

**Recent language-criteria in  
Flemish Accomodationcode  
and  
Vilvoorde**

*Davor Josipović*

*3<sup>e</sup> bachelor Wijsbegeerte, optie Fysica*

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## Main question and it's situation<sup>1</sup>

Does the state have the right to oblige the future citizens to learn - or even stronger: to know - the official language of the state if those citizens want to settle down in social accommodations? According to the 'Flemish accommodationcode'<sup>2</sup> (short: Code), which can be seen as the constitutional accommodationpolicy in Flanders that serves as a framework for any accommodationpolicy, the tenant of a social accommodation in a Flemish municipality is required to show willingness to learn Dutch. This policy has raised much debate, even inside the Flemish community, during the last year, and recently with the revival of it because of certain policydecisions in Vilvoorde. The most prominent contra-arguments were that the Flemish Accommodationpolicy has become discriminatory to the French speaking citizens since the adjustments of the Code in late 2006.<sup>3</sup> It has lead to the Walloons finally asking the Constitutional Court (and Christian Van Eyken the European Commission) for the destruction of the Code. The answer of the first was negative, but the European commission still owes an answer.<sup>4</sup>

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<sup>1</sup> I will base myself mainly on the following newspaper articles and programs concerning the discussed situation:

- De Knack, 'De waarheid achter de Vilvoordse taalrel', 08/07/2008
- De Knack, 'Franstaligen hekelen taaltest Vilvoorde', 25/06/2008
- De Knack, 'Keulen twijfelt aan taaltest Vilvoorde', 08/07/2008
- De Standaard, 'Uur van de waarheid voor Vlaamse Wooncode', 09/07/2008
- Eén, 'Politiek debat: taalverplichting of taalvoordeel' in program De Zevende Dag, 29/06/2008
- Official Vilvoorde website

<sup>2</sup> I am refereeing here to the 'Vlaamse Wooncode'.

<sup>3</sup> Original excerpt from Article 92. § 3 from 15 DECEMBER 2006. — Decreet houdende wijziging van het decreet van 15 juli 1997 houdende de Vlaamse Wooncode (Source: <http://www.juridat.be>): "De huurder van een sociale huurwoning leeft de volgende verplichtingen na: [...] 6° voor zover de huurder een sociale woning betreft, die niet gelegen is in een rand- of taalgrensgemeente zoals vermeld in de gecoördineerde wetten van 18 juli 1966 op het gebruik van de talen in bestuurszaken, de bereidheid tonen om Nederlands aan te leren. Bij het aanleren van het Nederlands wordt er gestreefd naar een niveau dat overeenkomt met de richtwaarde A.1. van het Gemeenschappelijk Europees Referentiekader voor talen. De Vlaamse Regering bepaalt de nadere regels om die bereidheid vast te stellen. Diegenen die kunnen aantonen reeds aan die richtwaarde voor het Nederlands te voldoen, worden onder de door de Vlaamse Regering te bepalen voorwaarden vrijgesteld. De Vlaamse Regering duidt tevens de categorieën van personen aan die worden vrijgesteld van die verplichting. In ieder geval wordt de persoon die aan de hand van een medisch attest aantoon dat hij ernstig ziek is of een mentale of fysieke handicap heeft, wat het halen van de richtwaarde A.1. blijvend onmogelijk maakt, vrijgesteld van die verplichting." There is no mention of such requirements for the selling of social accommodations, only the requisites under which selling and reacquiring can be done.

<sup>4</sup> Canvas, Coverage in program 'Terzake', 10/07/2008. Marino Keulen was confident that the European Commission will follow the decision of the Constitutional Court.

Although it seems obvious that the Frenchspeaking community would feel discriminated, not everyone on the Flemish side agrees either. Flemish Member of Parliament Vera Dua speaks of an alarming evolution. According to her, a political and psychological border has been crossed with the Code as it gives the fist incentive for language discrimination. And in some way, she is right. The reason of the current revival of it in the media is mainly due to the fact that some Flemish towns around the language border use the Code to issue regulations which go still further than the ones prescribed, and thus of which the legal basis is questionable. For example, the town Vilvoorde asks not only the willingness to learn Dutch, but the knowledge of it.<sup>5</sup> For everyone who is willing to buy one of the fifteen social accommodations that town Vilvoorde sells at a discount, must pass a languagetest. With such requirements for acquiring accommodations Vilvoorde goes further than the prescription of the Flemish accommodationcode for candidatetenants of social accommodations. Marino Keulen, the Flemish Minister of the Interior, doubts whether such a languagetest is possible and he openly said that he has found no legal basis for initiatives like in Vilvoorde. According to him it is to the municipalities themselves to come with legal arguments. And they do. Vilvoorde's OCMW-representative Hans Bonte sees the social accommodations in question as a gift with a requirement. He argues that if the accommodations were sold in public, the chance was very large that they would be bought up by speculators, who would rent them for usurious prices and sell them subsequently with profit. For this reason, he argues, a regulation was established in which the candidate purchaser must be someone with a low income, durable link with Vilvoorde, prepared to live at least ten years in the accommodation and has an elementary knowledge of Dutch. So he sees it as a reward for those who, in the past years, already did an effort to integrate, or are determined to do so in future. Above all, he says, it must be a stimulant for those which have not yet done so.

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<sup>5</sup> The language-requirement for social accommodation acquisition: "De stad gaat, via de behandelende ambtenaren, je kennis van de Nederlandse taal na. Een diploma van een Nederlandstalige onderwijsinstelling volstaat als bewijs van kennis van de Nederlandse taal. Kan je dit niet voorleggen? Dan moet je een taaltest afleggen. Het Huis van het Nederlands neemt deze test af. Weiger je deze test af te leggen? Dan kan je je niet kandidaat stellen als koper. Je komt voor de effectieve toewijzing pas in aanmerking wanneer je de taaltest met goed gevolg hebt afgelegd. De taalverplichting geldt zowel voor de kandidaat-koper als voor zijn of haar partner (gehuwd of wettelijk samenwonend)." Vilvoorde.be, 'Verkoop woningen', modified on: 29/05/2008, accessed on: 11/07/2008, [http://www.vilvoorde.be/asp/home\\_verkoopwoningen.asp](http://www.vilvoorde.be/asp/home_verkoopwoningen.asp),

Marie-Claire Van Immelen, city councilor, rhetorically asks how one could possibly be able to live in a Flemish city where all the administrative communication happens in Dutch, without knowing Dutch? She refers to a recent VDAB-study which shows that 53 percent of the jobseekers in Vilvoorde are foreign speakers. A major majority of them understands not or hardly Dutch. Only 23.5 percent of them finds work after half a year, compared to 30-35 percent for those that claim knowing Dutch. Further, in more than 90 per cent of the job openings for this region the employer desires knowledge of Dutch.

So, aren't those pro-arguments reason enough to allow Vilvoorde to treat its citizens unequally? And if so, to what extent? I would like to see whether political philosophy has any answers to such questions, or whether it can at least give some more insight in the case.

### **Dimensions of language, and why it is important**

Language can be seen as having two distinct dimensions. First off, it allows us to communicate and by that carries all the human social interactions. It broadens our context of choice in the instrumental sense by giving us the ability to read government letters, go to public schools, better labor opportunities, etc. (cf. Patten). This aspect of language I'll call the instrumental dimension of language. There is also the identity dimension of language because it provides people access to culture and partly constitutes the identity.<sup>6</sup> On this view, language has intrinsic (and thus moral) value, independent on the instrumental role it plays in the society. The state has interest to protect the languages no matter which sense it adheres. In the first sense the government has interest in it being solely for communicative means. In the latter sense, depreciating languages, like cultures and religions that constitute the identities of people, can lead to social problems, ethnic oppression, etc.

In our case, Dutch language for a foreign speaker primary has only instrumental value, and derived intrinsic value. Instrumental components, such as social or economical advantages are valuable in itself. Identity components are things one can value only by

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<sup>6</sup> Cf. Denise Réaume's concept of context of choice. She argues that for identity dimension of language people need not the right to some language, but to their own language (and culture). (Weinstock, p254-256)

having them. So, after our foreign speaker learns Dutch, he shall get access to certain Dutch specific culture components. In this sense, neither his identity nor his cultural context of choice is at stake, but the instrumental advantages he can gain from knowing Dutch in a Flemish society certainly are at stake.

His native language on the other hand has primarily identity value for him, and can only secondarily have instrumental value. Reason is that his mother tongue is native to him and by that constitutes in itself an identity component for him. Derived are the instrumental values, for example, if his native language is already an official language or a strong economic language.

Because, specifically in our case of accommodation policy, on the one hand one doesn't know the language and is in some way forced to learn it (primarily because of instrumental reasons), and on the other hand there is no policy concerning one's native language, one's identity (i.e. the identity dimension of language) is not at stake. The reasons that are brought up by the pro-members (i.e. the policy officials who support the policy of Vilvoorde; opponents I'll call the con-members), such as integration or loyalty and ability to find work, are instrumental reasons. The pro-members are convinced that you need the language so you can communicate and work within the society. The con-members argue on basis of discrimination or non-equal treatment. If the city would prohibit foreign speakers from speaking their native language in public, then the policy would be discriminatory based on language identity. Because the city in this case doesn't have any policy foreigner's native language, but only concerning the official language, the policy, as argued above, can only primarily limit or broaden his instrumental components.

Now, our society is full of similar prerequisites that one needs to fulfill if one wants a certain job or if one wants to be considered for certain things. For example, salaries that government issues to its employees are based on their education level. Why, following the logic of con-members, don't the handworkers complain on basis of discrimination for not being eligible for salaries as high as those of lawyers? Probably because we find it fair, but not the language issue. It might be because lawyers have chosen to go to school for at least 5 years, workers did not, and because our society gives everyone an equal

chance, the fact that a lawyer receives more and a worker less is justified by their own choice. But language has nothing to do with choice. We don't have the same possibility of choice concerning our native language as we have for what we want to become. Summarized, if the inequality goes back to our own (ideally well-informed) choice, then it's just, if not, then it might be unjust. The con-members argue on basis of unequal treatment that doesn't go back to one's choice, so it is unjust. Do we know of any unequal treatment that doesn't go back to our own choice, but is still just? Pilots need good eyes and policemen need to know the official language. Those are consonant examples, but the question is whether they can be raised here as a counterexample. We know what it means to be a good pilot, or a good policeman. Good pilot, among other things, has to warrant a safe flight, and a good policeman, among other things, has to be able to solve quarrels sooner with his mouth than with his fist. But a colorblind pilot would raise the risk of an unsafe transportation and a foreign speaking policeman would be quite useless in solving public quarrels. Could we, reasoning analogously, say that pro-members have a concept of a good citizen which, among other things, knows Dutch? I think they do, and I think it is at least one of the underlying reasons that is left unspoken in the public debate as it is rather harsh to say in public that a foreign speaker without knowledge of the official language is inclined to be a bad citizen, just like a colorblind pilot is inclined to be a bad pilot.

A peculiarity that conforms to this view is the fact that Vilvoorde also gives priority to those people who have lived most in Vilvoorde (i.e. what I'll call the timepreference). In this context I find it very strange that the languageconstraint has taken so much fire, but the timepreference did not, although they both can be seen as discriminatory. On basis of what should someone from the village next to Vilvoorde be taken less into consideration? The major calls it positive discrimination. The term is usually used - as I understand it - as a justified action, primarily to positively affect the already discriminated group as to elevate or counterbalance the present or past discrimination. One could say that the financially weak citizen of Vilvoorde has been discriminated by the wealthier, and the Vilvoorde administration is trying to do something about it. Nonetheless, it is not any financially weak citizen of Belgium, but of Vilvoorde. So the reasoning reinforces the view that local authority has a concept of a good citizen, in this case not only that he

knows Dutch, but also that he lived a long time in Vilvoorde (i.e. someone that knows the peculiarities of being a *Vilvoordenaar*).

The question that follows is, whether Vilvoorde is justified to issue such constraints (in form of laws)? This is a question about the nature of law and what it distinguishes from other normative domains like morality, religion, social conventions, etiquette, etc. The resolution is much too broad and exceeds the subject of this paper. However I would like to expound on one philosophical (?) conception of justice that might justify the policy, and that also comes close to our common understanding.

This conception is Gauthier's mutual advantage view of rights. He sees people as acting rationally from self-interest. Linked with the game theory, the rational outcome of a game where something is at stake and people can cooperate or non-cooperate is Nash's equilibrium (i.e. an inefficient situation). For example, prisoner dilemmas show how rational individual behavior can lead to irrational inefficient collective behavior. Reason behind it is that no-one wants to cooperate if one suspects the other to defect. Now, one solution which would ensure collective efficient rational behavior (and which Gauthier rejects) is a typical Hobbesian one: give state the power to punish us for non-cooperative behavior. State, for example, could enforce laws for this purpose.

Suppose that we do not have any language policies as means of enforcing the knowledge of the official language. implications could be:<sup>7</sup> (1) reduced social mobility by increased probability of separation of minority groups from majority groups, with thereby encouraged ghettoization, (2) impeded democratic deliberation because of bad understanding of each other, (3) discouraged formation of a common political identity because of dissimilar common goods, and (4) decreased efficiency of public institutions because of more translation work and multilingual staff. One could argue: a result of non-cooperation. Obliging the tenants to learn the official language, or to integrate in some or other way, should lead to more desirable results (cf. the advantages of language rationalization, Patten, p701). Applied on the examples: we need regulations that restrict unqualified people acting like judges, colorblind people from flying airplanes, and

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<sup>7</sup> Following are the opposites of the advantages of language rationalization as put forward by Patten (p701)

eventually also regulations that oblige policemen and maybe even citizens to know the official language. With such regulations we should not degrade in non-optimal situations. The constraints - and this is what it's all about in the mutual advantage concept of justice - are justified because they make us all better off. Of course, as Kymlicka notes (p133), this only works as long as there is something to gain for all due to cooperation, and something to lose due to non-cooperation. Otherwise the result might not stroke with our conception of justice, but rather with the justice of the strong, wealthy, etc.

The underlying thought behind all of this is that the state, or city in our case, knows what is good for it's citizens and what is not (i.e. that ghettoization is bad, etc.). Whether it leads too much to state-paternalism or whether it's a mere antidote for our weakness of will is dependant on the position of the line we put between liberalism and paternalism. I can not go further into this issue. I shall rather examine some answers that some political philosophers have given and see how this issue could be solved according to their view.

### **Patten's proposal**

Is refraining from supporting one or two official languages and recognizing them all an option? In such case we wouldn't have such policy constraints, and neither would we discriminate. Patten focuses himself almost exclusively on issues of public language recognition (i.e. whether one should have access to public services and/or conduct public business in his language). Although Patten doesn't really tackle our specific problem, he does show it's complexity. According to him the "official multilingualism embodies an attractive idea of equality that is central to much contemporary liberal thought," (Patten, p698) because it promotes the equality of people to the degree to which the languages they speak are publicly recognized (i.e. treats language as a basic good), in contrast to promoting certain social, economic, and political aspects (i.e. language rationalization, which advantages (cf. p7 above) he puts into perspective on p703-705), or to interests people have in language recognition (i.e. language maintenance). In our particular case the question is whether we should promote the social, economic, and political aspects or



the equality of treatment.<sup>8</sup> His view is that the “Official multilingualism model [...] is the most ethically appropriate default position and thus the one to opt for except where some sufficiently strong challenge to it can be mounted.” (Patten, p694) In deciding he argues that we should question the three assumptions that underpin language rationalization<sup>9</sup>: (1) whether equal recognition would prevent wide-scale convergence on some common language, (2) whether actual convergence really is necessary to achieve the advantages associated with convergence, and (3) whether language rationalization would be any more successful than official multilingualism at securing those advantages. As there is no place to make a whole study about the subject, I can only make a hint as to what it may look like and where it could lead to. The answer to the first question might be negative as the foreign populations are rather diverse in district Halle-Vilvoorde,<sup>10</sup> and because of the diversity, most foreigners would be inclined to integrate. Also, because of the diversity of populations, the convergence to one language is necessary, so the answer to the second question is positive. As for the third question I think that investing into public institutions that would facilitate the learning of Dutch would be far more efficient and advisable in such heterogeneous societies as to facilitating the communication with the institutions in their own language, or even conducting the laissez-faire policy (see below). So as to conclude, I do not think that official multilingualism is a viable option for Vilvoorde.

### **Common liberal approach: benign neglect**

What most theorists agree on is that the state should be neutral to cultural issues (i.e. that it should not value any culture, and thus language, more than the other). Vilvoorde is a Flemish city and the communication happens in Dutch. So although the city can't have the neutral stance toward the language(s) by which it communicates with its citizens, it can have (according to the laissez-faire policy) toward the main issue here (i.e. whether or not to force its citizens to learn the official language). According to the laissez-faire

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<sup>8</sup> I will not consider interests people have in language recognition (i.e. identity interests) as I already argued (p4) they are not at stake here.

<sup>9</sup> Cf. Patten, p703-705)

<sup>10</sup> cf. Het Nieuwsblad, ‘Top 10 vreemdelingen in Halle-Vilvoorde’, 08/08/07. Major of Vilvoorde also mentioned on Eén, ‘Politiek debat: taalverplichting of taalvoordeel’ in program De Zevende Dag, 29/06/08 that they have over 100 different nationalities in Vilvoorde.

attitude there is certainly no reason why the city should require the knowledge of Dutch; rather the contrary.

Suppose that Vilvoorde supported the laissez-faire policy toward language issues. In that case, they would not require any language knowledge of its tenants and there would be no objection based on discrimination. Such policy is intolerable for theorists such Kymlicka, Patten, and Weinstock which argue on basis of illiberal “*de facto* tyranny of the linguistic majority” (Weinstock, p260). But the minority languages are not the issue here, but the fact that the city is trying to secure its own official language in the public sphere. So their argument seems irrelevant here. Still, the sole fact that the state has to communicate in some way makes the laissez-faire policy self-destructive and impossible.<sup>11</sup> It is the duty of the city to provide means of communication with the foreigners (comparable to those with the natives), and in our particular case the city does it by obliging them to learn Dutch.

So, even if we decide to attain language policies, we might at best cover the costs they imply. One cost of laissez-faire policy, covered by Weinstock, is that it might (or might not) promote a language shift in the long run. To make it acceptable, Vilvoorde might compensate for it by giving the foreign speakers more linguistic facilities as a means of balancing (cf. Patten’s language maintenance). Still, I don’t think the con-members would find this an acceptable solution as their critique is mainly focused on discrimination that is inherent in the restrictions. As Vera Dua says, one may not discriminate *in any way* in accommodation policy.

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<sup>11</sup> “The kind of autonomous life that liberals privilege involves making choices among incommensurable values without paternalistic intervention. [i.e. according to the liberal view, the state can only inform it’s citizens about things, but not enforce them on the basis of state’s superior concepts of a good life.] And so, it might be claimed, the state ought simply to step back from legislating in the field of language, allow people to make the linguistic choices that best reflect their assessment of the rival goods in play, and let the linguistic chips fall where they may.” (Weinstock, p251) But although the arguments for laissez-faire policy concerning religion are strong, they weaken when it comes to language issues because “the idea of disestablishment [i.e. separation of church and state] might have some merit in certain corners of the multiculturalism debate, [but] it clearly has none as a response to the language recognition problem. Disengagement cannot be the best response of public institutions to linguistic pluralism because disengagement from language is impossible. Public services must be offered, and public business transacted, in some language(s) or other.” (Patten, p693)

## Weinstock proposal

For Weinstock, and also for the pro- *and* con-members<sup>12</sup>, it is an undisputable fact that the government must, in some way or the other, be able to communicate with it's citizens, and *vice versa*. Taking this fact as a premise and arguing that other goals like state neutrality, nation-building, cultural preservation, etc. can not work, he comes to the following 'middle ground' statement about linguistic justice: "states act justly in the area of language when they depart from the principle of benign neglect just enough to ensure that they will be able to communicate effectively with their citizenry, but no more." (Weinstock, p265) Communicating effectively implies certain conditions that government and citizens must meet. (cf. p265-266) "But she [i.e. the citizen] must obviously be in a position to understand at least one of the languages that the government speaks." (p266) Willingness, as in the Flanders accommodationcode, is not enough on Weinstocks account of lingual justice. Citizens of Vilvoorde must be able to understand Dutch, and according to Weinstocks view, Vilvoorde is justified to enforce it. But, taken into extreme, doesn't this mean that a foreign speaking immigrant would have to sleep in the city park or the city's train station (because of his inability to speak the official language), as long as he hasn't learned the language enough (as specified by the state)? Again, it's Vera Dua's point when she says that the accommodation policy should be discrimination-free. It is a liberal legacy that people have some basic inviolable rights, and one of them is a right to a shelter. So that is why such radical constraint of language knowledge is not at its place in Flemish accommodationcode, just like it isn't at place in the immigration policy.<sup>13</sup> You have to give the immigrants some time to learn the language. That is also why the willingness to learn Dutch is a balanced idea that can fit in both the accommodationcode as the immigration policy, without violating any basic human rights. It is a liberal idea as it tries to equalize some more important (i.e. privileged) social, economical or political aspects at the cost of learning the official language (i.e. the inequality).

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<sup>12</sup> The incentive for willingness to learn Dutch was given by Vera's party member Mieke Vogels in Antwerp. Also, Christian and Vera both explicitly agreed that a citizen must know the official language in Eén, 'Politiek debat: taalverplichting of taalvoordeel' in program De Zevende Dag, 29/06/08

<sup>13</sup> for example: only immigrants who know Dutch are entitled to enter Belgium.

But the situation in Vilvoorde is too complex to just shovel it as unjust because of its supposed violation of basic human rights. Weinstock seems also to acknowledge the potency of his “only independent goal” (i.e. effective communication) which the state should justly try to achieve and tries to moderate it by saying that “states must use the least invasive means possible in its attainment, so as not to detract from its citizens' ability to act to as great a degree as possible on the basis of their rankings of the various goods at play<sup>14</sup>,” (Weinstock, p268) noting that the actualization of it would depend upon the detail of specific cases. So reason enough to examine the situation at close quarters. As the mayor said<sup>15</sup>, Vilvoorde is selling these fifteen accommodations at reduced prices of about 50 to 100 thousand Euros and their aimed groups are people who, with their current wages and rising prices, are not able to live in their own region any more. In return they are demanding, among a few other things, that the purchaser be prepared to live at least ten years without transferring, renting, or making the accommodation available to third parties.<sup>16</sup> Now, this last constraint makes the whole difference. If someone is determined to stay in Vilvoorde for the next ten years, then he has already signed (figuratively) that he knows the official language according to Weinstock's theory. He thereby forgoes his immigrant being, and accepts to become a full citizen of Vilvoorde. Now, whether those ten years are enough for someone to be considered a citizen, and thereby being obliged (in Weinstock's terms) to know the language, is disputable. I do think it is enough, and I am sure the mayor thinks it too. But that doesn't mean that the duration can be clearly demarcated. Nonetheless, it certainly weakens the critique as being in violation of human rights.

## Conclusion

So as to conclude, we have seen that this language requirement, as used in Vilvoorde, is a border case. We have seen that supporting all languages is unattainable, and that most

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<sup>14</sup> With this last part (i.e. “rankings of the various goods at play”), he is probably alluding at the Rawlsian veil of ignorance and the from it emerging preferable goods which the basic human rights are supposed to safeguard.

<sup>15</sup> Eén, ‘Politiek debat: taalverplichting of taalvoordeel’ in program De Zevende Dag, 29/06/08

<sup>16</sup> “Verder ben je als koper verplicht de woning persoonlijk te bewonen. Indien je binnen de eerste tien jaren het pand vervreemdt, verhuurt of op een andere manier ter beschikking stelt aan derden, dan moet je een boete betalen.” Vilvoorde.be, ‘Verkoop woningen’, modified on: 29/05/2008, accessed on: 11/07/2008, [http://www.vilvoorde.be/asp/home\\_verkoopwoningen.asp](http://www.vilvoorde.be/asp/home_verkoopwoningen.asp).

theorist agree on the fact that effective communication between the state and citizenry is a must. But as we can not attain the laissez-faire policy toward the official language on the one hand, and we might be accused of discrimination (of basic human rights) on the other, we must find an acceptable middle ground, attaining the idea that a good citizen knows the official language. It might be that the safest solution is to refrain from such constraints in the accommodation policy as Vera Dua and Christian Van Eyken plea. But although they both criticize it as a bad evolution, and a bad incentive towards the private market, none gives an alternative way in which one could attain the language knowledge (with which they both explicitly agree) without some sort of discrimination.

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