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Developments in Belgian constitutional law

The year 2016 in review

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This contribution presents an overview of the Belgian Constitutional Court and its activities during 2016. Two constitutional controversies that were at the forefront of political discussions and attracted much media attention are discussed, namely the separation of powers and the refugee “crisis” as well as the Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada. Moreover, the article gives an overview of the main cases of the Belgian Constitutional Court of the past year that may be of interest to an international audience. These cases are divided into the following categories: the Belgian Constitution in Europe and the world, separation of powers, justice and order, ethical issues and hot topics.

1. Introduction

This contribution starts out by presenting the Belgian Constitutional Court and its activities in 2016. Second, two constitutional controversies are discussed that were at

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the forefront of political discussions and attracted much media attention, namely the separation of powers and the refugee “crisis” as well as the Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada.¹ Finally, we deliver an overview of the main cases of the Constitutional Court of the past year that can be of interest to an international audience. These cases are divided into the following categories: the Belgian Constitution in Europe and the world, separation of powers, justice and order, ethical issues, and hot topics.

2. The Constitution and the Constitutional Court

In the 1970s, Belgium embarked on a process of federalization. The transformation of the unitary Belgian state into a federal state led to a multiplication of legislative bodies. The creation of federated entities—regions and communities—empowered to adopt rules with the same legal effect as acts of the federal parliament resulted in the possibility of conflicts between legislative acts. Therefore, the original mission of the Constitutional Court was to oversee the constitutional division of powers between the federal state, the communities, and the regions. In the following decades, the competence of the Court was gradually extended to the constitutional rights and freedoms.

Now that the division of powers is well established between the federated entities and the federal state, conflicts of competencies only represent a small portion of the case law (4 percent of the judgments in 2016). The majority of cases in 2016 concern infringements of the principle of equality and non-discrimination, which, for historical reasons, is still the most invoked principle before the Court (52 percent). This is followed by review of compliance with the fundamental socioeconomic rights of article 23 of the Constitution (11 percent), the guarantees in taxation matters of articles 170 and 172 (8 percent), the property rights of article 16 (5 percent), the legality principle in criminal matters of articles 12 and 14 (4 percent), and the right to private and family life of article 22 (4 percent).

The Court makes the assumption that the fundamental rights under Title II of the Constitution and those enshrined in international conventions are inextricably linked. It is, therefore, unavoidable that the provisions under Title II are interpreted in conjunction with the provisions concerning similar fundamental rights in international treaties. As a result, the case law of the European Court of Human Rights (ECtHR) has a considerable influence on the case law of the Constitutional Court, which considers itself to be bound by the provisions of the European Convention on Human Rights (ECHR)² as interpreted by the ECtHR. Moreover, the case law of the Court of Justice of the European Union (CJEU) is also regularly reflected in the jurisprudence of the Constitutional Court.

¹ Comprehensive Economic and Trade Agreement, Can.–E.U., Sep. 26, 2014, European Comm’n, <http://ec.europa.eu/trade/policy/in-focus/ceta/>.

² European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, in force Nov. 3, 1953, 213 U.N.T.S. 222 [hereinafter ECHR].

A case may be brought before the Constitutional Court through an action for annulment or a reference for a preliminary ruling. Along with the action for annulment, or during the course of the proceedings, the suspension of the challenged legislative act may be demanded.

An action for annulment may be brought by the various governments, presidents of parliaments (at the request of two-thirds of their members); and any natural or legal person who has a justifiable interest in the annulment. In 2016, two institutional parties and seventy-two individual applicants brought a case before the Court. An action for annulment must, as a rule, be brought within six months of the official publication of the challenged act. If an action for annulment is well founded, the Court will annul all or part of the challenged provisions (twenty-nine in 2016), while (provisionally) maintaining—where appropriate—the effects of the provisions in question (three times). If the action for annulment is dismissed (on nineteen occasions in 2016), the judgment shall be binding on the courts with respect to the points of law settled by the judgment. In the other four judgments (out of a total of fifty-two), the annulment appeal was declared inadmissible.

The action for annulment does not suspend the effect of the challenged act. In order to prevent the challenged norm from causing irrevocable prejudice during the period between the introduction of the action and the judgment of the Court, the Court may—at the applicant’s request and in exceptional circumstances—order the suspension of the challenged norm pending a judgment on the merits of the case. In 2016, suspension was ordered in three cases. Such an action for suspension must be brought within three months following the official publication of the challenged norm.

If one of the parties invokes the infringement by a legislative act of the division of competencies between the state, the communities and the regions, by the fundamental rights guaranteed in Title II “The Belgians and their rights” or by the articles 143(1), 170, 172, and 191 of the Constitution in a dispute before a court of law, the latter must in principle refer a question for a preliminary ruling to the Constitutional Court. In 2016, most of the preliminary questions were referred by the Courts of First Instance (fifty-one), followed by the courts of appeal (twenty-five), the labor courts (ten), and the labor tribunals (ten). Incidentally, the highest courts also referred some questions, namely eight times for the Council of State and on six occasions for the Court of Cassation. An infringement was found in 36 percent of these cases, whereas no infringement was found on sixty-four occasions (58 percent of the cases). In other judgments, the Court held that the question does not need an answer, referred the case back to the court of law, declared itself incompetent or declared the question inadmissible.

In 2016, the Court delivered 170 judgments and handled 207 cases in total. The discrepancy between the number of treated and completed cases and the number of judgments is due to joined cases. Moreover, proceedings are sometimes terminated by court order that, for example, grants the discontinuance of the action. Conversely, it may happen that the Court gives an interlocutory ruling or a provisional ruling while the case is still pending. This takes place when the Court refers a case to the CJEU for a preliminary ruling.

Six judgments ruled on a request for suspension, fifty-two judgments concerned actions for annulment, 110 judgments concerned references for preliminary rulings, and two judgments handled requests for interpretation. Therefore, most judgments were preliminary rulings (65 percent), while actions for annulment represented 31 percent and requests for suspension represented 4 percent in 2016.

3. Constitutional controversies

3.1. The separation of powers and the refugee “crisis”

Since October 2016, Belgium has witnessed a fierce debate about the separation of powers related to the refugee “crisis.” The controversy started when a Syrian family asked for a humanitarian visa via the Belgian embassy in Beirut for a short stay in Belgium in order to be able to seek asylum. The applicants invoked article 3 ECHR which prohibits inhuman or degrading treatment. The Belgian Immigration Service, which falls under the authority of the Secretary of State for Asylum and Migration, Theo Francken, denied the request, but was faced with a suspension of its decision by the Council for Alien Law Litigation (CALL)³ and with the injunction to take a new decision within forty-eight hours due to an insufficient reasoning regarding the risk of inhuman or degrading treatment. This judgment was followed by two other suspensions by the CALL⁴ due to insufficient reasoning, as the rejection decision was three times literally almost identical. The third time, even though issuing a visa is a discretionary decision of the competent administrative authority, the judge compelled the Secretary of State to issue a visa. This judgment elicited Francken and his party New Flemish Alliance (N-VA) to launch an advertising campaign attacking the “unworldly judges” for their alleged judicial activism. He filed an appeal in cassation before the Council of State, as well as appeals against the judgment of the President of the Francophone Brussels Court of First Instance⁵ who imposed a coercive fine related to the obligation to issue the visa. Francken firmly refused to issue the visa and to pay the fine.

These actions led to severe criticism, among others by the High Council of Justice, stating that the Secretary of State refused to comply with the separation of powers and undermined the rule of law. In another case,⁶ the CALL referred for a preliminary ruling to the CJEU with regard to the legal issue at stake about the request for a humanitarian visa via an embassy. Several other countries and the European Commission joined the case.⁷ The Advocate-General advised the CJEU to hold that an EU member state is obliged to issue a visa on humanitarian grounds if, given the

³ Conseil du Contentieux des Étrangers [CCE] [Council for Alien Law Litigation], decision no. 175.973, Oct. 7, 2016 (Belg.).

⁴ CCE decision no. 176.363, Oct. 14, 2016, and CCE, decision no. 176.577, Oct. 20, 2016 (Belg.).

⁵ Tribunal de Première Instance [Civ.] [Tribunal of First Instance], Bruxelles, decision no. 16/3438/B, Oct. 25, 2015 (Belg.).

⁶ CCE, decision no. 179.108, Dec. 8, 2016 (Belg.).

⁷ C-638/16 PPU X and X v. État belge, Mar. 7, 2017, ECLI:EU:C:2017:173.

circumstances, there are strong reasons to believe that a refusal would directly lead to the applicant being subjected to torture or inhuman or degrading treatment, by withholding a legal action to exercise the right to request international protection in that member state. Nevertheless, the CJEU (Grand Chamber) did not explicitly hold that there is an obligation to issue a visa in this case, because an application for a visa with limited territorial validity made on humanitarian grounds by a third-country national, on the basis of article 25 of the Community Code on Visas,⁸ to the representation of the Member State of destination situated within the territory of a third country, with a view to lodging, immediately upon the arrival in that Member State, an application for international protection and, thereafter, to staying there for more than ninety days in a 180-day period, does not fall within the scope of that code but, as European Union law currently stands, solely within that of national law.⁹

3.2. Comprehensive Economic and Trade Agreement

In October 2016, the world was wondering how the Minister-President of the Walloon Region, on his own motion, was able to postpone the signing of the Comprehensive Economic and Trade Agreement between the European Union and Canada. The treaty-making power in Belgium is allocated according to the principle of *in foro interno, in foro externo*, established in article 167 of the Belgian Constitution. Community and Region governments have the power to enter treaties that exclusively relate to matters falling within their jurisdiction. As regards “mixed treaties,” such as CETA, the treaty-making power is shared with the federal authorities. After a period of power play and some minor adjustments, the Walloon Government conceded, which allowed CETA to be signed.

4. Major Cases

4.1. The Belgian Constitution in Europe and the world

In 2016, the Constitutional Court continued to show great openness towards international and European law, in particular the ECHR and EU Law. References were made to the jurisprudence of the ECtHR in forty-six cases and to the case law of the CJEU in nineteen cases. References to other sources of international law can be found in twenty-nine cases. Based on the CILFIT case law of the Court of Justice¹⁰, the Constitutional Court ruled in five cases, ensuing a request by the parties that there was no need to refer for a preliminary ruling to the CJEU.

⁸ Regulation 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas of the European Parliament and of the Council, O.J. (L 243) at 1.

⁹ C-638/16 PPU X and X v. État belge, Mar. 7 2017, ECLI:EU:C:2017:173.

¹⁰ See 283/81, Srl CILFIT and Lanificio di Gavardo Sp.A. v. Ministry of Health, Oct. 6, 1982, ECLI:EU:C:1982:335.

(a) Judgment No. 62/2016: Treaty on stability; demand for annulment; admissibility; primacy of EU Law; national identity

The 2012 Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (Fiscal Compact) is an intergovernmental agreement between twenty-five EU member states to reinforce budget discipline of euro area governments following the sovereign debt crisis in 2010.¹¹ The Constitutional Court had to decide on the admissibility of a demand for annulment of various acts of the federal and the Flemish parliament approving the Fiscal Compact and implementing its article 3(1).¹² A number of citizens and non-profit organizations asserted that the strict budgetary objectives established in the fiscal compact would lead to the authorities no longer being able to fulfill their constitutional obligations in terms of fundamental social rights (Article 23 of the Constitution).

The fact that austerity measures can be imposed on the basis of the Fiscal Compact is, according to the judgment, not sufficient to demonstrate a proper individualized connection between the personal situation of the applicants and the disputed provisions. They could only be affected directly and unfavorably by measures intended to achieve those budgetary objectives. In the Court's view, having an interest as a citizen or a person who has the right to vote is likewise not sufficient, because the challenged acts have no direct effect on the right to vote. Nonetheless, the Court considered whether the challenged acts interfered with any other aspect of the democratic rule of law which would be so essential that its protection is in the interest of all citizens. Parliament is indeed the only constitutional body empowered to approve the annual budget, but also to set medium-term budgetary objectives. It can enter into such commitments by way of a treaty. When they approve a treaty, however, the legislators may not violate constitutional guarantees. Although the Fiscal Compact makes provision for detailed targets and deficit reduction, it leaves national parliaments entirely at liberty as to how they draw up and approve budgets.

The Fiscal Compact does not merely create an inflexible budgetary framework, it also entrusts certain powers to the EU institutions, which is permitted by the Constitution (article 34). However, for the first time the Court asserts that

under no circumstances can there be any discriminatory violation of the national identity contained in the basic political and constitutional structures or of the fundamental values of protection that the Constitution affords to any person.¹³

The disputed acts, however, do not interfere with any aspect of the democratic rule of law, which is so essential that its protection is in the interest of all citizens. Consequently, none of the applicants had an interest to the degree required for them to seek the annulment of the challenged acts and the annulment appeals were thus declared inadmissible.

¹¹ Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, Mar. 2, 2012 [hereinafter Fiscal Compact].

¹² Cour Constitutionnelle [CC] [Constitutional Court] decision no. 62/2016, Apr. 28, 2016, available at <http://www.const-court.be/public/f/2016/2016-062f-info.pdf> (Belg.).

¹³ *Id.* at 22.

4.2. Separation of powers

(a) *Judgment No. 153/2016: administrative courts; administrative loop; independence and impartiality of the judiciary*

In judgments nos. 103/2015,¹⁴ 74/2014,¹⁵ and 152/2015,¹⁶ the Constitutional Court reviewed the constitutionality of the so-called “administrative loops” of the (federal) Council of State and the (Flemish) Council for Permit Disputes and the High Enforcement Council for the Environment. An administrative loop allows an administrative judge to give an administrative authority in an interim judgment the possibility of rectifying the irregularity of a contested administrative act. This aims to contribute to the final adjudication of disputes in a timely manner. According to the Court, the initial design of the loop provided administrative judges with the possibility of expressing their viewpoint regarding the outcome of a dispute, even though the use of the loop would not result in a (rectified) decision with an altered content. As a result, the Court argues that the administrative loop puts a strain on the separation of powers, and in a discriminatory way violates the principle of impartiality and independence of the judiciary. According to the Court, the administrative judge intervenes in the determination of the content of a discretionary administrative act, which is a task of the administrative authorities.

On December 1, 2016, however, the Constitutional Court dismissed an appeal against the Decree of June 3, 2015,¹⁷ which grants the above-mentioned two Flemish administrative courts a redesigned administrative loop for formal and substantive illegality.¹⁸ The judge can now offer the defendant the possibility of rectifying the unlawfulness by adopting a new rectified administrative act of which the content can be altered. In contrast to the previously designed loops, the judge now only holds whether the unlawfulness can be rectified, but he no longer needs to rule on the content of the administrative act. The Constitutional Court rejected all the arguments of the applicant and held that the contested provision was constitutional. The Court ruled, *inter alia*, that there was no longer a violation of the independence and impartiality of the judge.

¹⁴ CC decision no. 103/2015, July 16, 2016, available at <http://www.const-court.be/public/f/2015/2015-103f.pdf> (Belg.). See English version at <http://www.const-court.be/public/e/2015/2015-103e.pdf>.

¹⁵ CC decision no. 74/2014, May 8, 2014, available at <http://www.const-court.be/public/f/2014/2014-074f.pdf> (Belg.).

¹⁶ CC decision no. 152/2015, Oct. 29, 2015, available at <http://www.const-court.be/public/f/2015/2015-152f.pdf> (Belg.).

¹⁷ Decreet tot wijziging van art. 4.8.19 van de Vlaamse codex ruimtelijke ordening en het decreet van 4 april 2014 betreffende de organisatie en de rechtspleging van sommige Vlaamse Bestuursrechtsscholles [Decree Amending Art. 4.8.19 of the Flemish Code Urban Planning and the Decree of 4 April 2014 Concerning the Organization and the Judicial Procedure of some Flemish Administrative Courts], June 3, 2015, Belgisch Staatsblad [B.S.] [Official Gazette of Belgium], July 16, 2015.

¹⁸ CC decision no. 153/2016, Dec. 1, 2016, available at <http://www.const-court.be/public/f/2016/2016-153f.pdf> (Belg.).

4.3. Justice and order

(a) Judgment No. 83/2016: Criminal Procedure Code; out of court settlement; insufficient judicial review

Article 216bis(2) of the Criminal Procedure Code, as introduced by the Act of April 14, 2011,¹⁹ and modified by the Acts of July 11, 2011²⁰ and February 5, 2016,²¹ considerably enlarged the possibility for public prosecutors to settle criminal cases out of court. Such a settlement also became possible when the case was already pending before the criminal court or was already judged in first instance, as long as there was no final judgment on appeal, provided that the victims had been compensated properly. The Constitutional Court judged that insofar as the public prosecutor can settle a case that is under instruction of an investigating judge without an effective judicial review of the proposed settlement, the provision is incompatible with articles 10 and 11 of the Constitution in conjunction with the right to a fair trial and the principle of independence of the judiciary, guaranteed by article 151 of the Constitution, article 6(1) ECHR and article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).^{22,23} As the settlements concerned cases pending before the criminal (trial) judge in first instance or appeal, the judicial review limited to the formal conditions of the settlement was considered to be insufficient and thus violated the same provisions and principles. The Court decided to uphold the legal effects of the unconstitutional provision until the date of publication of the judgment in the official journal.

(b) Judgment No. 108/2016: police databases; privacy; supervision

The Act of March 18, 2014²⁴ provides a comprehensive legal framework for the various databases of the federal and local police in Belgium. The Act identifies the various databases, the data that they may or must contain in view of administrative or judicial policing, their management, the use of these data, the measures taken to

¹⁹ Wet houdende diverse bepalingen [Law Containing Various Provisions], Apr. 14, 2011, B.S., May 6, 2011.

²⁰ Wet tot wijziging van de artikelen 216bis en 216ter van het Wetboek van strafvordering en van artikel 7 van de wet van 6 juni 2010 tot invoering van het Sociaal Strafwetboek [Law Amending Articles 216bis and 216ter of the Code of Criminal Procedure and Article 7 of the Law of 6 June 2010 introducing the Social Criminal Code], July 11, 2011, B.S., Aug. 1, 2011.

²¹ Wet tot wijziging van het strafrecht en de strafvordering en houdende diverse bepalingen inzake justitie [Law Amending Criminal Law and Criminal Procedure and Containing Various Provisions on Justice], Feb. 5, 2016, B.S., Feb. 16, 2016.

²² International Covenant on Civil and Political Rights, Dec. 16, 1966, in force Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR].

²³ CC decision no. 83/2016, June 2, 2016, available at <http://www.const-court.be/public/f/2016/2016-083f.pdf> (Belg.).

²⁴ Wet betreffende het politiebureau en tot wijziging van de wet van 5 augustus 1992 op het politiebureau, de wet van 8 december 1992 tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens en het Wetboek van strafvordering [Law Concerning Police Information Management and Amending the Law of August 5, 1992 on Police Office, the Law of December 8, 1992 on the Protection of Privacy Relating to the Processing of Personal Data and the Code of Criminal Procedure], Mar. 18, 2014, B.S., Mar. 28, 2014.

protect privacy and abuse, the access and supervision, and the interaction with the judiciary and other law enforcement bodies. In a lengthy judgment of 141 pages the Court comes to the conclusion that, considered as a whole, sufficient measures have been taken to avoid any non-justified interference in the right to privacy guaranteed by article 22 of the Constitution, article 8 ECHR, article 17 ICCPR, and articles 7 and 8 of the EU Charter of Fundamental Rights,²⁵ after a detailed analysis of the relevant ECtHR case law. Nonetheless, the Court imposed a restrictive interpretation of several provisions.²⁶ Only one provision was partially annulled, namely concerning the composition of the body supervising the observance of the law by the various police departments. As the number of police members can exceed the number of external independent experts and members of the judiciary or members representing the Privacy Commission, the Court is of the opinion that the Act does not offer sufficient guaranties for effective and independent supervision. The legislator is ordered to amend this provision before the end of 2017.

4.4. Ethical issues and hot topics

(a) Judgment No. 2/2016: freedom of choice regarding a child's surname; equality between men and women

In 2014, the federal legislature amended the Civil Code²⁷ in order to establish autonomy of choice and equality between men and women regarding the way in which surnames are passed on to children. The new provision enabled parents to choose between the father's surname, the mother's surname, or a double-barreled surname made up of these two surnames in the order determined by them. It also stated that if the parents disagreed on the choice of the child's surname or if they do not make a choice, the father's surname would be assigned to the child. The latter provision was challenged before the Constitutional Court.²⁸

The Court first held that the right to pass on one's surname cannot be regarded as a fundamental right. It noted the legislature's choice to give preference to the parents' freedom of choice and considered it justified for parliament to determine the surname in cases of disagreement or lack of choice, as it is important to establish a child's surname at birth in a simple, swift, and uniform way. However, the reasons for giving precedence to the father's surname in these cases—tradition and a desire to make gradual progress—do not justify the differential treatment between the parents, solely on the

²⁵ Charter of Fundamental Rights of the European Union, 2010 O.J. C 83/02 [hereinafter Charter of Rights].

²⁶ CC decision no. 108/2016, July 14, 2016, available at <http://www.const-court.be/public/f/2016/2016-108f.pdf> (Belg.).

²⁷ Code Civile, art. 335(1)(2), 3d phrase, as replaced by Wet tot wijziging van het Burgerlijk Wetboek met het oog op de invoering van de gelijkheid tussen mannen en vrouwen bij de wijze van naamsoverdracht aan het kind en aan de geadopteerde [Law Amending the Civil Code in view of the Introduction of the Equality Between Men and Women Regarding the Manner of Transfer of Surnames to the Child And to the Adopted Person], art. 2, May 8, 2014, B.S., May 26, 2014.

²⁸ CC decision no. 2/2016, Jan. 14, 2016, available at <http://www.const-court.be/public/f/2016/2016-002f.pdf> (Belg.).

basis of their sex. Indeed, the disputed provision gave the father a veto right when deciding on the child's surname. Therefore, the Court found a violation of the principle of equality (article 10 of the Constitution) and annulled the disputed provision.

(b) Judgment No. 18/2016: filiation; right to challenge paternity; right to know one's descent

In a controversial case involving the former King of Belgium, the Constitutional Court confirmed, once more, with reference to the case law of the ECtHR, that in legal proceedings to determine filiation, the universal right to know one's descent must in principle take precedence over the interests of family peace and legal certainty of family ties. Therefore, article 318 of the Civil Code is incompatible with the right to respect for private life (article 22 of the Constitution, read in conjunction with article 8 ECHR) insofar as it bars a challenge to paternity when the child has been treated as the child of his legal father, a situation known as the "de facto status" (*possession d'état*), and insofar as it forbids a child over the age of twenty-two to challenge the paternity of his mother's husband more than one year after the child discovered that the man is not his father. Any other ruling would prevent the courts from taking the interests of all parties concerned into account. The lift of this double bar permitted Delphine Boël to challenge the paternity of her mother's husband before the Court of First Instance far beyond both limits and to bring a paternity suit against her supposed biological father, the former King of Belgium.

(c) Judgment No. 72/2016: combat of discrimination; sexism; clear definition; freedom of expression

In 2014 Belgium was the first country in the world to introduce a criminal provision prohibiting sexism in the public space.²⁹ The provision was challenged before the Constitutional Court for violating the principle of legality in criminal matters, as it allegedly did not define in sufficiently clear and accurate terms the offence of "sexism."³⁰ It allegedly also violated the freedom of expression (article 19 of the Constitution). The Court held that, even assuming that the definition of "sexism" is not sufficiently precise in scope or in content, the requirement that the criminalized acts and gestures must have resulted in a serious infringement of the dignity of the person, leaves the courts sufficient indications as to the scope of the contested provision. Indeed, it is inherent to the criminal court's mission to decide on the seriousness of a particular behavior and to determine whether that behavior falls within the scope of the criminal law.

²⁹ Wet ter bestrijding van seksisme in de openbare ruimte en tot aanpassing van de wet van 10 mei 2007 ter bestrijding van discriminatie teneinde de daad van discriminatie te bestraffen [Law Combatting Sexism in the Public Space and Amending the Law of 10 May 2007 combatting Discrimination in order to Criminalize the Act of Discrimination], arts. 2 and 3, May 22, 2014, B.S., May 24, 2014 [hereinafter Sexism Act].

³⁰ CC decision no. 72/2016, May 25, 2016, <http://www.const-court.be/public/f/2016/2016-072f.pdf> (Belg.). See English version at <http://www.const-court.be/public/e/2016/2016-072e.pdf>.

The Court further acknowledged that the contested Act interfered with a person's right to freedom of expression. However, as equality between men and women is one of the fundamental values of a democratic society, the Act serves a legitimate aim. Moreover, the necessity of the Act in a democratic society does not depend on its effectiveness, measured in terms of its application by the courts and sentences passed. Indeed, the Act may also have an educational and preventive effect. Lastly, given the fact that the Act requires a special intent and a serious infringement of the dignity of specific persons, it cannot be considered disproportionate. The Court therefore upheld the "Sexism Act."

5. Conclusion

The success rate of appeals before the Constitutional Court was quite high in 2016. From the Court's foundation in 1985 until 2015, actions for annulment were successful in 28 percent of the cases in the sense that they resulted in a total or partial annulment.³¹ In 2016, the Court annulled the challenged provisions in 56 percent of the cases. Until 2015, preliminary rulings had an average success rate of 32 percent, while the rate was 36 percent in 2016. Last year, the Court ordered three suspensions (50 percent), which is considerably more than the 10 percent average from the past. The cases discussed in Section 4 show, of course, only a partial picture of the Court's case law.

³¹ See Luc Lavrysen et al., *Developments in Belgian Constitutional Law: The Year 2015 in Review*, ICONNECT BLOG (Oct. 12, 2016), <http://www.iconnectblog.com/2016/10/developments-in-belgian-constitutional-law-the-year-2015-in-review>.