Translation in administrative interactions

Policies and practices at the local level in the Dutch language area of Belgium

Jonathan Bernaerts

Abstract

Linguistic diversity is leading to a number of legal and practical challenges in multilingual societies. The communication between administrative authorities and resident non-majoritarian language speakers is just one of the areas where these challenges arise. This contribution focuses on translation policies and practices at the regional and local level with regard to municipalities without language facilities in the Dutch language area in Belgium. It considers both formal and informal translations and interpretations provided by various actors. This contribution first addresses the relevant legal provisions on the use of translators and interpreters in interactions between administrative authorities and resident non-majoritarian language speakers. It considers the Belgian language model based on the general principle ‘the language of the area is the administrative language’, as well as specific norms at the Flemish level on translation and interpretation. Moreover, it discusses the relevant advisory practice of the Belgian Standing Committee for Linguistic Supervision and the Flemish government’s approach to this issue. Second, this contribution presents fieldwork results on translation policies and practices in municipalities without language facilities in the Dutch language area. The findings are drawn from semi-structured interviews with the involved parties, observations and an analysis of local language and translation policies. It provides empirical accounts of the use of translators and interpreters in interactions between administrative authorities and resident non-majoritarian language speakers. The presented empirical findings are lastly analyzed in light of the current legal framework.
1 Introduction

A complex set of rules applies to language use in administrative interactions in Belgium and its four language areas, namely, the monolingual Dutch, French and German language areas and the bilingual area Brussels-Capital (Clement 2003; De Pelsmaeker et al. 2004; Gosselin 2017). Yet if one considers the relevant provisions regarding language use in administrative interactions in the Dutch language area, the legal framework appears rather straightforward for municipalities without language facilities.\(^1\) It holds that only Dutch may be used by civil servants and residents in their administrative interactions. Translation policies, next to the clear-cut provisions on language use (Meylaerts 2011, 744–745), add nuance to this straightforward notion. These provisions and policies on language use and translation raise the question of how interactions unfold between allophone residents and administrations at the local level.

This contribution aims at providing insights into these interactions. It is based on qualitative empirical data that were collected during fieldwork in several municipalities in the Dutch language area and, more specifically, in municipalities “without” language facilities. The data gathered include 150 semi-structured individual interviews with civil servants and non-Dutch speakers, observations in administrative offices and written documents.\(^2\) The fieldwork took place at eleven field sites in the Dutch language area from autumn 2015 to summer 2018. The qualitative data do not allow for statistical claims regarding the overall situation in the Dutch language area, but they cover several types of services and municipalities (two in the periphery of Flemish municipalities around Brussels (Vlaamse Rand); two in the province of Flemish Brabant outside this Flemish periphery; two at the language border outside of Flemish Brabant; two larger cities (centrumsteden); one touristic center; and two municipalities with a considerable number of persons with a migration background).\(^3\)

\(^1\) There are twenty-seven municipalities with language facilities located in monolingual language areas in Belgium. In these municipalities, a special regime applies to the interactions between the administration and its residents, as the administration is under the obligation to use another language in certain cases.

\(^2\) The broader research examines the direct use of other languages by civil servants, as well as the use of translators and interpreters in local administrations.

\(^3\) The names of the municipalities are consistently not mentioned in publications related to this research in order to avoid identification of individual civil servants. Short descriptions of their profiles give nonetheless some background information.
Throughout this fieldwork, a broad variety of actors who offer translation and interpretation services was present, including formal translators and interpreters, multilingual colleagues and informal translators and interpreters (e.g., children, friends or mediators within a community). Formal translators and interpreters include those actors who are subject to some sort of certification, including sworn translators and interpreters (beëdigde vertalers en tolken), as well as community translators and interpreters (sociaal vertalers en tolken) provided by the Flemish Agency for Integration or by municipalities. These actors differ from informal translators and interpreters who are not certified for these tasks. This paper focuses on formal and informal translation and interpreting.

The analysis opens with a brief discussion of the legal framework, including the position of supervisory bodies on the use of translators and interpreters (2). This overview sketches the legal complexity of the use of translators and interpreters by administrations and provides background information to policies and practices at the local level. Thereafter, empirical findings on local policies and practices are presented, followed by an analysis of some legal challenges (3).

2 The legal framework on language use in administrative settings

Language use in administrative interactions in Belgium is governed by a legal framework that recognizes four language areas and differentiates between several types of services and administrative operations. This framework builds on a number of constitutional provisions as well as the Coordinated Laws of 18 July 1966 with regard to language use in administrative affairs (henceforth the Administrative Language Law). The principle holding that ‘the language of the area is the administrative language’ applies to interactions between local authorities and residents in the monolingual Dutch language area. The introduction of this so-called principle of territoriality in the Belgian legal framework was the result of several factors, including the idea of protecting the linguistic character of the different language areas in Belgium (Clement...
This historical protection of the Dutch-speaking character of Flanders is currently reinforced by a context of (renewed) monolingual ideologies leading, for example, to language courses and tests for immigrants (Blommaert 2011, 241; Meylaerts 2018, 462–463).

In the following overview, we will see that the Administrative Language Law has remained largely unmodified since its adoption and that it results in rather strict provisions on language use in administrative interactions on the local level. This strict impression is, however, softened by the Flemish Integration Decree and by supervisory bodies.

### 2.1 Relevant constitutional and legislative provisions

Three Articles of the Belgian Constitution are most relevant for language use in administrative settings, namely, Articles 4, 30 and 129. Article 4 constitutionally entrenches the division of Belgium into four language areas: the French language area, the Dutch language area, the German language area and the bilingual area Brussels-Capital. This provision further guarantees the constitutional protection of the priority of the designated language in the monolingual areas.\(^6\)

The principle of language freedom is secured by Article 30 (the former Article 23) of the Belgian Constitution. According to this provision, language freedom may only be regulated\(^7\) by the law for judicial affairs and for acts of public authorities (Velaers 2001, 52; Clement 2003, 772–787; Vande Lanotte et al. 2015, 621).\(^8\) Article 129 (the former Article 59bis, § 3) of the Belgian Constitution explicitly mentions bestuurzaken (administrative affairs) as a domain for which language use may be regulated, and it attributes the legislative competence, in principle, to Parliaments of the Communities.\(^9\)

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\(^6\) Grondwettelijk Hof (Constitutional Court) No. 17, 26 March 1986.

\(^7\) The Belgian Constitutional Court stated in a 1986 judgment that “regulate” refers to “imposing the use of a specific language, as well as the prohibition on the use of a specific language, as well as the prohibition on prohibiting the use of a specific language.” See Grondwettelijk Hof (Constitutional Court) No. 17, 26 March 1986.

\(^8\) Raad van State (Council of State) No. 140.635, 15 February 2005.

\(^9\) ‘Communities’ are entities at the sub-state level in Belgium that exercise competence in cultural matters, education, person-related matters and for the use of languages in several spheres. There are three Communities in Belgium, namely the Flemish, the French and the German Communities, which are, in principle, competent in their respective language areas. Article 129 § 2 of the Belgian Constitution holds that the federal level has the competence to regulate language use for the so-called municipalities with facilities, “services whose activities extend beyond the language
Several laws were adopted throughout Belgian history to regulate language use in administrative affairs (Clement 2003). Articles 11 and 12 of the Administrative Language Law of 1966 are the most relevant for language use in interactions between local administrations and their residents in monolingual municipalities without language facilities. Article 11 § 1 of the Administrative Language Law obliges local services located in the Dutch or French language area, to publish messages, announcements and forms addressed to the public exclusively in the language of the area. According to its Article 12, “[i]edere plaatselijke dienst, die in het Nederlandse, het Franse of het Duitse taalgebied is gevestigd, gebruikt uitsluitend de taal van zijn gebied voor zijn betrekkingen met de particulieren” (“Every local service, located in the Dutch, French or German language area, uses exclusively the language of its language area in its interactions with individuals”). Although the Administrative Language Law does contain some provisions on translators and interpreters for other types of interactions, it is silent on the use of translators and interpreters in these specific interactions in the monolingual areas.

The Administrative Language Law of 1966 is supplemented by a 1981 Flemish decree stipulating that individuals who are based in a municipality without a special language regime in the Dutch language area must exclusively use Dutch in their interactions with the local and regional administrative services. The report on the parliamentary discussions of this decree shows that it was the explicit choice of the Flemish legislature not to opt for a system with translators and interpreters. Article 12 of the Administrative Language Law and this Flemish decree result in the obligation for both local civil servants and residents in the monolingual Dutch language area to use Dutch in their interactions. A strict application of these provisions would

area within which they are located”, and “federal and international institutions designated by the law whose activities are common to more than one Community.”

10 Article 12 of the Administrative Language Law determines the language use for individualized interactions, whereas Article 11 covers texts that are disseminated without distinction on the basis of the recipient (De Pelsmaeker et al. 2004, 42–43, 6).

11 Article 17 § 1, Article 13, § 1 and Article 14, § 1 of the Administrative Language Law.

12 Decreet van het Vlaams Parlement van 30 juni 1981 houdende aanvulling van de artikelen 12 en 33 van de bij Koninklijk Besluit van 18 juli 1966 gecoördineerde wetten op het gebruik van de talen in bestuurszaken wat betreft het gebruik van de talen in de betrekkingen tussen de bestuursdiensten van het Nederlands Taalgebied en de Particulieren (Decree of the Flemish Council of 30 June 1981 concerning complementing Articles 12 and 33 of the Administrative Language Law with regard to language use in relations between the administrative services and private persons), Moniteur belge 10 November 1981.

entail that civil servants and non-Dutch speaking residents, without any further assistance, are legally trapped in a dialogue of the deaf during their administrative interactions (see Velaers and Adams 1993, 178).

Article 50 of the Administrative Language Law adds that the appointment of private collaborators or experts, such as contractors for road works and publishers of municipal magazines, does not exempt the administrative services from their language obligations, despite the fact that these private parties are not subject to a specific language regime. Consequently, monolingual administrative services located in the Dutch language area are obliged to monitor that their private collaborators respect the obligations under the Administrative Language Law. Otherwise, these services expose themselves to the obligation of translating into Dutch the documents drafted by these private partners.

### 2.2 Flemish Integration Decree

The Flemish Integration Decree of 2013 seemingly adds nuance to this stringent picture represented by the Administrative Language Law and the 1981 Flemish decree. The Flemish Integration Decree sets out the framework for community interpreting and translating (sociaal tolken en vertalen). These concepts are understood in this decree as instruments that support spoken and written communication with non-Dutch-speaking clients. These tools may be used by services, organizations and public administrations active in the Dutch language area or in the bilingual area Brussels-Capital (Article 42, § 1 and § 3, 2 of the Flemish Integration Decree). The Explanatory Memorandum of the Flemish Integration Decree states that these instruments can be utilized in emergency situations, to impart complex messages, as well as in cases where language learning takes time.

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16 Articles 41 and 42 of Decreet betreffende het Vlaamse integratie- en inburgeringsbeleid (decree on the Flemish integration and civic integration policy) of 7 June 2013, Moniteur belge 26 July 2013 (henceforth referred to as the Flemish Integration Decree).
According to the Memorandum, the administration may engage community interpreters or translators (ibid.). The legislative materials do not contain an explicit procedure as to how an institution is to proceed with the decision as to whether a community interpreter or translator has to be provided (Roels et al. 2015, 151). The Explanatory Memorandum recommends that this decision should be part of a language policy and takes into account the specific context and the service’s tasks in order to be effective and efficient (ibid.).

Another insufficiently settled element is the financing of these interpreting and translating services. The Flemish policy towards community interpreting organized by the Flemish Agency for Integration underwent a significant change, as the responsibility for the costs was transferred from Flemish ministries to the local level. Parliamentary debates show that the financing of these translation and interpretation services has remained a thorny issue, as the Flemish government appeared to cut back its funding and to transfer the costs to the allophone speakers using the service.

2.3 Supervisory bodies

A further nuance in the picture that emerges from the Administrative Language Law comes from the Standing Committee for Language Supervision (henceforth referred to as SCLS) and the Flemish government. The SCLS oversees the implementation of the Administrative Language Law and issues opinions on the matter that are merely advisory, albeit with a high degree

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18 The Flemish government used the option listed in Article 25 § 1 of the Integration Decree to assign tasks to local administrations. As such, the cities of Antwerp and Ghent are responsible for community interpreting and community translating (Article 17, 2, 2° of the Flemish Integration Decree).

19 Articles 4 and 5 of the Besluit van de Vlaamse Regering van 15 juni 2012 houdende de erkenning en subsidiëring van een Vlaamse centrale dienst voor sociaal telefoontolken en sociaal vertalen, vermeld in de artikelen 45/1 en 45/3 van het decreet van 28 april 1998 betreffende het Vlaamse integratiebeleid en houdende de vaststelling van de regels voor de betaling van de te presteren tolkprestaties, vermeld in artikel 45/3, vierde lid, en artikel 45/4, § 1, van het voormelde decreet (Decision of the Flemish Government of 15 June 2012 concerning the recognition and subsidization of a Flemish central service for social telephone interpreting and social translation, as referred to in Articles 45/1 and 45/3 of the Decree of 28 April 1998 on the Flemish integration policy and establishing the rules for payment of the interpreting services to be provided, as referred to in Article 45/3(4) and Article 45/4(1) of the aforementioned Decree), Moniteur belge 16 July 2012.


21 Vaste Commissie voor Taaltoezicht; Commission permanente de contrôle linguistique.
of moral authority (De Pelsmaeker et al. 2004, 247). The Flemish government is charged with the regular supervision of municipalities in the Dutch language area and has the power to annul documents that are at odds with the Administrative Language Law. These annulment decisions appear to be rather limited, but some indications of the approach of competent Flemish ministers can be found in a ministerial circular and in their responses to parliamentary questions.

Besides these supervisory bodies, jurisdictional appeals to the Council of State and to courts and tribunals are possible, in accordance with the competence of these bodies, against acts that violate the Administrative Language Law. As the case law on the use of translators and interpreters by local services in monolingual municipalities is rather limited, we focus on the SCLS’s advisory practice and the responses by competent Flemish ministers.

### 2.3.1 Standing Committee for Language Supervision

In its advisory practice, the SCLS has allowed certain exceptions to the use of other languages by local administrations (De Pelsmaeker et al. 2004, 83–84; Bernaerts 2019, 307–328). Four criteria can be distilled from the SCLS’s standing advisory practice on the use of other languages in written messages and announcements to the public, namely, (i) the use of other languages should be exceptional rather than systematic; (ii) it should be for a specific goal; (iii) it should be in addition to the prescribed administrative language; and (iv) it should be targeted at a specific audience. The SCLS’s advisory opinions on individual interactions are fewer.

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22 The system of administrative supervision, which differs from the hierarchical and the jurisdictional supervision, consists of the regular and the specific supervision. The former refers to the supervision within the framework of Decreet Lokaal Bestuur (Local Authorities Decree) of 22 December 2017, Moniteur belge 15 February 2018. The latter relates to tasks regarding specific regulations, for which the Federal authorities, the Regions and the Communities may organize specific administrative supervision for matters within their competences (Article 7, § 1, first and second sub-clause of Bijzondere wet tot hervorming der instellingen (the Specific Institutional Reform Act) of 8 August 1980, Moniteur belge 15 August 1980). See Raad van State (Council of State) No. 22.453, 30 July 1982.

23 Articles 327 and 332 Decreet Lokaal Bestuur (Local Authorities Decree) of 22 December 2017, Moniteur belge 15 February 2018.

24 In fact, we did not come across a single judicial decision on the use of a (community) interpreter or translator within an interaction between a local administration and an allophone resident in a monolingual Dutch municipality.

25 For the distinction between messages and announcements to the public, on the one hand, and interactions with individuals, on the other hand, see Section 2.1.
In addition, and more relevant for this contribution, the SCLS has issued some advisory opinions on translation and interpreting. Within the limited advisory practice on the matter, a distinction can be made between the ‘organization’ and the ‘use’ of these services. We did not come across any SCLS advice under the new current Flemish Integration Decree; as such, the SCLS’s position on the current organization remains to be seen. At the time of the predecessor of the Integration Decree, the Decree on the Flemish policy regarding ethnic-cultural minorities of 1998, the SCLS examined the functioning of interpreters who were working on the basis of cooperation agreements (and not as civil servants) and who received a lump sum for their services. The SCLS was of the opinion that these persons did not fall within the scope of the Administrative Language Law, and even if they did, the SCLS held that nothing in the Administrative Language Law would prohibit the drafting of these cooperation agreements by a local service.

In a second category of advisory opinions, the SCLS considered the use of translators and interpreters by administrations under the Administrative Language Law. The SCLS stated that interpreting during a meeting with residents was acceptable, as they were exceptional, the goal was specific, and the use of the other language was limited. In another advisory opinion on an information meeting, short interventions by an interpreter were also considered to be in conformity with the Administrative Language Law “in het licht van een betere integratie van de allochtone bevolking” (“in light of better integration of the non-native population”). The limited number of cases renders it difficult to derive general principles on the matter solely from the SCLS’s advisory practice.

2.3.2 Regular oversight

The Flemish government monitors the Administrative Language Law in the Dutch language area as part of its regular administrative oversight. Several Flemish ministers exercising the regular administrative oversight have exhibited a certain flexibility with regard to newcomers in the monolingual Dutch

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29 SCLS, 19 October 1998, No. 30.130.
language area in their interpretation of the Administrative Language Law and the supplementary 1981 Flemish decree. The responsible ministers’ answers to parliamentary questions show that they see the use of other languages as temporary exceptions to facilitate communication with administrative authorities during the integration process.

With regard to the organization and use of translators and interpreters, these parliamentary interventions by the responsible Flemish ministers also contain some indications of their approach. Minister Van Grembergen stated in 2004 that local administrations may decide on the modalities and situations in which they organize such services. The subsequent responsible minister, Keulen, endorsed this view and confirmed it in a 2005 ministerial circular. In this ministerial circular, he did not consider the use of translation and interpretation services to be a violation of the relevant legislation. Certain elements come to the fore in the approach of these ministers: (i) the use of translators and interpreters has to be part of an integration policy; (ii) it has to be temporary; and (iii) it does not lead to any rights.

35 Circulaire Keulen, 5–6.
Thereafter, the following minister, Bourgeois, distinguished the use of another language by civil servants from the use of community interpreters and translators. He envisaged the use of community interpreters in the context of “asylum seekers, people in an emergency situation, [...] for example, at the doctor’s”). The Explanatory Memorandum of the 2013 Flemish Integration Decree appears to build on these positions. As mentioned in Section 2.2, the Memorandum to this decree holds that community interpreting can be used when the learning of Dutch takes time, in emergencies or to communicate complex messages.

2.4 Conclusion on the legal framework

We started our overview of the legal framework with the strict provisions on language use in administrative interactions which are contained in the Administrative Language Law and the 1981 Flemish decree. This strict impression was nuanced by the Flemish Integration Decree and the position of supervisory bodies. These sources mention a limited or exceptional use within an integration framework as recurring characteristics justifying the use of (community) translators and interpreters. As such, these tools are, in their view, not intended for persons who have already been in Belgium for a long time or for persons belonging to ‘old’, historical minorities (whatever these minorities might be in Belgium or the Dutch language area).

The relation between the Flemish Integration Decree and the Administrative Language Law is not entirely clear. In light of Articles 30 and 129 of the Belgian Constitution, the question arises whether the reference to translators and interpreters in the Integration Decree installs a language regulation that deviates from the obligations in the Administrative Language Law. Without going into detail, it appears that the Integration Decree does not establish another language regulation (Bernaerts 2019, 322–323). Consequently, the Administrative Language Law forms the relevant framework for the organization and use of translators and interpreters in these interactions. In this understanding, the main problem is whether translators and interpreters provided for or employed

36 Questions and Answers Flemish Parl. 2011–2012, 7 December 2011 (Question No. 116 Segers; Answer Bourgeois).
38 For the discussion on which groups are to be considered the historical minorities in Belgium and in the Dutch language area, see Velaers (2009, 103–158).
by authorities fall within the scope of the Administrative Language Law or whether they are exempted from it by the Flemish Integration Decree.

Furthermore, the organization and the use of translators and interpreters in these administrative interactions have to respect Article 4 of the Belgian Constitution, in particular the priority of Dutch in the Dutch language area. As such, fully bilingual services or interactions entirely in another language are possibly at odds with Article 4 of the Belgian Constitution (Vande Lanotte et al. 2015, 1157).

3 Policy and practice at the local level

Following the foregoing analysis of the legal framework, we now turn to the empirical findings on local language policies and practices. First, we list three types of local language policies and their diverse approaches to translation and interpretation (3.1). Thereafter, we present data on the use of translators and interpreters by civil servants and residents (3.2), followed by some empirical and legal observations (3.3).

3.1 Three types of local language policies

While space does not allow us to discuss ‘language policy’ or ‘translation policy’ in detail (Meylaerts and González Núñez 2017, 2–3), our approach nevertheless requires some clarifications of these concepts. The empirical material on local language policies was not determined by legal criteria. This means that not only were statutory rules considered, but also local norms, guidelines and recommendations for civil servants, even if they do not necessarily conform to the Constitution or represent an obligation for civil servants or a right for residents (Patten and Kymlicka 2003, 26). Furthermore, we focus on policies at the ‘local’ level instead of on ‘national’ or ‘regional’ language policies (Backhaus 2012, 226–242). More specifically, we examine the parts of these policies that relate to the interactions between administrative services and their residents, being only one aspect of local language policies. Within the empirical data, a translation policy is often part of a local language policy.

Taking into account these conceptual clarifications, three ideal types of language policies were identified at the field sites, namely a ‘strict Dutch-only policy’, an ‘in-between policy’, and a ‘flexible language policy’. These types have in common that they allow allophones to speak a language other than Dutch if this language is understood by the personnel in the administration.
As such, these policies do not insist on the obligation for residents to use Dutch in the Dutch language area, as embedded in the 1981 Flemish Decree. The differences between the three policies are mainly apparent with regard to ‘when’ the use of languages other than Dutch is allowed for the administration. This use of another language is permitted under ‘strict Dutch-only policies’ only in very limited situations; under ‘in-between policies’ in some situations, but generally only as a last resort to enable communication; and under ‘flexible policies’ in numerous situations and earlier on in the interaction between a civil servant and a resident.

If we consider the translation policies embedded in these types, we see that the use of translators and interpreters is often restricted to informal translators and interpreters\(^\text{39}\) in ‘strict Dutch-only policies’. Under this type of policy, providing informal interpreters is often required of residents if they do not understand Dutch. Several ‘strict Dutch-only policies’ do not specify requirements for these informal interpreters, while other services that follow this type of policy mention that interpreters either should be or must be adults.

The use of community translators and interpreters is rarely addressed in ‘strict Dutch-only policies’; consequently, this type of translator and interpreter is generally not used by civil servants working under this policy. In some municipalities, however, these policies are combined with pragmatic initiatives, such as interpreting interventions by integration officers or welcome sessions by non-profit organizations. These initiatives enable administrations to bypass strict language policies by, for example, distributing information on municipal services in another language, while administrative services in general are allowed only to use Dutch.

‘In-between policies’ leave more room for the use of translators and interpreters. Concrete guidelines on which types of translators and interpreters can or should be used, when, and with whom are also rather rare with ‘in-between policies’. They often remain limited to including the use of community interpreters, as well as the request that residents bring an informal interpreter, on a flowchart detailing the steps involved in establishing communication between the administration and allophone residents.

‘In-between policies’ thus also request the assistance of informal interpreters, who are to be arranged by the private individual. In contrast to the ‘strict Dutch-only policies’, an informal interpreter often only stands as one of the last options in a flowchart outlining how to enable communication. Sometimes these ‘in-between policies’ mention that an adult interpreter is preferable or

\(^{39}\) For our understanding of ‘informal interpreters’ and the difference with ‘community interpreters’, see Section 1.
should be requested. Pragmatic initiatives, often in cooperation with partner non-profit organizations, are also present with ‘in-between policies’.

‘Flexible language policies’ share a lack of guidelines in general and as such the use of translators and interpreters is also not addressed extensively in this category. This non-regulation at the municipal level leads to divergent approaches in local administrations under flexible language policies. Some administrations require that residents bring an informal interpreter only if no common language can be found and after verifying the availability of a community interpreter. One supervisor operating under a ‘flexible language policy’ stated that, as a rule, they first try to solve the situation themselves before searching for or requesting an external (informal) interpreter.\textsuperscript{40} Some ‘flexible language policies’ also revert the suggested steps to establish communication in comparison with ‘in-between policies’, for example, by stating that for “gevoelige/emotioneel belastende, psycho-sociale, juridische/complexe onderwerpen” (“sensitive/emotional, psycho-social, legal/complex issues”),\textsuperscript{41} a community interpreter should be used instead of an informal interpreter available on site. Lastly, some ‘flexible language policies’ also require adult interpreters or explicitly forbid the use of children, while other policies of this type allow child interpreters only in emergencies.

3.2 Two groups of translators and interpreters in practice

As mentioned in the introduction, a broad variety of actors offer translation and interpreting in administrative interactions. We examine two groups, namely formal and informal translators and interpreters, which we introduce with short examples. The presented material includes quotes from civil servants which are accompanied by footnotes providing some additional context regarding the location, the service, the applicable local language policy and the civil servant’s position.

3.2.1 Formal translations and interpretations

Ze [anderstaligen bij het Openbaar Centrum voor Maatschappelijk Welzijn (OCMW)] hebben altijd recht op een tolk […] om een gelijkheid aan kwalitatieve dienstverlening te bieden, denk ik. Als onze sociaal werkers bijvoorbeeld in Pashto moeten proberen iets uittegen met handgebaren

\textsuperscript{40} Larger Flemish city 2, municipal office, flexible language policy, supervisor.

\textsuperscript{41} Language policy in a touristic center.
ofzo dan gaat er heel veel informatie verloren. En we vinden dat wel belangrijk voor de klanten dat ze voldoende geïnformeerd zijn.

(They [non-Dutch speakers in the Public Social Assistance Centre (PSAC)] always have the right to an interpreter [...] to ensure equality in the high-quality provision of services, I assume. If our social workers, for example, in Pashto [a language that they do not speak] have to explain something with hand gestures or something then a lot of information gets lost. And we find it important for the clients that they are sufficiently informed.)

The supervisor in this example discusses the use of formal translators and interpreters. Some PSACs have their own service with certified translators and interpreters, while other local administrations use community translators and interpreters provided by the Flemish Agency for Integration or by their municipality.

Community translators and interpreters can be distinguished from ‘guides in diversity’ (toeleiders in diversiteit), who are present in several Flemish municipalities, albeit in different setups. These guides in diversity are defined by their organizations as ‘experts by experience’ who help to familiarize newcomers with the local society or provide assistance in bridging the gap between newcomers and the administration. Their tasks do not necessarily include, in theory at least, translating or interpreting.

An initial issue with regard to the use of formal translators and interpreters in practice is closely related to the local language policy. It deals with the structural question of who (the administration or the private individual) provides the formal translator or interpreter. Some municipalities or administrations take upon themselves the responsibility to provide interpreters. In some PSACs, interpreters on-site or at the PSAC’s council can be arranged by social workers; this service is paid for by the administration, especially in administrations under ‘in-between’ and ‘flexible language policies’. In some PSACs, formal interpreters for several languages are always at hand at council meetings, while at other services interpreters for certain languages are present on a fixed day of the week. In this regard, the supervisor in the example above considered it the state’s obligation to provide translators and interpreters in all interactions between a social worker and the PSAC’s clients.

In other administrations, community interpreting is not used, as there is a belief that it would raise the same issues as the direct use of other languages.

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42 Larger Flemish city 1, PSAC, ‘flexible language policy’, supervisor.
43 Larger Flemish city 1, PSAC, ‘in-between language policy’, supervisor.
by civil servants, such as criticism from private individuals or from local politicians. Furthermore, several civil servants were unaware of this kind of service. As such, these administrations shift the responsibility for facilitating communication onto private individuals by, for example, requesting that they bring their own informal interpreters.

Apart from the structural provision of translators and interpreters, there are criteria regarding for whom, for which languages and when to provide or to request the presence of a translator or interpreter. This is often left to the civil servant’s discretion, as only a limited number of local language policies have guidelines on when to use these services.

In practice, some administrations only provide for formal translations when no common language is available between the civil servant and the private individual. As such, formal interpreters for French or English are not used in these services, as the supervisors or the civil servants believe that they can handle these languages themselves. A supervisor leading the municipal office in a larger Flemish city explained that interpreters are also not used for the Turkish language, as there are enough Turkish-speaking colleagues in the office.44

Some services under a ‘flexible language policy’ usually use community interpreters for non-Dutch speaking clients, even as early as the initial scheduling of appointments by telephone. For several civil servants, the use of interpreters depends on the complexity of the issue. In this regard, some civil servants indicated that they prefer formal interpreters for complex situations, while others, on the contrary, preferred not to have interpreters present during these interactions.

Other civil servants referred to the interpreting services’ characteristics to explain their use or non-use of interpreters. Some find telephone interpreting quick, the easiest tool, or just useful. A social worker based in a PSAC located at the language border indicated that her clients say more when a formal interpreter is used.45 Other civil servants found it cumbersome, said that awkward interactions are generated by telephone interpreting, or complained about the waiting time or the need for an appointment and thus the inconvenience of having to plan the session in advance. In addition, some civil servants doubted the quality or the professional attitude of community interpreters (despite their certification). As such, several civil servants indicated that it is faster to switch to another language (if indeed they have mastery of that language) than to use a formal interpreter.

44 Larger Flemish city 2, municipal office, ‘flexible language policy’, supervisor.
45 Flemish municipality at the language border 1, PSAC, ‘in-between policy’, social worker.
3.2.2 Informal translations and interpretations

A civil servant under a ‘strict Dutch-only language policy’ switched the conversation to persons who have lived in the municipality for five to six years. She stated:

Ze moeten toch een minimum aan Nederlands begrijpen. Vooral als ze dan kinderen hebben die hier naar het Nederlands onderwijs gaan. [zucht] Het komt ook vaak voor dat mensen komen met hun kinderen. Dat is dan ook [sic], ik vind dat ook lastig. Je moet dan soms een bevel gaan betekenen en daar zit een kind bij, want die ouder begrijpt niet wat hij krijgt en dan moet je aan dat kind gaan zeggen “het is geweigerd.”

(They should understand a minimum of Dutch. Especially as they have children who go to Dutch-speaking schools. [sighs] It also frequently occurs that people come with their children. That is also [sic], I think it’s also troublesome. Sometimes you have to give notice of an order and then there is a child present, because the parent does not understand it, and then you have to say to the child, “It has been refused.”)

The civil servant concluded her reflection by clarifying that there are no guidelines in this regard: “We zijn al blij dat ze meekomen. Ik bedoel als die vertrekken, zeg ik ‘dank u om te vertalen’.” (“We are just happy that they come along. I mean, when they leave, I say, ‘Thank you for translating.’”)

A supervisor leading a municipal office under a strict language policy located in another municipality explained:

[Informal interpreters are] fantastisch, dat is fantastisch, dat is integratie binnen de integratie. Mensen gaan mensen helpen, buren gaan vragen “spreekt gij Nederlands”, “alleh, komt gij ne keer mee naar het stadhuis.” We zien nu soms mensen die drie of vier keer per dag, die er een soort sport of hobby van maken. De nauwe contacten van de burgers worden op die manier beter. Ja, we zien dat het een soort groepsgesprek aan het worden is.

([Informal interpreters are] fantastic, that is fantastic, that is integration within the integration. People are helping people, neighbors go to ask, “Do you speak Dutch?” “c’mon then, come with me to the city hall.” We now see
some people [interpreters] three or four times a day – they make it a sort of sport or hobby. In this way close contacts between citizens get better. Yes, we see that it is becoming a sort of group conversation.)

These examples highlight two sorts of informal interpreters, namely children and mediators within a community. Other actors, such as family members and random persons in the waiting room, also perform these informal translations and interpretations. They are neither certified translators nor are they working within the administration, although in some cases they are arranged or solicited by the administration.

Certain authorities under ‘in-between’ and especially under ‘strict Dutch-only language policies’ specifically demand that non-Dutch speakers bring an interpreter. This requirement is conveyed to the general public or private individuals via, for example, a verbal request, a multilingual leaflet that requires that persons “who do not speak (sufficient) Dutch” bring an interpreter, or in the invitation letters for appointments with social workers or for hearings at the PSAC council. These requirements are not always followed in practice. One civil servant who works in an administration under a ‘strict Dutch-only policy’ where such a written demand is formulated in leaflets, indicated that she hardly ever uses this document, as rarely does a person not speak French, English or German, in other words, the languages that she knows. Other civil servants, however, almost automatically point to this paper in their conversations with non-Dutch speakers to justify their refusal to switch to a contact language.

In some administrations operating under a ‘flexible language policy’, informal interpreters are only requested of private individuals if there is no community interpreter (in that language) or no other communication channel available. In other administrations under a ‘flexible language policy’, there are no specific guidelines, and the principle of effective provision of aid to clients prevails.

Despite their informal character, some administrations arrange this informal translation and interpreting by actively using known networks and third parties to spread the message. Civil servants working in municipal emergency services, for example, indicated that they know who or which organizations to contact in case of an emergency in a certain area or when they need an

\[47\] Flemish municipality at the language border 1, municipal office, ‘strict Dutch-only policy’, supervisor.

\[48\] Flemish municipality at the language border 2, municipal office, ‘strict Dutch-only policy’, civil servant.
informal interpreter for a certain language.\textsuperscript{49} Besides these more organized initiatives by administrations, amounting in certain places to an institutional policy, there are \textit{ad hoc} searches by civil servants to find an interpreter. A city warden (\textit{stadswacht}) operating in a municipality in the Flemish periphery around Brussels indicated that she herself searches for informal interpreters, as that is the fastest way to find one, and she knows whom to trust.\textsuperscript{50}

More often, such informal interpreting is arranged by non-Dutch speaking residents. The examples already mentioned two types of actors. Among the recurring actors are mediators in a certain community. They are known persons within a community who are also familiar with the administration, for example, because of their (recognized) role within an organization for persons from a certain country of origin. In some municipalities, these informal translation services have coalesced into a whole system in certain communities, whereby some interpreters give the impression that they can “work out” something with the administration.

Other frequently recurring actors are children. As mentioned above, a number of local language policies state that children are not allowed to be interpreters. Accordingly, some administrations actively inform their users that they do not accept children as interpreters by, for example, posting a sign to this effect in the waiting area. Other services adopt a more pragmatic approach, as is illustrated by one service that only allows child interpreters outside of school hours.

Civil servants expressed divergent feelings about children acting as interpreters. Several civil servants stated that they are not happy if a child performs this role, but still allow it, even if it goes against a local language policy. Others find that they have no other choice than to work with child interpreters. Some civil servants found child interpreters bothersome or felt that it puts the children in a difficult position. Another group of civil servants indicated that they had not reflected on the potential difficulties but, rather, were more concerned with the immediate efficacy of child interpreters – some found it useful, while others held that it is an inadequate solution because children do not understand administrative jargon.

Apart from their differing degrees of appreciation for the interventions by children, civil servants also reflected on other informal interpreters (such as friends or neighbors) and expressed a range of feelings in this regard. On

\textsuperscript{49} Larger Flemish city 1, municipal office, ‘flexible language policy’, supervisor; Larger Flemish city 2, municipal office, ‘flexible language policy’, supervisor.

\textsuperscript{50} Flemish municipality in the Flemish periphery around Brussels 1, municipal office, ‘in-between policy’, civil servant.
the one hand, some civil servants experienced these informal translations as very useful. On the other hand, several civil servants highlighted problematic aspects with informal translations. First, they indicated a lack of control over the informal translation and raised concerns regarding the quality of the interpreting. As such, civil servants would do the interpreting themselves to be sure that the information was conveyed correctly. Multilingual civil servants, even those who are not allowed to or who refuse to use another language, still do have some control over the interventions of informal interpreters. If they hear that something is not being conveyed correctly, they can either correct the interpreter in Dutch or use the other language.

Situations where there is no contact whatsoever with the user generate a related difficulty. Civil servants indicated that they feel tempted to request a formal interpreter in these situations, but they do not want to raise extra costs for the private individual. Civil servants noted a final recurring challenge posed by the use of interpreters, that is, the change from a one-on-one conversation with their client to an unbalanced conversation, as the situation with an informal interpreter creates a majority situation with the private individual and the interpreter on one side and the civil servant on the other.

3.3 Analysis

The empirical data generated more insights with regard to local language policies and practices. From a legal perspective, a mixed response is evident regarding the conformity of local language policies with the legal framework. On the one hand, the competence of administrative authorities to adopt a local language policy on language use in administrative settings is limited, as the Belgian Constitution holds that language use in this domain may only be regulated by the law. As such, the adoption and the content of local languages policies are in a tense relationship with the constitutional framework. On the other hand, the Flemish Integration Decree mentions taalbeleid (language policy) as one of the tools for the Flemish Agency for Integration to be applied by local authorities.51 In 2014, in addition to this provision, the Flemish minister responsible for Interior Administration and Integration did not oppose a local language policy that included guidelines

51 Article 17, 2, 2°, b) of the Flemish Integration Decree. See also Explanatory Memorandum to Flemish Integration Decree, 15 January 2013, No. 1867, 33.
on the use of translators and interpreters. However, the wording of the Flemish Integration Decree and its Explanatory Memorandum indicate that language policy is not necessarily understood as including the regulation of language use in administrative affairs. Although it appears that some guidelines within these local language policies comply with the approach of supervisory bodies, other elements clearly go beyond the rare and exceptional use of other languages, as is stressed by these bodies (see Section 2.3). As such, several constitutional and legal obstacles to the adoption and content of these local language policies remain.

With regard to the practice, the empirical data show that several administrations do not provide formal interpreting services, which confirms the limited attention this form of interpreting receives in general in local language policies. This finding should not be overemphasized, however. It does not mean that all administrative interactions occur in Dutch, nor that no translator or interpreter plays a role in these administrations. Moreover, in other administrations, either in other municipalities or other types of administrations, interventions by community interpreters occur frequently.

Previous research suggesting arbitrary use of community interpreting (Roels et al. 2015, 149–156) is confirmed by the empirical data. Cascade reasoning is often present for spoken interactions in administrations where community interpreting is used (ibid., 155–175). The cascade reasoning is generally accompanied by an implicit understanding that community interpreting is regularly restricted to cases where no common language (such as French or English), no multilingual colleague, and no informal interpreter is available.

We have already pointed out that the use of translators and interpreters has received little attention in case law and jurisprudence. However, several aspects of the empirical data generate legal questions, for example, with regard to the Administrative Language Law and the non-discrimination and equality principle. Conformity of the current organization and use of interpretation services with the Administrative Language Law is a technical issue and depends on the specific circumstances of the case (Bernaerts 2019, 318–326). On the one hand, employees of administrative services remain bound by the Administrative Language Law, although they might refer to the SCLS’s advisory practice on the use of other languages. On the other hand, Article 50 of the Administrative Language Law applies to the situation in which private collaborators are hired by services covered by this law.

52 Questions and Answers Flemish Parliament, 17 September 2014 (Question No. 31 Van Grieken; Answer Homans).
In addition to conformity with the Administrative Language Law, the current use of translators and interpreters appears to be in a tense relationship with the non-discrimination and equality principle. These questions differ from the previous analysis of the Belgian language model in light of non-discrimination and equality provisions, as they are in this case rather concerned with the equal use of translation and interpretation services by different groups of non-Dutch speakers. As such, the comparison is concerned with non-Dutch-speaking persons or groups, and not so much with a comparison between Dutch speakers and non-Dutch speakers in Flanders.

Another specific issue is that formal translation and interpreting services are not often used for some languages that are commonly known by at least some civil servants. Formal translation and interpreting in these languages is neither used nor considered necessary in practice in several services, as civil servants or their colleagues use these languages as contact languages. This results in different treatment of persons with knowledge of a common language, as they do not enjoy the benefit of a certified interpreter’s assistance. Even the well-intended use of another language by a civil servant, instead of a formal interpreter, might be problematic in light of the general lack of verification of local civil servants’ language skills in other languages. Although there might be a reasonable and objective justification for the difference in treatment in these situations, such justifications are currently not entirely evident in local language policies and practices.

4 Conclusion

We have highlighted some of the legal obstacles with regard to local language policies as well as with the organization and use of translators and interpreters. These obstacles are concerned with whether their organization and their use conform, in the first place, with the language-related Articles in the Belgian Constitution and the Administrative Language Law and, second, with the non-discrimination and equality principle.

Consequently, a need for statutory regulations or guidelines on the use of translators and interpreters is apparent (Roels et al. 2015, 163; Meylaerts 2018, 474), especially for certain issues such as the use of child interpreters. Moreover, the diverging use of formal and informal translators and interpreters within one and between several administrations adds to this
need for a framework outlining when these services may or must be used. A fundamental question underpinning such a framework, going beyond the topic of translation and interpretation, is how the burden of enabling communication between administrative services and non-Dutch speakers should be distributed. The dominant narrative that Dutch is the common language in Flanders and that newcomers should learn Dutch does not preclude a more structural and consistent approach to translation and interpreting organized by administrations in certain situations.

References


