



# THE HOUSE OF REPRESENTATIVES

## BRIEF PARLIAMENTARY LAW

### THE CONSTITUTIONAL COURT:

COMPETENCE, ORGANISATION AND WORKINGS

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## PREFACE

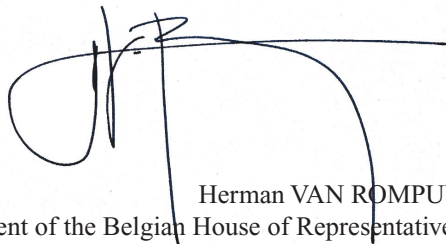
Since November 2000, the Legal Department of the House of Representatives has, on the initiative of my predecessor, Mr Herman De Croo, published a number of brochures in the series “Brief Parliamentary Law”. These brochures have been disseminated to a wide audience, and are intended to give that audience precise and, above all, accessible information.

Three of them are published in English:

- “*Parliamentary Privilege (Freedom of Speech)*”;
- “*Parliamentary Immunity*”;
- “*The Constitutional Court: competence, organisation and workings*”.

The text of the latter brochure has been written by the Constitutional Court and, if necessary, will be amended by the Court.

We hope that this brochure will make a contribution towards creating better understanding of a facet of Belgian constitutional law.

A handwritten signature in black ink, consisting of a large, stylized 'H' and 'R' followed by a horizontal line that curves downwards to the right.

Herman VAN ROMPUY  
President of the Belgian House of Representatives



# THE CONSTITUTIONAL COURT

## COMPETENCE, ORGANISATION AND WORKINGS (1)

### Introduction: genesis and development of the Court

The Constitutional Court is a court of law that has exclusive jurisdiction to rule whether regulations with force of law comply with the Constitution.

Up to 1984, it was up to the democratically elected members of the Parliament to ensure that laws were constitutional. There was a presumption that the legislator acted in accordance with the Constitution.

The reason for the introduction of judicial review of regulations with force of law was the development of the unitary Belgian State into a federal State, with three Communities and three Regions, each with legislative powers. With the division of powers, came the question of how any contradictions between regulations with equal force of law from the various legislative assemblies (2) should be resolved. It was decided to establish an independent and specialised court which could act as an “arbitrator”, to oversee compliance with the rules governing the division of powers in the Constitution, and in the laws reforming the institutions. The Court, then known as the Court of Arbitration, the predecessor of the present-day Constitutional Court, took its name from that arbitration role.

The establishment of the original Court of Arbitration was incorporated in the Constitution (former Article 107*ter*) in 1980.

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<sup>1</sup> Text written in the departments of the Constitutional Court.

<sup>2</sup> Legislative acts of the federal legislative power (King, House of Representatives and Senate) are referred to as “laws”. Legislative acts of the parliaments of the Flemish Community, the French Community and the German-speaking Community are referred to as “federate laws”. For the regions, the Constitution mentions “a rule referred to in Article 134 of the Constitution”, which actually means the “federate laws” of the Flemish Region and the Walloon Region and the “ordinances” of the Brussels Capital Region.

This constitutional provision was implemented by the Law of 28 June 1983, which defined the composition, competence and functioning of this new court. The Court of Arbitration was officially inaugurated in the Senate on 1 October 1984. On 5 April 1985 it delivered its first judgment.

In the Constitutional Reform of 7 May 2007, the name of the Court of Arbitration was changed to “Constitutional Court”. Since then, Article 142, first paragraph, of the Constitution has provided: “There is for all Belgium a Constitutional Court, the composition, competences and functioning of which are established by the law.”

There follows a more detailed presentation of the competence, the organisation and the workings of the Constitutional Court.

The address of the Constitutional Court is Place Royale 7, 1000 Brussels. The general telephone number is 02/500 12 11.

The e-mail addresses of the Presidency and the Clerks’ Office respectively are [voorz-pres@const-court.be](mailto:voorz-pres@const-court.be) and [griffie@const-court.be](mailto:griffie@const-court.be).

The Court’s web address is [www.const-court.be](http://www.const-court.be).

## Competence of the Constitutional Court

### *General*

Originally, the Court only had competence to examine the laws, federate laws and ordinances with regard to their compliance with the rules governing the division of powers, i.e. the rules that lay down the respective powers and responsibilities of the State, the Communities and the Regions. The competence rules are incorporated in the Constitution and in the laws (usually adopted by a special majority) implementing the Constitution.

Together with the extension of the competence of the Communities with regard to education, the competence of the Court was extended when the Constitution was amended on 15 July 1988. The organic Law of 28 June 1983 was replaced by the special Law of 6 January 1989 <sup>(3)</sup>.

Since then, the Court has not only had competence to examine conflicts between laws, federate laws and ordinances, but also examines compliance with Article 10 of the Constitution, which lays down the equality principle, Article 11, which prohibits discrimination, and Article 24, which deals with rights and freedoms with regard to education. Examining compatibility of regulations with the aforementioned articles of the Constitution involved testing these regulations, if only indirectly, against other provisions of the Constitution and of international law.

Under the special Law of 9 March 2003, the legislator made use of the possibility offered by Article 142, paragraph 2, 3<sup>o</sup> of the Constitution, to extend the competence of the Court still further, to examination of

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<sup>3</sup> Published in the *Belgian State Gazette* on 7 January 1989. The current version of the special Law can be found, among others, on the Court's website: [www.const-court.be](http://www.const-court.be).

An (ordinary) Law of 6 January 1989 governs the salaries and pensions of judges, law clerks and clerks of the Court. In addition, there are royal decrees, rules of procedure and guidelines that relate to various aspects of the competence and workings of the Court. All these basic texts are available on the Court's website (see Dutch and French versions of the website) under the heading "*Basisteksten*" / "*Textes de base*".

other articles of the Constitution<sup>(4)</sup>. Not only Articles 10, 11 and 24 of the Constitution, but also its entire Title II (Articles 8 to 32 inclusive, as well as Articles 170, 172 and 191 of the Constitution now form the frame of reference for the direct constitutional review of legislative acts by the Court.

The Court has exclusive competence for examining the compatibility of regulations with force of law with the Constitution. When referring to regulations with force of law, this is deemed to mean both the substantive and formal provisions adopted by the federal Parliament and sanctioned by the King (acts) or adopted by the parliaments of the Communities and Regions and sanctioned by their respective governments (federate laws and ordinances). All other regulations, such as royal decrees, decrees by the governments of the Communities and Regions, ministerial decrees, orders and decisions by provinces and municipalities, as well as court decisions, fall outside the jurisdiction of the Court.

The courts of law and the administrative courts remain competent for testing orders and decisions by other authorities against all higher legal norms.

Cases can be brought before the Court in two ways: by means of a request for a preliminary ruling submitted to it by a court or by a petition.

#### *Requests for a preliminary ruling*

If the courts of law or administrative courts are faced with an issue of whether laws, federate laws and ordinances comply with the rules governing the division of powers or with Articles 8 to 32, 170, 172 or 191 of the Constitution, in principle<sup>(5)</sup>, they must request a preliminary ruling from the Constitutional Court. “Preliminary” means: before making any further ruling themselves. If a court applies for a ruling, then the proceedings before that court are suspended while awaiting

<sup>4</sup> The special Law of 9 March 2003 amending the special Law of 6 January 1989 was published in the Belgian State Gazette on 11 April 2003. The amendments made by this special law are incorporated in the current version of the special Law of 6 January 1989, which can be found in the basic texts sections of the Court’s website ([www.const-court.be](http://www.const-court.be) in Dutch and French).

<sup>5</sup> For the exceptions: See Article 26, §§ 1 *bis*, 2 and 3, of the special Law of 6 January 1989.



the answer from the Court. If the Constitutional Court rules that the regulation submitted contravenes the aforementioned rules, the Court can no longer take account of that regulation in further consideration of that case. However, that norm continues to exist in the legal system. From the date of publication of the ruling in the *Belgian State Gazette*, a new period of six months commences, in which an action to have the regulation annulled may be initiated.

#### *Annulment applications and suspension actions*

The Constitutional Court also rules on applications to have laws, federate laws and ordinances annulled due to contravention of the rules governing the division of powers or of Articles 8 to 32, 170, 172 and 191 of the Constitution.

Such actions can be submitted, by means of a petition, by:

- the Council of Ministers and the governments of the Communities and Regions;
- the Presidents of all legislative assemblies, at the request of two-thirds of their members;
- natural or legal persons (both subject to private and public law, and both of Belgian and other nationalities).

The latter category of persons must “demonstrate an interest”. That means that in their petition to the Court, persons must demonstrate that they could be personally, directly and unfavourably affected by the challenged regulation.

In the petition, they “arguments” must be set out. In other words, it must be stated which of the rules with which the Court has to guarantee compliance, are alleged to have been violated, as well as which provisions are alleged to violate those rules. At the same time, it must be explained in what respect the rules are violated by the provisions in question.

In principle and leaving aside a few special cases, actions must be brought within six months of publication of the challenged provision in the *Belgian State Gazette*.

The annulment application does not have a suspensive effect. To avoid the challenged regulation causing irreparable prejudice between the moment when the action is initiated and the moment when the Court delivers its judgment, and a subsequent annulment being no longer of any use, in exceptional circumstances, the Court may, at the request (to be submitted within three months of publication of the challenged provision in the *Belgian State Gazette*) of the petitioner, order the suspension of the challenged provision pending a judgement on the merits of the case (within three months of the suspension ruling).

If the request is founded, the challenged provision must be annulled partly or in its entirety. Annulment is retroactive, i.e. the regulation concerned is considered never to have existed. If necessary, the Constitutional Court may mitigate the retroactive effect of the annulment by maintaining the consequences of the annulled regulation.

Judgments entailing the annulment of the challenged provision have the authority of a final decision from the date of their publication in the *Belgian State Gazette*. Judgments delivered by the Constitutional Court which dismiss annulment actions are binding on courts in respect of the points of law considered for those judgments.

## Organisation of the Court

### *General*

The Constitutional Court is conceived as a specialised court, independent of the legislative, executive and judicial authority. As an arbitrator between the various legislative assemblies in federal Belgium, the Court must be able to exercise its role in total independence. The law provides for a number of measures to guarantee that independence<sup>(6)</sup>. The financing of the Court by means of a budget allocation is an important guarantee of independence.

The Court is composed of twelve judges, a maximum of twenty-four law clerks (who provide legal support to judges) and two clerks (who are the heads of the Court administration). There are approximately fifty administrative staff.

### *Composition of the Court*

There are twelve judges, with one half being drawn from the Dutch linguistic group, and the other half from the French.

They are appointed for life by the King from a list of two candidates proposed alternately by the House of Representatives and the Senate by a majority of at least two-thirds of the members present.

Within each linguistic group, the judges elect a President, who presides over the Court for a term of one year, commencing on 1 September, in rotation with the other President.

Each linguistic group is composed of three judges who have had at least five years experience as Members of Parliament and three judges with at least five years background in a senior judicial function (senior magistrate with the Cour de cassation (Supreme Court) or the Council of State (Supreme Administrative Court), law clerk with the Constitutional Court or professor of law at a Belgian university). At

<sup>6</sup> See, *inter alia*, Articles 31 onward (including appointment of judges for life) and Articles 44 onward (incompatibility with other functions) of the special Law of 6 January 1989. See also the (ordinary) Law of 6 January 1989 on the salaries and pensions of judges, law clerks and clerks of the Court.

least one of this category of judges must have adequate knowledge of the German language.

Judges must be at least forty years of age. They may hold office until the age of seventy. There are strict rules of incompatibility with other offices, posts and professional activities.

The Court is assisted by a maximum of twenty-four law clerks (half of them Dutch-speaking, and half French-speaking). They must be at least twenty-five years of age, hold a doctorate, bachelor's or master's degree in law, and have been successful in a competitive recruitment examination. They must have adequate knowledge of the other national language. At least one law clerk from each linguistic group must also demonstrate adequate knowledge of the German language. Unless decided otherwise by the Court, after a three-year probationary period, they are appointed definitively (until 65 years of age).

There are also two clerks (one from each linguistic group). They must be at least thirty years of age, have two years useful experience and have passed one of the examinations (for jurists) listed in the special Law of 6 January 1989. Moreover, they must prove that they know the other national language.

Furthermore, there are some fifty administrative staff, working in the translation and concordance department, the library, the clerks' office, performing secretarial tasks, or working in IT, accounts, etc.). The staff complement and linguistic complement are decided by the Court (taking account of language parity at each level) and approved by Royal Decree. The Court is empowered to appoint and dismiss its own staff.

## How the Court operates

### *Initiation of proceedings and referral to the benches of the Court*

All cases (applications for annulment, whether or not accompanied by a suspension action, and requests for a preliminary ruling) are entered on the cause list of the Court in their order of receipt. As the case may be, they may be instituted in Dutch, French or German, but the investigations are conducted in Dutch or in French, in accordance with the rules determined in the special Law of 6 January 1989. The acting President delegates his powers to the other President if the case is heard in the latter's language.

Each year on 1 September (when the presidency changes), the benches of the Court are constituted. Normally the cases are heard by a bench of seven judges, composed of the two presidents who sit in all cases and five judges who are appointed according to a complex alternating system. This system guarantees that each bench has at least three judges from each linguistic group<sup>(7)</sup> and that there are always at least two “former Members of Parliament” and two judges with prior legal qualifications. In the ordinary composition with seven judges, decisions are taken by ordinary majority vote.

Either president or two members of the bench may ask for a case to be heard in full session. The case is then heard by twelve judges, or if a judge is prevented from attending, by ten, in which case the judge with the least seniority from the other linguistic group must withdraw. The president “in function” has a casting vote in the event of a tie in a full session vote.

Proceedings before the Constitutional Court are essentially written and adversarial. The rules of procedure are laid down in the special Law of 6 January 1989 and in the guidelines of the Court on procedure. You can find these texts (in Dutch and French only) on the Court's website ([www.const-court.be](http://www.const-court.be)) under the heading “*basisteksten/textes de base*”.

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<sup>7</sup> In one year (with the President of the Dutch linguistic group as the President “in function”), there are four members of the Dutch linguistic group and three of the French linguistic group. In the following year, these numbers alternate.

The text below broadly sets out the ordinary procedure, followed by a brief description of the “screening procedure” which has been put in place to deal with manifestly inadmissible or simple cases in summary proceedings.

### *Ordinary procedure*

The rules of procedure concerning actions for annulment and requests for a preliminary ruling are largely the same <sup>(8)</sup>.

Submission of a case is free of charge. The parties may represent their own interests, but due to the nature of the cases, legal assistance from a lawyer is usually advisable. All the case documents must be sent to the Court by registered post. Notifications by the Court are sent by registered post, and signed for.

Certain authorities listed in the Law - the “institutional parties”<sup>(9)</sup> -, and the parties in the case before the referring court, are informed individually by the clerk of a case being brought before the Court. They have a period of forty-five days to make written submissions in a statement, and produce any supporting documents.

The outside world can find out about a case being brought before the Court, since the identity of the person who entered the case and the subject of the application or the request for a preliminary ruling are published in the Belgian State Gazette. Petitions can also be consulted at the clerks’ office for thirty days following publication. Third parties who demonstrate that they have an interest in a case may participate in the proceedings if they submit a statement within thirty days of the publication.

The parties are notified by the clerks’ office of the statements filed by others, and then have a period of thirty days to submit a statement of reply. In cases concerning annulment actions, the parties may also respond to the statement of reply from the petitioner(s) with a statement of counter-reply within thirty days after being notified thereof.

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<sup>8</sup> The specific arrangements for suspension actions in connection with an annulment application are not taken into consideration here.

<sup>9</sup> These are the Council of Ministers, the governments of the Communities and Regions, and the presidents of the legislative assemblies.

For each case, there are two reporting judges (one from each linguistic group). After the time necessary for the exchange of statements<sup>(10)</sup> and for the investigations by the reporting judges and their law clerks, the reporting judges draft a report for internal use and the Court considers whether the case is ready for hearing. Unless there are still other aspects of a case that require investigation, the bench then takes a “preparation order”. This order announces when the hearing will take place, and questions may also be mentioned. All parties are notified of this, and sent a written report by the reporting judges, which may refer, if appropriate, to questions that might still be put to them.

The Court has extensive powers of inquiry and investigation. If necessary, it may correspond directly with authorities and can even hear testimony from the parties, as well as witnesses and experts. This rarely occurs in practice.

Before the court hearing, the parties have a period of a fortnight to consult the case files at the clerks’ office.

The Court hears cases in open session, unless this would pose a threat to public order or decency. At the hearing, the reporting judges present their report, and the parties, their representatives and counsel are given the opportunity to present their arguments concisely, and where appropriate, answer questions. The oral statements (in Dutch, French or German) are interpreted simultaneously.

It is extremely rare for adjournments to be allowed. After the conclusion of the debates, the court deliberates on the case. Deliberations are secret. The parties are informed of the judgement (see below).

The average time for a case to be dealt with before the Court is approximately ten months.

### *Screening procedures*

In order to avoid an overload of work for the Court, and to avoid dealing with unjustified cases, two screening procedures have been

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<sup>10</sup> This written phase of the proceedings, including all the formalities, can easily take six months.

established. For cases which are manifestly inadmissible or manifestly fall outside the jurisdiction of the Court, two reporting judges submit conclusions to the President within thirty days, in which they propose to settle the case in “preliminary proceedings”. At this stage, no announcement is published in the *Belgian State Gazette* to state that the case has been brought. The conclusions are sent to the party concerned, who has a fortnight to submit a “statement of justification”. A “restricted chamber”, consisting of the president and the two reporting judges, may then unanimously rule the case inadmissible <sup>(11)</sup> or outside the competence of the Court <sup>(12)</sup>. If it does not, the normal procedure is followed.

Actions that are manifestly unfounded, preliminary questions that evidently call for a negative reply, and cases that can be settled with a “judgment of instant reply” (owing to the nature of the case or the relatively straightforward nature of the problems raised in the case), may be settled in similar short proceedings, except that reporting judges present their conclusions to a bench of seven judges and the ruling is made by this bench, and not by a restricted chamber. The authorities, that are normally informed automatically of all cases, are not involved in this preliminary procedure, except when the reporting judges suggest in their conclusions that the Court deliver a judgment establishing that the Constitution has been violated by the challenged regulation.

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<sup>11</sup> For example, because the period allowed for appeal has expired.

<sup>12</sup> For example, because a request for a preliminary ruling has been submitted about a decree instead of a provision with force of law.



### *Judgment*

The judgments of the Court are drafted and pronounced by the presiding judges in public session in Dutch and in French. Furthermore, judgments in actions for annulment and in cases that were instituted in German are drafted and pronounced in German.

The judgements are enforceable by right, and are not open to appeal.

They are published (in excerpt form) in all three languages in the *Belgian State Gazette*.

Shortly after being pronounced, the judgements are published in full in Dutch and in French on the website of the Court ([www.const-court.be](http://www.const-court.be)) and subsequently in the officially printed collection “*Grondwettelijk Hof - Arresten*” / “*Cour constitutionnelle - Arrêts*” (Case Reports).