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REPORT

"Introduction of a Constitutional Review of Laws: Benefit, Purpose and Modalities"

by

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1. Establishment and Development of the Constitutional Court. Overview of Its Powers

1. The Belgian Constitutional Court is a relatively recent member of the family of constitutional courts. It was established in 1983 and until 7 May 2007 bore the name of "Court of Arbitration".

Today, the mission of the Constitutional Court is to ensure compliance of legislative acts[1] with the rules governing the division of powers and the articles of the Constitution guaranteeing the rights and freedoms of Belgian citizens and foreign nationals living on the territory of Belgium. However, these extensive powers vested in the Court and the credit given to its rulings are the outcome of a slow development process.

2. When Belgium was created in 1831, the Constitution was recognized as the highest rule in the hierarchy of rules of law; in other words, it had to be complied with by all lower rules. However, no one at the time had yet contemplated instituting a review of the constitutionality of laws. The dogma of the sovereignty of the legislator still prevailed: the law can do no wrong, since it had been adopted by representatives who were elected by the people, and who therefore enjoyed a representative legitimacy.

3. Trained as they were in this view, the judges of the Belgian courts and tribunals virtually unanimously refused for many decades to review the constitutionality of laws, and would not even consider raising the question of the appropriateness of such a review. The first event that came to reverse this dispassionate attitude was the ruling delivered by the Supreme Court on 27 May 1971[2], which conceded that the Belgian legislature could be wrong and which established the principle that the judiciary should refuse to apply a law contrary to an international treaty that has binding force in Belgium. The lessons of this ruling are still applicable in Belgium, since it is generally admitted that every Belgian judge is permitted, and is in fact obliged, to review the conventional validity of laws and, where appropriate, to set aside any legislative act that violates a treaty.

A second shake-up was brought about by the ruling delivered on 3 May 1974[3], again by the Supreme Court, and again following the conclusions of Attorney-General Ganshof van der Meersch. In this ruling, the Supreme Court attempted to pave the way for a review of the constitutionality of laws and to appropriate this review, provoking strong reactions in political circles. In fact this attempt would fail; the hatchet was buried, and with it – or so it was believed – the issue of constitutional review.

4. We should not forget that, at the same time, Belgium embarked on a process of federalization. This gave rise to a renewed awareness of the need to put in place a constitutional review of legislative acts. The transformation of the unitary Belgian state into a federal state engendered a multiplication of legislative bodies in Belgium. The creation of federated entities empowered to adopt rules with the same legal effect as laws opened up the possibility of conflicts between legislative acts. None of the newly instituted legislatures (in the Communities and Regions) or existing legislative bodies (Federal representatives and senators)

[1] This term covers the *laws* adopted by the Federal State, the *decrees* adopted by the French-speaking Community, the Flemish Community, the German-speaking Community, the Walloon Region, the Flemish Region, and the *ordinances* adopted by the Brussels-Capital Region.

[2] *Leski* judgment, Supreme Court, 27 May 1971, *Arr.Cass.,* 1971, pp. 959-968, with the conclusions of the Attorney-General, Ganshof van der Meersch.

[3] *Lecompte* judgment, Supreme Court, 3 May 1974, *Pas.,* 1974, I, pp. 910 et seq.

wanted to see a "competitor" encroaching on its powers, whether substantive or territorial. Curiously, yet perfectly logically, an objective alliance could be seen to form between all the legislative bodies: the constitutional legislator had no choice but to renounce the principle of infallibility of the legislator and to establish a constitutional court which it was to call "Court of Arbitration", since its mission was simply to arbitrate conflicts of jurisdiction.

In 1980, Article 107c (now Article 142) of the Constitution established on paper a Court of Arbitration, while the ordinary Act of 28 June 1983 "on the composition, competence and functioning of the Court of Arbitration" was adopted. The Court was officially inaugurated on 1 October 1984 and delivered its first judgments in April 1985.

5. In 1988, Article 142 of the Constitution was extensively revised. Henceforth, the composition, competence and functioning of the Constitutional Court must be regulated by a *special* law, that is to say, a law adopted in strict compliance with the conditions of attendance quorum and voting[4]. This guarantee of a broad consensus between the two major linguistic communities is important, since it implies that the status of the Court is set in concrete, so to speak, and that no change can take place without the approval of a broad group of Members of Parliament. The Constitutional Court is currently organized by the special Act of 6 January 1989, as amended by the special Act of 9 March 2003.

6. Although the review carried out by the Constitutional Court remains a "specialized" review (since it does not cover all the rules of the Constitution), the scope of this review was considerably extended in 1988, and subsequently by the special Act of 9 March 2003. Henceforth the Court oversees not only the respect by the different legislatures for the rules governing the division of powers, but also respect for the entire Section II of the Constitution (which deals with fundamental rights) and for Articles 170, 172 and 191 of the Constitution (equality in tax-related matters, legality principle in tax-related matters, and the rights of foreign nationals).

The Court has no jurisdiction to hear an action which directly challenges an infringement of a rule of international law. On the other hand, it believes that its review should also cover provisions of international conventional law which apply in Belgium and which deal with the same subject as the constitutional provisions for which it has direct competence. Similarly, it cannot directly oversee compliance with European Union law, but can, as it does with the other provisions of international law, include them in its review of actions relating to rights and freedoms by combining them with articles of the Constitution. When in such review it is confronted with a problem of interpretation of a rule of European law, it does not hesitate to refer a question to the Court of Justice of the European Communities.

7. A case may be brought before the Constitutional Court in two ways: either "directly" in the form of an action for annulment instituted within six months from the publication of the legislative act in the official journal of Belgium, the *Moniteur belge*, or "indirectly" in the form of a preliminary question which in principle must be addressed by any court when it is raised in that court in the context of a particular lawsuit where a particular question is concerned with the compatibility of a legislative act with the rules of which the Constitutional Court ensures the respect. In the latter case, no time limit is set with regard to the publication of the act under review. In preliminary issues, the review carried out by the Court may concern very old legislative acts[5].

[4] A special Act can only be adopted if two-thirds of the members of the two Federal assemblies (House of Representatives and Senate) are present and if it is carried by two-thirds of the votes in each assembly and the majority of each of the linguistic groups (Article 4 of the Constitution).

[5] It is precisely in order to avoid challenges to international obligations long after they have been taken on that Article 26, §1*b* of the special Act on the Constitutional Court excludes from the purview of the Court preliminary questions relating to laws, decrees and ordinances ratifying a treaty establishing the European Union or the

The Court may be seized of an action for annulment brought not only by the State, the Communities and the Regions acting through their respective governments, and by the president of the federal and federated legislative assemblies at the request of two-thirds of their members, but also by any natural or legal person declaring a justifiable interest, whether this person be Belgian or a foreign national residing in Belgium. It is therefore not a popular action, since a justifiable interest in taking action must be demonstrated, but an action that is open to all citizens.

Although it is not part of the judiciary[6], the Constitutional Court does perform a judicial function, with all the guarantees attached to the accomplishment of such a mission.

The disputes, which are necessarily of a legal nature, are settled by a judgment which has the authority of *res judicata,* in accordance with formal guarantees such as independence and impartiality of the judges, respect for the rights of defense, the principle of adversarial procedure, the public nature of the hearings and judgments, and the obligation to state the grounds of the judgments. Those guarantees are enshrined in the organic law of the Court, irrespective of whether the disputes concern the violation of power-defining rules or fundamental rights. The Court's judgments in actions for annulment are binding on all, private individuals and public institutions alike, whereas rulings given on preliminary issues are more limited in their effect.

It should also be noted that, as a constitutional court of law, the Court does not try individuals; it does not adjudicate cases involving subjective rights. The Court "judges" laws or rules having force of law by reviewing their compatibility with the constitutional rules, the upholding of which has been entrusted to it. By doing so, it safeguards the harmony of the State in all its constituents and guarantees the respect by all the legislative assemblies for the rules organizing the federation and the rules establishing the fundamental rights and the individual and collective freedoms.

2. A Concentrated Constitutional Review: The Rationale and Modalities of a Choice

8. Between the American model of constitutional review, which is based on the basic idea that constitutional review is inherent in the judicial function and which, consequently, vests this review equally in all courts of law, under the authority of the Supreme Court, which oversees the unity of case-law, and the model used in most European countries, where constitutional review is the preserve of an independent court specially set up for that purpose, Belgium clearly opted for the latter model.

When in 1980 Belgium decided to put in place a system of constitutional review, the two solutions presented themselves. The matter was hotly debated, particularly in academic circles. Quite obviously it was the concomitant emergence of federalism that brought about the conviction that a special court needed to be established, composed on a basis of linguistic parity[7]. It should be remembered that federalism in Belgium came about through a mechanism of dissociation and not, as in the United States of America, by a process of unification; federalism in Belgium has its roots in the confrontation between two major sociolinguistic communities.

Convention of 4 November 1950 on the protection of human rights and fundamental freedoms or an Additional Protocol to this Convention.

[6] See below under nos. 11 and 14.

[7] See below under no. 17.

Without embarking on a discussion of the respective merits of the two models, the model chosen by Belgium has a major advantage: it actually preserves the idea that the judicial function, like any function exercised in a democratic State, is one that has to be shared. If Belgium had opted for the American model, this would have meant placing the *Cour de cassation* (Supreme Court) in a position similar to that of the Supreme Court in the United States, whose inordinate powers are ill-suited to a representative democracy which, moreover, in Belgium is obliged to constantly seek compromises between pluralistic forces, be they linguistic, ideological, philosophical or religious.

9. The wish of the constitutional legislator to reserve constitutional review for one single court of law, both with respect to actions for annulment and preliminary issues, has as a consequence that the independence of this court is ensured in relation to the other powers (Section 1), and the relations of the Constitutional Court with the other courts of law are carefully regulated (Section 2).

Section 1. Independence of the Constitutional Court

a) Institutional Independence

10. The independence of the Constitutional Court is established first of all by its constitutional foundation. It was instituted by Article 142 in a separate chapter of the Constitution entitled “On the Constitutional Court, and the prevention and resolution of conflicts”. Any abolition of the Court or a thoroughgoing modification of its powers would necessarily require an amendment of the Constitution, which under Belgian law involves a cumbersome and lengthy procedure.

Moreover, the constitutional legislator strengthened the institutional independence of the Court by requiring that the organization, competences and procedure of the Court be regulated by a special Act[8].

11. The Court is independent in relation to the three other conventional constituted powers: it does not come under the legislative, the executive or the judiciary.

12. The Court oversees the work of the different legislative powers that exist in Belgium. It does not supervise the legislators as such, nor can it interfere directly in the legislative process. Its interference manifests itself in its power to annul unconstitutional legislative acts, i.e. in a negative manner. Nevertheless, characterizing it as a “negative legislator” would be to misunderstand a function which materializes in the form of a court judgment that is delivered at the end of a judicial procedure that is totally dissimilar to the procedure whereby a law is adopted or repealed by the legislature.

Similarly, the different legislatures cannot intervene in the operation of the Court. Although they have a say in the individual appointment of the judges, they can never intervene in the proceedings, whether by way of recommendation, opinion or political control.

13. The Court is also independent in relation to the executive. Apart from the power to appoint the constitutional judges (like the federal public officials and judges) which is vested in the King, before whom the presidents and judges take the oath, the federal, community and regional governments have no specific authority with regard to the Constitutional Court.

14. Finally, the Court is independent in relation to the other holders of a judicial office in

[8] *Supra,* n° 5 et note 4.

Belgium: the courts that fall under the judiciary and the administrative courts.

The Belgian judicial scene is thus composed of three categories of courts: the courts of justice and tribunals, headed by the Supreme Court; the administrative courts, headed by the Council of State, and empowered to annul acts of the executive; and finally the Constitutional Court.

b) Organizational and Financial Autonomy

15. It should also be pointed out, without going into detail, that the Constitutional Court has organizational and financial autonomy which is structurally guaranteed by the Constitution and the Special Act.

16. It is the Court that appoints its presidents and determines the organizational and linguistic framework of its administrative staff. It also adopts its own internal rules and regulations. Finally, the disciplinary regime of the constitutional judges is a matter for the Court itself and no other external authority. Judges are appointed for life and can only be removed from office by a disciplinary decision taken by the Court according to a procedure that is left to its own discretion.

16. The funds necessary for the operation of the Court are fixed in the allocations budget. This means that the Court itself decides on the appropriation of the sums that are allocated to it without any breakdown of expenditure being required by the budgetary law allocating the funds. The Court approves its own accounts.

c) Independence of the Constitutional Judges

17. The Constitutional Court is composed according to a system of double parity. First of all, it is composed on the basis of linguistic parity: there are six French-speaking judges and six Dutch-speaking judges. The Court is also composed on a parity basis as regards the background of the twelve judges: half of them have a legal background (university professors, judges at a court of law, Councilors of State or legal secretaries) and the other half are former Members of Parliament with at least five years' experience as members of the House of Representatives, the Senate or a parliamentary assembly of a community or region. This quota of former MPs was a *conditio sine qua non* for the institution of a constitutional review: the wish was expressed that this review should not be purely "legal", reserved for legal experts with no knowledge of the reality of politics or the legislative process.

18. The judges of the Court are appointed by the King from a double list submitted alternately by the House of Representatives and by the Senate, and approved by a special two-thirds majority of the members present. The judges are appointed for life and exercise their office until the age of seventy. This principle of appointment for life, which is quite rare for a Constitutional Court, is meant to assuage professional ambitions and to avoid the pressures connected with the exercise of successive terms of office. It is also a guarantee of the independence of the constitutional judges.

19. The remuneration of the constitutional judges is determined by law, as are the incompatibilities of office: these are strictly regulated, since constitutional judges can no longer carry out any other activity of a legislative or executive nature or activity linked to any other judicial office than that of constitutional judge. Appointment as a constitutional judge necessarily entails a break with the previous career, and in particular a public office, even if unremunerated.

Section 2. Relations between the Constitutional Court and the Other Courts of Law of the State

20. First of all, it should be pointed out that no hierarchy exists or was wanted between the Constitutional Court and the two higher courts that head the courts of justice and administrative courts respectively, namely the Supreme Court and the Council of State.

21. The dual system of constitutional review in Belgium (direct review in the form of actions for annulment and indirect action through the mechanism of preliminary questions[9]) is the outcome of a historical development. We recalled that since the judgment delivered on 27 May 1971 by the Supreme Court[10], all Belgian courts, including the Council of State, have refused to apply rules of domestic law that are incompatible with a rule of international law. Besides this diffuse review carried out by all courts of law in relation to international conventional provisions, the constitutional legislator and the legislature have put in place a concentrated review in relation to the constitutional provisions that govern the division of powers between the Federal State and the federated entities as well as in relation to the fundamental rights that are enshrined in the Constitution. They have always wanted to reserve this review for a specialized court distinct from the judiciary and the administrative courts, a court which they established specially for this purpose: the Court of Arbitration, now called the Constitutional Court. The attempt by the Supreme Court to appropriate this review in its judgment of 3 May 1974[11] failed and was categorically rejected, first by the political community, then by the constitutional legislator and the special legislature.

22. The fact remains that the concomitance of a system of diffuse review and a system of concentrated review raises special difficulties where there is a concurrent protection of fundamental rights, namely when fundamental rights in Belgium are guaranteed both by the Constitution and by international conventions. Moreover, the mechanism of preliminary questions which the Constitutional Court is asked to answer by the courts also necessitated institutional adjustments which we will now briefly outline. An organizational link (Section 1), a procedural link (Section 2) and a functional link have been set up between the three categories of courts in Belgium.

Subsection 1. Organizational Link

23. The exercise of a judicial office, whether in a court of justice, administrative court or constitutional court, involves expertise in the techniques of adjudication, the wording of a judgment, procedure and a practice of good offices between the different parties to a lawsuit. This explains why in Belgium at least one judge at the Constitutional Court must have at least five years' experience as a judge at the Supreme Court or the Council of State[12]. Obviously, once he or she has been appointed to the Constitutional Court, the judge must relinquish all the duties he has hitherto carried out at the court where he previously held office. In Belgium, none of the different categories of courts interfere in the appointment of their respective members.

Subsection 2. Procedural Link

24. The procedural link between the different courts manifests itself in Belgium by the fact that when a preliminary question is raised by a court, the proceedings that were instituted before the referring court are suspended pending the answer of the Constitutional Court. This is a logical consequence of the mechanism of preliminary questions. For that same reason, the special Act

[9] See above under no. 7.

[10] See above under no. 3 and footnote 2.

[11] See above under no. 3 and footnote 3.

[12] Today, of the six professional judges of the Court, two come from the bench, three were professors of law at a university, and one held the office of legal secretary at the Constitutional Court.

exempts judges in interim injunction proceedings or judges who are asked to rule on a pre-trial detention from the obligation in principle of referring a preliminary question, unless this question concerns a rule connected with the interim injunction proceedings or the pre-trial detention.

25. The procedural relations also relate to the dialogue that may ensue between the court that referred the question and the constitutional court that is asked to answer it. It must be admitted that Belgium has not institutionalized such a dialogue. In practice, this deficiency is often regretted. Since it is the referring court that formulates the preliminary question, it is often a pity that the Constitutional Court cannot ask the referring court in certain cases to clarify the purpose or the outline of the question. The only mechanism which exists, but which may seem rather drastic and is far from being applicable in all cases, is that the Court can close the proceedings if the question is manifestly inadmissible, manifestly unfounded or manifestly outside its jurisdiction.

Subsection 3. Functional Link

a) Actions for Annulment

26. A judgment by which the Court annuls a legislative provision has absolute authority of *res judicata* from the date of its publication in the *Moniteur belge*. It is binding on all: the parties who initiated the action as well as all natural or legal persons in public and private law. The annulment has retroactive effect. The annulled rule is therefore removed from the body of rules of law with effect from the date on which the rule in question was published.

Two mechanisms have been built in to mitigate this rule. First, the Constitutional Court may, in its judgment of annulment, and by a general provision, uphold the effects or certain effects of the annulled rule for a period which it determines in that same judgment. This facility which is offered to the Constitutional Court makes it possible to avoid impairment of the legal certainty of situations that were settled at a time when a particular rule was not challenged.

A second mechanism was put in place to challenge, by a special form of action, the application for *revocation,* all judicial or administrative judgments that were pronounced in pursuance of a rule that has been annulled by the Constitutional Court. The application must be brought within six months following the pronouncement of the judgment of annulment.

27. A judgment by which the Court dismisses an action for annulment only has relative authority of *res judicata* in as much as it is only binding on private or public persons and, consequently, on the courts in respect of the points of law that have been settled by the Court.

b) Preliminary Issues

28. In Belgian law, all courts are permitted and even obliged, save in certain exceptional cases, to refer preliminary questions to the Constitutional Court. The Constitutional Court gives a broad interpretation to the term ‘court’, since apart from the courts of justice and administrative courts, it has also had questions referred to it by the Commission for aid to victims of deliberate acts of violence, by the Competition Council, and by various commissions dealing with social security matters.

29. In most cases, a preliminary question is raised on the initiative of the parties before the referring court. However, it happens that the court raises the question if the constitutionality issue is considered to be of public interest. In criminal cases, the State Counsel’s Office may also ask the court to refer a preliminary question to the Court.

30. In principle, and in view of the wish declared by the constitutional legislator to set up a concentrated constitutional review in Belgium, the courts are required to refer preliminary

questions to the Court. However, no court is obliged to seek a preliminary ruling from the Court if it lacks jurisdiction to hear the case of which it has been seized or if the case is inadmissible on procedural grounds. Similarly, it is not required to seek a preliminary ruling from the Court if the Court has already ruled on a question having the same subject matter. In this case, the referring court must comply with the ruling given earlier. If it refuses to comply, it must refer the question, even if this means that the Constitutional Court answers with a so-called ruling of *instant reply* in which it recalls its earlier decision. Finally, courts adjudicating in interim injunction proceedings or deciding on the continuation of pre-trial detention are only obliged to refer questions to the Court if the constitutionality issue concerns a provision relating to these matters.

31. With the exception of the Supreme Court and the Council of State, which are two courts adjudicating in the last instance, the other courts, whose judgments are open to appeal, are exempt from referring to the Constitutional Court if the challenged rule does not manifestly violate the Constitution or if the reply is not essential to the settlement of the lawsuit. This provision has sometimes irritated the highest Belgian court of justice and administrative court, which have tried to get round the obligation that was imposed on them[13].

32. The Constitutional Court, too, is obliged to respect certain rules. While it is permitted to reformulate a question (which it does – admittedly quite rarely – only if it believes that a question needs to be interpreted so as to reveal the substance of the application in a way that is useful to identify the real constitutionality issue), it is not allowed, and it is not its mission, to intervene in matters of fact or in other matters of law that concern the case being heard by the referring court. Furthermore, it is not for the Court to decide on the relevance of the question referred to it. It cannot alter (extend or restrict) the scope of its jurisdiction. All these aspects are the exclusive matter of the judgments delivered by the referring courts, and which may be appealed against before the Supreme Court or the Council of State.

33. A tricky question is that of knowing who may interpret the rule under review. Neither the referring court nor the Constitutional Court - each with different objectives – would be able to carry out their mission without interpreting the rule under review. Nevertheless, the scope of interpretation of the rule by the referring court is totally different from that of the Constitutional Court: whereas the former has to verify whether and on what conditions the challenged rule applies to the case of which it has been seized, the latter is not concerned with this. The Constitutional Court has to investigate whether the rule which the referring court may have to apply stands up to the test of constitutionality. The interpretation of the rule by the Constitutional Court is limited to the review of its conformity to the Constitution. It should be mentioned that, unlike the Court of Justice of the European Communities, the Belgian Constitutional Court has not been given the competence to give a preliminary ruling on questions connected with conflicts relating to the interpretation of legislative acts. Moreover, in the absence of a hierarchy between the Constitutional Court, the Supreme Court and the Council of State, the risk of conflicting interpretations of the same rules is real, which would not only prove to be a "psychological" problem of precedence between the three higher courts, but would also seem extremely perilous for the legal certainty of litigants.

34. The risk of conflicts takes on yet another dimension when it comes to interpreting rules against rules of reference, such as the Constitution or international treaties. It should be accepted that it is for the Constitutional Court to impose its interpretation of the Constitution, since it has been set up for that purpose. Even if this is against the will of the Supreme Court or the Council of State, it would be contrary to the intention of the constitutional legislator to allow their interpretations of the Constitution to take precedence over that of the Constitutional Court.

[13] See below under nos. 33 and 34.

35. In the matter of the interpretation of international treaties, the issue is rather more delicate since no one disputes the power of the Belgian courts to refuse to apply legislative acts that are contrary to international law. Although it is true that the Constitutional Court does not directly review legislative acts for compatibility with international conventions, the extension of its competences in March 2003 to include the monitoring of Title II of the Constitution has increased the risk of conflicts, in any case with respect to the provisions of international law that protect fundamental rights.

At a symposium which was held shortly after this extension of competences and in which the Constitutional Court, the Supreme Court and the Council of State took part, the idea was floated of having this question settled by parliament. A special bill is being discussed which would establish the principle whereby the courts are obliged to refer questions to the Constitutional Court relating to legislative acts whose conformity to a provision of Title II of the Constitution in conjunction with a rule of international law with the same subject matter is challenged. The bill has already been passed by the Senate; now it has yet to be passed by the House of Representatives.

3. Final Considerations: The Legitimacy of the Constitutional Court

36. I have attempted, as fairly as possible and without skirting around the problems linked to the constitutional court model chosen by Belgium, to give an overview of its competences and especially of the rationale behind the choice of this model, and also of the institutional adjustments which this involved, in particular in the matter of the Constitutional Court's relations with the courts of justice and the administrative courts.

No model is perfect and therefore no one can claim that the model used in his legal system should be imposed on others. On the other hand, it is always interesting to exchange experiences, and in this respect Belgium's institutional experiences are worth getting to know better as a potential source of inspiration or of disapproval, as the case may be.

37. I would like to end with a final, more general thought. Whichever model of constitutional court is chosen, there is one question that cannot be evaded, namely that of its legitimacy. It is a complex yet essential question.

The legitimacy of a constitutional court is not a question of representativeness. No court represents anyone. The people's sovereignty is necessarily shared between all the institutions of the State. It is accepted today that it does not belong exclusively to the legislature, yet it cannot be devolved to a body that is charged with overseeing the legislative work. Any conception, in this theocratic sense, of whichever institution, even the constitutional legislator, fails to take account of the reality of a sovereignty which must be limited at all levels of power. It is the abuse of power which in all cases represents a threat to democracy. From this perspective, I do not believe that "popular" demands which are often expressed in a violent way in public places (in the street, through the media, etc) deserve more than other democratically expressed opinions to be taken over in the legal system. This temptation, to which politicians motivated by demagogical considerations sometimes fall victim, also perverts the meaning which should be given to the people's sovereignty.

No constitutional court has the last word. If anyone should have it in that respect, it should be the constitutional legislator. Would it not be more productive to talk, and especially to set up a proper constitutional dialogue between all the institutional partners who at all levels of power must oversee compliance with the Constitution? In this perspective, the Constitutional Court is not the only party concerned; all the legislators, the people in government and those who hold office in all the other courts of law are involved too. Moreover, it is also important to involve in this dialogue – as in fact they are in Belgium – the citizens who, through actions for annulment which they may bring or preliminary questions which they may initiate, also share in the

concern to preserve the constitutional order. By their voice which they make heard before the Constitutional Court, individually or collectively (through associations), and with respect for the rules of procedure, they show that the exercise of the people's sovereignty does not stop, as far as they are concerned, at the exercise of their right to vote.

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