

Challenging a tax rule: where to address? The Constitutional Court

What if the fiscal legislator introduces a rule which you do not agree with. You believe that your fundamental rights are jeopardized. You believe that the authority was not competent to introduce this measure. Then you can address yourself to several institutions to challenge these rules. Depending on the rule you want to challenge and the rights which are infringed, you should go to another court. In this article we focus on the Constitutional Court.

Challenging a law or a decree

The Constitutional Court looks to whether the laws, decrees and ordinances of the different Belgian legislators are in line with the Constitution. You can turn to this court when you think certain fundamental rights are infringed by a (fiscal) law or decree. The Court only 'assesses' whether a rule infringes certain articles of the Constitution. Note: the Court cannot assess all articles of the Constitution. The Court looks at competency rules (in the Constitution and other special laws), at the rules granting fundamental rights to citizens (articles 8 to 32), at the federal loyalty (article 143) and more specific in tax matters at the fiscal legality principle (article 170) and the fiscal equality principle (article 172).

This can be done in two ways: an annulment appeal or asking a court to raise a prejudicial question.

A law infringes e.g. the competency rules of the Constitution whenever the federal legislator tries to settle an issue for which a community or a region is competent (or otherwise).

An annulment appeal

Within six months upon a new law/decreet/ordonnance has been published in the Belgian National Gazette, everyone who has an interest can make an annulment appeal. You should have an 'interest' to do so, which means that you have personal and direct prejudice as a result of this rule. In your appeal you should mention (i) which rule you want to be annulled, (ii) which disposition of the Constitution is infringed and (iii) argue why this is the case.

If you are right, (a part of) the law will be annulled: the law is cancelled as if it never existed.

If there is a risk you will have detriment in the meantime, you can ask to suspend the law while the Court is examining the case. In such case the law is temporarily not applied until there is a final decision.

A prejudicial question

If you are in a dispute with the tax authorities before court, you can argue that one of the rules the tax authorities want to apply is not in line with the Constitution. The judge will then raise a prejudicial at the Constitutional Court. The judge will suspend its decision until the Court has given its opinion. The judge is bound by the opinion of the Court. While an annulment effects everybody (the law disappears from our legal system), the opinion on a prejudicial question only applies to the parties involved: the rule will not be applied to their specific case. Such a judgment reopens a new period of six months in which every person with an interest can file an annulment appeal.

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If a law can be interpreted in two different ways, the Court itself will not interpret (this is the task of the judge raising the question). The Court will limit itself to judge whenever the law in interpretation (a) is in line with the Constitution, but infringes the Constitution in interpretation (b). Clearly in such case the interpretation (a) in line with the Constitution is preferred.

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