

## Belgium, Constitutional Court, Decision of 7th July 2011

### Member State

 Belgium

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### Topic

The parties to a dispute in which the legality of an appointment as a state councilor is at issue must submit that dispute to a court of law (Le Conseil d'Etat) whose members have already been involved in a nomination that is an integral part of the appointment procedure – question of objective impartiality.

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### Deciding Court Original Language

La Cour Constitutionnelle

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### Deciding Court English translation

Constitutional Court

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### Registration N

123/2011

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### Date Decision

07.07.2011

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### ECLI (if available)

BE:GHCC:2011:ARR.20110707.2

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### National Follow Up Of (when relevant)

No violation so not applicable

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## ECtHR Jurisprudence

ECtHR, 26 February 1993, *Padovani v. Italy*, § 27

ECtHR, 1 October 1982, *Piersack v. Belgium*, § 30; 24 May 1989, *Hauschildt v. Denmark*, §§ 46 and 48; December 16, 2003, *Grievés v. United Kingdom*, § 69; ECtHR, 6 June 2000, *Morel v. France*, § 42; 24 June 2010, *Mancel and Branquart v. France*, § 34; ECtHR, 21 December 2000, *Wettstein v. Switzerland*, § 44; ECtHR, 28 September 1995, *Procola v. Luxembourg* ; large chamber, 6 May 2003, *Kleyn eat Netherlands*; 9 November 2006, *Sacilor Lormines v. France*.

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## Subject Matter

Independence-Impartiality

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## Legal issue(s)

The legal issue here is whether the parties to a dispute in which the legality of an appointment as a state councilor is at issue must submit that dispute to a court of law (Le Conseil d'Etat) whose members have already been involved in a nomination that is an integral part of the appointment procedure.

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## Request for expedited/PPU procedures

Not applicable.

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## Interim Relief

Not applicable.

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## National Law Sources

Article 14, § 1, first paragraph, 1 ° and Article 70, of the laws on the Council of State, coordinated on January 12, 1973, Articles 10 and 11 of the Belgian Constitution

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## Facts of the case

The three candidates for a vacant post of Councilor of State were presented. By Royal Decree of March 5, 2006, one of the candidates was appointed Councilor of State. The appeal was brought by another candidate arguing that the Council of State does not comply in the present case with the general principle of law of the objective impartiality of the courts and asks the Council of State to ask a preliminary question to this subject to the Court.

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### Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Constitutional Court notes that the ECtHR has already ruled on the question whether an institution that has both an advisory and a judicial function fulfills the requirement of objective impartiality. The Constitutional Court then cites ECtHR judgments in order to reaffirm that the mere fact that an institution exercises an advisory and a judicial function at the same time is not enough to establish a breach of the requirements of independence and impartiality. As measures capable of guaranteeing this independence, the ECtHR mentions the lack of binding force of the opinions for the division that subsequently exercises the judicial function, the irremovability of the judges and the existence of a possibility of objection to all members of the Judicial Division who, as members of the Advisory Division, have already given advice on “the same matter” or “the same decision”. If necessary, this challenge must be made ex officio, so that it cannot be waited until the parties request it. The Constitutional Court concluded: Article 14, § 1, first paragraph, 1<sup>o</sup>, of the laws on the Council of State, coordinated on January 12, 1973, read in conjunction with Article 70 of the same laws, does not violate the Articles 10 and 11 of the Constitution, read in conjunction with the general legal principle of the objective impartiality of the courts.

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### Relation of the case to the EU Charter

Not applicable.

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### Relation between the EU Charter and ECHR

Not applicable.

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### Use of Judicial Interaction technique(s)

Through the use of constant Interpretation technique, the Constitutional Court looks up to ECtHR judgements and notes that the Council of State, when it has to rule on an appeal brought against a decision appointing a state councilor, has already issued an «opinion», in the form of a nomination, on «the same matter». Following the nomination of three candidates, the General Assembly of the Council of State must examine the admissibility of the applications and compare the respective claims and merits of the candidates. Moreover, the nomination must be explicitly motivated. that the independence and objective impartiality of the Council of State are in principle not endangered when it is required to rule on an appeal brought against a royal decree appointing a state councilor.

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Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The Council of State, based on the appeal for annulment of the royal decree, asked a preliminary question to this subject to the Constitutional Court. Thus in order for the Council of State to rule on this appeal, considered it necessary to put the preliminary question to the Constitutional Court. Thus in order for the Council of State to rule on this appeal, considered it necessary to put the preliminary question to the Constitutional Court.

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Strategic use of judicial interaction technique (purpose aimed by the national court)

In this case, the independence and objective impartiality of the Council of State are in principle not compromised when it is required to rule on an appeal brought against a Royal Decree appointing a State Councilor.

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Impact on Legislation / Policy

Not applicable.

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Notes on the national implementation of the preliminary ruling by the referring court

Not applicable.

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Impact on national case law from the same Member State or other Member States

Not applicable.

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Connected national caselaw / templates

ECLI:BE:GHCC:2014:ARR.20140630.4

ECLI:BE:GHCC:2016:ARR.20160114.5

ECLI:BE:GHCC:2020:ARR.20200116.16

They refer to *Wettstein vs. Switzerland* when assessing objective and subjective impartiality.

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(Link to) full text

<https://juportal.be/content/ECLI:BE:GHCC:2011:ARR.20110707.2>

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