

Challenging a tax rule: where to turn to? The Council of State

What if the fiscal legislator implements a rule with which you do not agree. You believe your fundamental rights are infringed. You are of the opinion that the government was not qualified to take such measure. Then you can turn to various institutions in order to challenge these rules. Depending on the nature of the rule you want to challenge and the rights which are infringed, you can turn to a specifically appointed legal institution. After the Constitutional Court and the European Court of Justice, we now take a look at the Council of State.

Challenging an individual decision taken by the administration

You can turn to the Council of State when an administration has taken a decision with an individual scope with which you do not agree (e.g. another candidate is appointed for a position for which you also applied, your building application has been denied). You can then ask the Council of State to annul this decision.

If this decision is annulled by the Council of State, it should take another decision or confirm the initial decision with a better motivation. It is not because the Council of State annuls the nomination of a candidate, that the government should hire the plaintiff.

Challenging a communal regulation

You can also challenge a regulation of a lower authority which applies to multiple individuals, e.g. a tax regulation of a certain community applying to all inhabitants. The regulations of the provinces and communities, but also royal decrees are lower in the hierarchy of rules than laws. This means that royal decrees and communal (tax) regulations should be in accordance with laws, the Constitution and European rules. However communities are in principle competent to levy taxes, they should respect different 'higher' rules. If not, you can challenge the communal regulation.

So you can ask the Council of State to annul such a communal regulation because: (i) the community took a decision outside the scope of its competences (it concerned an issue for which it was not competent, it took a decision applying also to the territory of another community) or (ii) it introduced a tax which it cannot levy according to the Belgian tax code or (iii) it wants to collect a tax which infringes the European liberties, ...

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