

The Constitutional Court

The creation of the Constitutional Court (at that time called Court of Arbitration) was written in the 1980 Constitution. It was formally set up on 1 October 1984. Article 142 of the Constitution and the special law of 6 January 1989 govern the activities of the Court.

General

In a federal state within which competences are divided up among different authorities, conflicts cannot be ruled out. The federal authorities, communities and regions are at the same level of hierarchy and thus have an equivalent position in their respective areas of competences and on their territory. The question was raised as to know who would settle a dispute if one authority exceeded its competences. There thus had to be an independent arbitrator. As in other European federal states, this task has been entrusted to an independent court that does not come under the hierarchy of the other courts and tribunals. This independent Court was called in 1980 Court of Arbitration as its purpose was to see that the constitutional provisions governing the division of competences were observed. Afterwards, the Court was entrusted with other competences (see overleaf). Therefore, in May 2007, the Court was renamed 'Constitutional Court'.

Composition

The Court consists of twelve judges: six French-speaking and six Dutch-speaking judges. Each language group consists of three jurists (university professors, magistrates,) and three former parliamentarians (members of the House of Representatives, Senate or a community or regional parliament) who have held these positions for at least five years.

Within each linguistic group, the judges elect a president who holds, in turn for a one year period, the presidency of the Court. The judges must be at least 40 years old. Judges may exercise their office until they reach the age of 70.

In the event of a vacancy, two candidates are presented in turn by the House of Representatives and the Senate which decides by a majority of two-thirds. The King (the federal government) appoints one of the two proposed candidates.

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GRONDWETTELIJK HOF Voordracht van kandidaten met het oog op de benoeming van een Nederlandstalig rechter in het Grondwettelijk Hof	COUR CONSTITUTIONNELLE Présentation de candidats en vue de la nomination d'un juge d'expression néerlandaise à la Cour constitutionnelle

Working

Each case is dealt with by a chamber consisting of seven judges (three of each language group and the President of the Court). The decisions are taken by a majority. The Court is assisted by two public auditors and two clerks (one French-speaking and one Dutch-speaking).

Role of the Constitutional Court

» To act as an independent arbitrator between the federal State, the communities and the regions

The role of the Court mainly consists of settling conflicts of competence between the federal State, the communities and the regions. If one of these authorities passes laws, decrees or ordinances in which it exceeds its authority the Constitutional Court cancels the laws, decrees or ordinances in question.

» To guarantee the observance of certain fundamental rights of the citizen

The Court ensures observance of certain articles of the Constitution: art. 8-32 (rights and liberties), 170, 172 and 191.

It can cancel the laws, decrees and ordinances if they breach these constitutional provisions.

The federal legislator may, in addition, by a law passed with a special majority, extend the supervisory competence of the Court to other articles of the Constitution, which was done by the special law of 9th march 2003.

The Court is not authorised to judge the constitutionality of the acts of the executive, nor of the decrees and regulations of the provinces and communes. The Council of State is competent in this respect (see information sheet n° 30.00).

» To rule on preliminary questions

The judges of other courts may (or must sometimes) put questions to the Constitutional Court if a law, decree or ordinance that they have to apply with regard to a concrete dispute is contrary to the Constitution (art. 8-32, 170, 172 and 191 or the rules governing the dividing up of competences). We call this a preliminary question. The judges await the reply of the Constitutional Court before giving their own judgements. If the Constitutional Court judges that the law, decree or ordinance in question is in fact contrary to the Constitution, it is not applied and a new period of six months to cancel it is started by the Constitutional Court.

» Other missions

The powers of the Constitutional Court were broadened further in 2014. In addition to the missions set out above, the Court is also charged with:

- scrutiny of the compliance of laws, decrees and ordinances with the principle of federal loyalty enshrined in the Constitution
- scrutiny of the constitutionality of any regional referendum
- examination of appeals against decisions by the audit committee on electoral spending for elections to the House of Representatives.

Who may submit an appeal to cancel a law, decree or ordinance?

- The Council of ministers, regional and community governments.
- The presidents of the House of Representatives, Senate, and regional and community parliaments on the request of two-thirds of the members.
- Any person demonstrating an interest in the cancellation. The law, decree or ordinance must be concretely harmful to the party making the request.

Procedure

Any appeal to cancel a law, decree or ordinance must be submitted, as a general rule, within a period of six months following the publication in the Moniteur belge (Official State Journal).

The request submitted to the Constitutional Court must give the subject of the appeal and must contain grounds.

The party making the request may also request that the law, decree or ordinance that he is asking to be cancelled is suspended. Suspension may only be decided on if the application of the law, decree or ordinance risks causing serious harm to the requesting party that would be difficult to put right. A request aiming at suspending a law, a decree or an ordinance must be submitted within a period of three months following the publication in the Moniteur Belge (Official State Journal).

The procedure is essentially written, with both parties being heard. Maximum accessibility is desired. The parties use their own language. The proceedings are free of charge and the parties do not have to be represented by a lawyer. The judgements are published in the Moniteur Belge (Official State Journal) in the three languages (Dutch, French and German).

More information
www.const-court.be