teleological approach) according to the political sensitivity of the moment and other compelling sociological interests. For instance, in 1966 the Law contemplated few instances or situations for citizen participation, while today the reality is the reverse, as many laws and regulations in specific domains of governmental action (environmental protection, urban development, etc.) ask precisely for that participation, not only as a "desideratum", but as a legal obligation. From this perspective, the Congress Delegation understands that the "linguistic facilities" should be interpreted and applied in a way to encourage and to facilitate such participation of local residents, independently from their mother tongue, especially if they are all Belgian citizens. In this sense, the Charter does not regulate explicitly the matter, but unequivocally favours an interpretative approach that would result in facilitating and encouraging participation. The practical arrangements for that should be discussed by the appropriate stakeholders in a spirit of mutual respect, avoidance of maximalist positions and constructive spirit.

31. Finally, the Congress Delegation would also like to remind that in Resolution 276(2008), the Congress stressed "the need for citizens to take part in local affairs" (point 6). Recommendation 258 (2008) was more explicit on the topic under consideration, as the Congress noted that "the Belgian language laws, as interpreted and applied by the Flemish government in municipalities with so-called special arrangements, make it difficult for French-speaking Belgian citizens to take part in local affairs. This situation is incompatible with the spirit of the Charter…and, in particular, with consideration 5 of the preamble, which points out that citizen participation is a fundamental principle of local democracy".

32. In the light of the practice and guidelines implemented by the Flemish regional government during the last years, the rapporteurs have not seen during this fact-finding mission any substantial change in the situation under consideration. It seems that Flemish authorities have done little to adapt, interpret or implement the current legal framework in order to improve, foster, facilitate or enhance the participation of French-speaking local residents in the day-to-day activities of the several bodies of the "rim" municipalities.

4. LOCAL DEMOCRACY: PARTICIPATION OF LOCAL ELECTED REPRESENTATIVES IN THE DECISION-MAKING PROCESS OF THE LOCAL BODIES

33. A different question from that discussed in the previous heading is constituted by the actual capacity of local elected representatives (mainly, the members of the local council) to participate in the activities and decisions of the local administration bodies, in a context of linguistic diversity. That is, the ability of French-speaking local representatives to use French in the daily running of local bodies operations, meetings and decisions.

34. The expert´s legal opinion also conducted the analysis of this specific situation, to which reference is made. In this respect, the Official Letter of the Flemish Minister of 23 June 2016 also helped clarifying the

7 In this sense, see reference at note 5 (same paragraph of the Ruling).

regulatory framework. The Flemish government understands that the 1966 Laws are to be interpreted in the sense that all local elected representatives must use exclusively Dutch when they act in their official capacity of members of the local council, members of the *board of mayor and aldermen*, or members of "other participation bodies to which town councillors may possibly belong, for example council committees and municipal advisory bodies". This embraces any type of intervention, input or proposal, from the taking of the oath to votes or individual interventions. Municipal advisory bodies are considered at all respects as "internal offices of the municipality". Furthermore, interventions during the deliberations or at the introduction of an agenda point in a language other than that of the language region shall consequently result in the nullity of the decision taken. Opinions, deliberations, reporting and decisions must be made in Dutch (Official Letter, *supra*, pages 4-5).

35. This understanding is rooted in the consideration that, since the "rim municipalities" are located in the territory of the Flemish region, the official "agents" and institutional representatives of such municipalities are strictly bound the unilingual character of the region. Consequently, the "linguistic facilities" are only addressed to the local residents, and do not cover the political members of the local bodies whatsoever. What is more, if a local elected representative uses French during the meetings or sessions of the bodies of the municipalities, he may face a disciplinary sanction.

36. In this field, the Congress Delegation interprets that the legal context (from the perspective of French-speaking local representatives) seems to be more restrictive than the one applying to regular citizens. The Delegation also heard and noted that there is also room for conflict, distress and controversy. Thus, a French-speaking local representative reported in writing that, every month, he receives several calls to take part in the meeting of the local council or of working commissions, with the corresponding meeting agenda, which are exclusively written in Dutch. Allegedly, the meeting agenda is also written and available in French, but the administrative services of the municipality cannot send him those documents in that language. Therefore, he has to consult those agendas by reading them in the public announcement boards of the Town Hall. That is: as a local representative, as a local councillor, he has not the right to obtain those documents in French, something which is possible for a regular citizen, if he asks for it. This local representative also complained that all the antecedents and dossiers that serve as the basis for local discussions and decisions (even the most technical ones) are exclusively available in Dutch, and that all external experts and consultants who are invited to the meetings of the local bodies do speak only in Dutch. This situation would allegedly prevent him to adopt an informed position on a proposed decision, when this is voted in the city council.

37. The delegation also heard that in some cases the cohabitation of Dutch-speaking local representatives and French-speaking ones has proved to be problematic. Such situation was reported to have happened in the past in the city council of Linkebeek. A new case, shortly after the end of the mission, took place in the municipality of Sint-Genesius-Rode, where Ms. Van Rompuy-Windels, a Dutch-speaking alderman, resigned from her position. The main reason for that resignation was that she was allegedly mistreated and harassed by her French-speaking fellows at the city council.[8] The French-speaking members of the council denied these allegations, and presented the move as an electoral strategy.

38. It is important to remind that, in its Recommendation 258 (2008), the Congress recommended that the Belgian authorities "review the language laws and, in particular, the way in which they are applied in municipalities with so-called special language arrangements, to allow the use of both French and Dutch by municipal councillors and by the mayor and aldermen at the meetings of the municipal council". To this respect, the Congress Delegation could not see any improvement or change in the situation or in the administrative practice.

39. The second point has to do with the need to clarifying the legal context, and especially the reach and application of a Ruling of the former Court of Arbitration (now, Constitutional Court), namely the Ruling No. 26/98, of 10 March 1998. In this decision, the Court of Arbitration ruled, *inter alia*, that: (a) the Laws of 18 July 1966 are in conformity with the Belgian Constitution; (b) that the duty to use exclusively the Dutch language during the meetings of the city council applies in the *faciliteitengemeenten* only to the mayor and to the other members of the "board of the mayor and aldermen" (*college du Bourgmestre et des échevins*), but does not apply to other members of the city council, who are just regular local councillors and not members of the said board;[9] and (c) that Art. 23 does not violate Arts. 10 and 11 of the said Constitution "if it is interpreted as prohibiting the mayor or any other member of the board of the mayor and aldermen to introduce or

8 See: http://www.rtbf.be, of 8 February 2017.
9 *Question préjudicielle concernant l´article 23 des lois coordonnées du 18 juillet 1966 sur l´emploi des langues en matière linguistique, posée par le Conseil d´Etat. Arrêt No. 26/98 du 10 mars 1998, No. du rôle : 1095* (par. B.3.5.1).

comment in a language other than Dutch a point in the agenda of a meeting of the local council or to reply in that language to interventions of local councillors".[10]

40. Despite the apparent clarity of this ruling, the Congress Delegation could notice that this holding is not followed, applied or implemented in the *faciliteitengemeenten* around Brussels. According to Flemish government representatives, this precise point was not in the center of the lawsuit that was adjudicated by the Court of Arbitration. On the other hand, they understand that this paragraph was just a lateral consideration of the ruling and consequently cannot be interpreted as a "controlling precedent" to regulate the use of languages other than Dutch by local councillors who are not members of the board of the mayor and aldermen. In this sense, the "Official letter" of the Flemish minister points out that "the court of arbitration does not make any judgment in the ruling itself; it only makes reference to it in the considerations. The Council of State has not followed this opinion in any ruling whatsoever" (page 4).

41. The rapporteurs will not enter into the nitty-gritty intricacies of this legal question, however, it is evident in their view that the Court of Arbitration made a clear statement that is included not in a secondary "obiter dicta", but in a "ratio decidendi" and, moreover, in the operative part of the judgment. On the other hand, if the Council of State follows a different understanding, then the situation would probably need clarification, for this "asymmetric" case-law could be, and is in fact, a source of controversy.

5. LOCAL DEMOCRACY: THE SYSTEM FOR THE APPOINTMENT OF BURGOMASTERS

5.1 Previous reports and recommendations adopted by the Congress

42. The system that is in force now in Flanders, is based on the baseline that the mayor is not really "elected" but "appointed" by an explicit administrative decision of the Flemish government. This system is rooted in the legal tradition of Belgium (of Napoleonic origin) and is peculiar if contrasted with the most common practices in the field across Europe. The key point here is that, under regional legislation, the *burgomaster* is not just seen just as a regular "mayor" or local official, but as an institutional organ that is called upon to apply and enforce the laws, regulations and instructions of the "higher administrative layers" (under Art. 64 of the Flemish decree on Municipalities). Since he is conceived also as a representative of the regional and provincial authorities in the town, the "central" regional authorities (that is, the competent Minister of the Flemish Regional Government) have the power to ascertain the suitability of the person nominated by the local council to discharge the duties of burgomaster. This assessment is pretty large in scope, since the Flemish competent minister can take into consideration different "facts" and actions of the nominee in order to determine whether the candidate meets the "moral qualities" needed to perform the duties of burgomaster. This legal construct has been confirmed by the case-law of the Council of State.[11]

43. In the past, the Congress has addressed on several occasions the system by which burgomasters are appointed in the Flemish Region, namely in Recommendation 131 (2003), in Recommendation 258(2008)[12] and in Recommendation 366(2014).

44. The view of the Congress is that, on the basis of the implicit principles inspiring the Charter and of elementary considerations of local democracy, the system which better fits the Charter is a system where the mayor is elected directly by the local residents or by the members of the local council. That this appointment should be automatic or at least, where the intervention of other territorial government is foreseen, it should be reduced to the maximum. In this sense, it would be useful to underline that the Walloon Region introduced such a system, and abandoned he pre-existing one of appointed mayors.

5.2 The case of the non-appointment of a burgomaster in Linkebeek

45. The non-appointment of the burgomaster of Linkebeek deriving from the extraordinary local elections of 13 December 2015 is far to be a "new" or recent development in the Belgian political landscape. As a matter of fact, this situation has remained more of less the same since 2007, for the competent Minister of the

10 Operative part of the judgment (free translation from the French version of the Ruling).
11 Ruling No. 229.602, of 18 December 2014, *Thiéry* and Ruling No. 227.775, *Caprasse.*
12 As a result of a fact-finding mission that was by the Congress in May 2008.

Flemish Regional Government who has refused several times (in November 2007,[13] February 2013[14] and September 2014[15]) to appoint the same person (Mr. Damien Thiéry), invoking the same legal grounds: the candidate had allegedly infringed the legislation on the use of languages for administrative purposes when calling for the local elections. He had sent convocations to participate in elections in French for the French-speaking residents, and in Dutch for the Dutch-speaking residents. However, and according to the Flemish government, he should have sent all convocations in Dutch. And only if a French-speaking resident would have asked those documents in French, then he would send them in that language.

46. In his legal opinion of March 2016, Prof. Moreno carried out an extensive description of the antecedents and of the different attempts in which Mr. Thiéry was proposed or nominated by the City Council of Linkebeek as the burgomaster of the town, and how all these attempts were unsuccessful in the sense that the proposal was rejected by the competent Flemish Minister, always on the same ground that, by having infringed the federal legislation on the use of languages for administrative purposes, Mr. Thiéry did not meet the necessary legal and moral requirements to be appointed as Burgomaster. For the sake of concision, we do not need to repeat what was said in that extensive document, to which reference is made. Previous approaches of the Congress to this issue have been mentioned in the precedent item.

47. However, the rapporteurs discovered an additional legal element, which needs to be commented here. On 30 January 2017, that is, just a couple of days before the beginning of the mission, the Council of State of Belgium (which is the highest administrative court in the Kingdom) delivered a judgement in which it adjudicated in one decision two different legal challenges introduced by Mr. Thiéry in connection with the refusal of the competent Flemish Minister to appoint him as the burgomaster of Linkebeek. Namely, the plaintiff on the one hand challenged the decision of the Flemish Minister of 1 March 2016 that annulled the decision of the city council of Linkebeek that proposed his nomination,[16] and on the other hand challenged the decision of the Flemish Minister of 21 April 2016, which explicitly refused to appoint him as *burgomaster* of Linkebeek.[17]

48. In its ruling, the Council of State dismissed the appeals lodged by Mr. Thiéry. According to the Council of State, the "facts" in this situation still remain the same, and the unsuitability of the plaintiff to become the burgomaster of Linkebeek was declared twice by the Council of State on two different occasions (see, *supra*).

49.The celebration of "extraordinary" local elections in December 2015 did not alter this appreciation. Moreover, the full term for local mandates does run up to 2018. The court declared that the reiteration of the same proposal by the city council and the legal strategy to appeal the refusal of the Flemish Minister on every occasion was contradictory with the legislative intent to put an end to the institutional "carousels" (Council´s own words) as the one present in Linkebeek. The Court went on to declare that the action was dismissed, and condemned the plaintiff to pay the defendant a total sum of 1.400 euros for the costs of the proceedings.

50. This ruling of the Council of State was extensively commented by the interlocutors of the delegation. While Mr. Thiéry did not share the view of the High Court and pointed out some procedural weaknesses of the ruling (that his legal arguments were not reproduced in the decision, while those of the Flemish government were so; that two "auditors" of the Council of State had advised to upheld the appeal) the representatives of the Flemish Ministry understood that this ruling constituted a new (and final) confirmation that their behaviour was legally correct, and that Mr. Thiéry was wrong. The official position of the government is that the "Thiéry file" is closed and final.

51. In its ruling, the Council of State declared that the Flemish government could not legitimately refuse to appoint a burgomaster confirmed by the local council of Linkebeek for the term following the local elections of 2018 on the basis of acts ("an ignorance of the laws on the use of languages") produced before 14 October 2012,[18] unless that ignorance of the laws or of the instructions of the Flemish government "could be reasonably demonstrated on the basis of new, specific and precise elements" (of fact).[19]

13 In November 2007, the situation concerned three burgomasters, namely those of Wezembeek-Oppen, Crainhem and Linkebeek.
14 Mr. Thiéry filed a lawsuit against this decision of the Flemish Minister in the Council of State, but this court rejected his appeal by its Ruling 227.776, of 20 June 2014.
15 Mr. Thiéry filed a new lawsuit against this decision of the Flemish Minister in the Council of State, but the court also rejected his appeal by its Ruling 229.602, of 18 December 2014.
16 Case A.218.859/Abis-9.
17 Case A.218.859/Abis-10.
18 Date on which the municipalities Act was amended to introduce the possibility for the nominee to introduce an appeal in the council of State against the refusal decision of the regional minister.
19 Point 19.5 of the Ruling.

52. The key question here is whether, in the eventual scenario or a new nomination of Mr Thiéry (in case his party would win the local elections of 2018), the Flemish Minister could still refuse to appoint him, on the basis that he would continue to be unsuitable to perform his duties as Burgomaster. This consideration is even more than a prospect in the sense that the Council recalled that, in a previous litigation,[20] he had declared that "the Flemish government, in exercising his power to appoint a burgomaster, is not prevented to take into consideration elements related to the past, as long as they remain present and pertinent".[21] This wording is in our view too loose, and might trigger subsequent litigation.

53. It is not clear whether the present case-law of the Council of State would forbid the Flemish government to take into consideration facts that happened in the past, in order to keep on refusing the appointment of Mr Thiéry, in the event that he would be proposed again by the local council, after the local elections of 2018. If that were the case, it would be fine, but if not, that would certainly constitute a problem from the perspective of local democracy and the ability of every person to have access to the position of a local official, because the personal situation of Mr. Thiéry would amount to a kind of "lifelong" impeachment, which could never be "healed" by the affected person.

54. Beyond the Council of State´s ruling concerning the precise situation in Linkebeek, the Congress Delegation also notes three important aspects:

55. *Primo.* The system for the appointment of burgomasters in the Flemish Region as a whole is still in place and it has not been amended. Since the Congress has expressed at several times its impression that the current system is not in harmony with the Charter, the Delegation asked our interlocutors whether any governmental or legislative initiative had been adopted by the competent Ministry or in the Flemish Parliament in order to change or amend the present legal scheme. To our questions, both the competent Minister and one member of the Flemish Parliament openly declared that nothing had been done to implement the different Resolutions and Recommendations of the Congress. From this facts, the rapporteurs drew the conclusion that the system still remains in force as it was depicted in the abovementioned documents of the Congress, and that there is not political willingness to change it.

56. *Secundo.* The Special Act of 19 July 2012 is a legal development that deserves a very positive appraisal. This Act introduced a new Art.13bis in the new Municipalities Act, and makes it possible for a local councillor whose appointment as mayor has been refused by the Flemish government to introduce an appeal specifically targeted at obtaining the annulment of the said refusal. The Council of State (its General Assembly of the litigation section) may overrule the refusal of the Regional executive to appoint a mayor that has been duly proposed by the city council of a "rim" municipality with special linguistic arrangements. If the Council of State quashes the decision of the regional executive by which it refuses to appoint a proposed mayor, this implies automatically that the proposed person will be proclaimed as burgomaster, by the very virtue of the ruling. The Belgian Constitutional Court, on 3 April 2014, ruled that this piece of legislation was in conformity with the Belgian Constitution (ruling No. 57/2014).

57. Although that Special Law has clearly raised the legal protection standards of the procedure by which the Flemish Minister refuses to appoint the candidate that has been proposed by the local council, it is still true that, during the administrative procedures leading to the regional decision, there is no legal provision establishing the need for a previous "hearing" or for the right of defence of the concerned nominee. The same applies to the city council making the proposal, since the Flemish Minister does annul it of hand. The Congress Delegation asked Mr. Thiéry if that was his case, and he confirmed that he did not have the opportunity to be heard before the Flemish Minister adopted her decision not to appoint him.

58. Apparently, this regulatory situation would be legal under Belgian law: in her letter of 23 June 2016, released in reply to Prof. Moreno legal opinion (see supra), the Flemish Minister referred to some rulings of the Council of State in that sense. Namely, that official letter (page 9/10) states that "the government is not obligated to hear the proposed candidate or the proposer before rejecting a proposal, not even when the rejection is based on the personal behaviour or the proposed candidate mayor (Council of State, Ache, No. 27.292, 7 January 1987").

20 Ruling No. 229.602 (point 10).
21 Quote from the French version of the ruling: "il n´est pas interdit au Gouvernement flamand de prendre en compte, dans l´exercice de son pouvoir de nomination d´un bourgmestre, des éléments pouvant concerner le passé, pour autant du moins qu´il demeurent actuels et pertinents » (point 19.5, second indent).

59. Apart from this old precedent (rendered before the devolution of competences in local government affairs to the Regions), the Belgian Council of State has confirmed in more recent times that this legal scheme is correct.[22] The main reason for that understanding is that the non-appointment as a burgomaster of a candidate proposed by the city council is not a "sanction", and therefore the rights to defence do not apply.

60. The rapporteurs also believe that the local councillor that is nominated by the council has certain "legal expectations" to be appointed as burgomaster, and that it would be "convenient" or "fair" (at least from elementary considerations of "good administration") to establish the possibility for the nominee to be heard before the Flemish Minister takes his decision.

61. *Tertio.* The analysed system also raises doubts as to its compatibility with Art. 8.3 of the Charter. This aspect has been already extensively discussed and confirmed in previous "fact-finding missions" and "monitoring missions" conducted by the Congress in Belgium, and by the expert legal opinion of March 2016. Consequently, the rapporteurs cannot support a different understanding, especially in the view that nothing has changed in the Law. There is, however, a final point that the delegation would like to mention. In its ruling of 20 June 2014 (No. 227.776), the Council of State declared that the appointment power of the Flemish government "cannot be considered as disproportionate" (par. 37).

62. However, the Council of State did not consider the "direct effect" of Art. 8.3 of the Charter to the facts, a provision that is fully in force in Belgium. Therefore, the rapporteurs would expect to see that, in future legal proceedings, the Council of State decides to introduce the said ratified provision in its discussions and legal considerations.

6. CONCLUSIONS

63. The Congress delegation stresses that since 2008, the situation has not improved and is quite similar to the one observed in 2008[23]: Once again, a municipality located in the Flemish region is still without Executive. The electoral body was reconvened on the occasion of extraordinary local elections in 2015. By their votes, the citizens re-confirmed the previous candidate burgomaster, who stood again for these elections. The rapporteurs deplore this recurrent political situation and the fact that the Flemish government does not draw the due consequences from the elections by refusing one more time to appoint the winner of these elections.

64. The rapporteurs observed the sharp discrepancy between the opinion of the interviewed parties, not only about the soundness of the current legal scheme in place, but also as to the facts, and the seriousness of the situation.

65. They understand well that the legislation in place is the result of a delicate compromise on one of the fundamental balances that enables the very functioning of the country.

66. They also understand that there is a substantial room for improvement in the domain of participation of the local residents in the local affairs.

67.For what concerns the system of appointment of mayors in the Flemish Region, the rapporteurs consider that the proposal to appoint a person as a burgomaster is a key element of local autonomy, for the said official is the highest cog that culminates the very organic and institutional constitution of the local government.

68. On the other hand, the legal grounds for refusing the appointment of a person who has been proposed by a local council should be clarified and legally delimitated, in order to increase the legal certainty and predictability of the legal scheme. Currently, the system allows a margin of discretion that is too large, and that does not meet the standards of legal certainty.

69. As regard the supervision exercised by the Flemish authorities, Recommendation 258 (2008) already stated that the Flemish authorities' supervision of local authorities, in particular the appointment of elected mayors by the government, was incompatible with the general spirit of the Charter, in particular the preamble and Articles 4 and 8 of the Charter. In this respect, the rapporteurs remind the Congress adopted Recommendations 131 (2003) and 258 (2008) which both encouraged the adoption of the system of election

22 Ruling of the Council of State of 20 June 2014, No. 227.776, D. *Thiéry vs. Flemish Region* (par. 23-24).
23 CPL(15)8REP (2008): Report on local democracy in Belgium: non-appointment by the Flemish authorities of three mayors

of mayors by the municipal council or by the citizens, which would reduce the regional authorities' control of the municipalities.

70. The fact-finding visit which was carried on in February 2017 showed that the situation which was examined in 2008 is still valid and has not improved. Some interlocutors told the rapporteurs that the situation of local democracy in these municipalities with linguistic arrangements has even worsened since then.

APPENDIX I – PROGRAMME OF THE CONGRESS' FACT-FINDING MISSION TO BELGIUM

FACT-FINDING MISSION TO BELGIUM ON THE FUNCTIONING OF THE ORGANS OF LOCAL DEMOCRACY IN A CONTEXT OF LINGUISTIC DIVERSITY IN THE COMMUNES "WITH FACILITIES" AROUND BRUSSELS IN THE FLEMISH REGION

Brussels (2-3 February 2017)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Henrik HAMMAR	Rapporteur on local democracy Chamber of Local Authorities, EPP/CCE[24] Member of Örkelljunga Municipal Council, Sweden
Mr David ERAY	Rapporteur on regional democracy Chamber of Regions, ILDG[25] Minister of Environment of the Canton of Jura, Switzerland

Congress secretariat:

Mr Jean-Philippe BOZOULS *(as from 3 February)*	Director of the Congress
Ms Stephanie POIREL	Secretary to the Monitoring Committee

Expert:

Dr Angel M. MORENO	Chair of the Group of Independent Experts on the European Charter of Local Self-government

Interpreters:

Ms Martine BOGAERT
Ms Martine CARLIER

The working languages, for which interpretation is provided during the meetings, will be Dutch, English and French.

24 EPP/CCE: European People's Party Group in the Congress
25 ILDG : Independent and Liberal Democrat Group in the Congress

Thursday 2 February 2017
Brussels

Arrival of the Congress Delegation to Brussels

Meeting with the National Delegation to the Congress

- **Mr Marc COOLS,** Head of the National Delegation to the Congress, President of the association of the City and Communes of the Brussels-Capital Region
- **Mr Karim VAN OVERMEIRE**, Deputy Head of the National Delegation to the Congress, Member of the Flemish Parliament
- **Mrs Carla DEJONGHE**, Member of Parliament for the Brussels-Capital Region

Joint meeting with:

Local councillors who addressed a complaint to the Congress

- **Mr Jean-Luc MAZY** (representing Mr Gregory BOEN, Local councillor, Drogenbos)
- **Ms Sophie ROHONYI** (representing Mr Cédric DE COCK, Local councillor, Rhode-Saint-Genèse)
- **Mr Paul CARTUYVELS**, Local councillor, Kraainem
- **Mr Philippe THIERY**, President of CPAS (Public Welfare Center), Linkebeek
- **Ms Marie PAQUOT**, Local councillor, Wezembeek-Oppem

and with:

- **Mr Damien THIERY**, Non-appointed burgomaster of Linkebeek

Meeting with municipal councillor of Linkebeek (*tbc)*

- **Mr Rik OTTEN**, Local councillor of Linkebeek

Friday 3 February 2017
Brussels

Meeting with the Vice-Minister-President of the Government of Flanders and Flemish Minister for Local and Provincial Government, Civic Integration, Housing, Equal Opportunities and Poverty Reduction

- **Ms Liesbeth HOMANS,** Vice-Minister-President

Departure of the Congress Delegation from Brussels

APPENDIX II – ANALYSIS OF THE SITUATION IN CERTAIN MUNICIPALITIES WITH SPECIAL LANGUAGE ARRANGEMENTS LOCATED ON THE OUTSKIRTS OF BRUSSELS (BELGIUM), NOTABLY FROM THE PERSPECTIVE OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

Legal opinion by Angel M. MORENO, LLB, LLM, PhD, President of the Group of Independent Experts (GIE) on the European Charter of Local Self-Government, Professor of Law at Carlos III University of Madrid

Table of contents

1. Introduction

Background and scope of the opinion

1. The present opinion analyses two different sets of facts that take place in some "municipalities with special language arrangements" situated on the outskirts of Brussels, in Belgium. On the one hand, this opinion analyses the situation reported by some French-speaking local government representatives (in their majority, members of the city council of the abovementioned municipalities). They complain that they are not allowed to use French in the regular meetings of the said councils. In addition, the French-speaking inhabitants of the municipality are allegedly not allowed to such use, when they participate in citizens councils or in other local participation bodies. This problem is identified hereinafter as "situation A".

2. On the other hand, this opinion analyses the situation in Linkebeek, which is also a "municipality with special language arrangements" in the outskirts of Brussels. After the last municipal extraordinary elections, held in December 2015*,* and in accordance with applicable Flemish laws and regulations on local government, the city council proposed the appointment of Mr. Thiéry as the "mayor" (*Burgemeester* in Dutch, *Bourgmestre* in French) of the municipality. However, on March the 1st, 2016, the Flemish Ministry for Home Affairs refused to appoint the said candidate, on different grounds that will be analysed *infra.* This problem is identified hereinafter as "situation B".

3. This legal opinion has been commissioned by the Monitoring Committee of the Congress of the Council of Europe (hereinafter "the Congress") and analyses the two sets of situations described, mainly from the perspective of the European Charter of Local Self-Government (Charter, hereinafter "the Charter") and other applicable Council of Europe materials and documents. Reference will also be made, where needed, to the domestic legislation and case law, although this opinion does not pretend to be a comprehensive analysis of the situation from the perspective of the internal legal order and domestic practices.

2. Summary of the facts

2.1 Facts pertaining to situation "A" (city council members and members of the public not allowed to use French)

4. In May 2015, six local government officials discharging their duties in different Belgian municipalities filed a complaint in the Chamber of Local Authorities of the Congress of Local and Regional Authorities, Council of Europe (Congress). Five of them are members of the city council in five different such municipalities (Krainem; Drogenbos; Sint-Genesius-Rode; Wemmel and Wezembeek-Oppem), while the sixth one is the president of a "public center of social action" (CPAS) located in Linkebeek. All these local entities are entirely located in the territory of the Flemish region, but around the Brussels-capital region, that is, on the very fringe of the "border" between Flanders and the Brussels-Region. For these reasons they are known as "rim" municipalities. In those towns, with a large majority of French-speaking people,[26] special linguistic arrangements have been established in favour of French-speaking residents, and for this reason these entities are also commonly called "faciliteitengemeenten" in Dutch and "communes à facilités linguistiques" in French.

5. The local politicians complain that: (a) they are not allowed to use other language than Dutch (that is, French) in the regular meetings of the local city council. Therefore, this would allegedly hamper their ability to discharge their political and representative duties and functions, especially as representatives of the French-speaking residents; (b) French-speaking local residents are also allegedly prevented to use French when they take part in the advisory and participatory bodies of the municipalities, when they want to make oral submissions, proposals or remarks. Consequently, they claim that this situation goes against the spirit of the Charter, and would amount to a non-application of the Congress Resolution No. 259, of 2 December 2008 (the reference is however erroneous, since the right text is "Congress Recommendation 258(2008)"). This situation would allegedly be a consequence of a harsh implementation of the legislation on the use of languages in those local communities, carried out by the regional Ministry of Internal Affairs. And it would be facilitated by the different forms of control that the regional authorities may exert on municipalities (*tutelle*) in the Flemish region, under regional laws and regulations on the matter.

26 Language censuses are prohibited in Belgium since 1961. However, different sociological studies conducted during the last years have concluded that the proportion of French-speaking inhabitants in the "rim Municipalities" around Brussels range from 55% to 80%. These data are the matter of dispute.

2.2 Facts pertaining to the situation of the non-appointment of the mayor of Linkebeek (situation "B")

6. Linkebeek is one of the six "municipalities with special language arrangements", located in the outskirts of Brussels (a "rim" municipality) with 4,797 inhabitants (January 2015), most of which are French-speaking people.[27] Municipal, extraordinary elections were held in December 2015, as a consequence of the resignation of the thirteen French-speaking local councillors (out of a total of fifteen seats in the local council). As a result of these particular elections, the thirteen seats that were under dispute (that is, 100% of them) where won by the list "LB",[28] a party lead by French-speaking politicians. In accordance with applicable Flemish laws and regulations on local government, on the 29th of February, 2016 the city council proposed the appointment of Mr. Thiéry as the "mayor" (*Burgemeester* in Dutch, *Bourgmestre* in French) of the municipality. However, the very next day (on March the 1st 2016), the Flemish Minister for Internal Affairs (*Vlaams minister van Binnenlands Bestuur*) refused to appoint the said candidate, on the basis that in the past he had allegedly violated the laws on the use of languages in the electoral process.[29] He had sent notices in French calling for the municipal elections in Linkebeek.

7. It is important to note that this situation is not new. In 2006, and after the local elections, the then Minister of Internal Affairs refuse to appoint Mr. Thiéry (as proposed by the city council) because he had sent notices calling for the municipal elections in Linkebeek in French to the electors of the municipality. Since that date, Linkebeek has not had a mayor appointed by the Regional executive. In 2012, and in the prospect of the new local elections,[30] M. Thiéry allegedly sent again electoral notices in French. The new regional Minister for Internal Affairs refused, again, to appoint him as the mayor, despite the proposal of the majority of the members of the city council. In September 2015, the new regional Minister decided to appoint as mayor of Linkebeek one representative of the Dutch-speaking minority party (it holds only 2 seats out of 15), but this was rejected by the French-speaking local people and politicians. Namely, the thirteen French-speaking members of the city council resigned. In view of the unsustainable political situation at local level, new, extraordinary elections were held in December 2015, with the result that has been presented *supra*. This time, Mr. Thiéry has sent notices first in Dutch and upon request in French, in accordance with the law on the calling of elections. With this new decision of the regional Executive, Mr. Thiéry, has been refused as mayor by three consecutive regional Ministers in nine years.

8. Moreover, these are not isolated facts, since in recent years the same situation of non-appointment of mayors by the Flemish Executive (claiming the infringement of language legislation) has taken place in different *faciliteitengemeenten* located in the outskirts of Brussels, a situation that has been carefully analysed by the Congress on different occasions (see point 5.2, *infra*)

3. Legal considerations common to both situations

3.1 National legal framework on the use of languages in local government

9. Since the constitutional reform of 1980, the Kingdom of Belgium became a federal country. Many and important competences and powers were devolved to both the three existing Regions (Flanders, Brussels-Capital and Wallonia) and to the three *Communities*. Under the new constitutional arrangements, the three regions became competent to regulate all matters dealing with the local government. This legislative and regulatory power includes, *inter alia,* the different aspects of the legal regime of local authorities: (a) their composition, organisation, competences and functioning; (b) the election of the municipal organs; (c) the disciplinary regime of the mayors.[31]

10. The Flemish region (which amalgamated with the Flemish community) is a monolinguistic region, whose only official language is Dutch. This rule applies to all the different types of governmental organisations and layers present in the said region: the regional level, the provincial level and the local level. Dutch is the only language that can be used both in the "internal" communications between the municipal services, and in their "external" relations; the communications of citizens with the municipal services must be made only in Dutch; all the decisions, certificates, plans and regulations of the local bodies are only written in Dutch, etc. The only

27 It is estimated that some 79% of the local residents of Linkebeek are French-speaking people. Source: survey conducted by the newspaper "Le Soir", 14 February 2005.
28 Total number of valid ballots: 2,439. Blank and invalid ballots: 392: Votes for the "LB" (LinbeBeek) list: 1,958. Votes for "La Droite": 84. Source: official website of the Municipality of Linkebeek: *www.linkebeek.be.*
29 The said Minister had already anticipated her decision in the media, when she was interviewed in a TV-show, even before the proposal was formally made. See: *Le Soir* (Belgian newspaper), issue of 29 February 2016, page 6 ; *Le Vif* (on the internet), 28 February 2016.
30 Local elections in Belgium are called every six years.
31 See: M. BOUVIER: "Local Government in Belgium", in the collective book: *Local government in the Member States of the European Union: a comparative legal perspective* (A.MORENO, editor) INAP, Madrid, 2012, pages 46-47.

exceptions to that general rule apply in the so called "municipalities with special language arrangements" ("*faciliteitengemeenten"* in Dutch, "communes à facilités" in French). Among the different types of such special municipalities present in Belgium, the fact analysed here have to do with the so-called "rim" Dutch-speaking municipalities with facilities for French speakers. As noted *supra*, they are totally located in the Flemish region, around the Brussels-region. There are six such Municipalities: Drogenbos, Kraainem, Linkebeek, Sint-Genesius-Rode; Wemmel and Wezembeek-Oppem.

11. The use of language "for administrative purposes" in the municipalities with special linguistic arrangements has been regulated at the State, federal level, essentially by means of the so-called "*coordinated Laws on the use of languages on administrative matters* (or for governmental purposes) enacted on 18 July 1966 and subsequently amended (hereinafter, "the 1966 Laws"). In reality, these Laws apply to all governmental institutions in Belgium, and lay down specific provisions for local authorities (Arts. 9 -31). Common provisions apply also to municipalities (Arts. 57 and following). Even more specific provisions address the peculiarities of "rim" municipalities around Brussels (Arts. 23-31).

12. Three rules are key in those *faciliteitengemeenten*. First, only Dutch must be used "in their internal services", that is for internal or intra-services communications, and for the purposes of communicating with other government levels. Second, when there is a communication or relation between the residents and the "local services", French-speaking locals residents have certain rights or allowances to use French in their relations with the City Hall services. That is, they are entitled to use French to address the local services and organs (to file a petition or to ask for a permit, for instance). Correlatively, the civil servants and employees working at those *faciliteitendegemenenteen* must respond and to take care of the said citizens in French, too, if this is the language used by the citizen (Art. 25). Local resident may ask (in French) that the official documents, certificates and licences be written or delivered in French (Art. 26). Nobody can work in the municipalities if he has not a good command of French (Art. 29), etc. In a nutshell, this is the core of the so called "allowances" (facilités) linguistic regime. Finally, those rights or allowances are not recognised to the mayor (*burgemeester bourgmestre*), or the vice-mayors (*schepenen/échevins)* when they act in their official capacity as governmental representatives, and especially when they sit in the meetings of the different organs and bodies of the local authorities. This is especially true when they conduct and/or take part in formal meetings of the city council.

13. Despite this brief summary, the interpretation and implementation of the laws and regulations on "Municipalities with special linguistic arrangements" has produced a lot of controversy in Belgium, and is the source of a permanent, heated debate in media, academia, judicial and political fora. In 1997, the Flemish executive passed a "circular" (a sort of internal regulation) that "clarified" or supplemented the legal provisions of the "1966 Laws", but it was very controversial and has been disputed by French-speaking social sectors as been too restrictive.[32] Therefore, we do not need to present in detail the origins, evolution and present situation of this legal arrangements. It is enough to point out at this stage that the actual implementation of this legislation has produced litigation and rulings from the Constitutional Court, the Council of State[33] and the Standing Commission on Linguistic Control, which is a federal body for controlling the application of that legislation created by the "1966 Laws".

3.2 The application of the Charter in Belgium

14. The kingdom of Belgium ratified the Charter by means of the Act of June 24th, 2000. After the ratification of the text by the several competent legislative bodies in Belgium, the Charter came into effect in December 2004. According to Belgian experts, "the very existence of the Act of ratification of the Charter does not require any other supplementary legal instrument, so that local authorities are entitled to demand the respect of the provisions of the Charter".[34]

15. However, there are different peculiar features to be considered in this ratification:
- the Charter applies indeed to municipalities in all Belgium, but not to public centres of social action (*centre publics d´action sociale*) in the area of Brussels-Capital;
- Belgium declared that it was not bound by several Articles of the Charter:
    - Article 3.2 (responsibility of the executive body in front of the local assembly)
    - Article 8.2 (control over local authorities)
    - Article 9.2, Article 9.6 and Article 9.7 (financial resources).

32 « Circular » regulation BA 97/22, of 16 December 1997, on the use of languages in municipalities located in the Flemish region, usually referred as "the Peeters circular" (*Omzendbrief Peeters* in Dutch) due to the name of the regional Minister who proposed it. Another Circular, BA-2005/03, was adopted on 8 July 2005.

33 For instance, in its ruling of 20 June 2014 the Council of State declared illegal the "Peeters Circular".

34 See: M. BOUVIER: *op, cit,* at 49. For an analysis of the reception of the Charter in Belgian law, see: M. LEROY: "El derecho belga y la carta europea de autonomía local", *Estudios sobre la Carta Europea de Autonomía local,* Barcelona, 2002, pages 205- 220

4. Specific legal considerations, pertaining to situation "A"

4.1 Applicability of some provisions of the Charter to the facts under consideration

16. There are several provisions of the Charter that may be relevant for the purpose of analysing the referred facts. First of all, the fifth recital of the Preamble of Charter, according to which: "considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member states of the Council of Europe. Convinced that it is at local level that this right can be most directly exercised…". The preamble is a part of the Charter, which clearly sets the fundamental goals and structural principles inspiring the Charter.

17. On the other hand, Art. 3.2 of the Charter is also relevant *a contrario sensu*: this provision, which is not binding on Belgium, requires that local self-government "be exercised by councils or assemblies composed of members freely elected…and which may possess executive organs responsible to them". The second part of Art. 3.2 states that the existence of such councils or assemblies will not undermine the possibility to have "recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute". That is, the second part of Art. 3.2 is not an additional duty posed on a signatory country, it has no substantivity on its own as a specific "commitment" to be accepted (or not) by a signatory, but just a "caveat": the establishment of local councils or assemblies does not mean that other forms of direct citizens participation cannot be set up. Therefore, the second part of Article 3.2 is relevant and should be read carefully.

18. In our view, the fact that Belgium has made an improper "reservation" to Art. 3.2 does not mean that it can ignore the content of the Charter dealing with participation in general, just the contrary: since Belgium is not bound by Art. 3.2 (which deals mainly with assemblies and executive organs responsible to the former), any form of public participation may be implemented, encouraged and strengthened in that country. That is: the fact that Belgium is not bound by Art. 3.2 does not introduce *per se* any limitation on the introduction of any form of public participation. Therefore, Art. 3.2, second indent, of the Charter is closely linked with the fifth recital of the preamble.

19. Finally, art 7.1 establishes that: "the conditions of office of local elected representatives shall provide for free exercise of their functions". The "Explanatory memorandum" annexed to the Charter clarifies the scope of this provision: "this Article aims at ensuring both that elected representatives may not be prevented by the action of a third party from carrying out their functions and that some categories of persons may not be prevented by purely material considerations from standing for office".

4.2 The question whether the Charter recognises rights in the juridical sphere of physical persons

20. An interesting point is the question whether the Charter recognises rights in the juridical sphere of the individuals, on which they can rely and that they can invoke in the courts or in other fora. For the purpose of this opinion, we should clarify whether the Charter recognises on the citizens the right to participate in local government bodies, and the right to do so by using a language of his choice.

21. To begin with, the Charter is a classical international multilateral Treaty, negotiated and concluded in the framework of a regular international intergovernmental organisation. The question whether the Charter is directly applicable and has direct effect in the countries that have ratified it depends largely on purely domestic constitutional features and legal traditions.[35] In general, though, it is commonly considered that the Charter lacks direct applicability *in abstracto*, due to the general wording, broad and imprecise terminology that it uses in most of its Articles.[36]

22. On the other hand, we should also discuss briefly the issue whether the Charter does recognise "rights" (in the technical meaning of the word) in favour of individuals (like some provisions of the European Union Treaties do). This assertion cannot be supported, in the light of the historical precedents, the legal architecture of the Charter and a systematic interpretation of its provisions.

23. An initial line of research would consist in identifying *who* are the addressees of the Charter. In this sense, it can be noticed that the Charter is mainly addressed to the national or sub-national powers having the power to determine or regulate the legal regime, operations and working of local entities. On the other hand,

35 The Congress has analysed this interesting question. See the Report "The reception of the Charter in the countries having ratified it", compiled by the President of the GIE on the ECLSG (Prof. G. Merloni) in 2010.

36 For a discussion of this issue, see: *The European Charter of Local Self-Government. A Treaty for local democracy.* Edinburgh Univ. Press, 2015, pages 85-91.

the “beneficiaries” of the protections awarded by the Charter are the local entities themselves, instead of private, physical persons. This is confirmed by the language and wording of the Charter: the Charter certainly recognises rights or other equivalent concepts, but the “addressees” or beneficiaries of such terms are the local authorities themselves, no the individuals. Thus, the very notion of local self-government is depicted as a “right” (Art. 3.2). Furthermore, the Charter entrusts local bodies (with) certain minimum “rights” (Art. 11), “entitlements” (Art. 10) or “guarantees”, guarantees that may be invoked by the local authorities in their relations with the State or sub-national governments and Parliaments. Moreover, those rights and guarantees been protected by the domestic courts (Art. 11). The official “explanatory report” annexed to the Charter, is of further help in this interpretation. Under “General Remarks”, the report states that “the purpose of the Charter is to make good the lack of common European standards for measuring and safeguarding the *rights* of local authorities…the Charter commits the parties to apply basic rules guaranteeing the political, administrative and financial *independence* of local authorities…the *right* of local authorities to co-operate and form associations…”, etc.

24. The conclusion from the above considerations is that the Charter does not recognise on the juridical sphere of the individuals (in this case, the local residents) a subjective right to participate in the handling of local affairs; a right that they could invoke in national or domestic courts. This does not undermine the observation that citizens participation in one of the inspiring principles of the Charter (understood as a “societal good” in itself) as confirmed by the Preamble of the Charter.

25. By the same token, it is also hard to support the view that one member of a local government body (for instance, one member of the local council) might rely on the provisions of the Charter (as) against the local body of which he is an organic integral part. This “*intra corporis*” application of the Charter in the relations between the members of the local council and the president, manager or steering committee of the said council cannot be admitted and would amount to a wrong understanding and application of the Charter. Correlatively, the said member of the local council cannot rely on the provisions of the Charter (as) against another level of government, because the holder of the rights recognised by the Charter is the local authority itself.

26. Finally, it must be remembered that specific provisions on the right to participate in the local affairs were enshrined in a specific Protocol to the Charter, namely the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, signed in Utrecht on 16 November 2009 (ETS No.: 207). Nevertheless, the Kingdom of Belgium has signed the Additional Protocol, but has not ratified it. Therefore, the provisions of the said protocol do not apply to Belgium and they cannot be taken into consideration in this opinion.

27. However, and beyond this technical understanding of the legal architecture of the Charter, the “spirit” of the Charter asks for the full deployment of the most extensive participation in local affairs, as this is an ancillary element of local democracy. This idea is developed at point 4.5 below.

4.3 The language issue IN the Charter

28. Different considerations must be made as to the question whether the Charter does regulate in any sense the language that must or can be used by citizens when they participate in the meetings of the city council, or when the members of the local council participate in such meetings.

29. The language is a vehicle of communication. The “core” element of participation is “the right to participate” in itself, and not the way or the format chosen to communicate, although these two aspects may be closely intertwined. However, if the core element of participation is not expressly recognised or depicted as “right” by the Charter, an ancillary or subordinated element such as the language serving as a vehicle to that participation could hardly be regulated or foreseen, neither.

30. Secondly, the Charter does not make any reference to the linguistic regime in the working and operations of the local authorities, neither in an “internal” nor “external” dimension. The Charter does not mention the issue of language in any of its Articles. This is understandable because, on the one hand, the language issue is a “lateral” issue in the domain of local self-government and its protection. The Charter was politically framed without taking into consideration the likely existence of problems linked to the coexistence of languages. On the other hand, the framers of the Charter may have thought that this was not an issue for “regulation”, but just a matter of common sense. Another explanation for the silence of the Charter in this domain is that it is an international treaty addressed to more than forty countries in Europe, which have very different territorial structures and different degrees of cultural and linguistic identity or homogeneity. In comparative perspective, the Charter must be applied in countries with a strong unitary political and cultural identity and homogeneity (such as Portugal) and to countries with a high degree of cultural/linguistic diversity (such as Switzerland).

31. The solutions and the legal arrangements regulating the use in government of the different languages existing in the country may vary from a strong monolingual regime in the whole country, to the co-existence of different languages in different contexts (in education, for governmental purposes, etc.). In any case, the right accommodation of the existing languages in the local government life has to be decided by the competent bodies and powers, at State or Sub-state level, as provided by the domestic Constitution. Of course, it would be highly desirable that the legal arrangements on the co-existence of languages would facilitate to the highest level the participation of local residents in the municipal life. Even in unitary countries having a strong national cultural and mono-linguistic identity, the use of other languages in local life is either tolerated or accepted by the legislation, for the sake of promoting participation and enhancing Democracy in those areas or human settlements with minorities or concrete groups of people speaking languages different from the "official" one at national level. The best example of this possibility is the Slovak Republic, where, even if Slovak is the only official language in the country (Art. 6.1. Slovak Constitution), the use of Hungarian language is allowed in the day-to-day working and operation of certain municipalities in the South of the country, where the presence of citizens of Hungarian descent is very important, even predominant.

32. It is therefore undeniable that the Charter wishes to attain a high degree of citizens participation and a full democratic life, and element of which is the very possibility for the citizens to understand the drafts, decisions and plans produced by the local/municipalities and bodies, and their ability to utter thoughts and ideas, to communicate with the local officials and representatives in their own language, especially in cases such as, in the *faciliteitegemeenten,* the majority of local residents are French-speaking people. From this perspective it is clear that a fully bilingual regime would be probably the best one to achieve these compelling societal goods. Nevertheless, this arrangement can only be decided by the Belgian competent authorities on purely internal political grounds and considerations, since the Charter does not lay down precise standards on this matter.

4.4 The language issue AND the Charter

33. The precedent statements do not mean that the Charter has no role to play in the legal consideration of the facts herein analysed as letter "A". On the contrary, the Charter may be used, and must be used by domestic legal operators, as a reference method of interpretation of their internal laws and regulations. In this sense, the contents and principles inspiring the Charter should cast their hermeneutic force on the domestic regulations that govern the situations herein analysed.

34. In this sense, when a local resident of a "rim" municipality located in the outskirts of Brussels assists to a meeting of the city council and formulates a question or remark in French, he is using his interest or right to participate in the matters of the local community, which is one of the fundamental objectives of the Charter (Recital 5, Preamble). It is also possible to support the view that, when he speaks in French in that meetings, or in the meetings of bodies for citizen participation, he would do no nothing else than addressing *in voce* the "local services" (as referred by the "1966 Laws") in the language of his choice.

35. This is not a strained construction of what is a "local" or "municipal service" under the said "1966 Laws". First, any common understanding of the plain meaning of the words "local service" will lead to the conclusion that the city council stands among those services, and the same can be said of the bodies or procedures for citizen participation. What is more, the municipal practice supports that view. For instance, the official website of the Municipality of Linkebeek[37] (bilingual in both Dutch and French) includes a lot of information about the local bodies, its activities and policies. When it comes to "municipal services", the webpage opens different windows or sub-heading, including all such municipal services. The first municipal service to be displayed, (starting at the top) is of course the municipal administration (*bestuur*); the second is precisely the executive organ of the mayor and the aldermen (*College van Burgemeester en Schepenen* in Dutch, *Collège des Bourgmestre et échevins* in French); then comes the city council (*gemeenteraad / conseil communal*); and below, naturally, the Police, which is undeniably a "municipal service".

36. In the light of the precedent, it is possible to support the view that, even if the "1966 Laws" do not define precisely what are the "municipal services" (Art. 1), it is clear that:

- any regular interpretation of the said concept should include the city council and any substantive body being a constituent part of the municipal bureaucratic flowchart.
- the Municipality of Linkebeek itself understands that those organs and structures are "municipal services".
- Therefore, when a resident uses French in producing oral statements in the city council or in the meetings of citizens participation, he is doing nothing else than using the rights that the 1966 Laws recognise on him. He doing nothing else than addressing a municipal service, formulating *in voce* a

37 See: www.linkebeek.be.

request, remark or comment. Moreover, this fact does not produce any distortion in the decision-making process of the local body since, as noted *supra*, all civil servants and local officials in the *faciliteitengemeenten* are supposed to speak French.

- In case of doubt, an extensive interpretation (instead of a restrictive one) of the 1966 Laws should be implemented, under the hermeneutic force of the Fifth recital of the Preamble and Art. 3.1 of the Charter (management of local affairs *in the interests of local population*) to which Belgium is bound.

37. On the other hand, it should be observed that:

- (1) The 1966 Laws do not prohibit explicitly the use of French to local residents in open meetings of the city council or in public participation bodies.

- (2) The "1966 Laws" are *daughters* of their time, that is, a time when the governmental life was mainly conceived in a rather technocratic way, with a minimum involvement of the citizens. Today, however, the instances for public participation at local level have been multiplied by the different sectoral laws and regulations in quite a number of fields, ranging from land development planning to project licensing and environmental impact assessment[38]. These legal rules commonly enshrine true and genuine "rights" (in the technical sense of the word) to participate. This active participation and involvement of the local residents must be facilitated, and not restricted, by public (local) authorities.

- (3) The principle *odiosa sunt restringenda* is fully applicable in this case. In case of doubt as to the application of a legal rule, it should be resolved in the manner that hampers in the least possible manner the full deployment of a fundamental right. In this case, and apart from the interest in participating in the decisions of the local body, the freedom of expression and the freedom of speech are involved. These are fundamental rights recognised by the Belgian constitution, and by the European Convention of Human Rights (Art. 10) that was ratified by the Kingdom of Belgium without reservations on 14 June 1955.

- (4) The alleged prohibition to use French by the local residents in public meetings is even more striking since the meeting's agenda of each session of the city council is published in French in the official website of the Municipality. And so are the minutes of each city council meeting.

- (5) The issue seems to be settled by domestic case law and quasi-judicial practice, since the ruling of the Court of Arbitration of 10 Mar 1988 has clarified that the obligation to use Dutch in the *faciliteitegemeende* does only apply to the mayor and the vice-mayors, but does not apply to the regular members of the city council (see, point 4.8, below). This clear judicial precedent, together with an extensive interpretation of the Federal Laws on "special linguistic arrangements" in the light of the Charter, leads to the conclusion that the members of the city councils who signed the complaint cannot be refrained from using French. At the same time, the obligation to use Dutch in the city council or participatory bodies cannot be imposed on regular French-speaking local residents.

- (6) In any case, and under the method of interpretation advocated here, the city council and the participation bodies could be perfectly understood to be "internal services" in the meaning of the 1966 Laws, to which the regular citizens may turn in either Dutch or French.

4.5 Previous documents, texts, resolutions and recommendations of the Congress

38. In May 2008, the Congress carried out a fact-finding mission to Belgium, which mainly looked into the situation of the three elected mayors in municipalities with linguistic arrangements in the Flemish region. The Congress, however, also analysed the question of the use of languages in those municipalities and recommended to review the linguistic laws, concerning their application in the municipalities with special arrangements, in order to enable the use of Dutch and French during municipal council sessions. The Chamber of Local Authorities of the Congress adopted, on 2 December 2008, two important institutional documents on local democracy in Belgium: Resolution 276 (2008), and Recommendation 258 (2008).

39. In Resolution 276(2008), the Congress stressed "the need for citizens to take part in local affairs" (point 6). Recommendation 258 (2008) is more explicit on the topic under consideration. Namely, the Congress, on the one hand, noted that "the Belgian language laws, as interpreted and applied by the Flemish government in municipalities with so-called special arrangements, make it difficult for French-speaking Belgian citizens to

38 Different EU and international legal rules, fully obligatory in Belgium, impose on the competent governmental authorities (on municipalities, where applicable) the duty to establish a procedure for public participation. For instance, the EU Directive 2011/92, on Environmental Impact Assessment, or the UN/ECE Aarhus Convention on access to environmental information, participation in decision-making and access to justice in environmental matters, of 1998.

take part in local affairs. This situation is incompatible with the spirit of the Charter…and, in particular, with consideration 5 of the preamble, which points out that citizen participation is a fundamental principle of local democracy". On the other hand, the Congress recommended that the Belgian authorities "review the language laws and, in particular, the way in which they are applied in municipalities with so-called special language arrangements, to allow the use of both French and Dutch by municipal councillors and by the mayor and aldermen at the meetings of the municipal council.

40. In the light of the practice and guidelines implemented by the Flemish government during the last years, it is hard to see any substantial change in the linguistic situation in the "rim" municipalities. Flemish authorities seem have done little (or nothing) to adapt, interpret or implement the current legal framework in order to improve, foster, facilitate or enhance the participation of French-speaking local residents or local councillors in the sessions of the city council or in other participation bodies.

4.6. Relevant domestic case-law

41. Although this report focuses mainly on the Council of Europe materials, it could not ignore the fact that a situation similar to the one that is here analysed might have been the subject of adjudication at domestic level. In this sense, it is relevant to point out that the Court of Arbitration of Belgium (antecedent of the current Constitutional Court) adjudicated in 1998 a preliminary ruling formulated by the Council of State, concerning Article 23 of the laws of 18 July 1966.

42. In that case, the Council of State had to rule on an application for annulment of a Decision adopted by the Flemish region, by which the said region annulled different decisions adopted by the Municipality of Linkebeek, on the grounds that the said decisions did not comply with the said laws of 18 July 1966. Namely, the said decisions had been adopted during a session of the city council where different points and proposals, included in the official meeting's agenda, were introduced by the mayor or by a vice-mayor, both in Dutch and in French. Moreover, the said Mayor and vice-mayors replied in French to questions posed to them (in French) by certain city council members, and in Dutch when they were asked in that tongue. This use of French in a formal meeting of the city council, plus the mayor and vice-mayors, was considered by the regional executive to be in contravention on the legislation on the use of languages in the local administration. Namely, Art. 23 of the 1966 Laws establishes that, for what concerns the "internal services", o for *internal* purposes (and in their relations with other territorial bodies in the Flemish region) all the local bodies and services of the six *faciliteitegemeenten* must use the Dutch language. If the local representatives do not abide to these rules, they face disciplinary sanctions and the possible declaration of annulment of the decisions taken (Art. 57 and 58). Consequently, Art. 23 of the 1966 Laws does prevent the vice-mayors and the mayor of the *faciliteitegemeenten* to present in a language other than Dutch a point or proposal that is included in the agenda of the collegiate body meeting, or to reply to questions addressed to them, or make oral statements and remarks in that tongue during the celebration of the meeting.

43. The application for annulment was introduced by the concerned municipality. In the course of the proceedings, the Municipality of Linkebeek asked the Council of State to formulate a preliminary ruling by which the Constitutional Court should decide whether the said laws were in conformity with the Belgian Constitution, since they would allegedly violate Arts. 4, 10 and 11 of the Belgian Constitution, Art. 3 of the First Additional Protocol to the European Convention of Human Rights and Art. 27 of the International Covenant on the civil and political rights.

44. In its decision No. 26/98, of 10 March 1998, the Court of Arbitration ruled, in a nutshell: (a) that the Laws of 18 July 1966 are in conformity with the Belgian Constitution, and especially that Art. 23 does not violate Arts. 10 and 11 of the said Constitution; (b) that the duty to use exclusively the Dutch language during the meetings of the city council applies only to the mayor and to the other members of the "collegiate body of the mayor and the aldermen" (*college du Bourgmestre et des échevins*), but does not apply to other members of the city council, who are just and simply local councillors; (c) the obligation to use only Dutch is justified by a compelling reason of public interest and does not produce, by itself, discrimination. Neither hampers it the possibility for the local resident to carry out a political control of the local officials; (d) neither the First Protocol to the European Convention on human rights nor the International Covenant on civil rights apply to the controversial facts.

5. Legal considerations pertaining to the situation "B" (non-appointment of a mayor proposed by the local council in Linkebeek)

5.1 The applicability of the Charter to the facts

45. The applicability of the Charter to the situation described at point 2.1 is clear. In the view of this opinion, the following Articles should be applicable:

(a) Art. 7 (conditions under which responsibilities at local level are exercised). The three indents of this provision are fully applicable in Belgium.

(b) Art. 8 (administrative supervision of local authorities´ activities). Belgium declared not to be bound by the second indent of this provision (see, point 3.2 supra), but it is fully bound by par. 1 and 3. Especially, Art, 8.3 enshrines a key principle in the domain of inter-administrative control over municipalities, that of proportionality: "*Administrative supervision of local authorities shall be exercised in such a way that the intervention of the controlling authority is kept in proportion to the importance of the interests which is intended to protect*. Thus is in this case the "controlling authority" is the Flemish Minister for Internal Affairs, and the "local authority" under control is the Municipality of Linkebeek.

46. Apart from these Articles, it should be underlined that the Charter is not a Treaty on just "self-government" (understood in a narrow technical sense) but a treaty whose objective is broader. Namely, that of ensuring democracy at local level. As a matter of fact, and since its entry into force, the Charter has been commonly seen as a Treaty "for" or "on" local democracy, both in academic[39] and political-institutional for a.[40]

47. This structural goal of the Charter is enshrined in its Preamble, where it is stated that self-government "is an important contribution to the construction of Europe based on the principles of democracy…" and that this "entails the existence of local authorities endowed *with democratically constituted decision-making bodies*[41] and possessing a wide degree of autonomy with regard to their responsibilities…". Furthermore, the Explanatory report states that the function of the Council of Europe is the keeping of Europe´s democratic conscience and the defence of human rights in the widest sense. Indeed, it embodies the conviction that the degree of self-government enjoyed by local authorities may be regarded as a touchstone of genuine democracy" (point B. *General remarks)*. Finally, the Explanatory Report stresses both "the vital contribution of local self-government to democracy" and "the need for local authorities to be democratically constituted and enjoy wide-ranging autonomy".

48. Therefore, and as long as the Charter embodies a clear inspiring principle of local democracy, it can be supported that the facts under consideration are also under the scope of application of the core rules on local democracy. It cannot be otherwise, since Belgium is unanimously considered as a fully democratic country.

5.2 Previous documents, texts, resolutions and recommendations of the Congress

49. The facts analysed under issue "B" are not new or isolated. The Congress has analysed several times the situation under consideration, together with other similar situations that have taken place in the past in other municipalities. The Congress has consistently supported the view that the non-appointment of a mayor proposed by the city council, as provided for by the Flemish legislation on municipalities, is in contradiction with the Charter. The present legal opinion sides with this understanding. In a nutshell, the main approaches of the Congress may be summarised as follows:

(a) The information report of 2003

50. In 2003, the Congress adopted an information report on the state of local and regional democracy in Belgium, before the ratification of the Charter by the said country, in 2004. Even at that early stage the Congress identified, among other issues of concern, the possibility for regional executive not to appoint mayors proposed by the city council, and the lack of judicial remedies at the disposal of the non-appointed mayors, willing to sue the regional agency in courts. Moreover, the intergovernmental form of control embodied in the possibility not to appoint a proposed mayor was assessed as against the principle of proportionality.[42]

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39 See, for instance, C. HIMSWORTH: *The European Charter of Local Self-Government. A Treaty for local democracy*. Op. cit.
40 When the Monitoring Committee of the Congress organises monitoring visits in the countries that have ratified the Charter, the objective of the visit is not just checking the "reception" of the Charter, but analysing "the situation of local democracy" (and eventually that of regional democracy, too). Reports, Recommendations and Resolutions are adopted under that general title.
41 Emphasis added.
42 See: Recommendation 131 (2003) of the Congress on local democracy in Belgium.

(b) The 2008 fact-finding mission

51. As noted at point 4.6, *supra*, on 13 and 14 May 2008, the Congress carried out a fact-finding mission to Belgium, in order to examine the situation of the non-appointment of three mayors in different « rim » municipalities with special linguistic arrangements: Wezembek-Oppem, Kraainem and Linkebeek. This Congress mission triggered the production of the report CPL(15)8REP, which identified five failures to comply with the Charter. In addition, the Congress adopted both Resolution 276 (2008) and Recommendation 258 (2008). For what concerns the precise problem of the non-appointment of proposed mayors, Resolution 276 (2008) underlined that "the principle of proportionality…implies that, in exercising its prerogatives, the supervisory authorities should use the method which interferes least with local autonomy and democracy". For its part, Recommendation 258 (2008) made even stronger statements, namely that:

- "the Flemish authorities´ failure to appoint three elected mayors within reasonable timeframe has disrupted the proper management of public affairs" (point 6.a)
- "the refusal to appoint three mayors as a form of penalty is disproportionate given that no disciplinary proceedings have been initiated against the three mayors. This situation is incompatible with art. 8.3 of the Charter" (point 6.c)
- "the Flemish authorities´ supervision of local authorities, in particular the appointment of elected mayors by the government, is incompatible with the general spirit of the Charter, in particular the preamble and Articles 4 and 8 of the Charter".

On the other hand, this document recommended the Belgian authorities to appoint the three proposed mayors and to adopt a system of election of mayors by the municipal council of by the citizens.

(c) The 2013-2014 monitoring mission

52. This is the first full monitoring of the situation of local and regional democracy in Belgium since it ratified the Charter (the 2008 report focused on the non appointment of mayors and on the implementation of the linguistic laws). The monitoring visit allowed the production of the report CG(27)7Final, of 15 October 2014 and the adoption of Recommendation 366(2014) on local and regional democracy in Belgium.[43] This document recommended Belgium to envisage the introduction of a system, in Flanders and in the Brussels-Capital Region, for the election of burgomasters by the municipal councils or by the citizens, which implies the automatic nomination of burgomasters" (point 6,c).

5.3. Relevant domestic legislation

53. Apart from the general legislation mentioned at point 3.1 supra, mention should be made to two sets of laws that are of great relevance here:

(a) the Flemish Municipal Act

The Flemish legislation on municipalities (law of 15 July 2005) is the key legal rule providing legal grounds for the potential refusal to appoint a mayor who has been proposed by the local council of a given municipality. The relevant provision is Art. 59. This provision establishes, in a nutshell: (a) that the mayor is appointed by the Flemish government among the local councillors; (b) that a majority of councillors may present a candidate for that purposes. This is usually done on the very first meeting of the new local council, after the local elections; (c) that the Flemish government verifies whether the proposal is "admissible" (or "acceptable"); (d) on the contrary, the Flemish government may at any time solicit the presentation of another candidacy.

54. Therefore, and in the context of this process of verification of the admissibility of the council proposal, the Flemish government may decide that the candidate proposed is unfit for the position of mayor. This may happen if the Flemish government understands, among other possible grounds, that the proposed candidate infringed the legislation on the use of languages. Consequently, the Flemish government arrives to a conclusion which is embodied in a legal formulation that has been used systematically in the case of the mayor of Linkebeek and in other "rim" municipalities. Namely, that "*the person proposed to become mayor does not possess neither the personal qualities nor the moral authority required to act as a representative officer and as a person of confidence of the government, notably in the application of the laws, decrees and regulations*". This has been the legal justification of the three decisions of refusal to appoint of Mr. Thiéry as mayor of Linkebeek, adopted by the Flemish government since 2006.

43 Adopted on the 27th session of the Congress (14 October 2014).

(b) the Special Act of 19 July 2012

55. This piece of legislation introduced a new Art.13bis in the Flemish law on Municipalities. This Act makes it possible for a local councillor whose appointment as mayor has been refused by the Flemish government to introduce an appeal specifically targeted at obtaining the annulment of the said refusal. The Council of State (its General Assembly of the contentious section) may overrule the refusal of the Regional executive to appoint a mayor that has been duly proposed by the city council of a "rim" municipality with special linguistic arrangements. If the said Council of State rules for the invalidation of the decision of the regional executive by which it refuses to appoint a proposed mayor, this means or implies automatically that the proposed person will be proclaimed as mayor, by the very virtue of the ruling. The Belgian Constitutional Court, on 3 April 2014, ruled that this piece of legislation was in conformity with the Belgian Constitution (ruling No. 57/2014).

5.4 Relevant case-law

56. The non-appointment, by the Regional Flemish executive, of a mayor proposed by the city council of Linkebeek has been the object of two different legal proceedings instituted in the Council of State. These proceedings have been instituted on the bases of the Special Act of 19 July 2012.

(a) Ruling No. 227.776, of 20 June 2014

57. In this case, the Council of State rejected the appeal introduced by Mr. Thiéry against the refusal to appoint him as the mayor of Linkebeek, adopted by the regional Minister of Internal Affairs after the municipal elections held in 2012. The Council of State ruled that the refusal to appoint the applicant was in conformity with applicable laws and regulations on the appointment of mayors and on inter-administrative control (*tutelle*) in the Flemish Region, and that the said refusal was neither disproportionate nor in contradiction with the Charter.

(b) Ruling No. 229.602, of 18 December 2014

58. In these proceedings, the Council of State was called to re-considered the situation in Linkebeek, on the claim that "new" facts had taken place. The Council of State confirmed again the legality of the non-appointment of the proposed mayor of Linkebeek because it understood that the "new" facts did not modify the initial factual context. Therefore, the "recidivist" proposal of the council could not be admitted.

59. Apart from these rulings dealing specifically with the municipality of Linkebeek, at least two other rulings have been rendered by the Council of State on facts that are very similar to that of Linkebeek:

- Ruling No. 227.777, of 20 June 2014**:** in this case, the Council of State adjudicated an appeal introduced by Mr. Van Hoobrouk against the decision of the Flemish government of 25 February 2013, which refused to appoint him as the mayor of Wezembeek-Oppem as a result of the Local elections of 14 October 2012. The appeal was rejected on procedural grounds;

- Ruling No. 227.775, of 20 June 2014**:** in this case, the Council of State adjudicated an appeal introduced by Ms. V. Caprasse against the decision of the Flemish government of 25 February 2013, which refused to appoint her as the mayor of Kraainem as a result of the Local elections of 14 October 2012. The ground for such refusal was the understanding, by the Flemish government, that the appellant would not be willing to apply the "1966 laws" as specified by the "Peeters circular" (see, supra, point 3.1). The appeal was accepted and the Council of State overruled the contested decision on the merits. The main reason was that, in this case, Ms. V. Caprasse had not actually infringed the "1966 laws", but that the Flemish government had simply deducted from public statements made by the appellant that she would be reluctant to apply such laws. In absence of a real and actual infringement of the Law, the decision of the Flemish government lacked the necessary justification and legal founding.

5.5 Conclusive considerations

60. At this point, the situation under analysis deserves the following conclusive considerations:
First, the current system of appointment of mayor in the Flemish region (mainly embodied in Art. 59 of the Flemish law on municipalities) seems to be hardly compatible not only with the Charter, but with elementary democratic principles. The key point here is that a person who may represent a very large majority of the local electors is not proclaimed automatically, but it is formally appointed by the Region, under a scheme which is not a purely formality but under which the Regional executive may carry out a large (even discretional) analysis of the suitability of the nominee to perform his duties as mayor. The Flemish scheme is probably unique in the European context, where the rule is either the direct election by the people or the election by the

city council, this election implying the automatic proclamation of the mayor. In this respect it is important to note that a system similar to the Flemish one, which existed in the Wallonia Region in Belgium, was changed in 2006, so that at present the mayor is automatically appointed by the council. It is true that the system of appointment of mayors appointed by a higher territorial or State authority is also in place in the Netherlands, but the situation should be clearly distinguished from the Flemish legal scheme because in the Netherlands the mayor is not a politician taking part in the local elections. He is a non-elected, professional manager.

61. In the specific case of Mr. Thiéry, this person is a local politician whose party got the 13 vacant posts that were disputed in the last extraordinary local elections held in Linkebeek in December 2015 (out of 15 seats in the city council). He is the political leader, directly elected as local councillor, of roughly 80% of the local population. Therefore, his political mandate and democratic representativity is very high.

62. The current system may be depicted as an intrusive or abrupt form of control that prevents the local authority to complete its very organisational inception, because the mayor is the cog that culminates the crystallisation of the steering administrative structure in a town. This is especially serious in a case, such as the one under consideration, where a Municipality has not had a mayor enjoying democratic legitimacy since 2006.

63. It can be argued that a system by which there is a "verification" of the suitability of a person to run the office of Mayor before he starts discharging his duties is not, *in abstracto*, in contradiction with the Charter, because the democratic principles could not legitimise the possibility that someone who is a criminal or a serious wrongdoer carry out the position of mayor. However, there are different possibilities to reconcile this legitimate objective with the requirements of the Charter. For instance, it is possible to exclude someone from the electoral process, before the elections actually take place, if he incurs in a legal situation allowing for such possibility; it is also possible that a law court (like a criminal court) declares the personal unsuitability of the candidate, after a contradictory an impartial proceeding, etc. None of these criteria are fulfilled or followed by the Flemish legislation: it grants on the Flemish minister an almost unfettered discretion to arrive to the conclusion that the nominee does not meet the necessary moral authority to discharge the duty of mayor, independently of the seriousness of his past actions or legal infractions. This connects with the issue of proportionality.

64. Second, the situation is in contradiction with the principle of proportionality. As seen *supra*, Art. 8.3 of the Charter calls for the respect of the principle of proportionality when a "higher" administrative body carries out any form of control over municipalities, and the Congress has consistently supported the view that the current system that allows for the non-appointment of mayors in Flemish municipalities does not respect that principle.

65. The main reason is that the refusal to appoint a proposed mayor is a "sanction" or legal consequence that is triggered by facts that could be punctual or substantially irrelevant. In this sense, the law does not make any difference between trivial grounds or serious grounds for deciding the non-appointment. The law does not include a clear catalogue of "offences" or "infringements" leading to "penalties". In this context, the reaction of the Flemish executive could be disproportionately more severe than the legal infraction committed by the nominee. In the case of Mr. Thiéry, his only infringement was to circulate notices calling for the local elections in French.[44] Although it can be supported that this is, from the technical point of view, a violation of the laws on the use of languages at local level, it is clear in our view that the sanction was too harsh or severe, since such circulation did not disrupted, distorted or corrupted the electoral process, and this action is not depicted as a "crime" by Belgian criminal law. At least in theory, it is possible to think of "sanctions" that, even if severe, could comply with the principle of proportionality, for instance a monetary penalty, or a temporal suspension.
This is even more clear if one observes that the disqualification lasts in principle for the entire electoral mandate, that is, six years and that the law does not allow the individual to correct or "rectify" the situation, for instance by means of a pledge or by a statement that he will respect the linguistic laws *pro futuro*, etc. That is, there is no possibility for the nominee to get "rehabilitated".

66. Third, the situation may also be in contradiction with *due process* requirements. In effect, the refusal to appoint the Mayor of Linkebeek raises the issue of which is the legal nature of this decision. It is unclear whether this situation amounts or constitutes a true administrative "sanction" or not. In any case, it should be presumed that essential procedural rights and guarantees must have been observed by the Flemish Minister in order to adopt her decision. In this respect, we wonder whether a contradictory file has been formed; whether M. Thiéry was granted the right to be heard or not, etc. That is, whether essential elements of the *due process* principle have been respected. This may not be the case here, since the decision of the Flemish

44 This was the main reason for not appointing him in 2006 and 2012. In the last extraordinary local elections, Mr. Thiéry circulated also notices in Dutch, at least under the information at hand.

government of 1 march 2016 was adopted the day immediately after the city council adopted its proposal, the response was almost automatic. Moreover, the Flemish Ministry of Internal Affairs even expressed in a TV interview her willingness not to appoint Mr. Thiéry as mayor of Linkebeek, even before the proposal had been adopted by the city council. In this context, the decision of the Flemish Ministry could have been adopted in violation of due process requirements, rights and guarantees. Something which, incidentally, reinforces the idea of the disproportion of the decision, already taken beforehand. However, this must be ascertained and ruled by domestic courts and jurisdictions, and cannot be rationalised or argued from the exclusive perspective of the Charter.

67. Fourth, as it stands today, the appointment of *burgmeesters* in Flemish municipalities by the regional Flemish executive is regulated by a legal scheme that is fully in force and whose contradiction with the domestic Constitution or with fundamental rights has not been declared by the Constitutional Court of by the European Court of Human Rights. Moreover, the Council of State has repeatedly ruled that the system is legally acceptable. In the case of M. Thiéry, there are two different rulings confirming the legality of his non-appointment as mayor of Linkebeek on the occasion of the local elections of 2012.

68. On the other hand, the enactment of the Special Act of 19 July 2012 has substantially improved the situation, since the candidates whose appointment is refused by the Flemish executive may introduce an appeal in the Council of State in order to get the said refusal overruled or squashed. The introduction of this new legal remedy is very praiseworthy.

69. The rulings of the Council of State, which is the court of last resort in administrative matters in Belgium, should deserve the highest respect and recognition. However, this is not incompatible with the possibility of supporting, from a purely intellectual and dialectic perspective, another legal understanding of the current situation, along the lines advanced in the precedent paragraphs. In any case, and in the light of the present legislation and judicial practice, this reconciliation between the “legitimate” interest in keeping the “tutelle” (as this technique is traditionally understood in the country) and the basic requirements of the Charter and of Local Democracy (as embodied in the most common practices in Europe) can only be achieved through an amendment of the existing Flemish legislation.

6. Conclusions

70. In the light of the foregoing considerations, it is possible to support the following conclusions:

First, the facts and the situation reported by the five members of several city councils (situation identified as “situation A”) deserve a differentiated assessment, according to the people who are affected by the alleged prohibition to use French:

(A) for what concerns the use of French by local residents in the meetings of the city council and the meetings of other participation bodies:

The facts do not fall within the explicit scope of application of the Charter, since this international instrument does not include precise standards on the questions raised by these facts.
However, the Charter should be used as an interpretative tool in order to get a construction of the domestic legislation of linguistic arrangements that be consistent with the underlying objectives of the Charter, namely that of securing the deepest participation of the citizens in the conduction of the local affairs. In this sense, the relevant provision is the fifth recital of the Preamble of the Charter.
In the light of this interpretation, the wording “local services” used in the Laws of 18 July (Art. 1) should be construed as to include the city council and other local bodies, especially if they are public participation bodies. Consequently, the use of French by local residents when they make statements or remarks *in voce* during the formal meetings of the said organs should be understood not to be in contradiction with the “1966 Laws”.
In the light of the case law of the Council of State of Belgium, the duty to use Dutch in the meetings of the city council does not extend to local residents. Therefore, local residents should not be prevented to use French in the meetings of the city council of the rim municipalities with special language arrangements;

(B) For what concerns the use of French by members of the city council in the meetings of the city council and in the meetings of other participation bodies:

Although the Charter does not include precise, explicit standards on the issue raised by the complaint, the Charter should be used as an interpretative tool in order to get a construction of the domestic legislation of language arrangements with is consistent with the underlying objectives of the Charter, namely that of securing that the local politicians may carry out a meaningful representative function. In this sense, the relevant provisions are the fifth recital of its preamble, together with Art. 7 of the Charter.

Moreover, and according the case law of the Council of State of Belgium, the obligation to use Dutch is not applicable to members of the city council who are not members of the executive body of the “mayor and the aldermen” (*College van Burgmeester en Schepen/college du Bourgmestre et des échevins*).

71. **Second**, the facts and the situation concerning the non-appointment of the mayor proposed by the city council of Linkebeek, decided by the Flemish Minister of Internal Affairs, do fall within the objective scope of application of the Charter (especially, Art. 8.3).

The current scheme for the appointment of mayor presently in force in the Flemish region allows the possibility for the Flemish executive to refuse appointing a local councillor who has been freely and democratically elected by the people and proposed by the city council. This possibility is regulated in a loose and imprecise way, and in addition it does not guarantee the full respect of the principle of proportionality, as enshrined at Art. 8.3 of the Charter.
In addition, the scheme is not in conformity neither with the most extended standards and practices of advanced and democratic countries in Europe nor with Congress Recommendation No. 276 (2008) and Congress Recommendation 252 (2008).

In particular, the decision adopted ultimately by the Regional Ministry of Internal Affairs has been taken without a previous contradictory dossier respecting the right to be heard and the right to defence.